Control Number: 51023

Item Number: 679

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

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 IN BEXAR COUNTY	§	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

REBUTTAL TESTIMONY OF MICHAEL W. BITTER
ON BEHALF OF BEXAR RANCH, L.P.

Michael W. Bitter files this Rebuttal Testimony on behalf of Bexar Ranch, L.P., and stipulates that all parties may treat this testimony as though filed under oath.

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

ATTORNEYS FOR BEXAR RANCH, L.P.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been filed in the records of Docket 51023 on this 22nd day of March 2021.

_____
Soledad M. Valenciano

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LIST OF EXHIBITS

I. INTRODUCTION.

PLEASE STATE YOUR NAME FOR THE RECORD.

My name is Michael W. Bitter.

ON WHOSE BEHALF ARE YOU TESTIFYING?

I am testifying on behalf of Bexar Ranch, L.P.

DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY ON BEHALF OF BEXAR RANCH, L.P. IN THIS PROCEEDING?

Yes.

WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?

I am providing testimony on behalf of Bexar Ranch, L.P., in order to rebut portions of the Direct Testimony of several intervenors.

II. FOLIAGE AND GOLDEN-CHEEKED WARBLER.

CERTAIN INTERVENOR TESTIMONY DISCUSSED POTENTIAL GOLDEN-CHEEKED WARBLER HABITAT. WHAT WERE THOSE SPECIFIC REFERENCES?

On pages 6-7 of Brad Jauer's Direct Testimony on behalf of Brad Jauer and BVJ Properties, LLC, Mr. Jauer describes the front of his property having "a growth of mature Ashe juniper trees, or 'cedar' trees as we call them here in Texas that I understand are suitable golden cheeked warbler habitat."

On pages 18-19 of Steve Cichowski's Direct Testimony on Behalf of Anaqua Springs Homeowners Association, Mr. Cichowski states, "Route W also performs exceedingly well in the amount of high-value golden-cheeked warbler habitat that is impacted by the route."

On page 3 of his Direct Testimony, Patrick Cleveland states, "In addition, the extensive area of mixed Live Oak, Juniper, and deciduous trees along the intermittent stream is considered prime habitat for the endangered Golden Cheeked Warbler per the Diamond report referenced in Power Engineers Environmental Assessment." Mr. Cleveland also states that "[a]pproximately ½ of HCR is covered by native grass and brush and the remainder is covered by Live Oak and Juniper trees."

In CPS Energy's Response to Patrick Cleveland's Second Request for Information to CPS Energy, Question 2-2, a true and correct copy of which is attached to my rebuttal testimony as Exhibit MB-1 Rebuttal, CPS Energy states that with respect to calculating the acreage of Golden-Cheeked Warbler Habitat in the project area reflected in Attachment 1 (page 3-27) of the Application, the POWER team assumed that unaltered areas, meaning those with "no obvious alterations of vegetation" were assumed to remain the same quality and retained their Model C value designation. CPS Energy defined "obvious vegetation alteration" to include newly constructed infrastructure, commercial/residential developments, and clear-cut or thinned vegetation.

WHAT IS YOUR RESPONSE?

As I stated on page 26 of my Direct Testimony, "Bexar Ranch is not developed, nor is development desired by Bexar Ranch." And, as I stated on page 9 of my Direct Testimony, Bexar Ranch "is heavily wooded, with a wide variety of oaks, elms, walnuts, pecans, a few rare madrones, and ash juniper (cedar), as well as lots of mountain laurel, agarita, native grass fields and cactus. There are many, many heritage trees. It is mostly green year-round with bright colors in the fall."

Given my family's long-standing commitment to keeping Bexar Ranch in a natural state, "alterations of vegetation" are limited. As one of the caretakers of this property, I believe I can credibly state that the since 2010, the date of the referenced Diamond report, the vegetation on Bexar Ranch has proliferated and become denser. This is partly why our "two-track" roads tend to become impassible by vehicle and easier to travel by horseback or on foot. Below are three photographs which are true and accurate depictions of this density of cedar and related cover on Bexar Ranch in the areas of Segments 43, 44, and 45, respectively. Moreover, based on the attached 2008 CPS Golden Cheeked Warbler Study Habitat, a true and correct copy of which is attached, we believe our ranch has significant confirmed warbler sightings. *See* MB-1A Rebuttal.

MB-2 Rebuttal (Segment 43)

MB-3 Rebuttal (Segment 44)

MB-4 Rebuttal (Segment 45)

DO YOU HAVE OTHER EVIDENCE TO SUPPORT YOUR CONTENTION THAT BEXAR RANCH AND YOUR FAMILY HAVE A LONG-STANDING COMMITMENT TO KEEPING BEXAR RANCH IN ITS MOST NATURAL STATE?

Beyond such family values that have endured generations, Bexar Ranch, led by my father Joseph Bitter, has been in communication with Green Space Alliance of South Texas and The Nature Conservancy, contractors for the City of San Antonio's Edwards Aquifer Protection Program, to pursue placing Bexar Ranch in a conservation easement. As shown on the attached letter from Green Space Alliance of South Texas, a true and correct copy of which is attached to my testimony as Exhibit MB-5 Rebuttal Bexar Ranch is considered a top property for consideration into this conservation program. Included with this letter are additional business records of Bexar Ranch, L.P., for a total of 79 pages, which records are kept in the normal course of the business of Bexar Ranch, L.P., by me, a custodian of these records, and I am thus familiar with the manner in which these records were made and maintained. The records were made at the time noted by the dates included on each and were made by or transmitted with persons of knowledge of the matter set forth in same. It is the regular practice of Bexar Ranch to maintain these business records.

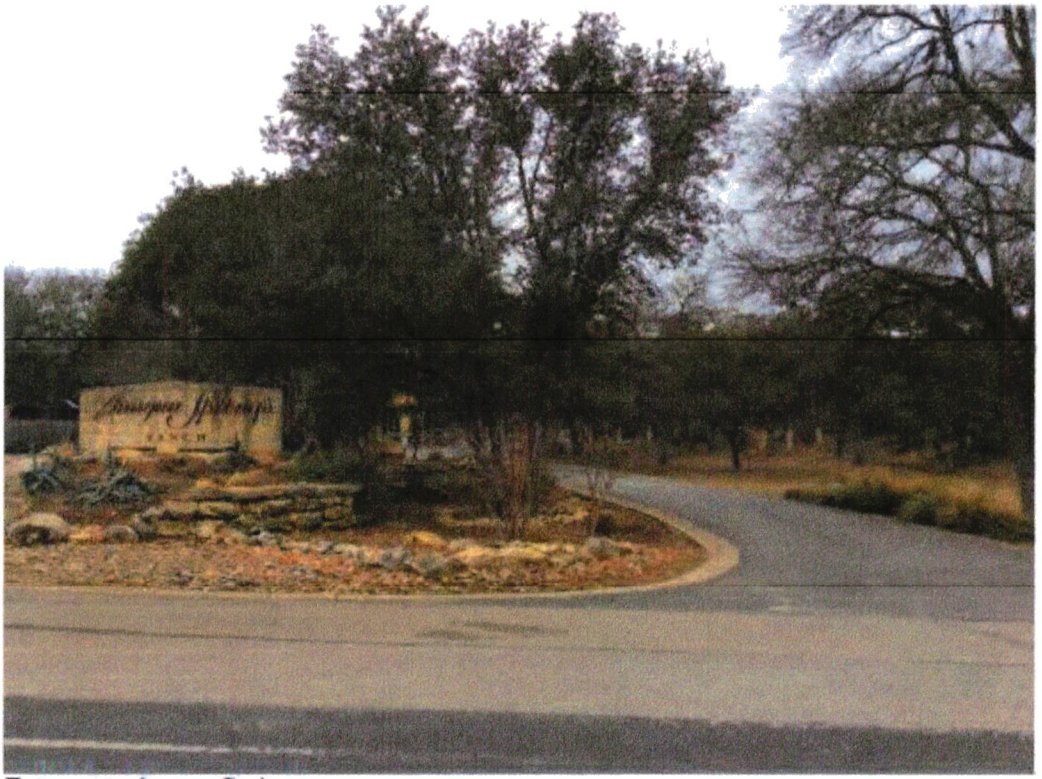
III. FRAGMENTATION.

SEVERAL INTERVENORS RAISED ISSUES RELATED TO THE CONCEPTS OF PARALLELING, FRAGMENTING AND BISECTING. PLEASE RESPOND TO THAT TESTIMONY.

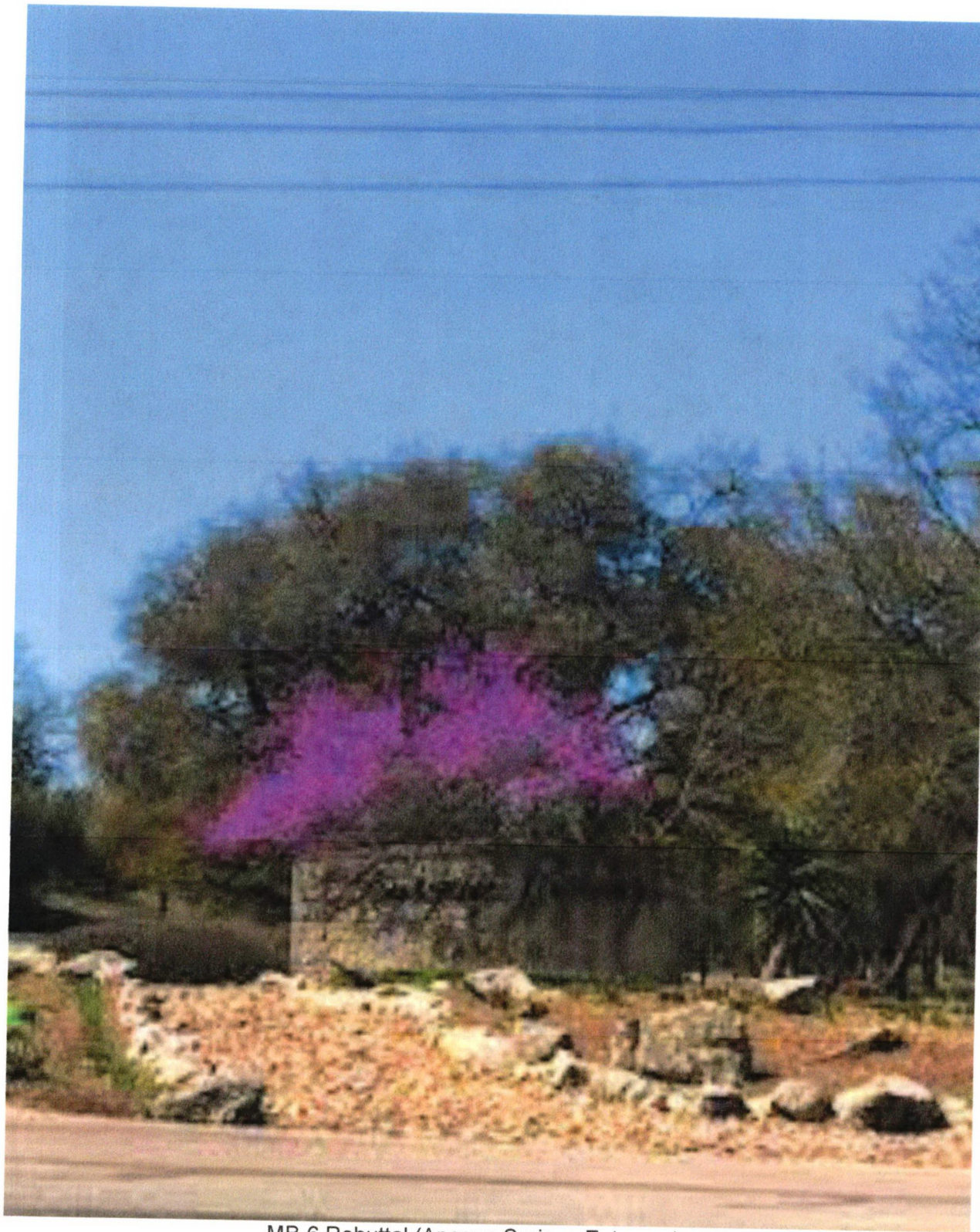
Sure, let's start with paralleling. In his Direct Testimony, Patrick Cleveland discussed a routing methodology that gives weight to *not being on a road* and to the

"number of properties affected by each of the proposed segments and routes." Thus, by negative implication, he makes paralleling roads an unfavorable factor. I don't believe his methodology appropriately considers the applicable routing factors and it unfairly penalizes larger properties like Bexar Ranch. Mr. Cleveland's approach would also encourage gamesmanship – one can predict a proliferation of postage-stamp parcels emerging along proposed segments. It is my understanding that paralleling roads is a valid routing factor, and there is no dispute that Toutant Beauregard is a road in the study area.

On page 36 of Steve Cichowski's Direct Testimony on Behalf of Anaqua Springs Homeowners' Association, Mr. Cichowski provides a photograph of the Anaqua Springs' subdivision entrance labeled Exhibit SC-4, page 4 of 6. It is shown below. What Mr. Cichowski's photograph does not show, however, is the electric distribution lines that cross over Anaqua Springs' subdivision entrance. Those distribution lines are visible in the images I have labeled MB-6 Rebuttal, MB-7 Rebuttal and MB-8 Rebuttal. These three photographs, MB-6 Rebuttal, MB-7 Rebuttal and MB-8 Rebuttal, shown below, are true and accurate depictions of the Anaqua Springs' subdivision entrance on Toutant Beauregard Road.

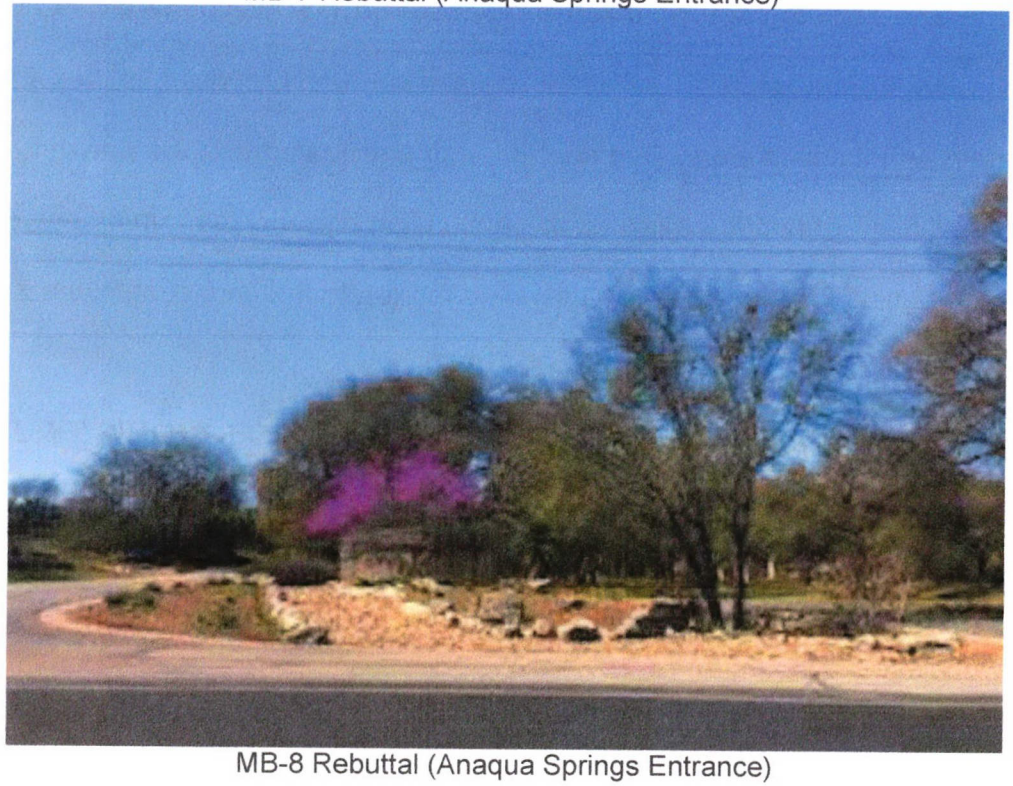


Entrance to Anaqua Springs



MB-6 Rebuttal (Anaqua Springs Entrance)

MB-7 Rebuttal (Anaqua Springs Entrance)



MB-8 Rebuttal (Anaqua Springs Entrance)

WHY IS THIS IMPORTANT?

Three words: favorable routing factors. In addition to roads like Toutant Beauregard being a favorable routing factor under 16 TAC 25.101 (B)(3)(b) so are "existing electric facilities." In these proceedings, CPS only tabulated "Length of ROW parallel and adjacent to existing transmission line ROW" on its Table 4-1, although it could have also tabulated distribution lines because they are electric facilities. In Anaqua Springs' case, however, that would have been triple counting as Segment 36 parallels Anaqua Springs' property line, Toutant Beauregard Road, and electric facilities.

ARE DISTRIBUTION LINES AT THE ENTRANCE OF ANAQUA SPRINGS ONLY RELEVANT TO ROUTING CRITERIA?

No, I bring up distribution lines because in CPS Energy's Response to the Brad Jauer's and BVJ Properties, L.L.C.'s Third Request for Information, Response RFI 3-1 (vii), a true and correct copy of which is attached to my testimony as Exhibit MB-9 Rebuttal, CPS Energy states "...if the transmission line proposed in this Project is approved for construction along Segment 36, it is anticipated that the transmission line easement will fully overlap the existing distribution line right-of-way." In other words, the existing distribution lines on Route Z1 may help moderate the impact of Route Z1, which is also favorable under the routing analysis.

MR. JAUER DISCUSSES THE LENGTH OF SEGMENT 36 ON HIS PROPERTY. WHAT IS YOUR RESPONSE?

Mr. Jauer describes the impact of Segment 36 on his property as 225 yards, or "2 1/4 football fields." Segment 36 runs along the northern boundary of his property. In contrast, (with the exception of portions of Segment 43) the three Segments crossing

Bexar Ranch do not run along its boundary – they bisect Bexar Ranch from east to west. Segment 43 is 2.05 miles long, or 3,608 yards. By Mr. Jauer's math, this is about 36 football fields. Segment 44 is 1.98 miles, or 3,484 yards (or close to 35 of Mr. Jauer's football fields). Segment 45 is 2.59 miles long, or 4,558 yards (or close to 46 of Mr. Jauer's football fields).

MR. ANDERSON'S TESTIMONY ALSO REFERENCES THESE TYPES OF PARALLELING, FRAGMENTING AND BISECTING ISSUES. WHAT IS YOUR RESPONSE?

On page 35 the Direct Testimony of Mark D. Anderson on Behalf of Anaqua Springs Homeowners' Association, Brad Jauer and BVJ Properties, LLC, Mr. Anderson advocates for the selection of Route W in part because he claims that it outperforms Route Z1 on "paralleling other linear features." However, Mr. Anderson states this in terms of distance, because Route W is 38% longer than Route Z1. A reference to sheer miles is misleading.

Mr. Anderson also presents Route W in the context of several other "very long" routes. However, referring the Administrative Law Judges and the Commission to the same data table, Table 4-1, prepared by CPS Energy, we see that Route Z1 parallels "all evaluation criteria" used by CPS Energy for 68% of its length while Route W only does so for 58% of its length.

In reality, what Mr. Anderson's testimony shows is that Route W, which is longer, achieves its lower paralleling score because it has significant portions that bisect properties. For example, Route W utilizes Segment 44. Segment 44 is a non-linear, 1.98 mile east-to west interior bisect of Bexar Ranch that appears to cross several tributaries

to Chimenea Creek. Relatedly, Bexar Ranch has previously disputed CPS Energy's initial assessments that Route 44 parallels any tabulated category in its Table 4-1.

DOES MR. ANDERSON ADDRESS THE ESTIMATED COST OF ROUTE W AS COMPARED TO THE ESTIMATED COST OF ROUTE Z1?

No, Mr. Anderson also fails to discuss the estimated cost differences between Routes W and Z1. The estimated costs for transmission and substation facilities for Route Z1 is $38.47M while the estimated cost for Route W is $52.87M.

PLEASE SUMMARIZE YOUR TESTIMONY ON THESE ISSUES.

In summary, Mr. Cichowski, Mr. Jauer, Mr. Cleveland and Mr. Anderson's testimonies reveal that they would have the Administrative Law Judges and the Commission believe that routes that parallel a public roadway, routes that already have electric facilities like distribution lines, routes that can absorb the new electric line by CPS using the same location to "fully overlap the existing distribution line right-of-way" and moderate the impact, routes that are shorter and cheaper – routes like Z1, AA1 and AA2 -- are somehow worse choices than Route W, a route that is 38% longer than Z1, parallels compatible right-of-way to a lesser extent than any of these routes, uses Segment 44 that bisects Bexar Ranch for nearly 2 miles, and is $14.4M more costly than Route Z1.

