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Addendum StartPage: 0

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BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF THE CITY OF SAN §
ANTONIO ACTING BY AND THROUGH §
THE CITY PUBLIC SERVICE BOARD §
(CPS ENERGY) TO AMEND ITS §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY FOR THE PROPOSED §
SCENIC LOOP 138-KV TRANSMISSION §
LINE §

OF

ADMINISTRATIVE HEARINGS

JOINT MOTION CHALLENGING ROUTE ADEQUACY AND REQUEST FOR ROUTE ADEQUACY HEARING

Anaqua Springs Homeowners' Association ("Anaqua Springs HOA") and Brad Jauer/ BVJ Properties, LLC ("Jauer") file this Joint Motion Challenging Route Adequacy and Request for Route Adequacy Hearing, and respectfully request that the Administrative Law Judges (ALJs) set a hearing on route adequacy, if necessary, and ultimately find that the City of San Antonio has failed to provide an adequate number of routes.

I. BACKGROUND AND BRIEF DESCRIPTION

On July 22, 2020, the City of San Antonio acting by and through the City Public Service Board ("CPS Energy" or "CPS") filed an application in this proceeding to amend its certificate of convenience and necessity ("CCN") in order to authorize construction of a proposed 138 kV transmission line in Bexar County, Texas (the "Application"). The routes included in the Application can be divided primarily between northern and southern routes and will be discussed as northern and southern routes to distinguish them in this motion.¹

This project is a regular CCN Application, not deemed critical, and, therefore, sufficient time exists for CPS to conduct a thorough evaluation of the study area and develop a reasonable number of geographically diverse routes to allow the ALJs and the Public Utility Commission of

¹ See Figure 4-1 of Attachment 1 of the Application, entitled "Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes," attached as Exhibit 1.

391

Texas (“Commission”) to recommend and determine the route that best meets the applicable routing criteria.

II. LEGAL STANDARD AND BURDEN OF PROOF

The Preliminary Order directs the ALJs to address whether CPS has filed an application that contains an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation.²

The legal standard for determining whether a utility has provided an adequate number of alternative routes is not a counting exercise but “whether an adequate number of reasonably differentiated routes has been proposed in the application to allow a reasoned choice of route considering all the facts and circumstances presented.”³ The Commission has recognized that there may be circumstances that justify a limited number of alternative routes. In that case an application needs to provide a reasonable explanation of the circumstances and a reasoned justification for the limited number of routes. That justification must arise from investigation and analysis, which should also be included in the application. It is within the scope of a route adequacy hearing to inquire into whether the application has sufficiently justified the limited number of routes.⁴

Although intervenors challenge the adequacy of routes in an application, it is the applicant that bears the burden of proof to show it has filed an adequate application. It is not the intervenor’s burden of proof to show that the application is inadequate.⁵

² Preliminary Order at 3.

³ *Application of Wood County Electric Cooperative, Inc for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas*, SOAH Docket No. 473-06-2341; PUC Docket No. 32070, Order on Appeal of Order No. 8 at 5 (October 31, 2006).

⁴ *Id.* at 6.

⁵ *Id.*

III. ANALYSIS

CPS has not provided an adequate number of reasonably differentiated routes. There are no routes in the northern half of the study area that do not utilize Toutant Beauregard,⁶ and every one of them utilizes Segment 54, which has one of the highest concentrations of impacted habitable structures in the study area.⁷ Moreover, most of the northern routes impact numerous other habitable structures along Toutant Beauregard and have highest concentration of impacted habitable structures in the study area.⁸ Most northern routes impact the only public elementary school identified in the study area and the middle school slated to be built next door.⁹

There are three reasons for this result, and each of them justifies the route adequacy hearing requested:

1. CPS eliminated Segment 12 because it crossed a conservation easement. And CPS did so without contacting all underlying parties to the conservation easement upon which CPS predicated the elimination of Segment 12, including its owner/grantee. As a result, all the cross-country northern-most segments connected to Segment 12,¹⁰ which avoided Toutant Beauregard, were eliminated from the Application and not replaced;
2. CPS unnecessarily restricted its substation siting boundaries to the northern portion of the overall study area,¹¹ leaving only one substation near the middle of the study area (*i.e.*, Substation 6) and none to the south from which to route alternatives that do not impact significant concentrations of habitable structures and the citizens who live in them; and
3. Due to its exclusive focus on the northern-most substation alternative for all transmission interconnection options, rather than the most suitable substation for each option, CPS did not provide a thorough analysis of the feasibility of interconnecting to the other available transmission lines in the area, particularly the La Sierra to UTSA B Tap transmission line option (“La Sierra”), which, in our expert’s estimation based on information provided in discovery, would be less expensive than all but two northern

⁶ Toutant Beauregard is a small two-lane road.

⁷ See Attachment 1, Table 4-1 Native, attached to the Application. Because this attachment is approximately 40 pages long, it is not attached as an exhibit, but it was filed as part of the Application.

⁸ See *id.* Six of the 8 segments with 10 or more impacted habitable structures are part of the northern routes.

⁹ See map reflecting McAndrew Elementary School and site for NISD’s Middle School attached as Exhibit 2, which was produced by CPS Energy in response to Anaqua Springs RFI No. 1-11 as Bates Page 000014.

¹⁰ See Figure 2-2 of the Application’s Environmental Assessment, which is attached as Exhibit 3.

¹¹ See “Scenic Loop 138-kV Transmission Line and Substation Project Environmental Field Map,” dated 5/8/2019 and produced by CPS in response to Anaqua Springs RFI No. 1-9, which is attached as Exhibit 4. The orange line denoted on this map has been recreated on Exhibit 12 to show where the substation siting boundary sits within the larger study area.

routes, and impact fewer habitable structures than the northern routes, which run along multiple residential subdivisions and the school along Toutant Beauregard.

Two maps that are attached as exhibits will assist with understanding the matters set forth in this motion.

1. The first map is attached as Exhibit 1 depicts each of the routes and substations proposed by CPS, as well as the habitable structures that are impacted.¹²
2. The second map is CPS's "Existing Area Transmission" map,¹³ attached as Exhibit 5, on which we have added elements to direct attention to:
 - Toutant Beauregard (highlighted in yellow);
 - The intersection of Toutant Beauregard and Scenic Loop (circled in red);
 - Each of the three transmission lines that CPS initially considered interconnecting to (boxed in black, with the two not chosen having dashed lines);
 - The general location of dividing line between the northern and southern routes (blue dashed line);
 - The general location of the southern extent of substation siting boundary chosen by CPS (red dashed line); and
 - The general location of proposed Substation 6 (blue dot).

In addition, the following Table of Routes lists all the routes proposed by CPS in its Application, and indicates:

- whether they are northern or southern routes;¹⁴
- whether they utilize Toutant Beauregard (*2/3 of them do*),
- whether they are adjacent to or on the school's property (*almost 1/2 of them do*), and
- whether they impact Anaqua Springs HOA and/or Mr. Jauer (*almost 3/4 of them do*).

¹² This map, entitled "Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes," is attached to the Application as Figure 4-1 of Attachment 1.

¹³ The base map for this exhibit is "Existing Area Transmission Map" attached to the Application as Attachment 4.

¹⁴ For purposes of this pleading, the routes are designated as northern or southern based on whether the point at which they connect to the transmission line in the west is the northern three or the southern three connection points.

TABLE OF ROUTES

Route	Northern/ Southern	Utilizes Toutant Beauregard	Adjacent to or on NISD property	Impacts Anaqua Springs HOA	Impacts Jauer
A	Northern	Yes	No	No	No
B	Northern	Yes	Yes	Yes	No
C	Northern	Yes	Yes (2 sides)	Yes	Yes
D	Northern	Yes	Yes	Yes	Yes
E	Northern	Yes	Yes (at one corner)	No	No
F	Southern	No	No	Yes	No
G	Northern	Yes	Yes	Yes	No
H	Northern	Yes	No	No	No
I	Northern	Yes	Yes	Yes	Yes
J	Northern	Yes	Yes	Yes	Yes
K	Southern	Yes	No	Yes	No
L	Southern	Yes	No	Yes	No
M	Northern	Yes	Yes	Yes	Yes
N	Southern	No	No	Yes	No
O	Southern	No	No	No	No
P	Southern	No	No	Yes	No
Q	Southern	No	No	Yes	No
R	Southern	No	No	Yes	No
S	Southern	No	No	No	No
T	Northern	Yes	Yes	Yes	Yes
U	Southern	No	No	Yes	No
V	Southern	No	No	No	No
W	Southern	No	No	No	No
X	Northern	Yes	Yes	No	No
Y	Northern	Yes	Yes	Yes	Yes
Z	Northern	Yes	Yes	Yes	Yes
AA	Northern	Yes	Yes	Yes	Yes
BB	Southern	Yes	No	Yes	No
CC	Southern	Yes	No	Yes	Yes

A. CPS's Elimination of Segment 12 Funneled All Northern Routes to Toutant Beauregard

Segment 12 was one of the segments proposed at CPS's open house before the Application was filed.¹⁵ It extended west from Substation 1 (which was then located north of the as-filed Substation 1) to Segment 23 (which is now Segment 31) and provided an alternative corridor for the northern routes that avoided the dense concentration of habitable structures along Toutant Beauregard. However, CPS withdrew Segment 12 prior to filing the Application and elected not to consider any alternatives that would avoid Toutant Beauregard.¹⁶ As a result, every northern route utilizes Toutant Beauregard; there is no other northern alternative.¹⁷

CPS withdrew Segment 12 because, according to CPS, the United States has a third-party beneficiary interest in a conservation easement granted to the Nature Conservancy over the property (the "Conservation Easement"), and CPS was concerned that it would be unable to condemn the property in the event a route including Segment 12 were chosen. CPS based this refusal on a letter received from the military regarding the easement.¹⁸

Anaqua Springs HOA and Mr. Jauer do not dispute that CPS lacks the power to condemn federal property. In at least one other CCN case, the Commission has been required to route a line underground at high cost to accommodate federal demands.¹⁹ However, this case does not present the same situation. Regardless of what the military wrote in a hearsay letter to CPS, and however

¹⁵ See Figure 2-2 of the Application's Environmental Assessment, which is attached as Exhibit 3

¹⁶ See CPS Energy's Response Anaqua Springs RFI Nos. 1-5 & 1-6 attached as Exhibit 6.

¹⁷ CPS has noted in discovery responses that it has included southern routes that do not use Toutant Beauregard, which is true. However, those routes are more expensive than the northern routes.

