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1 JEFF HATCH-MILLER

2 Chairman

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4 Commissioner

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10 Commissioner

2005 SEP 14 P 4: 17

AZ CORP COMMISSION
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11 IN THE MATTER OF THE APPLICATION
12 OF SALT RIVER PROJECT
13 AGRICULTURAL IMPROVEMENT AND
14 POWER DISTRICT ON BEHALF OF
15 ITSELF AND ARIZONA PUBLIC SERVICE
16 COMPANY, SANTA CRUZ WATER AND
17 POWER DISTRICTS ASSOCIATION,
18 SOUTHWEST TRANSMISSION
19 COOPERATIVE, INC. AND TUCSON
20 ELECTRIC POWER IN CONFORMANCE
21 WITH THE REQUIREMENTS OF ARIZONA
22 REVISED STATUTES SECTION 40-360, *et*
23 *seq.*, FOR A CERTIFICATE OF
24 ENVIRONMENTAL COMPATIBILITY
25 AUTHORIZING CONSTRUCTION OF THE
26 PINAL WEST TO SOUTHEAST
27 VALLEY/BROWNING PROJECT
28 INCLUDING THE CONSTRUCTION OF
TRANSMISSION LINES FROM PINAL
WEST TO THE BROWNING SUBSTATION
AND OTHER INTERCONNECTION
COMPONENTS IN PINAL AND
MARICOPA COUNTIES, ARIZONA.

Docket No. L00000B-04-0126

Case No.126

**APPLICATION FOR REHEARING
PURSUANT TO A.R.S. § 40-253(A)
AND/OR REQUEST FOR
RECONSIDERATION PURSUANT
TO A.R.S. § 40-360.07(C)
BY INTERVENORS VANGUARD
PROPERTIES, INC., ROAD
RUNNER RESORTS, L.L.C., CMR
CASA GRANDE, L.L.C. AND
FLORENCE COPPER, INC.**

Intervenors Vanguard Properties, Inc., Road Runner Resorts, LLC, CMR Casa Grande, LLC and Florence Copper, Inc. (collectively, "Vanguard") hereby apply for a rehearing pursuant to A.R.S. § 40-253(A) and/or request a reconsideration pursuant to

1 A.R.S. § 40-360.07(C) of the Arizona Corporation Commission's decision and final order in
2 this matter dated August 25, 2005. The Commission's 3-2 decision approving an
3 amendment to the route selected by the Power Plant and Transmission Line Siting
4 Committee ("Line Siting Committee") and placing Applicant's 500 kV transmission line
5 across Vanguard's property not only ignored the 9-1 vote of the Line Siting Committee
6 based on 17 days of evidentiary hearings, but also misapplied the factors set out in A.R.S.
7 § 40-360.06(A) to govern such decisions. In particular, the Commission granted excessive
8 and inordinate weight to the concerns of certain existing homeowners, when no competent
9 evidence has been presented that the transmission line could not be constructed to avoid
10 those homes and when the Line Siting Committee had specifically toured the alternative line
11 corridors to confirm that the homeowners could be avoided. The Commission also
12 apparently gave inordinate weight to inaccurate and mistaken testimony concerning
13 electrical demands and reliability, as well as ignoring due process and procedural issues.

14 This motion is limited to the line segment between Nodes 175 and 44 and does not
15 seek rehearing or reconsideration of any other portion of the Commission's Order or subject
16 line siting.

17
18 **I. Section 40-360.06(A) Does Not Allow the Commission to Ignore the Plans of**
19 **Pinal County Local Governments Based on the Unsupported Concerns of A**
20 **Limited Group of Homeowners.**

21 **A. The Commission Based Its Reversal of the Line Siting Committee On**
22 **Incorrect Conclusions Concerning The Effects of the "Backwards C"**
23 **Alignment on Existing Residences.**

24 The "existing plans of the state, local government and private entities for other
25 developments at or in the vicinity of the proposed site," the very first factor under A.R.S. §
26 40-360.06, could not have been more clear in this record: the "Backwards C" alignment is
27 favored by Florence, Coolidge and Casa Grande and represented the route that was most
28 harmonious and consistent with area planning and reducing impacts on the population of
Florence. But the Commission result ignored this factor while focusing on the asserted

1 needs of existing homeowners that it mistakenly believed would be affected by the Line
2 Siting Committee's 9-1 decision. Because the transmission line can be engineered to avoid
3 these homeowners, and because the sudden shift of the line "blindsided" a similar number of
4 property owners and a private railroad (the Copper Basin Railroad along the eastern
5 alternative green route) that had relied on the original siting, the Commission should
6 reconsider and rehear its ruling and reestablish the line where it belongs: along the corridor
7 selected by the Line Siting Committee and along the Preferred Route to the west of the heart
8 of Florence.

9 Arizona law requires that the Line Siting Committee and Corporation Commission
10 base their decisions on testimony and evidence received "under oath." A.R.S. § 40-
11 360.04(C). In contrast to the sworn testimony and evidence presented by Vanguard on
12 Merrill Ranch and other parties regarding the statutory factors that should control the siting
13 decision, the Line Siting Committee received little or no sworn testimony or other
14 competent evidence on the impact of the line on developments at Magic Ranch or on other
15 existing residences. Virtually all evidence on the number of residences at Magic Ranch
16 derives from an unsworn letter from D.R. Horton Inc. – Dietz-Crane ("Horton") filed on
17 March 17, 2005. In that letter, Horton provided speculative information about the numbers
18 of residences in the entire Magic Ranch development:

19
20 Horton has confirmed approximately 358 occupied homes at the Oasis [Horton's
21 development]. There is also potentially 175 more occupied homes at Oasis that were
22 sold by Centex Homes [in the Mirage development]. In addition, of the 113
23 remaining homes to the southwest of Hunt Hwy, nearly 100% are sold and should be
24 occupied by end of November, 2005.