Overall the testimony shows that Route Z1 is one of the best routes, if not the best, in CPS's array. Yet, these mentioned testimonies, on behalf of developed and partially developed properties, would suggest 'with a straight face' that it is somehow more appropriate to completely and dramatically bisect one of the few remaining large tracts in Bexar County maintained in a natural undeveloped state, which is highly rated for

consideration to enter the City of San Antonio's Aquifer Protection Program and has significant confirmed golden-cheeked warbler per the 2008 CPS Report.

IV. RECREATION AREAS.

MR. CLEVELAND BROUGHT UP RECREATION AREAS. WHAT IS YOUR RESPONSE?

On page 15 of his Direct Testimony, Patrick Cleveland states that "Segment 49a is the only segment in the entire study area that goes through a recreational area." He identifies such recreational areas on HCR as having "canyons and springs."

Bexar Ranch is not disputing that there are areas on HCR that are recreational; however, Mr. Cleveland's testimony fully ignores the nearly 3,200 acre "recreational area" that is Bexar Ranch, which also has canyons and springs.

In addition to being a working ranch, Bexar Ranch is a family gathering place that, as my sister Sarah testified, and I agree, is used for "family rodeo nights," hiking, sightseeing, camping, and so forth. On page 10 of my testimony I state, "[i]f you like the outdoors, there is a lot to do: hiking, mountain biking, hunting and fishing, fossil-hunting, water activities, or simply sitting outside on the porch." My testimony and Sarah's describe the multiple springs, streams, canyons, bluffs, hills, and valleys that proliferate Bexar Ranch.

If there is any property in the study area that most fits Mr. Cleveland's definition of "recreational," it is Bexar Ranch. It has all of the characteristics that Mr. Cleveland describes. Moreover, the segments proposed on Bexar Ranch, (with the exception of portions along Segment 43 in part) fully bisect the property. If anything, Mr. Cleveland should understand that the devastation he anticipates on HCR is only amplified on Bexar

Ranch. Fortunately, he has the option with Route Z1 to avoid any type of interior bisect, unlike my family that faces the possibility of Segments 43, 44 or 45 fragmenting our ranch, a ranch that has been in our family for five generations.

V. COMMUNICATION TOWERS 501 AND 502.

DO YOU HAVE ANYTHING TO RESPOND TO WITH RESPECT TO MR. HUBER'S TESTIMONY REGARDING COMMUNICATION TOWERS IN THE STUDY AREA, INCLUDING COMMUNICATION TOWERS 501 AND 502?

Yes, I do. On pages 2 of Brad Jauer's Direct Testimony on Behalf of Brad Jauer and BVJ Properties, LLC, Mr. Jauer raised the issue of the FCC-registered communications tower located on Tract C-028 and identified as "communication tower 501." He also referred to a Mr. Greg Huber, who would be providing direct testimony regarding Tract C-028 and the communication tower.

On page 4 of the Direct Testimony of Carl G. Huber on Behalf of Brad Jauer and BVJ Properties, LLC, Mr. Huber identifies two "known" communication towers in the study area. Tower 501 is 482 feet from Segment 36, which is the segment on Mr. Jauer's road frontage and a component of Route Z1, among others.

On page 10 of his testimony, Mr. Huber also recognizes the second "known" communication tower in the study area, Tower 502, which is 521 feet from Segment 16. Segment 16 is located on Scenic Loop as is part of Route W, among others.

Thus, the two towers, Towers 501 and 502, are both "within 2000 feet" of a proposed segment, with Tower 501 some 482 feet from Segment 36 and Tower 502 some 521 feet from Segment 16

On page 3 of his testimony, Mr. Huber references Exhibit Huber-6 which he states shows a "steep service road" leading from Toutant Beauregard Road up to Tower 501. Mr. Huber states Route Z1 would encroach on Tower 501. On page 7 of his testimony, Mr. Huber describes the service road that leads to Tower 501 and states that the "hard right-angle turn that is required for a crane to enter and exit the property from Toutant Beauregard would be extremely hazardous under or in proximity to an electric transmission line..."

It is unclear how CPS Energy's new transmission line would impact this service road at all given it is already crossed by CPS Energy's existing distribution lines. While Exhibit Huber-6 doesn't show these distribution lines in his photograph below, Exhibit MB-10 Rebuttal, shown below, which is a true and accurate depiction of the service road to Tower 501, shows this road is already crossed by CPS Energy's distribution lines.

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DIRECT TESTIMONY OF
GREG HUBER

EXHIBIT HUBER-6

MB-10 Rebuttal TOWER 501 AT SEGMENT 36 – TOUTANT BEAUREGARD ROAD

I also want to comment that, although I could be wrong, it also appears from Exhibit Huber-4 that the connection between Segment 20 to Segment 36 avoids the service road to Tower 501 altogether. In other words, from CPS Energy's mapping it appears that the connection between Segment 20 and Segment 36 is to the northwest of the service road, or to the right of it on the service road shown on Exhibits MB-10 Rebuttal and MB-11 Rebuttal, meaning CPS Energy's new electric transmission line may not cross over the service road at all.

MB-11 Rebuttal TOWER 501 AT SEGMENT 36 – TOUTANT BEAUREGARD ROAD

DO YOU HAVE ANY OTHER REBUTTAL REGARDING TOWER 501 OR 502?

Yes, I would like to comment on Tower 502, which is located on Segment 16 along Scenic Loop. As shown in the photograph below, which is a true and accurate depiction of the service road on Scenic Loop leading to Tower 502, the turn onto the service road leading to Tower 502 from Scenic Loop, like the turn into the service road leading to Tower 501 from Toutant Beauregard, also requires a 90-degree turn. Therefore, if Mr. Huber is correct that a right turn on to the Tower 501 service road is dangerous, it would also be dangerous for Tower 502.

MB-12 REBUTTAL - TOWER 502 AT SEGMENT 16 – SCENIC LOOP

MB-13 REBUTTAL - TOWER 502 AT SEGMENT 16 – SCENIC LOOP

VI. SUBSTATIONS.

DO YOU HAVE ANY RESPONSE TO TESTIMONY REGARDING SUBSTATIONS?

Yes. On page 14 of Steve Cichowski's Direct Testimony on Behalf of Anaqua Springs, Homeowners Association, Mr. Cichowski discusses his concerns regarding Substation 7. In his testimony, however, Mr. Cichowski fails to include information that CPS provided in its Application and discovery responses, including that Substation 7 would be on a larger tract than the other proposed substation tracts, with greater visual shielding due to the foliage on that larger tract.

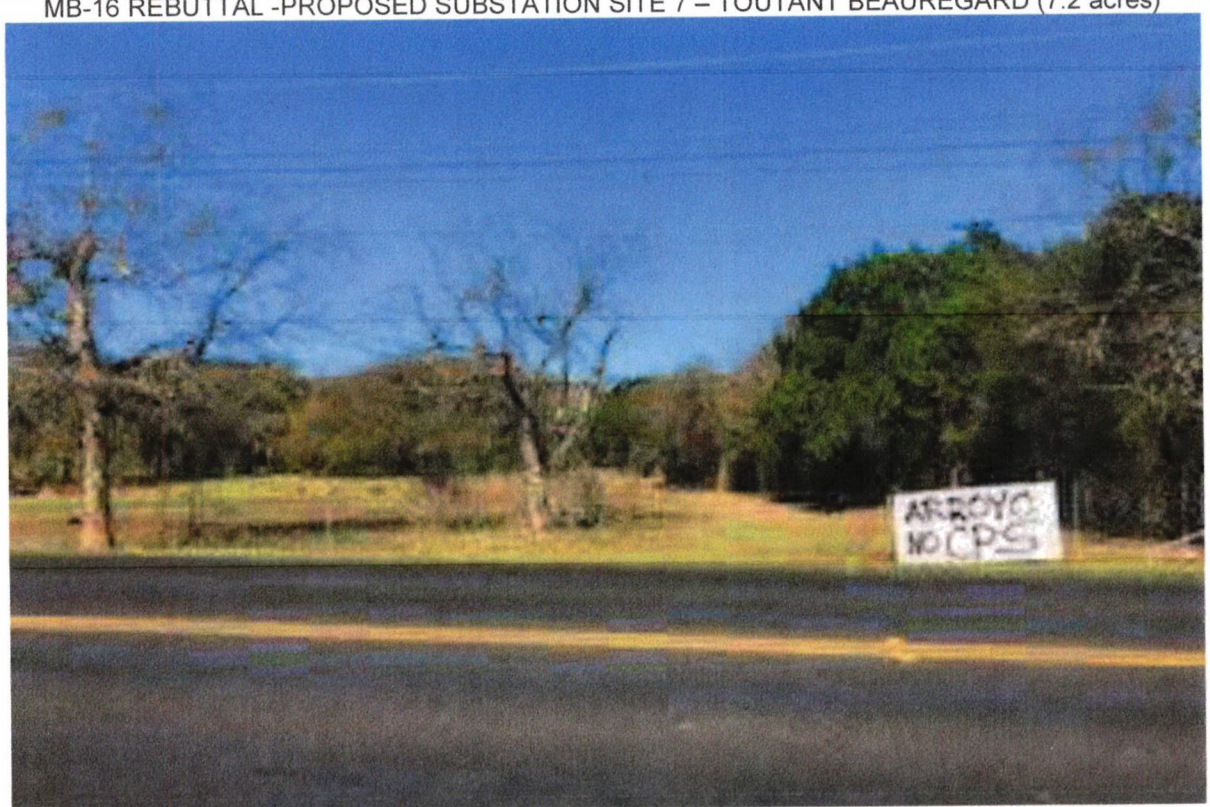
In discovery responses to Brad Jauer, CPS Energy stated that, as to Substation 7, "The oversized and heavily vegetated property provides CPS Energy with an opportunity to construct and operate the substation facilities away from the property lines with existing vegetation around the facility reducing the visual impacts" and that "the substation facilities will be designed and constructed on the property in a way that minimizes the footprint on the property and leaves as much of the existing vegetation as possible for a visual buffer. No 'clear cutting' is anticipated. Based on CPS Energy's current

understanding of the property without the benefit of on the ground surveys, it is anticipated the substation facilities will be constructed in the center area of the property." Copies of these discovery responses are attached as Exhibit MB-14 Rebuttal to my testimony.

Mr. Cichowski did not provide any photograph of Substation 7, although he provided photographs all around Substation 7. The following two photographs (MB-15 Rebuttal and MB-16 Rebuttal) are true and accurate depictions of the site selected for Substation 7. As shown, there is short driveway that leads to, and then stops at, a row of trees. It is these trees, in part, that could provide the shielding from the road that CPS describes. The third photograph in the series is a true and accurate depiction of the site selected for Substation 6 (Exhibit MB -17 Rebuttal).

MB-15 REBUTTAL - PROPOSED SUBSTATION SITE 7 – TOUTANT BEAUREGARD (7.2 acres)

MB-16 REBUTTAL -PROPOSED SUBSTATION SITE 7 – TOUTANT BEAUREGARD (7.2 acres)



MB-17 REBUTTAL - PROPOSED SUBSTATION SITE 6 - SCENIC LOOP (5 acres)

In addition to not discussing these visual impact minimization techniques that CPS plans to use on Substation 7, Mr. Cichowski did not address the size and cover limitations of Substation 6, which is located on Scenic Loop. This property, as shown on MB-17 Rebuttal, is not very deep and its foliage is located toward the back of the property As between the two properties, the Substation 6 site, which is 2.24 acres smaller than the Substation 7 site, does not have the space, shape, natural foliage and tree cover to provide the visual shielding that the Substation 7 site offers.

VII. SCHOOLS.

MR. CICHOWSKI EXPRESSED CONCERNS ABOUT ROUTING NEAR THE LOCAL ELEMENTARY SCHOOL. DO YOU HAVE ANY COMMENTS TO THIS?

Yes. On page 10 of Steve Cichowski's Direct Testimony on Behalf of Anaqua Springs, Homeowners Association, Mr. Cichowski states the "HOA is opposed to any powerlines running near the school or schools." Of course, there are already distribution lines in the areas near the elementary school. On page 12, Mr. Cichowski states that Segment 42a would run behind the school and come "very close to the school property." He speculates that "children would likely be tempted to explore the transmission line towers." I visited the elementary school in question.

Mr. Cichowski is correct that Segment 42a is not on the school's property – it is south of the school. Let me add that the school's playground is fenced. There are layers of perimeter fences, including some barbed wiring, and a thicket of trees, between the school property and the property associated with Segment 42a. In some areas, there is a bus loop and a sizable drainage ditch separating the playground from the school

district's southern property line. There are two very large drainage ditches on the campus, both very close to the school, along with a water treatment facility.

Ultimately, however, Mr. Cichowski fails to give Northside Independent School District ("NISD") credit that, as a very large, 6A school district in Texas, NISD is likely very well equipped to handle electric transmission line easements on or near their schools. For example, Jerry D. Allen Elementary School, Braun Station Elementary School, R.R. Cable Elementary School, Jimmy Elrod Elementary School, Galm Elementary School, Hatchett Elementary School, Mary Hull Elementary School and Raba Elementary School are all located in very close proximity to electric transmission lines of varying styles. R.R. Cable Elementary School is located next door to a substation. This information is easily verified using NISD's website or visiting the school in person. True and accurate photographs of these schools, as well as photographs of the elementary school in the study area, are attached as exhibits to my testimony.

Under Mr. Cichowski's logic, NISD has placed many students in danger. However, I think the truth lies elsewhere. It is my opinion that NISD knows very well how to safely operate a school in the vicinity of an electric transmission line – otherwise, one would question how it could operate the schools listed in my testimony. Here, CPS Energy's transmission line would be on an entirely different property, and it would be relatively hard for the students to get to it, in my opinion. It may be that the two large drainage ditches are more "tempting" to explore – they are certainly closer to the school – actually on the school property – so they are more accessible. So, I believe Mr. Cichowski's concerns are unwarranted. Moreover, to the extent they are warranted, how would routing the powerline into neighborhoods like Canyons, Clear Water Ranch, or Altair, where children

and families live 24-7 be a safer and better choice? If anything, Segment 42a complies with many of the Northside ISD's concerns, including not running the powerline in the front of the school or where it would impact vacant land reserved for a future middle school.

DO YOU HAVE PHOTOGRAPHS TO SHARE?

Yes, the photographs and imagery attached to my testimony as Exhibit MB-18 Rebuttal are true and accurate depictions of the elementary school identified on each exhibit.

DOES THIS CONCLUDE YOUR TESTIMONY?

Yes, thank you.

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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 PATRICK CLEVELAND'S
SECOND REQUEST FOR INFORMATION TO CPS ENERGY

Patrick Cleveland Question No. 2-2:

Was the map of Golden Cheeked Warbler Habitat in Bexar County, (published in the Diamond, D.D., L.F. Elliot, and R. Lea. 2010 Golden-cheeked Warbler Habitat Up-date, Final Report to Texas Parks & Wildlife, Austin, Texas, USA), used as an overlay or otherwise used to calculate the acreage of Golden Cheeked Warbler habitat in the project area?

Response No. 2-2:

Yes. The Golden Cheeked Warbler Habitat in Bexar County was used to calculate the acreage of golden-cheeked warbler habitat in the project area. Please also note that, as stated on page 3-27 of the Environmental Assessment attached to CPS Energy's Application as Attachment 1, POWER biologists identified obvious vegetation alterations in areas designated as potential suitable habitat by the Model C. Examples of obvious vegetation alterations included newly constructed infrastructure (e.g., roads, transmission lines, and pipelines), commercial/residential developments, and clear-cut or thinned vegetation. Unaltered areas (no obvious alterations of vegetation) were assumed to remain the same quality and retained their Model C value designation.

Prepared By: Lisa B. Meaux Title: Project Manager, POWER Engineers, Inc.
Sponsored By: Lisa B. Meaux Title: Project Manager, POWER Engineers, Inc.

Curt D. Brockman
cdbrockman@cpsenergy.com
Direct: (210) 353-2423
Fax: (210) 3536829

April 3, 2009

Dr. Joseph Bitter
446 County Road 115
Edna, Texas 77957

Re: Cagnon-to-Kendall Transmission Line: 2008 Bird Survey.

Dear Dr. Bitter:

As requested, enclosed is the 2008 Golden-Checked Warbler Survey Report for 2008. If you have any questions, please do not hesitate to contact Barbara Broll or me at (210) 353-2423.

Sincerely,

Curt D. Brockmann
Attorney at Law

CDB/re
Enclosures

cc: w/ attach.: Hayden and Cunningham
Attn: Michael Bitter
7750 Broadway
San Antonio, Texas 78209

cc: w/o attach.: Barbara Broll

Golden-Cheeked Warbler Survey
for CPS Energy's Cagnon-Kendall
345-kV Transmission Line
Bexar County, Texas
Spring 2008

Document No. 080089
PBS&J Job No. 100001529

GOLDEN-CHEEKED WARBLER SURVEY FOR CPS ENERGY'S CAGNON-KENDALL 345-KV TRANSMISSION LINE BEXAR COUNTY, TEXAS

SPRING 2008

Prepared for:

CPS Energy
P.O. Box 1771
San Antonio, Texas 78296-1771

Prepared by:

PBS&J
6504 Bridge Point Parkway
Suite 200
Austin, Texas 78730

December 2008

Printed on recycled paper

Contents

Figures

Tables

1.0 INTRODUCTION

CPS Energy energized its 30-mile (48-kilometer [km]) long Cagnon-Kendall 345-kilovolt (kV) transmission line on January 31, 2007. This line connects the Cagnon Substation in Bexar County to a tie-point with LCRA's 345-kV transmission line at the Kendall County line (Figure 1). Most of the project is located in Bexar County, with only 33 of the 155 poles being in Medina County. The line includes a 100- to 150-foot (ft) (30- to 46-meters [m]) right-of-way (ROW) over most of the route. Each pole averages approximately 160 ft (49 m) in height, is bolted to a foundation, and extends 14 to 56 ft (4 to 17 m) below ground. The distance between each pole varies between 230 and 1,570 ft (70 and 479 m). The Cagnon-Kendall line was constructed to address potential low voltage conditions in this region, which includes Bexar, Kendall, Medina, and surrounding counties of the Texas Hill Country.

Construction of certain creek crossings for the access road required verification from the U.S. Army Corps of Engineers (USACE) that construction was authorized under Clean Water Act Nationwide Permit 12. Because it was known that some of the crossings were in the vicinity of habitat for the golden-cheeked warbler (GCWA – *Dendroica chrysoparia*), the USACE consulted with the U.S. Fish and Wildlife Service (FWS) under Endangered Species Act section 7(a)(2). PBS&J prepared a draft biological assessment, dated October 2005, which the USACE adopted as its Biological Assessment. The FWS issued its no jeopardy Biological Opinion on June 23, 2006. The USACE then verified CPS Energy's authorization to construct crossings related to the line under Nationwide Permit 12 on July 27, 2006.

As part of the voluntary avoidance, minimization, and conservation measures, CPS Energy agreed to conduct annual presence/absence surveys for the GCWA for 4 years along certain portions of the proposed ROW in Bexar County once the line had been constructed and energized. The presence/absence surveys started on the first full season following energization of the line (i.e., 2007) and will continue annually through 2010.

This report presents the results of the Year 2 (2008) presence/absence surveys that PBS&J performed. The survey protocols adhere to FWS's recommended minimum procedures for determining the presence/absence of GCWAs, as outlined in PBS&J's Federal Fish and Wildlife Permit (Permit No. TE-820022). Section 2.0 of this report presents biological information about the GCWA. Section 3.0 presents the methods PBS&J employed to perform the 2008 surveys, while Section 4.0 provides a discussion of the findings of the presence/absence surveys. Section 5.0 provides a summary and Section 6.0 is the reference section.