¹⁸ Direct Testimony of Lisa Meaux at 10 ("For example, Segment 12 was removed from further consideration upon receipt of a letter from the Department of the Airforce and the Army dated March 26, 2020.") The letter is attached as Exhibit 7.

¹⁹ *Application of Electric Transmission Texas, LLC to Amend its Certificates of Convenience and Necessity for the Proposed Barney Davis to Naval Base 138-kV Single-Circuit Transmission Line in Nueces County*, PUC Docket No. 42467, SOAH Docket No. 473-14-4431, Order at 2, 8-10, 13-14 (May 28, 2015).

CPS interprets the letter, the easement document itself is what governs the third-party rights of the federal government, if any, over the property over which Segment 12 was designed to run.²⁰

Although the Commission is not the proper forum for a determination of the rights granted in an easement, whether CPS properly followed the prescribed process and investigated the facts and circumstances surrounding the available routing options, and then made any necessary adjustments is properly adjudicated in a route adequacy hearing. As outlined above, the Commission has recognized that there may be circumstances justifying a limited number of alternative routes. However, if that is the case, there must be a reasonable explanation of those circumstances, and a reasoned justification that arises from investigation and analysis and following prescribed procedures.

In this case, CPS Energy does not dispute that it withdrew Segment 12 after receiving a letter from the Air Force and the Army.²¹ That letter notes that the proposed right-of-way would be inconsistent with the conservation easement and would negatively impact the ongoing military missions at Camp Bullis.²² It then goes on to note that if the conservation easement were disturbed, another consultation under Section 7 of the Endangered Species Act would need to occur so that Camp Bullis could obtain replacement golden-cheeked warbler mitigation credits. The letter notes that the easement only allows utilities to be installed for existing houses and that the fee simple owners and the Nature Conservancy “are resistant”²³ to a utility right-of-way.²⁴ What the letter

²⁰ Based on conversations with counsel for CPS Energy, absent the potential interest of the federal government in the conservation easement, CPS Energy could have condemned the property to route a transmission line.

²¹ Exhibit 7.

²² *Id.* at 1.

²³ There are multiple evidentiary issues related to the letter. First, letter itself is hearsay and, because it contains statements attributed to other parties (Pond Foundation and Nature Conservancy), it contains hearsay within hearsay. Secondly, the letter does not govern the purported easement over the area in question – the easement document itself does. Therefore, the letter is a violation of the best evidence rule. And finally, should the letter be offered as evidence it would be subject to an optional completeness objection. The letter references the easement document and states that the easement is attached to the letter, but the easement is not included as part of the letter in the Application. Given these evidentiary infirmities and the fact that the letter is neither from the easement holder nor the landowner, without further investigation, CPS should not have relied on it to justify the elimination of Segment 12 and the limitation of routes resulting from the elimination of that segment.

²⁴ Exhibit 7 at 2.

does not state is that the Air Force or Army refuses to allow the easement, or that the Air Force or the Army even has the right to refuse the easement. Nevertheless, CPS withdrew Segment 12 and thereby removed all potential northern corridors except those that run along Toutant Beauregard, thus limiting the northern routes to one corridor.

CPS withdrew Segment 12 without conducting a full investigation as to whether Segment 12 remained a viable option. CPS engaged in no discussions with the owner of the property associated with the Conservation Easement,²⁵ and there is no indication that CPS has even discussed the matter with the property owner. Moreover, CPS has not even asked the Nature Conservancy if it would approve an easement across the Conservation Easement,²⁶ even though CPS Energy has been aware of the Conservation Easement and the potential federal interest in it since the summer of 2019.²⁷

In transmission line routing cases, the applicant is required to show that it has proposed an adequate number of reasonably differentiated routes in its application for the ALJ and the Commission to conduct a proper evaluation. In considering route adequacy, consideration may also be given to the facts and circumstances specific to the geographic area under consideration, and to any analysis and reasoned justification presented for a limited number of alternative routes. In this case, CPS has removed Segment 12, without providing an alternative to Toutant Beauregard for routing in the north, – and thus eliminated routes using Segment 12 from consideration because CPS is concerned that acquisition of the easement could be challenging or not viable. However, if

²⁵ See CPS Energy's Response Anaqua Springs RFI No. 1-19 attached as Exhibit 8.

²⁶ See CPS Energy's Response Anaqua Springs RFI No. 1-20 attached as Exhibit 9.

²⁷ See CPS Energy's Response Anaqua Springs RFI No. 1-4 attached as Exhibit 10. The acquisition of rights-of-way for transmission lines is governed by Chapter 21 of the Texas Property Code, which prescribes an orderly and efficient process for the acquisition of property for a public purpose. Under that process, prior to proceeding with condemnation, an entity with eminent domain authority must make a bona fide offer to acquire the property from the property owner voluntarily. This condemnation process, after the route is selected also indicates that the condemner needs to make an offer to acquire the property.

CPS has not consulted or engaged in conversations with either the landowner or the grantee of the Conservation Easement, CPS has not properly justified that there are limited options.

Prior to deciding to withdraw Segment 12, in an effort to either investigate whether its options to the north were limited or to determine whether it could condemn the area needed for Segment 12, CPS could have:

- followed up with the Air Force and Army to determine whether they would officially oppose Segment 12 if it were left as a possible alternative route;
- contacted the Nature Conservancy regarding the easement and the Nature Conservancy's stance on it;
- attempted to locate additional golden-cheeked warbler habitat available for mitigation credits;
- met with or contacted landowners along Toutant Beauregard to seek input on alternative routes and informed them of the withdrawal of Segment 12 prior to the filing of the Application.

In the alternative, if CPS Energy did not want to undertake such an investigation and analysis, CPS Energy could have looked at other possible substation locations to allow northern routes along a second corridor. Once Segment 12 was withdrawn, CPS Energy was faced with having fewer routes and a substation located in an unusable location. Substation 1 was then moved to a location farther to the south, but no additional proposed segments were added to the Application. Because CPS Energy did not investigate options for a second northern corridor, did not attempt to locate golden-cheeked warbler habitat available for mitigation credits, did not contact the Nature Conservancy about the easement, and did not contact landowners along Toutant Beauregard to seek input on alternative routes, they have failed to provide an adequate justification for the limited number of routes in the Application, the vast majority of which follow Toutant Beauregard.

In the absence of CPS's efforts, Anaqua Springs Ranch homeowners²⁸ undertook, on their own, to contact the military to discuss the possibility of an exchange of golden-cheeked warbler

²⁸ This group is distinguished from the Anaqua Springs HOA to indicate that individuals took these actions on their own, without coordination from the HOA or the HOA attorneys.

habitat so that Segment 12 could be reinstated in the Application and provide additional routing options further to the north and away from the concentration of habitable structures along Toutant Beauregard. In fact, the Anaqua Springs HOA informed the military that it is willing to donate more acreage than would be taken by the transmission line and would look into available golden-cheeked warbler habitat that could be purchased to offset any lost golden-cheeked warbler credits. The response from the Air Force was that it could not act unless the Pond Foundation and the Nature Conservancy were willing to release the easement.²⁹

B. CPS's Substation Siting Boundary Created an Imbalanced Preference to the North and Funneled Routes to Toutant Beauregard and Disregarded Potentially Less-Costly Southern Routes

It is clear from the Application that CPS would prefer that its “new Scenic Loop Substation” be located “in the area of the intersection of Scenic Loop Road and Toutant Beauregard Road.”³⁰ However, CPS configured the boundaries of its substation siting area in such a way that ensures the least costly options utilize Toutant Beauregard,³¹ which happens to impact the highest concentration of habitable structures of any corridor used for the alternative routes proposed in the Application.³² Rather than *center* the substation siting area on the intersection of Scenic Loop and Toutant Beauregard, CPS shifted it to the north, leaving 1/3 less area to the south for a substation, and farther away from the east/west corridors through the middle and south of the routing study area, leaving Toutant Beauregard standing alone.³³

²⁹ Emails between James Cannizzo and Steve Cichowski, President of Anaqua Springs HOA, Exhibit 11. Understandably, these emails are hearsay as is the letter from the military. However, these emails show that the homeowners in Anaqua Springs were able to have ongoing discussions with the military.

³⁰ Application, “General Description of Project,” Page 3.

³¹ Each of the five least expensive routes utilize Toutant Beauregard. *See* Table 2, “Transmission and Substation Facilities Total Estimated Costs (Sorted Least to Most Expensive),” Attachment 3 of the Application. *See also* Exhibit 12, showing substation siting boundaries.

³² *See* Exhibit 1.

³³ *See* the “Environmental Field Maps” produced by CPS in response to Anaqua Springs RFI 1-9, attached as Exhibit 4, which delineate the “substation siting boundary” with “an orange line.” These maps were used to generate the orange line on Exhibit 12, which shows the substation siting boundary drawn on the study area.

George Tamez, CPS's Director of Grid Transformation and Planning, indicates in his direct testimony that moving a substation in any direction from the intersection of Scenic Loop and Toutant Beauregard "will require significant infrastructure to be installed to the area at significant cost."³⁴ This illustrates the inherent imbalance CPS imposed on Toutant Beauregard by shifting the center of the substation siting area to the north. By truncating the southern extent of the substation siting area, CPS limited viable, cost-effective, and geographically diverse alternatives that warrant serious consideration.

C. CPS Failed to Consider the Cost of Connecting Substation 6 (or Other Substations Farther South) to the La Sierra to UTSA B Tap 138 kV Transmission Line.

The transmission interconnection analysis conducted by CPS's consultants and attached to the Application as Attachment 13³⁵ appears to conclude that an interconnection with the Ranchtown to Menger Creek 138 kV transmission line ("Ranchtown") was the least costly³⁶ option and the "most viable and less impacting to the community."³⁷ In addition, Mr. Tamez indicates in his direct testimony that the new transmission line needed to connect CPS's new substation to the Ranchtown transmission line was of a "shorter distance and lower estimated cost" than a connection to the other transmission lines,³⁸ which included the La Sierra transmission line to the southeast.³⁹

However, CPS did not consider connecting the La Sierra transmission line to Substation 6, and based on the information CPS has provided up to this point in the discovery process, it could be the least expensive and the least impactful option.

³⁴ See "Direct Testimony of George J. Tamez, P.E. #90313 on behalf of Applicant CPS Energy," page 9, line 30, to page 10, line 1

³⁵ "Scenic Loop Substation Analysis Report," Burns & McDonnell Engineering Company, Inc., dated 7/14/2020, Attachment 13 to the Application.

