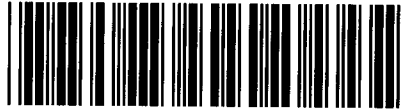


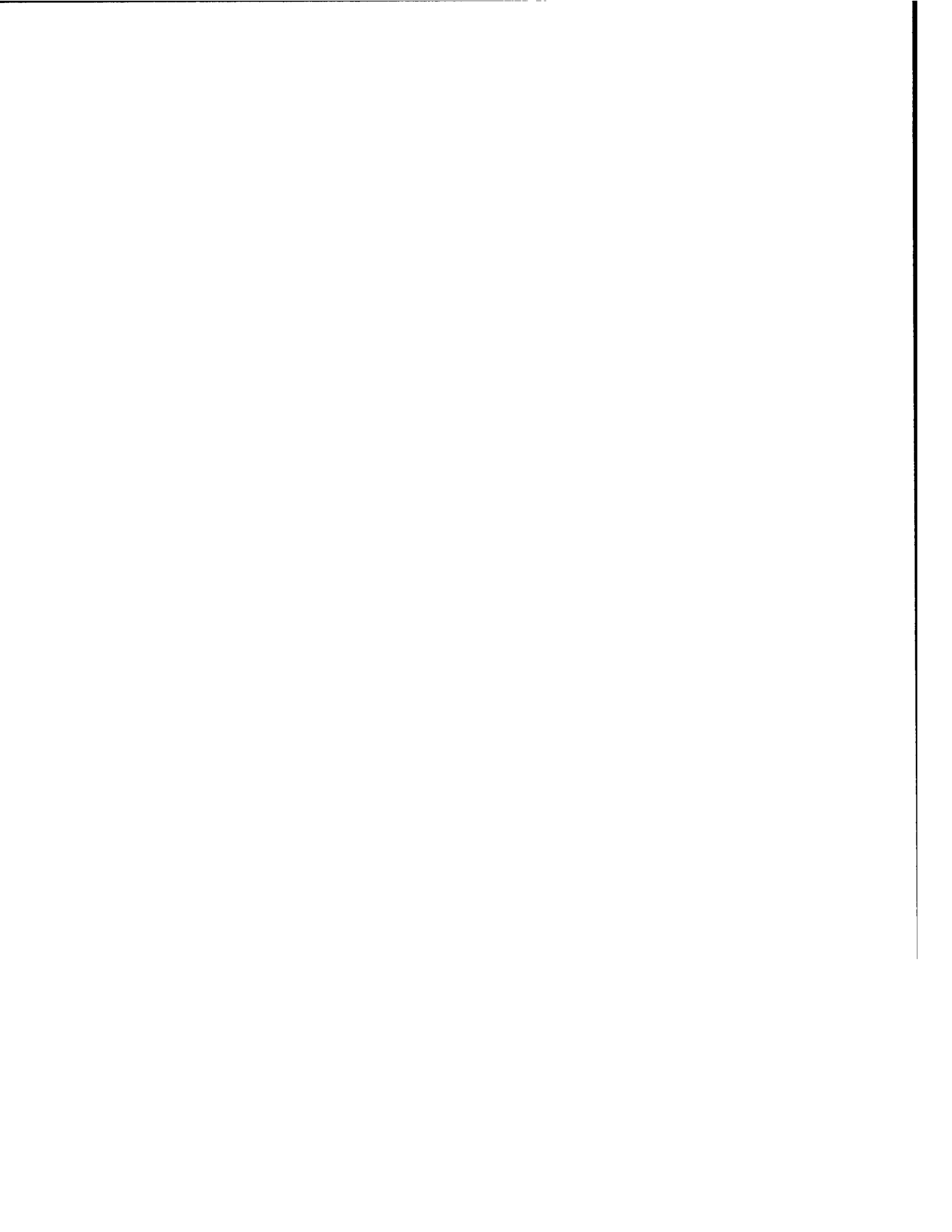


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SOAH DOCKET NO. 473-15-1589  
DOCKET NO. 43599

2015 JUL -8 AM 9: 00

APPLICATION OF LCRA TRANSMISISON §  
SERVICES CORPORATION TO AMEND CCN FOR §  
THE PROPOSED BLUMENTHAL SUBSTATION §  
AND 138-KV TRANSMISSION LINE PROJECT IN §  
BLANCO, GILLESPIE, AND KENDALL §  
COUNTIES, TEXAS §

PUBLIC UTILITY  
COMMISSION

TEXAS

**FM 1888 SCENIC BYWAY ALLIANCE'S SUPPLEMENTAL MOTION FOR LEAVE  
WITH ATTACHED CORRECTED INITIAL POST HEARING BRIEF**

On July 7, 2015, it came to the attention of counsel for the 1888 Scenic Byway Alliance ("1888 Alliance"), prior to the filing of any Motion to Strike, that although counsel had timely filed an Initial Post Hearing Brief, that brief exceeded the 50-page limitation for same. Counsel represents that this was an inadvertent oversight.

Counsel immediately filed a Motion for Leave, therein respectfully requesting that the Administrative Law Judges either grant leave to file an Initial Post Hearing Brief which exceeds page limits or, alternatively, to promptly file a Corrected Initial Post Hearing Brief. Because the 1888 Alliance has faced extensive opposition in these proceedings, pursuant to PUC Procedural Rule 22.72(f), the 1888 Alliance respectfully requests that a larger page limit be allowed and that the 1888 Alliance's Initial Post Hearing Brief be deemed accepted as filed.

Alternatively, in order to ensure that no party is prejudiced by having to reply to a brief in excess of 50 pages, the 1888 Alliance files this Supplemental Motion For Leave with its proffered Corrected Initial Post Hearing Brief attached hereto, as Attachment A, which brief contains no new arguments and simply removes content in order to comply with the 50-page limitation.

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Therefore if the Administrative Law Judge declines the 1888 Alliance leave to have their Initial Post Hearing Brief in excess of 50 pages deemed filed, the 1888 Alliance respectfully requests that the Administrative Law Judges deem the attached Corrected Initial Post Hearing Brief as timely and properly filed, with no further action required by counsel for the 1888 Alliance.

Respectfully submitted,

SPIVEY VALENCIANO, PLLC  
McAllister Plaza – Suite 130  
9601 McAllister Freeway  
San Antonio, Texas 78216  
Telephone: (210) 787-4654  
Facsimile: (210) 201-8178

By: /s/ Soledad M. Valenciano  
James K. Spivey  
jkspivey@svtxlaw.com  
State Bar No. 00794680  
Soledad M. Valenciano  
State Bar No. 24056463  
svalenciano@svtxlaw.com

**ON BEHALF OF THE FM 1888  
SCENIC BYWAY ALLIANCE,  
INTERVENORS**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document has been served and filed in the records of Docket 43599, on this 8th day of July, 2015, in compliance with PUC Procedural Rule 22.74 and the applicable Orders in the above-captioned proceedings.

/s/ Soledad M. Valenciano  
Soledad M. Valenciano

SOAH DOCKET NO. 473-15-1589  
DOCKET NO. 43599

APPLICATION OF LCRA TRANSMISISON	§	PUBLIC UTILITY
SERVICES CORPORATION TO AMEND CCN FOR	§	COMMISSION
THE PROPOSED BLUMENTHAL SUBSTATION	§	
AND 138-KV TRANSMISSION LINE PROJECT IN	§	TEXAS
BLANCO, GILLESPIE, AND KENDALL	§	
COUNTIES, TEXAS	§	

**ORDER GRANTING THE FM 1888 SCENIC BYWAY ALLIANCE'S  
SUPPLEMENTAL MOTION FOR LEAVE  
WITH ATTACHED CORRECTED INITIAL POST HEARING BRIEF**

On this day, the Administrative Law Judges reviewed the 1888 Scenic Byway Alliance's Supplemental Motion for Leave with Attached Corrected Initial Post Hearing Brief. Having reviewed the merits of the motion and the attached Corrected Initial Post Hearing Brief included as Attachment A,

It is, therefore, ORDERED, ADJUDGED AND DECREED that the Supplemental Motion for Leave is GRANTED AND THAT THE 1888 Alliance is permitted (as checked):

- To exceed the 50-page limitation in its Initial Post Hearing Brief, thereby having said Initial Post Hearing Brief be deemed timely filed, with no further action necessary.
- Have the attached Corrected Initial Post Hearing Brief be deemed timely filed, with no further action necessary.

**HON. HOLLY VANDROVEC  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINSTRATIVE HEARINGS**

**HON. JOANNE SUMMERHAYS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINSTRATIVE HEARINGS**

## Attachment A

SOAH DOCKET NO. 473-15-1589  
DOCKET NO. 43599

APPLICATION OF LCRA TRANSMISSION	§	PUBLIC UTILITY
SERVICES CORPORATION TO AMEND CCN FOR	§	COMMISSION
THE PROPOSED BLUMENTHAL SUBSTATION AND	§	
138-KV TRANSMISSION LINE PROJECT IN	§	TEXAS
BLANCO, GILLESPIE, AND KENDALL COUNTIES,	§	
TEXAS	§	

**FM 1888 SCENIC BYWAY ALLIANCE'S CORRECTED INITIAL POST- HEARING BRIEF**

Respectfully submitted,

SPIVEY VALENCIANO, PLLC  
McAllister Plaza – Suite 130  
9601 McAllister Freeway  
San Antonio, Texas 78216  
Telephone: (210) 787-4654  
Facsimile: (210) 201-8178

By: /s/ Soledad M. Valenciano  
James K. Spivey  
jkspivey@svtxlaw.com  
State Bar No. 00794680  
Soledad M. Valenciano  
State Bar No. 24056463  
svalenciano@svtxlaw.com

**ON BEHALF OF THE FM 1888  
SCENIC BYWAY ALLIANCE,  
INTERVENORS**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document has been served and filed in the records of Docket 43599, on this 8th day of July, 2015, in compliance with PUC Procedural Rule 22.74 and the applicable Orders in the above-captioned proceedings.

/s/ Soledad M. Valenciano  
Soledad M. Valenciano

Reid, on behalf of LCRA, testified, “Although, the former pipeline easement has reverted back to the land owners, it is a manmade linear clearing that still exists. It would reduce the wooded areas that would be cleared in some areas and reduce potential new habitat fragmentation.”<sup>112</sup> Reid added that transmission line might even *improve* habitat, and, in the case of the Hershey Ranch, because “it’s a savanna sort of situation” the environmental impact of widening out the prior abandoned right-of-way would be *less*.<sup>113</sup>

Finally, LCRA offered evidence regarding its ability to minimize its right-of-way by using a “vertical configuration monopole structure.”<sup>114</sup> In addition to ordering Routes 16 or 16M to take advantage of the co-locating opportunity within portions of the abandoned pipeline right of way, the Commission could also order a *narrower* easement width and *narrower* tower profile structures along Hershey Ranch and all portions of the abandoned pipeline easement to further lessen the impact of LCRA’s electric transmission line and more closely occupy the abandoned pipeline easement right-of-way.

**(C) The Hersheys Opted to Have the Abandoned Pipeline Removed.**

Lindemann confirmed that an oil pipeline easement was in place within proposed Segments A1, F2 and E1 on Hershey Ranch from 1928 until 2012.<sup>115</sup> It is important, in the context of alleged concerns for protecting environmental integrity by avoiding habitat fragmentation and protecting grasslands, to consider that on areas east of Hershey Ranch, landowners asked the pipeline company to *leave the pipe in the ground*.<sup>116</sup> The Hersheys, however, opted to have the pipeline removed, a process that Lindemann confirmed he witnessed.<sup>117</sup> One must question why the Hersheys opted to permit construction trucks to

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<sup>112</sup> LCRA Ex. 13, Pg. 26, Ln. 24-27.

<sup>113</sup> Vol. 4, Pg. 763, Ln. 21 – Pg. 764, Ln. 7.

<sup>114</sup> Vol. 4, Pg. 840, Ln. 1-22; LCRA Ex. 1, Page 6 (“The typical ROW width is estimated to be between 80 and 100 feet.”)

<sup>115</sup> HCLT Ex. 1, Pg. 11, Ln. 14-16.

<sup>116</sup> Vol. 4, Pg. 745, Ln. 16 – Pg. 746, Ln. 10.

<sup>117</sup> HCLT Ex. 1, Pg. 11, Ln 14-16.



## I. INTRODUCTION.

In the weeks leading up to the hearing on the merits, it was clear that the bandwagon was locked and loaded, with the majority of the various alliances in these proceedings endorsing LCRA's "Best Meets" route, Route 17, or a variation of it, 17Y. However, in the days leading up to the hearing, and at the hearing in particular, even the most disinterested observer would have to agree that Routes 16 and 16-Modified proved to be routes worthy of serious consideration.<sup>1</sup> With a Study Area as small as this one, measures such as length of a line, percentage of paralleling, and even dollars, proved to be less varied, giving way for serious consideration of factors that go beyond simply choosing the "shortest and cheapest" route. And in this study area, the differences are more strategic than sincere – particularly, in the case of ostensibly protecting one scenic byway over the other. The evidence shows that all three scenic byways in the study area, FM 1623, FM 1376 and FM 1888, area are valued<sup>2</sup> and when considered objectively, the community as a whole would not prefer that they be paralleled.<sup>3</sup> And, in this particular project, they do not have to be. Like the familiar *Sesame Street* song, the path to one of LCRA's Tap Points is quite different than the others,

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<sup>1</sup> In connection with the direct testimonies filed in April 2015 by members of the FM 1888 Scenic Byway Alliance, those landowners all adopted the testimony of John Kuhl (expert for Jenschke Lane Preservation Alliance) and testified that Route 11 or Route 11M was the route that should be selected. At that time, members of the FM 1888 Alliance understood that there were potential issues relating to VORTAC and CTEC preference that would likely result in the selection of a substation along Luckenbach Road. As set forth in this brief, the FM 1888 Alliance's position remains that if the substation location selected is Substation Site 1-5 or 8 along Luckenbach Road, then the only logical routes are Route 11 or Route 11M. However, the FM 1888 Alliance members made clear in their direct testimonies that if the substation location selected is along Jenschke Lane, then the route selected should terminate at Tap 2, not Tap 3. Given what developed in connection with the rebuttal testimonies submitted by LCRA, Friends and Luckenbach relating to VORTAC and CTEC preference issues raised by Jenschke experts, the FM 1888 Alliance has chosen to emphasize and focus upon the selection of Routes 16 or Route 16M that would both terminate at the Tap 2 site. The reference to Route 12 in the FM 1888 Alliance Members' direct testimonies was clearly in error as Route 12 would have the substation location along Luckenbach Road, not Jenschke Lane as suggested in the direct testimonies.