2.0 BIOLOGICAL BACKGROUND

2.1 GOLDEN-CHEEKED WARBLER (*Dendroica chrysoparia*)

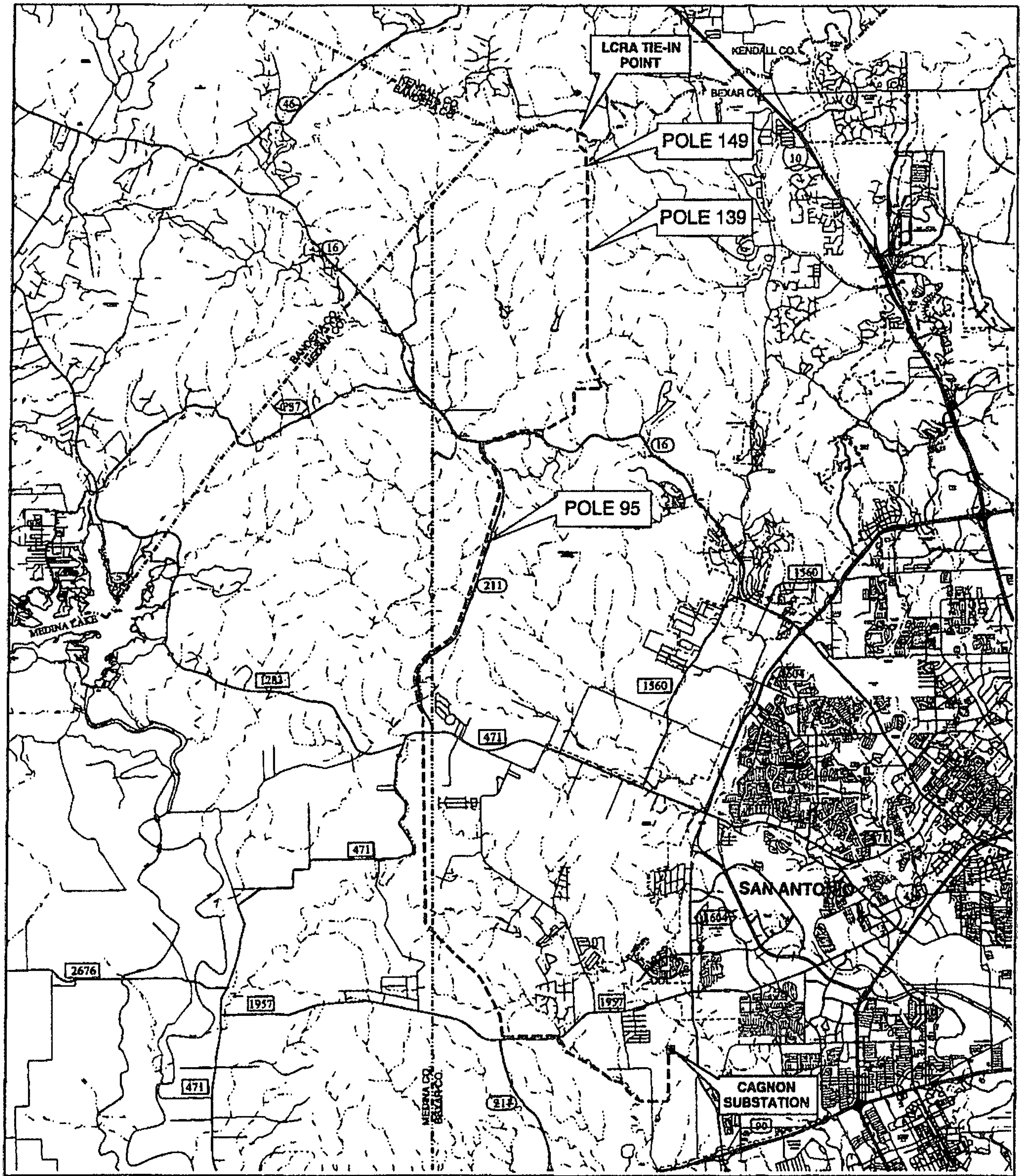
Description: The GCWA is a medium-sized (length ca. 12–13 centimeter [cm]) insectivorous songbird. Breeding adult males have black on the forehead, crown, nape, and back. The cheeks are a bright golden

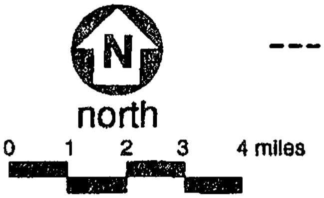
yellow, interrupted by a black eyeline. The throat and upper breast are black, which continues as streaking along the sides and flanks. The remaining underparts are white. The wings are black with two distinct white wing-bars. Adult females are similar in coloration, but are comparatively duller; the crown and back are olive-green with some black streaking (Oberholser, 1974; Pulich, 1976; Ladd and Gass, 1999).

Range: The GCWA is the only bird species that nests exclusively within the state's boundaries. Data indicate the species historically nested in 41 of Texas's 254 counties; however, current confirmed breeding records exist from approximately 27 Texas counties (Pulich, 1976; FWS, 1995; Texas Ornithological Society [TOS], 1995; Lasley et al., 1997; Ladd and Gass, 1999; Lockwood and Freeman, 2004). Currently, the species is a rare to locally common summer resident from Young and Palo Pinto counties, south through the eastern and south-central parts of the Edwards Plateau to Real and Uvalde counties (Lockwood and Freeman, 2004). GCWAs winter in pine and pine-oak woodlands in the highlands of southern Mexico, Guatemala, Honduras, and Nicaragua (Ladd and Gass, 1999). In Bexar County, the species is a fairly common spring migrant and summer resident (San Antonio Audubon Society [SAAS], 2004).

Habitat: GCWA breeding habitat consists of mature oak-juniper woodlands in the Edwards Plateau, Lampasas Cut-Plain, and Llano Uplift regions, and to a lesser extent on portions of the Comanche Plateau, Western Cross Timbers, and North-Central Prairies (Ladd and Gass, 1999; Lockwood and Freeman, 2004). Ashe juniper (*Juniperus ashei*) and various oaks, such as Texas red oak (*Quercus buckleyi*) and plateau live oak (*Quercus virginiana* var. *fusiformis*), are the dominant tree species throughout the GCWA's breeding range. Other common canopy constituents include post oak (*Quercus stellata*), Lacey oak (*Quercus laceyi*), shin oak (*Quercus sinuata* var. *sinuata*), cedar elm (*Ulmus crassifolia*), walnut (*Juglans* spp.), escarpment black cherry (*Prunus serotina* var. *eximia*), hackberry (*Celtis* spp.), Texas ash (*Fraxinus texensis*), and sycamore (*Platanus occidentalis*) (Ladd, 1985; Ladd and Gass, 1999). GCWAs use the shredding bark of mature Ashe junipers to construct nests and, therefore, require some mature juniper in their nesting habitat; however, GCWAs may occur in areas with little juniper provided that other key components of their habitat are present. Preferred woodlands typically have a moderate to high density of mature trees and a dense canopy cover in the middle and upper layers (FWS, 1992; Ladd and Gass, 1999). GCWAs typically occur in areas containing steep slopes, such as canyons and draws, as well as adjacent ridgetops, but may occur elsewhere provided suitable habitat is present (Pulich, 1976; Ladd and Gass, 1999).

Status: On May 4, 1990, FWS published an emergency listing of the GCWA as endangered (55 FR 18844), as well as a proposed rule to formally list the GCWA as endangered. On December 27, 1990, FWS published the final rule for listing as endangered (55 FR 53153). The Texas Parks and Wildlife Department (TPWD) also lists the species as endangered.





---- CPS Energy's 345-kV Line

Base Map: TxDOT General Highway Maps; Bandera, Bexar, Medina and Kendall Counties, Texas

PBSJ
• Engineering
• Environmental Consulting
• Surveying

Figure 1

CSP ENERGY'S CAGNON–KENDALL 345–KV TRANSMISSION LINE PROJECT

t:/projects/hc1/cps/441227/biological assessment/cad/pole95.dgn

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2.2 PRESENCE IN THE GENERAL AREA

According to TPWD's Natural Diversity Database (TPWD, 2005), no previously documented GCWA records existed from within the Cagnon-Kendall transmission line ROW prior to the 2007 presence/absence surveys. However, documented GCWA records did exist from several locations in the general vicinity of the ROW (Keddy-Hector, 1997; Elliott, 2004; FWS, 2005, TPWD, 2005; Zara Environmental, 2006). The Elizabeth P. Hill Preserve, established in 1996 via a conservation easement from Christopher C. Hill to the Nature Conservancy of Texas, is located near the southwest corner of State Highway (SH) 211 and SH 16. Keddy-Hector (1997) reported seven territories on this preserve, while Elliott (2004) recorded two male GCWAs proximate to the ROW. One of Elliot's warblers was west of Pole 98, while the other was near Pole 99. Zara Environmental (2006) identified one or two warbler territories on the Morales Pasture of MWM property. These territories are north of poles 118–120 and west of poles 122–123. Apart from these records, other nearby records include two west of the ROW (west and southwest of Pole 140), another north of the ROW (north of Pole 107) along SH 16, and a fourth approximately 2 miles north of Pole 107 (TPWD, 2005). In addition, approximately 50 GCWA territories are located within Government Canyon State Natural Area, which is located east of SH 211 and south of SH 16, approximately 1 mile from the Cagnon-Kendall transmission line ROW (FWS, 2005). Prior to the spring 2007 surveys, PBS&J had not encountered any GCWAs within the Cagnon-Kendall transmission line ROW or vicinity.

3.0 METHODOLOGY

PBS&J conducted presence/absence surveys in previously identified occupied/potential GCWA habitat along or adjacent to the existing Cagnon-Kendall transmission line ROW and any associated permanent access roads along the 11-mile portion of the line between Pole 95 on SH 211 and the Kendall County line at Balcones Creek, just north of Pole 152 (Figure 2, map pocket). The ROW is approximately 150 ft wide and includes some of the access roads. Based on habitat assessments conducted in October and November 2004 prior to CPS Energy's construction of the transmission line, PBS&J identified six general areas of potential GCWA habitat within this portion of the line. PBS&J conducted presence/absence surveys of these six areas during spring 2007 (PBS&J, 2007) and in spring 2008 (this report). They are as follows (see Figure 2):

- **Area 1**: Adjacent to the west side of SH 211 from approximately 300 ft south of Pole 96 to approximately 200 ft north of Pole 102, with gaps.
- **Area 2**: (A) Adjacent to the south side of SH 16 from approximately 600 ft east of Pole 103 to near Pole 104; (B) Adjacent to the north side of SH 16 from approximately 225 ft west of Pole 106 to approximately 100 ft east of Pole 108.
- **Area 3**: From approximately 480 ft southwest of Pole 115 to approximately 170 ft north of Pole 127, with gaps; paved access road.
- **Area 4**: From approximately 570 ft south of Pole 129 to approximately 300 ft south of Pole 133, with gaps.

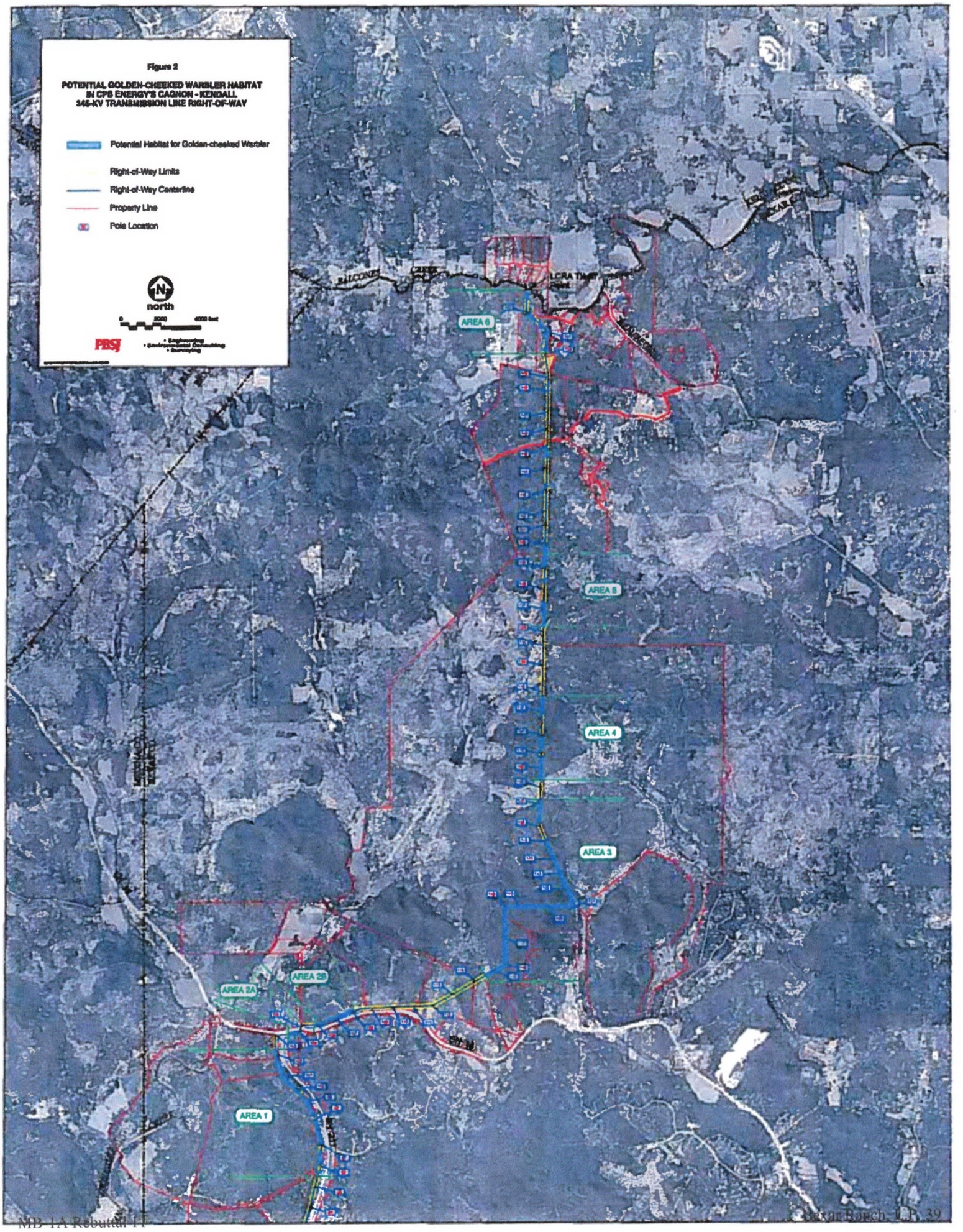
Figure 2
POTENTIAL GOLDEN-CHEEKED WARBLER HABITAT
IN CPS ENERGY'S CAGNON - KENDALL
345-KV TRANSMISSION LINE RIGHT-OF-WAY
Potential Habitat for Golden-cheeked Warbler
Right-of-Way Limits
Right-of-Way Centerline
Property Line
Pole Location
north
AREA 6
AREA 5
AREA 4
AREA 3
AREA 2B
AREA 2A
AREA 1

- **Area 5**: From approximately 300 ft north of Pole 136 to approximately 750 ft north of Pole 139 (Note: PBS&J originally identified additional potential GCWA habitat in several areas between poles 139 and 145; however, a large area of land, including these areas, was subsequently cleared by an unrelated third-party before CPS Energy started its construction and, therefore, could not be surveyed during spring 2007. The clearing stretches from the fence line between poles 139 and 140 to the fence line near Pole 149 (see Figure 2). The clearing was mostly of Ashe juniper, leaving the larger hardwoods.
- **Area 6**: From approximately 100 ft north of Pole 150 to Balcones Creek, with gaps; gravel access road.

According to McMahan et al. (1984), the dominant vegetation communities in the area are live-oak-Ashe juniper parks, live oak-mesquite-Ashe juniper parks, live oak-Ashe juniper woods, and mesquite-live oak-bluewood parks. These upland community types occur as open savannah or as woodland tracts dominated by oaks and Ashe juniper, the degree of canopy coverage being dependent upon the amount of clearing that has taken place.

Within the transmission line ROW, dominant canopy species within potential golden-cheeked warbler habitat include Ashe juniper, plateau live oak, Texas red oak, Lacey oak, escarpment black cherry, black walnut (*Juglans nigra*), cedar elm, and sugar hackberry (*Celtis laevigata*). Common midstory and understory species include Texas mountain laurel (*Sophora secundiflora*), Texas persimmon (*Diospyros texana*), elbowbush (*Forestiera pubescens* var. *pubescens*), Texas redbud (*Cercis canadensis* var. *texensis*), red buckeye (*Aesculus pavia* var. *flavescens*), Mexican buckeye (*Ungnadia speciosa*), agarito (*Berberis trifoliata*), Lindheimer's silktassel (*Garrya ovata* ssp. *lindheimeri*), catclaw mimosa (*Mimosa aculeaticarpa* var. *biuncifera*), and gum bumelia (*Sideroxylon lanuginosum* ssp. *rigidum*). Other associated understory species include greenbriar (*Smilax* sp.), mustang grape (*Vitis mustangensis*), Virginia creeper (*Parthenocissus quinquefolia* var. *quinquefolia*), heartleaf ampelopsis (*Ampelopsis cordata*), cedar sedge (*Carex psilostachya*), and twistedleaf yucca (*Yucca rupicola*).

PBS&J performed the presence/absence surveys in accordance with the procedures outlined by FWS (Permit No. TE-820022). Current FWS survey protocol establishes the GCWA survey season as March 15 to May 15. PBS&J began the presence/absence surveys on April 11, 2008, with subsequent presence/absence surveys on April 12, 17, 18, 24, 25, and 30; and May 1, 5, 7, and 8 (Table 1). During these visits, PBS&J ornithologists surveyed each of the six habitat areas five times, except for Area 4, which was surveyed six times. No more than one survey was conducted in any habitat area within a 5-day period, with the exception of Area 4, which was survey on two consecutive days (April 24 and 25). Ornithologists played cassette tapes of GCWA vocalizations to elicit responses from the target species, but only after the fifth visit to areas where no GCWAs had been previously detected.

TABLE 1

SUMMARY OF SURVEY EFFORT AND WEATHER CONDITIONS

Date	Area	Beginning/ Ending Times	Temperature (°F)	Wind Direction and Speed (mph)	Cloud Cover, etc.	Personnel[1]	Comments
4/11/08	1	06:50–08:15	68–69	N 5–10	Overcast	DG	No GCWAs detected
	2	08:20–09:20	69–70	N 5–10	Partly cloudy	DG	No GCWAs detected
	6	10:11–11:18	72–74	N 5–10	Partly cloudy	DG	No GCWAs detected
4/12/08	3	07:20–08:45 10:00–14:05	56–74	N 5–10	Clear	DG	2–3 GCWAs detected
	4	08:51–09:55	60–63	N 5–10	Clear	DG	1 GCWA detected
4/17/08	6	07.00–08:22	57–66	SE 10–15	Overcast	MH	No GCWAs detected
	3	07:57–12:05	66–74	S 10–15	Overcast; partly cloudy	DG	2 GCWAs detected
	1	08:52–10:40	68–71	SSW 10–15	Partly cloudy	MH	1 GCWA detected
	2	10:50–11:50	71–74	SSW 10–15	Mostly sunny	MH	No GCWAs detected
4/18/08	4	08:31–10:23	54–63	N 5–10	Partly cloudy	DG	1 GCWA detected; 2 GCWAs detected Area 3
	5	10:38–11:18	63–64	N 5–10	Clear	DG	No GCWAs detected
4/24/08	3	07:45–13:11	72–76	S 0–5	Overcast	DG, GN	7 GCWAs detected
	6	07:40–08:30	72–73	SE 5–10	Overcast	MH	1 GCWA detected
	5	08:45–09:50	73–74	SE 5–10	Partly sunny	MH	No GCWAs detected
	1	11:15–12:34	74–75	SE 5–10	Partly cloudy	MH	1 GCWA detected
	2	12:38–13:30	75–77	SE 5–10	Mostly cloudy	MH	No GCWAs detected
	4	15:45–16:55	78–80	S 5–10	Overcast	DG, GN	1 GCWA detected
4/25/08	4	07:37–09:32	72–74	S 0–5	Overcast; sporadic drizzle	DG, GN	3 GCWAs detected
4/30/08	3	07:22–13:27	60–80	SSE 0–5	Mostly clear	DG, GN	18 GCWAs detected
	6	07:35–08:42	61–63	SSE 5–10	Clear	MH	No GCWAs detected
	5	09:02–09:45	63–66	SSE 10–15	Clear	MH	1 GCWA detected
	1	10:18–11:30	70–74	SSE 10–15	Mostly clear	MH	2 GCWAs detected
	2	11:40–12:40	75–78	SE 10–15	Clear	MH	No GCWAs detected
5/1/08	4	07:27–09:29	69–71	S 0–5	Overcast	DG, GN	4 GCWAs detected
	5	09:44–10:30	71–72	S 0–5	Overcast	DG, GN	No GCWAs detected
5/5/08	6	09:40–10:40	70–75	SE 0–5	Overcast, drizzle	MH	1 GCWA detected
	5	10:55–11:59	76–82	SE 0–5	Partly cloudy	MH	1 GCWA detected (tape played)
	1	12:33–13:55	83–85	SE 0–5	Partly cloudy	MH	2–3 GCWAs detected (tape played)
	2	14:10–15:10	85–87	SE 0–5	Partly cloudy	MH	No GCWAs detected (tape played)
5/7/08	3	07:27–13:35	70–83	S 0–5	Overcast	DG	11–12 GCWAs detected
5/8/08	4	07:43–09:49	62–72	NE 0–5	Clear	DG	4 GCWAs detected

[1]Personnel – Derek Green (DG), Mike Horvath (MH), Gary Newgord (GN).