³⁶ See *Id.* at page 31, Table 19 "Transmission options cost estimates."

³⁷ See *Id.* at page 36.

³⁸ See "Direct Testimony of George J. Tamez, P.E. #90313 on behalf of Applicant CPS Energy," page 9, lines 11-14.

³⁹ See Exhibit 5.

In their table of “transmission options cost estimates,”⁴⁰ CPS’s experts estimated the cost of connecting CPS’s new substation to the Ranchtown transmission line (Option 1) to be \$46.3 million, and the cost to connect to the La Sierra transmission (Option 2) to be \$55.3 million, with both options roughly equivalent in voltage performance. They based their calculations on a straight-line distance multiplied by a routing inefficiency factor of 1.3 and an estimated construction cost of \$6.9 million per mile.⁴¹ Based on the “pin” denoting the location of “Scenic Loop (CPS)” on the map accompanying the discussion of their analysis⁴² and the location of “Scenic Loop” on the map entitled “Transmission Options considered for analysis,”⁴³ it appears CPS’s consultants measured the straight-line distance to the La Sierra transmission line from Substation 1,⁴⁴ which is the northern-most substation and correspondingly provides the longest length and highest interconnection estimate from La Sierra, further skewing the viability of this option. As sites were added to the south of Substation 1, and Segment 12 was eliminated, there does not appear to have been any effort by CPS to revisit the La Sierra interconnection option.

If Substation Site 6 had been considered, rather than the most northern substation in the study area, the cost estimate for interconnecting with the La Sierra transmission line would have been *significantly lower* than the estimated cost of connecting to the Ranchtown transmission line. Based on CPS’s response to Anaqua Springs RFI 1-11, the straight-line distance from Substation Site 6 to the La Sierra to UTSA B Tap is 4.6 miles. Applying the inefficiency factor of 1.3, this equates to a distance of 5.98 miles, and multiplying that distance by \$6.9 million per mile results in an estimated cost of \$41.262 million -- which is *\$5 million less expensive* than the \$46.3 million

⁴⁰ See Scenic Loop Substation Analysis Report at 31, Table 19 “Transmission options cost estimates.”

⁴¹ See “Scenic Loop Substation Analysis Report,” pages 30 & 31.

⁴² See *Id.* at page 30, Figure 16, entitled “Transmission lines in the area surrounding the proposed Scenic Loop Substation.”

⁴³ See *Id.* at page 31, Figure 17.

⁴⁴ See Exhibit 1.

estimated to connect to the Ranchtown transmission line, which served as the basis for CPS's rejection of La Sierra in the first place.⁴⁵

Notably, there is a viable routing corridor from Substation 6 south on Scenic Loop to Babcock Road, then along Babcock Road to the point where it intersects the La Sierra transmission line. And, adding one or more connections to the La Sierra transmission line provides much needed geographical diversity, given that the current alternatives are limited to an interconnection with Ranchtown.⁴⁶ Given all of the factors set forth above, it is imperative that serious consideration be given to offering one or more connections to the La Sierra transmission line and possibly the addition of one or more substations further to the south.

D. CPS's Failure to Provide an Adequate Number of Reasonably Differentiated Routes Results in Undue Impacts on the Neighborhood School, Anaqua Springs HOA, and Jauer.

1. Dr. Sara McAndrew Elementary School

All but two of the northern routes impact Northside ISD's school property in the northwest portion of the study area – *that is 13 of the 15 northern routes.*⁴⁷ McAndrew Elementary School is located on the property and is designated as habitable structure number 17 on Exhibit 1. Just to the north of the elementary school, Northside ISD has plans to build a new middle school to further accommodate the area's growth. The Northside ISD property is the hub of youth and family activity within the community, and it is virtually surrounded by Segments 35, 42, 48, 41, and 34. The less expensive routes may run through the north, but all but two impact the school and its activities, and they all run down the Toutant Beauregard corridor and impact the greatest concentration of habitable structures to get there.

⁴⁵ If a route connecting Substation 6 to the La Sierra transmission could be completed for \$41.262 million, it would be the 3rd lowest cost alternative of all 29 Routes evaluated in the Application. See Table 2, "Transmission and Substation Facilities Total Estimated Costs (Sorted Least to Most Expensive)," Attachment 3 of the Application.

⁴⁶ Currently, the issue of geographically diverse routes is addressed in the direct testimony of George Tamez on page 10, lines 20, 21, but it is limited to all interconnecting with the Ranchtown transmission line.

⁴⁷ See Table of Routes, *infra*.

2. Anaqua Springs Subdivision

The Anaqua Springs Subdivision is impacted by all but 8 of the proposed routes, both northern and southern. Exhibit 1 shows how the northern routes utilizing Sections 36 or 42 impact the Anaqua Springs HOA-owned properties, as well as subdivision residents. Sections 38, 39, and 43 all impact the southern boundary of Anaqua Springs and the residents of those properties. Of the 15 southern routes, only 4 do not impact the Anaqua Springs subdivision. This impact could have been reduced, as discussed above, if there were any northern routes that did not run along Toutant Beauregard. In addition, if Segment 26 had retained its original course of going straight west to intersect with Segment 39, instead of turning north to Segment 38 as filed, potential routes could have turned south along Segment 39 toward undeveloped areas. However, because Segment 26 was redirected to turn north, there is no longer an option to run south and away from Anaqua Springs. The Environmental Assessment (“EA”), without elaborating, indicates that there were engineering constraints that caused them to move Segment 26, but the constraints are not enumerated. At the technical conference held on November 12, 2020, CPS Energy indicated that there may have been some issues with terrain in that area but also indicated that there may now be a road in that location that has cut through the terrain, which could provide compatible right-of-way for a segment to follow. Again, that is another routing option that it appears CPS did not investigate.

3. Brad Jauer/BVJ Properties, LLC

Brad Jauer and BVJ Properties, LLC own property adjacent to the Anaqua Springs Ranch subdivision to the east, and Mr. Jauer’s home is located on the property. The property owned by Mr. Jauer and BVJ Properties, LLC abuts Toutant Beauregard and is impacted by Segment 36 to the north and Segment 32 to the east. Notably, Segment 32 not only runs across a significant

extent of the Jauer/BVJ property, it also has the highest count of habitable structures of all the proposed segments – 24, which is 20% more than even the second highest.⁴⁸

IV. CONCLUSION

CPS has failed to provide a reasonable number of adequately differentiated routes in its Application, and because this is a standard, non-critical CCN Application, there is sufficient time for CPS to re-evaluate its options and develop additional routes.

All the northern routes utilize Toutant Beaugard, where there is the highest concentration of impacted habitable structures and the community's local elementary school and soon-to-be middle school. At one point, other more northern options existed that did not impact the Toutant Beaugard corridor; however, CPS summarily eliminated them when it eliminated Segment 12 without conducting a full and proper exploration of its viability and without considering any other options thereafter.

CPS also structured its substation siting boundaries so as to limit the extent of possible substations to the south, even those that might be equidistant to the focal point intersection of Toutant Beaugard and Scenic Loop. By doing this, CPS virtually ensured that Toutant Beaugard would be the more direct and generally less expensive corridor.

And finally, CPS dismissed consideration of routes that intersect with the La Sierra transmission line (i.e., one of the two other available transmission lines cited in the EA) based upon its straight-line distance from the *northern-most* substation under consideration. Had this not been done, and had a substation farther south, like Substation 6, been used for measurement to the La Sierra transmission line, the result would have been different, more geographically differentiated routes would be available, and their cost would likely be competitive with the northern routes.

⁴⁸ See Attachment 1, Table 4-1 Native, attached to the Application.

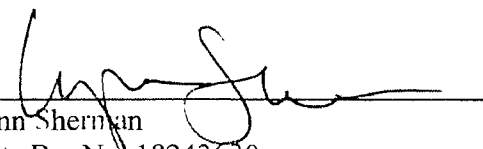
For these reasons and the other cited herein, the parties to this Joint Motion respectfully request that the ALJs hold a route adequacy hearing, if necessary, and order CPS to develop additional routes in its Application.

Respectfully submitted,

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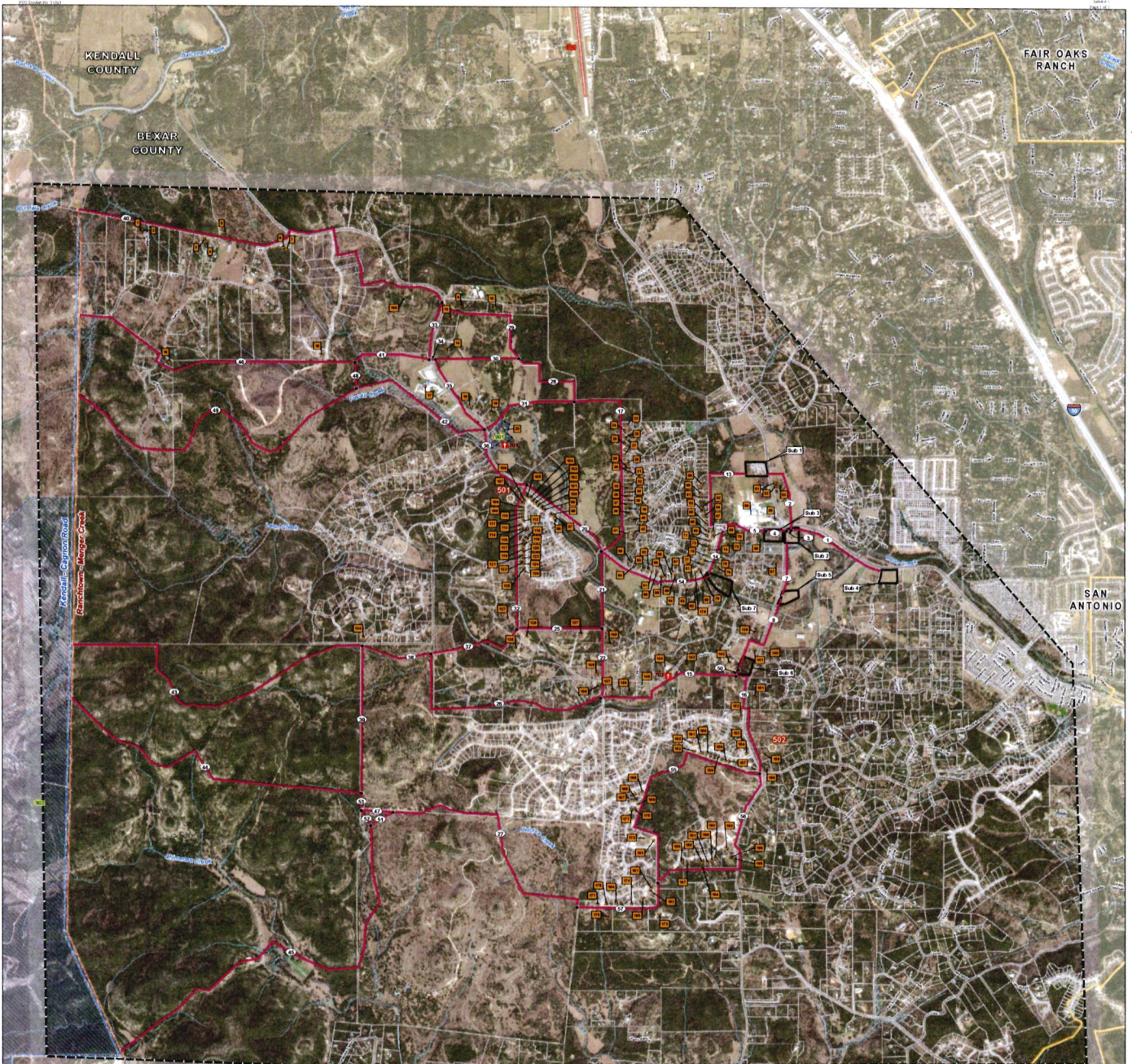
**ATTORNEY FOR BRAD JAUER &
BVJ PROPERTIES, L.L.C.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been filed with the Commission and served on all other parties via the PUC Interchange on this the 24th day of November 2020, pursuant to SOAH Order No. 2 issued in this docket.