<sup>2</sup> "...Ranch Road 1623 is a favorite scenic drive for visitors to this area." Scenic 1623 Alliance Ex. 4, Pg. 3, Ln. 16-17; "FM 1376 is the main scenic route from San Antonio to Fredericksburg and the surrounding wineries." Friends Ex. 18, Pg. 7, Ln. 35 – Pg. 8, Ln. 7. "FM 1888 is unquestionably the most scenic route by which anyone can travel when entering the Hill Country from the east and into the mid-section, or heart, of the Hill Country and onward to Fredericksburg." FM 1888 Ex. 2, Pg. 19, Ln. 17-19.

<sup>3</sup> LCRA Ex. 1, Pg. 149.

leaves the community's three scenic byways unscathed, utilizes an already-fragmented corridor, and terminates<sup>4</sup> at a location where no land owner has intervened: Tap 2.<sup>5</sup>

For reasons set forth herein, the FM 1888 Scenic Byway Alliance (the "1888 Alliance") requests that the Administrative Law Judges recommend and the Commission order: (1) Routes 11 or 11-Modified (if Luckenbach Road is selected for the substation) or (2) Routes 16 or 16-Modified (if Jenschke Lane is selected for the substation). Further, the 1888 Alliance respectfully requests that alternative routes terminating at Tap 3, including 4, 9, 13, 17, 17Y and 19, not be selected.

## **II. ORDER OF REFERRAL/PRELIMINARY ORDER.**

### **A. Preliminary Order Issue No. 4: 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)?**

If the issues raised by the Jenschke Lane Preservation Alliance ("JLPA"),<sup>6</sup> deter selection of Jenschke Lane substation alternatives, then Route 11-Modified (followed by Route 11) is the best alternative route. However, if Jenschke Lane is the preferred substation location, then Route 16-Modified (followed closely by Route 16) is the best alternative route. Each is discussed below vis-à-vis Routes 17/17Y.

#### **1. Community Values.**

Route 16 and 16-Modified (also referred to as "16M") are highly favorable routes in terms of Community Values. According to LCRA's Environmental Assessment ("EA"), POWER Engineers evaluated the proposed project for Community Values and resources that might be of importance to a particular community as a whole.<sup>7</sup> In particular, LCRA provided

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<sup>4</sup> In this brief, substation locations will be called starting points and tap sites called ending points.

<sup>5</sup> The owner of the location of Proposed Tap Site 2 did not intervene. LCRA Ex. 18; Vol. 2, Pg. 250, Ln. 15-18. The Proposed Tap Site 2 is located along a remote, narrow road known as Maenius Road. FM 1888, Ex. 1, Pg. 45 – Pg. 46, Ln. 1. Routes 17 and 17Y would terminate at the opposed Tap Site 3 on property owned by Intervenor, Patricia Ryan. LCRA Ex. 18.

<sup>6</sup> See e.g., JLPA Ex. 1, Pg. 5, Ln. 20 – Pg. 6, Ln. 23; JLPA Ex. 2, Pg. 12-18.

<sup>7</sup> LCRA Ex. 1, Pg. 112.

a questionnaire to open house attendees, and to the public on its website, that requested responders to rank their concerns regarding the proposed transmission line project.<sup>8</sup> Of the 183 responders, the greatest concerns were

- (1) maximizing the distance from residences (23%);
- (2) paralleling existing transmission right of way (12%)<sup>9</sup>; and
- (3) minimizing the visibility of the lines (10%).<sup>10</sup>

Questionnaires are a common and accepted method in CCN proceedings of complying with the applicant's requirement of gathering information regarding Community Values.<sup>11</sup> This project was no exception, and in addition to information learned from its questionnaires, LCRA reported that common concerns expressed by landowners included "proximity of the routes, tap points and substations locations to homes" and "aesthetic or visual impacts caused by visibility of the substation/transmission lines/tap points."<sup>12</sup>

Of course, it is not uncommon for the Community Values information to compete. For example, in Docket No. 38354, the PUC relied on information from LCRA's questionnaires and open houses which stated, in *that* particular community and Study Area, the use of Interstate 10 was preferred.<sup>13</sup> The PUC noted that the questionnaire data and other information gathered by LCRA revealed that responders wanted to avoid disturbing the Texas Hill Country and habitable structures in developed areas. There, however, "[t]he community values of avoiding habitable structures in developed areas and avoiding the Hill Country [were] competing values."<sup>14</sup> Here, the Community Values of maximizing distance from

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<sup>8</sup> LCRA Ex. 1, Pg. 147-149; Ex. 1, Pg. 322-326; FM 1888 Ex. 1, Pg. 17, Ln 14-Pg. 18, Ln. 3.

<sup>9</sup> It is undisputed that there is no significant opportunity in the study area to parallel existing transmission right of way.

<sup>10</sup> FM 1888 Ex. 1 at Exhibit 8 at 4-5; Vol. 2 Pg. 318, Ln. 7-9.

<sup>11</sup> See also FM 1888 Ex. 1, Pg. 18, Ln. 10-14. "Unlike a situation where questionnaire responses are self-serving and merely seek to 'keep the line off of my property,' these responses reflect what this community believes is a shared value. I believe that these results are very helpful to the Commission in understanding this very clear shared Community Value."

<sup>12</sup> LCRA Ex. 1, Pg. 150.

<sup>13</sup> See e.g., Final Order, PUC Docket No. 38354.

<sup>14</sup> See Final Order, PUC Docket No. 38354.

residences and minimizing the visibility of the transmission line, substation and tap points are aligned and can be met.

### **1. Maximizing Distance from Residences.**

Routes 16 and 16M have only two habitable structures within 300 feet of centerline, both of which are on properties that would not be crossed by LCRA's transmission line.<sup>15</sup> The number of habitable structures located on 17/17Y stand in marked contrast. For example, the Bowen's property, located on Segment N of Routes 17/17Y, in and of itself, has as many habitable structures within 300 feet of Routes 17/17Y as do Routes 16/16M; however, the Bowen's property would be crossed by the line.<sup>16</sup> In fact, one of the two Bowen habitable structures is located 56 feet from centerline of Segment N, or only 2 yards from edge of a 100 foot wide easement.<sup>17</sup> The Smisers' home, located on Segment W, would be 74 feet from the centerline of Routes 17/17Y, or only 8 yards from edge of a 100 foot wide easement.<sup>18</sup> And the Grenwelges' two homes are impacted whether Segment X (*i.e.*, Route 17) or Segment Y (Route 17Y) is ordered.<sup>19</sup>

Intervenor, Patricia Ryan's property, the curious selection for Proposed Tap Site 3, in and of itself, also has many more habitable structures located on it than the entire length of Routes 16 or 16M.<sup>20</sup> As an initial matter, besides being a working ranch, Ryan Ranch is a gathering place for numerous individuals and civic groups in and around the surrounding community, many of who use the Ryan Pavilion for community events.<sup>21</sup> HS-Ryan 1 (now HS 58) is regularly used as guest quarters by people using the Ryan Pavilion or otherwise visiting

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<sup>15</sup> Vol. 2, Pg. 314, Ln. 20 – Pg. 315, Ln. 3; LCRA Ex. 1 at Figure 5-1, P.1-2; References to "Vol." are to each Volume of the hearing transcript.

<sup>16</sup> Vol. 2, Pg. 323, Ln. 1-7.

<sup>17</sup> Vol. 2, Pg. 321, Ln. 15-25.

<sup>18</sup> Vol. 2, Pg. 330, Ln. 24 – Pg. 331, Ln. 7.

<sup>19</sup> Vol. 2, Pg. 337, Ln. 15-20.

<sup>20</sup> The habitable structures located on Intervenor Patricia Ryan's property are: HS-34, 35, 37, 38, 58, 59 and 60; FM 1888 Ex. 1, Pg. 8, Ln. 3-Page 10, Ln. 20; LCRA Ex. 13, Pg. 32, Ln. 2-11.

<sup>21</sup> FM 1888 Ex. 1, Pg. 5, Ln. 1 – Pg. 6, Ln. 21.

Ryan Ranch.<sup>22</sup> One of Ms. Ryan's employees lives in HS-34.<sup>23</sup> There is a family of five living in HS-35, which includes two children, ages 1 and 9.<sup>24</sup> Two people live in HS-37 in a two bedroom apartment above Ms. Ryan's broodmare barn.<sup>25</sup> Four people live in HS-38, including two children ages 11 and 14.<sup>26</sup> Two of Ms. Ryan's employees regularly reside in HS-Ryan 2 (now HS-59).<sup>27</sup> HS-Ryan (now – HS 60) is a home office of a local realtor.<sup>28</sup> And, just outside the cut-off for inclusion as a habitable structure is HS-Ryan 3 which is 473 feet from the centerline of Segment Y and occupied by family of three, including a 10 year old child.<sup>29</sup>

In sum, Route 17/17Y have significantly more habitable structures than do 16/16M, with a negative impact that is notable in both number and in degree. Selection of 17/17Y as opposed to 16/16M does not align with the Community Value of maximizing the distance of the line from residences. And, of significance here, Routes 16/16M do.

## **2. Minimizing Visibility of the Line.**

Routing LCRA's transmission line along any of the Study Area's three scenic byways offers little in terms of minimizing the visibility of the line. However, routing the transmission line along Routes 16 or 16-Modified provides a very practical and obvious means of minimizing the visibility of the line.

## **3. Proximity to and Visibility of Substations and Tap Sites.**

As stated above, LCRA's EA reveals that Community Values extends beyond

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<sup>22</sup> FM 1888, Ex. 1, Pg. 8, Ln. 12-19.

<sup>23</sup> FM 1888, Ex. 1, Pg. 8, Ln. 6.

<sup>24</sup> FM 1888, Ex. 1, Pg. 8, Ln. 6-7.

<sup>25</sup> FM 1888, Ex. 1, Pg. 10, Ln. 5-6.

<sup>26</sup> FM 1888, Ex. 1, Pg. 10, Ln. 8-9.

<sup>27</sup> FM 1888, Ex. 1, Pg. 9, Ln. 10-11.

<sup>28</sup> FM 1888, Ex. 1, Pg. 10, Ln. 17-19.

<sup>29</sup> FM 1888, Ex. 1, Pg. 9, Ln. 16-17. While HS-Ryan 3 is outside LCRA's habitable structure inventory, it nevertheless informs the Administrative Law Judges, and the Commission, of the nature and degree of the impact of LCRA's proposed line on "residences," as used in LCRA's questionnaires, along Routes 17 and 17Y. As such, it is important to note that the Jenschke Family's home is 311 feet from the centerline of Link V. FM 1888, Ex. 1, Pg. 15, Ln. 2-3. Carla Schladoer's home is 326 feet from the centerline of Link W. FM 1888, Ex. 1, Pg. 14, Ln. 13-14. Jessie and Doris Rose have two homes that are 357 feet and 477 feet from the centerline of Link W. FM 1888, Ex. 1, Pg. 14, Ln. 11-12.

maximizing the distance of residences from the transmission line itself and minimizing the visibility of the line. Common concerns expressed to LCRA by landowners included concerns regarding the “proximity of the routes, **tap points and substations** locations to homes;” and “aesthetic or visual impacts caused by visibility of the **substation/transmission lines/tap points.**”<sup>30</sup> Thus, the community is concerned with the visibility of the substation<sup>31</sup> and tap points as well and the proximity of those structures to homes. In terms of the tap site’s visibility, it is first important to appreciate what will be built and where the proposed tap sites are located. In terms of “what” will be built, LCRA will acquire a two-acre<sup>32</sup> tap point site in order to build three substation A-frame structures, three 138-KV operated switches with interrupters, a 138-kv operating bus, a power voltage transformer, a control house, a motor-operated switch panel, and a remote terminal unit.<sup>33</sup> In terms of “where” tap site will be built, Tap 2 is located along a remote, narrow, unpaved road known as Maenius Road.<sup>34</sup> Notably, the owner of property on which Tap 2 would be built did not intervene, nor did any land owners intervene along Segments H1 and J1 leading up to Tap 2, as well as the majority of Segment A1.<sup>35</sup> This is in marked contrast to the 1888 Alliance’s opposition to Tap 3.<sup>36</sup>

Tap 4a, the terminus for Routes 11 and 11-Modified, is located behind a thicket of trees and would not impact the proposed home site for the affected landowner and does not

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<sup>30</sup> LCRA Ex. 1, Pg. 150 (emphasis added).

<sup>31</sup> The practical difference in *substation* visibility among Routes 11, 11-M, 16, 16-M, 17 and 17Y is unclear and far less pronounced as the difference in *tap site* visibility. Substations 5 and 8 (starting points for Routes 11-M and 11, respectively) along Luckenbach Road both exceed the ½ mile set-back from US Highway 290 requests of the Gillespie County Economic Development Commission and the Texas Wine and Grape Growers Association. LCRA Ex. 1 at 308-309,311-312. Substation 9, which is the starting point for Routes 16 and 17 along Jenschke Lane, is less than ½ mile from US Highway 290. However, the Luckenbach Alliance contends that even at its 0.4 mile distance, Substation 9 “will be minimally visible from Highway 290.” Luckenbach Alliance Ex. 4, Pg. 12, Ln. 20-21.

<sup>32</sup> An acre is approximately 90% of an American football field.

<sup>33</sup> LCRA Ex. 1, Pages 7-8; LCRA Ex. 4, Pg. 4, Ln. 24-29.

<sup>34</sup> FM 1888, Ex. 1, Pg. 45, Ln. 15-19; *see also* photograph of Maenius Road and Tap 2 location. FM 1888, Ex. 1, Pg. 46; LCRA’s Lance Wenmohs described Tap 2 was “very rural.” Vol. 2, Pg. 338, Ln. 18-21 (referring to FM 1888 Demonstrative Ex. 86).

<sup>35</sup> Vol. 2, Pg. 250, Ln. 15-18; Vol. 2, Pg. 252, Ln. 16-19; LCRA Ex. 18 (Intervenor Map).

<sup>36</sup> LCRA Ex. 18.

implicate the concerns raised by that affected landowner regarding the selection of Segment N1.<sup>37</sup> Thus, to the extent there is a land use impact here, it is in marked contrast to that of Tap 3 on Ryan Ranch.