As with the 2007 survey, PBS&J's right-of-entry (ROE) was restricted to CPS Energy's easements; therefore, the survey routes employed by PBS&J during the spring 2008 survey were restricted to areas within these easements, including the transmission line ROW and permanent access roads. For each respective survey area (e.g., Area 1, Area 2, etc.), PBS&J ornithologists would pick a starting point and would then walk the centerline of the transmission line ROW or access road until reaching a designated ending point. Occasionally, topographic features (e.g., bluffs, cliffs, extremely steep terrain, etc.) necessitated slight deviations from these routes. Slight deviations also occurred when ornithologists investigated detections of nearby GCWAs. PBS&J made attempts to alternate the direction of routes and the order of areas surveyed for each visit, to allow surveys to occur during different times of the day.

PBS&J performed surveys using the spot-mapping method, as described by the International Bird Census Committee (IBCC) (1970). Ornithologists used aerial photography and U.S. Geological Survey (USGS) 7.5-minute topographic quadrangles (San Geronimo, Helotes, Jack Mountain, and Van Raub, Texas, quadrangles) and recorded field observations with handheld Garmin™ Global Positioning System (GPS) units (estimated accuracy <10 m).

4.0 RESULTS

PBS&J ornithologists conducted GCWA presence/absence surveys on April 11, 12, 17, 18, 24, 25, and 30; and May 1, 5, 7, and 8, 2008. The presence/absence survey effort occurred on 11 separate days, for a total of 59 survey hours. During the 2008 presence/absence survey effort, PBS&J ornithologists encountered GCWAs on all but the first day of the survey (April 11). Table 1 presents data including survey dates, area(s) surveyed, survey begin/end times, weather conditions, personnel, and general comments. Figures 3 through 15, located in Appendix A, depict the locations and directions of movements of observed GCWAs, with individual observations represented by the appropriate IBCC symbol and annotated chronologically (e.g., 0412A, 0412B, 0424A, etc.). Appendix B presents detailed information for each GCWA observation, including date, time, observer, visit number, survey area, location data (latitude/longitude), number of individuals, sex, vocalizations, contact type, and whether a tape was used. Appendix C presents additional bird species that ornithologists encountered in the area during the 2008 survey period, while Appendix D shows project photographs.

4.1 AREA 1

On April 11, 2008, PBS&J ornithologists conducted the first of five visits to Area 1. Subsequent visits were made on April 17, 24, and 30, and on May 5, 2008. While no GCWAs were encountered during the initial visit, PBS&J ornithologists detected a singing adult male GCWA (0417C) at the edge of the transmission line ROW, just northwest of pole 99 during the second visit on April 17 (Figure 3). On the third visit to Area 1 on April 24, 2008, PBS&J detected a singing male (0424M) approximately 300 ft west of Pole 99. This bird was heard at two subsequent locations (0424N and 0424O). PBS&J detected

two singing males during the fourth visit on April 30: 0430L and 0430M southeast of Pole 101 and 0430Q, 0430R, and 0430S west of Pole 99 (see Figure 3).

The fifth and final visit to Area 1 was conducted on May 5, 2008, when PBS&J heard two or three singing males: 0505E, 0505F and 0505G between poles 101 and 102; 0505H near Pole 99; and 0505I just northwest of Pole 101 (see Figure 3). This latter male may have been the same one heard earlier (i.e., 0505E, 0505F and 0505G). During this fifth visit, PBS&J ornithologists also played a cassette tape of GCWA vocalizations to elicit responses from the target species in the portions of Area 1 where no GCWAs had been detected in earlier visits. The taped call elicited no responses.

PBS&J ornithologists detected a total of six or seven adult male GCWAs in Area 1 during the spring 2008 survey (see Figure 3). However, several of these observations were likely of the same bird in subsequent visits. It is likely that the singing males represent a total of 2–3 territories in Area 1. No female or juvenile GCWAs were heard or observed in Area 1. While suitable habitat for the GCWA is present in and adjacent to portions of the ROW within Area 1, much of the habitat is of low quality and of limited extent. In addition, the transmission line ROW runs adjacent and parallel to SH 211. During surveys, PBS&J ornithologists noted significant traffic noise from the roadway, which could have an effect on the number of GCWAs recorded in these areas. Furthermore, the proximity of the ROW to SH 211 may have an effect on the number of GCWAs occupying suitable habitat within Area 1. In 2007, two GCWAs were detected in Area 1 (see Figure 3).

4.2 AREA 2

PBS&J ornithologists made five visits to Area 2 in 2008 on the following dates: April 11, 17, 24, and 30, and on May 5. No GCWAs were detected in Area 2 during any of the first four visits. Thus, on the fifth and final visit to Area 2, PBS&J ornithologists played a cassette tape of GCWA vocalizations to elicit responses from the target species. No GCWAs responded to the tape.

While suitable habitat for the GCWA is present in and adjacent to portions of the ROW within Area 2, much of the habitat is fragmented, of low quality, and of limited extent. In addition, the transmission line ROW runs adjacent and parallel to SH 16. During surveys, PBS&J ornithologists noted significant traffic noise from the roadway, which could have an effect on the number of GCWAs detected in these areas. Like Area 1, the proximity of the ROW to SH 16 may have an effect on the number of GCWAs occupying suitable habitat within Area 2. For comparison, in 2007, only one GCWA was detected in Area 2 (see Figure 3). This male started signing in response to the cassette tape.

4.3 AREA 3

PBS&J ornithologists conducted five presence/absence visits in Area 3 during the spring 2008 survey: April 12, 17, 24, 30, and May 7. In addition, male GCWAs were heard singing in Area 3 during a visit to Area 4 on April 18, 2008. Because numerous GCWAs were detected in this area, the results are broken down by visit.

4.3.1 Visit 1

The first 2008 visit to Area 3 occurred on April 12. During this visit, PBS&J ornithologists detected at least two and possibly three adult male GCWAs (Figure 4). The first adult male GCWA (0412A) was heard singing in the canyon between poles 124 and 125. The second adult male GCWA (0412B) was heard farther down the canyon 7 minutes later and may have been the same male. The third adult male GCWA (0412C) was singing just east of Pole 125 and then was heard singing just north of its initial location (0412D).

4.3.2 Visit 2

The second visit to Area 3 was conducted on April 17, 2008. During this visit, PBS&J ornithologists detected two adult male GCWAs (see Figure 4). The first adult male GCWA (0417A) was heard singing just northwest of Pole 121, while the second was heard singing on the south side of the Morales Road, southwest of Pole 120. While surveying Area 4 on April 18, 2008 (see below), two GCWA males were heard singing in Area 3. The first (0418B) was in the transmission line ROW just north of Pole 126 and the second (0418C) was just southeast of Pole 126 (see Figure 4).

4.3.3 Visit 3

PBS&J conducted the third visit to Area 3 on April 24, 2008. During this visit, PBS&J ornithologists detected seven adult male GCWAs (see Figure 4). Five of the seven GCWAs were detected along the portion of transmission line ROW between poles 121 and 127, while the other two were encountered along the portion of transmission line ROW between poles 115 and 121. The first adult male GCWA (0424B) was singing within the transmission line ROW on the southern side of the canyon just south of Pole 125. Five minutes later this bird was visually observed slightly farther up the slope. It had nesting material in its mouth (0424C). The second male (0424D) was heard singing just east of the ROW between poles 125 and 126. The third male GCWA (0424E) was first heard singing just west of the ROW between poles 124 and 125. Eight minutes later it had moved closer to Pole 124, and 3 minutes later it was visually observed in the ROW approximately 150 ft west of Pole 124 (0424F). The fourth male (0424G) landed nearby and was visually observed being chased by the third male. The third male was then visually observed singing again at the edge of Pole 124 (0424H). The fifth male (0424I) was heard singing and then observed visually in the ROW, just southeast of Pole 123. The sixth male was heard singing in the ROW just east of Pole 120 (0424J) before moving north of the ROW (0424K). The seventh male (0424L) was heard singing northeast of Pole 118, just outside of the ROW.

4.3.4 Visit 4

PBS&J conducted the fourth visit to Area 3 on April 30, 2008. During this visit, PBS&J ornithologists detected at least 16 adult male GCWAs, a female, and a juvenile (Figure 5). Ten of the 16 male GCWAs and the female were detected along the portion of transmission line ROW between poles 115 and 121,

while the other 6 males and a juvenile were encountered along the portion of transmission line ROW between poles 121 and 127.

The first male (0430A) was singing just outside of the ROW southeast of Pole 120. A different male (0430B) was heard singing northeast of Pole 120, which then moved farther west (0430C). A third male (0430D) was heard within the transmission line ROW just west of Pole 120 on the east slope of a ravine. The fourth male (0430E) was heard singing in a ravine just northeast of Pole 119, while a fifth male (0430F) was heard singing in the transmission line ROW just north of Pole 117. A sixth male (0430H) was heard singing just northeast of Pole 116. Male 5 was heard again near the original spot (0430I). Walking back along the Morales Road, PBS&J visually observed a male (0430J) and two minutes later a female (0430K) southeast of Pole 119. Both were chipping. Eventually the male started to sing. The pair was under observation for 22 minutes before PBS&J moved on, the pair still there and the male still singing. Where the Morales Road passes by Pole 120, PBS&J heard three males singing simultaneously: 0430N was just northwest of Pole 120, while 0430O was on the southwest side of the road and 0430P on the east side of the road south of Pole 120. Male 0430P was likely Male 0430A heard earlier that morning, while Male 0430N was likely Male 0430D, also heard earlier that morning. Farther south along the road, PBS&J heard another male (0430T) on the east side of the road and then saw it fly across to the west side of the road where it continued singing (0430U and 0430V). PBS&J heard yet another male (0430W) farther along the road on the southwest side.

In the northern portion of Area 3 (poles 121-127) PBS&J encountered six male GCWAs and a juvenile. The first (0430X) was heard singing just outside of the ROW northeast of Pole 124. Another male (0430Y) was visually observed within the ROW approximately 400 ft northwest of Pole 124. This bird did not sing, but chipped, and was accompanied by a juvenile. Another male (0430Z) was heard singing just east of the ROW approximately midway between poles 124 and 125 while male 0430Y was still in sight. Yet another male (0430AA) was heard singing on the western edge of the ROW upslope of 0430Z while 0430Z was still singing. Another male (0430BB) was heard singing east of the ROW between poles 126 and 127 and then moved slightly north to continue singing (0430CC). Finally, male 0430DD was heard singing near Pole 124. Thus, five separate male GCWAs likely occur in this area between poles 124 and 125.

In summary, PBS&J encountered at least 16 different male GCWAs, as well as 1 female and 1 juvenile during Visit 4.

4.3.5 Visit 5

On May 7, 2008, PBS&J conducted the fifth and final visit to Area 3. During this visit, PBS&J ornithologists detected 11-12 adult male GCWAs (Figure 6). Eight of these male GCWAs were detected along the southern portion of Area 3 (between poles 115 and 121), while the other three or four were detected in the northern portion of Area 3 (poles 121-127).

The first adult male GCWA (0507A) was heard singing in the transmission line ROW just north of Pole 116. The second male (0507B) was heard singing in the ROW just northeast of Pole 115. The third and fourth males were also heard singing within the transmission line ROW, the third (0507C) just north of Pole 117 and the fourth (0507D) about 600 ft south of Pole 118. The fifth male (0507E) was heard singing outside of the transmission line ROW and just northeast of Pole 118. A sixth male (0507F) was heard singing just north of the ROW northeast of Pole 120 and then moved slightly west (0507G). Male seven (0507H) was heard singing in the ROW immediately east of Pole 119 on the west slope of a ravine. The eighth male (0507I) was encountered on the south (upper) side of the Morales Road south of Pole 120. This bird was singing despite the slight drizzle.

In the northern portion of Area 3, a ninth male (0507J) was heard singing within the ROW in the canyon just southeast of Pole 125. The tenth male (0507K) was heard singing in the ROW in a creek area just north of Pole 126. On the return journey, an eleventh male (0507L) was heard singing within the ROW in the canyon just south of Pole 125. This could easily have been a male GCWA (0507J) heard earlier in the same location. However, from previous surveys earlier in the year it is known that three males occur in this general vicinity. A twelfth male (0507M) was heard singing briefly in the ROW just southeast of Pole 123.

4.3.6 Summary

PBS&J ornithologists conducted five visits to Area 3 during the spring 2008 survey. During these visits, PBS&J ornithologists recorded 56 encounters with GCWAs, which included adult males, an adult female, and a juvenile of unknown sex. While territory mapping was not in PBS&J's scope, we estimate that the 56 encounters may represent 24–26 GCWA territories (figures 7 and 8).

4.4 AREA 4

PBS&J ornithologists conducted six presence/absence visits to Area 4 during the spring 2008 survey on April 12, 18, 24, 25, and May 1 and 8. The reason for an extra visit was because during visit 3 (April 24) the conditions were not optimal (even though a male GCWA was heard singing) and so the survey was repeated the following day (April 25). During the initial visit on April 12, 2008, PBS&J ornithologists heard one adult male (0412E) singing in a canyon just east of Pole 132 (Figure 9). This bird moved north (0412F and 0412G). During the second visit on April 18, one male GCWA (0418A) was visually observed singing on the north slope of a canyon just southwest of Pole 132. The singing perch was the same one used the year before during spring 2007. During this second visit, two male GCWAs (0418B and 0418C) were detected in Area 3 (see Figure 4). During the third visit to Area 4 on April 24, a male GCWA (0424P) was heard singing just northeast of Pole 130 (see Figure 9).

During the fourth visit (April 25), three males were encountered (see Figure 9). The first (0425A) was heard singing just west of Pole 129. The second (0425B) was heard singing then visually observed on the east side of the access road southeast of Pole 129 and near the southern edge of Area 4. This bird then flew west into the transmission line ROW and was heard singing along the creek (0425C). The third male

(0425D) was visually observed singing southwest of Pole 132 from the same perch as the week before and during the 2007 spring survey.

During the fifth visit (May 1), four male GCWAs were encountered (see Figure 9). The first (0501A) was visually observed within the transmission line ROW in a ravine just south of Pole 133. It was chipping, but not singing. The second male (0501B) was heard singing in the ROW between poles 130 and 131. The third male (0501C) was heard singing in the transmission line ROW just south of 129 and just north of the creek. The fourth male (0501D) was heard singing just southeast of Pole 132. It moved slightly to the east (0501E). When first heard, this bird was singing the A song. After approximately 6 minutes, it changed to the B song.

The sixth and final presence/absence visit to Area 4 (and, indeed, the spring 2008 survey) was conducted on May 8, 2008. Four adult male GCWAs were detected during this visit (see Figure 9). Despite seemingly ideal conditions, no GCWAs were detected until a male (0508A) was heard singing southwest of Pole 129. This male was heard continuously as it moved southeast (0508B and 0508C). During this time it changed from its A song to its B song. It was visually observed flying east across the access road, where it continued with its B song (0508D). It then moved slightly northeast (0508E). This bird was heard continuously for over 20 minutes.

The second adult male GCWA (0508F) was heard chipping and visually observed just outside of the ROW midway between poles 130 and 131. Then it started its B song and was observed flying west into the ROW, where it continued its B song (0508G). A third adult male GCWA (0508H) was heard singing its B song near the fence line southeast of Pole 132 in an area where a male GCWA had been heard on previous occasions. The fourth and final male (0508I) was heard singing (A song) east of the transmission line ROW and on the south side of a creek between poles 132 and 133.

During the spring 2008 survey, PBS&J ornithologists made 23 encounters with adult male GCWAs within Area 4. Based on the locations and timing of these GCWA encounters, as well as local topography, PBS&J ornithologists estimate that five or six adult male GCWAs were present in Area 4 during the spring 2008 survey. No female or juvenile GCWAs were heard or observed in Area 4.

4.5 AREA 5

PBS&J ornithologists conducted five surveys within Area 5 on April 18, 24, 30, and May 1 and 5, 2008. GCWAs were encountered in this area on only two of the survey days: April 30 (third visit) and May 5 (fifth and final visit) (Figure 10). On April 30, 2008 an adult male (0430G) was heard singing in the transmission line ROW north of Pole 139. On May 5, 2008, an adult male (0505C) was heard singing the B song east of the transmission line ROW between poles 139 and 140. It then moved to just north of the fence line (0505D). Although GCWAs had been encountered in Area 5, during the fifth and final visit, PBS&J ornithologists played a cassette tape of GCWA vocalizations to elicit responses from the target species in the portions of Area 5 where no GCWAs had been detected in earlier visits. No GCWAs responded to the taped GCWA songs.

In PBS&J's original habitat assessment identifying potential GCWA habitat conducted prior to construction of the transmission line, Area 5 extended farther north to Pole 149, primarily because of its proximity to other potentially suitable GCWA habitat. However, prior to the initial survey in spring 2007 this habitat was cut down during clearing activities by a third party unrelated to CPS Energy from the fence line between poles 139 and 140 to the fence line near Pole 149 prior to construction of the transmission line. Nevertheless, during the drive along the transmission line ROW to access areas 4 and 5, PBS&J heard singing male GCWAs on two occasions north of Area 5. On April 18, 2008 PBS&J encountered a singing male east of Pole 144 (0418D), and in 2007, PBS&J heard a male GCWA singing just east of Pole 145 (see Figure 10).

4.6 AREA 6

PBS&J ornithologists conducted the 2008 surveys within Area 6 on April 11, 17, 24, 30 and May 5. GCWAs were encountered in Area 6 on only two of the visits: April 24 (third visit) and May 5 (fifth and final visit) (Figure 11). On April 24, 2008, PBS&J ornithologists heard a singing adult male GCWA (0424A) in the transmission line ROW near the creek crossing between poles 151 and 152. On May 5, 2008, PBS&J heard a singing male (0505A) in almost the same place. It then flew across the access road (0505B).

During the spring 2008 survey, PBS&J ornithologists had three encounters with adult male GCWAs within Area 6. Based on the locations and timing of these GCWA detections, as well as local topography, PBS&J ornithologists estimate that one adult male GCWA was present in Area 6 during the spring 2008 survey. No female or juvenile GCWAs were detected in Area 6.

5.0 SUMMARY AND CONCLUSIONS

PBS&J ornithologists recorded 99 detections of GCWAs during the spring 2008 survey, including adult males, an adult female, and a juvenile of unknown sex. These 99 detections may represent 33–37 possible territories. A total of 18 GCWAs was visually verified, while the remaining GCWAs were heard only. Figures 3 through 15 depict the locations and direction of movement of the GCWA encounters (see Appendix A). Appendix B presents detailed information for each GCWA encounter, including date, time, observer, visit number, survey area, location data (latitude/longitude), number of individuals, sex, vocalizations, contact type, and whether a tape was used. Appendix C presents additional bird species that ornithologists encountered in the area during the 2008 survey period, while Appendix D shows project photographs.

Table 2 compares the results of the 2007 and 2008 surveys by area. Excluding the male detected just northeast of Pole 145 near Area 5 (see Figure 10), PBS&J estimated that the 106 detections of GCWAs in 2007 may represent 25–29 territories (PBS&J, 2007). For 2008, excluding the male detected just east of Pole 144 near Area 5 (see Figure 10), PBS&J estimates that the 99 detections of GCWAs may represent 33–37 territories, a slight increase over last year. The biggest increase was in Area 3, where PBS&J

recorded 24–26 territories in 2008, compared to 16–18 in 2007. Area 4 showed a slight increase from 4–5 territories (2007) to 5–6 territories (2008), while Area 1 also showed a slight increase in 2008 with at least 2 and possibly 3 territories, compared to just 2 in 2007. PBS&J recorded 1 territory in Area 5 in 2008, whereas no birds were detected in 2007. PBS&J assumes that the male heard near Area 5 in 2008 was the same individual that was heard in 2007, or at least a bird occupying the same territory. Two areas, however, showed a slight reduction from 2007. PBS&J detected no GCWAs in Area 2 in 2008 despite playing a tape after the fifth and final visit. In 2007, PBS&J had detected one male GCWA in Area 2, which responded to a cassette tape after the fifth and final visit. In Area 6, PBS&J recorded only one territory in 2008, compared to 2–3 territories in 2007.