25 D.R. Horton letter of March 17, 2005 at 1 (emphasis added). Horton provided no sworn
26 testimony in the proceedings before the Line Siting Committee and its assertions were never
27 subjected to cross-examination. Moreover, Horton said nothing in this unsworn letter about
28 the most significant issues, such as: (1) when these homes were sold and occupied, (2)
whether Horton and/or Centex Homes informed the purchasers of the homes that the SRP's

1 preferred route would cross Magic Ranch, and (3) how many homes would be taken by
2 SRP's transmission line.

3 SRP conducted its public meetings from June 2002 through June 2004, and Horton
4 and/or Centex Homes had every opportunity to have informed their prospective purchasers
5 (some of whom likely purchased homes even after SRP filed its CEC application in October
6 2004) that SRP's preferred route would pass near their homes. Moreover, nothing in
7 Horton's letter indicates how many, if any, of these residences would be directly affected by
8 the line.

9 This unfounded information was given inordinate weight by the Commission in its
10 vote reversing the decision of the Line Siting Committee. None of the discussion of the
11 impact of the line on residences at Magic Ranch has any better evidentiary support in the
12 record; in fact, the record exhibits make the Line Siting Committee's case that the existing
13 homes (as opposed to future platted lot layouts) at Magic Ranch would most definitely not
14 be affected by the transmission line as sited by the Committee. For example, Scott Lenz
15 testified for Walker Butte that there were "533 existing homes" at Magic Ranch, but he
16 based his testimony on the unsworn Horton letter.^{1/} Transcript of Proceedings on April 8,
17 2005 at 3429-30 ("according to the D.R. Horton letter that was filed with Docket Control,
18 and their own research, that there are existing 533 homes that are sold and occupied").
19 During cross-examination, Mr. Lenz began insisting that there were 582 existing homes, see
20 Transcript of Proceedings on April 14, 2005 at 4630, but he provided no evidentiary support
21 for that claim. But the existing homes could be avoided by SRP's transmission lines, given
22 the width of the corridor approved by the Line Siting Committee.

23 Patrick Black of the Fennemore Craig law firm, purporting to represent the Oasis at
24 Magic Ranch Homeowners Association in public comment to the Commission on July 13,
25

26 ^{1/} Mr. Lenz apparently combined Horton's "approximately 358" existing homes in
27 Oasis at Magic Ranch with the "potential" 175 homes sold by Centex in Mirage at Magic
28 Ranch.

1 2005 (although these homeowners never chose to intervene to state their opposition to the
2 preferred route to the Committee, where the record that controls was made), also based his
3 unsworn “public comments” on the unsworn Horton letter. Transcript of Proceedings on
4 July 13, 2005 at 208-09. Neither Mr. Lenz nor Mr. Black provided any evidence relating to
5 residences at Magic Ranch other than their reliance on the Horton letter. No witness or
6 attorney provided any evidence as to when the residents of Magic Ranch bought their
7 homes, whether Horton and Centex provided any information to the purchasers about SRP’s
8 preferred route (that had been noticed for many years) passing near the area, and, most
9 importantly and apparently dispositive to the majority of the Commissioners, how many
10 homes would actually be physically impacted by placing the transmission lines on SRP’s
11 preferred route near Magic Ranch, especially given the extra-wide one mile corridor
12 engineered by the Applicant, Walker Butte and the Line Siting Committee during final
13 deliberations.

14 The record also lacks substantial evidence and is vague concerning the nature and
15 number existing residences along the existing 115 kV transmission line north of Highway
16 287, and most importantly, whether any of those homes already impacted by the 115 kV line
17 would have to be taken to construct the new 500 kV line. Relatively early in the
18 proceedings related to Area C, when discussing a proposed route for the transmission line
19 that would go west to east between Nodes 174 and 175, SRP’s witness Dan Hawkins
20 testified that placing the line in that area would affect at most three or four residences:

21 [I]n the discussion on Node 174 to 175, as Ms. Pollio pointed out, there’s several
22 existing residences there. No matter which side of the existing Western line we build
23 on, one side has three residences that we will have a conflict with. The other side has
24 four residences that we’ll have a conflict with.

25 Transcript of Proceedings on February 14, 2005 at 2036 (emphasis added). When
26 Committee Member Williamson asked Mr. Hawkins for clarification, Mr. Hawkins
27 suggested that SRP could avoid the most or all of the homes between Nodes 174 and 175:

28 MEMBER WILLIAMSON: . . . [I]f you took the preferred route maybe one or two

1 homes might be affected, but if you go between [Nodes] 174 and 175 maybe five or
2 six. Is that a fair characterization?

3 MR. HAWKINS: That's fair. Like everything else there's a tradeoff there. You can
4 miss some of those homes along [Nodes] 174 and 175 if you jump back and forth the
5 Western line.