As previously mentioned, Ryan Ranch was identified as the location for Tap 3. Its numerous habitable structures are now well documented.<sup>38</sup> Additionally, Tap 3 would be built west of Ms. Ryan's broodmare barn, within her broodmare pasture, along her property line at FM 1888.<sup>39</sup> Ms. Ryan's broodmare pasture is fully visible from FM 1888 and is not located behind a privacy gate.<sup>40</sup> Tap 3, if ordered, would be fully exposed along FM 1888.<sup>41</sup> Ms. Ryan's direct testimony is telling:

**The construction of a two-acre tap site on my property will be jarring ... [and] aesthetically devastating, especially when one understands and appreciates that the tap site would be built in full view of my main gate which is used daily by my residents, my employees, the hundreds of members of the surrounding community that use my Pavilion as a gathering place each year, and by me.<sup>42</sup>**

Regarding his residence, Intervenor Karl Jackson testified:

**Rising Dove Ranch sits on a 200-foot landing overlooking FM 1888. It also has beautiful views toward where the Proposed Tap Site 3 would be. If the line is built on Link Y, then ... my views from the property would be of the towers, circuitry and wires generally and at eye level, as well as the eyesore that would be Proposed Tap Site 3."<sup>43</sup>**

Tap 3 would be in the center of the view from the Dixes' ranch house looking due south.<sup>44</sup> And, Tap 3 site will sit directly across FM 1888 from Intervenor Chris Hale's main ranch entrance.<sup>45</sup> Taken together, the Community Values of this particular Study Area show

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<sup>37</sup> Friends Ex. 21, Pg. 3, Ln. 8-13.

<sup>38</sup> FM 1888 Ex. 1, Pg. 8, Ln. 3 – Pg. 20, Ln. 20; LCRA Ex. 13, Pg. 32 (correcting Habitable Structure Inventory on Ryan Ranch, adding HS-58, HS-59 and HS-60). The habitable structures located on Intervenor Patricia Ryan's property are: HS-34, 35, 37, 38, 58, 59 and 60.

<sup>39</sup> FM 1888 Ex. 1, Pg. 32, Ln. 2-11.

<sup>40</sup> FM 1888 Ex. 1, Pg. 24, Ln. 11-12.

<sup>41</sup> FM 1888 Ex. 1, Pg. 24, Ln. 12-13.

<sup>42</sup> FM 1888 Ex. 1, Pg. 46, Ln. 6-Pg. 47, Ln. 4.

<sup>43</sup> FM 1888 Ex. 10, Pg. 4, Ln. 5-9. View of Tap 3 would not change if Route 17 was ordered.

<sup>44</sup> FM 1888 Ex. 9, Pg. 5, Ln. 22.

<sup>45</sup> FM 1888 Ex. 2, Pg. 8, Ln. 9-11.

that Route 16 and 16M, which route the line and associated tap point far away from homes, off of the three scenic byways in the Study Area, and as out of sight as is possible, are favorable in terms of Community Values expressed in these proceedings.

## 2. Historical and Aesthetic Values.

### (a) Historical Values.

Routes 17 and 17Y outperform Routes 11 and 11-Modified and Routes 16 and 16-Modified. While LCRA's Table 5-1 reports that there are zero recorded archeological sites crossing any of these routes, Rob Reid, on behalf of LCRA, acknowledged that Recorded Site #41KE243 lies directly underneath centerline of Segment X on Route 17.<sup>46</sup> Regarding the number of "additional archaeological sites within 1,000 feet," Routes 11, 11-M, 16, 16-M and 17 each have one.<sup>47</sup> Patricia Ryan's testimony (and related photographic evidence) raised the issue of an "additional archaeological site" on her property *within Segment Y* on Route 17Y: a historic sheep shearing station, which representation LCRA did not refute.<sup>48</sup> Notably, Bill Lindemann, on behalf of the Hill Country Land Trust, testified that the historic Bannerman home and old rock wall are the two most significant historical features on Hershey Ranch.<sup>49</sup> However, Routes 16 and 16-Modified do not cross the Bannerman home or the old rock wall located on Hershey Ranch.<sup>50</sup> Finally, LCRA states in its EA that while all *Routes* cross through area with high probability for prehistoric or historic archaeological sites, Route 11 is one of two routes that has the *least* amount of length through areas of high archaeological/historic site potential.<sup>51</sup> Routes 16 and 16M have lower percentages of high

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<sup>46</sup> LCRA Ex. 13 (Reid Rebuttal) Pg. 18, Ln. 9-17; LCRA Ex. 19; FM 1888 Ex. 3, Pg. 2, Ln. 7-10.

<sup>47</sup> See FM 1888 Ex. 3, Pg. 3, Ln. 1-4. Referring to Site #41KE249, also known as "Barn Site" which lies within 200 feet of Segment X on Route 17, also on Intervenor Chris Hale's property. The item found along Routes 11 and 11-Modified is a layer of burned rock located 426 feet from centerline. FM 1888 Ex. 1, Pg. 39, Ln. 4-6; LCRA Ex. 1, pg. 365 (Table 5-13).

<sup>48</sup> FM 1888 Ex. 1, Pg. 39, Ln. 12-16 (referring to Exhibit 14, photograph of sheep shearing site).

<sup>49</sup> Hill Country Land Trust Ex.1, Pg. 18, Ln. 11-13.

<sup>50</sup> Vol. 3, Pg. 471, Ln. 16 – Pg. 472, Ln. 18.

<sup>51</sup> LCRA Ex. 1, Pg. 204 (Route 11/11M are tied with Route 3 with respect to having the least amount of length through areas of high archaeological/historic site potential).



archaeological/historic site potential (78.9% and 79.8%, respectively) than do Routes 17 and 17Y (85.6% and 86.4%, respectively).<sup>52</sup> And, not all *Segments* cross through areas with high probability for prehistoric or historic archaeological sites. For example, 100% of Segment X, X2 and Y, located on 17/17Y is classified as “high,” whereas Segments F2 and V1, located on Routes 16/16M have 0% high archaeological site potential.<sup>53</sup>

**(b) Aesthetic Values.**

In rebuttal, LCRA’s Lance Wenmohs summarizes LCRA’s position on aesthetics by claiming the issue is “close.” Mr. Wenmohs’ analysis hinges on an over-simplistic dichotomy: properties along roadways versus “more undeveloped land.”<sup>54</sup> Therefore, one must first believe that this dichotomy advances the analysis of aesthetic impact. It doesn’t – it moots it. Applying this dichotomy **without further analyzing the actual evidence in these proceedings** is not useful. Under Mr. Wenmohs’ logic, there really is no reason to further analyze the aesthetic impact factor because roadways will always lose out. This approach allows another routing factor, paralleling roadways, to dictate the analysis of the aesthetic factor every time. Without question, the landowners that would be affected by the imposition of an electric transmission line in these proceedings deserve much more than a cursory or general analysis. Therefore, the evidence presented in these proceedings should be considered, as opposed to photographs of other projects where evidence relevant to those proceedings was properly taken into account to achieve results particular to those projects.

The FM 1888 Alliance questions the reliance on “road signage” and “potential future development” as an indication that the imposition of a 100-foot tall electric transmission line and a two-acre tap site would be less aesthetically devastating on FM 1888 than on “more undeveloped” non-roadway property (*i.e.*, along Routes 16/16M). Rather, in terms of

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<sup>52</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2).

<sup>53</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2).

<sup>54</sup> LCRA Ex. 9, Pg. 6, Ln. 12-29.

development, here, the evidence shows that in addition to having beautiful hills and valleys overlooking the heart of the Blanco River Valley, FM 1888 has no commercial frontage at all.<sup>55</sup> There is no commercial development along its 16-mile stretch.<sup>56</sup> FM 1888 has been called “one of the few remaining unadulterated roads of the Texas Hill Country.”<sup>57</sup> James Heard’s testimony speaks volumes to the “development” along the portions of FM 1888 that make up Routes 17/17Y:

**First, [FM 1888] is a historic road that people do not want to see changed. For example, my lessee, Mr. Kuebel, who as a child lived several miles east of the Lindendale One Room Schoolhouse along FM 1888 (next to Pat Ryan’s property), used to ride his horse to and [sic] that school. He and I would like to see FM 1888 stay the way it is now, just slightly more developed than it was back then.**<sup>58</sup>

If Mr. Wenmohs’ reliance on development is correct, then amongst the competing scenic byways, the same analysis would spare FM 1888 over, for example, FM 1623, which traverses the communities of Stonewall and Albert and has *significantly* more development than FM 1888.<sup>59</sup>

The analysis of aesthetics should go further, however, and consider what the evidence shows and what it does not. Here, the evidence overwhelmingly shows that the landowners along the three scenic byways believe their particular properties and their related scenic byway will be aesthetically impacted in a very negative way if that particular scenic byway is paralleled.<sup>60</sup> The evidence also shows that the landowners along FM 1888 have spoken up

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<sup>55</sup> FM 1888 Ex.10, Pg. 11, Ln. 3-4.

<sup>56</sup> FM 1888, Ex. 2, Pg. 19, Ln. 12-13.

<sup>57</sup> LCIA Ex. 1, Pg. 6, Ln. 19-20.

<sup>58</sup> FM 1888 Ex. 8, Pg. 14, Ln. 15-20.

<sup>59</sup> See Ex. Hershey Joint Ex. 1, Pg. 20, Ln. 3 – Pg. 21, Ln. 16 (Almon detailing development along FM 1623 such as wineries, school, cemetery, etc.).

<sup>60</sup> See e.g., “To place high Voltage line along this future development corridors would be short-sited and destructive to future tourism in this area when the line could be placed in more remote areas not bordering well-traversed highways and beautiful country lanes. . . Building tap points, substations, and transmission lines along one of the most popular approaches would be a huge mistake.” Friends Ex. 18, Pg. 7, Ln. 46 – Pg. 8, Ln. 7. “A transmission line and towers built on Y1 would traverse the entire frontage of our property on RR 1888. Because of the Ranch’s topography, the transmission line and towers would be clearly visible from just about every point on the ranch.” Friends Ex. 17, Pg. 6, Ln. 4-7; “I disapprove of Routes ... along

in opposition to Routes leading to Tap 3 and have provided important evidence regarding aesthetic impact and concerns. The evidence also shows that the most vocal Intervenor along Route 16 and 16-Modified have not.

Each member of the FM 1888 Alliance shares more than an appreciation for the scenic byway that is their namesake; they also share panoramic views of the Blanco River Valley. LCRA's transmission line, if routed along FM 1888, would materially and completely obstruct their views. For example, the evidence shows that the Bowen Family owns two homes on the north side of FM 1888, along Segment N, with viewscapes toward the Blanco River Valley.<sup>61</sup> The evidence shows that one of the Bowen homes is located a mere two yards from edge of the proposed 100 foot wide easement.<sup>62</sup> This is a real aesthetic impact. The evidence also shows that the Smisers' home, located on Segment W, would be a mere eight yards from edge of a 100 foot wide easement.<sup>63</sup> The Smisers' home is a custom home with panoramic views of the Blanco River Valley that was "specifically sited and designed ... to take full advantage of the spectacular views."<sup>64</sup> Virginia Smiser testified, "Perhaps the favorite feature of our home is the large, covered 16X40 foot patio with an outdoor kitchen overlooking the pond and the long-range vistas of the Blanco River Valley."<sup>65</sup> As shown in Exhibit 1A to FM 1888 Exhibit 4, because Segment W sits between the Smisers' home and FM 1888, the Smisers will see towers prominently from their patio and most rooms in their house.<sup>66</sup> The aesthetic impact extends further, though, as explained by Virginia Smiser:

**[W]hen we drive into our property, we will be greeted by and cross under LCRA's electric transmission line, and then when we turn west and drive up our driveway to our home, we will drive alongside the towers constructed on our property within Link W. ... [O]ur home and the balance of our 22 acres**

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RR 1623, which would be detrimental to this area's aesthetic, historical and community values. Scenic 1623 Alliance Ex. 1 (Dir. Test. Albert Community Club), Pg. 4, Ln. 23-25.

<sup>61</sup> FM 1888 Ex. 77 (photographs of Bowen homes).

<sup>62</sup> Vol. 2, Pg. 321, Ln. 15-25.

<sup>63</sup> Vol. 2, Pg. 330, Ln. 24 – Pg. 331, Ln. 7.

<sup>64</sup> FM 1888 Ex. 4, Pg. 3, Ln. 1-2, 9-12.

<sup>65</sup> FM 1888 Ex. 4, Pg. 3, Ln. 10-12.

<sup>66</sup> FM 1888, Ex. 4, Pg. 9, Ln. 18-21.

cannot escape the visual impact of these 100 foot tall 138 kv towers. Given the topography of our property, including the relief between where our home sits and where Link W travels, it may very well be that we are looking not just at the towers but at the higher points of the towers, where the cables, wiring and circuitry connect. That visual impact would be devastating.<sup>67</sup>

This is also a real aesthetic impact. And, it is remarkably similar to that of Intervenor, Karl Jackson, who, like the Smisers, also lives on a small (30-acre) parcel up on a hill with spectacular views overlooking the Blanco River Valley. Mr. Jackson testified,

**If the line is built on Link Y, then ... my views from the property would be of the towers, circuitry and wires generally and at eye level...<sup>68</sup>**

Intervenor, Sandra Dorris, presented a different aesthetic concern, one where she's be "surrounded" by LCRA's new and old power lines. She explains:

**As you can see, my property is X-001. If Link W is chosen, then my entire north western view is of a power line. When you get to the black dot, or "node" to the east of Link W, there is a choice between Link Y and Link X. In either case, my northern and northeastern views will be of a power line. If Link X is chosen, then the power line sits on my property, with a turn structure between Chris Hale and my property. In either scenario, both corners of the entire north view from Diamond D is of LCRA's power lines. If you then look south east, you will see ... LCRA's recently upgraded transmission line. ... This means that I am going to be surrounded, in very close proximity, by electric transmission lines. ... No, this is not a situation where existing lines are being paralleled. This would be a situation where I am *surrounded* by LCRA's electric transmission lines.<sup>69</sup>**

Intervenor, Chris Hale's testimony presented a different perspective – a conservation easement dedicated to protecting the conservation value of scenic enjoyment of FM 1888. Mr. Hale explains that the intent of his conservation easement in large part is to protect the scenic enjoyment of FM 1888, and therefore, he is equally opposed to construction of the transmission line on 17 (his property) or 17Y (across FM 1888 on his neighbors' properties).<sup>70</sup> At its core, Mr. Hale's Conservation Easement speaks to the aesthetics that he is

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<sup>67</sup> FM 1888 Ex. 4, Pg. 20, Ln. 7-22.

<sup>68</sup> FM 1888 Ex. 10, Pg. 4, Ln. 5-9. View of Tap 3 would not change if Route 17 was ordered.

<sup>69</sup> FM 1888 Ex. 13, Pg. 4, Ln. 10 – Pg. 5, Ln. 2 (emphasis added).

