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APPLICATION OF LCRA § BEFORE THE STATE OFFICE  
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CORPORATION TO AMEND ITS §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY FOR THE PROPOSED § OF  
BLUMENTHAL SUBSTATION AND 138- §  
KV TRANSMISSION LINE PROJECT IN §  
BLANCO, GILLESPIE, AND KENDALL §  
COUNTIES § ADMINISTRATIVE HEARINGS

**INITIAL BRIEF**

**OF**

**WILLIAMS CREEK WATERSHED LANDOWNERS**

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**WILLIAMS CREEK WATERSHED**  
**LANDOWNERS**

**JULY 1, 2015**

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<b>COUNTIES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**INITIAL BRIEF OF  
WILLIAMS CREEK WATERSHED LANDOWNERS**

The Williams Creek Watershed Landowners ("WCWL") offer this initial brief in the *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Blumenthal Substation and 138-kV Transmission Line Project in Blanco, Gillespie, and Kendall Counties*, Public Utility Commission Docket No. 43599. WCWL show that proposed Route 6 and any route using proposed Link G-1 do not meet the criteria laid out in in PURA § 37.056(c) and P.U.C. SUBST. R. 25.101(b)(3).

**I. INTRODUCTION AND SUMMARY**

The WCWL is comprised of a community of landowners<sup>1</sup> in the Williams Creek Watershed who all oppose Link G-1, which is included in proposed Route 6. Link G-1 would bisect and fragment the WCWL properties without following any existing right-of-way or property boundaries and would devastate the lands that they and others in the community have been trying to restore to its natural state. Rather than fragmenting property, the route selected should be one that follows existing roads and rights-of-way as much as possible to make the lines

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<sup>1</sup> WCWL is comprised of the following intervenors who filed direct testimony in this case: Michael D'Eath on behalf of himself and his wife Brenda Freed, Leonard Hilliard on behalf of himself, his wife M. Catherine Hilliard, and the Hilliard Family Partnership, Rodney Ruebsahm on behalf of his family and the Rocking R Stone Hills Limited Partnership, and David Mabry Elliot on behalf of Marauder LLC.

less intrusive once built as well as during the periods of construction and maintenance. Doing so will greatly reduce the negative effect on the environment, aesthetic qualities, and community values associated with the land in this area.

To approve an application for a Certificate of Convenience and Necessity ("CCN") the Public Utility Commission ("Commission" or "PUC") requires that all of the criteria in PURA § 37.056(c)<sup>2</sup> be met and that the factors set forth in P.U.C. Subst. R. 25.101(b) be considered. Substantive Rule 25.101(b)(3)(B) states: "an application for a new transmission line shall address the criteria in PURA § 37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to *moderate the impact on the affected community and landowners...*" As will be discussed below, any route using Link G-1 would not be a route that best meets the criteria.

## II. ISSUES TO BE ADDRESSED

### A. Which proposed transmission line route is the best alternative weighing the factors set forth in PURA § 37.056(c) and P.U.C. Subst. R. 25.101(b)(3)(B)? [Preliminary Order Issue No. 4]

#### 1. Community values

The Commission has previously described "community values" as a "shared appreciation of an area or other natural or human resource by members of a national, regional, or local community."<sup>3</sup> The WCWL members are a group of landowners that own property in the Williams Creek Watershed that have spent years preserving the natural beauty of the land for their friends and family to enjoy. Because Link G-1 cuts through and fragments the WCWL properties without following any existing right-of-way or property boundaries, it is not the best

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<sup>2</sup> Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 37.056(c) (West 2007 & West Supp. 2013) ("PURA").

<sup>3</sup> *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity (CCN) for a 138 kV Transmission Line in Kerr County*, Docket No. 33844, Final Order at 15, FoF 65 (Mar. 4, 2008).

way to moderate the impact on the WCWL community. Instead, the use of Link G-1 would severely detract from the community values in the area along Link G-1.

Many of the WCWL properties have been held by their respective families for decades. For example, Rodney Ruebsahm described how his family has held their nearly 800 acre property known as the "Rocking R" for approximately 90 years, and that the tradition of five generations of his family holding the property will continue on through his children and grandchildren.<sup>4</sup> Similarly, Leonard Hilliard and Michael D'Eath explained that their families have owned their respective properties for about 20 years.<sup>5</sup>

In addition to using the property as their homes, the various WCWL use the property for hunting, ranching, and recreational purposes. Mr. D'Eath described how the community as a whole has protected this relatively undeveloped portion of the Texas Hill Country. His family has leased their property to a local cattle rancher for 20 years, using the surface water on the property to ensure the cattle could survive the severe drought in Texas.<sup>6</sup> If Link G-1 were constructed, the disruption to the grasslands, water, limestone, soil, or trees could severely impact the value of the WCWL property for ranching by reducing water flows and grasslands as well as reducing or eliminating shade and water for the animals. Additionally, Mr. D'Eath described a former wagon road from the 1880s on his property that would be bisected and could be damaged by Link G-1.<sup>7</sup>

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<sup>4</sup> Direct Testimony of Rodney Ruebsahm, WCWL Ex. 4 at 3.

<sup>5</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 4; Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 4.

<sup>6</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 7.

<sup>7</sup> *Id.*

Similarly, Mr. Hilliard has also leased their property to a local cattle rancher for over 20 years, and opens their property up to others for deer, turkey, and hog hunting.<sup>8</sup> The Hilliard's property also has a lake where friends, family, neighbors, and associates come to fish and enjoy the beauty of the land.<sup>9</sup> The presence of the transmission line would devastate these activities that the WCWL community has come to enjoy.