6 Id. at 2039 (emphasis added).

7 However, when the possibility of the Backwards C route arose, with a east to west
8 route between Nodes 175 and 174, Mr. Hawkins suddenly asserted that the line would affect
9 a much larger number of homes, testifying that "there are approximately 38 existing
10 residential dwelling units along this proposed backwards C alignment along [Highway]
11 287." Transcript of Proceedings on April 15, 2005 at 3938-39 (emphasis added). Mr.
12 Hawkins offered no evidentiary support for this sudden increase in the number of possibly
13 affected homes from "maybe five or six" to 38. The number of allegedly impacted homes
14 along Highway 287 rose even higher in SRP's closing argument, at which time Mr. Sundloff
15 asserted that even more homes would be impacted: "Impact to dwelling units are not great
16 until you get the backward C and go along the [Gila] river, along the Highway 287, where
17 there are quite a few homes, I think the testimony was 68." Transcript of Proceedings on
18 May 10, 2005 at 4116 (emphasis added). Neither SRP nor any intervenor has ever offered
19 any explanation how the impacted homes along Highway 287 could rise from three or four
20 to 68, and no evidence supports any number over a half dozen. Transcript of Proceedings
21 on February 14, 2005 at 2036, 2039. Moreover, residents along Highway 287 admitted
22 during open comment sessions that they received numerous notices that the new
23 transmission line might follow the route of the existing 115 kV line. Transcript of
24 Proceedings on July 13, 2005 at 214-15. Most importantly, each of these homeowners is
25 already affected by that 115 kV line, and the members of the Committee obviously took that
26 into account following their personal site tour to physically observe these conditions.

27 The Line Siting Committee fully took into account these existing residences when it
28 voted 9-1 in favor of the Backwards C route, as did local governments in Pinal County when

1 they overwhelmingly supported the Line Siting Committee's decision. Committee members
2 drove mile by mile along each of the corridors and had the opportunity to personally and
3 closely observe the impact on existing homes along the corridor it eventually chose. By
4 reversing the Line Siting Committee and placing the transmission line route across Merrill
5 Ranch, the Commission vote disregarded the will of the population at large in Florence and
6 Coolidge expressed through their elected officials, disregarded the substantial evidence of
7 the effects on the Anthem at Merrill Ranch and Merrill Ranch, and instead relied upon
8 unsworn and unsupported assertions by non-parties such as Horton, which did not intervene
9 in these proceedings and instead hurriedly continued to sell houses to new customers in the
10 area of SRP's heavily-noticed and long-standing Preferred Route. More importantly, the
11 Commission was persuaded by a stampede mentality concerning "hundreds" of residents
12 that would allegedly lose their homes in favor of homeowners in Merrill Ranch that did not
13 yet have homes built, when the aerial photographs in the record indicate that the alignment
14 selected by the Line Siting Committee could avoid every existing home at Magic Ranch (see
15 Ex. WB-9, attached as Exhibit A to this motion), and would impact at most three or four
16 existing homes near the 115 kV line north of highway 287.

17 Exhibit WB-9 (attached as Exhibit A to this motion), submitted by Walker Butte at
18 the Line Siting hearing, establishes that a transmission line constructed east of the centerline
19 along the existing railroad tracks (the red line up the middle of the exhibit), within the area
20 shown in blue on the exhibit, would completely avoid every house at Magic Ranch. The
21 small lot lines shown underneath the blue corridor shading are not existing homes; in fact,
22 they are nothing more than future residential lots that have not yet been improved or
23 constructed. The only existing improvement to be affected at Magic Ranch is a water tank
24 located to the south of the development. There is a single family residence noted to the
25 north of Magic Ranch within the blue shading, but this house could be avoided by the use of
26 a turning structure moving the line to either the west or the east south of that residence. The
27 key point is that despite the impression created in argument before the Commission, not a
28

1 single Magic Ranch resident would lose their existing home by the placement of the
2 transmission line as selected by the Committee.

3
4 **B. The Commission Vote Sought To Avoid One Set of Problems For Existing**
5 **Homeowners By Imposing Those Same Problems On Another Group of Existing**
6 **Homeowners Along the New Route Who Were Completely Blindsided by the**
7 **Sudden Reversal.**

8 The 3-2 vote of this Commission served to transfer the impact of the transmission
9 line from the Highway 287/Magic Ranch homeowners to an equally impacted group of
10 homeowners along the new corridor at the Wild Horse Estates and Crestfield Manor
11 developments located north of Merrill Ranch along the eastern alternative alignment. (See
12 Exhibit A-33-c, attached as Exhibit B to this motion; the Wild Horse Estates residential
13 development is labeled "Felix 120/WLB" and the Crestfield Manor residential development
14 is labeled "Little/Langley"). But these newly impacted existing property owners had relied
15 on the early placement of the corridor along the western Preferred Route and the advocacy
16 by their governmental officials to keep the line in that corridor, far from their existing
17 homes and properties. Moreover, the Copper Basin Railroad, operator of the rail line now
18 suddenly impacted with the rail line, was similarly blindsided by the sudden shift of the line
19 at the very last minute. The Commission heard nothing concerning the impacts of the
20 shifted line corridor to these existing homeowners and the railroad, who had innocently and
21 in good faith relied on the line siting process, the record before the Committee, and the 9-1
22 vote to site the line to the west away from their homes and business. At a minimum, the
23 matter should be reopened and reheard to undertake a mile-by-mile comparison of the true
24 effects of the corridor shift on homeowners and structures along both corridors.

25 **C. The Drastic Effects of Eastern Railroad Route on Merrill Ranch.**

26 Arizona law provides a list of nine factors which the Line Siting Committee "shall
27 consider" when determining the placement of a transmission line, the first of which is
28 "Existing plans of the state, local government and private entities for other developments at
or in the vicinity of the proposed site." A.R.S. § 40-360.06(A)(1)(emphasis added). Pinal

1 County first approved a plan for the development of the Merrill Ranch area in December
2 2000, almost four years before the Line Siting Committee began hearings in this matter.
3 Transcript of Proceedings on April 14, 2005 at 3694. Vanguard purchased the bulk of the
4 Merrill Ranch property in May 2001, and immediately began meeting with local
5 government officials concerning development of the property. *Id.* at 3694. Following those
6 discussions, the Town of Florence annexed the Merrill Ranch area in December 2003,
7 approving a PUD and other development-related matters for the area. *Id.* at 3695.