<sup>70</sup> FM 1888, Ex. 3, Pg. 4, Ln. 15-22.

painstakingly trying to preserve along FM 1888.

And of course, there are aesthetic concerns that Patricia Ryan shared, most importantly, due to her property's selection as the location for Tap 3. When asked if there were "other" uses of her property (rather than training, foaling grazing) she testified:

Yes, Ryan Ranch is a gathering place for many people in the surrounding community or who are visiting this area...I bought Ryan Ranch twenty-five years ago. Very soon after that people starting asking me if they could come visit the ranch. Of course, I said yes. The property has numerous walking and horseback trails throughout, and of course lots of relief and scenic vistas, so it is a peaceful place to visit and come enjoy nature and all of its beauty. As time passed it became apparent that I had a lot of visitors and the number was steadily, even quickly, climbing. So, in 1999, to accommodate this ever-increasing number of visitors, I built an event center, I call it The Pavilion, overlooking one of my lakes. The Pavilion is used year round for many different events, including weddings, reunions, civic club meetings, funeral/memorial services, baptisms, mother-daughter weekends, birthday parties, baby showers and the like. There are fisherman, campers, artists, photographers, walkers and physical fitness buffs too numerous to name who also visit and congregate at The Pavilion....The construction of a two-acre tap site on my property will be ... aesthetically devastating, especially when one ... appreciates that the tap site would be built in full view of my main gate which is used daily by my residents, my employees, the hundreds of members of the surrounding community that use my Pavilion as a gathering place each year, and by me.<sup>71</sup>

Quite obviously, Ms. Ryan's interest in the aesthetics of her property and the impact that Tap 3 would have on those aesthetics extends far beyond her own self-interests. The easy answer, of course, would be to argue that her visitors can still enjoy the views despite the two-acre tap site and new electric transmission line in the view scape. *But the easier answer is that they don't have to.*

This is because there is a complete absence of evidence with respect to the aesthetic impact (or lack thereof) on the property on which Tap 2 would be built. With no intervention by the owner of the Tap 2 location one can only guess that there is a negative aesthetic impact to that landowner. Of course, it is just as fair to conclude the opposite.

And, the analysis of Aesthetic Values would be incomplete without analyzing Routes

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<sup>71</sup> FM 1888 Ex. 1, Pg. 5, Ln. 2 – Pg. 6, Ln. 21; and FM 1888 Ex. 1, Pg. 46, Ln. 6-11. Ms. Ryan does not charge for the use of her property or for the use of the Pavilion.

16/16-Modified. Because 16/16M and 17/17Y share common segments, FM 1888 Alliance's analysis focuses on Segments from the "critical juncture"<sup>72</sup> toward Tap 2 – *i.e.*, where the routes differ: **Segments A1 → F2 → E1 → V1 → H1 → J1 → TAP 2.**

The most vocal opponents of these segments are (1) Hershey Ranch (along A1-F2-E1) and (2) Hill Country Land Trust (same, holders of a conservation easement on Hershey Ranch).<sup>73</sup> Notably, none of either intervenors' witnesses provided evidence regarding any perceived or actual negative aesthetic impact associated with Route 16 or 16-Modified.

Hershey Ranch presented Andrew Sansom. Sansom testified that Hershey Ranch is burdened by a conservation easement that focuses on environmental integrity and preventing future subdivision.<sup>74</sup> However, there was no testimony by Mr. Sansom regarding any negative aesthetic impact to Hershey Ranch. Bill Lindemann testified on behalf of Hill Country Land Trust. He focused his testimony on the environmental and ecological integrity of Hershey Ranch, detailing environmental and ecological concerns not at all uncommon to many Intervenor throughout the study area.<sup>75</sup> Therefore, neither Mr. Sansom nor Mr. Lindemann presented any evidence regarding any negative aesthetic impact to Hershey Ranch.

Finally, T. Brian Almon testified on behalf of Hershey Ranch (as well as on behalf of Intervenor with properties located along FM 1623). Notably, Mr. Almon provides testimony that contradicts Mr. Wenmohs' aesthetic impact analysis, and as a result, Mr. Almon effectively protects all three of the scenic byways in the study area.<sup>76</sup> And, Mr. Almon offered no testimony, and thus no evidence, regarding negative aesthetic impact to Hershey Ranch as a result of LCRA's line. Rather, Mr. Almon testified:

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<sup>72</sup> Vol. 2, Pg. 251, Ln. 15-19.

<sup>73</sup> Schumann Road Landowners (E1) and Bryla Family Intervenor (V1) will not be crossed by LCRA's line if Routes 16/16M are selected. There were no intervenors along H1, J1 or Tap 2. LCRA Ex. 18.

<sup>74</sup> See Hershey Ex. 1, Pg. 4, Ln. 28-30.

<sup>75</sup> Hill Country Land Trust ("HCLT") Ex. 1, Pg. 4, Ln. 18-22.

<sup>76</sup> Hershey JT Ex. 1, Pg. 19, Ln. 10-Pg. 21, Ln. 16.

**Q: WHAT ARE THE AESTHETIC VALUES THAT SHOULD BE CONSIDERED AS THEY RELATE TO THIS CASE?**

A: In my opinion, the aesthetic values in this case are the visual impacts on local area residents and persons traveling through the area of the proposed transmission facilities juxtaposed with the existing surroundings including homes, businesses, and the local terrain and scenery.<sup>77</sup>

Mr. Almon then discusses at length the aesthetic impact that LCRA's line would have on segments **that do not make up any part of Route 16 or 16-Modified**.<sup>78</sup> For example, Mr. Almon discusses the negative aesthetic impact that the line would have on Pedernales Cellars along Segments Z1, Z2, Z3 and B1.<sup>79</sup> None of these segments are part of Routes 16 or 16-Modified. Mr. Almon then discusses the negative aesthetic impact that the line would have on the community of Albert, Williams Creek School and Wilke Cemetery along Segments C1, C2, D1, D2 and F1.<sup>80</sup> None of these segments are part of Routes 16 or 16-Modified. Mr. Almon then discusses the negative aesthetic impact that the line would have on the Wilson Family Farmers, whose properties are along FM 1623 and Segments D1 and D2.<sup>81</sup> Neither segment is part of Routes 16 or 16-Modified. Mr. Almon even discusses the negative aesthetic impact that the line would cause to the "many beautiful homes and properties" located on Segment E2.<sup>82</sup> Segment E2, of course, is not part of Routes 16 or 16-Modified.

The similarities between the locations that Almon states are impacted and the locations along FM 1888 toward Tap 3 are many. The community of Lindendale compares to the community of Albert; the One Room Schoolhouse in Lindendale compares to the

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<sup>77</sup> Hershey JT Ex. 1, Pg. 19, Ln. 10-15, Section C "Aesthetic Values". The Hersheys are not "local area residents" and do not reside on the Hershey Ranch. HCLT Ex. 1, Pg. 7, Ln. 5-6.

<sup>78</sup> Hershey JT, Ex. 1, Pg. 19-23.

<sup>79</sup> Hershey JT Ex. 1, Pg. 20, Ln. 5-7.

<sup>80</sup> Hershey JT Ex. 1, Pg. 20, Ln. 19-23.

<sup>81</sup> Hershey JT Ex. 1, Pg. 23, Ln. 1-11.

<sup>82</sup> Hershey JT Ex. 1, Pg. 21, Ln. 8-9.

Williams Creek School; both locations have “many beautiful homes and properties,” and both have scenic byways, albeit FM 1623 is more commercially developed than is FM 1888. Given the foregoing, Almon’s testimony supports that even the most developed areas of the Study Area along FM 1623 near Stonewall and Albert can experience a negative aesthetic impact. Moreover, there is an absence of evidence that Route 16/16M are impacted negatively in terms of aesthetics.

Finally, a review of LCRA’s Table 5-1’s “Aesthetics” data confirms that except for the 0.4 miles further away from US Highway 290 that Route 16-M alleviates, Routes 16/16-M have equal or lower values in all “Aesthetics” columns in LCRA’s Table 5-1.<sup>83</sup>

### **3. Environmental Integrity.**

These proceedings have had two red herrings, each advanced under the guise of protecting environmental integrity: 1) that LCRA somehow cannot occupy a recently-abandoned pipeline easement right-of-way; and 2) that LCRA cannot cross a property burdened with a conservation easement that has conservation values of “protecting environmental integrity.” Whether each was a novel addition to PUC proceedings generally is unclear, but in these proceedings, both were advanced without apology. And, both should be rejected. Both would require this judicial body to legislate new statutory routing criteria for the sake of protecting a single property – Hershey Ranch. Even if that was warranted, which is denied, both arguments are not supported by the evidence.

As an initial matter, LCRA and the FM 1888 Alliance both agree that occupying an abandoned pipeline easement right-of-way is both proper and permitted under Rule 25.101(b)(3)(B). Both also agree that conservation easements are not “stop signs” that protect the associated properties from consideration for transmission line easements.<sup>84</sup>

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<sup>83</sup> LCRA Ex. 13 at Ex. RRR-4R; FM 1888 Ex. 23.

<sup>84</sup> “The abandoned pipeline ROW is a compatible routing feature or corridor that can be followed by the proposed transmission line.” LCRA Ex. 9, Pg. 11, Ln. 28-29; LCRA Ex. 13, Pg. 26, Ln. 24-27; Vol. 1, Pg.



**(a) LCRA's Response to General Concerns.**

It is undisputed that all of the primary alternative and proposed modified routes are environmentally acceptable, viable and feasible.<sup>85</sup> LCRA is fully able to mitigate environmental impacts incident to any transmission line project. According to LCRA's engineer, Jessica Melendez, "LCRA TSC owns and has constructed transmission lines through sensitive environmental and cultural areas in the Hill Country ... As a result, LCRA TSC is very experienced with using careful design and construction techniques. LCRA TSC has standard practices that will help to reduce or mitigate potential adverse effects on ... the environment ... resulting from the construction of this transmission line."<sup>86</sup>

Moreover, Rob Reid, on behalf of LCRA, repeatedly and adeptly responded to the types of concerns raised by various witnesses. For example, regarding habitat fragmentation concerns, Reid testified, "Many wildlife species are 'edge' adapted species, which may benefit from the habitat edge effect resulting from creation of the cleared ROW."<sup>87</sup> Thus, Lindemann's concerns that segments A1-F2-E1, which follow the abandoned pipeline easement right-of-way and Hershey Ranch property line, will be fragmented thereby affecting wildlife habitat are mitigated and may even benefit.<sup>88</sup>

In response to concerns regarding stream crossings, Reid responded that LCRA is able to mitigate against environmental impacts by crossing streams at right angles, which

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113, Ln. 24-Pg. 114, Ln. 5; Vol. 4, Pg. 749, Ln. 9 – Pg. 750, Ln. 3.

<sup>85</sup> LCRA Ex. 7, Pg. 27, Ln. 4-9.

<sup>86</sup> LCRA Ex. 11, Pg. 4, Ln. 13-20; see *also* LCRA Ex. 11, Pg. 6-7 (discussing vegetation removal); LCRA Ex. 11, Pg. 7-8 (discussing erosion mitigation techniques); LCRA Ex. 11, Pg. 10-12 (discussing construction and maintenance activities); LCRA Ex. 1, Pages 68-69 (Section 1.5 of EA)(Construction considerations demonstrating efforts to avoid environmental impact); LCRA Ex. 1, Pages 69-70 (Section 1.5.1 of EA) (Right of Way preparation demonstrating efforts to avoid environmental impact); LCRA Ex. 1, Pages 71-72 (Section 1.5.4 of EA)(Cleanup techniques demonstrating efforts to avoid environmental impact); LCRA Ex. 1, Pages 72-73 (Section 1.6 of EA)(Maintenance efforts to avoid environmental impact); LCRA Ex. 5, Pg. 11, Ln. 15 – Pg. 13, Ln. 2 (discussing LCRA's standard vegetation removal, construction and maintenance practices that mitigate concerns expressed by TPWD).

<sup>87</sup> LCRA Ex. 13, Pg. 8, Ln. 17-19. Relatedly, Friends' expert, Mark Turnbough, acknowledged that fragmentation may be in some respects "purely symbolic" and there may be only some "nominal impact" on environmental integrity. Vol. 3, Pg. 571, Ln. 9-16.

<sup>88</sup> HCLT, Ex. 1, Pg. 15-17.

minimizes the amount of clearing needed.<sup>89</sup> Moreover, LCRA indicated that any impacts to water resources will be minimized by LCRA by crossing streams at their narrowest points; following TPWD guidelines; and installing erosion control measures and implementation of the SWPPA. LCRA anticipates no significant adverse impacts to any aquatic habitats or biological resources.<sup>90</sup> Therefore, while the Hershey Ranch Intervenors have advocated for Routes 17 and 17Y in part because it has fewer stream crossings than 16/16M, all streams crossed will experience the same benefits incident to LCRA's mitigation practices.<sup>91</sup>

With regard to Bill Lindemann's concerns for birds on the Hershey Ranch, Reid points out that, "[T]here were no sightings for the endangered Black-capped Vireo or the Golden Cheeked Warbler presented in Mr. Lindemann's data for the Hershey Ranch."<sup>92</sup> There is no evidence of warbler *presence* on Hershey Ranch or *confirmed warbler habitat* within Segment E1.<sup>93</sup> In response to an alleged whooping crane sighting on the Hershey Ranch included in Lindemann's testimony, Reid testified that he "cannot help but question the credibility and validity of the Whooping Crane report."<sup>94</sup>

Notably, there was no similar response by Reid to similar concerns raised by Intervenor, Chris Hale, who reported having had occasional sightings of bald eagles in the live oak motte (which includes 330 documented live oaks within Segment X) within the proposed right-of-way along 17 and having documented black-capped vireo habitat on his property per studies by the Environmental Defense Fund and the Nature Conservancy.<sup>95</sup>

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<sup>89</sup> Vol. 4, Pg. 760, Ln. 11-15.

<sup>90</sup> LCRA Ex. 1, Pg. 183-184.

<sup>91</sup> Routes 16, 16M, 17 and 17Y each have about 1.9 streams per mile on average. Additionally, all 23 routes parallel streams or rivers within 100 feet for some amount, and Routes 16/16M and 17/17Y have the same amount of stream/river paralleling at 0.2 miles. All 23 Routes cross streams, with an average of 23-24 streams per route. LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for 16M).

<sup>92</sup> LCRA Ex. 13, Pg. 27, Ln. 27-29.

<sup>93</sup> HCLT Ex. 1 (comparing Exhibits II-B to V-B, models do not confirm warbler in Segments A1-F2-E1).

<sup>94</sup> LCRA Ex. 13, Pg. 27, Ln. 21-27.