Mr. Elliot explained that as a community, the WCWL and others are highly committed land stewards, which is evidenced by the investment in and preservation of their properties.<sup>10</sup> Like his neighbors, he is concerned about his ability to use his property for ranching in light of all of the construction and maintenance required for a transmission line. He described how the native grasses have been carefully protected from overgrazing and echoed the concerns of the rest of the WCWL community that the many years of stewardship of their lands would be ruined.<sup>11</sup>

Mr. Ruebsahm also explained how his family has preserved the Rocking R to protect the scenic beauty, plants, and wildlife of the Williams Creek Watershed along with the rest of the community. Like others in the WCWL community, the Rocking R is open to friends and family who want to escape to enjoy the beauty and unspoiled areas of the Texas Hill Country.<sup>12</sup> Because Link G-1 cuts through the WCWL's properties without following any right-of-way or other natural feature, Link G-1 would remove crucial cropland and pasture for livestock that could have a permanent negative impact for the WCWL. Like so many in the community, the

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<sup>8</sup> Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 7.

<sup>9</sup> *Id.*

<sup>10</sup> Direct Testimony of David Mabry Elliot, WCWL Ex. 2 at 5.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Direct Testimony of Rodney Ruebsahm, WCWL Ex. 4 at 6.

WCWL chose to build their home on the property because of the beauty of the land in its natural state.

In an effort to restore the property to its natural state, the WCWL community has conducted prescribed burns together. The purpose of the burns is to suppress the opportunistic and non-native plants, allowing the native species to flourish. These burns require approximately 20 private volunteers to come with their own equipment to help perform the burns. The WCWL community has performed 3 of these burns together over the past 8 years. The prescribed burning is supported and encouraged by Natural Resources Conservation Service, a department of the USDA. Their personnel provide advice and assistance for these activities. From approximately 2004 through 2006 (before the burns), the Hilliards were participants in the USDA program and a similar state program that funded about one-third to one-half of the expenses associated with our efforts to mechanically clear the undesirable species. At that time, the WCWL community was focusing on removing mountain cedar and ashe juniper. This governmental support has helped landowners like the WCWL improve ground water supplies, reduce soil erosion, and promote healthy native plant species, including trees, shrubby plants, and grasses. The clear cutting associated with a transmission line will be counterproductive in the most sensitive area of the WCWL land.<sup>13</sup>

Rather than bisecting and fragmenting property, the route selected should be one that follows existing roads and rights-of-way as much as possible to make the lines less intrusive once built as well as during the periods of construction and maintenance. Doing so will greatly reduce the negative effect on the aesthetic and economic value of private lands crossed by the

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<sup>13</sup> Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 11-12.



transmission lines and poles.<sup>14</sup> Construction and operation of a major electrical line in the Williams Creek Watershed would be devastating and is the wrong choice for the WCWL community.

**2. Use of property lines, rights-of-way, or other natural features**

Route 6, which uses Link G-1, is the longest route of all the routes proposed by LCRA and is one of the most expensive at \$37.1 million.<sup>15</sup> The vast majority of Proposed Link G-1 does not follow any existing property boundaries, corridors, or existing right-of-way. The link follows what appear to be tax tract boundaries that do not make up the property boundaries of the WCWL member properties. Land fragmentation occurs when routes cross undeveloped land without any linear features to justify the placement of the route.<sup>16</sup> During the hearing, an expert witness in the case, Mark Turnbough, explained that in the absence of a roadway or another transmission line, one looks for property boundaries for the lines to parallel.<sup>17</sup> Routes that cut through a substantial amount of undeveloped land while paralleling little existing compatible right-of-way, causing land fragmentation, have been considered to rank poorly by the Commission in prior cases.<sup>18</sup>

As shown in LCRA Ex. 18 and the direct testimonies of each of the WCWL members, the property boundaries of the WCWL extend much further north and south of Link G-1.<sup>19</sup> Traveling from west to east, Link G-1 enters the Rocking R's property following no existing right-of-way, continues on into Mr. Elliot's property (Marauder LLC) and cuts through without

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<sup>14</sup> Direct Testimony of Rodney Ruebsahm, WCWL Ex. 4 at 5.

<sup>15</sup> Application at Attachment 3.

<sup>16</sup> Tr. at 560.

<sup>17</sup> Tr. at 560-61.

<sup>18</sup> Friends Ex. 34 at 2-3.

<sup>19</sup> See WCWL Ex. 6-9 that are included as Attachment A to this Initial Brief.

following existing right-of-way, then bisects the middle of Mr. Hilliard's property without following existing right-of-way, and finally bisects Mr. D'Eath's property following no property boundaries or other features. Mr. Turnbough, confirmed that G-1 would create land fragmentation as it crossed each of the WCWL properties.<sup>20</sup>

Because Link G-1 would bisect each of the WCWL properties, causing land fragmentation and devastating these properties, Link G-1 should not be used.

