A. We will manage all refuges in accordance with an approved comprehensive conservation plan (CCP). The CCP describes the desired future conditions of the refuge or refuge planning unit and provides long-range guidance and management direction to accomplish the purpose(s) of the refuge and Refuge System mission. We prepare CCPs with State fish and wildlife agencies and with public involvement and include a review of the appropriateness and compatibility of existing refuge uses and of any planned future public uses. If, during preparation of the CCP, we identify previously approved uses we can no longer consider appropriate on the refuge, we will clearly explain our reasons to the public and describe how we will eliminate or modify the use. When uses are reviewed during the CCP process, the appropriateness finding will be documented using the form provided as FWS Form 3-2319 for the refuge files. The documentation for both appropriateness findings and compatibility determinations should also be included in the documentation for the CCP.

B. For proposed uses we did not consider during the preparation of the CCP or if a CCP has not yet been prepared, we will apply the procedure contained in this policy and make an appropriateness finding without additional public review and comment. However, if we find a proposed use is appropriate, we must still determine that the use is compatible. The compatibility determination includes an opportunity for public involvement. See the planning policy (602 FW 1, 3, and 4) for detailed policy on refuge planning.

1.10 What are the different types of refuge uses? For the purposes of this policy, there are five types of uses.

A. Wildlife-Dependent Recreational Uses. When compatible, they are legitimate and appropriate uses of refuges and are the priority general public uses of the Refuge System.

B. State Regulated Take of Fish and Wildlife. When compatible, the take of fish and wildlife under State regulations is a refuge use.

C. Other General Public Uses. General public uses that are not wildlife-dependent recreational uses (as defined in the Improvement Act) and do not contribute to the fulfillment of refuge purposes or goals or objectives as described in current refuge management plans (see section 1.6A(2)) are the lowest priorities for refuge managers to consider. These uses are likely to divert refuge management resources from priority general public uses or away from our responsibilities to protect and manage fish, wildlife, and plants and their habitats. Therefore, both law and policy have a general presumption against allowing such uses within the Refuge System. Before we will consider these uses further, regardless of how often they occur or how long they last, we must first find if these public uses are appropriate as defined in section 1.11.

D. Specialized Uses. These uses require specific authorization from the Refuge System, often in the form of a special use permit, letter of authorization, or other permit document. These uses do not include uses already granted by a prior existing right. We make appropriateness findings for specialized uses on a case-by-case basis. Before we will consider a specialized use, we must make an appropriateness finding as defined in section 1.11A(3) of this chapter. Any person whose request for a specialized use is denied or who is adversely affected by the refuge manager's decision relating to a permit may appeal the decision. In these situations, the person should follow the appeal process outlined in 50 CFR 25.45 and, for Alaska refuges, in 50 CFR 36.41(i). The appeal process for denial of a right-of-way application is in 50 CFR 29.22. The appeal process for persons who believe they have been improperly denied rights with respect to providing visitor services on Alaska refuges is in 50 CFR 36.37(g). Some common

examples of specialized uses include.

(1) Rights-of-way. See 340 FW 3 (Rights-of-Way and Road Closings) and 603 FW 2 (Compatibility) for detailed policy on rights-of-way.

(2) Telecommunications facilities. We process requests to construct telecommunication facilities on a refuge the same way as any other right-of-way request. The Telecommunications Act of 1996 does not supersede any existing laws, regulations, or policy relating to rights-of-way on refuges. The refuge manager should continue to follow the procedures in 340 FW 3 (Rights-of-Way and Road Closings) and 603 FW 2 (Compatibility).

(3) Military, National Aeronautics and Space Administration (NASA), border security, and other national defense uses. The following guidelines apply to Refuge System lands owned in fee title by the Service or lands to which the Service has management rights that provide for the control of such uses:

(a) We will continue to honor existing long-term, written agreements such as memorandums of understanding (MOU) between the Service and the military, NASA, and other Federal agencies with national defense missions. However, we discourage entering into any new agreements permitting military preparedness activities on refuges. Only the Director may approve any modification to existing agreements. Where joint military/NASA/Service jurisdiction occurs by law, an MOU negotiated by the principal parties, and subject to the approval of the Director, will specify the roles and responsibilities, terms, and stipulations of the refuge uses. Wherever possible, we will work to find practical alternatives to the use of refuge lands and to minimize the effects on fish, wildlife, and plants and their habitats.

(b) We consider authorized military activities on refuge lands that directly benefit refuge purposes to be refuge management activities, and they are not subject to this policy. For example, in a case where a national guard unit is assisting the refuge with the construction of a water control structure or helping to repair a refuge bridge, we consider these activities to be refuge management activities. We do not consider them to be specialized uses.

(c) For routine or continuous law enforcement and border security activities, an MOU between the Service and the specific enforcement agency must clearly define the roles and responsibilities of the enforcement agency and must specify the steps they will take to minimize impacts to refuge resources. The MOU should also address emergency situations and require advance notice and approval as a general rule. It should clearly spell out under what circumstances, if any, the enforcement agency may enter refuge lands in emergency situations prior to notifying the refuge manager. We recognize that in some situations a refuge manager cannot be notified until after an operation has taken place (for example, where lives are in danger). If such situations occur, the refuge manager must be notified as soon as possible. For undercover operations, those involved must strictly follow Service guidelines that cover the specific situation.

(4) Research. We actively encourage cooperative natural and cultural research activities that address our management needs. We also encourage research related to the management of priority general public uses. Such research activities are generally appropriate. However, we must review all research activities to decide if they are appropriate or not as defined in section 1.11. Research that directly benefits refuge management has priority over other research.

(5) Public safety training. We may assist local government agencies by allowing health, safety, and rescue training operations on the refuge if we find the use to be appropriate and compatible Examples include fire safety training, search and rescue training, and boat operations safety training. Law enforcement training exercises in support of refuge management activities are usually appropriate We will evaluate each request on a case-by-case basis and consider the availability of other local sites. We will review these uses to decide if they are appropriate as defined in section 1.11. To the extent practicable, we will develop written agreements with the requesting agencies.

(6) Native American ceremonial, religious, medicinal, and traditional gathering of plants. We will review specific requests and provide reasonable access to Native Americans to refuge lands and waters for gathering plants for ceremonial, religious, medicinal, and traditional purposes when the activity is appropriate and compatible or when existing treaties allow or require such access.

(7) Natural resource extractions. Part 612 of the Service Manual provides general guidance relating to minerals management on refuges. Managers should refer to those policies, particularly in cases where their refuge has valid existing rights vested in private interests. The Alaska National Interest Lands Conservation Act of 1980 provides specific guidance for oil and gas leasing on Alaska refuges. We only allow the extraction of certain resources, such as gravel, that supports a refuge management activity when there is no practical alternative and only in compliance with 50 CFR 29.1. We will not justify such activity by citing budgetary constraints or mere convenience. We will seek funding through our normal budgetary process for projects that require gravel or similar resources found on the refuge.

(8) Commercial uses. Commercial uses of a refuge may be appropriate if they are a refuge management economic activity (see 50 CFR 25.12), if they directly support a priority general public use, or if they are specifically authorized by statute (such as ANILCA). See 50 CFR 29.1 for additional information on economic uses of the natural resources of refuges. An example of a commercial use that may be appropriate is a concession-operated boat tour that facilitates wildlife observation and interpretation. We will review all commercial uses to decide if they are appropriate as defined in section 1.11

E. Prohibited uses. Certain activities that are prohibited on refuges by regulations are listed in 50 CFR 27

1.11 How do we make the appropriateness finding for a use on a refuge?

A. A refuge use is appropriate if the use meets at least one of the following three conditions:

(1) It is a wildlife-dependent recreational use of a refuge This finding does not require refuge supervisor concurrence.

(2) It contributes to fulfilling the refuge purpose(s), the Refuge System mission, or goals or objectives described in a refuge management plan approved after October 9, 1997, the date the Improvement Act was signed into law This finding does not require refuge supervisor concurrence

(3) The refuge manager has evaluated the use following the guidelines in this policy and found that it is appropriate The refuge manager will address the criteria below and complete FWS Form 3-2319 for each use reviewed for appropriateness, including uses

reviewed in conjunction with a CCP or step-down management plan. If the answers to the questions on FWS Form 3-2319 are consistently "yes," and if the refuge manager finds, based on sound professional judgment, the use is appropriate for the refuge, the refuge manager then prepares the written justification using FWS Form 3-2319 (If the answer to any of the factors is "no," refer to section 1.11B) Before undertaking a compatibility determination, the refuge manager should forward the justification to the refuge supervisor to obtain written concurrence when a use is found appropriate. The requirement for concurrence from the refuge supervisor will help us promote Refuge System consistency and avoid establishing precedents that may present management problems in the future. Refuge supervisors will usually consult with their Regional Chief and peers in other Regions as these decisions are made to promote consistency within the Refuge System. The refuge manager will base the finding of appropriateness on the following 10 criteria:

(a) Do we have jurisdiction over the use? If we do not have jurisdiction over the use or the area where the use would occur, we have no authority to consider the use.

(b) Does the use comply with all applicable laws and regulations? The proposed use must be consistent with all applicable laws and regulations (e.g., Federal, State, tribal, and local). Uses prohibited by law are not appropriate.

(c) Is the use consistent with applicable Executive orders and Department and Service policies? If the proposed use conflicts with an applicable Executive order or Department or Service policy, the use is not appropriate.

(d) Is the use consistent with public safety? If the proposed use creates an unreasonable level of risk to visitors or refuge staff, or if the use requires refuge staff to take unusual safety precautions to assure the safety of the public or other refuge staff, the use is not appropriate.

(e) Is the use consistent with refuge goals and objectives in an approved management plan or other document? Refuge goals and objectives are designed to guide management toward achieving refuge purpose(s) These goals and objectives are documented in refuge management plans, such as CCPs and step-down management plans Refuges may also rely on goals and objectives found in comprehensive management plans or refuge master plans developed prior to passage of the Improvement Act as long as these goals and objectives comply with the tenets and directives of the Improvement Act. If the proposed use, either itself or in combination with other uses or activities, conflicts with a refuge goal, objective, or management strategy, the use is generally not appropriate.

(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed? If we have already considered the proposed use in a refuge planning process or under this policy and rejected it as not appropriate, then we should not further consider the use unless circumstances or conditions have changed significantly. If we did not raise the proposed use as an issue during a refuge planning process, we may further consider the use.

(g) For uses other than wildlife-dependent recreational uses, is the use manageable within available budget and staff? If a proposed use diverts management efforts or resources away from the proper and reasonable management of a refuge management activity or wildlife-dependent recreational use, the use is generally not appropriate. In evaluating resources available, the refuge manager may take into consideration volunteers, refuge support groups, etc If a requested use would rely heavily on

volunteer or other resources, the refuge manager should discuss the situation with the refuge supervisor before making an appropriateness finding. The compatibility policy also addresses the question of available resources (603 FW 2.12A(7)).

(h) Will the use be manageable in the future within existing resources? If the use would lead to recurring requests for the same or similar activities that will be difficult to manage in the future, then the use is not appropriate. If we can manage the use so that impacts to natural and cultural resources are minimal or inconsequential, or if we can establish clearly defined limits, then we may further consider the use.

(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources? If not, we will generally not further consider the use.

(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D), compatible, wildlife-dependent recreation into the future? If not, we will generally not further consider the use.

B. Where we do not have jurisdiction over the use, there is no need to evaluate it further as we cannot control the use (a "no" response to criterion (a)). We may not find uses appropriate if they are illegal, inconsistent with existing policy, or unsafe. Therefore, if there is a "no" response to criteria (b), (c), or (d), immediately stop consideration of the use. If the answer is "no" to any of the other questions, we will generally not allow the use. However, there may be situations where the refuge has exceptional or unique recreational resources, such as rock climbing, that are not available nearby, off the refuge, and the use requires insignificant management resources. In such cases, we may further consider a use.

C. When the refuge manager finds that a proposed use is not appropriate, the finding must be documented for the refuge files using FWS Form 3-2319. This finding does not require refuge supervisor concurrence. However, if outside the CCP process a refuge manager finds that an existing use is not appropriate, the finding requires refuge supervisor concurrence. The refuge manager will send copies of all findings to the refuge supervisor to be incorporated into a national database annually This section specifically clarifies and expands on the compatibility policy (603 FW 2.10D).

D. Following the issuance of this policy, refuge managers, in consultation with the States, must review all existing uses for appropriateness within 1 year unless the use was reviewed in a post-1997 CCP. If the refuge manager finds an existing use is not appropriate, the use must be modified so it is appropriate or terminated or phased out as expeditiously as practicable. The refuge manager must obtain refuge supervisor concurrence when there are changes to existing uses that eliminate the use or substantially change the use. All appropriateness findings required under section 1 11A(3), including findings made during the CCP process, must be documented for the refuge files using FWS Form 3-2319. Include the documentation for both appropriateness findings and compatibility determinations in the documentation for the CCP. A finding of "not appropriate" for a new use does not require refuge supervisor concurrence However, the decision to modify or terminate a use may be subject to the National Environmental Policy Act (NEPA). Refuge managers should consult with their Regional NEPA coordinator to see if a decision would be subject to NEPA.