TABLE 2

ESTIMATED NUMBER OF GCWA TERRITORIES, 2007 AND 2008

	2007	2008
Area 1	2	2–3
Area 2	1	0
Area 3	16–18	24–26
Area 4	4–5	5–6
Area 5	0	1
Area 6	2–3	1
Total	25–29	33–37

It is assumed that the male golden-cheeked warblers encountered in the study area in 2008 also breed there. Evidence of nesting is not common. One male in Area 3 was observed with nesting material in its mouth, while another male in Area 3 was accompanied by a juvenile of unknown sex. The only female observed this year was also in Area 3, and was accompanying a male. In 2007, the surveys continued into August to include monitoring during CPS Energy maintenance activities. During that period, more family groups were observed, indicating successful reproduction. Similar to 2007, the warblers in 2008 appear to be readily and successfully using areas adjacent to the line and do not appear to be disturbed by its presence. PBS&J found no evidence of warblers or other birds striking the lines, which is not surprising considering the average flight patterns.

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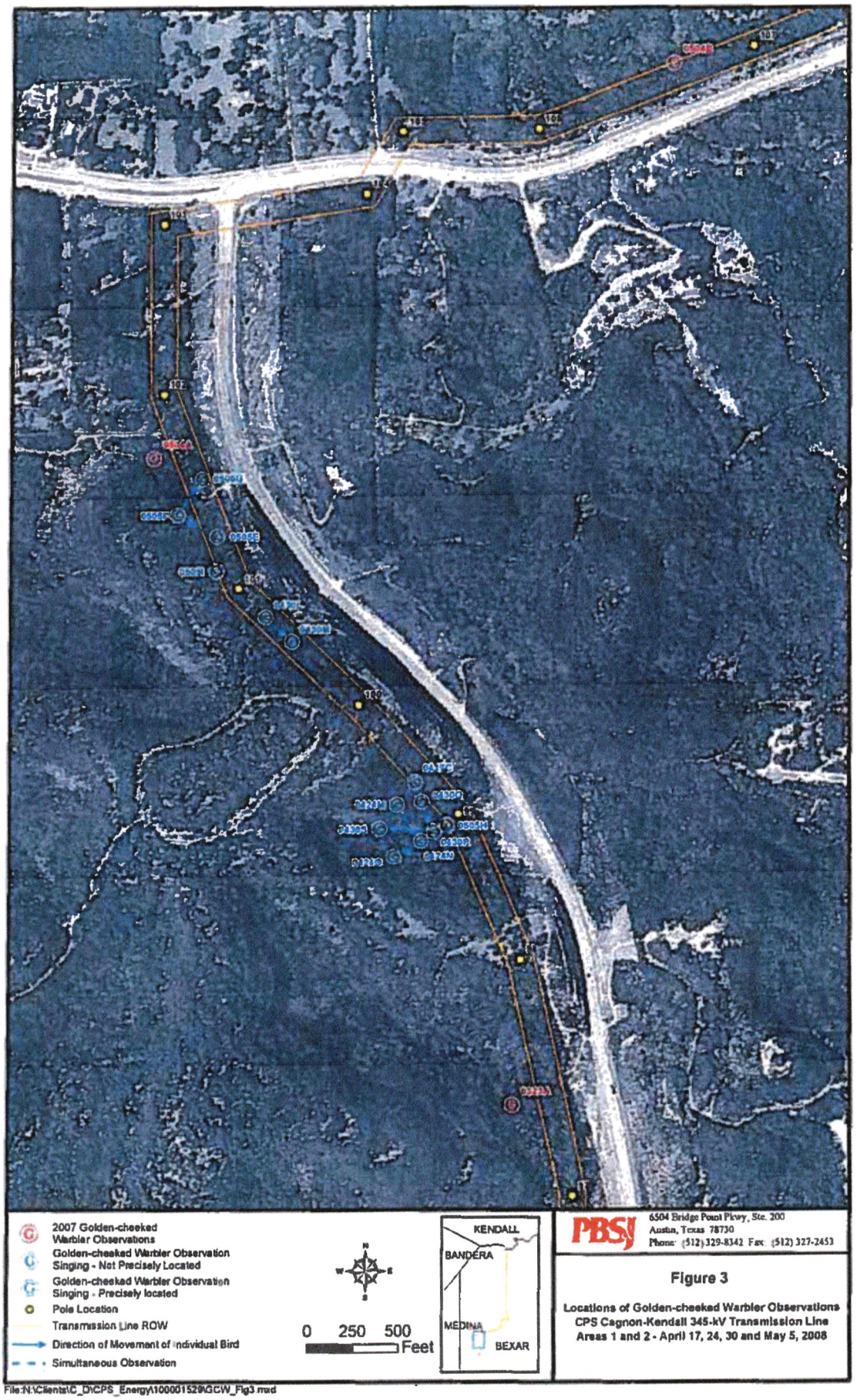
Appendix A

Figures of GCWA Locations


2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
0 250 500 Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste. 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax: (512) 327-2453
Figure 3
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Areas 1 and 2 - April 17, 24, 30 and May 5, 2008
File:N:\Clients\C_D\CPS_Energy\100001529\GCW_Fig3.mxd


2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
N
W
E
S
0 300 600
Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax (512) 327-2453
Figure 4
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 3 - April 12, 17, 18 and 24, 2008
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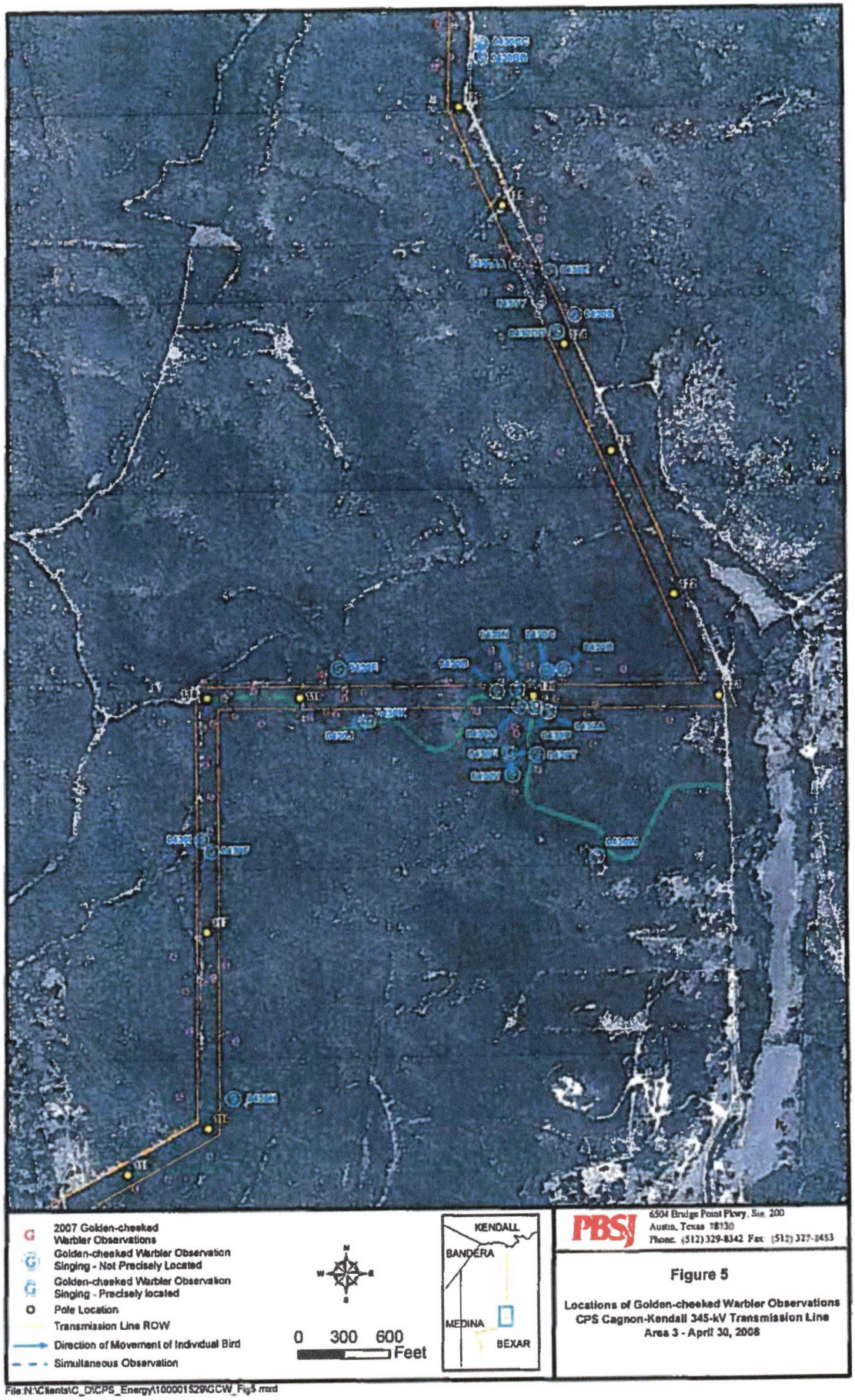
2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
N
W
E
S
0 300 600
Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBS&J
6504 Bridge Point Pkwy, Ste. 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax: (512) 327-2453
Figure 5
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 3 - April 30, 2008
File:N:\Clients\C_D\CPS_Energy\100001529\GCW_Fig5.mxd


2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of individual Bird
Simultaneous Observation
N
W
E
S
0 300 600 Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax: (512) 327-2453
Figure 6
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 3 - May 7, 2008
File:N:\Clients\C_D\CPS_Energy\100001529\GCW_Fig6.mxd

Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
0 200 400 Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste. 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax: (512) 327-2453
Figure 7
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 3 South - 2008
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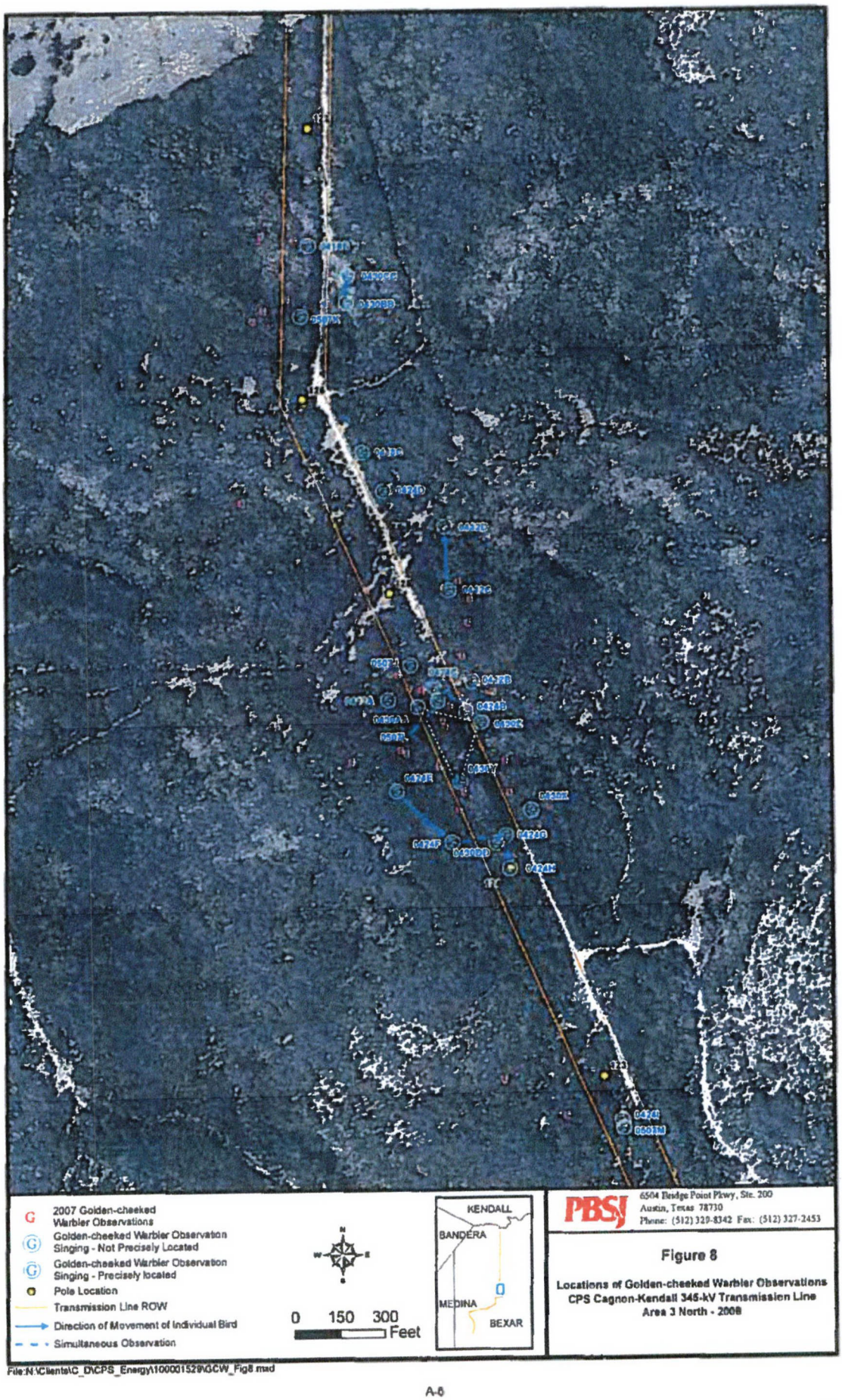
2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
N
W
E
0 150 300
Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste. 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax: (512) 327-2453
Figure 8
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 3 North - 2008
File:N:\Clients\C_D\CPS_Energy\100001529\GCW_Fig8.mxd


2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
0 150 300 Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax (512) 327-2453
Figure 9
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 4 - April 12, 18, 24, 25, May 1 and 8, 2008
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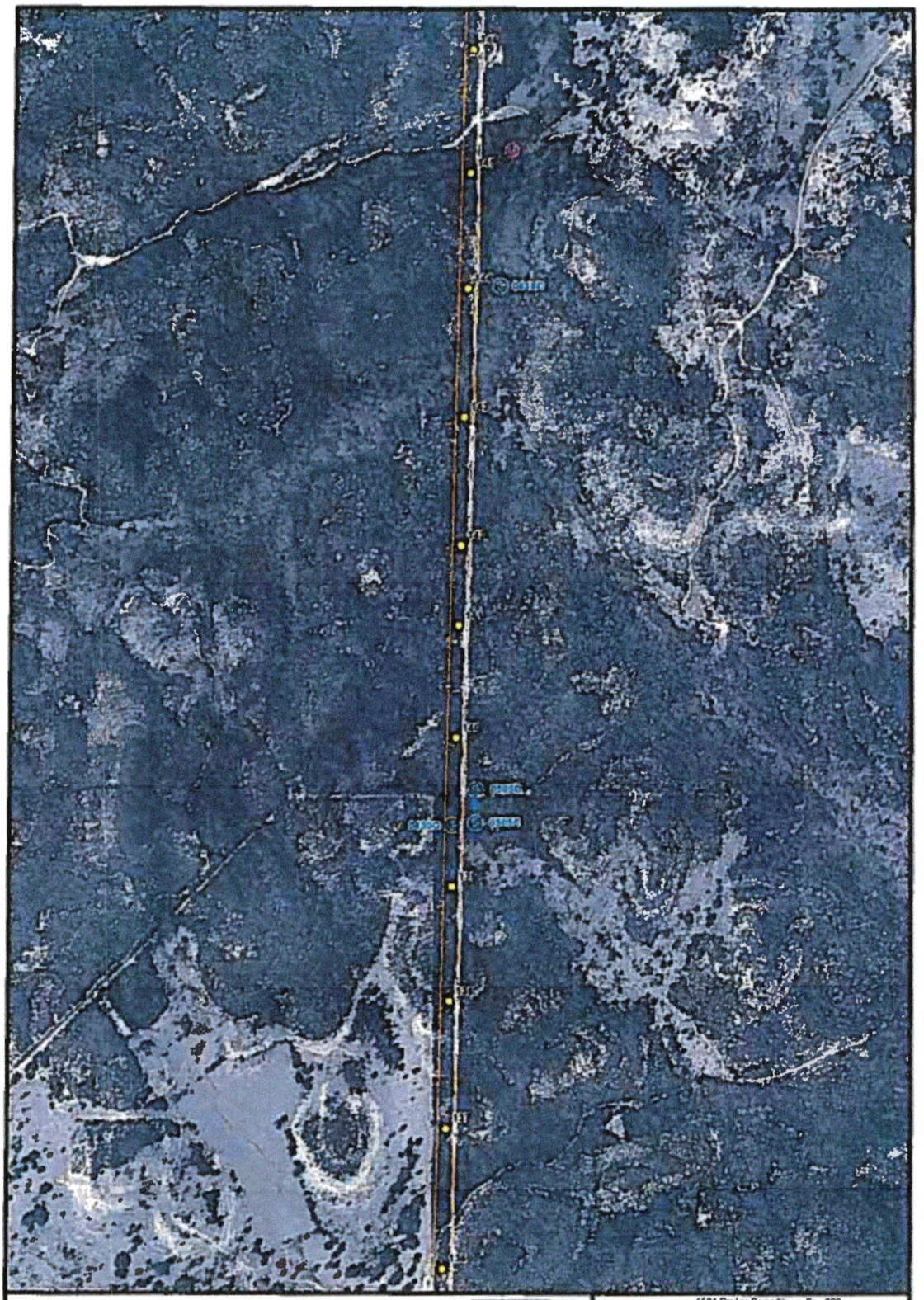
2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
0 400 800
Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste. 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax: (512) 327-2453
Figure 10
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 5 - April 30 and May 5, 2008
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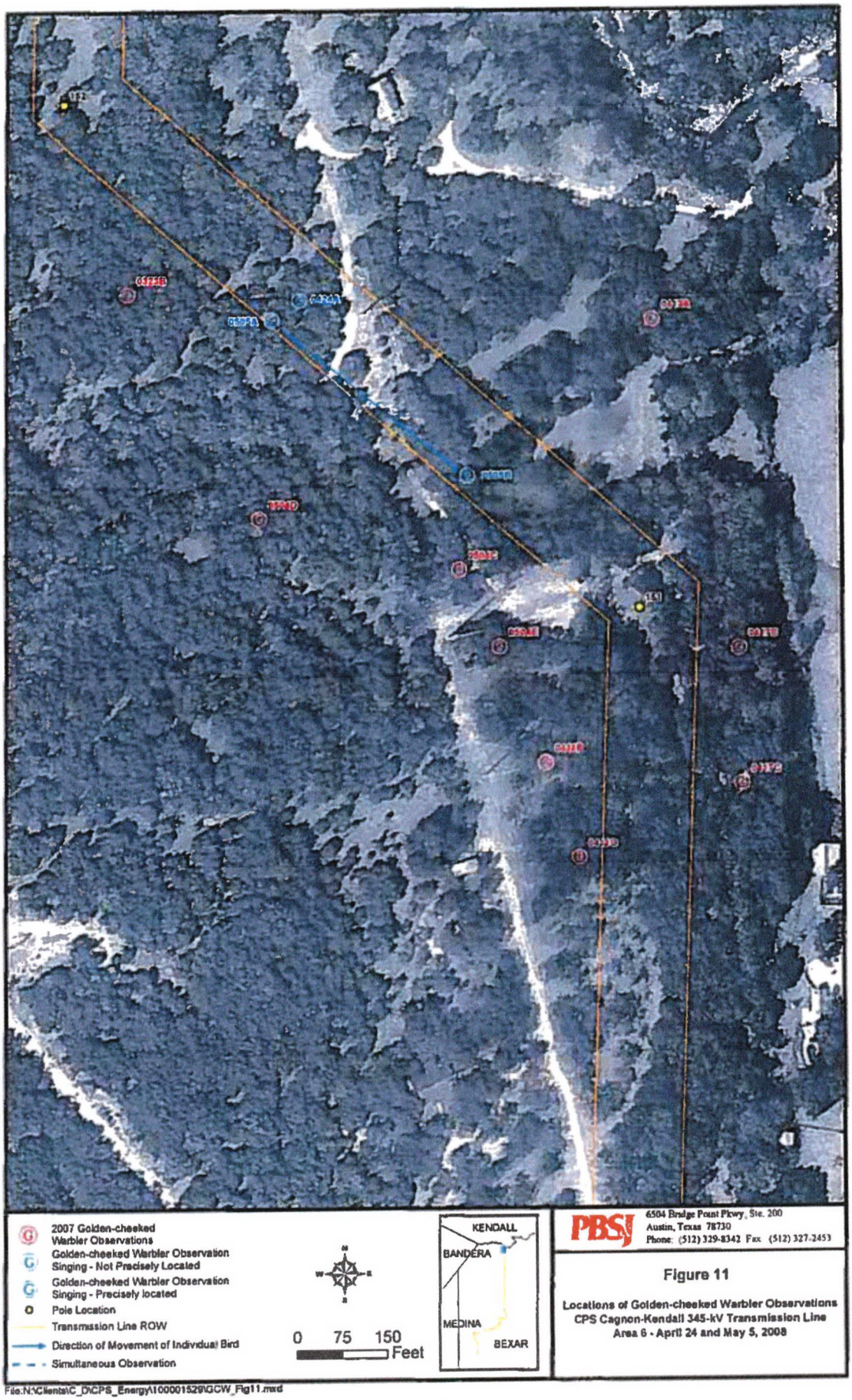