### **3. Conformance with the Commission's policy on prudent avoidance**

Each of the WCWL properties has a home near proposed Link G-1. For example, Mr. Hilliard explained that his home is near to, and in direct view of the proposed transmission line.<sup>21</sup> Mr. Elliot describes the two homes on the property, one of which dates back to 1912.<sup>22</sup> Mr. Ruebsahm described the 1950s camp house on the Rocking R that will be approximately 600 feet from the line in full view of the home.<sup>23</sup> Similarly, Mr. D'Eath described his home and guest house that would be within 600 feet and 500 feet of the transmission line, respectively. While the D'Eath's 2009 custom home is newer than the other WCWL homes, the guest house that the Mr. D'Eath also uses to accommodate friends and family is approximately 19 years old.<sup>24</sup>

Of great importance to all of the WCWL community is that their homes are used by WCWL family and friends. They currently enjoy the opportunity to provide a hill country retreat that would be devastated if a transmission line were constructed across their properties.

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<sup>20</sup> Tr. at 561-63.

<sup>21</sup> Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 9.

<sup>22</sup> Direct Testimony of David Mabry Elliot, WCWL Ex. 2 at 8.

<sup>23</sup> Direct Testimony of Ruebsahm, WCWL Ex. 4 at 7.

<sup>24</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 10.

#### **4. Environmental integrity**

##### **(a) Link G-1 will impact the grass and trees on WCWL properties.**

If Link G-1 were selected, the construction and maintenance of the lines across the WCWL properties will cause a significant amount of negative environmental impacts. Of great importance in the study area are the grass and trees on the WCWL properties. As Mr. D'Eath and Mr. Hilliard explained, the WCWL community worked hard to preserve and return the local environment and its water systems to their natural condition, and any construction or operation of a major electrical line in the Williams Creek Watershed could irreparably damage this sensitive ecosystem, and ruin this historic place.<sup>25</sup> This part of the Texas Hill Country is at an elevation of between 1,500 and 2,000' and runs along the Divide between the Colorado and Guadalupe river systems. The area is home to unusual species of trees. The Ladybird Johnson Wildflower Center and an expert nurseryman have confirmed the presence of an uncommon Texas Yellow (or White) Buckeye that grows in specific strata within 50 feet of the proposed centerline of Link G-1.<sup>26</sup> The property also has large Escarpment Cherry and Black Walnut, both of which are found primarily in the high Hill Country. Their properties have some of the oldest and largest Live Oaks in the vicinity.<sup>27</sup>

Mr. Elliot explained that the construction of Link G-1 in the pristine high ground of "the Divide" between the Pedernales and Blanco river basins would irreparably damage a delicate ecosystem that provides critical wildlife habitat and water resources.<sup>28</sup> The proposed cutting of trees would greatly increase the risk of oak wilt on their property, where none currently exists.

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<sup>25</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 6.

<sup>26</sup> *Id.* at 12.

<sup>27</sup> Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 10-11; D'Eath at 13.

<sup>28</sup> Direct Testimony of David Mabry Elliot, WCWL Ex. 2 at 6.

Additionally, the property has huge Old Growth Walnut, Escarpment Cherry, and Oak trees that could be destroyed.<sup>29</sup>

**(b) Link G-1 will impact the wildlife on WCWL properties.**

LCRA's tables show that three surveys agree that these hills are likely habitat for endangered species, specifically Golden-cheeked Warbler. An expert in the case, Harold Hughes, testified that the presence of Golden-cheeked Warbler was the most important ecology criteria.<sup>30</sup> Mr. Hughes determined that Route 6 had the most acreage of potential Golden-cheeked Warbler habitat of all the routes proposed by LCRA.<sup>31</sup> In addition, the land is home to migratory ducks, birds, and raptors throughout the year.<sup>32</sup> Mr. D'Eath testified that the reduction in old growth tree cover in the easement and presence of power lines across the property could impact the ability of those birds to remain on his property.<sup>33</sup> Mr. D'Eath has seen persistent evidence of white tail and axis deer, fox, raccoon, porcupine, coyote, mountain lion, ring-tail, squirrel, armadillo, turtle, frog, snake, lizard, and many other forms of wildlife. Construction of Link G-1 and its easement would eliminate acres of habitat for many of these species.

In 2013, Mr. Elliot's family donated a Conservation Easement on 685 acres to the Hill Country Land Trust that includes protection of the habitat of the endangered Golden-cheeked Warbler, with essential old growth ashe juniper and mature Texas red oak.<sup>34</sup>

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<sup>29</sup> Direct Testimony of David Mabry Elliot, WCWL Ex. 2 at 9-10.

<sup>30</sup> Direct Testimony of Hal Hughes, Jr. P.E., Grape Creek Vineyards Ex. 1 at 10.

<sup>31</sup> *Id.* at 19-20.

<sup>32</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 13; Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 10.

<sup>33</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 13.

<sup>34</sup> Direct Testimony of David Mabry Elliot, WCWL Ex. 2 at 10.

**(c) Link G-1 will cause damage to surface and subsurface water on WCWL properties.**

Mr. D'Eath and Mr. Hilliard's properties provide much of the water source for the west fork of Williams Creek, which itself feeds the Pedernales River. Both properties have many springs, wetlands, creeks, and tanks throughout the property, some of which are directly within the proposed easement for Link G-1, and others are within 50 feet or less of its proposed centerline.<sup>35</sup> The combination of direct intrusion into springs and wetlands that are located within the proposed easement and the high potential for consequential damage to springs, creeks, and tanks as a result of silting and soil movement could take decades to repair and some of the damage would be irreparable. As the proposed easement for Link G-1 is directly over them, any vehicular traffic or earth movement could cause some springs to stop flowing. Any damage to these systems would reduce or eliminate the value of the properties for grazing and as a livestock water source during persistent high-drought conditions.