E. The Refuge System Headquarters will maintain a database of refuge uses This database will include a refuge-by-refuge listing of all uses refuge managers have found

either appropriate or not appropriate With this information, refuge managers will know which uses have already been approved or denied at any other unit of the Refuge System. This information will help strengthen the Refuge System by reinforcing consistency and integrity in the way we consider refuge uses. However, this does not mean that a use found to be not appropriate on one refuge should automatically be found not appropriate on other refuges in the Refuge System

1.12 How do we coordinate with the States? Both the Service and State fish and wildlife agencies have authorities and responsibilities for management of fish and wildlife on refuges as described in 43 CFR part 24. Consistent with the Administration Act, as amended, the Director will interact, coordinate, cooperate, and collaborate with the State fish and wildlife agencies in a timely and effective manner on the acquisition and management of refuges. Under both the Administration Act, as amended, and 43 CFR part 24, the Director as the Secretary's designee will ensure that Refuge System regulations and management plans are, to the extent practicable, consistent with State laws, regulations, and management plans. We charge refuge managers, as the designated representatives of the Director at the local level, with carrying out these directives. We will provide State fish and wildlife agencies timely and meaningful opportunities to participate in the development and implementation of programs conducted under this policy. These opportunities will most commonly occur through State fish and wildlife agency representation on the CCP planning teams. However, we will provide other opportunities for the State fish and wildlife agencies to participate in the development and implementation of program changes that would be made outside of the CCP process Further, we will continue to provide State fish and wildlife agencies opportunities to discuss and, if necessary, elevate decisions within the hierarchy of the Service

340 FW 3, Rights-of-Way and Road Closings

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3.1 Purpose. The purpose is to set out the procedures to be followed by the Service in relation to rights-of-way and road closings in accordance with statutes, regulations, and policies.

3.2 Scope. This chapter applies to all Service activities relating to rights-of-way and road closings.

3.3 Policy. It is the policy of the Service to discourage the types of uses embodied in right-of-way requests. On areas in the National Wildlife Refuge System (System), if a right-of-way cannot be certified as compatible with the purposes for which a unit was established, it cannot be granted without authorization by Congress (50 CFR 29.21(g)). (See 3.6A(3) and A(4) below).

3.4 Authority and Regulations.

A. Prior to December 19, 1969, permits for rights-of-way across lands under the primary jurisdiction of the Service were issued by the Bureau of Land Management in accordance with regulations now published in 43 CFR 2800. After December 19, 1969, the Service's basic authority for granting right-of-way permits and/or easements is the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd(d)). In addition, authority to grant rights-of-way for pipelines for the transportation of oil, natural gas, or synthetic liquid, or gaseous fuels, or any refined product therefrom, is Section 28 of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 185).

B. Regulations covering the granting of rights-of-way on and across refuge lands are promulgated in 50 CFR, Parts 29.21 and 29.22. 50 CFR 29.21 requires a payment to the Service for use and occupancy of lands for rights-of-way. Fees from System lands are deposited in the Migratory Bird Conservation Fund and used for land acquisition. The Division of Realty has copies of these regulations available upon request.

C. Rights-of-way for the use of other than System lands (National Fish Hatcheries, Research Areas, and Administrative Sites) will be made under applicable authority cited in 43 CFR 2800 in accordance with procedures prescribed in 50 CFR 29.21. Some of these authorities are 43 U.S.C. 959, 43 U.S.C. 961, and 40 U.S.C. 319-319(c). These statutes should be thoroughly reviewed to determine which is applicable for a specific situation. Fees from other than System lands are deposited as directed by the Refuge Revenue Sharing Act (16 U.S.C. 715s).

3.5 Definitions.

A. Right-of-way. The term right-of-way as used in this chapter covers uses that will encumber real property by granting a right to use and alter the landscape through construction of a facility such as a road, powerline, pipeline, or building (air navigation facility, radio tower, etc.). Generally, such uses are for a relatively long period of time; i.e., 10 years or longer.

B. Compatibility. The term compatibility means that the requested right-of-way or use will not interfere with or detract from the purposes for which the unit of the National Wildlife Refuge System was established.

C. Primary or Sole Control Areas. These are lands owned by the United States where the Service is the primary administering agency. Lands acquired in fee by the Service, lands acquired by other Federal agencies and transferred to the Service, and public domain lands on which the Service has the primary withdrawal or reservation fall into this category. The Service grants rights-of-way on these areas.

D. Secondary Control Areas. These are lands owned by the United States, States, or others that are made available to the Service for management through permit, cooperative agreement, and overlay or secondary withdrawal. For such areas, the primary administering agency has the ultimate responsibility to grant rights-of-way. Most management agreements give the Service the right to make recommendations concerning such requests.

E. Easement Areas. These are areas on which the United States owns an interest in land but for which the fee title remains with the landowner. Usually, such easements are negative easements in that the landowner has agreed to maintain the land in an undeveloped state in accordance with terms as specified in the easement. For example, in Waterfowl Production Area easements, landowners agree to maintain wetlands by not filling, leveling, draining, or burning.

F. Coordination Areas. These are areas in which the United States has title (withdrawn or acquired lands) with custody in the Service, and made available to a State pursuant to the Fish and Wildlife Coordination Act (16 U.S.C 661-666c), as amended; or by long-term lease or agreement pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended. In such cases, the Service will grant the right-of-way.

G. Alaska Native Claims Settlement Act (ANCSA) Lands. These are lands in Alaska which were conveyed out of a refuge but for which application of refuge laws and regulations are retained in accordance with Section 22(g) of the Alaska Native Claims Settlement Act. These are similar to easement areas for granting of rights-of-way.

3.6 Permits vs Easements

A. General Guidance

(1) The term right-of-way should not be confused with short term and temporary use of an existing road or trail, etc., that can best be accommodated through special use permits. Rights-of-way that may be included in a contract for services, such as a powerline or telephone line that provides service to project facilities only, should also be handled through special use permits. Rights-of-way should not be confused with uses of project lands through rights that were reserved or outstanding at the time of acquisition. In these cases, a special use permit with stipulations to protect project values is used to authorize entry onto Service lands. No charge is made for the special use permits; however, surface damages that occur beyond what is ordinary or expected can be assessed to the user.

(2) Applications by any Federal, State, local agency, private individual, or organization for rights-of-way for roads and highways may be made under the above authorities in accordance with 50 CFR 29.21. In the case

of Federal, State, or local agencies, use and occupancy charges can be waived only if there is an exemption from payment by any other provision of law. The Federal Aid Highway Act (Title 23 U.S. Code provides no such exemption).

(3) A determination of compatibility or noncompatibility cannot be made in an arbitrary manner and such a determination must be supported by facts. The facts can best be presented in an environmental assessment (EA) or environmental impact statement (EIS). A determination of compatibility with the purposes for which a unit of the System was established must mean consideration only of wildlife values or project values, not of any broader social or economic concerns.

(4) For lands in the System, the file must contain a finding by the Regional Director that the proposed use is compatible as defined in 50 CFR 29.21(g). If the proposed use cannot be certified as compatible, the permit or easement cannot be granted. The term "inconsistent" in Section 28(6)(1) of the Mineral Leasing Act of 1920, as amended, shall be deemed to mean a use that is "not compatible," as "compatible" is defined herein (50 CFR 29.21(g)). A compatibility determination is not required on Service lands other than those in the System (National Fish Hatcheries, Research Areas, and Administrative Sites).

(5) The regulations require a right-of-way permit from the Service where the interest owned by the United States will be adversely affected (thus needing protection by special stipulations). However, no charge will be made. If such interest will not be adversely affected, the Regional Director may simply give a letter of no objection. In each case, the landowner must grant the right-of-way.

(6) On Coordination Areas, written approval of the State administering the land must be obtained before a permit or easement may be granted.

B. When to Use Permits. Permits should be utilized for most Service outgrants. Permits generally have the same force and effect as easements and are subject to the same terms and conditions. Permits may be granted for up to 50 years. In the case of oil and gas pipelines, only permits are authorized and are limited to a 30-year period. Permits should contain stipulations to protect the interests of the United States and provide for termination for non-use or non-compliance. A basic form of permit is found in Exhibit 1.

C. When to Use Easements. Right-of-way easements may be used when the type of use will substantially alter the real property and is of a permanent or long term nature. Also when the charge to be made for the grant is large, a permittee may insist on a recordable instrument to justify the investment. Some examples are major pipelines and electric power transmission lines (when permanent towers will be erected on the land). Generally, easements should be limited to a term of 50 years (30 years for oil and gas pipelines) and should be used only when public utilities are involved. Permits and/or easements for Federal aid or other public highways may be granted without term limitations. Permanent or long term easements for private use should not be granted. Any easement granted should contain stipulations to protect the interests of the United States and to provide for termination for non-use or non-compliance. A basic easement form is found in Exhibit 2.

D. Designations

(1) For record keeping purposes, permits and easements will carry a designation assigned (by Region) at the time of application and in sequence by date of application and specific type. Records will be established for uses that encumber real estate; i.e., those requiring construction or alteration of the land (roads, powerlines, etc.); and those granting exclusive use of Federal property for a long period of time, 10 years or more. The use of Service land and/or facilities for a temporary or short period of time is usually handled by special use permit which should not be assigned a case number or included in the real property records. The Realty

records will reflect a current record of permits/easements for each project in sequence of their application, e.g.:

(E1) Mountain States Power Co.

(E2) Golden Valley Electric Corp.

(D1) Valley Drainage District.

(E3) Valley Electric Corp.

(2) The alphabetical letter used to identify permits/easements for uses of a similar nature is capitalized and used as a prefix. Letter designations are as follows:

D - Ditch, canal, culvert

E - Electric transmission lines

L - Levee, dike

M - Miscellaneous (dock site, jetties, recreational area, stock driveway, right of passage, roadside park, dams)

P - Pipelines (gas, oil, sewer, water)

R - Road or highway

RR - Railroad

T - Telephone or telegraph

(3) An application which covers more than one use should carry the designation of the primary use; e.g., application for a highway and material site should be designated "R".

(4) When permits or rights-of-way are obtained by the Service on lands outside project boundaries, the designation assigned becomes 1E, 2E, 1D. etc.

3.7 Responsibilities.

A. Regional Office. The Regional Office (Division of Realty) will review right-of-way applications for adequacy and resolve any legal questions. The Regional Office will also prepare the appraisal of market value of the right-of-way and prepare the permit document and appropriate charges to the applicant. In situations where Ecological Services is involved with the application at the field level, Ecological Services will coordinate activities to develop a unified Service response.

B. Project Leader. The project leader plays a key role in the decision as to whether or not a right-of-way will be granted. He/she must have a good working knowledge of Title 50, Code of Federal Regulations, Parts 29.21 and 29.22, and the procedures under which rights-of-way are granted. The basic responsibilities of the project leader, as they apply to rights-of-way, are to:

(1) Ensure there is no occupancy of project lands unless a right-of-way has been granted except as stated in 3.6 above.

(2) When a right-of-way is granted, ensure that the recipient complies with the terms and conditions of the grant and that the right-of-way is used only for the specific use granted.

(3) Report to the Regional Director any right-of-way that has been abandoned so that it can be terminated and removed from the Service's real estate records.

3.8 Preapplication Contact. A prospective applicant will usually make an initial contact with the project leader concerning his/her desired use of project lands. For uses such as large powerlines, pipelines, or highways, the initial contact may be made at the Regional Office. At this contact, it is important to determine the magnitude of the proposed use. Will it affect only project lands or is it a part of a larger facility such as a power transmission line, a pipeline, or highway affecting the environment on and off the project? The project leader should discuss proposed routing and alternatives, if any. The prospective applicant should be given a copy of the regulations, 50 CFR 29.21 to 29.22, which describe the requirements for filing an application. If it is determined that the proposed right-of-way will affect the environment on and off the project, the Regional Office must be alerted and brought into discussions if not already involved. Care should be taken not to commit the Service to the granting of a right-of-way prior to actual approval by the Regional Director.

3.9 Application Procedure. The prospective applicant files an application with the Regional Director in accordance with the regulations and accompanies this request with an application fee as required by 50 CFR 29.21-2. Realty will check the request for completeness and conformance with the regulations and resolve any legal questions before it is coordinated with the project leader, Ecological Services, and other agencies as appropriate.

3.10 Right-of-Way Package - Project Leader. The project leader will consider the application and develop a package which will include the following information. Documents referenced are available in Realty offices.

A. National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA). The regulations in CFR 29.21-2(a)(4) require the applicant to furnish an environmental analysis from which the project leader may develop the environmental assessment (EA). This analysis should include alternatives to the proposed use and information concerning historical and cultural features. If these features are present, measures to protect them should be included in accordance with NEPA, NHPA, and Executive Order 11593.

B. Floodplains and Wetlands. If the proposed use is located in a floodplain or wetland, include an analysis of the potential effects, if any, of the proposed use on the floodplain or wetland. (See Executive Orders 11988 and 11990.)

C. Coastal Zone Management. Include a statement from the applicant as to the consistency of the proposed use with State coastal zone management programs, if appropriate.

D. Endangered Species. List any endangered species occurring on the project, if any, and a recommendation as to whether Section 7 consultation is required.

E. Terms and Conditions. List any special terms and conditions needed to protect the interest of the Service over and above the standard fifteen in 50 CFR 29.21-4(b) and recommend whether any of the standard fifteen should be deleted. If a proposed use can be made compatible through mitigation measures (50 CFR 29.21-7(c)), the applicant's recommendation of such mitigation measures should be included.