Wendy K. L. Harvel



Primary Alternative Routes	Alternative Substation and Route Composition
A	Sub 1 - 13-14-54-17-28-29-40
B	Sub 1 - 13-14-54-17-31-42-48-46
C	Sub 1 - 2-3-4-5-14-54-20-36-35-34-41-46
D	Sub 2 - 4-5-14-54-20-36-42-48-46
E	Sub 2 - 4-5-14-54-17-28-30-34-33-40
F	Sub 2 - 7-8-50-15-26-38-43
G	Sub 3 - 5-14-54-17-31-42-49
H	Sub 3 - 5-14-54-17-28-29-40
I	Sub 3 - 5-14-54-20-36-42-48-46
J	Sub 3 - 5-14-54-20-36-42-49
K	Sub 3 - 5-14-54-21-25-37-38-43
L	Sub 3 - 5-14-54-21-25-37-38-39-53-52-45
M	Sub 4 - 1-3-4-5-14-54-20-36-42-48-46
N	Sub 5 - 8-50-15-26-38-43
O	Sub 5 - 8-50-16-56-57-27-47-53-44
P	Sub 6 - 50-15-22-25-37-38-43
Q	Sub 6 - 50-15-26-38-39-44
R	Sub 6 - 50-15-26-38-43
S	Sub 6 - 50-16-56-57-27-51-45
T	Sub 6 - 50-15-22-25-32-36-42-48-46
U	Sub 6 - 50-15-26-38-39-53-52-45
V	Sub 6 - 50-16-55-57-27-47-53-44
W	Sub 6 - 50-16-56-57-27-47-53-44
X	Sub 7 - 54-17-28-30-34-41-46
Y	Sub 7 - 54-20-36-35-34-33-40
Z	Sub 7 - 54-20-36-42-48-46
AA	Sub 7 - 54-20-36-42-49
BB	Sub 7 - 54-21-25-37-38-43
CC	Sub 7 - 54-20-32-37-38-43

Legend

Project Components

- Study Area Boundary
- Primary Alternative Segment, Node and Label
- Proposed Substation Site

Land Use Features

- Habitable Structure
- Communication Tower (FCC)
- Cemetery (USGS)
- National Register of Historic Places (THC)

Existing Utility Features

- 138 kV Transmission Line
- 345 kV Transmission Line

Transportation Features

- Interstate Highway
- State Highway
- Local Road
- Airport Runway

Hydrologic Features

- River / Stream (NHD)
- Floodplain (FEMA)

Administrative Features

- City Limits
- Parcel Boundary
- County Boundary

1 inch = 1,000 feet

Project Location

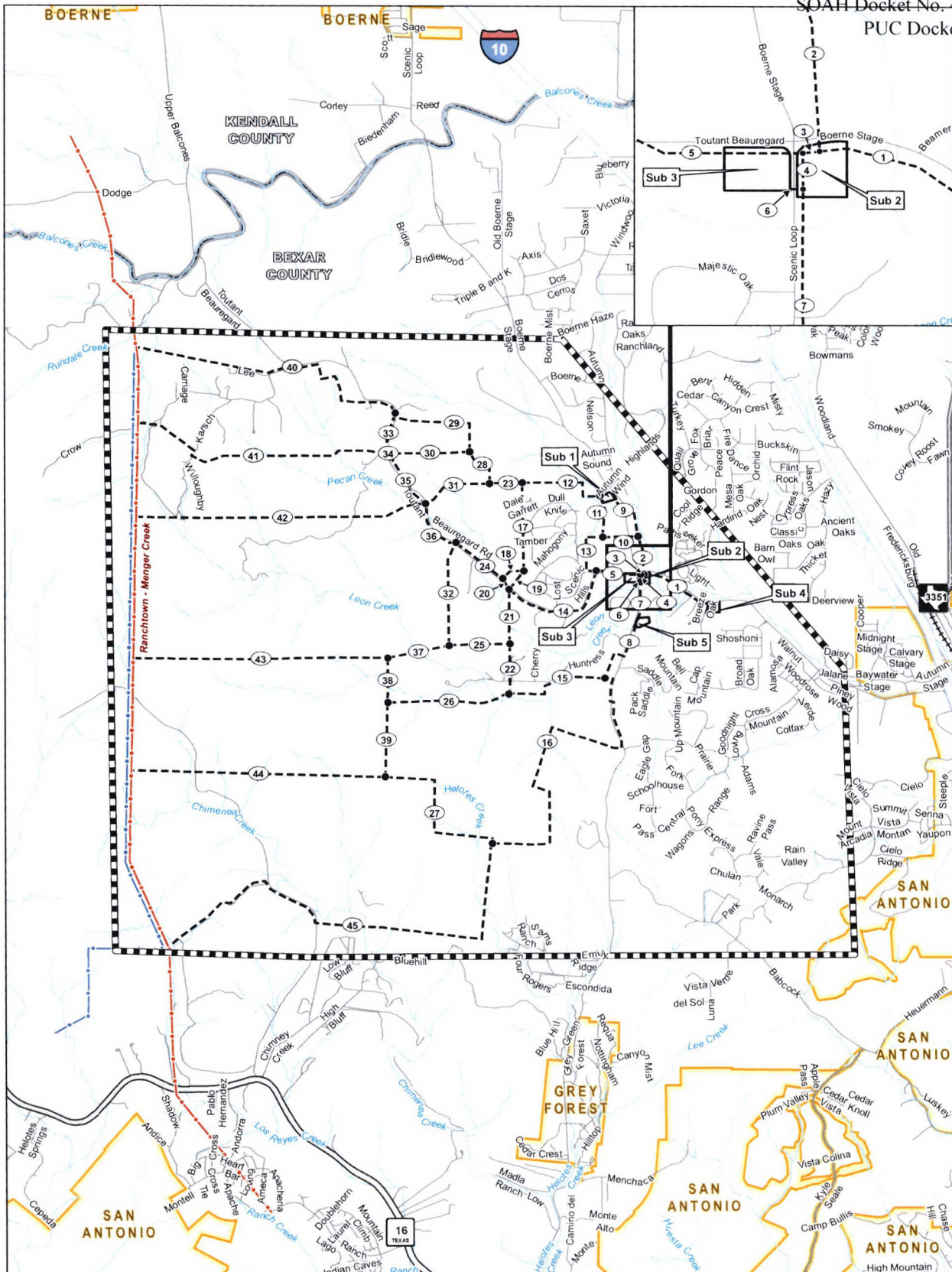
SCENIC LOOP 138 kV TRANSMISSION LINE AND SUBSTATION PROJECT

Figure 4-1
Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes

0 1,000 2,000 3,000 4,000 Feet

POWER
PLANNING, INC.
DATE: 7/12/2016





Project Components	Transportation Features	Existing Utility Features	Project Location	SCENIC LOOP 138 kV TRANSMISSION LINE AND SUBSTATION PROJECT
<ul style="list-style-type: none"> Study Area Boundary Preliminary Segment, Node, & Label Preliminary Substation Site 	<ul style="list-style-type: none"> Interstate Highway State Highway FM Road Local Road Railroad 	<ul style="list-style-type: none"> 138 kV Transmission Line 345 kV Transmission Line 		

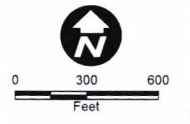


SCENIC LOOP 138-kV
 TRANSMISSION LINE
 AND SUBSTATION
 PROJECT
**ENVIRONMENTAL
 FIELD MAP**

- Map Grid
- Water Well
- Study Area Boundary
- Substation Siting Boundary
- Transportation**
- Local Road
- Stream
- Wetland
- 100 Year Floodplain
- National Register of Historic Places
- Known Federally Listed Threatened or Endangered Wildlife Species Habitat
- Parcel Boundary

DRAFT

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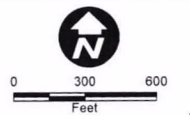