Following his grandfather's wishes, Mr. Ruebsahm has continued to preserve the areas around the springs on his property for decades. However, Link G-1 would have a severe impact on these springs.<sup>36</sup>

On the west side of Mr. Elliot's property, a steep slope goes down to a seasonal creek that forms the Middle Fork of Three Mile Creek. The construction of Link G-1 would be in an area of the property with runoff to a draw that joins other seeps and springs to the east to form the west fork of Williams Creek. Therefore, Link G-1 would result in perennial damage to the sensitive creeks, wetlands, springs, and lakes in the line of Link G-1.<sup>37</sup>

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<sup>35</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 14; Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 12.

<sup>36</sup> Direct Testimony of Rodney Ruebsahm, WCWL Ex. 4 at 6.

<sup>37</sup> Direct Testimony of David Mabry Elliot, WCWL Ex. 2 at 10.

**(d) Link G-1 will cause damage to the roads on WCWL properties.**

The local roads cannot withstand the level of construction traffic expected to build the transmission lines. The private roads on Mr. D'Eath's property were mostly constructed approximately 20 years ago, after the previous owners ceded a century-old (wagon) easement road that traverses his property. These are primitive gravel roads that have taken 20 years and almost \$100,000 to get to the point where they can withstand the rain and weather without road damage or silting of the water systems.<sup>38</sup> Mr. D'Eath still has to adjust and repair (with permaculture) the resulting silting and runoff damage to the wetlands, creeks, and springs on the property. Schumann Road, the primary access road to the valley, is a primitive one-lane tarmac road with ten (10) cattle guards along its 4.5 mile length. Schumann Road has not been properly maintained for over 20 years, and continues to degrade.<sup>39</sup> Damage caused by the construction traffic could take *decades* to repair.

Mr. Hilliard also described their efforts to construct the private roads on their property approximately 20 years ago, at the cost of \$75,000. These roads are finally to the point where they can withstand the rain and weather without road damage or silting of the water systems; and they are still adjusting and repairing (with permaculture) the resulting silting and runoff damage to the wetlands, creeks, and springs on his property.<sup>40</sup>

Similarly, Mr. Elliot explained that his access road via an easement includes a gradual uphill route after passing the end of Schumann Road. This road cannot withstand the impact of heavy equipment for construction and maintenance of the power line. This is the case even though he has invested in improving the incline segment with crushed limestone and part of the

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<sup>38</sup> Direct Testimony of Michael D'Eath, WCWL Ex. 1 at 12.

<sup>39</sup> *Id.*

<sup>40</sup> Direct Testimony of Leonard Hilliard, WCWL Ex. 3 at 10.

remaining route with caliche. Similarly, the other dirt roads on the ranch cannot bear such traffic without significant destruction.<sup>41</sup>

**B. Recommendations or informational comments from Texas Parks and Wildlife Department [Preliminary Order Issue No. 7]**

In her direct testimony, Texas Parks and Wildlife Department (“TPWD”) witness Jessica Schmerler explained that one of TPWD’s “greatest concerns” was the “potential impacts to Golden-cheeked Warbler (*Setophaga chrysoparia*) habitat.”<sup>42</sup> Schmerler described how the potential Golden-cheeked Warbler breeding and nesting habitat was modeled using three different predictive habitat models, and recommended that the Commission not select an alternative route that crosses Golden-cheeked Warbler habitat where the three models agreed.<sup>43</sup> TPWD explained that only four routes (Routes 8, 13, 17, and 17Y) do not cross any area of predicted Golden-cheeked Warbler habitat.<sup>44</sup> As discussed above, the models showed that Link G-1 is one such area that should be avoided because of potential Golden-cheeked Warbler habitat.

### **III. CONCLUSION**

A preponderance of the evidence demonstrates that Route 6 is not the route that best meets the criteria for route selection and that Link G-1 should not be used. Any route using Link G-1 is an imprudent choice for the construction of this transmission line because it does not follow existing right-of-way across the WCWL properties, because it would fragment each of the WCWL properties, and because it would damage the wildlife habitat and devastate the lands that

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<sup>41</sup> Direct Testimony of David Mabry Elliot, WCWL Ex. 2 at 9.

<sup>42</sup> Texas Parks and Wildlife Ex. 1, Direct Testimony of Jessica Schmerler at 6.

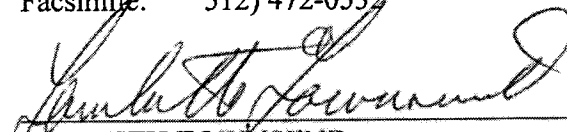
<sup>43</sup> *Id.* at 14.

<sup>44</sup> *Id.* at 6-7; TPWD’s Initial Brief at 3 (June 30, 2015).

these families have held for decades. The WCWL community as a whole is opposed to any route using Link G-1.

