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**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE  
APPLICATION OF ARIZONA PUBLIC  
SERVICE COMPANY, IN  
CONFORMANCE WITH THE  
REQUIREMENT OF ARIZONA REVISED  
STATUTES §§ 40-360, *et seq.*, FOR A  
CERTIFICATE OF ENVIRONMENTAL  
COMPATIBILITY AUTHORIZING THE  
TS-5 TO TS-9 500/230kV  
TRANSMISSION LINE PROJECT,  
WHICH ORIGINATES AT THE FUTURE  
TS-5 SUBSTATION, LOCATED IN THE  
WEST HALF OF SECTION 29,  
TOWNSHIP 4 NORTH, RANGE 4 WEST  
AND TERMINATES AT THE FUTURE  
TS-9 SUBSTATION, LOCATED IN  
SECTION 33, TOWNSHIP 6 NORTH,  
RANGE 1 EAST, IN MARICIPA  
COUNTY, ARIZONA

DOCKET NO.

L-00000D-08-0330-00138

CASE NO. 138

**DLGC AND LAKE PLEASANT  
GROUP'S REQUEST FOR REVIEW  
OF LINE SITING COMMITTEE'S  
DECISION**

Arizona Corporation Commission

**DOCKETED**

JAN 13 2009

DOCKETED BY

AZ CORP COMMISSION  
DOCKET CONTROL

2009 JAN 13 P 4: 04

**RECEIVED**

Pursuant to A.R.S. § 40-360.07, Intervenors DLGC II, LLC and Lake Pleasant Group, LLP (collectively, "DLGC") hereby file their request for review of the Arizona Power Plant and Transmission Line Siting Committee's ("Committee") Certificate of Environmental Compatibility ("CEC"), issued on December 29, 2008. DLGC requests that the Corporation Commission ("Commission") amend the CEC to adopt a condition to minimize visual impacts on visitors to Lake Pleasant Regional Park and from DLGC's property.

**BACKGROUND**

In its application, Arizona Public Service Company ("APS") had proposed as Alternative 3 a route that would run along SR 74 between the 179<sup>th</sup> Avenue alignment and the 99<sup>th</sup> Avenue alignment. APS's proposed corridor along Alternative 3 was 3,500

1 feet wide, including 2,000 feet north of the centerline of SR 74, and 1,500 feet south of  
2 the centerline of SR 74.<sup>1</sup>

3 DLGC is developing residential property immediately north of SR 74, at  
4 approximately the 107<sup>th</sup> Avenue alignment. As reflected in the map that is attached as  
5 Exhibit A, Lake Pleasant Regional Park is adjacent to DLGC's property, on the north and  
6 east sides of DLGC's property.<sup>2</sup> The Park's southern boundary abuts SR 74. Because  
7 APS's Alternative 3 corridor encroached on DLGC's property, DLGC intervened in the  
8 proceeding.

9 During the course of the hearing, several parties proposed what became known as  
10 the "Alternative 3 North" alignment, a variation on APS's proposed Alternative 3 that  
11 was largely, but not completely, north of SR 74, and was completely within the corridor  
12 noticed by APS as Alternative 3. In the area of DLGC's property, the Alternative 3  
13 North consisted of a route that was on the south side of SR 74 (thus avoiding encroaching  
14 on DLGC's property and the Park), in a 1,000 foot wide corridor that began 500 feet  
15 south of SR 74. Thus, at the vicinity of DLGC's property and the Park, the Alternative 3  
16 North corridor went as far south in the APS noticed corridor as possible.

17 At the hearing, DLGC offered testimony and visual simulations of the line when  
18 placed at points 500 feet, 1,500 feet and 2,000 feet south of SR 74.<sup>3</sup> The simulations  
19 (attached as Exhibit B) demonstrated that, by moving an additional 500 feet south, from a  
20 point 1,500 feet south to a point 2,000 feet south of SR 74, significant screening can be  
21 accomplished due to the terrain in the area. This additional 500 feet is outside of the  
22 corridor originally noticed by APS as part of Alternative 3 and completely on State Land.  
23 However, Chairman Foreman ruled that, based on the facts, this additional footage was  
24 not a substantial change from the noticed route, and thus the Committee could consider a

25 <sup>1</sup> APS's Application at 7.