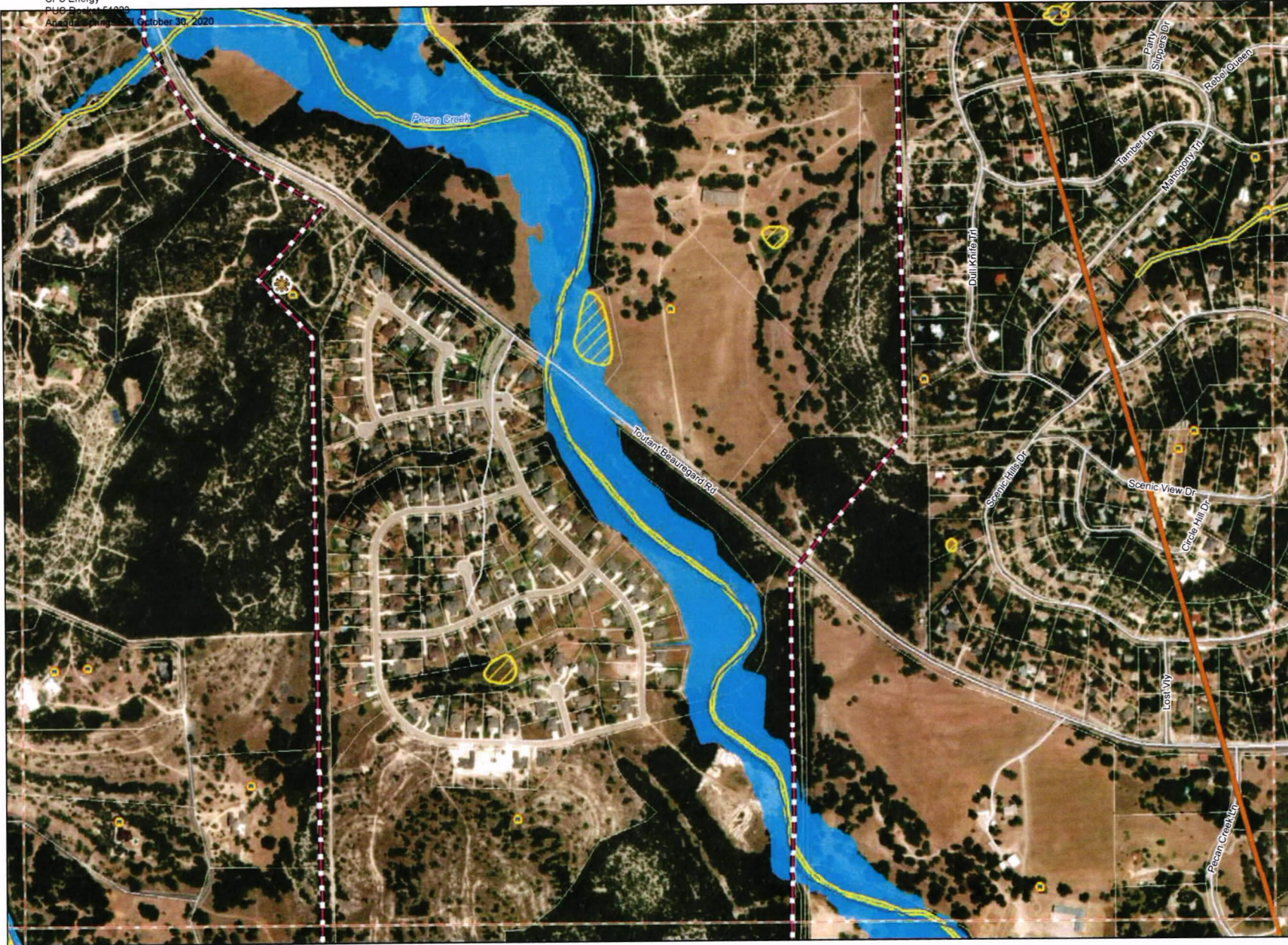
SCENIC LOOP, 138-kV
 TRANSMISSION LINE
 AND SUBSTATION
 PROJECT
 ENVIRONMENTAL
 FIELD MAP



- Map Grid
- Cemetery
- Water Well
- Segments
- Study Area Boundary
- Substation Siting Boundary
- Transportation
 - Local Road
 - Stream
 - Wetland
 - 100 Year Floodplain
 - National Register of Historic Places
 - Known Federally Listed Threatened or Endangered Wildlife Species Habitat
 - Parcel Boundary

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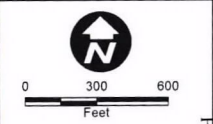


**SCENIC LOOP, 138-kV
 TRANSMISSION LINE
 AND SUBSTATION
 PROJECT
 ENVIRONMENTAL
 FIELD MAP**

- Map Grid
- Communication Tower
- Water Well
- Segments
- Study Area Boundary
- Substation Siting Boundary
- Transportation**
 - Local Road
 - Stream
 - Wetland
 - 100 Year Floodplain
 - National Register of Historic Places
 - Parcel Boundary

DRAFT

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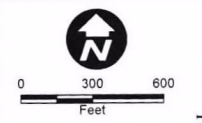


SCENIC LOOP, 138-kV
 TRANSMISSION LINE
 AND SUBSTATION
 PROJECT
 ENVIRONMENTAL
 FIELD MAP

- Map Grid
- School
- Official Texas Historical Marker
- Water Well
- Segments
- Proposed Substation Site
- Proposed Substation Site Transparency
- Study Area Boundary
- Substation Siting Boundary
- Transportation
 - Local Road
 - Stream
 - Wetland
 - 100 Year Floodplain
 - Known Federally Listed Threatened or Endangered Wildlife Species Habitat
 - Parcel Boundary

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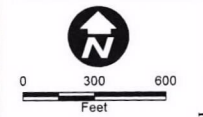
SCENIC LOOP, 138-kV
 TRANSMISSION LINE
 AND SUBSTATION
 PROJECT
 ENVIRONMENTAL
 FIELD MAP



- Map Grid
- Water Well
- Segments
- Study Area Boundary
- Substation Siting Boundary
- Transportation**
- Local Road
- Stream
- Wetland
- 100 Year Floodplain
- Archeological Site
- Known Federally Listed Threatened or Endangered Wildlife Species Habitat
- Parcel Boundary

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SCENIC LOOP, 138-kV
 TRANSMISSION LINE
 AND SUBSTATION
 PROJECT
 ENVIRONMENTAL
 FIELD MAP

- Map Grid
- Communication Tower
- Water Well
- Segments
- Study Area Boundary
- Substation Siting Boundary
- Transportation**
- Local Road
- Stream
- Wetland
- 100 Year Floodplain
- Known Federally Listed Threatened or Endangered Wildlife Species Habitat
- Parcel Boundary

DRAFT

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000006 cps
 Date: 5/8/2019

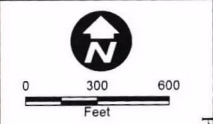


SCENIC LOOP, 138-kV TRANSMISSION LINE AND SUBSTATION PROJECT ENVIRONMENTAL FIELD MAP

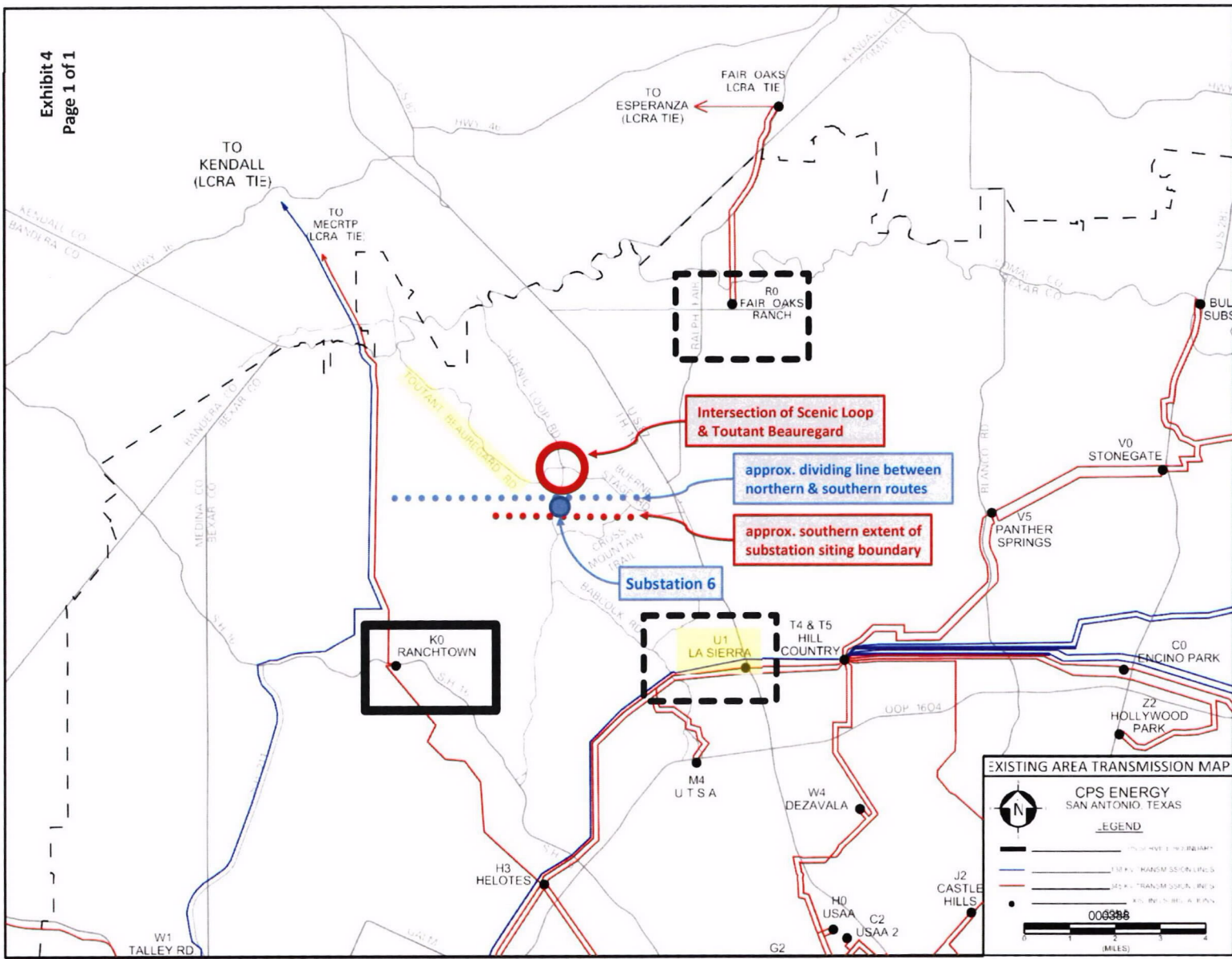
- Map Grid
- Water Well
- Study Area Boundary
- Substation Siting
- Boundary
- Transportation**
- Local Road
- Stream
- Wetland
- 100 Year Floodplain
- Known Federally Listed Threatened or Endangered Wildlife Species Habitat
- Parcel Boundary

DRAFT

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25	26	27	28



000007 cps Date: 5/8/2019



**SOAH DOCKET NO. 473-21-0247
PUC DOCKET NO. 51023**

APPLICATION OF THE CITY OF SAN ANTONIO TO AMEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE SCENIC LOOP 138-KV TRANSMISSION LINE IN BEXAR COUNTY §
§
§
§
§
§
BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

CPS ENERGY'S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS' ASSOCIATION FIRST REQUEST FOR INFORMATION

Anaqua Springs Question No. 1-5:

Please provide all documents related to alternatives considered to Segment 12 after it was eliminated from consideration as a segment in the Application.