Respectfully submitted,

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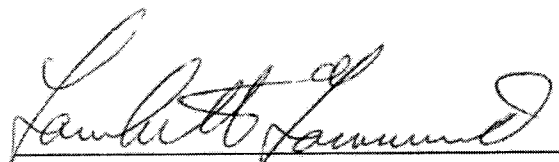
  
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WATERSHED LANDOWNERS

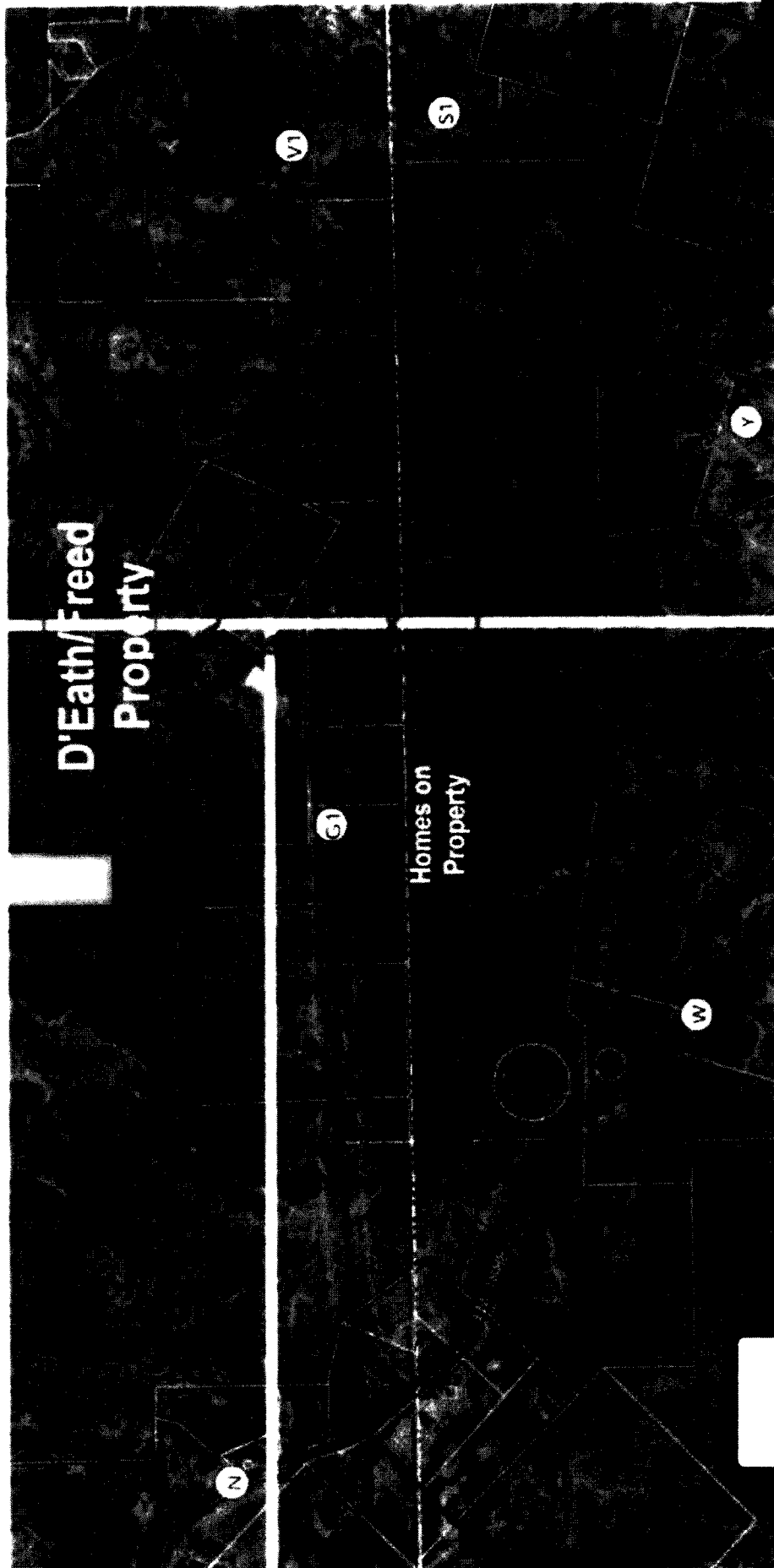
**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served in accordance with Order No. 2 in this proceeding on this 1st day of July, 2015.