2007 Golden-cheeked Warbler Observations
Golden-cheeked Warbler Observation Singing - Not Precisely Located
Golden-cheeked Warbler Observation Singing - Precisely located
Pole Location
Transmission Line ROW
Direction of Movement of Individual Bird
Simultaneous Observation
0 75 150
Feet
KENDALL
BANDERA
MEDINA
BEXAR
PBSJ
6504 Bridge Point Pkwy, Ste. 200
Austin, Texas 78730
Phone: (512) 329-8342 Fax (512) 327-2453
Figure 11
Locations of Golden-cheeked Warbler Observations
CPS Cagnon-Kendall 345-kV Transmission Line
Area 6 - April 24 and May 5, 2008
File:N:\Clients\C_D\CPS_Energy\100001529\GCW_Fig11.mxd

Appendix B

Observation Data and Locations

APPENDIX B - OBSERVATION DATA AND LOCATIONS: SPRING 2008

ID	Date	Time	Observer[1]	Visit	Area[2]	Latitude[3]	Longitude[3]	Number	Sex[4]	Vocalization	Contact Type	Visual/ Aural[5]	Tape? (Y/N)
0412A	4/12/2008	08:18	DG	1	3	N 29 38 36.269204	W 98 44 39.127771	1	M	A	Single	A	N
0412B	4/12/2008	08:25	DG	1	3	N 29 38 36.868547	W 98 44 35.852149	1	M	A	Single	A	N
0412C	4/12/2008	08:34	DG	1	3	N 29 38 39.965873	W 98 44 36.730220	1	M	A	Single	A	N
0412D	4/12/2008	08:36	DG	1	3	N 29 38 42.119640	W 98 44 36.878829	1	M	A	Single	A	N
0412E	4/12/2008	09:13	DG	1	4	N 29 39 42.076332	W 98 44 39.076872	1	M	A	Single	A	N
0412F	4/12/2008	09:18	DG	1	4	N 29 39 42.772925	W 98 44 39.414497	1	M	A	Single	A	N
0412G	4/12/2008	09:29	DG	1	4	N 29 39 43.146698	W 98 44 39.428306	1	M	A	Single	A	N
0417A	4/17/2008	08:09	DG	2	3	N 29 38 08.362467	W 98 44 24.929089	1	M	A	Single	A	N
0417B	4/17/2008	09:49	DG	2	3	N 29 38 03.764332	W 98 44 42.877729	1	M	A	Single	A	N
0417C	4/17/2008	10:12	MH	2	1	N 29 36 33.679360	W 98 46 54.240721	1	M	A	Single	A	N
0418A	4/18/2008	08:37	DG	2	4	N 29 39 41.454561	W 98 44 42.646116	1	M	A, B	Single	V	N
0418B	4/18/2008	09:21	DG	-	3	N 29 38 51.652105	W 98 44 42.093410	1	M	A	Single	A	N
0418C	4/18/2008	09:27	DG	-	3	N 29 38 44.683051	W 98 44 40.069458	1	M	A	Single	A	N
0418D	4/18/2008	11:29	DG	-	-	N 29 41 43.009504	W 98 44 34.784153	1	M	A	Single	A	N
0424A	4/24/2008	08:07	MH	3	6	N 29 38 08.406168	W 98 44 59.194464	1	M	A	Single	A	N
0424B	4/24/2008	08:25	DG, GN	3	3	N 29 42 56.193979	W 98 44 44.878877	1	M	A	Single	A	N
0424C	4/24/2008	08:30	DG, GN	3	3	N 29 38 35.859555	W 98 44 36.085826	1	M	A	Single	V	N
0424D	4/24/2008	09:10	DG, GN	3	3	N 29 38 36.703210	W 98 44 37.354804	1	M	A	Single	A	N
0424E	4/24/2008	09:40	DG, GN	3	3	N 29 38 43.335574	W 98 44 39.263955	1	M	A	Single	A	N
0424F	4/24/2008	09:51	DG, GN	3	3	N 29 38 33.174605	W 98 44 38.808183	1	M	A	Single	V	N
0424G	4/24/2008	09:52	DG, GN	3	3	N 29 38 31.448889	W 98 44 36.655247	2	M	A	Single	V	N
0424H	4/24/2008	09:56	DG, GN	3	3	N 29 38 31.678154	W 98 44 34.593287	1	M	A	Single	V	N
0424I	4/24/2008	10:17	DG, GN	3	3	N 29 38 30.561436	W 98 44 34.456362	1	M	A	Single	V	N
0424J	4/24/2008	10:51	DG, GN	3	3	N 29 38 22.074714	W 98 44 30.231830	1	M	B	Single	A	N
0424K	4/24/2008	10:57	DG, GN	3	3	N 29 38 06.999469	W 98 44 32.505984	1	M	B	Single	A	N
0424L	4/24/2008	11:34	DG, GN	3	3	N 29 38 08.407335	W 98 44 32.415742	1	M	A	Single	A	N
0424M	4/24/2008	11:40	MH	3	1	N 29 36 32.381930	W 98 46 55.403223	1	M	A	Single	A	N
0424N	4/24/2008	11:42	MH	3	1	N 29 36 30.389686	W 98 46 53.875285	1	M	A	Single	A	N
0424O	4/24/2008	11:44	MH	3	1	N 29 36 29.523752	W 98 46 55.601801	1	M	A	Single	A	N
0424P	4/24/2008	16:08	DG, GN	3	4	N 29 39 24.202389	W 98 44 39.830418	1	M	A	Single	A	N
0425A	4/25/2008	08:27	DG, GN	4	4	N 29 39 15.999810	W 98 44 43.451403	1	M	A	Single	A	N
0425B	4/25/2008	08:40	DG, GN	4	4	N 29 39 10.518543	W 98 44 40.401494	1	M	A	Single	V	N
0425C	4/25/2008	08:42	DG, GN	4	4	N 29 39 10.574344	W 98 44 42.261679	1	M	A	Single	A	N
0425D	4/25/2008	09:15	DG, GN	4	4	N 29 39 41.454561	W 98 44 42.646116	1	M	-	Single	V	N
0430A	4/30/2008	07:49	DG, GN	4	3	N 29 38 06.197108	W 98 44 35.783893	1	M	A	Single	A	N
0430B	4/30/2008	07:56	DG, GN	4	3	N 29 38 36.021861	W 98 44 37.972289	1	M	B	Single	A	N
0430C	4/30/2008	08:00	DG, GN	4	3	N 29 38 09.082847	W 98 44 34.612917	1	M	A	Single	A	N
0430D	4/30/2008	08:12	DG, GN	4	3	N 29 38 49.726341	W 98 44 40.646411	1	M	A	Single	A	N

APPENDIX B - OBSERVATION DATA AND LOCATIONS: SPRING 2008

ID	Date	Time	Observer[1]	Visit	Area[2]	Latitude[3]	Longitude[3]	Number	Sex[4]	Vocalization	Contact Type	Visual/ Aural[5]	Tape? (Y/N)
0430E	4/30/2008	08:35	DG, GN	4	3	N 29 38 08.929566	W 98 44 35.860847	1	M	B	Single	A	N
0430F	4/30/2008	09:02	DG, GN	4	3	N 29 38 50.629178	W 98 44 40.608485	1	M	A	Single	A	N
0430G	4/30/2008	09:20	MH	4	5	N 29 38 07.576641	W 98 44 39.659143	1	M	A	Single	A	N
0430H	4/30/2008	09:24	DG, GN	4	3	N 29 38 31.420259	W 98 44 34.978203	1	M	A	Single	A	N
0430I	4/30/2008	09:54	DG, GN	4	3	N 29 38 09.241838	W 98 44 51.624394	1	M	A	Single	A	N
0430J	4/30/2008	10:16	DG, GN	4	3	N 29 37 57.181822	W 98 45 01.267835	1	M	A	Single	V	N
0430K	4/30/2008	10:18	DG, GN	4	3	N 29 40 58.292909	W 98 44 39.116875	1	F	Chips	Single	V	N
0430L	4/30/2008	10:30	MH	4	1	N 29 37 40.818167	W 98 44 59.714035	1	M	A	Single	A	N
0430M	4/30/2008	10:32	MH	4	1	N 29 37 57.931689	W 98 45 02.051231	1	M	A	Single	A	N
0430N	4/30/2008	10:44	DG, GN	4	3	N 29 38 05.683907	W 98 44 50.015156	1	M	A	Simultaneous	A	N
0430O	4/30/2008	10:44	DG, GN	4	3	N 29 38 05.724397	W 98 44 49.443952	1	M	A	Simultaneous	A	N
0430P	4/30/2008	10:44	DG, GN	4	3	N 29 36 42.732084	W 98 47 03.647085	1	M	A	Simultaneous	A	N
0430Q	4/30/2008	10:47	MH	4	1	N 29 36 41.385213	W 98 47 01.980793	1	M	A	Single	A	N
0430R	4/30/2008	10:48	MH	4	1	N 29 38 07.709506	W 98 44 38.088267	1	M	A	Single	A	N
0430S	4/30/2008	10:49	MH	4	1	N 29 38 06.575439	W 98 44 37.924570	1	M	A	Single	A	N
0430T	4/30/2008	10:49	DG, GN	4	3	N 29 38 06.510777	W 98 44 36.734935	1	M	A	Single	A	N
0430U	4/30/2008	10:49	DG, GN	4	3	N 29 36 32.547504	W 98 46 53.831433	1	M	A	Single	V	N
0430V	4/30/2008	10:52	DG, GN	4	3	N 29 36 30.913380	W 98 46 53.082385	1	M	A	Single	A	N
0430W	4/30/2008	10:56	DG, GN	4	3	N 29 36 31.066563	W 98 46 56.496436	1	M	A	Single	A	N
0430X	4/30/2008	11:44	DG, GN	4	3	N 29 38 03.412999	W 98 44 36.600022	1	M	A	Single	A	N
0430Y	4/30/2008	12:03	DG, GN	4	3	N 29 38 03.559602	W 98 44 38.697086	2	M, J	Chips	Simultaneous	V	N
0430Z	4/30/2008	12:03	DG, GN	4	3	N 29 38 02.077283	W 98 44 38.507067	1	M	A	Simultaneous	A	N
0430AA	4/30/2008	12:03	DG, GN	4	3	N 29 37 56.612474	W 98 44 32.177721	1	M	B	Simultaneous	A	N
0430BB	4/30/2008	12:28	DG, GN	4	3	N 29 38 32.526366	W 98 44 33.632907	1	M	A	Single	A	N
0430CC	4/30/2008	12:30	DG, GN	4	3	N 29 38 33.465650	W 98 44 36.339264	1	M	A	Single	A	N
0430DD	4/30/2008	13:02	DG, GN	4	3	N 29 38 35.487820	W 98 44 35.514370	1	M	A	Single	A	N
0501A	5/1/2008	07:29	DG, GN	5	4	N 29 39 49.335315	W 98 44 40.711188	1	M	Chips	Single	V	N
0501B	5/1/2008	07:57	DG, GN	5	4	N 29 39 27.306834	W 98 44 41.401383	1	M	A	Single	A	N
0501C	5/1/2008	08:15	DG, GN	5	4	N 29 39 13.804894	W 98 44 41.376494	1	M	A	Single	A	N
0501D	5/1/2008	09:08	DG, GN	5	4	N 29 39 41.394420	W 98 44 39.668842	1	M	A	Single	A	N
0501E	5/1/2008	09:14	DG, GN	5	4	N 29 39 41.408103	W 98 44 39.083644	1	M	B	Single	A	N
0505A	5/5/2008	09:40	MH	5	6	N 29 42 55.862613	W 98 44 45.408187	1	M	A	Single	A	N
0505B	5/5/2008	09:41	MH	5	6	N 29 42 53.259080	W 98 44 41.681539	1	M	A	Single	A	N
0505C	5/5/2008	10:59	MH	5	5	N 29 40 58.534196	W 98 44 36.980285	1	M	B	Single	A	N
0505D	5/5/2008	11:00	MH	5	5	N 29 41 01.294953	W 98 44 36.903004	1	M	B	Single	A	N
0505E	5/5/2008	12:43	MH	5	1	N 29 36 47.198541	W 98 47 06.714108	1	M	A	Single	A	N
0505F	5/5/2008	12:43	MH	5	1	N 29 36 48.432366	W 98 47 09.231646	1	M	A	Single	A	N
0505G	5/5/2008	12:44	MH	5	1	N 29 36 50.391388	W 98 47 07.678313	1	M	A	Single	A	N

APPENDIX B - OBSERVATION DATA AND LOCATIONS: SPRING 2008

ID	Date	Time	Observer[1]	Visit	Area[2]	Latitude[3]	Longitude[3]	Number	Sex[4]	Vocalization	Contact Type	Visual/ Aural[5]	Tape? (Y/N)
0505H	5/5/2008	13:00	MH	5	1	N 29 36 31.277516	W 98 46 52.240845	1	M	A	Single	A	N
0505I	5/5/2008	14:00	MH	5	1	N 29 36 45.311041	W 98 47 06.750846	1	M	A	Single	A	N
0507A	5/7/2008	08:01	DG	5	3	N 29 37 40.248082	W 98 45 01.893469	1	M	A	Single	A	N
0507B	5/7/2008	08:11	DG	5	3	N 29 37 36.980966	W 98 45 05.242235	1	M	A	Single	A	N
0507C	5/7/2008	08:27	DG	5	3	N 29 37 53.368460	W 98 45 01.673745	1	M	A	Single	A	N
0507D	5/7/2008	08:37	DG	5	3	N 29 38 01.524292	W 98 45 01.497487	1	M	A	Single	A	N
0507E	5/7/2008	09:23	DG	5	3	N 29 38 09.130388	W 98 44 59.105649	1	M	A	Single	A	N
0507F	5/7/2008	10:18	DG	5	3	N 29 38 08.948681	W 98 44 35.375601	1	M	B	Single	A	N
0507G	5/7/2008	10:24	DG	5	3	N 29 38 09.087123	W 98 44 36.436877	1	M	B	Single	A	N
0507H	5/7/2008	10:58	DG	5	3	N 29 38 07.236750	W 98 44 53.052845	1	M	A	Single	A	N
0507I	5/7/2008	11:24	DG	5	3	N 29 37 58.969341	W 98 44 37.680277	1	M	A	Single	A	N
0507J	5/7/2008	12:20	DG	5	3	N 29 38 37.432547	W 98 44 38.238508	1	M	A	Single	A	N
0507K	5/7/2008	12:37	DG	5	3	N 29 38 49.279229	W 98 44 42.393003	1	M	A	Single	A	N
0507L	5/7/2008	12:59	DG	5	3	N 29 38 36.230268	W 98 44 37.179849	1	M	A	Single	A	N
0507M	5/7/2008	13:17	DG	5	3	N 29 38 21.813888	W 98 44 30.190703	1	M	A	Single	A	N
0508A	5/8/2008	08:25	DG	6	4	N 29 39 15.482200	W 98 44 42.819553	1	M	A	Single	A	N
0508B	5/8/2008	08:29	DG	6	4	N 29 39 14.869504	W 98 44 42.049925	1	M	A	Single	A	N
0508C	5/8/2008	08:39	DG	6	4	N 29 39 13.766515	W 98 44 41.524140	1	M	B	Single	A	N
0508D	5/8/2008	08:43	DG	6	4	N 29 39 11.035410	W 98 44 40.228106	1	M	B	Single	V	N
0508E	5/8/2008	08:46	DG	6	4	N 29 39 11.749382	W 98 44 39.439925	1	M	B	Single	A	N
0508F	5/8/2008	09:11	DG	6	4	N 29 39 28.064137	W 98 44 39.941359	1	M	Chips	Single	V	N
0508G	5/8/2008	09:17	DG	6	4	N 29 39 28.068771	W 98 44 41.204745	1	M	B	Single	V	N
0508H	5/8/2008	09:30	DG	6	4	N 29 39 40.581183	W 98 44 38.992125	1	M	B	Single	A	N
0508I	5/8/2008	09:43	DG	6	4	N 29 39 48.451763	W 98 44 39.449182	1	M	A	Single	A	N

[1]Derek Green (DG), Mike Horvath (MH), Gary Newgord (GN)

[2]Area 1: SH211 (Poles 95-102); Area 2: SH16 (Poles 104-108); Area 3: Morales (Poles 115-127); Area 4: Bitters/Moore; Area 5: Poles 136-145(Poles 128-133); Area 6: Recht (Poles 150-153)

[3]All coordinates are in Lat/Lon hddd°mm'ss.s", North American Datum 1983, feet

[4]Male (M), Female (F), Juvenile - unknown sex (J)

[5]Visual (V), Aural (A)

Appendix C

Avian Species Encountered
Spring 2008

APPENDIX C

AVIAN SPECIES ENCOUNTERED
CAGNON/KENDALL 345-KV TRANSMISSION LINE
SPRING 2008

Common Name[1]	Scientific Name[1]
Wild turkey	*Meleagris gallopavo*
Northern bobwhite	*Colinus virginianus*
Great blue heron	*Ardea herodias*
Black vulture	*Coragyps atratus*
Turkey vulture	*Cathartes aura*
Cooper's hawk	*Accipiter cooperii*
Red-tailed hawk	*Buteo jamaicensis*
Crested caracara	*Caracara cheriway*
American kestrel	*Falco sparverius*
Killdeer	*Charadrius vociferus*
White-winged dove	*Zenaida asiatica*
Mourning dove	*Zenaida macroura*
Yellow-billed cuckoo	*Coccyzus americanus*
Greater roadrunner	*Geococcyx californianus*
Common nighthawk	*Chordeiles minor*
Chimney swift	*Chaetura pelagica*
Black-chinned hummingbird	*Archilochus alexandri*
Golden-fronted woodpecker	*Melanerpes aurifrons*
Ladder-backed woodpecker	*Picoides scalaris*
Downy woodpecker	*Picoides pubescens*
Northern flicker	*Colaptes auratus*
Eastern phoebe	*Sayornis phoebe*
Ash-throated flycatcher	*Myiarchus cinerascens*
Great crested flycatcher	*Myiarchus crinitus*
Western kingbird	*Tyrannus verticalis*
Scissor-tailed flycatcher	*Tyrannus forficatus*
White-eyed vireo	*Vireo griseus*
Warbling vireo	*Vireo gilvus*
Blue jay	*Cyanocitta cristata*
Western scrub-jay	*Aphelocoma californica*
Common raven	*Corvus corax*
Purple martin	*Progne subis*
Cliff swallow	*Petrochelidon pyrrhonota*
Barn swallow	*Hirundo rustica*
Carolina chickadee	*Poecile carolinensis*
Black-crested titmouse	*Baeolophus atricristatus*
Bushtit	*Psaltriparus minimus*
Canyon wren	*Catherpes mexicanus*