26 <sup>2</sup> Exhibit A hereto is Page 8 from Hearing Exhibit G-3.

<sup>3</sup> Hearing Transcript Vol. XVIII at pgs. 2900-01, Hearing Exhibit G-3 at pgs. 13 & 15 (500 feet south), 17 (1,500 feet south) and 18 (2,000 feet south).

1 corridor that included the additional 500 feet.<sup>4</sup> DLGC, which had originally opposed the  
2 Alternative 3 route, supported the Alternative 3 North route with the additional 500 feet  
3 to the south, and supported a condition that would have required APS to attempt to site  
4 the line in the additional 500 feet to take advantage of the additional screening  
5 opportunities.<sup>5</sup>

6 The CEC adopted by the Committee largely adopted the Alternative 3 North  
7 proposal, and adopted the additional 500 feet south between the 115<sup>th</sup> Avenue alignment  
8 and the 99<sup>th</sup> Avenue alignment.<sup>6</sup> The CEC did not include a condition to require APS to  
9 take advantage of the screening opportunities by using the southern-most 500 feet  
10 between the 115<sup>th</sup> Avenue and 99<sup>th</sup> Avenue alignments.

11 **THE COMMISSION SHOULD AMEND THE CEC TO REQUIRE APS TO TAKE**  
12 **ADVANTAGE OF SCREENING OPPORTUNITIES IN THE AREA OF LAKE**  
13 **PLEASANT REGIONAL PARK**

14 On the second day of the hearing, Maricopa County Parks and Recreation  
15 (“Department”) Director R.J. Cardin provided public comment to the Committee  
16 indicating the Department’s objection to APS’s proposed Alternative 3 alignment, in part  
17 because of the visual impact to the Park’s 700,000 annual visitors.<sup>7</sup> While the Committee  
18 did ultimately adopt a route that is in the vicinity of the Park (but not actually  
19 encroaching on Park property, as APS’s Alternative 3 had), it did not adopt a simple  
20 condition that could have more fully alleviated the Department’s concern. A condition to  
21 require APS to attempt to utilize a transmission route in the southernmost 500 feet of the

22 \_\_\_\_\_  
23 <sup>4</sup> Hearing Transcript Vol. VX, at pgs. 3173-74.

24 <sup>5</sup> Hearing Transcript Vol. XV at pg. 3338. *See also* Form of CEC filed November 26, 2008, at pg. 12, line  
25 25 – pg. 13, line 8. DLGC’s proposed condition was drafted as a modification to language that was proposed by  
26 Intervenor Diamond Ventures, that would have required APS to request in any BLM or ASLD applications the  
particular route proposed by Diamond Venture’s witness at the hearing. DLGC’s additional proposed language  
would have allowed APS to apply to BLM or ALSD for a route further south in the area east of the 115<sup>th</sup> Avenue  
alignment.

<sup>6</sup> CEC at pg. 6 line 24-pg. 7 line 2.

1 corridor from the 115<sup>th</sup> Avenue alignment to the 99<sup>th</sup> Avenue alignment would allow APS  
2 to maximize the screening benefits due to the additional 500 feet of corridor width.

3 DLGC's visual simulation demonstrates that by constructing the transmission line  
4 in the southernmost 500 feet of the corridor in the vicinity of the Park, APS could take  
5 advantage of significant additional screening opportunities, almost completely shielding  
6 the view of the line from DLGC's property and the Park.<sup>8</sup> To address land use and visual  
7 impacts along other portions of the route, the Committee approved narrower corridors  
8 than APS had originally proposed, even when such narrower corridors increased impacts  
9 on public lands.<sup>9</sup> Thus, the Committee expressed its general preference for minimizing  
10 impacts by approving narrower corridors.

11 In reviewing a CEC, the Commission the Commission "shall comply with the  
12 provisions of § 40-360.06 and shall balance, in the broad public interest, the need for an  
13 adequate, economical and reliable supply of electric power with the desire to minimize  
14 the effect thereof on the environment and ecology of this state." A.R.S. § 40-360.07(B).  
15 Nothing in this statute requires Commission to grant any deference to the Committee's  
16 determinations regarding how environmental impacts ought to be addressed by a project.  
17 Rather, the Commission is free to undertake its own weighting of the environmental  
18 impacts of a project, and impose its own conditions to alleviate such impacts.