8
9 In reliance on these approvals by local governments, and on the Applicant's choice of
10 a preferred route for its 500 kV power line which would place the line approximately four
11 miles to the west of Merrill Ranch, Vanguard and others began massive planning and
12 development efforts in the area, including such new and unique components as Vanguard's
13 Desert Color project. *Id.* at 3693, 3700-01, 3739-40. Moreover, Pulte Homes has already
14 graded approximately 1,400 acres and is currently developing significant infrastructure,
15 including widening and improving major roadways such as Felix Road and the new Merrill
16 Ranch Road. *Id.* at 3697-98. The entire Merrill Ranch project consists of 9,100 acres and
17 will contain 31,000 to 32,000 residential units, with an expected population of 85,000 to
18 100,000. *Id.* at 3693-95, 3698. Altogether, Vanguard and Pulte have spent several millions
19 of dollars developing what is expected to be a \$8 to \$9 *billion* project. *Id.* at 3700-01.
20 Literally thousands of lots and the associated infrastructure have been engineered and
21 planned in good faith reliance on the line siting process, the Preferred Route chosen after
22 years of study and public hearings, and the Committee's vote.

23 Placement of the transmission line along the so-called eastern railroad route would
24 drastically impact the Merrill Ranch development. As discussed during the siting hearing
25 and during its deliberations, the Desert Color project may not be built if the Commission's
26 decision stands. *Id.* at 3701-02. As one example of the impact of the transmission line,
27 residents arriving from the Phoenix metropolitan area via Felix Road would have to cross
28 twice under the power lines to enter Desert Color's main entrance. The Commission's

1 decision has also put at risk the construction of numerous homes within Pulte's Anthem at
2 Merrill Ranch development to the west of the Copper Basin Railroad and west of Desert
3 Color that were set to begin in early 2006.

4 The last-minute shift in the route also upset plans long in place for a commercial
5 business and regional mall site south of the residences at Merrill Ranch. The new line
6 placement could lead to a shift in design and focus of the regional mall planned for that
7 commercial village, located at the intersection of Hunt Highway and Felix Road. Without
8 Desert Color nearby, the regional mall will lose a significant component of its planned
9 value.

10 Based on these and many other considerations, the Town of Florence consistently
11 asserted throughout the proceedings before the Line Siting Committee, balancing the needs
12 and desires of its own existing and future residents, that the route of the 500 kV
13 transmission line in the Florence area should stay west of Merrill Ranch and on land along
14 the Gila River Indian Community boundary. The Line Siting Committee ultimately voted 9-
15 1 in favor of a route alignment that would remove the power line from the planned heart of
16 the Town of Florence. Following the Line Siting Committee's vote, the Town of Florence,
17 the City of Casa Grande, the City of Coolidge and the Pinal County Alliance of Towns and
18 Cities all passed resolutions supporting the route approved by the Line Siting Committee.
19 The Commission's decision to place the power line across Merrill Ranch disregarded the
20 Line Siting Committee's 9-1 recommendation and the position of virtually every local
21 governmental authority involved in any way in the line siting process.

22
23 **II. Concerns of Electrical Reliability Do Not Require a 500 KV Line Through the
Merrill Ranch Development.**

24 In arguments before the Line Siting Committee and the Commission, counsel for
25 SRP and others repeatedly suggested that the size and planned population of the Merrill
26 Ranch development required placement of SRP's 500 kV transmission line across the
27 development. However, SRP and others presented little or no competent evidence on this
28

1 issue. Rather, SRP's witnesses, including Mark Etherton, based their testimony on complete
2 mischaracterizations of the Vanguard's evidence:

3
4 Q. [by SRP's counsel] Mr. Etherton, I want to move away for a second from your
5 prepared presentation slides and put up Exhibit V-2 which the Committee saw
6 yesterday. That was the Merrill Ranch exhibit. And Harrison Merrill testified that
7 that subdivision or multiple subdivisions and ultimate buildout would have 71,000
8 homes plus related businesses and schools. Have you estimated what you think the
9 load might be for the Merrill Ranch development?

10 A. . . . If I was to extrapolate that out for this 14 square miles and the 72,000
11 dwelling units, that's going to be somewhere around 200 megawatts of load.

12 Q. What would you need in terms of transmission lines and substations to serve
13 that 200 megawatts of load?

14 A. Anywhere from four to six 69 kV substations, as well as a receiving station
15 that we're showing for this area of the 500 megawatts capacity to serve not only this
16 area, this subdivision, but the one, the surrounding that we showed in our Area 7. . . .

17 Q. Mr. Etherton, I don't want you to speculate but a way of doing this would be
18 to put a 230/69 substation in that purple area along the railroad track?

19 A. Right in the middle.

20 Q. How would you have to serve that in terms of 230 lines?

21 A. Again, like I mentioned, for a 230 station on the slide where I have everything
22 tiled, you could have a 230 line in – actually we could probably go back to this,
23 where you have one 230 line in and one 230 line out to give you reliability to serve
24 the substation, and all the distribution stations that it's serving for that area.

25 Transcript of Proceedings on April 15, 2005 at 3893-95 (emphasis added).

26 SRP's question and Mr. Etherton's answer were flawed in their very premise: Mr.
27 Merrill testified that the Merrill Ranch development would contain 31,000 to 32,000 homes,
28 not 71,000 to 72,000. Tr. 3693-95, 3698. In short, SRP and its witness more than doubled
the projected population of Merrill Ranch, resulting in a likely doubling of the projected
number of substations and lines needed to serve the area. Similarly, Mr. Etherton's
"speculation" that a 230/69 kV substation and related transmission lines would need to be

1 placed "right in the middle" of Merrill Ranch was equally unfounded. Merrill Ranch's
2 plans call for 69 kV lines to be placed underground to serve its residents, and there was no
3 evidence that such lines are insufficient or impractical under the Preferred Route alignment
4 chosen by the Line Siting Committee. Moreover, Merrill Ranch has already planned for the
5 siting of two 69 kV substations within its development in discussions with its electric utility
6 provider, Arizona Public Service. The ACC staff and the Applicant persisted in erroneously
7 asserting that Electrical District No. 2 was the electric provider to Merrill Ranch, when in
8 fact it is Arizona Public Service, demonstrating a lack of understanding of the baseline facts
9 regarding the provision of electricity to these residents.