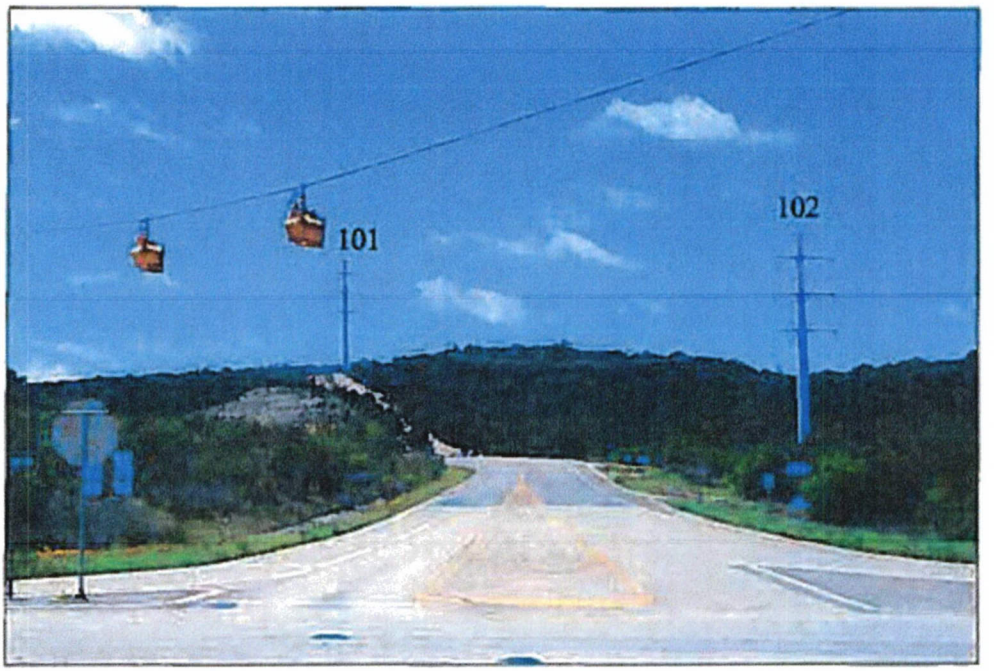
Common Name[1]	Scientific Name[1]
Carolina wren	*Thryothorus ludovicianus*
Bewick's wren	*Thryomanes bewickii*
Ruby-crowned kinglet	*Regulus calendula*
Blue-gray gnatcatcher	*Polioptila caerulea*
American robin	*Turdus migratorius*
Northern mockingbird	*Mimus polyglottos*
European starling	*Sturnus vulgaris*
Orange-crowned warbler	*Vermivora celata*
Nashville warbler	*Vermivora ruficapilla*
Yellow-rumped warbler	*Dendroica coronata*
Golden-cheeked warbler	*Dendroica chrysoparia*
Black-and-white warbler	*Mniotilta varia*
Summer tanager	*Piranga rubra*
Rufous-crowned sparrow	*Aimophila ruficeps*
Chipping sparrow	*Spizella passerina*
Field sparrow	*Spizella pusilla*
Lark sparrow	*Chondestes grammacus*
Savannah sparrow	*Passerculus sandwichensis*
White-crowned sparrow	*Zonotrichia leucophrys*
Northern cardinal	*Cardinalis cardinalis*
Blue grosbeak	*Passerina caerulea*
Painted bunting	*Passerina ciris*
Great-tailed grackle	*Quiscalus mexicanus*
Brown-headed cowbird	*Molothrus ater*
House finch	*Carpodacus mexicanus*

[1] Nomenclature follows American Ornithologist's Union (AOU) *Check-list of North American Birds* (1998, 2000, 2002, 2003, 2004, 2005, 2006, 2007)

Appendix D

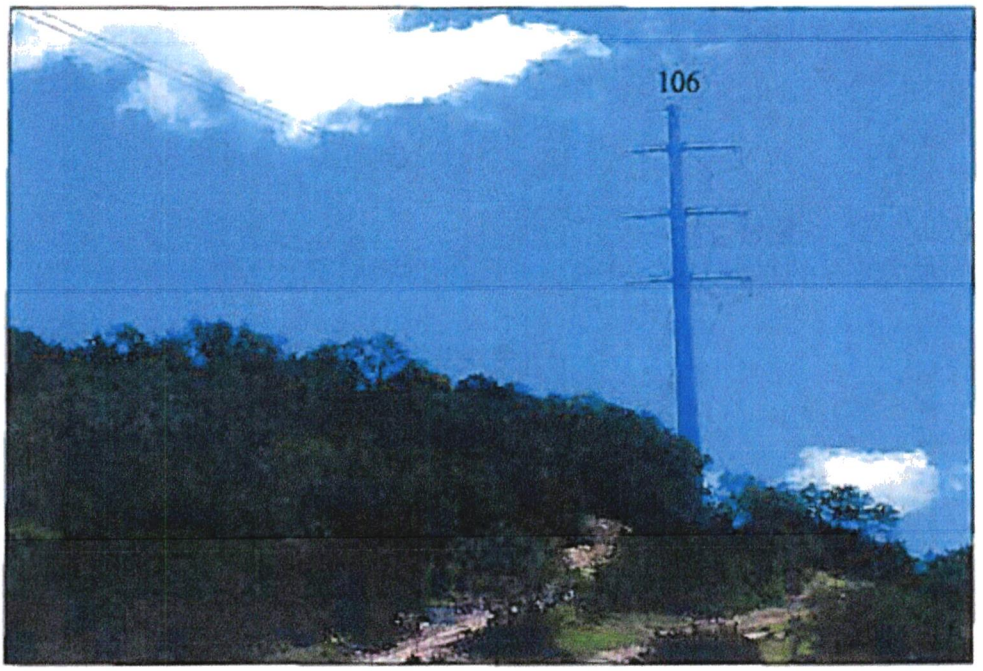
Project Photographs

Photograph 1 - Area 1. Looking south from Pole 98 toward Pole 97.
SH 211 and Retablo Ranch are in the background.

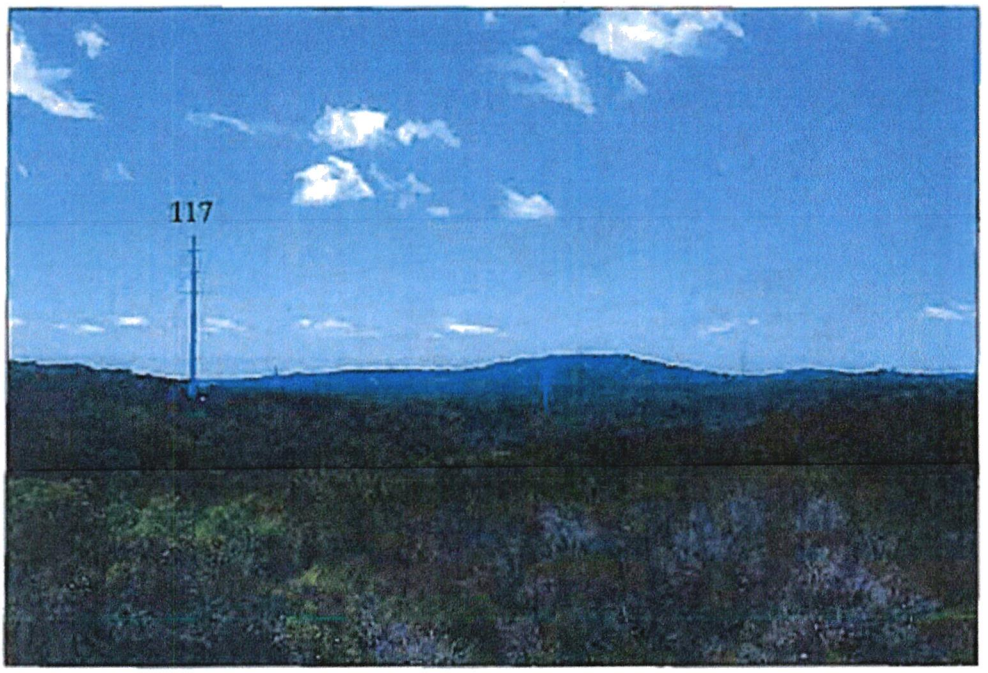


Photograph 2 - Area 1. Looking south along SH 211 from its junction with SH 16.
Poles 101 and 102 can be seen.

L:\Projects\Hc1\CPSV41227 (Cagnon)\GCW Survey\Report\PHOTOS\photo1-2.dgn

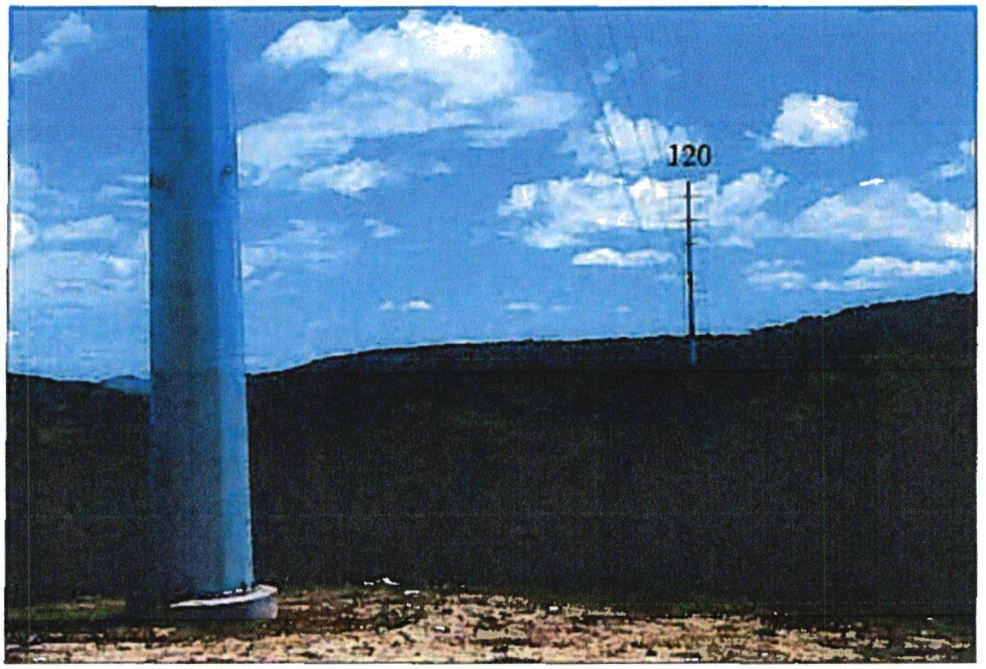


Photograph 3 - Area 2B. Looking east toward Pole 106 from SH 16.



Photograph 4 - Area 3. Looking south from ROW near Pole 118.

L:\Projects\Hc1\CPS\441227 (Cagnon)\GCW Survey\Report\PHOTOS\photo3-4.dgn

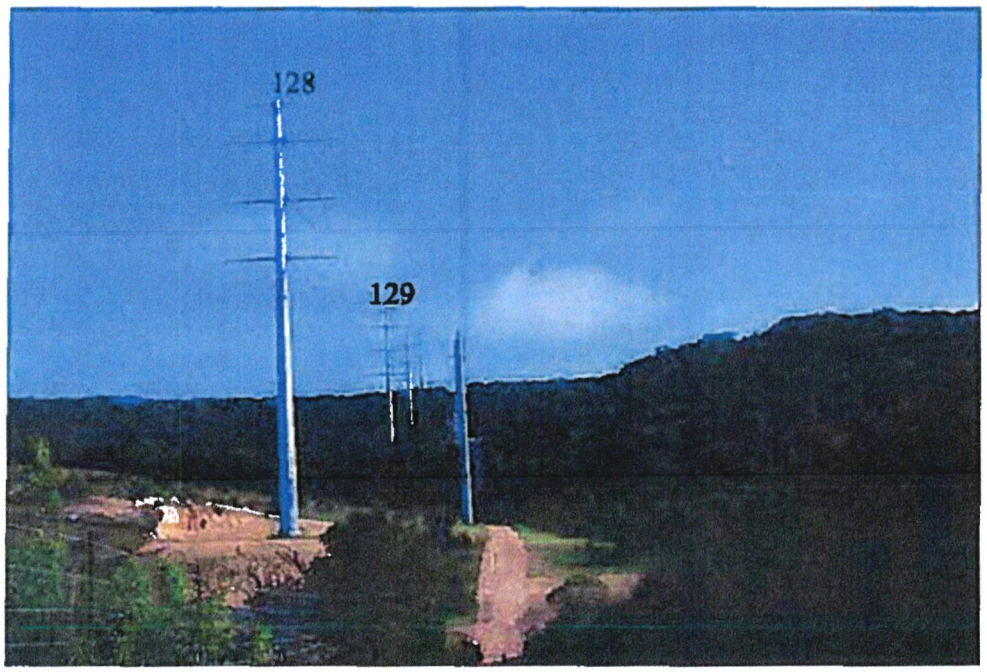


Photograph 5 - Area 3. Looking east from Pole 119 toward Pole 120.

Photograph 6 - Area 3. Looking west from Pole 120 along the permanent access road toward Pole 119.

L:\Projects\Hc1\CPS\441227 (Cagnon)\GCW Survey\Report\PHOTOS\photo5-6.dgn

Photograph 7 - Area 3. Looking south from Pole 125 toward Pole 124.
Helotes-Cico 138-kV transmission is on the left.



Photograph 8 - Area 4. Looking north. Area 4 starts between Poles 128 and 129.
Helotes-Cico 138-kV transmission line is on the right.

L:\Projects\Hcl\CPS\441227 (Cagnon)\GCW Survey\Report\PHOTOS\photo7-8.dgn

GREEN SPACES ALLIANCE
OF SOUTH TEXAS

CELEBRATING 20 YEARS
of Conservation, Education, & Engagement

September 14, 2018

Dear Joseph Bitter,

The Conservation Advisory Board for the City of San Antonio's Edwards Aquifer Protection Program (EAPP) met on August 22nd and made progress on properties currently in the program process. Green Spaces Alliance, as a contractor for the City, has several properties currently in the process, however must wait until one of those properties closes before we can propose the next property to the City. The City, contractors and subcontractors must move at the pace of the slowest wheel during the process. As explained to you before, this is a slow process and takes a lot of patience from all parties.

There is a specific system for ranking the recharge and conservation value of all properties in the region. This ranking is for the benefit of the land acquisition team (Green Spaces Alliance, the Nature Conservancy and the City) as well as the benefit of the advisory board that determines the acceptance or declination of a particular property to the program. However, the model is not perfect in ranking properties, so we like to visit properties in person to determine the true quality of the land. Therefore, it is up to the discretion of the land acquisition team to order the interested properties.

The ranking system is determined based on a model designed by the Scientific Evaluation Team (SET). The model ranks properties in 10% increments, with 10% being the highest value and 90% being the lowest. Your property has been modeled in the top 10% and is currently ranked at #1 in the current cue. Since your property ranks in the top 10% of recharge potential, I will be able to begin the first stage of due diligence without a request to the City. I understand your family has some questions, concerns and reservations about the due diligence process of this program. If there is anything I can do to help you all, I am happy to help.

We value your potential interest in the program. I want to stress that your property is very important to Green Spaces Alliance and we look forward to conserving your land for the benefit of the Edwards Aquifer and for you. If/when your family makes this very big decision, please feel free to contact me.

Please contact me at 210.222.8430 x 305 or at tyler@greensatx.org if you have any questions or require additional information. I am excited that you have submitted your property for conservation to the EAPP, and look forward to working with you.

Sincerely,

Tyler Sanderson
Land Conservation and Stewardship Manager, Interim Executive Director

RE: Conservation Easement / Geologist visit/ Pictures/ Maps

dbezanson@TNC.ORG
Fri, 13 Mar 2020 2:11:32 PM -0500
To "Sarah Bitter"
Cc "Joseph Bitter"
Tags
Security Learn more

Sarah,
Thanks for getting in touch with me. Yes, both dates will work for the geologists, and I can be there on the 27th.

I'll send a confirmation email to everyone.

The photos and videos are great! Can I share the link with the City staff as well?

Best,
David

From: Sarah Bitter
Sent: Friday, March 13, 2020 1:25 PM
To: David Bezanson <[redacted]>
Cc: Joseph Bitter
Subject: Conservation Easement / Geologist visit/ Pictures/ Maps

Good afternoon, David,

My dad asked I reach out to you to see if I could help facilitate coordinating a time for your geologists to visit Bexar Ranch.

In general, Fridays and Mondays--Tuesdays will probably work as well--are going to be best for us. With that in mind, would you all be able to meet Friday, March 27th? I am not sure if you all are needing one or two days to do your work, but if two, how about Friday, March 27th and Monday, March 30th?

Also, my dad indicated you requested we send you a few 'scenic pictures' of the ranch. We have pulled some together, along with a few short videos clips, and hope they'll provide a small window into this beautiful ranch that means so much to our family and to give you an idea of the amount of water that runs through the property. You'll receive an invite to [redacted] to view them.

We look forward to hearing from you and setting up a time to meet with your geologists at the ranch.

Regards,
Sarah Bitter

RE: Conservation Easement / Geologist visit/ Pictures/ Maps

dbezanson@TNC.ORG
Mon, 23 Mar 2020 1:33:37 PM -0500
To "Sarah Bitter"
Cc "Joseph Bitter"
Tags
Security Learn more

That sounds great. How about 9 am on Friday? We'll meet at the gate – is there a combination?

I anticipate only 2-3 people – usually it's much bigger, but under the circumstances...

Yes, we will want to come back on Monday... with the smaller group, we won't be able to accomplish too much the first day.

What we try to accomplish is to see as much of the ranch as possible and look at streams, springs, faults and caves (if any)...

Thanks,
David

From: Sarah Bitter
Sent: Monday, March 23, 2020 12:14 PM
To: David Bezanson <[redacted]>
Cc: Joseph Bitter
Subject: RE: Conservation Easement / Geologist visit/ Pictures/ Maps

Hi David,
We are willing to meet and practice social distancing. However, would you let us know who and how many people will be coming? Also, would you outline for us what all you all will be doing on this initial site visit? Finally, what time can we expect you on Friday and how long do you anticipate being there? Will you all be coming on Monday as well?

Looking forward to meeting you,
Sarah

---- On Mon, 23 Mar 2020 10:21:54 -0500 **David Bezanson** <[redacted]> wrote ----

Joe, Sarah – We are still willing to visit the ranch this Friday and practice social distancing – in fact, if you're more comfortable we would need to meet you, but could conduct the initial site visit outdoors. Just let me know what you would prefer. Thanks, David

From: Sarah Bitter
Sent: Friday, March 13, 2020 1:25 PM
To: David Bezanson <[redacted]>
Cc: Joseph Bitter

Subject: Conservation Easement / Geologist visit/ Pictures/ Maps

Good afternoon, David,

My dad asked I reach out to you to see if I could help facilitate coordinating a time for your geologists to visit Bexar Ranch.

In general, Fridays and Mondays--Tuesdays will probably work as well--are going to be best for us. With that in mind, would you all be able to meet Friday, March 27th? I am not sure if you all are needing one or two days to do your work, but if two, how about Friday, March 27th and Monday, March 30th?

Also, my dad indicated you requested we send you a few 'scenic pictures' of the ranch. We have pulled some together, along with a few short videos clips, and hope they'll provide a small window into this beautiful ranch that means so much to our family and to give you an idea of the amount of water that runs through the property. You'll receive an invite to [redacted] to view them.

We look forward to hearing from you and setting up a time to meet with your geologists at the ranch.

Regards,
Sarah Bitter

Re: Geologist visit CANCELED

Tue, 24 Mar 2020 11:59:46 AM -0500

To "David Bezanson" <dbezanson@TNC.ORG>

Cc "Joseph Bitter"

Tags

David, I was just about to email you to see how the order affected you all. We've been trying to sort things as well. We understand. And we'll be in touch soon. Thanks...

Sarah

---- On Tue, 24 Mar 2020 11:49:16 -0500 **David Bezanson** <[redacted]> wrote ----

Joe, Sarah - With the Mayor's stay-at-home order, the geologists reluctantly canceled the site visit. We'll have to shoot for April. Thanks, David

From: Sarah Bitter
Sent: Monday, March 23, 2020 12:14 PM
To: David Bezanson <[redacted]>
Cc: Joseph Bitter
Subject: RE: Conservation Easement / Geologist visit/ Pictures/ Maps

Hi David,
We are willing to meet and practice social distancing. However, would you let us know who and how many people will be coming? Also, would you outline for us what all you all will be doing on this initial site visit? Finally, what time can we expect you on Friday and how long do you anticipate being there? Will you all be coming on Monday as well?

Looking forward to meeting you.
Sarah

---- On Mon, 23 Mar 2020 10:21:54 -0500 **David Bezanson** <[redacted]> wrote ----

Joe, Sarah – We are still willing to visit the ranch this Friday and practice social distancing – in fact, if you're more comfortable we would need to meet you, but could conduct the initial site visit outdoors. Just let me know what you would prefer. Thanks, David

From: Sarah Bitter
Sent: Friday, March 13, 2020 1:25 PM
To: David Bezanson <[redacted]>
Cc: Joseph Bitter
Subject: Conservation Easement / Geologist visit/ Pictures/ Maps

Good afternoon, David,

My dad asked I reach out to you to see if I could help facilitate coordinating a time for your geologists to visit Bexar Ranch.

In general, Fridays and Mondays--Tuesdays will probably work as well--are going to be best for us. With that in mind, would you all be able to meet Friday, March 27th? I am not sure if you all are needing one or two days to do your work, but if two, how about Friday, March 27th and Monday, March 30th?

Also, my dad indicated you requested we send you a few 'scenic pictures' of the ranch. We have pulled some together, along with a few short videos clips, and hope they'll provide a small window into this beautiful ranch that means so much to our family and to give you an idea of the amount of water that runs through the property. You'll receive an invite to [illegible] to view them.

We look forward to hearing from you and setting up a time to meet with your geologists at the ranch.

Regards,
Sarah Bitter

RE: Conservation Easement / Geologist visit/ Pictures/ Maps

David Bezanson <dbezanson@TNC.ORG>
Fri, 27 Mar 2020 12:42:31 PM -0500

To "Sarah Bitter"

Cc "Joseph Bitter"

Tags

Security

No problem, we will wait and see how things go. Talk to you soon, David

From: Sarah Bitter
Sent: Friday, March 27, 2020 11:51 AM
To: David Bezanson <[redacted]>
Cc: Joseph Bitter
Subject: RE: Conservation Easement / Geologist visit/ Pictures/ Maps

Hi David,
Thank you for your email. We would not.