F. Project Leader's Recommendation. The project leader will make a recommendation whether the proposed use will be compatible (required on System lands only), can be made compatible through specific mitigation measures, or will not be compatible and should be denied and the reasons for such denial. If he/she

concurs with the granting of the right-of-way, a Finding of No Significant Impact (FONSI) and a certification of compatibility will be prepared for the Regional Director's signature. If the right-of-way is to be denied, a draft of a letter of denial will be prepared to the applicant for the Regional Director's signature (See 3.6A(3) and (4) above).

3.11 Right-of-Way Package - Regional Office.

A. The right-of-way package will be referred to the Regional Office for preparation of the final documents. If the Regional Director decides to grant the right-of-way, Realty will make a determination of market value charges for the right-of-way and prepare the permit or easement document. The Regional Director will send the permit or easement including all special terms and conditions to the applicant for execution. Upon receipt of the approved permit and fees, the Regional Director will execute the permit or easement and send the original to the applicant. Realty will send a copy of the permit to the project leader and maintain a record file in the Regional Office.

B. At the time the right-of-way granting document is sent to the applicant, a certificate of completion of construction is transmitted to the applicant which is to be executed upon completion of construction and returned to the Regional Director.

C. If the Regional Director decides to deny the permit or easement, the applicant will be so informed in writing and the reasons for the denial stated. The Regional Director's decision may be appealed to the Director and the Director's decision may be appealed to the Secretary (43 CFR Part 4.700 Subpart G).

3.12. Oil and Gas Pipelines.

(1) Applications for pipelines and related facilities for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product therefrom are to be filed in accordance with 50 CFR 29.21. Special requirements for these rights-of-way are included in 50 CFR 29.21-9. When the right-of- way or proposed facility will occupy Federal land under the control of more than one Federal agency and/or more than one bureau or office of the Department of the Interior, a single application shall be filed with the appropriate State Director of the Bureau of Land Management in accordance with regulations in 43 CFR Part 2800.

(2) Federal, State, and local government agencies and the public shall be given adequate notice and opportunity to comment upon pipeline right-of-way applications (Publish notice in the Federal Register).

(3) In accordance with 50 CFR 29.21-9(m), the Senate - Committee on Energy and Natural Resources and the House - Committee on Interior and Insular Affairs must be notified when the Service receives an application for a right-of-way for a pipeline 61.44 centimeters (24 inches) or more in diameter. Headquarters will notify the committees. If the Service decides to grant the right-of-way, a follow-up letter will be sent to the committees including a copy of the proposed right-of-way document. If a waiver of the 60-day waiting period is requested, the following information must be provided:

(a) Justification for the waiver.

(b) Description of the area affected by Township and Range.

(c) The kilometers (miles) of right-of-way and hectares (acres) of permanent use which cross Federal lands by agency and county.

3.13 Reimbursement of Costs.

A. When an application is received, the costs expected to be incurred in processing will be estimated. If the estimated costs exceed the application fee, the Regional Director shall require the applicant to make periodic payments in advance of the incurrence of such costs by the United States. On request by the applicant or prospective applicant, the Regional Director will provide an estimate of costs for processing the application.

B. If the permit or easement is to be granted, the holder agrees to reimburse the United States for reasonable costs incurred by the Service in monitoring the construction, operation, maintenance, and termination of facilities.

C. If actual costs for processing a right-of-way are used, Realty must document the charges (including those of all Divisions) in the file. The same procedure applies to monitoring fees.

D. Realty or the applicant will prepare an appraisal (subject to Service review and approval) of the market value to be charged for the right-of-way and also prepare the grant document.

E. No application or monitoring costs will be required of State or local governments or agencies or instrumentalities thereof except those for rights-of-way, easements, or permits for oil and gas pipelines under Section 28 of the Mineral Leasing Act or 1920, as amended by P.L. 93-153 (50 CFR 29.21-2). If any Federal, State or local agency is exempted from the payment for the use and occupancy of the land under another provision of Federal law, such agency shall otherwise compensate the Service at the discretion of the Regional Director or payment may be waived if he/she finds such payment impractical or unnecessary. The Federal Aid Highway Act does not provide an exemption from payment for the use and occupancy of Service lands.

F. Actual payment may be by lump sum or an annual market rental. Payment is to be made in advance. When annual rental payments are used, the rates shall be reviewed at any time not less than 5 years after the grant of the permit, right-of-way, or easement or last revision of charges and a new charge established if appropriate. (See 50 CFR 29.21-2 through 7).

3.14 Post Permit Procedures. The project leader is responsible for monitoring the construction and operation of the facility to ensure that the terms and conditions in the permit are being met and to protect the project and the public.

3.15 Road Closings.

A. On any area acquired by the Service, it may become necessary or desirable to close certain public roads or highways that may no longer serve the public because of the establishment of the project. Public roads are established in a number of ways, such as dedication by the landowner, by prescription, or by statutory proceedings under the power of eminent domain.

B. Roads can be closed by condemnation proceedings or by complying with the applicable statutes of each State. Condemnation will not be used unless all other means fail and it is essential the road be closed. Each situation is best treated separately. Realty should provide the same assistance as if acquiring any other interest in land.

C. Revised Statute 2477 may need to be considered when attempting to eliminate access across public domain lands. Such access might be asserted according to State law. The right originated after 1886 and was repealed in 1976 with the enactment of the Federal Lands Policy and Management Act (P.L. 94-579). Use prior to 1976 can still be asserted, so public access rights thought to be eliminated are possible under Revised Statute 2477.

For more information about this chapter, please contact the Division of Realty. For more information about this Web page, contact Krista Holloway, in the Division of Policy and Directives Management.

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thanks
bryan

---------- Forwarded message ----------
From: **Don DeWolfe** <ddewolfe@sharyland.com>
Date: Thu, Jan 3, 2013 at 11:24 AM
Subject: U.S. Fish & Wildlife Services Meeting
To: "Bryan R. Winton (bryan_winton@fws.gov)" <bryan_winton@fws.gov>, "Barbara_Rose@fws.gov" <Barbara_Rose@fws.gov>, "David_Allard@fws.gov" <David_Allard@fws.gov>, "Riesley_Jones (riesley_jones@fws.gov)" <riesley_jones@fws.gov>, "Barry R. Smith (brsmith1@aep.com) (brsmith1@aep.com)" <brsmith1@aep.com>, "Randy Roper (reroper@aep.com)" <reroper@aep.com>, Anastacia Santos <anastacia.santos@powereng.com>, Michael Landgraf <mlandgraf@sharyland.com>, Alicia Rigler <arigler@sharyland.com>, Bridget Headrick <bheadrick@sharyland.com>
Cc: "Kelly_McDowell@fws.gov" <Kelly_McDowell@fws.gov>, Mark Caskey <Mcaskey@sharyland.com>, "rob.reid@powereng.com" <rob.reid@powereng.com>

For any individuals that are unable to attend the meeting, below is a call-in number.

1-888-808-6929

Code 6324072#

Sharyland, ETT and Power Engineering will be presenting to U.S. Fish & Wildlife.

Rick Jones (Reality Officer, Region 2, Division of Realty)
Bryan Winton (Refuge Manager)
David Allard (Realty Specialist)
Barbara Rose (Chief, Reality Manager)
As discussed, please invite any additional personnel you feel will be needed.

Meeting Agenda:

1. Introduce Sharyland and ETT
2. Discuss the development of the project study area
3. Discuss Project Need and The Electric Reliability Council of Texas (ERCOT)
4. Discuss transmission routing process in Texas and Public Utility Commission of Texas (PUC) role
5. Discuss the types of structures
6. Discuss proposed links that may potentially cross U S Fish & Wildlife National Wildlife Refuge areas

This meeting is to seek U S Fish & Wildlife involvement in the routing process before a CCN

application is submitted to the PUC. The goal for Sharyland and ETT is to provide an adequate number of feasible and geographically diverse routing options to the PUC that minimize potential impacts to existing land use and environmental resources. Due to the ERCOT designated timeline for the project it is critical to coordinate with U.S. Fish and Wildlife for routing options that may be permitted and meet the power needs of the community.

--
Bryan R. Winton, Refuge Manager
Lower Rio Grande Valley National Wildlife Refuge
3325 Green Jay Road
Alamo, Texas 78516
(956) 784-7521 office
(956) 874-4304 cell
(956) 787-8338 fax

--
Chris Perez, Wildlife Biologist
Lower Rio Grande Valley NWR
3325 Green Jay Rd.
Alamo, TX 78516
Phone: 956-784-7553
Fax: 956-787-8338

From:	Winton, Bryan
To:	Anastacia Santos 6903, Don DeWolfe
Cc:	Rob Jess; John Wallace, Ernesto Reyes
Subject:	Supporting information for Refuge Compatibility Evaluation for the Sharyland ETT 345Kv Line
Date:	Thursday, January 17, 2013 10 07 19 AM
Attachments:	Sharyland ETT Alignment Considerations,Questions.doc Tract 245, a - edited.pdf

Stacy/Don:
I briefed my supervisors Project Leader Robert Jess and Deputy PL John Wallace with the South Texas Refuge Complex yesterday morning on the details associated with your Albuquerque meeting and some notes I took from the conference call. My understanding is that the Regional Office in Albuquerque will rely on the refuge to prepare an Appropriate Use Evaluation and Compatibility Determination (CD). These documents need prepared prior to your request for a ROW on US Fish & Wildlife Service-owned property. However, typically a CD and ROW request is for a single preferred project/alignment which you've indicated will not be your decision. At this stage, you are only to identify feasible alignments (plural) whereas someone else will ultimately select the "preferred" alignment. Therefore, based on this situation, along with the compressed timeline you've indicated, I have the following recommendations for you to consider:

1. Avoid establishment of a new right-of-way on refuge lands (with 1 exception; see Item 3.). There does not appear to be sufficient time to process a right-of-way request given you have yet to identify a preferred alignment. Also, a new right-of-way which would result in a temporary-permanent loss of vegetation would be difficult to find appropriate or compatible with refuge purposes.

2. Consider co-location of your 345Kv line within an existing right-of-way currently established on the refuge. Insure the co-location doesn't result in an increase in temporary-permanent vegetation loss (within reason). Negotiations would be with the current right-of-way owner not USFWS. We could provide a letter stating we support the co-location in lieu of a new right-of-way elsewhere on or off the property.

3. Consider the conversion of Lago Road to a 345Kv right-of-way. This "new" right-of-way would result in the elimination/closure of Lago Road, establishment of a minimally-acceptable new right-of-way, and vegetation management considerations would be incorporated to improve the current conditions of the refuge in the area associated with this alignment. This option, depending upon the details of any other environmental benefits, could possibly be found compatible.

4. Consider utilization of an existing 100' (east-west) inholding that is currently owned by San Benito and Rio Grande Valley Railway Company and traverses the Ranchito Tract (see attached .pdf Tract 245a-edited file). This would enable Sharyland ETT to avoid refuge processes and timeline, although US Fish & Wildlife Service's Ecological Services regulations associated with endangered species habitat protection may still apply.

Please view the attachment above regarding obtaining more specific information associated with the various alignments. These questions request details which are important to addressing the project in the Appropriate Use Evaluation and Compatibility Determination.

Also, can you please confirm whether you would like to meet again at 11-12pm on January 22 to discuss your project in more detail?

Thank you. Sincerely,

Bryan R. Winton, Refuge Manager
Lower Rio Grande Valley National Wildlife Refuge
3325 Green Jay Road
Alamo, Texas 78516
(956) 784 7521 office
(956) 874-4304 cell
(956) 787-8338 fax

Considerations Regarding the 345Kv Line Alignments to Aid with making an Appropriate Use Evaluation and Compatibility Determination on Lower Rio Grande Valley National Wildlife Refuge (USFWS) prepared by Bryan R. Winton, Refuge Manager

1. What is the total Length of the Alignment(s) – for the portion(s) of the route occurring solely on the refuge?

2. What is the preferred right-of-way width? What is the minimally-acceptable width?

3. What is the type/quality of refuge vegetation associated with each proposed alignment? Note: Some portions of the refuge are more densely vegetated than others. Avoiding removal of high quality dense vegetation is a significant consideration.