<sup>95</sup> FM 1888 Ex. 2, Pg. 4, Ln. 17-20; Pg. 7, Ln. 7-19.

And, while Lindemann raised concerns regarding loss of mature trees along Segments F2 and E1, the length of affected right-of-way and density and type of mature trees does not outweigh that which would be cleared on the Hale property.<sup>96</sup>

Hershey Ranch's second witness, T. Brian Almon, did little to support the notion that the Hershey Ranch was deserving of special treatment because environmental impacts were somehow unique or different there. For example, he testified that the property had nice trees and wildlife and that it was serene.<sup>97</sup> This is no different than the testimony of Intervenors Tommie Turner,<sup>98</sup> Patricia Ryan,<sup>99</sup> and James Dix, for example.<sup>100</sup> Almon also testified that he visited Tap Site 1 (but not Tap Site 2) and, using photographs of Tap Site 1, expressed concerns about erosion and the presence of a dirt road associated with the existing LCRA transmission line.<sup>101</sup> However, Almon did not explain how this adverse environmental impact would be worse on Tap 2 than on Tap Site 3 on Patricia Ryan's property. Ultimately, Almon offered testimony about environmental impacts that affect all landowners.

**(b) Pipeline Right-of-Way "Overlap" Mitigates Environmental Impact.**

LCRA routed 16/16M in part within an abandoned pipeline right of way.<sup>102</sup> One of the reasons that LCRA chose to use a portion of the abandoned pipeline right of way as a potential segment was to *reduce* impact to environmental integrity.<sup>103</sup>

**Utilizing the abandoned pipeline corridor mitigates the impact on the land because the new transmission ROW will be co-located (overlapped) as opposed to locating the new ROW in a separate area where no ROW exists or ever existed. Stated differently, it is preferable to locate new transmission line ROW where a pipeline ROW once existed, rather than locating the electric**

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<sup>96</sup> Compare HCLT Ex. 1, Pg. 15-17 to FM 1888 Ex. 2, Pg. 4, Ln. 17-20; Pg. 7, Ln. 7-19.

<sup>97</sup> Hershey JT, Ex. 1, Pg. 16-17.

<sup>98</sup> FM 1888 Ex. 6, Pg. 3, Ln. 19-24 ("Sunrises and sunsets on my property are breathtaking, and Diane and I enjoy them daily. The beauty and serenity is impossible to describe...").

<sup>99</sup> FM 1888 Ex. 1, Pg. 3, Ln 4 – Pg. 4, Ln. 1-16; Pg. 5, Ln. 6-9 (referring to serenity that attracts many visitors to Ryan Ranch as well as the property's vegetation and wildlife).

<sup>100</sup> FM 1888, Ex. 9, Pg. 3, Line 1 (regarding his property's three best attributes, "The scenery, the solitude and the work that always needs to be done.")

<sup>101</sup> Hershey JT, Ex. 1, Pg. 15, Ln. 16-20.

<sup>102</sup> Vol. 1, Pg. 121, Ln. 9-16.

<sup>103</sup> Vol. 1, Pg. 119, Ln. 25 – Pg. 120, Ln. 6.

**transmission line in a separate location where a ROW never existed.**<sup>104</sup>

LCRA's objective is to try to "marry the proposed transmission line with the abandoned pipeline corridor" to reduce the amount of habitat fragmentation and tree clearing required.<sup>105</sup>

Almon, on behalf of Hershey Ranch, acknowledged that with an *abandoned* pipeline right of way, LCRA can *overlap* the abandoned pipeline right of way whereas with an *existing* pipeline, you can't overlap but could *only parallel it*.<sup>106</sup>

LCRA's Lance Wenmohs testified, "[T]here is a swath of cleared corridor centered along the old pipeline where LCRA TSC could build the transmission line, reducing the amount of habitat fragmentation and woody plant clearing along the ROW, which is a concern for some landowners and TPWD."<sup>107</sup> Wenmohs provided aerial imagery confirming a "cleared and maintained pipeline ROW/corridor" that was "devoid of trees in many areas."<sup>108</sup> Wenmohs confirmed that given restrictions by the pipeline company, there are no homes, businesses, barns or trees growing in the former corridor.<sup>109</sup> Wenmohs added, however, that:

**"[r]egardless of whether the entire abandoned pipeline ROW is still cleared, using the pipeline ROW, including that portion where trees have not grown back, would reduce the number of trees that would otherwise have to be removed, reduce habitat fragmentation, and utilize an existing compatible linear corridor. These are positive routing attributes."<sup>110</sup>**

When presented with FM 1888 Exhibit 26, another aerial image of the Hershey Ranch and surrounding area, Almon acknowledged the "scar" of the abandoned pipeline right of way is visible on Hershey Ranch as well as outside of it.<sup>111</sup>

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<sup>104</sup> LCRA Ex. 9, Pg. 12, Ln 21-27.

<sup>105</sup> Vol. 4, Pg. 749, Ln. 9-17.

<sup>106</sup> Vol 3, Pg. 609, Ln. 11-21.

<sup>107</sup> LCRA Ex. 9, Pg. 13, Ln. 4-7.

<sup>108</sup> LCRA Ex. 9, Pg. 12, Ln. 2-4.

<sup>109</sup> LCRA Ex. 9, Pg. 12, Ln. 17-19.

<sup>110</sup> LCRA Ex. 9, Pg. 12, Ln. 11-15 (emphasis added).

<sup>111</sup> Vol. 3, Pg. 608, Ln. 1-5; Vol. 3, Pg. 616, Ln. 13-16. See also Vol. 4, Pg. 743, Ln. 11-19 (Wenmohs acknowledging he has seen pipeline corridor clearly on the Hershey Ranch and in other places in the study area); LCRA Ex. 9, Pg. 34 and Exhibit LW-4R (aerial photo depicting abandoned pipeline across Hershey Ranch); LCRA Ex. 9, Pg. 12, Ln. 30 – Pg. 13, Ln. 2.

Reid, on behalf of LCRA, testified, “Although, the former pipeline easement has reverted back to the land owners, it is a manmade linear clearing that still exists. It would reduce the wooded areas that would be cleared in some areas and reduce potential new habitat fragmentation.”<sup>112</sup> Reid added that transmission line might even *improve* habitat, and, in the case of the Hershey Ranch, because “it’s a savanna sort of situation” the environmental impact of widening out the prior abandoned right-of-way would be *less*.<sup>113</sup>

Finally, LCRA offered evidence regarding its ability to minimize its right-of-way by using a “vertical configuration monopole structure.”<sup>114</sup> In addition to ordering Routes 16 or 16M to take advantage of the co-locating opportunity within portions of the abandoned pipeline right of way, the Commission could also order a *narrower* easement width and *narrower* tower profile structures along Hershey Ranch and all portions of the abandoned pipeline easement to further lessen the impact of LCRA’s electric transmission line and more closely occupy the abandoned pipeline easement right-of-way.

**(C) The Hersheys Opted to Have the Abandoned Pipeline Removed.**

Lindemann confirmed that an oil pipeline easement was in place within proposed Segments A1, F2 and E1 on Hershey Ranch from 1928 until 2012.<sup>115</sup> It is important, in the context of alleged concerns for protecting environmental integrity by avoiding habitat fragmentation and protecting grasslands, to consider that on areas east of Hershey Ranch, landowners asked the pipeline company to *leave the pipe in the ground*.<sup>116</sup> The Hersheys, however, opted to have the pipeline removed, a process that Lindemann confirmed he witnessed.<sup>117</sup> One must question why the Hersheys opted to permit construction trucks to

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<sup>112</sup> LCRA Ex. 13, Pg. 26, Ln. 24-27.

<sup>113</sup> Vol. 4, Pg. 763, Ln. 21 – Pg. 764, Ln. 7.

<sup>114</sup> Vol. 4, Pg. 840, Ln. 1-22; LCRA Ex. 1, Page 6 (“The typical ROW width is estimated to be between 80 and 100 feet.”)

<sup>115</sup> HCLT Ex. 1, Pg. 11, Ln. 14-16.

<sup>116</sup> Vol. 4, Pg. 745, Ln. 16 – Pg. 746, Ln. 10.

<sup>117</sup> HCLT Ex. 1, Pg. 11, Ln 14-16.

enter the property and dig up and remove the pipeline, thereby fragmenting the land and disturbing the existing grasses, when not disturbing the land was an option.

In summary, the abandoned pipeline easement right-of-way is a red herring. Locating a new transmission line over and within an already disturbed area, such as an abandoned pipeline easement right-of-way, is an excellent opportunity to mitigate the environmental impact of a new transmission line. This is especially true when the evidence shows that the areas in question are cleared and that LCRA has the capability to reduce its footprint. The opportunity is also quite different than paralleling a road or a natural or cultural feature. And of course, there is no prohibition to utilizing an abandoned pipeline easement right-of-way.

**(d) Conservation Easements Do Not Trump Routing Criteria.**

Finally, the Hershey Ranch, the Hill Country Land Trust and the Texas Parks & Wildlife Department have an interest in making policy in these proceedings. It appears that each would like to set a precedent here that conservation easements with the “conservation value” of protecting environmental integrity are “stop signs” in terms of power line routing. However, setting that precedent here, a benefit the Hershey Ranch would gladly receive, would needlessly open a Pandora’s Box. The message would spread like wildfire that the best way to avoid the possibility of an electric transmission line on one’s property is to donate a conservation easement that protects environmental integrity to an entity like the Hill Country Land Trust. A reading of the Hershey Ranch conservation easement would readily confirm that the stewardship requirements are not onerous and of course, a landowner could vary the terms to make them even less so.

The way that Hershey Ranch, the Hill Country Land Trust, TPWD and PUC Staff have attempted to make this concept palatable is to suggest that the ALJs and Commission protect Intervenor, Chris Hale, “as well” by recommending and ordering Route 17Y instead of Route 17 (or in the case of TPWD, Route 13, which is similar). This “favor” to Chris Hale is

problematic on many levels, especially given that many if not all proponents of this “favor” did not even read Hale’s conservation easement to determine its conservation values.<sup>118</sup> Overall, putting Hershey Ranch and Chris Hale’s conservation easements in the forefront in the way that Hershey Ranch, the Hill Country Land Trust, TPWD and PUC Staff have is a veiled attempt to distract the ALJs and the Commission from the policy implications of setting this precedent.

First, PURA and PUC’s Substantive Rules do not include an exception for lands encumbered by conservation easements.<sup>119</sup> As Rob Reid testified:

**LCRA has the ability to condemn for ROW across conservation easements if the Commission chooses a route that crosses those particular properties. There is nothing in the Commission’s rules that automatically removes a property burdened with a conservation easement from consideration for a transmission line.**<sup>120</sup>

Despite the fact that there is no such exception, Almon’s opinion is that conservation easements should not be crossed – they are a “stop sign” for routing.<sup>121</sup> The first problem with a “stop sign” policy is that it would reduce availability of routing corridors. Reid testified:

**Refusing to route a transmission line on land covered by a conservation easement . . . may reduce routing corridors (particularly if people attempt to convey conservation easements after they discover at an open house that their properties are within a routing corridor...).**<sup>122</sup>

Common sense dictates that routing around a patchwork of strategic conservation easements could also result in more circuitous routing corridors.

In addition to affecting the availability or quality routing corridors, a “stop sign” policy places neighboring properties at greater risk of having transmission line placed on their

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<sup>118</sup> Vol. 3, Pg. 612, Line 9-17 (Almon did not read Hale’s conservation easement); Vol. 3, Pg. 709, Ln. 3-6 (Poole did not read Hale’s conservation easement.)

<sup>119</sup> LCRA Ex. 9, Pg. 10, Ln. 28-29; see *also* LCRA Ex. 13, Pg. 9, Ln. 4-6. (Conservation easements are not a criterion established by the PUC and do not preclude the construction of a transmission line.)

<sup>120</sup> LCRA Ex. 13, Pg. 9, Ln. 11-15.

<sup>121</sup> Vol. 3, Pg. 603, Ln. 5-11.

<sup>122</sup> LCRA Ex. 13, Pg. 9, Ln. 26 – 29.

property despite the fact that the neighbors may be no less conscientious land stewards than the person granting the conservation easement.<sup>123</sup> This is exactly what has occurred in these proceedings with the introduction of Route 17Y (and recently, 13).

Here, Lindemann, Almon, PUC Staff and TPWD's "favor" to Hale has placed those along Segment Y (the Turners, James Heard, JENC Ranch Property, Karl Jackson, Andrew Stanley, Francia Ruppen and Patricia Ryan) at a much greater risk to have LCRA's transmission line routed on their properties. This "easy fix" is convenient for those who wish to protect the Hershey Ranch at all cost, especially because it focuses the attention solely on the cursory choice between Segments X and Y, to the exclusion of Segments along 16/16M.

It is true that Chris Hale acknowledged generally that he appreciated the intent to have conservation easements respected in these proceedings – however, not blindly and not without consideration of the impact to his neighbors.<sup>124</sup> There is nothing in the record that would suggest that Chris Hale would prefer to impact the homes and properties of his neighbors across FM 1888 from him ***over a single property on which the landowners (i.e., the Hersheys) do not even reside.*** Rather, in addition to explaining how the X-Y favor does not alleviate the frustration of his conservation easement's conservation values, explained below, Hale made sure the Commission was aware of the presence of many homes along **Segment Y** falling just outside the 300-foot inventory criteria that would be impacted by LCRA's transmission line.

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<sup>123</sup> LCRA Ex. 13, Pg. 27, Ln. 10-16.

<sup>124</sup> FM 1888 Ex. 3, Pg. 3, Ln.16-24; Vol. 3, Pg. 701, Ln. 20-25 (not a stop sign).



**WITH RESPECT TO HOMES ALONG FM 1888, WHAT ELSE WOULD YOU LIKE THE COMMISSION TO KNOW?**

I would like the Commission to know that that there are additional residences ... which run along FM 1888, that are just outside the 300 foot corridor. ... there are the homes of ... Tommie and Diane Turner, Jim Heard, James and Esther Dix, Francia Ruppen, Andrew Stanley and Karl Jackson, as well as the numerous employees who live on Ms. Ryan's property (whose homes have not even been mentioned in these proceedings), who will see the transmission line (and in some cases the tap points [sic]), whose homes are further away than 300 feet from centerline, yet face and are in full view of the proposed transmission line.<sup>125</sup>

Yet another reason to reject a "stop sign" policy is that following Lindemann's logic results in a "slippery slope" problem and failed absolutes. For example, Lindemann does not believe that a conservation easement should act as a stop sign if the property in question is located in the Texas Panhandle or some other part of Texas.<sup>126</sup> Perhaps recognizing this fallacy, Almon refused to answer questions regarding his opinion on when a property burdened by a conservation easement would be worthy of protection, and when it would not, answering each question with a memorable "No opinion."<sup>127</sup>

The inevitable selective application of the rule became most evident, though, when the conservation values of Chris Hale's conservation easement were given only partial credence and/or were not even reviewed.<sup>128</sup> This was despite Lindemann having "ask[ed] the Public Utility Commission to honor the intent and purpose of all conservation easements within the Blumenthal substation transmission line area."<sup>129</sup> Given the inconsistency, Hale openly questioned why one of his conservation easement's conservations values was respected and the other patently ignored. Mr. Hale testified:<sup>130</sup>

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<sup>125</sup> FM 1888 Ex. 2, Pg. 16, Ln. 10 – Pg. 17, Ln. 2.