  
LAMBETH TOWNSEND



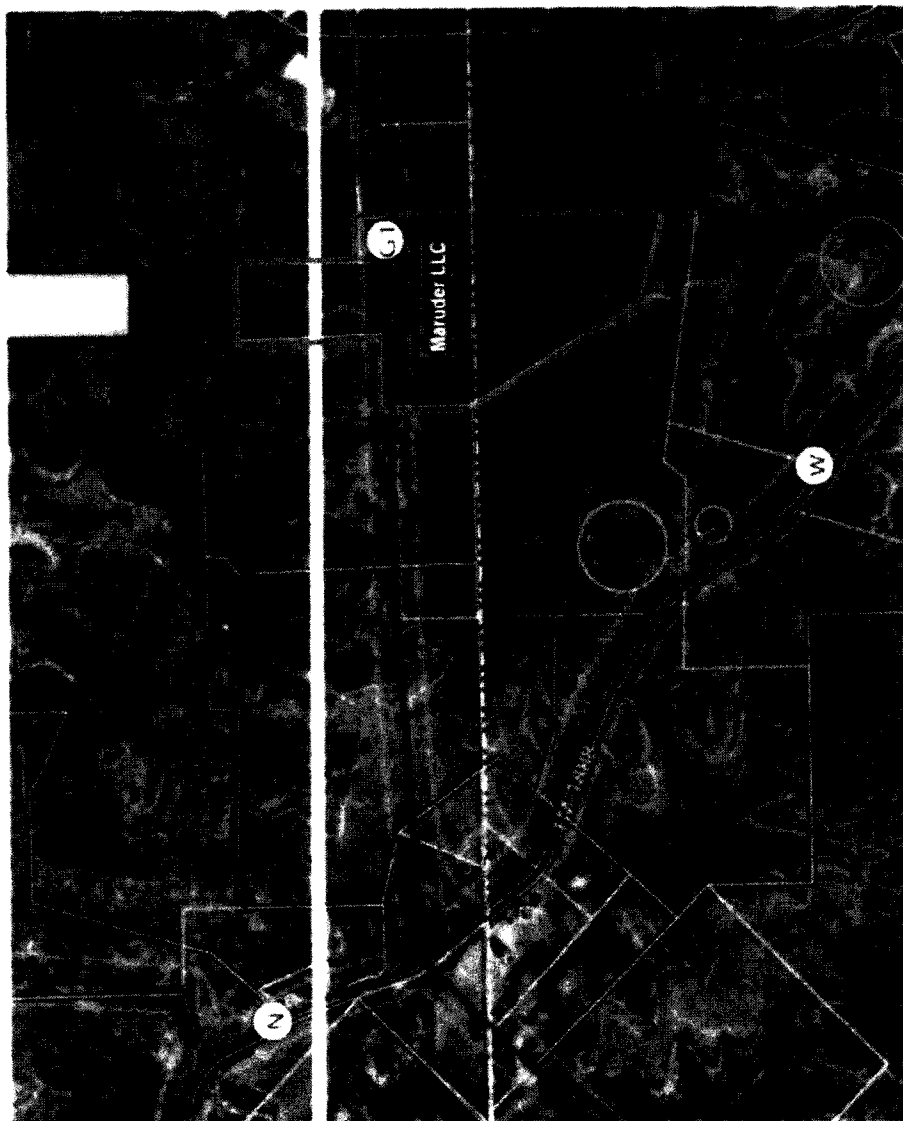
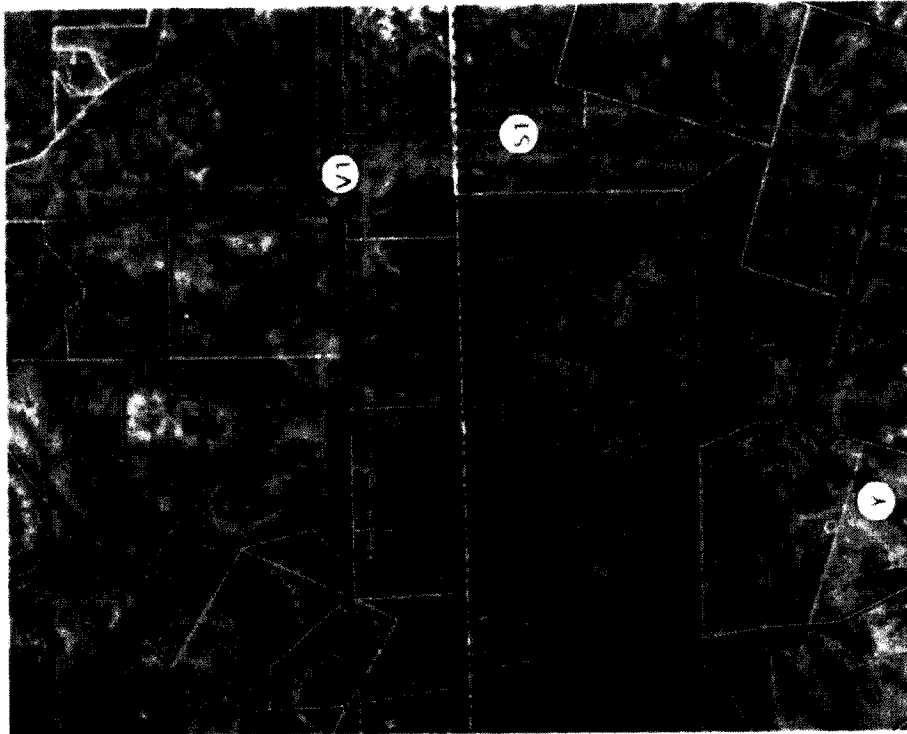
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**WCWL  