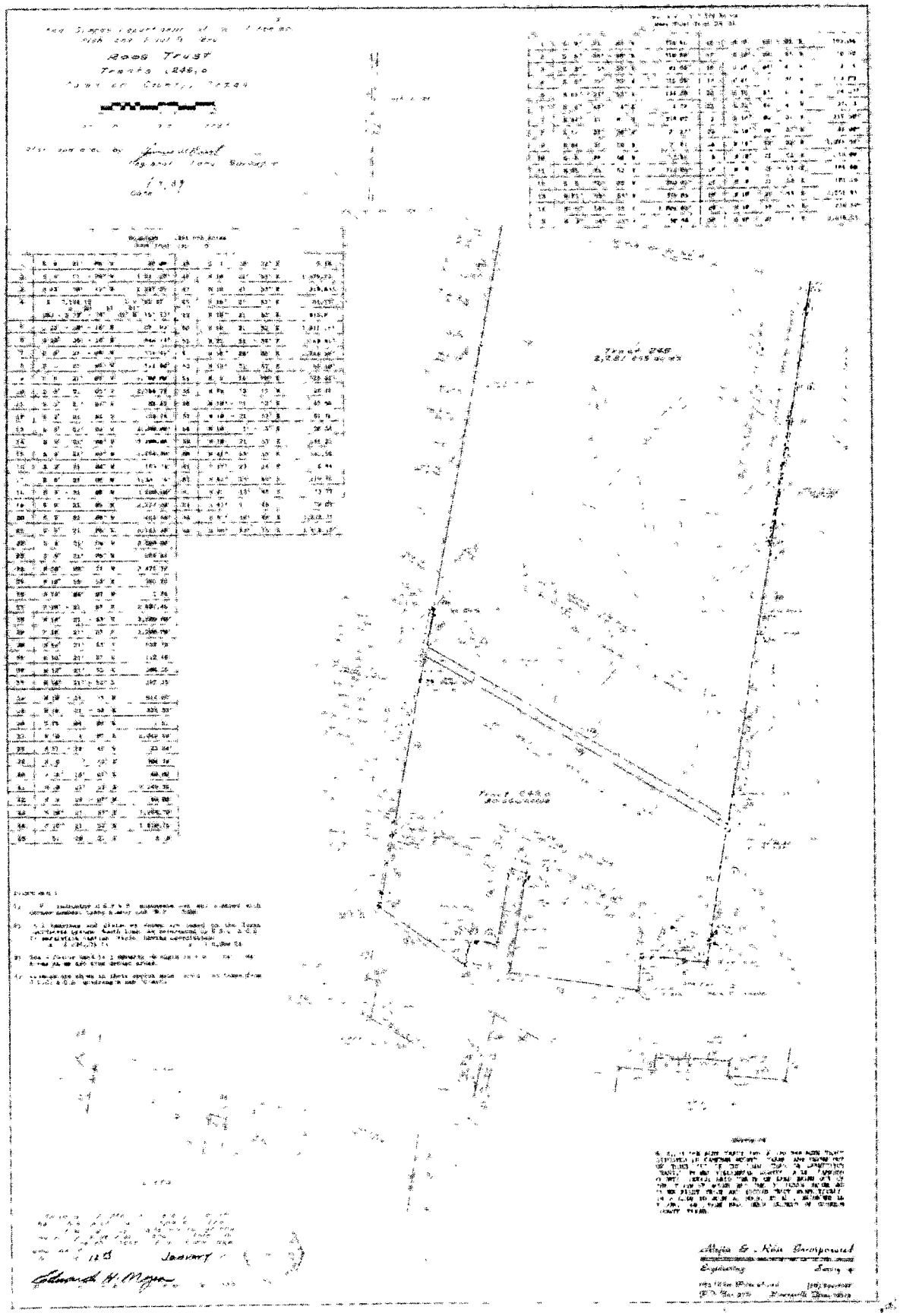
4. What are the required vegetation management standards associated with the line type and height? Can the standards be modified to allow for vegetation to be preserved or to re-establish beneath areas cleared for construction, and/or can vegetation be protected/planted perpendicular to the alignment in order to facilitate north-south travel of sensitive wildlife movement?

5. Would the alignment of Lago Road be an acceptable path for the 345Kv alignment? Note: Neither the City of Brownsville nor Cameron County perform maintenance on Lago Road. This is considered a refuge road which we have interest in abandoning.

6. Is it possible to utilize an existing utility right-of-way crossing the refuge and co-locate the existing line(s) with the 345Kv line? Note: If no net loss of refuge real estate occurs, and vegetation protection parameters can be incorporated/instituted, then the project could potentially provide added benefits to the refuge.

7. Would a 100' linear inholding crossing the refuge (see Tract 245a-edited) owned by the Railroad Company be sufficient to meet the 345Kv line needs? Note: This would enable Sharyland ETT to possibly meet timeline requirements by avoiding the refuge and satisfying US Fish & Wildlife Service Realty/ROW processes.

8. Lastly, any additional information and/or details about each proposed alignment, construction requirements, length of construction, maintenance widths, frequency of maintenance, vegetation management needs, etc. Anything you can provide to address environmental considerations throughout the establishment/maintenance of the preferred alignment.



From: Winton, Bryan
To: Don DeWolfe; Anastacia Santos 6903
Subject: Fwd Sharyland ETT 345Kv Proposal - Map Graphics
Date: Friday, January 18, 2013 8 31:54 AM
Attachments: Ranchito Tract Power Line Proposal Overview.pdf
Ranchito Tract Power Line Proposal RxR ROW.pdf

FYI. Some more maps of our Ranchito Tract showing the linear inholding and its location.
bryan

---------- Forwarded message ----------
From: **Wallace, John** <john_wallace@fws.gov>
Date: Thu, Jan 17, 2013 at 5:22 PM
Subject: Sharyland ETT 345Kv Proposal - Map Graphics
To: Bryan Winton <bryan_winton@fws.gov>
Cc: Robert Jess <robert_jess@fws.gov>

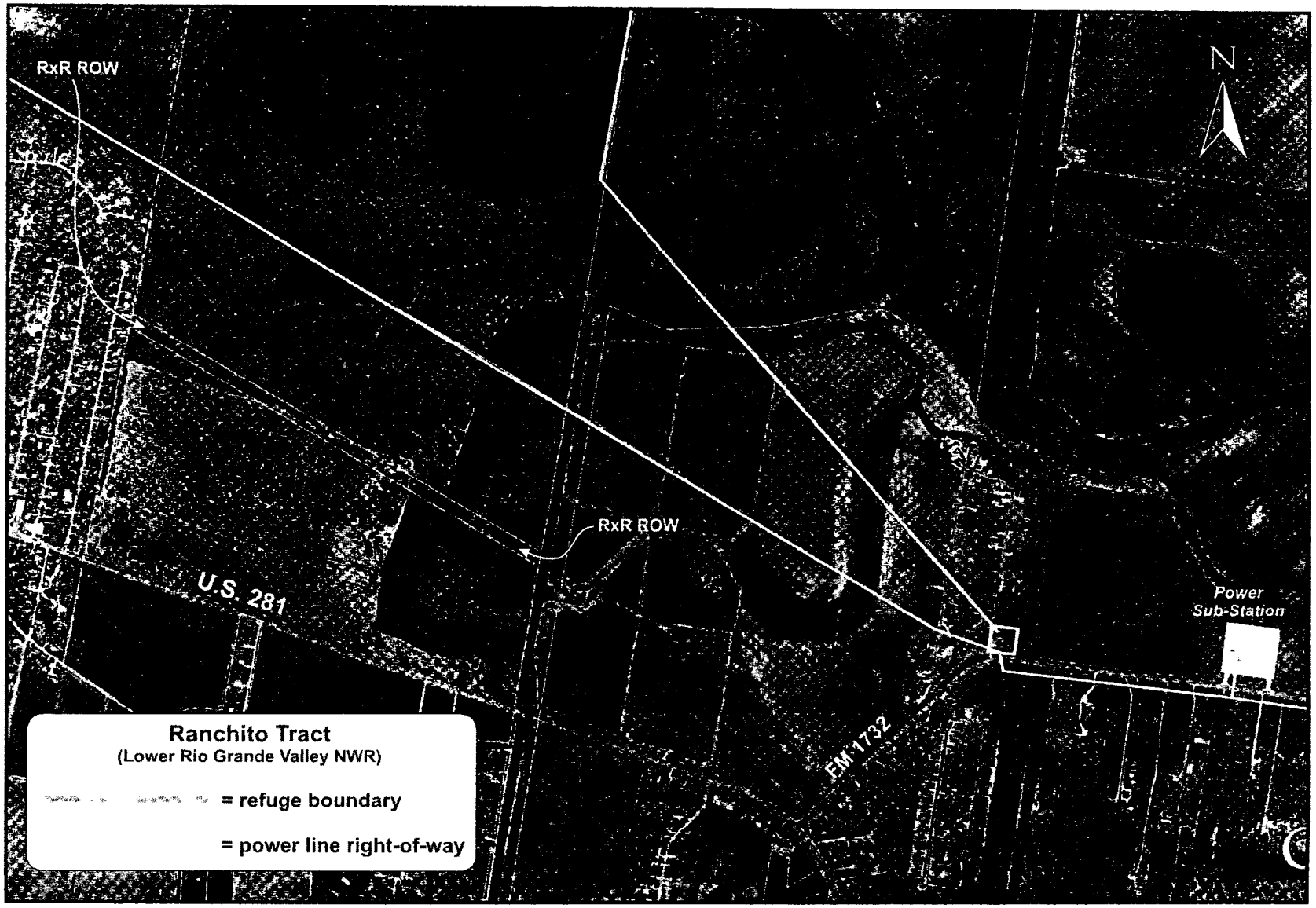
Bryan,

Attached are two map graphics of the Ranchito Tract relative to the Sharyland ETT 345 Kv Proposal. One graphic is an overview of the Ranchito tract showing the location of existing powerline rights-of-way and roads surrounding and crossing the tract. The other graphic is a "close-up" of the railroad right-of-way and its relation to existing powerline rights-of-way. If you note any errors on either of these two graphics, then let me know ... it would be easy to fix any errors. These graphics can be shared with others as needed.

Thanks,
--
/s/ John D. Wallace, Deputy Project Leader
South Texas Refuge Complex
956-784-7542

--
Bryan R. Winton, Refuge Manager
Lower Rio Grande Valley National Wildlife Refuge
3325 Green Jay Road
Alamo, Texas 78516
(956) 784-7521 office
(956) 874-4304 cell
(956) 787-8338 fax

Sharyland ETT 345 Kv Line Proposal



Sharyland ETT 345 Kv Line Proposal

POWER ENGINEERS, INC.

7600B N CAPITAL OF TEXAS HWY
SUITE 320
AUSTIN, TX 78731 USA

PHONE 512-795-3700
FAX 512-795-3704

March 14, 2013
(Via Mail)

ENERGY
FACILITIES
COMMUNICATIONS
ENVIRONMENTAL

Ernesto Reyes
US Fish and Wildlife Service – Alamo Field Office
3325 Green Jay Road
Alamo, Texas 78516

Re: North Edinburg to Loma Alta 345 kV Transmission Line Project
Request for Preliminary Comments on Proposed Alternative Links for Transmission Line

Dear Mr. Reyes:

Electric Transmission Texas, LLC (ETT) and Sharyland Utilities, L.P. (Sharyland) will be filing an application with the Public Utility Commission of Texas (PUCT) to amend their Certificates of Convenience and Necessity (CCN) to design and construct a new 345-kilovolt (kV) transmission line in Hidalgo and Cameron counties, Texas. POWER Engineers, Inc. (POWER) is assisting ETT and Sharyland during the application process by analyzing alternative routes for the transmission line and obtaining all necessary permits and licenses required for the project.

The new transmission line will run from the existing North Edinburg Substation, which is located approximately 3.3 miles northwest of Edinburg and west of U.S. Highway 281, to the existing Loma Alta Substation located approximately 6.8 miles northeast of Brownsville and northeast of U.S. Highway 77. Between these endpoints, the new transmission line will be routed in the vicinity of the existing South McAllen Substation, located approximately 3.0 miles southwest of McAllen and south of U.S. Highway 83.

POWER sent a consultation letter to your office dated March 30, 2012 during the initial routing process to gather information about the project study area in order to develop alternative links. (A reply was received, dated September 10, 2012). In addition to the initial response, Sharyland, ETT and POWER have visited your office several times to discuss this project. Several proposed alternative links that will be included in the CCN application cross portions of the International Boundary and Water Commission (IBWC) Lower Rio Grande Valley Flood Control Project Right of Way (ROW). The PUCT will ultimately approve one route for the transmission line, and if the PUCT selects one of the routes crossing the IBWC ROW, then ETT and/or Sharyland will be required to obtain a license from the IBWC.

ETT, Sharyland, and POWER have met several times with personnel from the IBWC Mercedes Field Office in an effort to ensure the proposed floodway crossings by the new transmission line are consistent with the IBWC's guidelines. In certain areas, the structures supporting the transmission line might need to be placed near and/or within the floodway.

These structures would be primarily single shaft steel poles (monopole) of double-circuit capable design, with use of lattice steel towers where appropriate or necessary.

In addition to complying with the IBWC's guidelines, IBWC has stated that before it will issue a license, ETT and Sharyland must also contact and obtain letters of compliance from the Texas Historic Commission (THC), U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), the Texas Parks and Wildlife Department (TPWD), and the Texas Commission on Environmental Quality (TCEQ). These letters must concur with the proposed work and give clearance under the appropriate statutory provisions while noting any special conditions on the project. For the USFWS, this includes a determination that the proposed project complies with the Endangered Species Act, as needed.

ETT and Sharyland are not requesting any formal determination at this time. But as a preliminary step to aide in this process, POWER is requesting that USFWS review the attached map sheets 1-9 showing the proposed alternative links that cross IBWC ROW and notify POWER of any preliminary comments or potential concerns with the proposed crossings. A table of each link with the corresponding sheet number that crosses the IBWC ROW is included below. If the PUCT approves a route that requires an IBWC license, ETT and Sharyland will send your agency additional information related to the IBWC ROW crossing(s) and formally request a letter of compliance from your agency.