10 The Commission's Staff then compounded SRP's erroneous testimony and
11 information by seeking to elicit testimony from Mr. Etherton favoring placement of the 500
12 kV line along the "green route" across Merrill Ranch:

13 Q. If you can please put on the Merrill Ranch exhibit that was put on Would a
14 230 kV receiving substation for this area . . . would that be better situated to
15 efficiently serve this load and the projected load if located along the green route
16 rather than the blue route, considering if the green route is built with the 230 line?

17 A. I guess from an efficiency standpoint, you're referring to the amount of
18 transmission lines coming out of that substation to serve the 69 to 12 substations. To
19 keep those distances to a minimum I would place the receiving station as close to the
20 electrical center of that area as you can. That being said, I would place it somewhere
21 in the middle. If you place it somewhere on the west edge you have the potential 69
22 kV substation, 69 kV lines emanating out from there, and the distance would be
23 longer and longer.

24 Transcript of Proceedings on April 15, 2005 at 3921 (emphasis added). Because Mr.
25 Etherton based his suggestion that Merrill Ranch needed a 230 kV substation on an
26 erroneous assumption about the planned population of Merrill Ranch, his further
27 speculations about placement of the 230 kV substation are equally unfounded.

28 SRP's counsel then again suggested in closing argument that the 500 kV power line
had to pass through the middle of Merrill Ranch:

1 This is a huge development. . . . It needs power. It can't be served by a single 69
2 substation; in fact, it probably needs four [or] five 69 substations. . . . Mr. Merrill
3 testified that in fact the plan contemplates a substation right in the middle . . . along
4 the railroad alignment. I suggest that that substation is your 230 – 500/230
5 substation. That's the bulk source of power. From there you go out underground
6 into your different 69 lines. You end up having a single transmission line running
7 through that entire development

8 Transcript of Proceedings on May 10, 2005 at 4117-18 (emphasis added). In short, SRP
9 began with an erroneous premise that the Merrill Ranch development would contain more
10 than twice as many homes as actually planned. SRP and the Commission's Staff then
11 extrapolated that flawed premise into assertions that Merrill Ranch needed numerous 69 kV
12 substations, a 230 kV substation, and ultimately a 500 kV transmission line "running
13 through that entire development." Id. at 4118. (Moreover, evidence in the record indicates
14 that the majority of the power carried by the line will serve the Phoenix area, not Florence.)
15 These factual and other errors continued to multiply due to the Line Siting Committee's
16 limitations on the time allowed for Merrill Ranch's direct case, see infra, which prevented
17 Merrill Ranch from presenting any electrical expert who could respond to these erroneous
18 assertions.

19 **III. The Line Siting Committee Denied Vanguard Due Process by Enforcing Severe** 20 **Limitations on the Time Allowed for Vanguard's Direct Case.**

21 Due process "dictates that a party has the right to be heard." Hall v. Lalli, 194 Ariz.
22 54, 57, 977 P.2d 776, 779 (1999). "Procedural due process requires notice and an
23 opportunity to be heard in a meaningful manner and at a meaningful time." Webb v. State
24 ex rel. Arizona Board of Medical Examiners, 202 Ariz. 555, 558, 48 P.3d 505, 508 (App.
25 2002); Comeau v. Arizona State Board of Dental Examiners, 196 Ariz. 102, 106-07, 993
26 P.2d 1066, 1070-71 (App. 1999)("Procedural due process means that a party had the
27 opportunity to be heard at a meaningful time and in a meaningful manner").

28 Throughout these proceedings, Vanguard was denied a fair opportunity to present its
arguments against placement of the 500 kV transmission line across Vanguard's property.
SRP filed its application for the CEC in October 2004, with a preferred route that bypassed

1 Vanguard's property. At that time, the Town of Florence was taking the lead in presenting
2 arguments against moving the line any closer to downtown Florence. See Transcript of
3 Proceedings on April 14, 2005 at 3696. Accordingly, Vanguard did not seek to intervene in
4 the hearings before the Line Siting Committee in November 2004 through mid February
5 2005. Throughout that period, SRP continued to seek its Preferred Route which avoided
6 Vanguard's property.

7
8 However, the factual situation and positions of the parties changed dramatically in
9 mid February. On February 14, 2005, the City of Coolidge reversed its prior position and
10 passed a resolution in favor of the so-called Eastern Alternative Route, across Vanguard's
11 property and much nearer to the center of downtown Florence. After becoming aware of
12 these changes in position, Vanguard moved to intervene in the hearings before the Line
13 Siting Committee so as to present its own witnesses concerning placement of the
14 transmission line. Both Walker Butte and SRP opposed Vanguard's motion to intervene,
15 and the Chairman of the Line Siting Committee ultimately allowed Vanguard only ten
16 minutes to present its witness and exhibits. Transcript of Proceedings on March 9, 2005 at
17 2343-58.