-Sarah

---- On Thu, 26 Mar 2020 12:28:00 -0500 **David Bezanson** <[redacted]> wrote ----

Joe, Sarah – Would you be comfortable with going ahead with the appraisal while we are waiting on the geologists' report? I think we could probably get an appraiser lined up... David

Michael Bitter

From: Joseph Bitter <josephbitter@att.net>
Sent: Sunday, June 3, 2018 4:56 PM
To: Michael Bitter; 'Sarah Bitter'; 'Stephen Pearson Bitter'
Subject: FW: Edwards Aquifer Protection Program Introduction
Attachments: Introduction Letter - Bitter.pdf

I will be meeting with Tyler on Tuesday in case you would like to join us. I haven't set a time yet so if you are interested, let me know quickly. Dad

From: Tyler Sanderson [mailto:tyler@greensatx.org]
Sent: Friday, June 1, 2018 3:10 PM
To: josephbitter@att.net
Subject: Edwards Aquifer Protection Program Introduction

Mr. Bitter,

Thank you for talking with me today during your drive. I appreciate you taking the time to speak with me.

I have not been able to get in touch with David Bezanson, but that will not change the fact that we can meet on next **Tuesday, June 5th** to view your property and discuss the potential conservation easement.

I would be happy to meet with you at any time on Tuesday. Please just let me know when is best and where I should meet you.

You can email or call me to get in touch. My cell phone is best (319)471-5900.

I have also attached a letter that explains the program in detail in case you have anything that might need cleared up. I am looking forward to talking with you and viewing your property.

Best,

Tyler Sanderson Land Conservation & Stewardship Manager

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Michael Bitter

From: Tyler Sanderson <tyler@greensatx.org>
Sent: Tuesday, June 5, 2018 4:17 PM
To: Michael Bitter; josephbitter@att.net
Subject: Bexar Ranch Visit - Edwards Aquifer Protection Program
Attachments: Conservation Easement--01-23-2014 (clean version).doc; Introduction Letter - Bitter.pdf

Gentlemen,

Thank you very much for showing us around your incredible property today. I had a great time and appreciate your conservation mentality and the management of your property.

I have relayed the questions that came up today that we were not able to answer. The City Staff will get back to me soon and I will report back with those answers.

In the meantime I have attached the letter that I sent to Dr. Bitter last week as well as the template of the conservation easement that the City works with.

I did want to partially answer your question about what in the conservation easement is non-negotiable. To an extent, everything is negotiable except for the annual monitoring, the percentage of impervious surface restriction (#1 in easement), mineral rights (#10 in easement and elsewhere I believe), and storage, dumping and disposition (#9 in easement).
The City is willing to consider any suggested edits to the conservation easement. Generally, after the appraisal process, I ask the landowner to provide me with any suggested edits or concerns that they might have. If there is something major that might change the appraised value significantly, I would like to know that ahead of time.

There was also a question today about condemnation language in the easement (I think I was grabbing the sotol. There is language in there (#20 in easement), so take a look at that and let me know if it works for you. Again, you can send proposed edits for the City to consider.

Again, thank you all for showing us around. I look forward to any further conversation. Please let me know if you have any questions and let me know how the family feels about this potential project.
I also wanted to ask if you are comfortable working with me, or would prefer to work with David Bezanson? We had originally delegated your property to Green Spaces Alliance for contact, but I understand you have spoken with David a couple times. I obviously would prefer to work with you, we are not in competition and all I really care about is conserving land and spending the Edwards Program budget wisely.

Best,

Tyler Sanderson | Land Conservation & Stewardship Manager

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GREEN SPACES ALLIANCE OF SOUTH TEXAS

June 1, 2018

Dear Mr. Bitter,

I am happy to hear that you may be interested in the Edwards Aquifer Protection Program. I am somewhat familiar with your property location and have driven past the entrance many times. It is amazing that such a beautiful parcel is located in Bexar County. Below is an extensive description of the program. I can be a bit wordy, so I apologize for that, but I want to make sure you have a good understanding of the program. I am sure you already know a lot of this information since you attended the Bexar County Conservation Easement Workshop in April, and have had discussions with David Bezanson, but I wanted to make sure you have my description in writing. I am also providing you with a conservation easement template in case that has not been provided to you yet. This is a baseline draft and all land is different and all landowners' desires are different, so we tweak each easement to fit the land and the wants of the landowner.

Green Spaces Alliance of South Texas is an accredited land trust, which means that we are recognized nationally as a trustworthy organization that meets high standards for land conservation. It demonstrates that we have successfully implemented Land Trust Standards and Practices, and offers the assurance that we can keep the promise of a conservation easement (CE) in perpetuity.
An easement is the purchase or donation of development rights, which limits development on your property. It does not make it impossible to build on your land, but it limits the development to a certain amount of impervious surface. The amount depends on the size and/or value of the land, and negotiations/agreements can be made as to where that development may be within the property.

The City of San Antonio voted for the Edwards Aquifer Protection Program (EAPP) which provides a small percentage of tax dollars to a program that pays owners of undeveloped land within the Edwards Aquifer recharge zone to keep that land undeveloped. So, basically the city is buying the right to not develop on your property.
By taking away the development rights, in perpetuity, the owned land loses some value. That value is basically **the difference between the value of the property with capability to develop and without**. The reduction in value depends on location and attributes, as properties closer to urban sprawl will be valued much higher with development capabilities.

Your property of approximately 1,422 acres would most likely be allowed two 5-acre building envelopes (potentially able to negotiate different terms). That means that you can name a portion of the property to be where you might have an existing or planned house, barn, feed operation, driveway, etc. There will be limitations as to where they can go, depending on the specific property's attributes. If there is a karst feature, such as a sinkhole, the envelope will not be within a certain distance (400 ft) of that sinkhole (which you wouldn't want to build there anyway). If there is an area in the 100 year floodplain, the building envelope will not be allowed in that floodplain. The envelopes are amendable, meaning they are not set in stone and can be updated over time. The major stipulation to understand with development in these envelopes is that less than 0.5% (0.005) of the property can be impervious surface such as roof tops and concrete. For example, if you have a 1,422-acre ranch, you have the ability to develop 7.11 acres completely with impervious surfaces. That makes for a large sized house and driveway. There are also ways around impervious concretes, driveways and patios. Easement properties can also not be subdivided.

Currently, the EAPP has over 149,000 acres in easements, and more come in each quarter.

It is important to keep in mind that your land will not be worth the same value, so that is why we are paying you for the development rights. The value that your land is appraised for before the easement (which includes value of development) will be higher than the value after the easement is in place (development rights revoked). The difference between these two appraisal values is what you will be paid for your development rights. You will be taxed on that amount, but you may spend it on anything you want, as long as it does not exceed development restrictions within the building envelope.

We are not purchasing your property from you. You will be able to continue any and all of your current agricultural and living practices as long as they adhere to the management plan that we develop together. Because we and the City of San Antonio do not own the land, you do not have to allow any public access to the property except for 1 time a year when the city sends someone to monitor the success of the easement. This monitoring is just to make sure you are adhering to the building envelope, no drastic issues are happening to the landscape, etc.
Before purchasing the development rights and creating an easement, we will work with you to develop a management plan. These things are like a playbook. It is basically documentation of what you would want to do to your land in the future. What agricultural practices, what new barns, children's houses, new pond, what animals and plants to raise. Things like that.

The EAPP easements are for the protection of **quality and quantity** of water, and the program is only focused on land within the Edwards Aquifer recharge zone in Uvalde, Medina and Bexar Counties. The recharge zone is about an average of 20 miles wide strip that flows underground northeast from Kinney County to Austin, but you already seem to know a lot about the recharge zone. The reason the program is only protecting the land in Uvalde, Medina and Bexar Counties is because that is the critical part of the aquifer recharge that affects quality and quantity of drinking water for the City of San Antonio. Anything northeast of that does not flow to San Antonio and so is not covered in the EAPP.
Any other conservation issues, such as protection of golden cheek warbler habitat, are not a concern pertaining to the funding of this program. Those are obviously conservation concerns, but not a focus of this program.

To get involved with this program, it takes a lot of patience on everyone's part. There is a waiting list to start the process. If your land has better features, such as sinkholes, perennial surface water, higher potential for development, etc., you can be put to the front of the line. This would also include adjacency to other current or interested conservation easements. You are adjacent to two other interested landowners. Your property is in the top 10% of recharge potential, and it is one of the largest tracts left in Bexar County, so it would move close to the top of the list. However, we are at the mercy of the city.

Once your property is selected at the front of the line, we will have to take several steps before getting it conserved. We start with looking at your property in person and on maps and then can move forward. We will take your property to the Conservation Advisory Board (CAB) with the City and try to get your property voted on by the CAB. To do so, I would make a presentation including photos and maps of the property and listing high quality features. If it is accepted by CAB, then we will do a geological survey (Edwards Aquifer Authority), and an appraisal at the same time. The appraisal will tell us what the property is worth before and what it could be worth after development rights are taken. The city will pay you the difference. If the CAB agrees on the appraised conservation value we will then order a boundary survey and environmental surveys. If, based on the surveys, assessments and appraisals, we are able to continue with the process, we will move to Phase 2 and see if there are any areas of concern on the property. Things that might be included are a dump site that would need cleaned up, an oil well without the proper buffer. We will pay for the surveys, assessments and appraisals for Phase I. The landowner would have to pay for any cleanups necessary, any lawyer fees (which we strongly recommend, so that

you can be sure that you are making the right decision, and have a professional to look over your paperwork). That usually runs from $7-10K. It may sound like a lot for you to invest, but the City will pay you upfront for you easement value, which can add up to a lot, and your property taxes will immediately be lowered due to the decrease in your appraisal value of land.

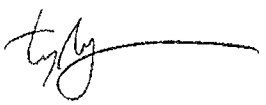
Once involved in the program you are not stuck in it. You don't have to continue with the process if at any point you want out. You can stop at any point until closing, but I would recommend that if you are unsure before closing, to contact me, Phillip Covington or Susan Courage with the City directly and hopefully we can clear up any of your concerns.

Two things I need to know about your land before starting are: **is there anybody else on the title for the land?** Parents, children, siblings etc. It is important to get everybody to understand what this means for their property. I will be happy to meet with you on the property or elsewhere to discuss this project if you are still interested. Also, **does anybody own the mineral rights on your property?** Because an easement will not prevent the mineral rights owners from stripping or mining the land. We cannot put a land in conservation with EAPP if this is true and we do not reach an agreement with that third party, for obvious reasons that future mining will do far more damage to the recharge zone than simply adding an apartment complex.

If you have any questions about the program or anything else, please do not hesitate to call me. I will do my best to answer questions along the way, and if I am unsure of something, I will seek the proper guidance with the City and get those questions answered.

Again, thank you very much for your interest in the program. Your property looks to be in a perfect location for this program and has a great chance to be accepted in the future.

Sincerely,



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Michael Bitter

From: Tyler Sanderson <tyler@greensatx.org>
Sent: Wednesday, June 13, 2018 10:43 AM
To: Michael Bitter; josephbitter@att.net
Subject: Re: Bexar Ranch Visit - Edwards Aquifer Protection Program

Dr. Bitter,

I got a response from the City staff and attorney's office about a couple of your questions. The responses are below.

1. Non-Disclosure Agreement? - Since the EAPP is a publicly funded program information is open to the general public. The program does not willingly share information and will not willingly post it, but it can be pulled out of county court due to the freedom of information act. Any request for the information will have to be granted. The program has never used a non-disclosure agreement in the past and the City Attorney's office opposes the idea. The program does not promote the name of landowners and could use a name you choose to keep the family name out of the process. The only time the family name would need to be used is if/when the property goes to City Council for final approval. I completely understand your concern, especially given the problem you have had with CPS in the past. I'm not sure you question was answered properly when we met in person, but the above answer is how the program handles all information collected on properties.
2. What are the appraisal standards? - Each appraiser has been approved for the vendors list because they are certified land appraisers by a State of Texas certification and they understand that their appraisals must be Uniform Standards of Professional Appraisal Practice (USPAP) compliant. With that said, if a landowner wishes to have more strict standards on an appraisal, such as yellow book, the program will allow that by request.

I hope this answers some of the questions you had. I also hope these answers are not a major deal breaker. The City staff, Land Acquisition Team and the Conservation Advisory Board will do all that we can to make you and your family comfortable with this process. Please do not hesitate to ask any further questions or make any requests.

Thank you again for showing me around your amazing property. Have a great rest of your week.

Best,

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From: Michael Bitter
Sent: Friday, June 22, 2018 8:30 PM
To: Tyler Sanderson
Cc: josephbitter@att.net
Subject: RE: Bexar Ranch Visit - Edwards Aquifer Protection Program

Tyler –

Thanks for your responses.

Can you provide me with the name and number of the attorney in the City Attorney's office with whom I can visit on the issue of EAPP and the NDA? There are some exceptions to FOIA that may be applicable. We will be reluctant to provide all the information you are going to want without some level of assurance. Once both sides are able to determine they are truly interested in the Conservation Easement on our property, the dynamic will be different. But until that point in time, we risk disclosing information that could have repercussions, without any benefit in return.

Thanks for the information on appraisal standards. What can you tell me about how you select the appraisers for the program and each property? Can you provide a list of approved appraisers with some information about how much experience they have with EAPP transactions?

Regards,

Michael

Michael W. Bitter
Hayden & Cunningham, PLLC
7750 Broadway
San Antonio, Texas 78209
Tel: (210) 826-7750
Fax: (210) 822-0916
e-mail: mbitter@7750law.com

From: Tyler Sanderson [mailto:tyler@greensatx.org]
Sent: Wednesday, June 13, 2018 10:43 AM
To: Michael Bitter <mbitter@7750law.com>; josephbitter@att.net
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Thank you again for showing me around your amazing property. Have a great rest of your week.

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Sent: Monday, June 25, 2018 4:03 PM
To: Michael Bitter
Cc: josephbitter@att.net
Subject: Re: Bexar Ranch Visit - Edwards Aquifer Protection Program

Michael,

Thank you for your response. I have sent this email along to the City and asked which attorney they would like for me to get you in contact with. When they respond, I will send you that person's information.

We have a vendor list for all of our due diligence. The EAPP has put together this list of vendors who have experience with conservation easements and who now have experience with the Edwards program specifically.
There are only four appraisers on that vendor list: Valbridge, Stouffer and Associates, Jeffries Appraisal Services and Bierschwale land Co. We have to get three cost/time estimates from separate appraisers and make a decision based on those three. Typically, there is not much of a difference in cost/time, so we make the decision based on our experience with the appraisers. I have opinions of who I prefer based on their work, but the landowner's input is certainly welcome. I do not have experience with Bierschwale, but the other three are all very comparable and they all have extensive knowledge of the program.
If you have a particular appraiser you would prefer, if they are on the list we can try to go with them...if they are not on the list, we can get them added if they have conservation easement experience. To get a vendor added to the list, I just send an email to the Special Projects Manager with the City, give him the name and contact info for that vendor and they have a form for the vendor to fill out.

I hope that answered the second half of your questions. I will get back to you soon about the first half.

Have a great week,

Tyler Sanderson | Land Conservation & Stewardship Manager

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1. Non-Disclosure Agreement? - Since the EAPP is a publicly funded program information is open to the general public. The program does not willingly share information and will not willingly post it, but it can be pulled out of county court due to the freedom of information act. Any request for the information will have to be granted. The program has never used a non-disclosure agreement in the past and the City Attorney's office opposes the idea. The program does not promote the name of landowners and could use a name you choose to keep the family name out of the process. The only time the family name would need to be used is if/when the property goes to City Council for final approval. I completely understand your concern, especially given the problem you have had with CPS in the past. I'm not sure you question was answered properly when we met in person, but the above answer is how the program handles all information collected on properties.
2. What are the appraisal standards? - Each appraiser has been approved for the vendors list because they are certified land appraisers by a State of Texas certification and they understand that their appraisals must be Uniform Standards of Professional Appraisal Practice (USPAP) compliant. With that said, if a landowner wishes to have more strict standards on an appraisal, such as yellow book, the program will allow that by request.

I hope this answers some of the questions you had. I also hope these answers are not a major deal breaker. The City staff, Land Acquisition Team and the Conservation Advisory Board will do all that we can to make you and your family comfortable with this process. Please do not hesitate to ask any further questions or make any requests.

Thank you again for showing me around your amazing property. Have a great rest of your week.

Best,

Tyler Sanderson | Land Conservation & Stewardship Manager

GREEN SPACES
ALLIANCE

Land Trust Accreditation Commission Accredited

PO Box 15275 | San Antonio TX 78212

210.222.8430 x.305 | Fax 210.222.8022

Our mission is to sustain the natural environment and enhance urban spaces through land conservation, community engagement, and education. Your donation to Green Spaces today or through a planned gift nurtures a culture of conservation in our community.

On Tue, Jun 5, 2018 at 4:17 PM, Tyler Sanderson <tyler@greensatx.org> wrote:

Gentlemen,

Thank you very much for showing us around your incredible property today. I had a great time and appreciate your conservation mentality and the management of your property.

I have relayed the questions that came up today that we were not able to answer. The City Staff will get back to me soon and I will report back with those answers.

In the meantime I have attached the letter that I sent to Dr. Bitter last week as well as the template of the conservation easement that the City works with.

I did want to partially answer your question about what in the conservation easement is non-negotiable. To an extent, everything is negotiable except for the annual monitoring, the percentage of impervious surface restriction (#1 in easement), mineral rights (#10 in easement and elsewhere I believe), and storage, dumping and disposition (#9 in easement).

The City is willing to consider any suggested edits to the conservation easement. Generally, after the appraisal process, I ask the landowner to provide me with any suggested edits or concerns that they might have. If there is something major that might change the appraised value significantly, I would like to know that ahead of time.

There was also a question today about condemnation language in the easement (I think I was grabbing the sotol. There is language in there (#20 in easement), so take a look at that and let me know if it works for you. Again, you can send proposed edits for the City to consider.

Again, thank you all for showing us around. I look forward to any further conversation. Please let me know if you have any questions and let me know how the family feels about this potential project.

I also wanted to ask if you are comfortable working with me, or would prefer to work with David Bezanson? We had originally delegated your property to Green Spaces Alliance for contact, but I understand you have spoken with David a couple times. I obviously would prefer to work with you, we are not in competition and all I really care about is conserving land and spending the Edwards Program budget wisely.

Best,

Tyler Sanderson | Land Conservation & Stewardship Manager

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Michael Bitter

From: Tyler Sanderson <tyler@greensatx.org>
Sent: Tuesday, June 26, 2018 2:00 PM
To: Michael Bitter
Cc: josephbitter@att.net
Subject: Re: Bexar Ranch Visit - Edwards Aquifer Protection Program

Michael and Joseph,

The attorney for the City of San Antonio's EAPP, Steve Whitworth, is interested in meeting with you. He has asked me to see about your availability next week for a meeting via conference call or in person. The Special Projects Manager for the EAPP, Phillip Covington would also be interested in being part of the discussion.
Could you please send me a proposed date and time for a meeting. If you are unable to meet next week, I can get word from the City to share their contact information with you.

Thank you,

Tyler Sanderson | Land Conservation & Stewardship Manager

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On Fri, Jun 22, 2018 at 8:29 PM, Michael Bitter <mbitter@7750law.com> wrote:

Tyler –

Thanks for your responses.

Can you provide me with the name and number of the attorney in the City Attorney's office with whom I can visit on the issue of EAPP and the NDA? There are some exceptions to FOIA that may be applicable. We will be reluctant to provide all the information you are going to want without some level of assurance. Once both sides are able to determine they are truly interested in the Conservation Easement on our property, the dynamic will be different. But until that point in time, we risk disclosing information that could have repercussions, without any benefit in return.

Thanks for the information on appraisal standards. What can you tell me about how you select the appraisers for the program and each property? Can you provide a list of approved appraisers with some information about how much experience they have with EAPP transactions?

Regards,

Michael

Michael W. Bitter

Hayden & Cunningham, PLLC

7750 Broadway

San Antonio, Texas 78209

Tel: (210) 826-7750

Fax: (210) 822-0916

e-mail: mbitter@7750law.com

From: Tyler Sanderson [mailto:tyler@greensatx.org]
Sent: Wednesday, June 13, 2018 10:43 AM
To: Michael Bitter <mbitter@7750law.com>; josephbitter@att.net
Subject: Re: Bexar Ranch Visit - Edwards Aquifer Protection Program

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