LINKS WITHIN THE IBWC ROW	
Sheet Number	Link Numbers
1	70, 84a, 84b, 84c, 85b
2	84a, 84b 84c, 86, 88, 97, 98 100, 101a, 104, 105
3	104, 105, 108, 116, 118a, 118c, 125a, 352
4	166, 184 185, 187, 349a, 349b
5	187, 193b, 193c , 194, 195
6	None
7	193c, 194, 195, 197, 201, 210, 215, 217, 220
8	210, 220, 221, 222
9	290

POWER ENGINEERS, INC.

Thank you for your assistance with this proposed electric transmission line project. Please contact me by phone at 512-795-3700, extension 6903 or by e-mail at anastacia.santos@powereng.com if you have any questions or require additional information.

Sincerely,

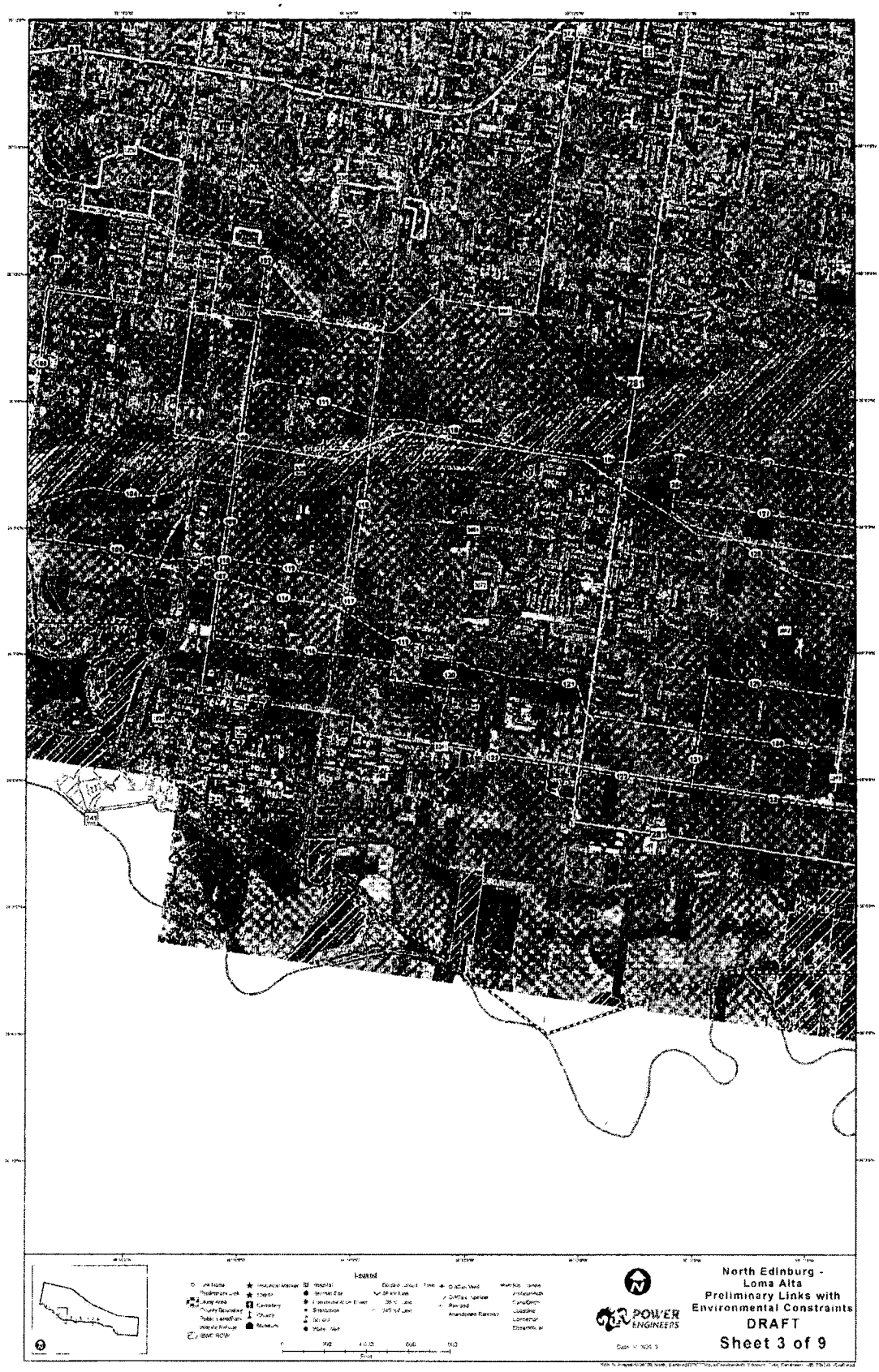
Anastacia Santos
Project Manager

Enclosure(s): Map Set, Sheets 1-9

c: Don DeWolfe (Sharyland)
Teresa Trotman (AEP)
Randy Roper (AEP)
Saul Barrera (IBWC)


Legend
POWER ENGINEERS
North Edinburg -
Loma Alta
Preliminary Links with
Environmental Constraints
DRAFT
Sheet 1 of 9


Legend
POWER ENGINEERS
North Edinburg - Loma Alta
Preliminary Links with Environmental Constraints
DRAFT
Sheet 2 of 9


North Edinburg -
Loma Alta
Preliminary Links with
Environmental Constraints
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Sheet 3 of 9


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Preliminary Links with Environmental Constraints
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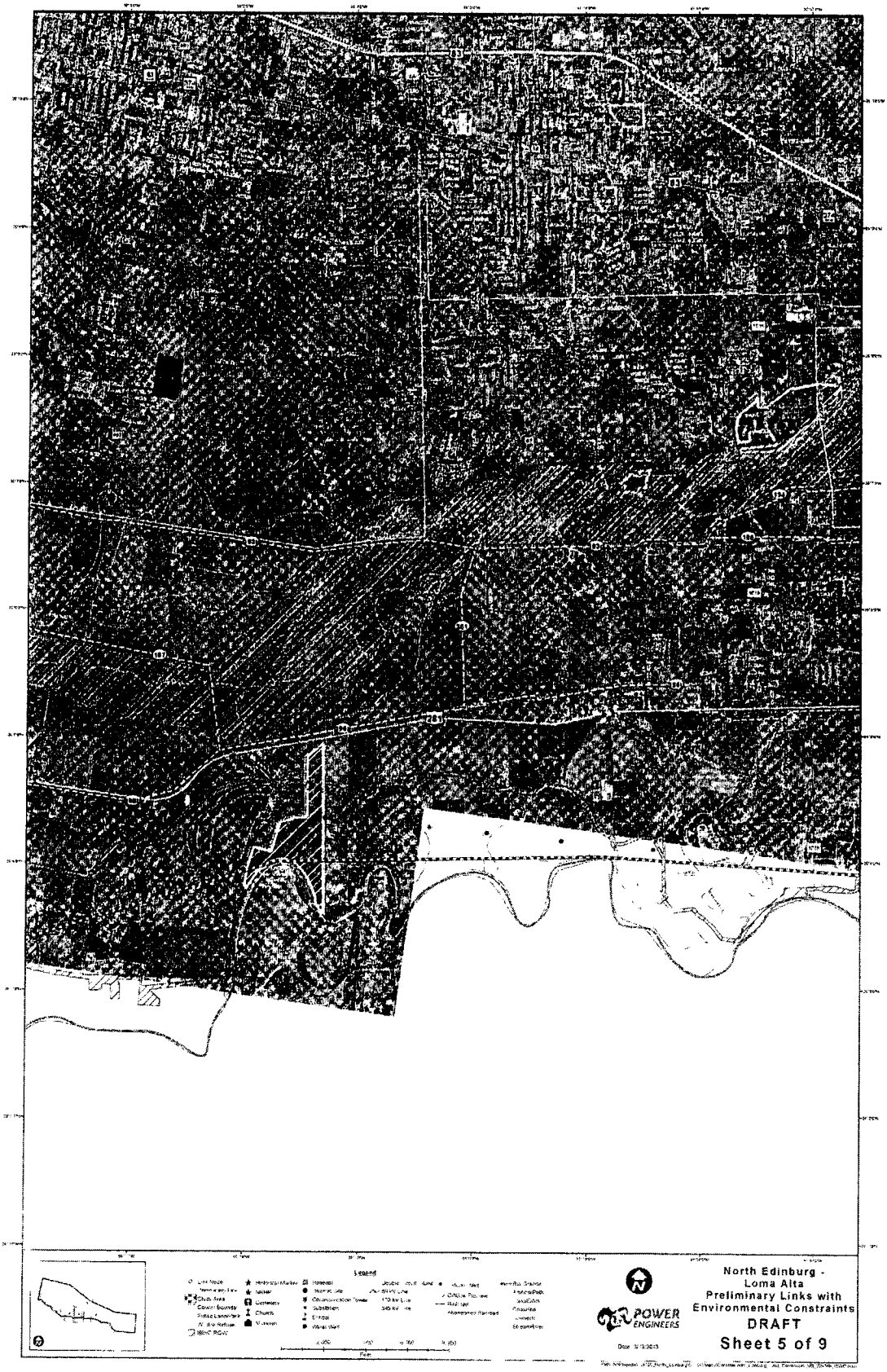
Sheet 4 of 9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Preliminary Links with Environmental Constraints
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Sheet 5 of 9


POWER ENGINEERS
North Edinburg - Loma Alta
Preliminary Links with Environmental Constraints
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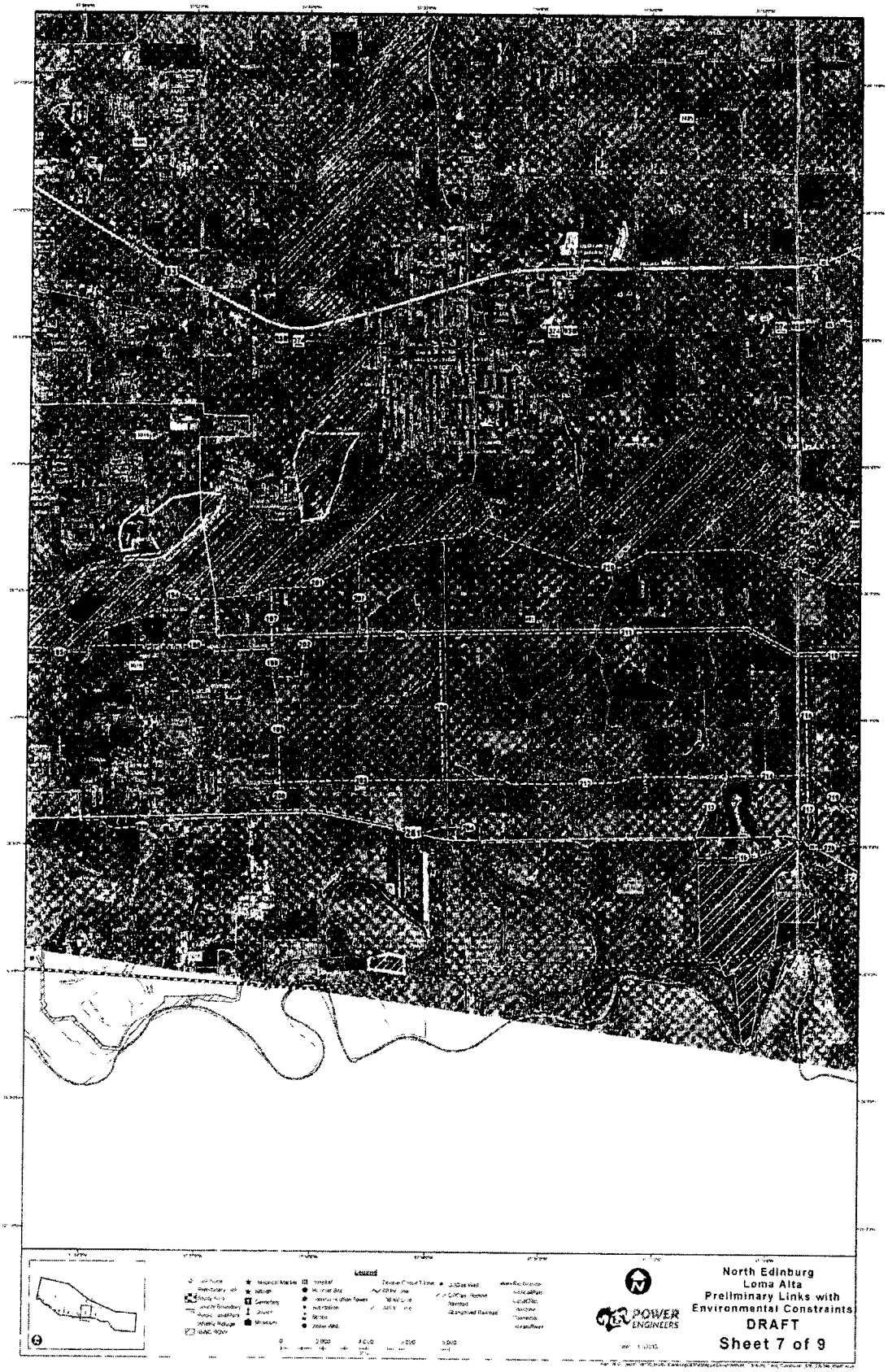
Sheet 6 of 9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North Edinburg
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Preliminary Links with
Environmental Constraints
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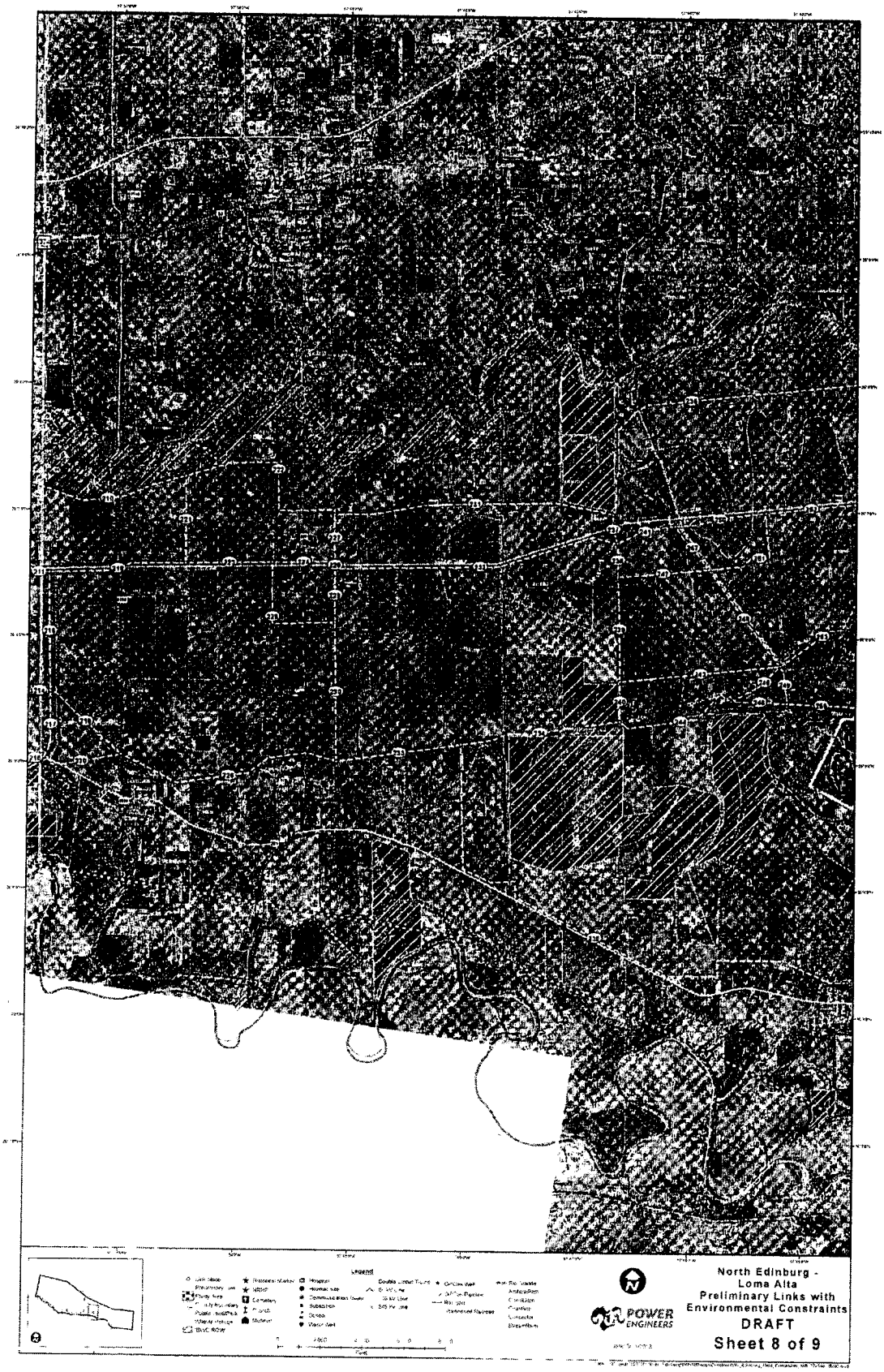
Sheet 7 of 9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North Edinburg -
Loma Alta
Preliminary Links with
Environmental Constraints
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Sheet 8 of 9