Response:

There are no documents responsive to this request. Following the decision to remove Segment 12 from consideration due to the interest of the U.S. Army in the Conservation Easement, CPS Energy, in consultation with experts at POWER Engineers, Inc., determined that the remaining segments could be combined to delineate an adequate number of reasonably differentiated alternative routes to conduct a proper evaluation. See discussion on page 6-7 of the Environmental Assessment included as Attachment 1 to the Application.

Prepared By:	Adam R. Marin	Title:	Regulatory Case Manager
	Lisa B. Meaux	Title:	Project Manager, POWER Engineers, Inc.
Sponsored By:	Adam R. Marin	Title:	Regulatory Case Manager
	Lisa B. Meaux	Title:	Project Manager, POWER Engineers, Inc.



**DEPARTMENT OF THE AIR FORCE
502D AIR BASE WING
JOINT BASE SAN ANTONIO**



26 March 2020

Mr. Richard Trevino, USAF
Base Civil Engineer
502d Civil Engineer Group
2428 Stanley Rd
JBSA-Fort Sam Houston TX 78234

COL Isaac C. Manigault
Commander, Army Environmental Command
2455 Reynolds Road
Fort Sam Houston, Texas 78234-7664

Kirk D. Rasmussen
Jackson Walker LLP
100 Congress Ave #1100
Austin, Texas 78701

Re: Request for Right of Way to CPS for a transmission line through Maverick Ranch

Dear Mr. Rasmussen,

We write jointly regarding your client's, City Public Service (CPS), request for a Right of Way (ROW) for an electric transmission line and substation through a tract on Maverick Ranch located in northwest Bexar County. For the reasons set forth below, it is the Air Force's and Army's position that the proposed ROW would be inconsistent with the conservation easement over the Maverick Ranch that the Army's conservation partner, The Nature Conservancy (TNC), acquired in 2010 (see enclosed conservation easement). In addition, a ROW for an electric transmission line would negatively impact the ongoing military missions at Camp Bullis.

By way of background, the Maverick Ranch perpetual conservation easement was one of six endangered species habitat exchanges executed during 2009 – 2013 between Camp Bullis and TNC with assistance from the City of San Antonio, Bexar County, and Texas Parks and Wildlife Department (TPWD). The specific tract at issue is made up of very dense old growth cedar and oak and contains a high percentage of Golden-cheeked Warbler (GCW) habitat (see enclosed 2019 Endangered Species Presence-Absence Survey of the subject property). This effort was vital to relieving endangered species habitat restrictions on more than 2,500 acres of GCW habitat on Camp Bullis.

In return for conserving land off of the installation in perpetuity, US Fish and Wildlife Service (USFWS) authorized Camp Bullis to clear most of the cedar on 2,500 acres on Camp Bullis. This exchange made it much more feasible to accommodate the growth related to the

Base Realignment and Closure (BRAC) recommendations of 2005, wherein Joint Base San Antonio stood up, and 12,000 additional personnel were added to Fort Sam Houston and Camp Bullis. This made Fort Sam Houston the home of all Department of Defense medic training, including 5,000 additional medical trainees. The field training at Camp Bullis is essential to the long-term viability of Fort Sam Houston and is home to a multitude of critical training, including security forces trainees from Joint Base San Antonio-Lackland.

If the TNC in perpetuity conservation easements were to be disturbed, USFWS would require another consultation under Section 7 of the Endangered Species Act and Camp Bullis would need to obtain replacement GCW mitigation credits. Finally, regardless of any willingness of Camp Bullis (US Air Force or Army) to entertain additional endangered species replacement habitat, Section 4 of the conservation easement only allows utilities to be installed for existing houses already on the tracts.

We have also been communication with the owners of the underlying fee title of the Maverick Ranch as well as TNC, and both are resistant to a utility ROW over the Maverick Ranch.

Sincerely

Sincerely

RICHARD TREVINO JR., GS-15
Director, 502d Civil Engineer Group

ISAAC C. MANIGAULT
COL, CM
Commanding

Enclosures

cc: The Nature Conservancy
The Pond Foundation

**SOAH DOCKET NO. 473-21-0247
PUC DOCKET NO. 51023**

**APPLICATION OF THE CITY OF SAN § BEFORE THE STATE OFFICE
ANTONIO TO AMEND ITS §
CERTIFICATE OF CONVENIENCE § OF
AND NECESSITY FOR THE §
SCENIC LOOP 138-KV TRANSMISSION § ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY §**

**CPS ENERGY'S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS'
ASSOCIATION FIRST REQUEST FOR INFORMATION**

Anaqua Springs Question No. 1-19:

Did CPS make an offer to purchase an easement from the Nature Conservancy?

Response:

CPS Energy has not offered to purchase an easement from the Nature Conservancy or any other landowner in order to accommodate construction of the Project.

Prepared By: Adam R. Marin
Sponsored By: Adam R. Marin

Title: Regulatory Case Manager
Title: Regulatory Case Manager

**SOAH DOCKET NO. 473-21-0247
PUC DOCKET NO. 51023**

**APPLICATION OF THE CITY OF SAN § BEFORE THE STATE OFFICE
ANTONIO TO AMEND ITS §
CERTIFICATE OF CONVENIENCE § OF
AND NECESSITY FOR THE §
SCENIC LOOP 138-KV TRANSMISSION § ADMINISTRATIVE HEARINGS
LINE IN BEXAR COUNTY §**

**CPS ENERGY'S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS'
ASSOCIATION FIRST REQUEST FOR INFORMATION**

Anaqua Springs Question No. 1-20:

Did CPS seek the approval of the Nature Conservancy for an easement across the Conservation Easement?

Response:

CPS Energy has not sought approval from the Nature Conservancy for an easement across the Conservation Easement in order to accommodate construction of the Project.

Prepared By: Adam R. Marin
Sponsored By: Adam R. Marin

Title: Regulatory Case Manager
Title: Regulatory Case Manager

**SOAH DOCKET NO. 473-21-0247
PUC DOCKET NO. 51023**

**APPLICATION OF THE CITY OF SAN ANTONIO TO AMEND ITS
CERTIFICATE OF CONVENIENCE AND NECESSITY FOR THE
SCENIC LOOP 138-KV TRANSMISSION LINE IN BEXAR COUNTY** § **BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

**CPS ENERGY'S RESPONSE TO ANAQUA SPRINGS HOMEOWNERS'
ASSOCIATION FIRST REQUEST FOR INFORMATION**

Anaqua Springs Question No. 1-4:

Please provide the approximate date upon which CPS became aware of the federal interest in the Conservation Easement.

Response:

CPS Energy became aware of the potential federal interest in the Conservation Easement in the summer of 2019.

Prepared By: Adam R. Marin

Lisa B. Meaux

Sponsored By: Adam R. Marin

Lisa B. Meaux

Title: Regulatory Case Manager

Title: Project Manager, POWER Engineers, Inc.

Title: Regulatory Case Manager

Title: Project Manager, POWER Engineers, Inc.

-----Original Message-----

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC [mailto:james.cannizzo@us.af.mil]
Sent: Thursday, October 22, 2020 7:38 AM
To: steve@cichowskilaw.com
Subject: FW: RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits; Email from HOA

I would have not used some of the wording you use, but you are correct in the key point that unless the TNC and Pond Foundation agree to relinquish part of the conservation easement, the Army/Air Force cannot act -- we cannot force them to relinquish it. Ref GCWA mitigation credits, we would need credits from a FWS approved GCWA mitigation bank and even then a new section 7 formal consultation would have to be done.

Regards, Jim C
Jim Cannizzo, GS-15, USAF
Senior Attorney, Mission Sustainment and Planning AFLOA/JACE-FSC
3515 S. General McMullen, Suite 4060
JBSA-Lackland AFB, 78226
(210) 375-4142 teleworking from home

From: Steve Cichowski <steve@cichowskilaw.com <mailto:steve@cichowskilaw.com> >
Sent: Wednesday, October 21, 2020 12:41 PM
To: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil <mailto:james.cannizzo@us.af.mil> >
Subject: [Non-DoD Source] RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits

Thank-you for taking the time to visit with me regarding the Pond Foundation property and the Conservation Easement. I am meeting with the other Board members tomorrow to brief them on what we discussed and want to confirm that I understood what we talked about.

To summarize, CPS Energy is planning a transmission line to improve service in the Scenic Loop/Boerne Stage Road area. CPS formerly proposed a possible route that had a short segment (segment 12) going through the old Maverick Ranch. Upon final submittal to the PUC, that segment had been removed. We were under the impression that it had been removed because the Army/Air Force would not give its agreement to CPS for that segment because it would result in a loss of Golden Cheeked Warbler Habitat credits now owned by the Army/Air Force. We (the group of homeowners represented by the Anaqua Springs HOA) proposed to acquire replacement credits and donate them to the Army/Air Force in exchange for the Army/Air Force giving its agreement to allow the route segment in question to be re-added to the routes being considered by the PUC. For this purpose we sought a meeting with the Army's representatives in order to present this proposal. Numerous e-mails were exchanged regarding the subject matter of the sought after meeting of which you are aware.

Prior to meeting with the Army, we were made aware that we were talking to the wrong people and that the Air Force was now the point of contact on this matter. You subsequently e-mailed me and we were able to visit this week regarding what we (the HOA) were proposing. After speaking with you it is my understanding that the things we were proposing are not within the Air Force' control, nor within the Air Forces authority under the Conservation Easement to agree to. In other words, the Air Force cannot give CPS Energy its agreement to go forward with the transmission line in the location we are talking about because the Conservation Easement does not grant it the authority do so. Based on our conversation it is my understanding that the only authority the Air Force has is the authority to enforce the terms of the Conservation Easement in the event the Nature Conservancy does not, and the authority to have the Easement transferred to the Air Force or other qualified entity in the event the Nature Conservancy dissolves or becomes incapable of monitoring and enforcing the terms of the Easement. I was left with the impression that it is the Air Force's position that it is up to the Nature Conservancy and the Grantors of the easement to agree to the location of a transmission line on the property.

Because it is so important to the Board members and affected homeowners that what I report to them is accurate, can you please confirm or correct any of the impressions I have taken away from our conversation. The proposed project is going to affect hundreds of home and land owners so your time is greatly appreciated.