18 The Chairman of the Line Siting Committee strictly enforced these limits,
19 commenting near the end of Harrison Merrill's direct testimony that he had exceeded his
20 allotted time "By about a minute and a half." Transcript of Proceedings on April 14, 2005
21 at 3702. Because of these strict time limits, Vanguard could present only one witness. In
22 particular, the Line Siting Committee's limitations did not allow Vanguard to present
23 witnesses on the electrical reliability issues or to prove dispositively the fact that the line
24 could be designed to avoid completely homes at Magic Ranch or along Highway 287. In
25 contrast, Walker Butte's witness Scott Lenz testified over two days. See Transcript of
26 Proceedings on April 8, 2005 at 3375-3441; Transcript of Proceedings on April 14, 2005 at
27 3613-3650. Walker Butte's counsel also presented testimony by an environmental
28 consultant and a power line designer who testified concerning Walker Butte. See Transcript

1 of Proceedings on March 23, 2005 at 3269-3330. Even worse, Mr. Black, counsel for
2 Magic Ranch, never even intervened but was allowed to present lengthy legal argument
3 under the guise of “public comment” after Vanguard had presented its argument to the
4 Commission on July 13. Mr. Black’s comments obviously were given extraordinary weight
5 by the Commission, even over the parties who had intervened and presented evidence to the
6 Commission.

7 The patently unfair allocation of time drastically affected Vanguard’s ability to
8 present facts related to Vanguard’s position. While the Line Siting Committee allowed
9 Walker Butte to present hours of testimony directed towards placing the line on Vanguard’s
10 property, the Committee ultimately forced Vanguard to present its entire case within 11+
11 minutes. That did not constitute “an opportunity to be heard in a meaningful manner and at
12 a meaningful time.” Webb, 202 Ariz. at 558, 48 P.3d at 508. As a consequence of the
13 drastic limitations imposed on Vanguard, mistaken and factually incorrect comments by
14 SRP and Walker Butte (and public comment by residents of Magic Ranch) went
15 unchallenged. The Commission should not base its decision on the location of SRP’s power
16 line on such a biased and one-sided record, and therefore should grant Vanguard’s
17 application for a rehearing.

18 **IV. Counsel for Walker Butte et al. Engaged in Improper and Impermissible Ex**
19 **Parte Contacts with Members of the Commission.**

20 The Commission has promulgated a strict rule against ex parte contacts with parties
21 “to assist the members of the Arizona Corporation Commission and its employees in
22 avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings
23 before the Commission.” Arizona Administrative Code R14-3-113(A). In particular, the
24 Rule states as follows:

- 25 1. No person shall make or cause to made an oral or written communication, not
26 on the public record, concerning the substantive merits of a contested proceeding to a
27 commissioner or commission employee involved in the decision-making process for
28 that proceeding.

1
2 2. No commission or commission employee involved in the decision-making
3 process of a contested proceeding shall request, entertain, or consider an
4 unauthorized communication concerning the merits of the proceeding.

5 R14-3-113(B). Intervenor Walker Butte may have violated these rules against ex parte
6 contacts.

7 Lawrence V. Robertson of Munger Chadwick, P.L.C. represented Walker Butte
8 throughout the entirety of the Line Siting Committee proceedings. In particular, Mr.
9 Robertson questioned Walker Butte's witnesses and presented oral argument on its behalf
10 up to and including the issuance of the Certificate of Environmental Compatibility on June
11 8, 2005. However, on June 22, 2005, simultaneously with Walker Butte's filing of its
12 Request for Review, Walker Butte associated of record John P. Kaites of the firm of
13 Ridenour, Heinton, Kelhoffer, Lewis & Garth as co-counsel. Mr. Kaites, a three-term
14 Arizona legislator and former candidate for Attorney General, advertises himself as a
15 lobbyist and has lobbied the Commission on many matters in the past. In fact, Mr. Kaites'
16 profile on his law firm's website announces that he specializes in "Government Affairs,"
17 (see Exhibit C attached), while Public Policy Partners, another entity with which he is listed
18 as being affiliated as of Summer 2005, openly states that it is "a lobbying firm." (see Exhibit
19 D attached to this motion). Walker Butte clearly brought in Mr. Kaites to "lobby" the
20 Commission into reversing the Line Siting Committee's 9-1 vote. Mr. Kaites was
21 repeatedly observed by the participants in the proceedings engaging in ex parte contacts
22 with Commission members during the July 20, 2005 public meeting in Casa Grande and
23 during the August 15, 2005 deliberation session. Obviously, only the Commission members
24 can know the extent and nature of actual, direct ex parte contacts outside of the public eye.
25 If any of these contacts violated R14-3-113(B), the Commission should grant a rehearing on
26 that basis alone.

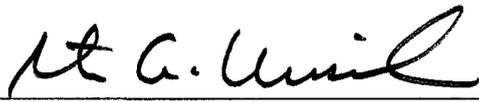
27 CONCLUSION

28 For the foregoing reasons, the Corporation Commission should grant Vanguard's
application for a rehearing and/or motion for reconsideration, approve the Certificate of

1 Environmental Compatibility as adopted by the Line Siting Committee and delete the
2 amended alignment on page 2, lines 4-26 of the Commission's August 25, 2005 Decision.
3 This motion is limited to the line segment between Nodes 175 and 44 and does not seek
4 rehearing or reconsideration of any other portion of the Commission's Order or subject line
5 siting.