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Loma Alta
Preliminary Links with
Environmental Constraints
DRAFT
Sheet 9 of 9

POWER ENGINEERS, INC.

7600B N CAPITAL OF TEXAS HWY
SUITE 320
AUSTIN, TX 78731 USA

PHONE 512-795-3700
FAX 512-795-3704

POWER ENGINEERS

April 1, 2013

ENERGY
FACILITIES
COMMUNICATIONS
ENVIRONMENTAL

Subject: North Edinburg-Loma Alta 345-kV Project

Information Concerning Lower Rio Grande Valley National Wildlife Refuge Appropriate Use Evaluation and Compatibility Determination

Dear Mr. Winton:

As you know, Electric Transmission Texas, LLC (ETT)[1] and Sharyland Utilities, L.P. (Sharyland) will be filing to amend their Certificates of Convenience and Necessity (CCN) with the Public Utility Commission of Texas (PUCT) to design and construct a new 345-kilovolt (kV) transmission line that will be located in Hidalgo and Cameron counties, Texas. POWER Engineers, Inc. (POWER) is preparing an Environmental Assessment (EA) and Alternative Route Analysis for ETT and Sharyland to support their CCN application to the PUCT. The PUCT requires CCN applicants to develop, evaluate, and present an adequate number of geographically diverse alternative routing options. In order to satisfy this requirement, over 340 preliminary alternative links were developed for the project. Five of the preliminary alternative links cross tracts of the Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR) system. Before USFWS will grant ETT and Sharyland a right-of-way (ROW) over refuge land, it must perform an Appropriate Use Evaluation and then issue a Compatibility Determination for that ROW. In order to assist USFWS, ETT, Sharyland, and POWER are submitting additional information on each of the proposed preliminary alternative links crossing the LRGVNWR properties.

Project Background

ETT and Sharyland plan to file their CCN application with the PUCT for this project in late April, 2013. During the route development process, in accordance with PUCT routing guidelines, efforts were made to utilize and/or parallel existing linear corridors (including apparent property boundaries) to reduce potential habitat fragmentation and land use impacts. Other sensitive resources (including conservation lands) were also considered during the route development process and were avoided to the extent feasible. However, due to the location of the project endpoints, orientation of the LRGVNWR tracts, and the ongoing USFWS effort to establish a north/south LRGVNWR conservation corridor, five of the proposed preliminary alternative links cross the LRGVNWR within the Ranchito and Resaca del Rancho Viejo areas. Additional preliminary alternative links are located off of LRGVNWR property to the

[1] ETT is a transmission utility, which is a joint venture between subsidiaries of American Electric Power (AEP) and Mid American Energy Holdings Company, LLC. AEP is the parent company of AEP Texas Central Company (AEP TCC) American Electric Power Service Corporation, a subsidiary of AEP, will provide design, project management, construction, and other administrative services including regulatory support to ETT for the proposed transmission line and associated facilities

north and south of the Ranchito crossing and to the north of the Resaca del Rancho Viejo crossings.

Preliminary Alternative Links

The proposed preliminary alternative links (Links) crossing LRGVNWR tracts include Links 234, 281, 287, 291 (which crosses at two separate locations designated as 291A and 291B), and Link 293 (which crosses at four separate locations designated as 293A, 293B, 293C, and 293D). Links 234, 281, and 291 were aligned to parallel roadways and/or existing transmission line easements. The remaining two preliminary alternative links do not parallel existing linear features but were aligned to minimize the overall crossing length of LRGVNWR tracts. Several crossing options were also evaluated including two options each for Links 281 and 291. (See Figures 1-7 in Attachment 1.)

Table 1 summarizes the preliminary alternative link crossings with information regarding each crossing length, ROW requirements, number of structures proposed and lengths crossing various brush densities and associated potential brush clearing impacts. Table 1 also provides an additional breakdown of the potential temporary and permanent impacts to various brush densities estimated for each crossing.

Engineering Design Considerations

ETT and Sharyland can implement certain measures to avoid and/or minimize the potential impact of brush clearing (where applicable), taking into consideration the sensitive resources located within the LRGVNWR and the LRGVNWR Conservation Plan.

First, ETT and Sharyland can reduce the width of the ROW and use monopole towers wherever possible. The standard ROW width for the proposed 345-kV transmission line is 150 feet (ft) with a typical span of 900 ft between structures. A reduced ROW width of 100 ft is feasible if shorter spans are used. However, shorter spans require the use of more structures. Additional structures may also increase the temporary and permanent impacts. ETT and Sharyland propose to utilize tangent monopole structures for the transmission line with double pole dead-end structures for turning or tangent 345-kV monopoles with 138-kV underbuild. (See Figures 1-3 in Attachment 2 for typical structure drawings.)

Second, ETT and Sharyland will use non-mechanized clearing methods, minimize the size of the cleared area, and revegetate any areas temporarily cleared for access. Anticipated impacts to habitat (brush clearing) at each crossing location include temporary and permanent impacts. Temporary impacts include clearing for structure locations during construction and to facilitate access to each structure location. The minimum clearing requirement for construction at each structure location is a 75 ft x 75 ft workspace (5,625 ft^2). Existing access roads and/or access from parallel roadways will be incorporated into the construction plan to the extent feasible. A 15-ft wide temporary construction access road within the proposed ROW will be required in areas not accessible from existing roadways. All impacts associated with access roads will be temporary. Areas cleared for access will be allowed to revegetate after construction or will be re-seeded with appropriate native species. In the event maintenance is required at a structure location, new temporary access will need to be constructed to access the individual structure The amount of clearing

will be limited to provide minimum access for the necessary maintenance equipment, if any is required.

A portion of the 75 ft x 75 ft workspace (5,625 ft^2) cleared for construction will be permanently impacted due to the actual structures and for the minimum cleared area required around each structure (150 ft^2). The remaining 5,475 ft^2 area, cleared temporarily for construction, will be allowed to revegetate after construction or will be re-seeded with appropriate native species. All other trees and brush outside of the 15-ft wide temporary access road but within the 150-ft wide easement will be left intact with the conductor/shield wire stringing completed by helicopter.

Third, ETT and Sharyland will design its transmission facilities to minimize the number of structures required within the LRGVNWR property boundaries and the temporary and permanent impacts from those structures. Preliminary engineering design was completed for each crossing as reflected in the structure locations. (See Figures 1-7 in Attachment 1.)

Existing Vegetation Descriptions and Impacts
A field survey was completed by a POWER biologist and a Sharyland engineer on January 28-29, 2013, to determine the dominant brush species and estimated density at each preliminary link crossing the LRGVNWR and to evaluate engineering design options including existing accessibility, pole placement, and minimum clearing requirements. Vegetation was evaluated for species composition and brush density was visually estimated based on absolute cover. Density categories derived include Grassland/Cropland (< 5%), Low Density Brush (5-30%), Moderate Density Brush (30-70%), and High Density Brush (>70 %). The length of each preliminary alternative link within each brush density category and total estimated temporary and permanent impacts associated with clearing requirements are presented in Table 1. An additional breakdown of potential temporary and permanent impacts by brush density category for each crossing is also provided in Table 1. Overall, it was observed that the brush having the highest density and diversity were in areas bordering croplands, resacas, fencelines, irrigation canals, and drainage channels.

Link 234
Link 234 is located within the Ranchito Tract, south of Adams Garden Reservoir, and parallels the north side of Jimenez Road. An existing transmission line and distribution line are located on the south side parallel to this roadway. An irrigation line was observed during the field survey that likely parallels the roadway on the north side.

The tree canopy within the proposed ROW for this alternative link consists of mesquite (*Prosopis glandulosa*) and tepeguaje (*Leucaena pulverulenta*) with occasional occurrences of Texas ebony (*Pithecellobium ebano*). Shrub species occasionally observed included grajeno (*Celtis pallida*), whitebrush (*Aloysia gratissma*), tenaza (*Pithecellobium pallens*), retama (Parkinsonia aculeata), allthorn (*Koeberlinia spinosa*) and boxthorn (*Citharexylum brachyanthum*). The dominant herbaceous layer vegetation observed includes kleingrass (*Panicum coloratum*) and Kleberg bluestem (*Dicanthium annulatum*). Occasional occurrences of lantana (*Lantana horrida*), prickly pear (*Opuntia englemannii*), peppervine (*Amplelopsis arborea*) and Texas nightshade (*Solanum triquetrum*) were observed. Brush

density within the ROW varied from low density at the western extent increasing to 30-40% cover towards the eastern extent. (See Photos 1-3 in Attachment 3.)

Estimated brush clearing required includes moderate density brush based on the need for two structure workspaces at this crossing. Jimenez Road will be utilized for access to the structure locations and no temporary access road for construction is anticipated. The remaining ROW will be spanned with existing trees and brush remaining intact. Potential temporary and permanent brush clearing impacts are provided in Table 1. No surface water crossings are associated with this alternative link crossing.

Link 281

Link 281 parallels the north and east side of the existing Cavazos-La Palma 69-kV transmission line within the Resaca del Rancho Viejo tract. Lago Road bisects the tract and intersects the existing and proposed transmission line ROWs. Vegetation in this area is characteristic of a fallow cropland that has recently revegetated. Vegetation within the proposed ROW on the north side of Lago Road consists of grassland dominated by bufflegrass (*Cenchrus ciliaris*) which blends into a low density brushland dominated by young aged mesquite and huisache (*Acaia farnesiana*) with isolated occurrences of retama and tepeguaje. Vegetation within the proposed ROW located south of Lago Road includes a low density of mesquite with isolated occurrences of retama, huisache, tepeguaje and false willow (*Baccharis neglecta*). The herbaceous layer is comprised of bufflegrass, common sunflower (*Helianthus annuus*) and an occasional Spanish dagger (*Yucca freculeana*). (See Photos 4-8 in Attachment 3.)