19 The Committee did not indicate why it declined to adopt the condition that would  
20 require APS to attempt to take advantage of screening opportunities presented by the  
21 additional 500 feet. However, the Commission is empowered to adopt the condition, and  
22 should do so because it more appropriately balances the impacts presented by the

23 <sup>7</sup> Hearing Transcript Vol. II at pgs. 269-71.

24 <sup>8</sup> Hearing Exhibit G-3 at pgs. 17-18 (included in Exhibit B hereto).

25 <sup>9</sup> In its rebuttal testimony, APS narrowed corridor widths in a number of portions of its proposed routes, in  
26 response to concerns expressed at the hearing by parties and Committee members. Additionally, the Committee  
adopted a corridor narrower than APS's rebuttal proposal along the 275<sup>th</sup> Avenue alignment, between the Mead-  
Phoenix transmission line and the Lone Mountain Road alignment (adopted 1,000 foot wide corridor, as opposed to  
APS's rebuttal proposal of 2,000 feet). See CEC at pg. 4, lines 21-24; Form of CEC filed November 26, 2008, at  
pg. 4, line 25 - pg. 5, line 4.

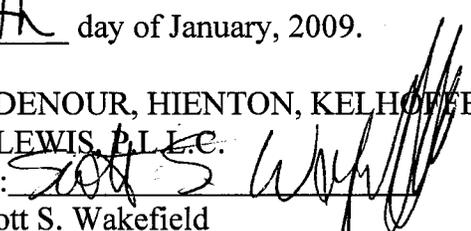
1 transmission line. Attached as Exhibit C is the amendment that DLGC proposes the  
2 Commission adopt to require APS to take advantage of the additional screening  
3 opportunities in the southernmost portion of the corridor between the 115<sup>th</sup> Avenue  
4 alignment and the 99<sup>th</sup> Avenue alignment.

5  
6 **CONCLUSION**

7 DLGC requests that the Commission modify the CEC approved by the Committee  
8 to require APS to take advantage of the additional screening opportunities available in  
9 the southernmost portion of the approved corridor between the 115<sup>th</sup> Avenue alignment  
10 and the 99<sup>th</sup> Avenue alignment, to minimize visual impacts on visitors to the Lake  
11 Pleasant Regional Park, drivers on scenic SR 74, and future residents on DLGC's  
12 property. The Commission should adopt the proposed amendment attached as Exhibit C  
13 hereto.

14 Dated this 13<sup>th</sup> day of January, 2009.

15 RIDENOUR, HIENTON, KELHOFER  
& LEWIS, P.L.L.C.

16 By:   
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22 Pursuant to A.A.C. R14-3-204,  
23 the Original and 25 copies were filed on  
this 13 day of January, 2009, with:

24 Docket Control  
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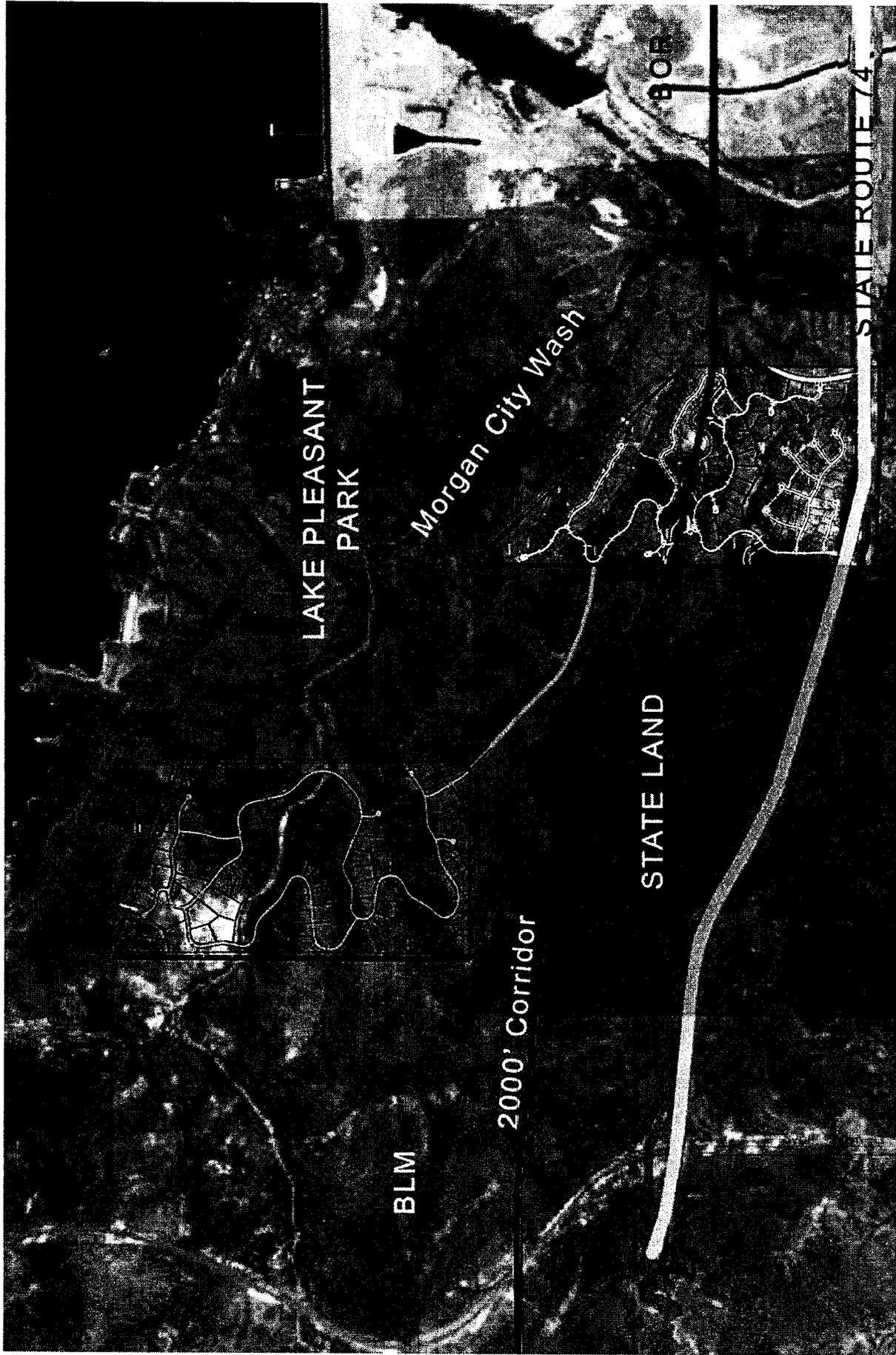
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299819;ssw;22711-0001