6 RESPECTFULLY SUBMITTED this 14th day of September, 2005.

7 BRYAN CAVE LLP

8
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21 1200 W. Washington Street
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23 And copies mailed or e-mailed this date, to:

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27 Walker Butte Granite, L.L.C.; Magic Lake 80, L.L.C.;
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Sonoran 382, L.L.C.; MLC Farms, L.L.C.;
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10 Golf Resort and surrounding property, owned and
11 operated by FG Partners, LLP ("Francisco Grande");
12 The Maha Ganapati Temple of Arizona (the "Temple");
13 Sun Valley Farms Unit 5 Homeowners' Association,
14 Inc. ("Sun Valley HOA"); Karolyn Clough, an individual,
15 Wanda Wood, an individual, Jean Stout, an individual,
16 Linda Beres, an individual, Brenda Scott, an individual,
17 and Jackie Guthrie, an individual ("Impacted Neighbors");
18 and Aspen Farms

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EXHIBIT A

Oasis at Magic Ranch

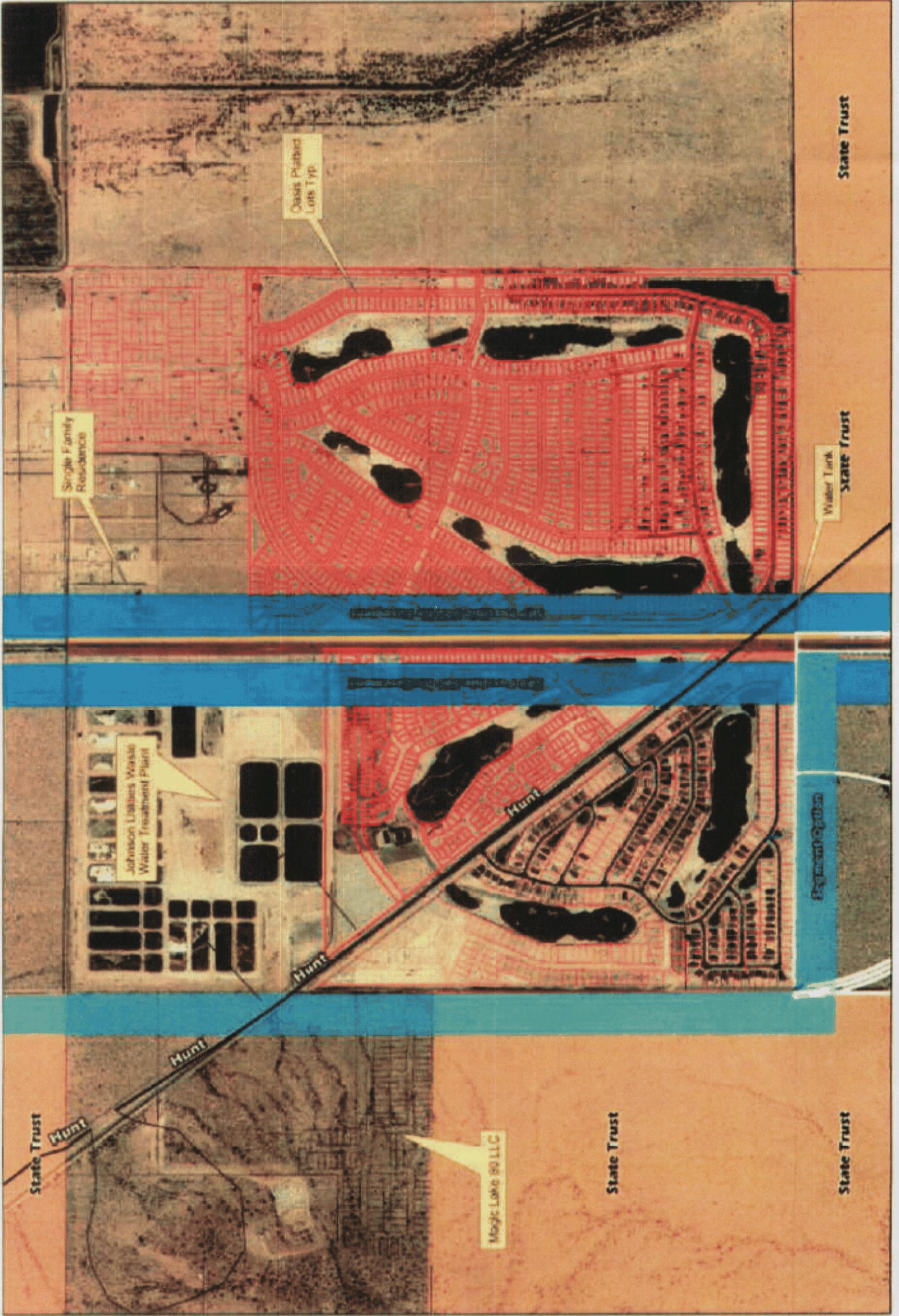
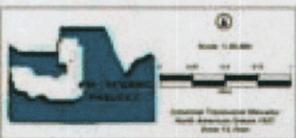


EXHIBIT B

EXHIBIT A-33-c
RESIDENCES & DEVELOPMENT STATUS
AREA C



Legend	
	Existing SRP Transmission Line
	Existing 200 kV Transmission Line
	Existing 115 kV Transmission Line
	Existing Transformer Station with Inventory
	Existing Transformer Station
	Existing Substation
	Property Boundaries
	County Boundary
	State
	Proposed Transmission Corridor
	Red Landmark
	Red Landmark
	State Land (Red Landmark)
	County Landmark (Red Landmark)
	County Landmark (Red Landmark)
	County Landmark (Red Landmark)
	County Landmark (Red Landmark)
	State
	County Boundary
	State
	Proposed Transmission Corridor
	Red Landmark
	Red Landmark
	State Land (Red Landmark)
	County Landmark (Red Landmark)
	County Landmark (Red Landmark)
	County Landmark (Red Landmark)
	County Landmark (Red Landmark)