ETT and Sharyland propose two options for Link 281. Option 1 parallels the existing 69-kV transmission line on the north and east side. Option 1 would require two tangent monopole structures located within low density brush and five tangent monopole structures and one dead-end double pole located within grasslands. The dead-end double pole structure would require additional temporary brush clearing for two stringing sites (150 ft x 500 ft). A temporary 15-ft wide temporary access road is anticipated within the ROW. Access could also potentially be obtained through the adjacent existing transmission line in areas where no additional brush clearing would be required. Potential temporary and permanent brush clearing impacts are provided in Table 1.

Option 2 would parallel a portion of the existing 69-kV transmission line continue straight across to the eastern edge of the LRGVNWR boundary, turning south within the LRGVNWR boundary. One of the monopole structures would be located in low density brush while the remaining eight tangent monopoles and one dead-end double pole structure would be located within grasslands. The string sites would be shifted to outside the eastern LRGVNWR property boundary. A temporary 15-ft wide access road is anticipated within the ROW. Potential temporary and permanent brush clearing impacts are provided in Table 1. Clearing impacts within the grassland areas would be comprised of mowing the ROW to facilitate access and reduce fire dangers.

Link 287

Link 287 crosses within the Resaca del Rancho Viejo tract and parallels apparent property boundaries. The majority of this alternative link length, consisting of the eastern and central

portions of the link, is located within cropland and would not require any brush clearing. The western portion crosses the Resaca del Rancho Viejo. High density brush located on the border of the resaca is dominated by mature mesquite, black willow (*Salix nigra*), Brazilian pepper (*Schinus terebinthifolius*) and grajeno. West of the resaca border, moderately dense brush was observed dominated by mesquite with occasional occurrences of retama, grajeno, and boxthorn. (See Photos 9-14 in Attachment 3.)

ETT and Sharyland propose to span the resaca approaching the area from the east and west side with one structure located within moderately dense brush. The remaining six structures for this crossing would be located within active cropland portions of the property. A temporary 15-ft wide access road is anticipated for this crossing within the ROW. Potential temporary and permanent brush clearing impacts are provided in Table 1. Potential impacts are recorded for ROW areas within currently active cropland areas to take into account the potential conversion to fallow fields prior to construction.

Link 291

Link 291 crosses two separate portions of the same Resaca del Rancho Viejo tract. These crossings have been labeled 291A and 291B. The majority of Link 291A is located within moderately dense brush with higher brush densities associated with the crossing of the Resaca del Rancho Viejo and a drainage channel located on the eastern extent of the property. The central portion of this alternative link also crosses an irrigation channel. High density brush located on the border of the resaca is dominated by mature mesquite, Texas ebony, and grajeno. West of the resaca, moderately dense brush was observed dominated by mesquite with occasional retama, grajeno, and huisache. (See Photos 15-17 in Attachment 3.) ETT and Sharyland propose two options for Link 291A, as follows:

Link 291A - Option 1 proposes to abut the existing La Palma to Military Highway 138-kV transmission line easement on the north side with a new 150-ft easement. ETT and Sharyland propose to span the resaca approaching the structures from the east and west sides. A temporary 15-ft wide access road is anticipated. Four tangent structures, with three located within moderate density brush and one within low density brush, are associated with this option. A temporary 15-ft wide access road is anticipated for the length of this option. Potential temporary and permanent brush clearing impacts are provided in Table 1.

Link 291A - Option 2 proposes constructing the 345-kV line within the existing 138-kV line 100-ft easement. This would require a 138-kV underbuild on the proposed 345-kV line (see Figure 3 in Attachment 2) and the use of shorter spans between structures, requiring additional structures. The only new 100-ft wide easement required for this option is associated with a small section as the line inflects to the northeast prior to exiting the LRGVNWR property. ETT and Sharyland propose to span the resaca approaching the structures from the east and west sides. This option includes five tangent monopole structures and one dead-end double pole structure located at the inflection point. Six structures are proposed within moderate density brush, and one is proposed within low density brush. A temporary 15-ft wide access road is anticipated. The existing 100-ft easement has been allowed to revegetate since the transmission line was constructed and clearing would be required. Potential temporary and permanent brush clearing impacts are provided in Table 1.

Link 291B - The crossing location of Link 291B is 119 ft wide and will be spanned with no associated clearing impacts. No structures or access roads are proposed within the LRGVNWR property associated with this crossing (see Table 1).

Link 293

Link 293 crosses four different tracts within the Resaca del Rancho Viejo tract. These crossings have been labeled 293A, 293B, 293C, and 293D. The crossing locations for Links 293A, 293B, and 293C are all comprised of high density vegetation located along the edges of agricultural fields. Dominant vegetation includes mesquite, Texas ebony, snake-eyes (*Phauthamnus spinescens*), and grajeno. (See Photo 18 in Attachment 3 for an example of the density and type of vegetation at these locations.)

The crossing location for Link 293D is comprised of high density mature mesquite located along the western fenceline with moderately dense younger-aged mesquite and occasional tepeguaje located east of the fenceline for the remainder of the crossing. (See Photos 19 and 20 in Attachment 3.)

All four LRGVNWR tract crossings (293A, 293B, 293C, and 293D) are proposed as spans with no brush clearing required for structure locations or temporary access roads (see Table 1). Existing vegetation will remain intact.

USFWS Suggested Link Options

After several preliminary meetings, USFWS personnel suggested two additional existing corridors that ETT and Sharyland could evaluate as potential alternative link options: (1) Lago Road (which could replace Link 281), and (2) the abandoned railroad ROW (which could replace Link 291A).

As part of the evaluation of the Lago Road option, ETT and Sharyland learned that the City of Brownsville owns the easement for the road. The City anticipates upgrading the roadway in the future. If this existing roadway were converted to a transmission line ROW, then the City would require a new easement within the same area. As a result, this option would not reduce any potential impacts to the LRGVNWR and was therefore dismissed as an advantageous option.

To utilize the abandoned railroad ROW, Link 291A would have to be modified in a manner that continues to impact LRGVNWR property. To access the western end of the railroad ROW, Link 291A would have to extend 1,411 ft south inside the refuge property boundary due to extensive residential development located adjacent to the western property boundary. Based on POWER's interpretation of aerial photography, this option would also require clearing of moderate to high density brush to allow for a temporary access road and placement of numerous structures. Because there appear to be minimal, if any, benefits of using this option, it was dismissed from further consideration.

Table 1 - Summary of Potential Impacts for Preliminary Alternative Links Crossing LRGNWR Tracts

	Link 234	Link 281 Option 1	Link 281 Option 2	Link 287	Link 291A Option 1	Link 291A Option 2	Link 291B	Link 293A	Link 293B	Link 293C	Link 293D
Length of LRGVNWR crossing	2,073	7 186	8 552	6,268	3 874	3 863	119	200	200	383	497
Number of tangent monopole structures proposed	2	7	9	7	4	5	0	0	0	0	0
Number of dead-end double pole structures proposed	0	1	1	0	0	1	0	0	0	0	0
Width of new ROW requested	150	150	150	150	150	100	150	150	150	150	150
Area of new ROW requested	310 950	1 074,900	1,282 800	940,200	581,100	19,251	17 850	30,000	30,000	57,450	74,550
Width of existing transmission Line ROW to be utilized	0	0	0	0	0	100	0	0	0	0	0
Length of new easement crossing grassland/cropland (< 5%)	0	4 179	7,573	4,992	0	0	0	0	150	0	0
Length of new easement crossing low density brush (5-30%)	574	2 987	979	0	1,035	1 625	0	0	0	0	0
Length of new easement crossing moderate density brush (30-70%)	1 526	0	0	784	1,953	1 600	0	0	0	0	417
Length of new easement crossing high density brush (> 70%)	0	0	0	492	886	638	119	200	50	383	80
Length parallel to existing transmission line	0	7 166	3,487	0	3,874	0	0	0	0	0	0
Length parallel to roadway	2,073	0	0	0	0	0	0	0	0	0	0
Estimated Brush Clearing Impacts											
Area of ROW to be cleared for structure construction (temporary impacts)	11 250	200,625[3]	61 875	39,375	22,500	39,375	0	0	0	0	0
Area of ROW to be cleared for access road (temporary impacts)	0	107 490	128,280	78,600	58 110	57 945	0	0	0	0	0
Area of temporary brush clearing impacts within grassland/cropland (<5%)	0	252,060[3]	168,845	101 490	0	0	0	0	0	0	0
Area of temporary brush clearing impacts within low density brush (5-30%)	0	56,055	20,310	0	21,150	30,000	0	0	0	0	0
Area of temporary brush clearing impacts within moderate density brush (30-70%)	11,250	0	0	16,485	59 460	67,320	0	0	0	0	0
Area of temporary brush clearing impacts within high density brush (> 70%)	0	0	0	0	0	0	0	0	0	0	0
Area of estimated permanent brush clearing impacts within grassland/cropland (<5%)	0	1 050	1,500	900	0	0	0	0	0	0	0
Area of estimated permanent brush clearing impacts within low density brush (5-30%)	0	300	150	0	150	150	0	0	0	0	0
Area of estimated permanent brush clearing impacts within moderate density brush (30-70%)	300	0	0	150	450	900	0	0	0	0	0
Area of estimated permanent brush clearing impacts within high density brush (> 70%)	0	0	0	0	0	0	0	0	0	0	0
Total area of temporary brush clearing impacts	11,250	308 115[3]	190,155	117,975	80,610	97 320	0	0	0	0	0
Total area of permanent brush clearing impacts	300	1 350	1,650	1,050	600	1,050	0	0	0	0	0

[1] Lengths and are provided in feet and Amounts are provided in square feet
[2] Brush Density based on visually estimated absolute cover
[3] impacts include two temporary stringing sites

Additional Environmental Measures

Construction of the new transmission line would require federal and state regulatory agency review and/or permitting and compliance with the PUCT final order for the approved alternative route. Typically a PUCT final order reflects the necessary state and federal permitting actions required, but it can also specify additional measures. The EA and Routing Study drafted to support the CCN application is based upon a desktop review of potential environmental impacts for each alternative route, and a pedestrian survey of areas of potential environmental concern will be completed, once the PUCT approves a route, to determine sensitive resources (threatened and endangered species and/or cultural resources) located within the ROW. ETT and Sharyland will complete all necessary field surveys and obtain all necessary agency permits prior to construction.

In addition to these permitting actions, construction activities and design of the proposed line will be compliant with the Migratory Bird Treaty Act (MTBA). Measures for compliance typically include the survey of the ROW where there is potential for active bird nests prior to clearing activities during the nesting season and the installation of bird flight diverters on the shield wires within one-half mile of surface waters and wetlands. These areas are typically considered high avian use areas, and marking the lines should minimize the potential for avian collisions with the line.

In order to achieve a "no net loss" of LRGVNWR lands, ETT and Sharyland anticipate mitigation measures associated with the construction of any of the preliminary alternative link crossings. We appreciate your review of this information to facilitate your Appropriate Use Evaluation and Compatibility Determination for each of the potential LRGVNWR crossings. If you require clarifications or additional information please feel free to contact me at (512) 795-3700 ext. 6903.