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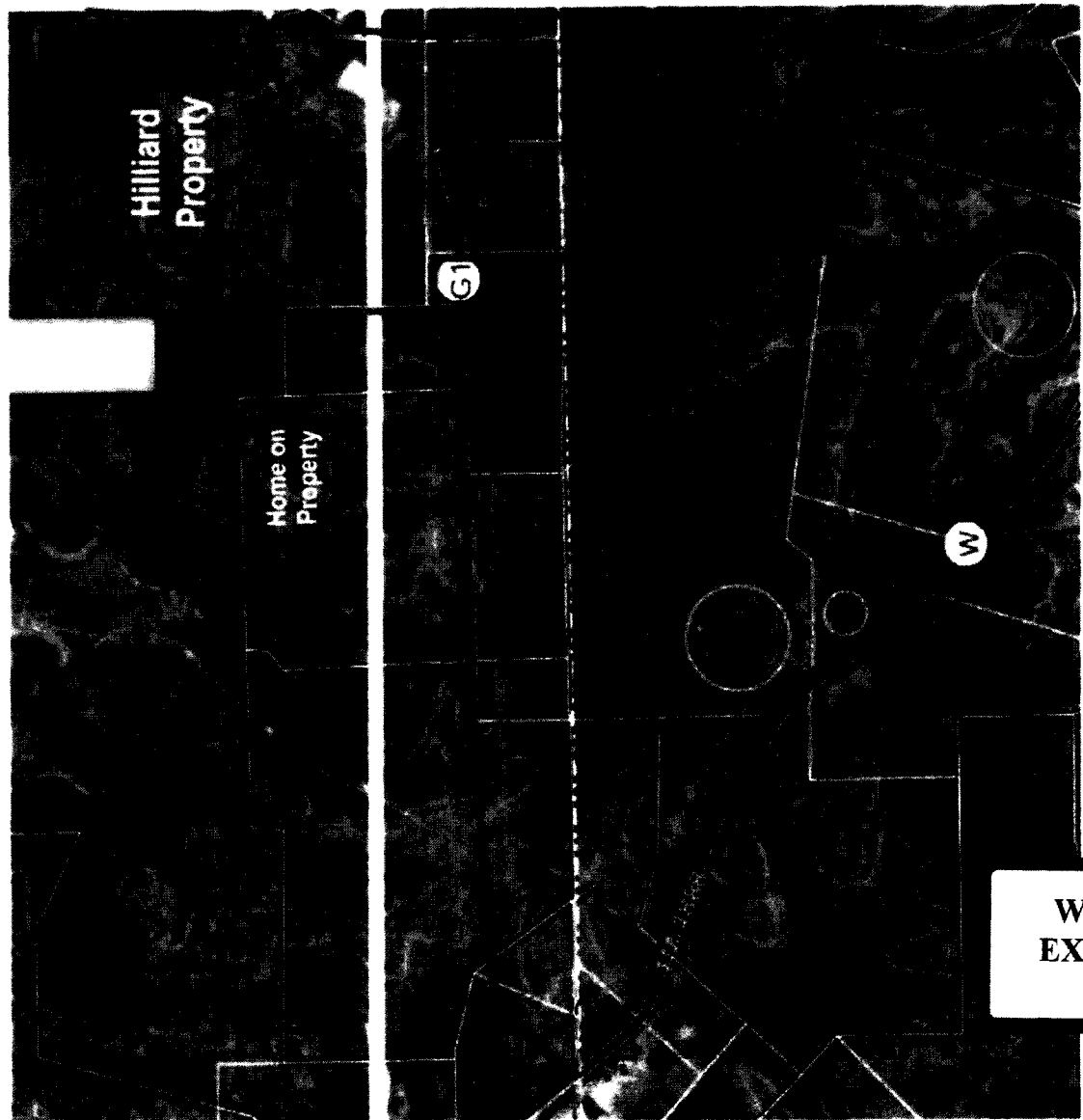
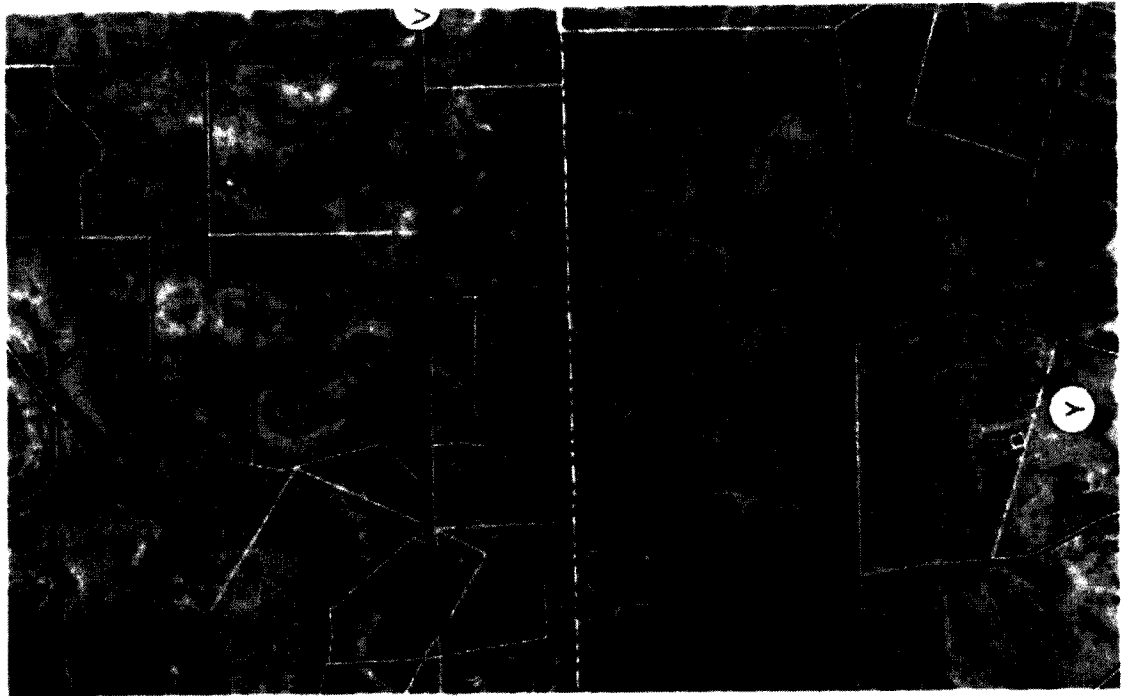