<sup>126</sup> Vol. 3, Pg. 471, Ln. 9-15

<sup>127</sup> See Vol. 3, Pg. 605, Ln. 15 – Pg. 606, Ln. 11.

<sup>128</sup> Vol. 3, Pg. 612, Ln. 9-17 (Almon made recommendation of "necessary modification" to avoid Hale Conservation Easement, but did not read Hale's conservation easement.); Vol. 3, Pg. 709, Ln. 3-6 (With respect to Poole's opinion that Route should be Modified 17 to avoid Hale Conservation Easement, Poole did not read Mr. Hale's conservation easement.

<sup>129</sup> HCLT Ex. 1, Pg. 18, Ln. 29 – Pg. 19, Ln. 2

<sup>130</sup> FM 1888 Ex. 3, Pg. 4, Ln. 1-10.

**1 LET'S START BY HAVING YOU REMIND THE COMMISSION ABOUT YOUR  
2 PROPERTY'S CONSERVATION EASEMENT AND ITS "CONSERVATION VALUES."**

3 In 2007, my wife Janet and I granted a conservation easement to the Nature Conservancy on the 665.7  
4 acres that make up Norco Ranch, on which Segment X is located. This Conservation Easement  
5 references certain "Conservation Values" comprised of natural, ecological, and aesthetic values that are  
6 deemed important to the people of Kendall County and visitors to the area. In particular, it recognizes  
7 that Norco Ranch lies within the Guadalupe/San Antonio River Drainages, a biologically important  
8 conservation area threatened by commercial and residential development, soil erosion and run-off,  
9 ecologically incompatible land management, loss of nesting habitat and land fragmentation, among  
10 other things. Therefore, there are several restrictions on the development of the property.

Thus, one of Mr. Hale's conservation values falls under 26 U.S.C. § 170(4)(A)(ii), related to the protection of habitat and ecosystems.<sup>131</sup> However, Mr. Hale's conservation easement was also donated with an express and stated purpose of protecting the public's views along FM 1888 in perpetuity.<sup>132</sup> Stated differently, Mr. Hale's conservation easement has an additional conservation value related specifically to and actually referencing FM 1888.<sup>133</sup> And, protecting FM 1888 is a valid conservation value provided for under 26 U.S.C. § 170(4)(A)(iii), which provides for "the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public."<sup>134</sup> Given these conservation values, routing LCRA's line on Segment X or Y, both which border FM 1888, negatively affects the public's scenic enjoyment of FM 1888. Either option frustrates Hale's conservation values related to preserving FM 1888 for the public's scenic enjoyment.<sup>135</sup>

<sup>131</sup> FM 1888, Ex. 3, Pg. 6, Ln. 21-23.

<sup>132</sup> FM 1888, Ex. 2, Pg. 9, Ln. 20-21; FM 1888 Ex. 3, Pg. 4, Ln. 23-Pg. 5, Ln. 7.

<sup>133</sup> FM 1888, Ex. 2, Pg. 9, Ln. 20-21; FM 1888 Ex. 3, Pg. 4, Ln. 23-Pg. 5, Ln. 7.

<sup>134</sup> FM 1888 Ex. 3, Pg. 6, Ln. 23-25.

<sup>135</sup> FM 1888 Ex. 3, Pg. 8, Ln. 18-21.

Therefore, Mr. Hale questioned how all conservation easements were in fact being respected when his was being frustrated by advocates of Routes 17 and 17Y.<sup>136</sup> Mr. Hale questioned how the focus could be so narrow “when federal law and public policy puts scenic byways on an equal plane with safeguarding plants and wildlife.”<sup>137</sup> To date, proponents of 17/17Y have not reconciled this point. The shortcomings related to simply advancing 17Y (and TPWD’s 13) become apparent once all conservation values in the Study Area are analogized to their respective routing factor counterparts: environmental integrity (26 U.S.C. §170(4)(A)(i)) versus aesthetics/ community values (26 U.S.C. §170(4)(A)(iii)). Quite obviously, the position advanced by Lindemann, Almon, TPWD (Schmerler) and PUC Staff (Poole) ignores the full analysis.

Finally, with respect to whether a “conservation easement that protects environmental integrity” should be a “stop sign,” one must question why *that type* of a conservation easement should carry so much weight when environmental integrity is but one factor in the routing analysis. Is saying one has that type of a conservation easement all that it takes? What, if like Mr. Hale, you have that type “plus more” – a conservation value that is analogous to aesthetics/community values? Does the “plus more” get ignored? Does a property that does not have a conservation easement that protects environmental integrity *fragment less* making it a more sensible alternative?<sup>138</sup> Does having a conservation easement automatically mean one is a better steward of one’s land and therefore more worthy of the PUC’s protection?<sup>139</sup> Should a review on the merits take a backseat to a conservation easement that protects environmental integrity? Is a conservation easement that protects

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<sup>136</sup> FM 1888, Ex. 3, Pg. 3, Ln. 11 – Pg. 8, Ln. 24.

<sup>137</sup> FM 1888 Ex. 3, Pg. 6, Ln. 13-17.

<sup>138</sup> Lindemann acknowledged un-fragmented habitat can exist outside of a conservation easement. Vol. 3, Pg. 480, Ln. 8-10. Lindeman acknowledged that a line can cause habitat fragmentation even if it does not pass through a conservation easement. Vol. 3, Pg. 480, Ln. 11-14. Almon acknowledged that habitat fragmentation is a concern that is not isolated to conservation easements. Vol. 3, Pg. 595, Ln. 21-23.

<sup>139</sup> Lindeman acknowledged that just because a property is not covered by a conservation easement, a landowner can still practice good conservation practices. Vol. 3, Pg. 479, Ln. 11-14.

environmental integrity a shield or a sword?

Ultimately, the evidence shows that while the Hershey Ranch's conservation easement has conservation values that protect environmental integrity, there is nothing that prevents a transmission line from crossing it.<sup>140</sup> Rather, the conservation easement contemplates condemnation of power lines, a clear indication that at least Terese Hershey did not think that her property was immune from power lines.<sup>141</sup> The evidence also shows Hershey Ranch was encumbered by a pipeline in 2009 when Therese Hershey donated the conservation easement.<sup>142</sup> Therefore, this conservation easement has been in place for less than six years, and in that time, however destructive to habitat it was, the Hersheys permitted a pipeline to be removed from the property.<sup>143</sup>

Given the foregoing, and given the measures that LCRA can take to mitigate against environmental integrity concerns along any route, concerns of environmental integrity do not weigh in Route 16/16M's favor, regardless of the presence of a conservation easement. The ability to co-locate LCRA's power line within an abandoned pipeline easement's right-of-way should be and is compelling. Stated differently, utilizing Segments A1-F2-E1 within Route 16/16M is a unique opportunity to **actually utilize** already fragmented land in the Study Area, thereby mitigating against the environmental impacts incident to construction elsewhere where this opportunity does not exist.

#### 4. Engineering Constraints.

Routes 11, 11-M, 16, and 16-M are feasible and constructible.<sup>144</sup> Floodplains require engineering considerations so as to not adversely impact floodwater flow.<sup>145</sup> Routes 17/17Y

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<sup>140</sup> Vol. 3, Pg. 475, Ln. 20 – Pg. 476, Ln. 15; see also HCLT Ex. 1, Pg. 7 at Exhibit 1 (Hershey Cons. Eas.).

<sup>141</sup> Vol. 3, Pg. 475, Ln. 20 – Pg. 476, Ln. 15.

<sup>142</sup> HCLT Ex. 1, Pg. 11, Ln. 14-16; LCRA Ex. 9, Pg. 11, Ln. 7-10.

<sup>143</sup> HCLT Ex. 1, Pg. 11, Ln. 13-25.

<sup>144</sup> LCRA Ex. 11, Pg. 33, Ln. 2-8.

<sup>145</sup> LCRA Ex. 1, Pg. 183-184.

have 0.2 miles of floodplain, as compared to Routes 16/16M, which have 0.00 miles, including 0.0 miles within Segment J1 on which Tap Site 2 is located.<sup>146</sup>

## **5. Costs.**

Cost is an important factor in any routing decision; however, it is not the only factor.<sup>147</sup> And, the decision-making process is often referred to as a “balancing test” with certain give and take, and a certain “tension” between factors. What one saves in financial dollars may come at the expense of other factors listed in PURA § 37.056(c) and P.U.C. SUBST. R. 25.101(b)(3)(B). This case is no exception.

In these proceedings, the estimated route costs represent a relatively tight data set.<sup>148</sup> Given the range, costs are not a driving factor.<sup>149</sup> This is especially true given the various weaknesses in LCRA’s methodology for determining its estimated costs. In particular, cross examination of LCRA’s sponsoring witness revealed why there is a lack of reliability in LCRA’s cost estimates for particular segments comprising Routes 17/17Y and Routes 16/16M. Given this lack of reliability, the tight data set otherwise, and the importance of balancing routing factors, estimated costs in these proceedings should not be given extraordinary weight and a route should not be chosen simply because it’s the so-called “cheapest route.”

### **A. LCRA’s Cost Estimates.**

The following cost components were scrutinized at the hearing: (1) Right-of-Way Land Acquisition; (2) “Other”; and (3) Project-Wide Adders. Estimated “Right-of-Way and Land Acquisition,” consists of four components: (i) acquisition labor costs; (ii) right-of-way costs (“ROW Costs”); (iii) condemnation costs, and (iv) acquisition surveying costs.<sup>150</sup> ROW Cost

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<sup>146</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23.

<sup>147</sup> Vol. 2, Pg. 254, Ln. 17-20 (agreeing that estimated costs are not the only factor with respect to route selection).

<sup>148</sup> JLP A Ex. 1, Pg. 9, Ln. 20-21; Vol. 2, Pg. 254, Ln. 17-20.

<sup>149</sup> Vol. 3, Pg. 660, Ln. 18-24.

<sup>150</sup> FM 1888 Ex. 31 and 35; Vol. 2, Pg. 261, Ln. 14 – Pg. 262, Ln. 1; Vol. 2, Pg. 268, Ln. 15 – Pg. 269, Ln. 13.

estimate is a true estimate and the other three component parts are generally estimated by multiplying a fixed cost by the number of parcels within a segment.<sup>151</sup> The ROW Cost estimate methodology does not rely on appraisals, but instead uses tax data from the three counties in the Study Area: Gillespie, Blanco and Kendall.<sup>152</sup> The tax data used on a particular segment is further dependent on parcel size and neighboring properties.<sup>153</sup> The ROW Cost methodology used in these proceedings was tested in LCRA's Cushman to Highway 123 Project, and it proved to be off by 28%.<sup>154</sup>

LCRA's "Other Costs" include the estimated costs associated with endangered species permitting and mitigation for black-capped vireo and golden cheeked warbler habitat.<sup>155</sup> For black-capped vireo mitigation, the estimated mitigation acreages were developed through aerial imagery interpretation.<sup>156</sup> Models were used to predict golden-cheeked warbler habitat, and data was presented by LCRA showing where one, two and/or three models predicted warbler habitat.<sup>157</sup> Where one warbler model indicated potential for warbler habitat, mitigation costs were included in cost estimate.<sup>158</sup> Thus, warbler mitigation costs were the same, however, regardless if one, two or three warbler models agreed. Mitigation costs are "estimates," and LCRA will not know actual mitigation costs until field studies identify actual habitat.<sup>159</sup>

LCRA incorporated two project-wide adders into the estimated costs for all PUC categories for each route segment and node (and by extension, each route). These adders include (i) "Project Contingency" at a rate of 10% and (ii) "General Administrative Costs" at a

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<sup>151</sup> Vol. 2, Pg. 269, Ln. 16 - Pg. 271, Ln. 8.

<sup>152</sup> Vol. 2, Pg. 264, Ln. 21-24; see also FM 1888 Ex. 32.

<sup>153</sup> Vol. 2, Pg. 275, Ln. 16 - Pg. 285, Ln. 1; see e.g., FM 1888 Ex. 37.

<sup>154</sup> FM 1888 Ex. 1 at Ex. 13 (LCRA's Response to Ryan RFI 3-6).

<sup>155</sup> Vol. 2, Pg. 243, Ln. 5-10.

<sup>156</sup> FM 1888 Ex. 31 at Page 54; FM 1888 Ex. 48.

<sup>157</sup> LCRA Ex. 1, Pg. 189-190.

<sup>158</sup> Vol. 1, Pg. 101, Ln. 4-8.

<sup>159</sup> Vol. 2, Pg. 244, Ln. 5-12

rate of 2.5%.<sup>160</sup> Right of way and mitigation costs shown on FM 1888 Exhibit 35 are “before costs” and do not yet include Project Contingency Costs and General Administrative Costs.<sup>161</sup> Because Project Contingency and General Administrative Costs are calculated as percentage of estimated cost, Routes with lower estimated costs have less of an increase than are Routes with higher estimated costs.<sup>162</sup>

**B. Route 16/16M and 17/17Y Comparison and Analysis.**

Jessica Melendez was LCRA’s sole sponsor for cost estimates.<sup>163</sup> Ms. Melendez testified that the costs of Routes 11-M and 16-M are reasonably similar in total costs to the 20 routes included in the application.<sup>164</sup> As shown below, Routes 16 and 16M are very competitive and worthy of selection. Route 16M is the third lowest.<sup>165</sup>

Category	Route 16	Route 16M	Route 17	Route 17Y
LCRA “Estimated” Cost	\$27,106,000	\$26,483,000	\$24,458,000	\$24,311,000

As shown above, difference between the estimated costs of Route 16 and Route 17 is \$2,648,000 (a 10.27% difference).<sup>166</sup> Of that difference, \$1,796,000, or 68%, falls under Category 1 and 2, Right-Of-Way Land Acquisition and Other (*i.e.*, mitigation).<sup>167</sup> The difference between Route 17 and Route 16M is only \$2,025,000 (7.95% difference).<sup>168</sup>

**1. Right-Of-Way Land Acquisition Costs – ROW Costs.**

LCRA’s current estimates do not rely on condemnation-based appraisals or actual market data.<sup>169</sup> Instead, these estimates are derived from ad valorem tax data for the three

<sup>160</sup> FM 1888 Ex. 31 at Page 54.