# **EXHIBIT A**

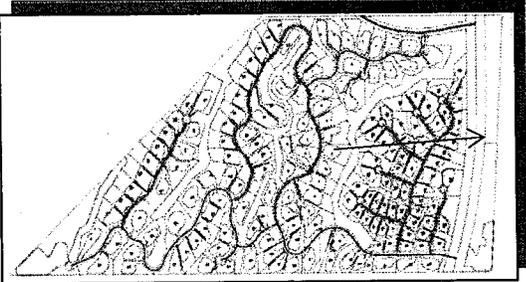
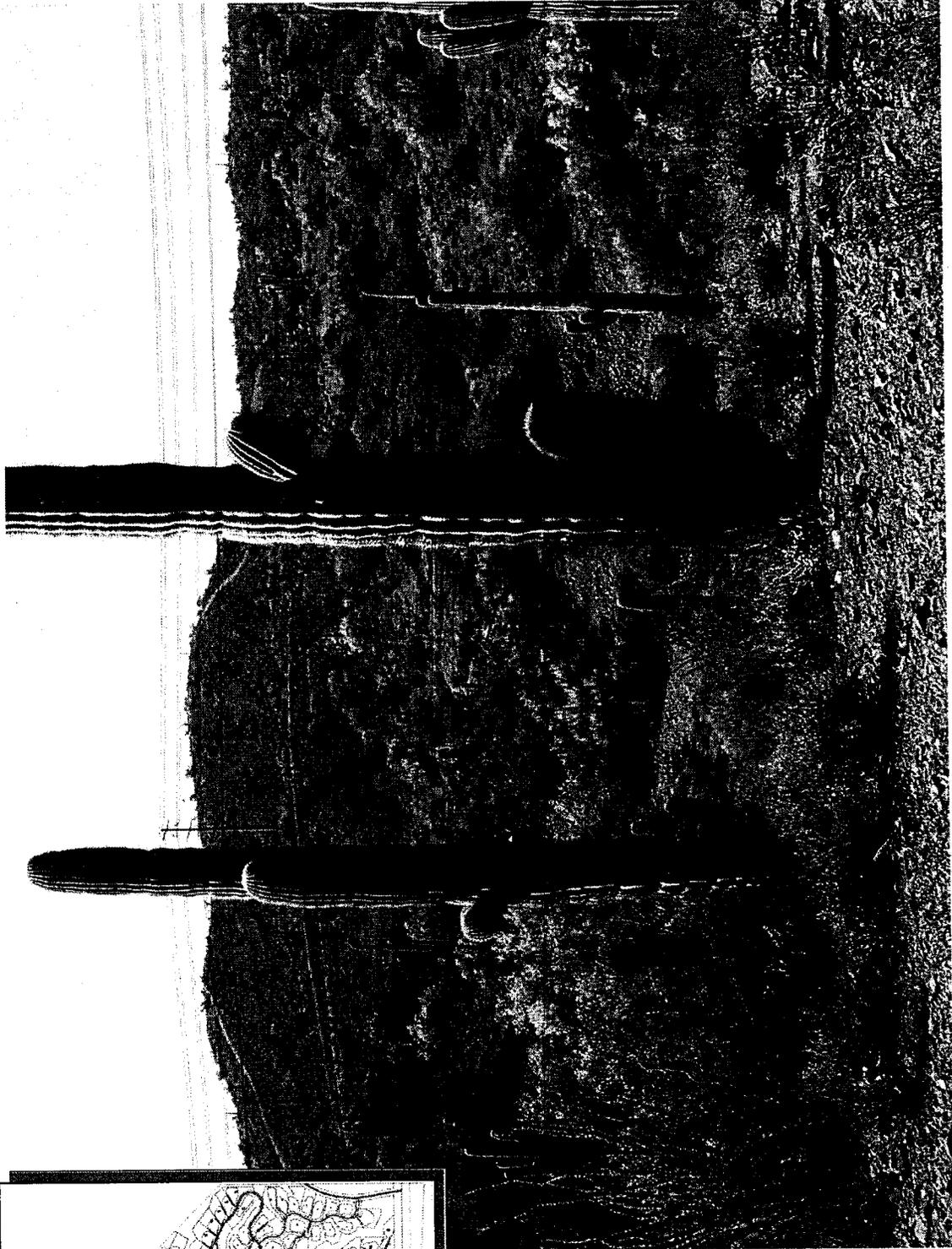


2000' CORRIDOR

State Route 74

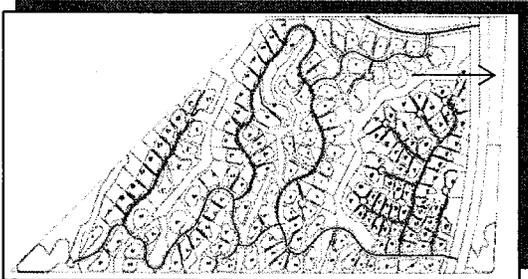
# **EXHIBIT B**





THE VIEW FROM LOT 25 LOOKING EAST  
FROM THE HOUSE IN 1900. CARRIE'S HOME





Existing  
69kV Poles



**EXHIBIT C**

**DLGC'S PROPOSED AMENDMENT**

(to require APS to take advantage of additional screening opportunities between the 115<sup>th</sup> Avenue and 99<sup>th</sup> Avenue alignments)

**Page 7, Line 17 of Certificate of Environmental Compatibility**

INSERT the following after "Certificate":

In such right-of-way application to cross ASLD lands for that portion of the Project between the 115<sup>th</sup> Avenue alignment and the 99<sup>th</sup> Avenue alignment, the Applicant shall specify a transmission route in the southern-most 500 feet of the corridor approved in this Certificate.