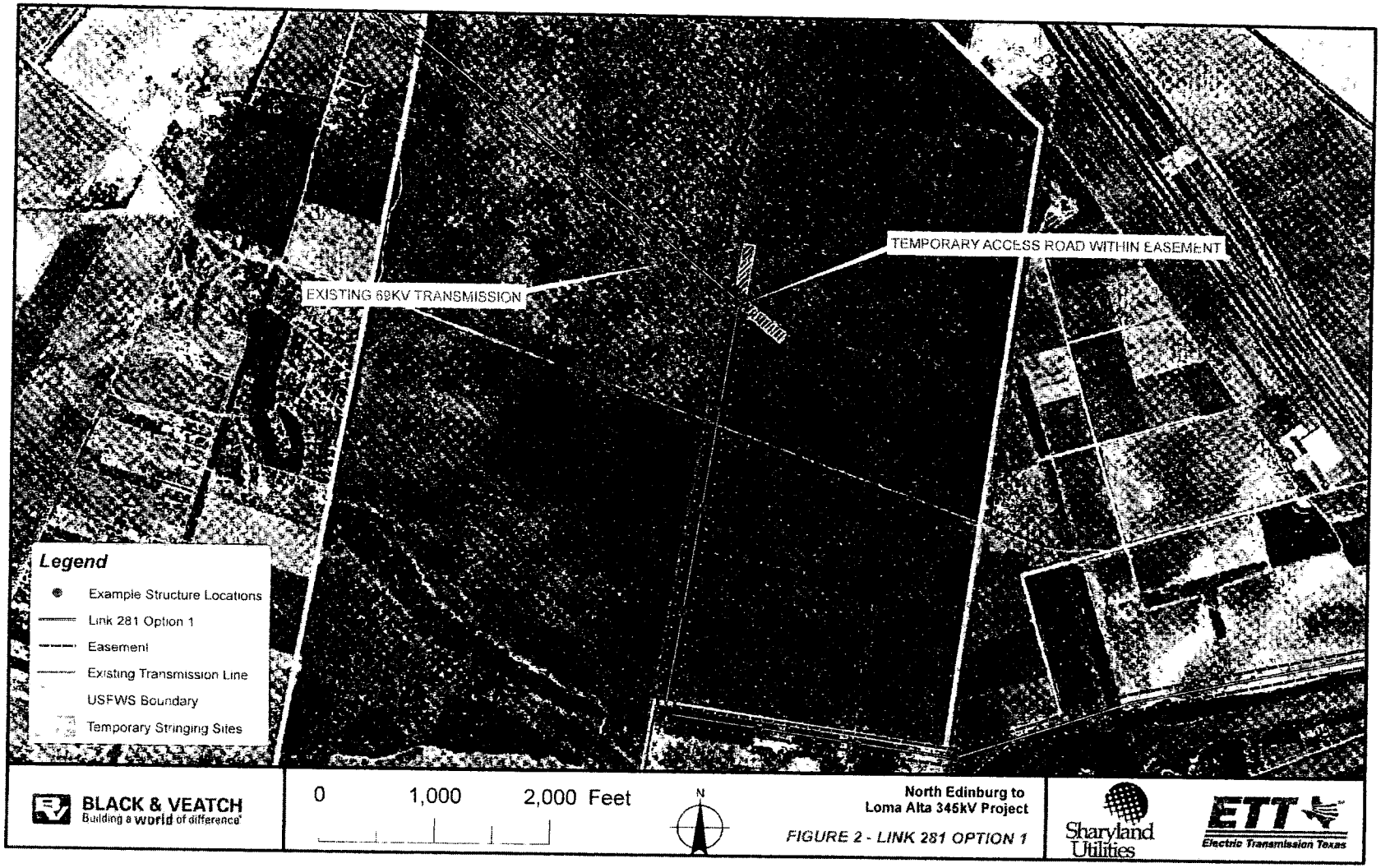
Sincerely,

Anastacia Santos
Project Manager

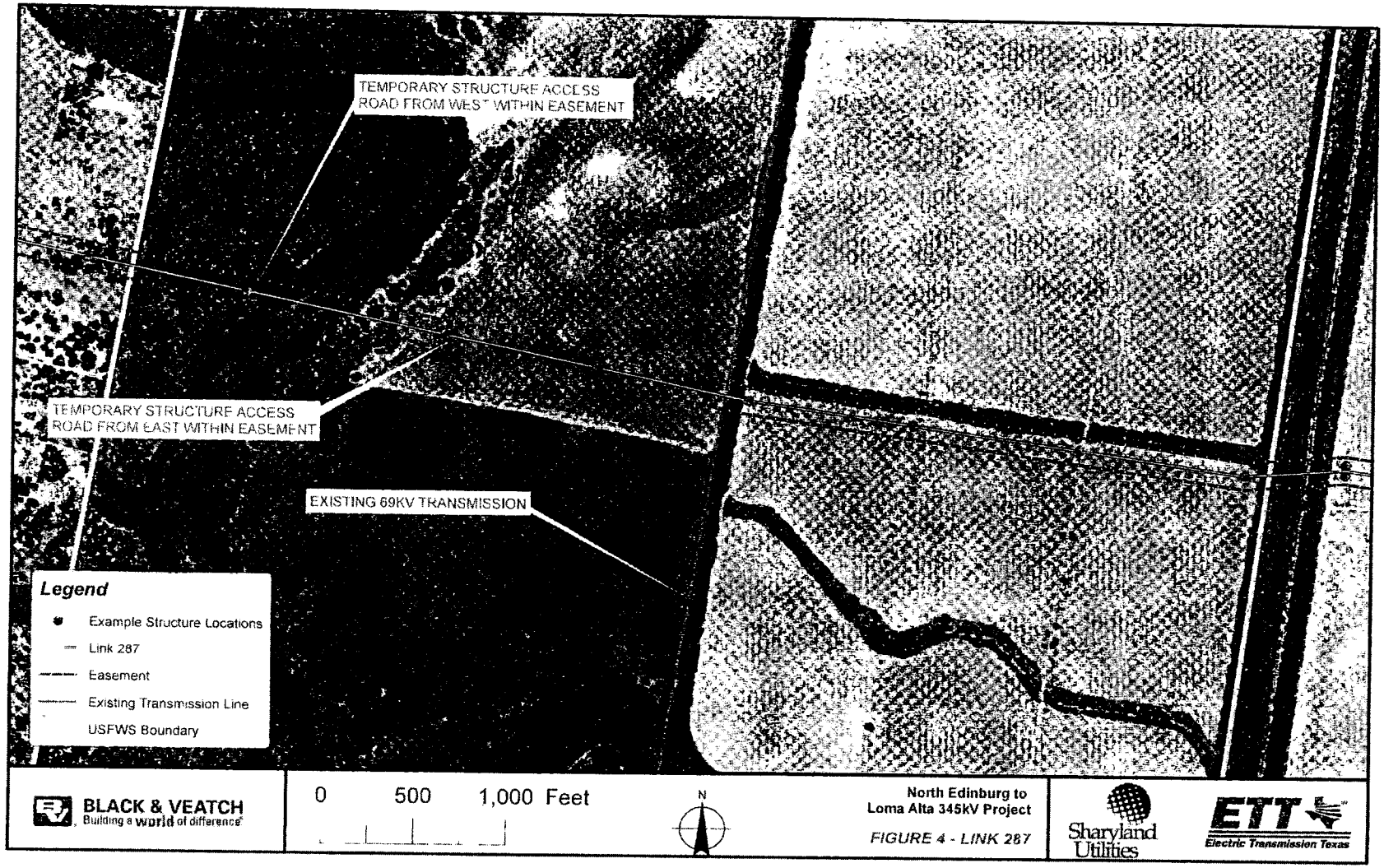
c: Don DeWolfe (Sharyland)
Teresa Trotman (AEP)
Randy Roper (AEP)

Attachment 1
Link Maps

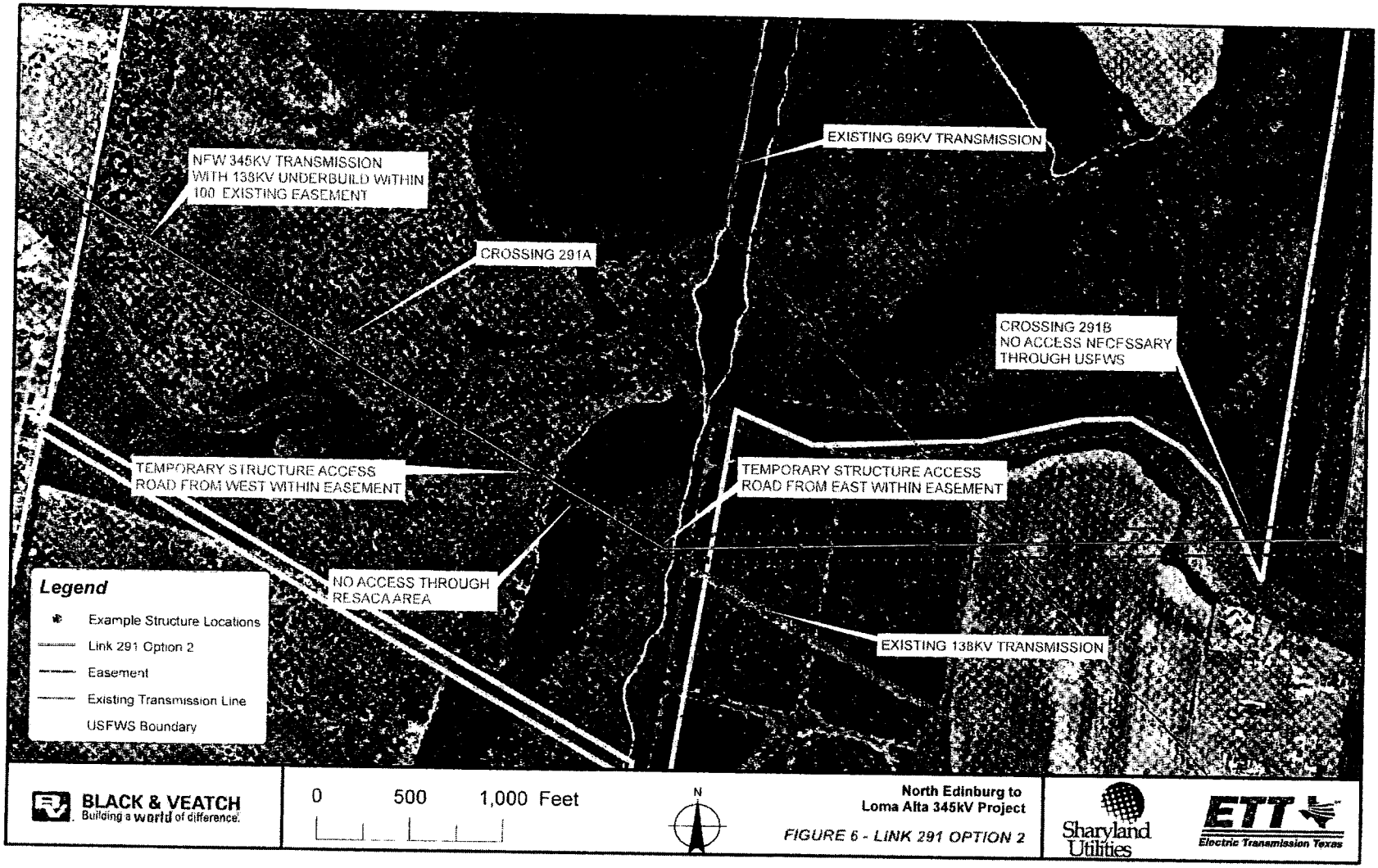
ACCESS EACH STRUCTURE INDIVIDUALLY VIA JIMENEZ ROAD
EXISTING 69KV TRANSMISSION
Legend
Example Structure Locations
Link 234
Easement
Existing Transmission Line
USFWS Boundary
BLACK & VEATCH
Building a world of difference
0
500
1,000 Feet
N
North Edinburg to
Loma Alta 345KV Project
FIGURE 1 - LINK 234
Sharyland Utilities
ETT
Electric Transmission Texas


TEMPORARY ACCESS ROAD WITHIN EASEMENT
EXISTING 69KV TRANSMISSION
Legend
Example Structure Locations
Link 281 Option 1
Easement
Existing Transmission Line
USFWS Boundary
Temporary Stringing Sites
BLACK & VEATCH
Building a world of difference
0
1,000
2,000 Feet
N
North Edinburg to
Loma Alta 345kV Project
FIGURE 2 - LINK 281 OPTION 1
Sharyland Utilities
ETT
Electric Transmission Texas

TEMPORARY ACCESS ROAD WITHIN EASEMENT
EXISTING 69KV TRANSMISSION
Legend
Example Structure Locations
Link 281 Option 2
Easement
Existing Transmission Line
USFWS Boundary
BLACK & VEATCH
Building a world of difference.
0
1,000
2,000 Feet
N
North Edinburg to
Loma Alta 345kV Project
FIGURE 3 - LINK 281 OPTION 2
Sharyland Utilities
ETT
Electric Transmission Texas


TEMPORARY STRUCTURE ACCESS ROAD FROM WEST WITHIN EASEMENT
TEMPORARY STRUCTURE ACCESS ROAD FROM EAST WITHIN EASEMENT
EXISTING 69KV TRANSMISSION
Legend
Example Structure Locations
Link 287
Easement
Existing Transmission Line
USFWS Boundary
BLACK & VEATCH
Building a world of difference
0 500 1,000 Feet
N
North Edinburg to Loma Alta 345kV Project
FIGURE 4 - LINK 287
Sharyland Utilities
ETT
Electric Transmission Texas

EXISTING 69KV TRANSMISSION
CROSSING 291B
NO ACCESS NECESSARY
THROUGH USFWS
TEMPORARY STRUCTURE ACCESS
ROAD FROM EAST WITHIN EASEMENT
EXISTING 138KV TRANSMISSION
CROSSING 291A
TEMPORARY STRUCTURE ACCESS
ROAD FROM WEST WITHIN EASEMENT
NO ACCESS THROUGH
RLSCA AREA
Legend
Example Structure Locations
Link 291 Option 1
Easement
Existing Transmission Line
USFWS Boundary
BLACK & VEATCH
Building a world of difference.
0
500
1,000 Feet
N
North Edinburg to
Loma Alta 345kV Project
FIGURE 5 - LINK 291 OPTION 1
Sharyland Utilities
ETT
Electric Transmission Texas


NEW 345KV TRANSMISSION WITH 138KV UNDERBUILD WITHIN 100' EXISTING EASEMENT
CROSSING 291A
EXISTING 69KV TRANSMISSION
CROSSING 291B NO ACCESS NECESSARY THROUGH USFWS
TEMPORARY STRUCTURE ACCESS ROAD FROM WEST WITHIN EASEMENT
TEMPORARY STRUCTURE ACCESS ROAD FROM EAST WITHIN EASEMENT
NO ACCESS THROUGH RESACA AREA
EXISTING 138KV TRANSMISSION
Legend
Example Structure Locations
Link 291 Option 2
Easement
Existing Transmission Line
USFWS Boundary
BLACK & VEATCH
Building a world of difference.
0
500
1,000 Feet
N
North Edinburg to Loma Alta 345kV Project
FIGURE 6 - LINK 291 OPTION 2
Sharyland Utilities
ETT
Electric Transmission Texas