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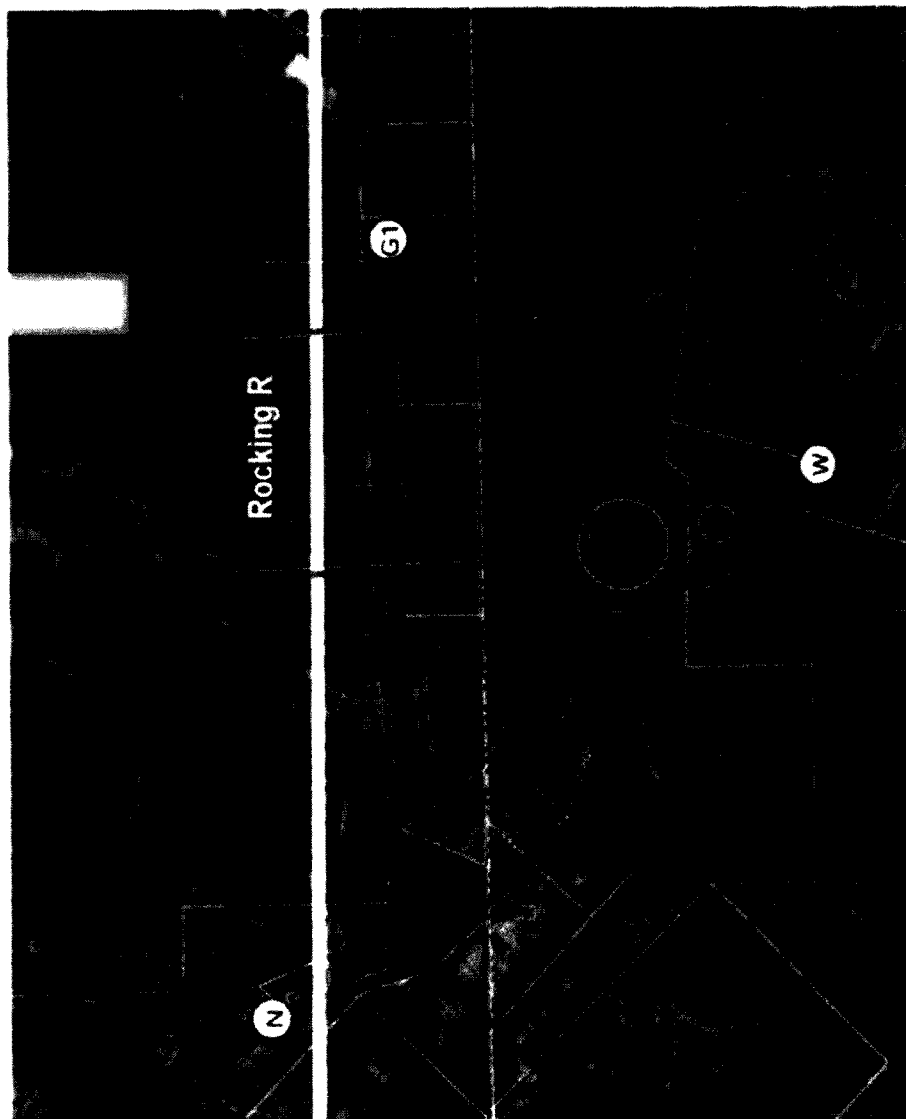
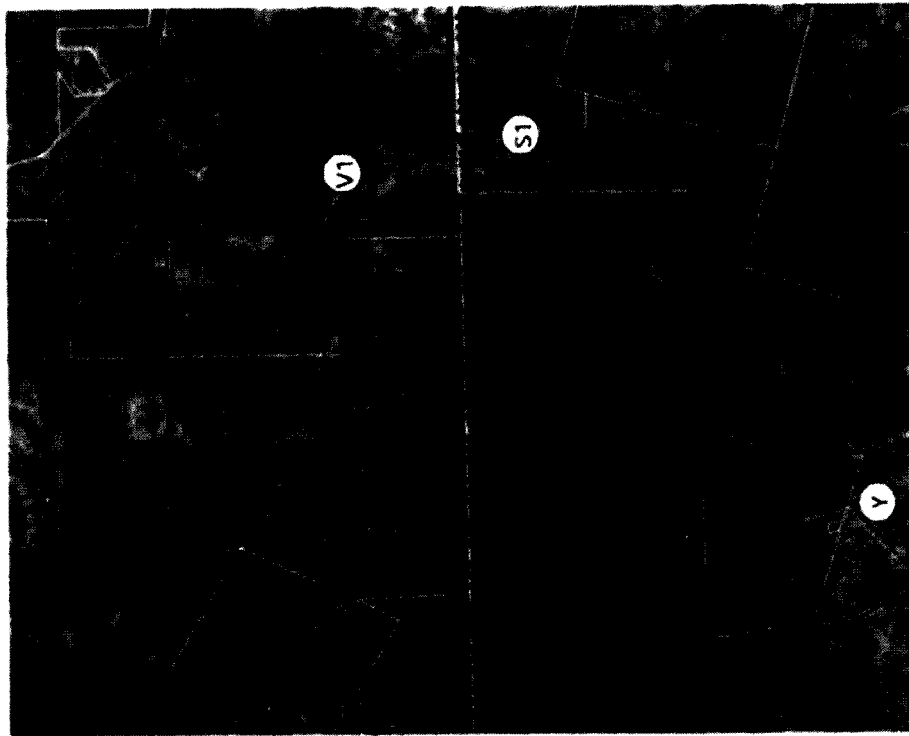
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