Thank-you again for your time.

Steve Cichowski
Cichowski Law Firm, P.C.
Board Certified - Personal Injury Trial Law Texas Board of Legal Specialization
10500 Heritage Blvd., Suite 102
San Antonio, Texas 78216
210-223-5299 direct
210-870-1521 fax

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC [mailto:james.cannizzo@us.af.mil]
Sent: Monday, October 19, 2020 5:42 PM
To: steve@cichowskilaw.com <mailto:steve@cichowskilaw.com>
Subject: CPS Powerline Project and Conservation Easement and GCW Habitat Credits

As I mentioned on the phone, very few people understand the difference between section 7 and 10 of the ESA, credits under Section 10 are not usable under Sec 7 (the federal agency section), see excerpt from SEPHCP website:

P 3:

WHO MAY USE THE SEP-HCP?

Landowners, developers, Bexar County, the City of San Antonio, and others conducting nonfederal activities within the jurisdictions of Bexar County or the City of San Antonio (excluding any portion of Comal County) may be eligible to achieve ESA compliance through the Plan.

https://www.fws.gov/southwest/es/Documents/R2ES/AUES_SEP_HCP_FINAL_11_13_2015.pdf

The key issue in my mind as I relayed in the prior email, is TNC and Pond Foundation willingness to extinguish/relinquish part of the conservation easement for the 100 ft ROW. When we spoke with them last spring and when I checked back with them last week, they were not willing. Here are their POC contact #s:

Kathryn Tancig, Braun & Gresham:

Kathryn Tancig
Attorney and Counselor
512.894.5426

<https://braungresham.com/meet-the-team/kathryn-tancig/>

Justin G. Rice, Senior Attorney
The Nature Conservancy
200 E. Grayson St., Suite 202
San Antonio, TX 78215
Tele (210) 301-5779 direct
(210) 224-8774 <tel:+1(210)%202248774>

https://lawyers.findlaw.com/profile/view/4076872_1

Regards, Jim C
Jim Cannizzo, GS-15, USAF
Senior Attorney, Mission Sustainment and Planning AFLOA/JACE-FSC
3515 S. General McMullen, Suite 4060
JBSA-Lackland AFB, 78226
(210) 375-4142 teleworking from home

-----Original Message-----

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC [mailto:james.cannizzo@us.af.mil]
Sent: Wednesday, October 14, 2020 4:56 PM
To: steve@cichowskilaw.com
Subject: CPS Project and Conservation easement and GCW habitat credits

The Joint Base POCs asked me to call you to explain the situation the Air Force is in. Until about 2 years ago I worked for the Army and was actually the one who arranged all of the Camp Bullis golden-cheeked warbler mitigation transactions from 2009-2013. I now work for the Air Force at a legal HQ at Lackland's Kelly Annex.

The options you laid out for John Anderson are NOT within the Air Force (or Army's) control because the REPI conservation partner, TNC, and the underlying fee owner, the Pond Foundation, are unwilling to extinguish the easement. I re-verified this with TNC and the Pond Foundation today.

I tried calling the direct line in your email below, but it just rang without an answering machine. I have been working from home for the past 7 months, so my telework number is below if you wish to discuss this.

Regards, Jim C
Jim Cannizzo, GS-15, USAF
Senior Attorney, Mission Sustainment and Planning AF/JAOE
3515 S. General McMullen, Suite 4060
JBSA-Lackland AFB, 78226
(210) 375-4142 teleworking from home

From: TREVINO, RICHARD JR GS-15 USAF AETC 502 CEG/CL <richard.trevino@us.af.mil>
Sent: Wednesday, October 7, 2020 12:44 PM
To: steve@cichowskilaw.com; 'Rasmussen, Kirk' <krasmussen@jw.com>
Cc: JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS <candace.jackson@us.af.mil>; Anderson, John H CIV USAF 502 ABW (USA) <john.h.anderson54.civ@mail.mil>; MULHEARN, MARY H GS-14 USAF AFMC AFCEC/SAF/GCN-SA <mary.mulhearn@us.af.mil>
Subject: RE: [Non-DoD Source] RE: CPS Project and Conservation easement and GCW habitat credits

Mr. Cichowski,

Mr. John Anderson will be contacting you to reset with the correct points of contact.

Thank you for your understanding.

v/r, Richard

From: Steve Cichowski <steve@cichowskilaw.com <mailto:steve@cichowskilaw.com> >
Sent: Wednesday, October 7, 2020 12:28 PM
To: TREVINO, RICHARD JR GS-15 USAF AETC 502 CEG/CL <richard.trevino@us.af.mil <mailto:richard.trevino@us.af.mil>
>; 'Rasmussen, Kirk' <krasmussen@jw.com <mailto:krasmussen@jw.com> >
Cc: JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS <candace.jackson@us.af.mil
<mailto:candace.jackson@us.af.mil> >; Anderson, John H CIV USAF 502 ABW (USA) <john.h.anderson54.civ@mail.mil
<mailto:john.h.anderson54.civ@mail.mil> >; MULHEARN, MARY H GS-14 USAF AFMC AFCEC/SAF/GCN-SA
<mary.mulhearn@us.af.mil <mailto:mary.mulhearn@us.af.mil> >
Subject: [Non-DoD Source] RE: CPS Project and Conservation easement and GCW habitat credits

Mr. Trevino,

Understood. Just to be clear, do I need to call and reset with the proper persons, or will we be contacted?

Steve Cichowski
Cichowski Law Firm, P.C.
Board Certified - Personal Injury Trial Law Texas Board of Legal Specialization
10500 Heritage Blvd., Suite 102
San Antonio, Texas 78216
210-223-5299 direct
210-870-1521 fax

From: TREVINO, RICHARD JR GS-15 USAF AETC 502 CEG/CL [mailto:richard.trevino@us.af.mil]
Sent: Wednesday, October 07, 2020 10:03 AM
To: Steve Cichowski <steve@cichowskilaw.com <mailto:steve@cichowskilaw.com>
>; Rasmussen, Kirk <krasmussen@jw.com <mailto:krasmussen@jw.com> >
Cc: JACKSON, CANDACE L GS-06 USAF AETC 502 CEG/CSS <candace.jackson@us.af.mil
<mailto:candace.jackson@us.af.mil> >; Anderson, John H CIV USAF 502 ABW (USA) <john.h.anderson54.civ@mail.mil
<mailto:john.h.anderson54.civ@mail.mil> >; MULHEARN, MARY H GS-14 USAF AFMC AFCEC/SAF/GCN-SA
<mary.mulhearn@us.af.mil <mailto:mary.mulhearn@us.af.mil> >
Subject: CPS Project and Conservation easement and GCW habitat credits
Importance: High

Mr. Cichowski/Mr. Rasmussen,

Good morning. Hope all is safe and healthy for you and your families.

Sincerely apologize for the late notice, but I must cancel today's discussion concerning the CPS Energy project as it pertains to the Conservation easement and habitat credits.

It has been recently brought to my attention that the appropriate office to address your concerns is the Air Force Civil Engineer Center located on Joint Base San Antonio.

Mr. John Anderson, the 502d Air Base Wing Community Initiatives Director will contact you to facilitate any further meetings on this issue with the Air Force Civil Engineer Center. Mr. Anderson's contact information is 210-808-7513 (office) or 660-238-4708 (cell).

Again, I sincerely apologize for the late cancellation, as I know there has much time spent trying to set up this meeting. Sincerely appreciate your continued partnership with the United States Armed Forces and Joint Base San Antonio.

Respectfully, Richard

RICHARD TREVINO JR., P.E., GS-15
Director, 502d Civil Engineer Group
Joint Base San Antonio, Texas
(210) 221-0903

-----Original Message-----

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC [mailto:james.cannizzo@us.af.mil]
Sent: Friday, October 23, 2020 9:46 AM
To: steve@cichowskilaw.com
Subject: RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits; 2nd Email from HOA

Ref the map you attached, off the top of my head, I do not know where the Maverick Range is in relation to the map routes, we would have to have a GIS tech plot it to understand route dynamics.

It is largely irrelevant what the route is and whether the AF/Army objects or supports a ROW through the Maverick easement. As long as the easement holder and property fee interest owner do not agree to relinquishment, it cannot happen.

In the ACUB/REPI program we normally support our conservation partners. And undoing even part of the conservation easement would cause GCWA mitigation crediting issues and cause us to have to reopen our prior Section 7 ESA formal consultation.

I am not working today, just logged in for a few minutes to check my email.

Regards, Jim C
Jim Cannizzo, GS-15, USAF
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3515 S. General McMullen, Suite 4060
JBSA-Lackland AFB, 78226
(210) 375-4142 teleworking from home

-----Original Message-----

From: Steve Cichowski <steve@cichowskilaw.com>
Sent: Thursday, October 22, 2020 1:52 PM

To: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil>
Subject: [Non-DoD Source] RE: RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits; Email from HOA

Thank-you for your response. It seems the more I learn, the less I understand.

Can you answer this question that I will be asked:

1. Does the Air Force/Army object to the construction of a 138 kv transmission line, shown as Segment 12 on the attached proposed route map, across the property known as the old Maverick Ranch.

Steve Cichowski
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-----Original Message-----

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC [mailto:james.cannizzo@us.af.mil]
Sent: Thursday, October 22, 2020 7:38 AM
To: steve@cichowskilaw.com
Subject: FW: RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits; Email from HOA

I would have not used some of the wording you use, but you are correct in the key point that unless the TNC and Pond Foundation agree to relinquish part of the conservation easement, the Army/Air Force cannot act -- we cannot force them to relinquish it. Ref GCWA mitigation credits, we would need credits from a FWS approved GCWA mitigation bank and even then a new section 7 formal consultation would have to be done.

Regards, Jim C
Jim Cannizzo, GS-15, USAF
Senior Attorney, Mission Sustainment and Planning AFLOA/JACE-FSC
3515 S. General McMullen, Suite 4060
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From: Steve Cichowski <steve@cichowskilaw.com <mailto:steve@cichowskilaw.com> >
Sent: Wednesday, October 21, 2020 12:41 PM
To: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC <james.cannizzo@us.af.mil <mailto:james.cannizzo@us.af.mil> >
Subject: [Non-DoD Source] RE: CPS Powerline Project and Conservation Easement and GCW Habitat Credits

Thank-you for taking the time to visit with me regarding the Pond Foundation property and the Conservation Easement. I am meeting with the other Board members tomorrow to brief them on what we discussed and want to confirm that I understood what we talked about.