<sup>161</sup> Vol. 2, Pg. 267, Ln. 20 – Pg. 268, Ln. 4.

<sup>162</sup> Vol. 2, Pg. 261, Ln. 3-13.

<sup>163</sup> Vol. 1, Pg. 94, Ln. 8-10.

<sup>164</sup> LCRA Ex. 11, Pg. 33, Ln. 2-8; *see also* LCRA Ex. 11 at Exhibit JRM-IR.

<sup>165</sup> FM 1888 Ex. 23.

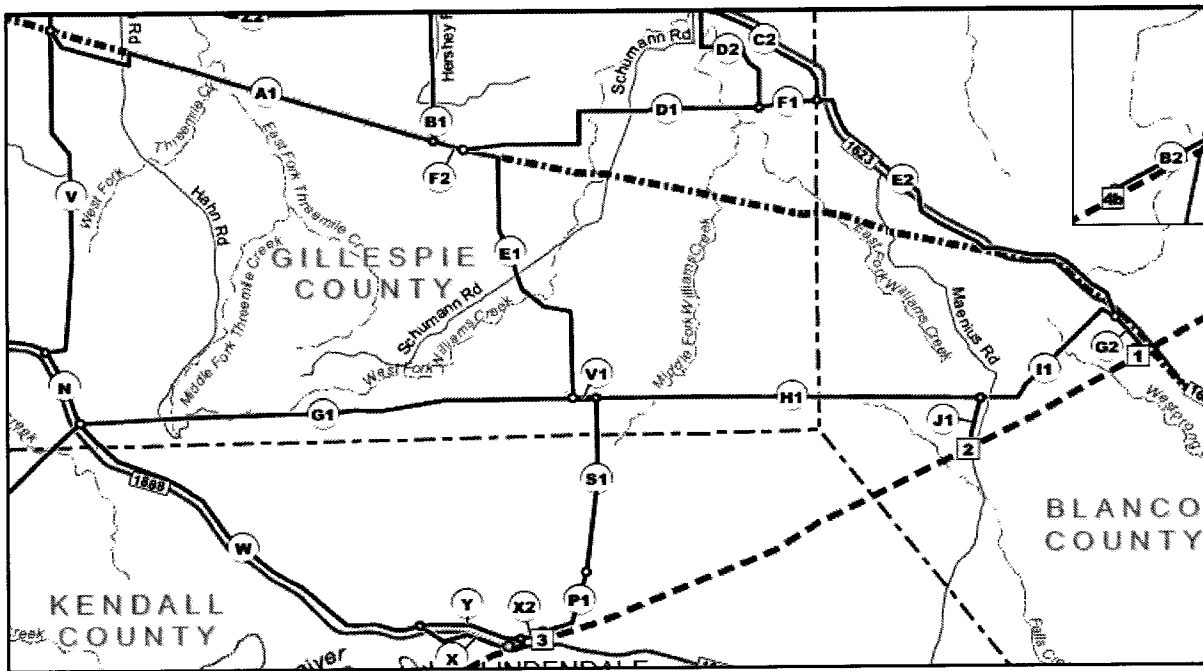
<sup>166</sup> Vol. 2, Pg. 256, Ln. 1-8.

<sup>167</sup> Vol. 2, Pg. 258, 13-16.

<sup>168</sup> Vol. 2, Pg. 314, Ln. 7-11.

<sup>169</sup> Vol. 2, Pg. 262, Ln. 4-6; FM 1888 Ex. 31.

counties in the Study Area.<sup>170</sup> Cost estimates for Routes 16/16M and 17/17Y rely on tax data from Gillespie and Blanco (Routes 16/16M) and from Gillespie and Kendall (Routes 17/17Y). Given the small (11 mile) Study Area, the two routes are relatively close to each other, and Tap 2 and Tap 3 are located on either side of the tri-county border.<sup>171</sup>



Data showing ROW Costs per acre for each Segment was provided on FM 1888 Exhibit 35.<sup>172</sup> A comparison of Segment A1 (along Routes 16/16M) and Segment W (along Routes 17/17Y) shows that there is a difference of \$111,680.00 in estimated ROW Costs, with Segment A-1 in Gillespie County valued higher than Segment W located primarily in Kendall County, despite the two Routes' nearly identical lengths.<sup>173</sup> This is true despite the presence of panoramic home sites located along Segment W, as well as FM 1888 road frontage, and the absence of such features along Segment A1. A similar comparison was

<sup>170</sup> FM 1888 Ex. 32; see e.g., FM 1888 Ex. 37, 38, 39, 41, 42.

<sup>171</sup> LCRA Ex. 1, Pg. 167.

<sup>172</sup> Vol. 2, Pg. 271, Ln. 7-21.

<sup>173</sup> Vol. 2, Pg. 274, Ln. 10 – Pg. 275, Ln. 4. LCRA estimated that Segment A1 would be 19,028 feet long and encompass 43.7 acres of right-of-way. LCRA estimated that Segment W would be 19,051 feet long and encompass 43.8 acres of right-of-way. See FM 1888 Ex. 35.



made between Segment H1 (along 16/16M) and Segment V (along 17/17Y), revealing a difference of \$269,760 in estimated ROW Costs, with segment H1 using Blanco County tax data valued higher than tax data utilized for Segment V in Gillespie County, despite the two routes being nearly identical in length.<sup>174</sup> In addition, LCRA uses \$10,800 per acre for Segment J1 (16/16M) which runs to Tap 2, yet used only \$5,400 per acre (half) for segment X2 (17/17Y) on Ryan which runs to Tap 3.<sup>175</sup>

This significant difference in ROW Costs per segment is primarily due to two methodology flaws. First, and foremost, the parcels in each segment are in different counties.<sup>176</sup> This “different-counties” flaw was demonstrated in thorough cross examination of Ms. Melendez.<sup>177</sup> In the cross examination of Ms. Melendez it was shown that the calculation of ROW Costs for Segments H1 and S1 differed based on whether data from Gillespie, Blanco or Kendall were used for each particular dual-county segment.<sup>178</sup> A full analysis of the “different-counties” effect demonstrated that properties in Kendall were generally appraised much lower than similar properties in Gillespie and Blanco, and properties in Gillespie were appraised much lower than similar properties in Blanco.<sup>179</sup> And if a property was located in a county along a segment that spanned two counties, such as H1 and J1 along Route 16/16M, Ms. Melendez confirmed that the higher tax per acre value, here

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<sup>174</sup> LCRA estimated that Segment H1 would be 17,280 feet long and encompass 39.7 acres of right-of-way. LCRA estimated that Segment V would be 16,199 feet long and encompass 37.2 acres of right-of-way. See FM 1888 Ex. 35; see also FM 1888 Ex. 37-39, 41-42 (Backup Documentation for Segment V (Gillespie County); Backup Documentation for Segment H1 (Gillespie County); Backup Documentation for Segment H1 (Blanco County); Backup Documentation for Segment S1 (Gillespie County); Backup Documentation for Segment S1 (Kendall County)).

<sup>175</sup> FM 1888 Ex. 35

<sup>176</sup> A second flaw of LCRA's ROW cost methodology that there is no distinction made in estimating per acre cost between a parcel that's 101 acres and a tract that's 1,561 acres. Vol. 2, Pg. 280, Ln. 4-7. Using such broad size categories to estimate ROW Costs resulted in lower estimates for Route 17/17Y and higher estimates for Routes 16/16M.

<sup>177</sup> Apparently, all of the experts hired by intervenors in these proceedings simply assumed that LCRA's cost estimates were correct. See e.g., Vol. 3, Pg. 508, Ln. 13-22 (Hughes); Vol. 3, Pg. 568, Ln. 15-24 (Turnborough); Vol. 3, Pg. 611, Ln. 25 – Pg. 612, Ln. 8 (Almon); Vol. 3, Pg. 709, Ln. 18-25 (Poole).

<sup>178</sup> Vol. 2, Pg. 275, Ln. 20 – Pg. 294, Ln. 10.

<sup>179</sup> FM 1888 Ex. 38, 39, 41, 42; Vol. 2, Pg. 275, Ln. 5 – Pg. 294, Ln. 10.

Blanco County's, was used.<sup>180</sup> In other words, a property located in Gillespie County (but along a Segment that crossed counties) could have different ROW costs per acre because the taxing authorities valued their respective county's properties differently.<sup>181</sup> As a result, LCRA's methodology assigned higher per acre ROW Cost estimates for much of Route 16/16M, given that it is primarily in Gillespie and Blanco Counties. This methodology also resulted in lower per acre ROW cost estimates for much of Route 17/17Y, given it is primarily in Gillespie and Kendall Counties. Given the proximity of the Segments and individual parcels to each other, as shown in the map above, the differences in per acre ROW cost data should not have been so pronounced.

Other anomalies with regard to LCRA's ROW Cost estimates using \$5,400 per acre for the portion of Ms. Ryan's highly improved property impacted by Routes 17/17Y and using four different values ranging from \$7,300 per acre to \$12,400 per acre for the Hershey Ranch, even though the Hershey Ranch is burdened by a conservation easement that that does not allow any subdividing.<sup>182</sup> Given the anomalies, Patricia Ryan requested historical evidence from LCRA substantiating the reliability of LCRA using property tax information from different taxing authorities. LCRA referred Ms. Ryan to its data on the Cushman to Highway 123 Project.<sup>183</sup> With regard to Cushman to Highway 123, LCRA confirmed that it was 28% off on its estimated right of way costs.<sup>184</sup> Notably, the Cushman to Highway 123 Project, was only a **one-county** project.<sup>185</sup>

## **2. "Other Costs" – Mitigation Costs for Black-Capped Vireo.**

With regard to cost estimates for mitigation, LCRA included \$338,250.00 in estimated

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<sup>180</sup> Vol. 2, Pg. 285, Ln. 4 – Pg. 288, Ln. 2.

<sup>181</sup> See e.g., FM 1888 Ex. 38, 39.

<sup>182</sup> FM 1888 Ex. 35; HCLT Ex. 1 at Exhibit 1.

<sup>183</sup> FM 1888 Ex. 1 at Ex. 13; Vol. 2, Pg. 295, Ln. 6-19.

<sup>184</sup> Vol. 2, Pg. 296, Ln. 16-22; see also FM 1888 Ex. 1 at Ex. 13.

<sup>185</sup> Vol. 2, Pg. 296, Ln. 23 – Pg. 297, Ln. 2.

mitigation costs for black-capped vireo along Segment H1, which is part of Routes 16/16M.<sup>186</sup> LCRA determined mitigation costs were necessary by using aerial photography interpretation, a method that is admittedly inaccurate.<sup>187</sup> FM 1888 Exhibit 48, an email from LCRA's Erik Huebner to the LCRA team, revealed important concerns:

**BCVI acreage was calculated through aerial photography interpretation; however, because BCVI habitat is difficult to identify using aerial photography, these numbers are much less accurate than GCWA . . . No accurate way of estimating BCVI, unfortunately. No modeling data developed at this time.**<sup>188</sup>

In contrast, LCRA included \$0.00 for black-capped vireo in Routes 17/17Y, despite documented vireo habitat on Chris Hale's property.<sup>189</sup> Accordingly, the inclusion of \$338,250.00 estimated mitigation costs for vireo for Segment H1 appears entirely unwarranted and skews the data unfairly against Routes 17/17Y which do not have any mitigation costs allocated for black-capped vireo, despite documented observations of same.

### **3. Project Wide Adders.**

Cost estimates along Routes 16/16M and 17/17Y do not include Project Wide Adders. The \$338,250.00 in "other costs" for black-capped vireo along Segment H1 translates to \$380,531.25 once Project Wide Adders are included. Project Wide Adders exacerbate the issues—namely "across-counties" methodologies and over-inclusion of vireo mitigation costs that result in higher estimated costs for Routes 16/16M.

### **4. LCRA's Response.**

In response to the FM 1888's criticisms, LCRA suggested it was inconsistent for

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<sup>186</sup> Vol. 2, Pg. 307, Ln. 11-16; see also FM 1888 Ex. 35.

<sup>187</sup> FM 1888 Ex. 48; JLP A Ex. 1 (Direct Testimony of Kuhl), Pg. 23, Ln. 5-7 ("It is difficult to identify the habitat of the endangered Black-Capped Vireo ("BCVI") relying primarily on aerial photography, and there are no sources for mapped or modeled BCVI habitat."); LCRA Ex. 1, Page 106 (Section 2.6.4 of EA) ("Modeling potential black-capped vireo habitat is difficult and generally inaccurate . . . cannot be accurately identified with aerial imagery or topographical imagery. Pedestrian field surveys may be needed . . ."); see also LCRA Ex. 1, Page 190 (Section 5.1.4.3 of EA); LCRA Ex. 13, Pg. 36, Ln. 24-25.

<sup>188</sup> FM 1888 Ex. 48 (emphasis added).

<sup>189</sup> FM 1888 Ex. 35; see also FM 1888 Ex. 2, Pg. 4, Ln. 17-20 ("We have black-capped vireo habitat as documented by studies done by Environmental Defense Fund and the Nature Conservancy.")

landowners to question this methodology if the affected landowner hadn't asked their county's tax assessor to re-assess their property to a higher value.<sup>190</sup> However, LCRA's suggestion is not only unrealistic, but wouldn't correct the flaws in LCRA's methodology. This is because LCRA's ROW Cost methodology also utilizes properties that are *not* along the proposed segments as a component of their calculations.<sup>191</sup> Therefore, an affected landowner would also have to figure out which non-project properties are included and rally those landowners to also ask their county tax assessor to re-assess their properties to a higher value. Notably, LCRA's suggestion would not mitigate against the "across-counties" problem that plagues LCRA's cost estimates.

Given the foregoing, the estimated costs for Routes 16/16M should be much closer to those of Routes 17/17Y, and the 7.95%-10.27% difference between them much less. Given the documented lack of reliability of using LCRA's ROW Cost methodology across *one* county (in the Cushman project), the shortcomings of using it across three counties, the use of suspect vireo mitigation estimates, the disproportionate impact of Project Wide Adders, the tight data set otherwise, and the importance of balancing routing factors, estimated costs in these proceedings should not be given extraordinary weight. A route should not be chosen simply because it's the so-called "cheapest route."<sup>192</sup>

Finally, while Route 16M is approximately \$623,000 lower with respect to LCRA's estimated costs than Route 16, the FM 1888 Scenic Byway Alliance believes that both routes are better choices than Routes 17 or 17Y and should be given serious consideration. The real difference between Route 16 and Route 16M is that Route 16 starts at Substation 7 and Route 16M starts at Substation 9. While Route 16 is estimated to be more expensive than

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<sup>190</sup> LCRA Ex. 11, Pg. 23, Ln. 20-28.