SEV / SRP RS-22

COOLIDGE

AREA C

Pinal South

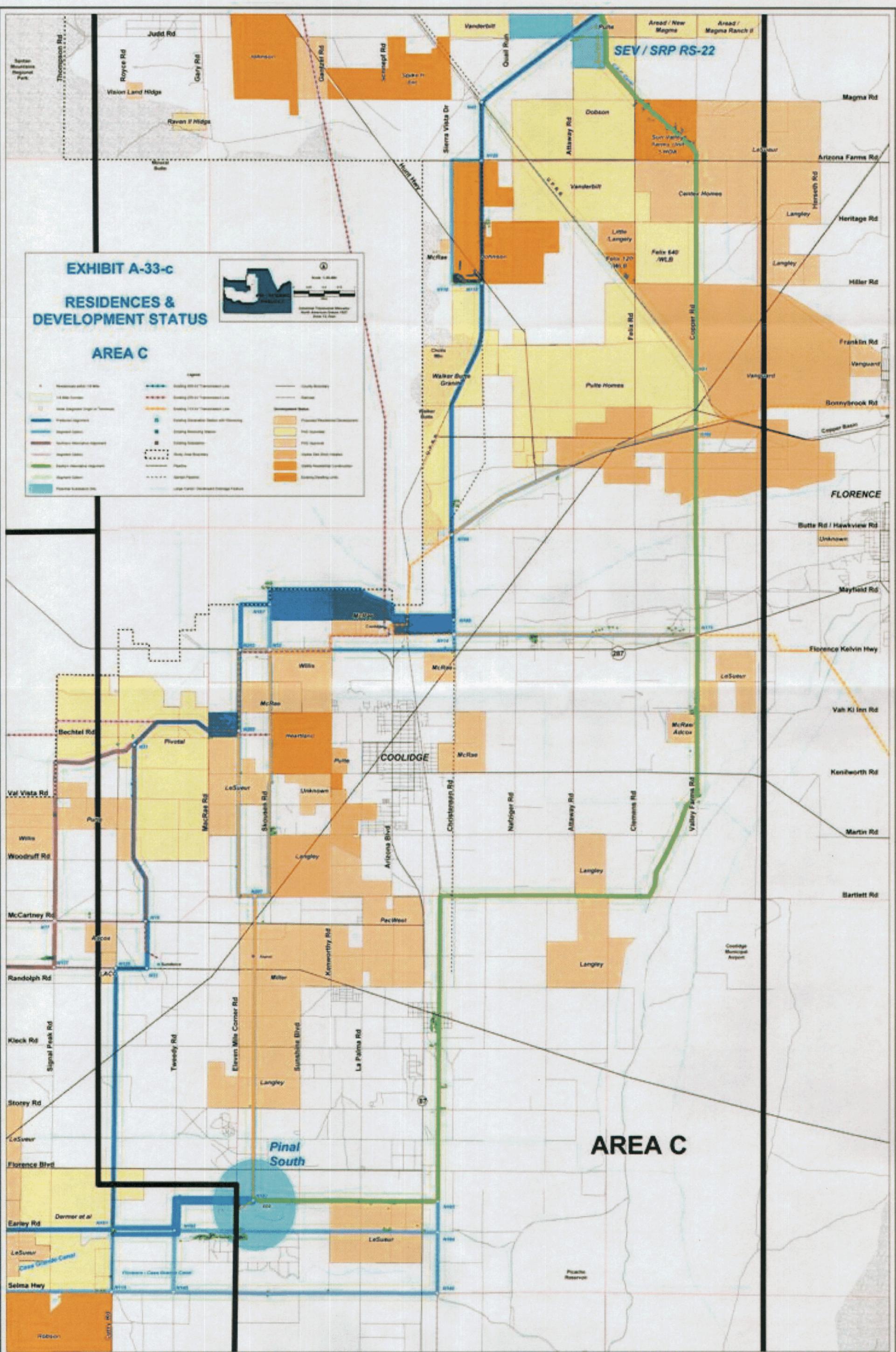
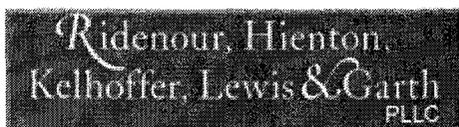


EXHIBIT C



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John P. Kaites, a member, joined the firm in February 2002. He began his legal career in 1989 as an Assistant Attorney General for the State of Arizona in the Organized Crime and Racketeering Division and the Environmental Crimes Section. In addition, he worked as a prosecutor for the Maricopa County Attorney's Office. John then served three terms in the Arizona Legislature. During his tenure in the Arizona Legislature, John was the Chairman of the Senate Banking & Insurance Committee and Senate Judiciary Committee. John authored and was instrumental in passing the Securities Litigation Reform Act, the Interstate Banking & Branching Act, and The Privilege of Self Critical Analysis for Products Liability Act. John also sponsored the final draft to the Arizona Criminal Code and the Arizona Juvenile Justice Code. In 1998, John was recognized nationally by the American Legislative Exchange Council's 3,000 legislative members and received The Outstanding Legislator of the Year Award.



John K

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- Government Affairs

EDUCATION

- Duquesne University, School of Law
- Allegheny College, Bachelor of Arts
The Outstanding Legislator of the Year Award

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- The Order of Barristers
- State Bar of Arizona
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- American Bar Association
- Chairman, Downtown Urban Community Kids Program
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COURT ADMISSIONS

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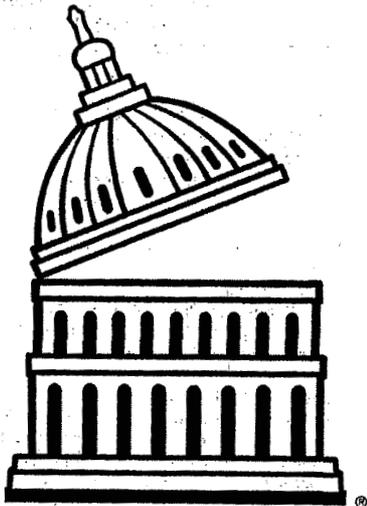
EXHIBIT D

Summer 2005 Volume 11, Number 2

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government affairs



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