To summarize, CPS Energy is planning a transmission line to improve service in the Scenic Loop/Boerne Stage Road area. CPS formerly proposed a possible route that had a short segment (segment 12) going through the old Maverick Ranch. Upon final submittal to the PUC, that segment had been removed. We were under the impression that it had been removed because the Army/Air Force would not give its agreement to CPS for that segment because it would result in a loss of Golden Cheeked Warbler Habitat credits now owned by the Army/Air Force. We (the group of homeowners represented by the Anaqua Springs HOA) proposed to acquire replacement credits and donate them to the Army/Air

Force in exchange for the Army/Air Force giving its agreement to allow the route segment in question to be re-added to the routes being considered by the PUC. For this purpose we sought a meeting with the Army's representatives in order to present this proposal. Numerous e-mails were exchanged regarding the subject matter of the sought after meeting of which you are aware.

Prior to meeting with the Army, we were made aware that we were talking to the wrong people and that the Air Force was now the point of contact on this matter. You subsequently e-mailed me and we were able to visit this week regarding what we (the HOA) were proposing. After speaking with you it is my understanding that the things we were proposing are not within the Air Force' control, nor within the Air Forces authority under the Conservation Easement to agree to. In other words, the Air Force cannot give CPS Energy its agreement to go forward with the transmission line in the location we are talking about because the Conservation Easement does not grant it the authority do so. Based on our conversation it is my understanding that the only authority the Air Force has is the authority to enforce the terms of the Conservation Easement in the event the Nature Conservancy does not, and the authority to have the Easement transferred to the Air Force or other qualified entity in the event the Nature Conservancy dissolves or becomes incapable of monitoring and enforcing the terms of the Easement. I was left with the impression that it is the Air Force's position that it is up to the Nature Conservancy and the Grantors of the easement to agree to the location of a transmission line on the property.

Because it is so important to the Board members and affected homeowners that what I report to them is accurate, can you please confirm or correct any of the impressions I have taken away from our conversation. The proposed project is going to affect hundreds of home and land owners so your time is greatly appreciated.

Thank-you again for your time.

Steve Cichowski
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10500 Heritage Blvd., Suite 102
San Antonio, Texas 78216
210-223-5299 direct
210-870-1521 fax

From: CANNIZZO, JAMES V GS-15 USAF HAF AFLOA/JACE/FSC [mailto:james.cannizzo@us.af.mil]
Sent: Monday, October 19, 2020 5:42 PM
To: steve@cichowskilaw.com <mailto:steve@cichowskilaw.com>
Subject: CPS Powerline Project and Conservation Easement and GCW Habitat Credits

As I mentioned on the phone, very few people understand the difference between section 7 and 10 of the ESA, credits under Section 10 are not usable under Sec 7 (the federal agency section), see excerpt from SEPHCP website:

P 3:

WHO MAY USE THE SEP-HCP?

Landowners, developers, Bexar County, the City of San Antonio, and others conducting nonfederal activities within the jurisdictions of Bexar County or the City of San Antonio (excluding any portion of Comal County) may be eligible to achieve ESA compliance through the Plan.

https://www.fws.gov/southwest/es/Documents/R2ES/AUES_SEP_HCP_FINAL_11_13_2015.pdf

The key issue in my mind as I relayed in the prior email, is TNC and Pond Foundation willingness to extinguish/relinquish part of the conservation easement for the 100 ft ROW. When we spoke with them last spring and when I checked back with them last week, they were not willing. Here are their POC contact #s:

Kathryn Tancig, Braun & Gresham:

Kathryn Tancig

Attorney and Counselor

512.894.5426

<https://braungresham.com/meet-the-team/kathryn-tancig/>

Justin G. Rice, Senior Attorney

The Nature Conservancy

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Tele (210) 301-5779 direct

(210) 224-8774 <tel:+1(210)%202248774>

https://lawyers.findlaw.com/profile/view/4076872_1

Regards, Jim C

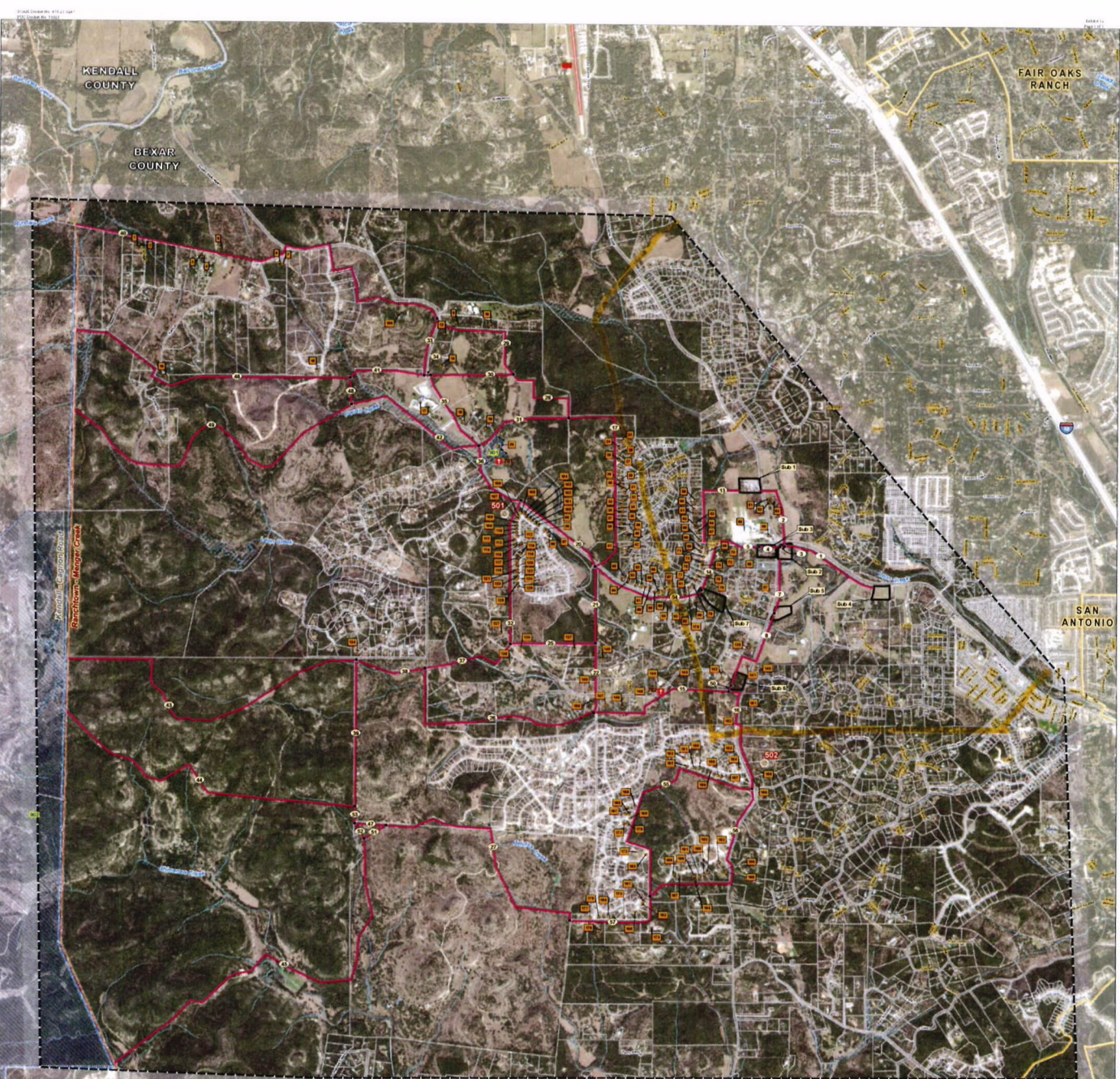
Jim Cannizzo, GS-15, USAF

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Primary Alternative Routes	Alternative Substation and Route Composition
A	Sub 1 - 13-14-54-17-26-29-40
B	Sub 1 - 13-14-54-17-31-42-48-46
C	Sub 1 - 2-3-4-5-14-54-20-36-30-34-41-46
D	Sub 2 - 4-5-14-54-20-36-42-48-46
E	Sub 2 - 4-5-14-54-17-26-30-34-33-40
F	Sub 2 - 7-8-50-15-26-38-43
G	Sub 3 - 5-14-54-17-31-42-49
H	Sub 3 - 5-14-54-17-29-29-40
I	Sub 3 - 5-14-54-20-36-42-49-46
J	Sub 3 - 5-14-54-20-36-42-49
K	Sub 3 - 5-14-54-21-25-37-38-43
L	Sub 3 - 5-14-54-21-25-37-38-39-53-52-45
M	Sub 4 - 1-3-4-5-14-54-20-36-42-48-46
N	Sub 5 - 8-50-15-26-38-43
O	Sub 5 - 8-50-16-56-57-27-47-53-44
P	Sub 6 - 50-15-22-25-37-38-43
Q	Sub 6 - 50-15-26-38-39-44
R	Sub 6 - 50-15-26-38-43
S	Sub 6 - 50-16-56-57-27-51-45
T	Sub 6 - 50-15-22-25-32-36-42-48-46
U	Sub 6 - 50-15-26-38-39-53-52-45
V	Sub 6 - 50-16-56-57-27-47-53-44
W	Sub 6 - 50-16-56-57-27-47-53-44
X	Sub 7 - 54-17-29-30-34-41-46
Y	Sub 7 - 54-20-36-35-34-33-40
Z	Sub 7 - 54-20-36-42-48-46
AA	Sub 7 - 54-20-36-42-49
BB	Sub 7 - 54-21-25-37-38-43
CC	Sub 7 - 54-20-33-37-38-43

Legend

Project Components

- Study Area Boundary
- Primary Alternative Segment, Node, and Label
- Proposed Substation Site

Land Use Features

- Habitable Structure
- Communication Tower (FCC)
- Cemetery (USGS)
- National Register of Historic Places (THC)

Existing Utility Features

- 138 kV Transmission Line
- 345 kV Transmission Line

Transportation Features

- Interstate Highway
- State Highway
- Local Road
- Airport Runway

Hydrologic Features

- River / Stream (NHD)
- Floodplain (FEMA)

Administrative Features

- City Limits
- Parcel Boundary
- County Boundary



1 inch = 1,000 feet

Project Location

SCENIC LOOP 138 kV TRANSMISSION LINE AND SUBSTATION PROJECT

Figure 4-1
Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes

0 1,000 2,000 3,000 4,000 Feet

cps POWER