<sup>191</sup> FM 1888, Ex. 32; Vol. 2, Pg. 278, Ln. 6-18.

<sup>192</sup> The difference in estimated costs of Route 16M and Route 17Y is \$2,172,000 (8.55% difference). LCRA Ex. 1, Pg. 392-395 (Attachment 3 to Application); see also FM 1888 Ex. 23.

Route 16M, the owner of the property where Substation 7 would be located did not intervene in this proceeding. Thus, the selection of Route 16 over Route 16M may alleviate some of the concerns raised by Dr. Jay Fosbury on behalf of WMB Partners, Ltd., which owns the land where Substation 9 would be located.

**6. PUC Subst. Rule 25.101 – Paralleling.**

P.U.C. SUBST. R. 25.101(b)(3)(B) states that the following factors shall be considered in the selection of the utility's alternative routes:

- (i) whether the routes parallel or utilize existing compatible rights-of-way for electric facilities, including the use of vacant positions on existing multiple-circuit transmission lines;
- (ii) whether the routes parallel or utilize other existing compatible rights-of-way, including roads, highways, railroads, or telephone utility rights-of-way; and
- (iii) whether the routes parallel property lines or other natural or cultural features.

**(a) Factor (i).**

None of the 20 Primary Alternative and none of the modified routes (11M, 16M or 17Y), utilize existing transmission line right-of-way or vacant positions on existing lines.<sup>193</sup>

**(b) Factor (ii).**

The Community Values in these proceedings show that in responses to LCRA's questionnaire, paralleling other existing right-of-way, like roads and highways, was not one of the three highest ranking values.<sup>194</sup> Rather, *minimizing the visibility of the lines* (an impossible feat if roadways are paralleled) was one of the top three values.<sup>195</sup> Therefore, this factor is in tension with the community values in these proceedings.

**(c) Factor (iii).**

LCRA provided data regarding property line paralleling, including apparent property

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<sup>193</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for Route 16M). Electric facility paralleling distance does not exceed 0.3 mile on any route.

<sup>194</sup> Vol. 2, Pg. 318, Ln. 19-22.

<sup>195</sup> LCRA Ex. 1, Pg. 149; FM 1888 Ex. 1 at Exhibit 8 at 4-5; Vol. 2 Pg. 318, Ln. 7-9.

lines. LCRA also provided data regarding paralleling (and co-locating) its new power line along the natural or cultural features incident to the abandoned pipeline easement right-of-way located along Segments A1→F2→E1 of Routes 16/16M.<sup>196</sup>

Certain Intervenor groups questioned whether “apparent” property lines are a proper consideration. Notably, the PUC revised Rule 25.101(b)(3)(B)(ii)-(iii) in April of 2015.<sup>197</sup> In its Final Order, the PUC responded to comments from various condemning authorities, including LCRA. LCRA commented on use of the terms “property boundaries” versus “property lines”.<sup>198</sup> Factor (iii) now uses the term “property lines,” and Factor (ii) no longer uses “property boundaries.”<sup>199</sup> The contention that “property lines” must mean “property boundaries” must fail – had the Commission intended the paralleling of Factor (iii) to be limited to “boundaries” then it would have used that term. Those opposing the use of “apparent” property lines are insisting, however, that their “property boundaries” should be paralleled and that data about the length of paralleling should not include paralleling apparent property lines. LCRA’s use of apparent property lines, *i.e.*, property lines existing between tax parcels owned by the same landowner, is consistent with Rule 25.101(b)(3)(B)(iii). Insisting that LCRA can only report data regarding the paralleling of “property boundaries,” a term the PUC no longer uses, is not consistent with Rule 25.101(b)(3)(B)(iii). Furthermore, using apparent property lines results in an equal treatment of all landowners in the Study Area.<sup>200</sup>

Regarding “other natural and cultural features,” the rest of Factor (iii), it is LCRA’s opinion, and the FM 1888 Alliance agrees, that the abandoned pipeline easement’s right-of-way qualifies as a “natural and cultural feature.”<sup>201</sup> The Luckenbach Alliance also

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<sup>196</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for Route 16M).

<sup>197</sup> See Final Order in PUC Docket 42470.

<sup>198</sup> See *id.* at Page 5.

<sup>199</sup> See Final Order in PUC Docket 42470.

<sup>200</sup> Vol. 2, Pg. 216, Ln. 15 – Pg. 217, Ln. 3.

<sup>201</sup> Vol. 1, Pg. 113, Ln. 24 - Pg. 114, Ln. 5.

acknowledges the abandoned pipeline corridor as a valid routing corridor, giving it “more weight” than paralleling apparent property lines.<sup>202</sup> Therefore, data regarding the paralleling (and otherwise co-locating) of LCRA’s transmission line along the abandoned pipeline easement’s right-of-way is consistent with Rule 25.101(b)(3)(B)(iii).

Taken together, the data table below suggests that mile-for-mile, Routes 11/11M and 16/16M are equal or better choices than Routes 17/17Y in terms of overall paralleling.<sup>203</sup> In terms of the percentage of each Route’s overall length that meets the Rule 25.101 factors, Routes 16/16M are marginally lower because they are marginally longer; however, it should be noted that the **majority** of Routes 16/16M that **do not parallel** Rule 25.101 factors, **are located along Segments H1 and J1 where no intervention occurred.**<sup>204</sup>

Category	Route 11	Route 11M	Route 16	Route 16M	Route 17	Route 17Y
Parallel electric facility	0.0	0.0	0.1	0.1	0.3	0.2
Parallel Roadway	4.4	4.7	0.9	0.5	4.2	4.7
Parallel Abandoned Pipeline	0.0	0.0	3.3	3.3	0.0	0.0
Parallel Apparent Property Lines	4.3	4.3	4.3	4.3	3.5	3.4
Total Rule 25.101 Factors (i)-(iii)	8.7	9.0	8.6	8.2	8.0	8.3

## 7. Conformance with the Commission’s Policy of Prudent Avoidance.

P.U.C. SUBST. R. 25.101(b)(3)(B)(iv) states that several factors shall be considered in the selection of the utility’s alternative routes unless a route is agreed to by the utility and affected landowners. One of those factors is whether the route conforms with the policy of prudent avoidance.<sup>205</sup> Prudent avoidance is the “limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort.”<sup>206</sup> The policy of

<sup>202</sup> Luckenbach Alliance Ex. 2 (Direct Testimony of James Dauphinais), Pg. 14, Ln. 10-13.

<sup>203</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for Route 16M).

<sup>204</sup> LCRA Ex. 18.

<sup>205</sup> P.U.C. SUBST. R. 25.101(b)(3)(B)(iv).

<sup>206</sup> P.U.C. SUBST. R. 25.101(a)(4).

prudent avoidance is designed to protect placement of transmission lines near homes and habitable structures where people live.<sup>207</sup>

Routes 16 and 16M best comply with the policy of prudent avoidance. First, there are only two habitable structures on these Routes, and the properties on which these two habitable structures sit will not be crossed by LCRA's electric transmission line.<sup>208</sup>

Routing along 16 or 16M, instead of on Routes 17 or 17Y, which include numerous homes and habitable structures (the vast majority of whom reside on the property that would be crossed by LCRA's line) would greatly reduce human exposure to electric and magnetic fields. Routing along 16 or 16M would place the Tap Site on Tap 2, where there are no habitable structures, as opposed to Patricia Ryan's, where there are numerous homes and habitable structures, several residents, and even children.<sup>209</sup>

Achieving this relatively significant reduction in exposure to electric and magnetic fields would only require LCRA to invest a reasonable amount of additional money – namely, choosing either the third or fourth least expensive of the 23 Routes.<sup>210</sup>

## **8. Response to Texas Parks and Wildlife Department's Recommendation.**

TPWD advocates for Route 13 and against selection of Route 17.<sup>211</sup>

### **A. TPWD's Concerns Do Not Prevent Selection of Routes 16 or 16M.**

TPWD's concerns related to (1) "potential" impacts to golden-cheeked warbler ("GCW") habitat; and (2) fragmentation of lands protected by conservation easements.<sup>212</sup>

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<sup>207</sup> Vol. 3, Pg. 510, Ln. 7-11 (Testimony of Harold L. Hughes, Jr.), Pg. 14, Ln. 11-17.

<sup>208</sup> LCRA Ex. 18; LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for Route 16M).

<sup>209</sup> FM 1888, Ex. 1, Pg. 8, Ln. 6-7; FM 1888, Ex. 1, Pg. 10, Ln. 8-9; FM 1888 Ex. 1, Pg. 8, Ln. 3 – Pg. 20, Ln. 20; LCRA Ex. 13, Pg. 32 (correcting Habitable Structure Inventory on Ryan Ranch, adding HS-58, HS-59 and HS-60). The habitable structures located on Ryan's property are: HS-34, 35, 37, 38, 58, 59 and 60.

<sup>210</sup> Route 16M is the third least expensive route and 16 is the fourth least expensive route.

<sup>211</sup> TPWD Ex. 1, Pg. 11, Ln. 9. Because Route 13 is very similar to 17Y, parallels FM 1888 and ends at Tap Site 3 on Patricia Ryan's property, the arguments for Route 16/16M and against Routes 17/17Y continue to apply and will not be restated here.

<sup>212</sup> TPWD Ex. 1, Pg. 6, Ln. 18-20.



With respect to GCW habitat, LCRA gathered data from three predictive habitat models published in 2007, 2008 and 2012. LCRA then reported the acreage of different routes and segments (Tables 5-1 and 5-2, respectively) that showed right-of-way crossing areas where three of the models agreed.<sup>213</sup> While TPWD is correct that Route 13 has 0.00 acres of predictive GCW habitat where three models agree, several other Routes have 0.00 acres as well, and Route 16 (and 16M) has only 0.5 acres (the next lowest value for this category).<sup>214</sup> Table 5-2 shows that the 0.5 acres is located in Segment E1. Recalling Lindemann's testimony, who has access to Hershey Ranch, there is no evidence in the record of actual warbler presence on Hershey Ranch, or confirmed warbler habitat within Segment E1 to warrant categorically excluding 16/16M.

TPWD's second concern again puts conservation easements in the spotlight. TPWD appears to seek new routing criteria by advocating a policy that the PUC no longer cross properties that have conservation easements. Aside from this not being the forum to advance new routing criteria, TPWD's rationale does not survive scrutiny. TPWD rationale is "Lands with conservation easements protect existing wildlife habitat from future fragmentation and therefore have greater environmental integrity than lands without conservation easements."<sup>215</sup> Obviously this is a bold statement. And, TPWD did not cite any evidence to support it. Moreover, Lindemann and Almon appear to contradict this statement. Lindemann acknowledged that un-fragmented habitat can exist outside of a conservation easement.<sup>216</sup> Almon acknowledged that habitat fragmentation is a concern that is not isolated to conservation easements.<sup>217</sup> And, given that the terms of the Hershey Ranch conservation

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<sup>213</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for Route 16M).

<sup>214</sup> LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for Route 16M); Route 19 has as much as 6.2 acres of three-model overlap.

<sup>215</sup> TPWD Ex. 1, Pg. 7, Ln. 10-12.

<sup>216</sup> Vol. 3, Pg. 480, Ln. 8-10; Friends Ex. 17, Pg. 3, Ln. 25-33. For example, the record shows that Intervenor, Garret Von Netzer, received the Gillespie County Wildlife Conservationist Award for 2015, and did so without having a conservation easement on his property.

<sup>217</sup> Vol. 3, Pg. 595, Ln. 21-23.

easement also contemplate future condemnation (and thus fragmentation), it does not logically follow that this particular conservation easement was written with the intent that it could in fact “protect existing wildlife habitat from future fragmentation.”

Of course, Hershey Ranch is already fragmented by a pipeline easement right-of-way that pre-dated its conservation easement. It has not reverted to its natural state.<sup>218</sup> Indeed, given the TPWD’s direct testimony stating that the TPWD typically recommends that lines be located adjacent to “previously disturbed areas,” and “discourages fragmenting habitat,” it would seem that Routes 16/16M would be preferred by the TPWD over areas where existing fragmentation doesn’t already exist.

In sum, conservation easements are not statutory or regulatory criteria that require avoidance when routing a transmission line.<sup>219</sup> They are not a cure-all that prevents fragmentation. Fragmentation exists along Segments within Routes 16/16M that the TPWD should not have ignored simply to advance a policy change at the PUC.

**B. TPWD’s Data In Support of Route 13 is Not Persuasive.<sup>220</sup>**

TPWD Factor	FM 1888 Alliance Response
“Route 13 only crosses 0.2 mile of pasture/rangeland, with the shorts length of ROW crossing pasture/rangeland at 0.1 mile.”	This length ROW crossing pasture/rangeland is not significant. Routes 16/16M cross 0.3 miles. Of that, Segments A-1 and F2 cross 0.0 miles and Segment E1 crosses 0.1 miles.
“Route 13 crosses 8.9 miles of upland woodlands/brushlands, with the shortest length of ROW crossing upland woodlands/brushlands at 7.8 miles”	This length is not significant. Nine of the twenty-three Routes have equal or less miles crossing upland woodlands/brushlands.
“Route 13 is one of only three routes that does not cross any bottomland/riparian woodlands”	This fact is not significant. Routes in this study area have, at most, 0.4 miles of bottomland/riparian woodlands. Here, 4 routes cross 0.0 miles; 8 routes cross 0.1 miles; 3 routes cross 0.2 miles; 5 routes cross 0.3 miles; and 2 routes cross 0.4 miles.
“Route 13 does not cross any wetlands mapped in the National Wetlands Inventory.”	This fact is not significant. 17/23 routes also show 0.0 miles crossed. 6/23 routes show 0.1 miles crossed

<sup>218</sup> LCRA Ex. 13, Pg. 26, Ln. 24-27.

<sup>219</sup> LCRA Ex. 7, Pg. 24, Ln. 12-17.

<sup>220</sup> TPWD Ex. 1, Pg. 11, Ln. 16-Pg. 12, Ln. 20; LCRA Ex. 13 at Ex. RRR-4R (Revised Table 5-1 and 5-2); FM 1888 Ex. 23 (Table 5-1 for Route 16M).