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AZ CORP COMMISSION
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5 Attorneys for Surprise Grand Vista JV I, LLC

6
7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA PUBLIC SERVICE
10 COMPANY, IN CONFORMANCE WITH
11 THE REQUIREMENTS OF ARIZONA
12 REVISED STATUTES §§40-360, *et seq.*, FOR
13 A CERTIFICATE OF ENVIRONMENTAL
14 COMPATIBILITY AUTHORIZING THE
15 TS-5 TO TS-9 500/230kV TRANSMISSION
16 LINE PROJECT, WHICH ORIGINATES AT
17 THE FUTURE TS-5 SUBSTATION,
18 LOCATED IN THE WEST HALF OF
19 SECTION 29, TOWNSHIP 4 NORTH,
20 RANGE 4 WEST AND TERMINATES AT
21 THE FUTURE TS-9 SUBSTATION,
22 LOCATED IN SECTION 33, TOWNSHIP 6
23 NORTH, RANGE 1 EAST, IN MARICOPA
24 COUNTY, ARIZONA

Docket No. L-0000D-08-0330-00138

Case No. 138

**INTERVENOR SURPRISE GRAND
VISTA JV I, LLC'S RESPONSE IN
OPPOSITION TO THE ARIZONA
STATE LAND DEPARTMENT'S
REQUEST FOR REVIEW**

17 Pursuant to the Arizona Corporation Commission's ("Commission") Procedural Order
18 dated January 22, 2009, Intervenor Surprise Grand Vista JV I, LLC ("Grand Vista") submits
19 the following Memorandum of Points and Authorities in response and in opposition to the
20 Request for Review submitted by the Arizona State Land Department ("ASLD") on January
21 19, 2009 ("ASLD Request"). In addition to the following Memorandum, this Response is
22 supported by the record established during the hearings conducted by the Arizona Power Plant
23 and Transmission Line Siting Committee ("Committee") in connection with this Case No. 138.

Arizona Corporation Commission

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1 **Memorandum of Points and Authorities**

2 In a brief and somewhat vague Request for Review, the ASLD has asked the
3 Commission to find that the project proposed by Applicant Arizona Public Service Company
4 (“APS”) is “not justified in the context of the Commission’s balancing in the broad public
5 interest of the need for an adequate, economical, and reliable supply of electric power with the
6 desire to minimize the effect thereof on the environment and ecology of the state;” or, in the
7 alternative, if the Commission finds that the project is justified by the evidence presented at the
8 hearing in light of the criteria set forth in A.R.S. § 40-360.06, that “the matter be referred back
9 to the Committee to evaluate new corridors that were not addressed during the above-
10 mentioned hearings.” ASLD’s Request at p. 3. For the reasons explained below, neither of
11 those alternative requests for relief should be granted.

12 **1. The Committee’s Decision Complies with A.R.S. § 40-360.06.**

13 ASLD’s Request makes essentially a single point in alleging noncompliance with
14 A.R.S. § 40-360.06. Citing to an August 11, 2008 correspondence from the Arizona Game
15 and Fish Department (“GFD”), ASLD asserts that “strong opposition” from GFD establishes
16 that the route selected by the Committee fails to give adequate protection to “fish, wildlife and
17 plant life” as required by A.R.S. § 40-360.06(A)(2). ASLD Request at p. 4. As the
18 Committee correctly concluded, however, GFD’s concerns (a) do not “trump” the adverse
19 impacts associated with the alternative routes (in particular, Alternate Route No. 2) under
20 consideration; and (b) can be mitigated by measures identified by APS in its CEC Application.

21 First, it should be noted that GFD’s letter makes no reference whatsoever to any type of
22 study or investigation made in connection with its response to APS’ CEC Application. Indeed,
23 GFD’s letter makes no reference to any source whatsoever for the assertions and preferences
24 set forth therein.

25 Next, unlike the Committee and the Commission, GFD’s focus is on a single prong of
26 the applicable statute. GFD’s opinion gives no consideration to the adverse impacts to
privately owned lands for which “plans for development” exist, as required by subsection (1)
of A.R.S. § 40-360.06(A).

1 Finally, nowhere in its letter does GFD even mention the possibility of
2 mitigation. In contrast, both the testimony offered at the hearing by APS' expert Jennifer
3 Frownfelter (Project Manager, with URS) and the text of APS' CEC Application (Exhibits C
4 and D) described the mitigation efforts which may be undertaken in design and construction
5 along the selected route so as to minimize impacts to wildlife. No such mitigation is possible
6 with regard to the proposed developments along Alternate Route 2, the alignment promoted by
7 GFD and ASLD.

8 When all of the A.R.S. § 40-360.06(A) factors are examined, it is clear that
9 GFD's concerns are overstated and (understandably) biased in favor of that department's
10 particular focus. Rather than considering all of the relevant factors which are inherent in
11 proper transmission line siting analyses, GFD's focus is a narrow one which should not be
12 given undue weight. In light of the fact that GFD's concerns can, for the most part, be
13 adequately addressed, GFD's objections to "the northern portions of the Preferred Route"
14 (presumably, Segment 3) should not be deemed a sufficient reason to reject the Committee's
15 studied decision.¹

16 **2. Approval of the Committee's Recommendation Regarding Segment 3 Will Not**
17 **Unduly Harm the Beneficiaries of the State School Land Trust.**

18 Without offering any citation to the hearing record, ASLD contends that Segment 3 of
19 the preferred route (presumably, ASLD is equating the "preferred route" in this area with the
20 "approved route" as adopted by the Committee) "bifurcates ASLD lands" and renders such
21 lands "almost useless due to the location of the proposed lines and Highway 74." ASLD
22 Request at p. 3. In this case, a "picture is worth a thousand words" in responding to ASLD's
23 allegations.

24 Attached hereto as Exhibit "A" is a map showing the corridor approved by the
25 Committee in relation to ASLD trust lands (in blue) and the approved master planned
26 development known and labeled as "Grand Vista." The segment in question runs from 235th
27 Avenue on the west to approximately 179th Avenue on the east. As is readily apparent, the

¹ The Committee record is replete with evidence that Alternate Route 2 is fatally flawed and was included as an alternative only because of the possibility/threat that ASLD might attempt to withhold the permit necessary for construction across state lands.

1 corridor approved by the Committee does not unduly “bifurcate” ASLD lands. Indeed, other
2 than at the east end where the shape restrictions are the result of the diagonal alignment of SR
3 74, construction of the proposed APS high voltage transmission lines along the southern
4 portion of the approved corridor (basically, the Joy Ranch Road alignment) will afford ASLD
5 a full section of land both south and north of the proposed transmission lines along the entire
6 west-to-east stretch of Segment 3! With proper planning – a process which has not even been
7 undertaken by ASLD to this point in time – there can be no serious doubt that the trust lands
8 can be fully and optimally developed.² Contrary to the unsupported assertions of ASLD, its
9 lands will not be rendered “useless” and certainly no evidence was introduced to support such
a suggestion at the Committee hearing.

10 Next, ASLD’s argument regarding a lack of alternative corridors is similarly
11 unpersuasive. The evidence at the hearing demonstrated that, as part of its initial study
12 process, APS considered a myriad of possible corridors/routes along almost every section line
13 and/or natural feature in the study area. For a number of reasons, many of those initial
14 alternatives were eliminated early in the process. In its Request, ASLD did not identify even a
15 single alternative that it deems superior to those presented by APS.³ There is, therefore,
16 nothing for the Commission to consider with regard to this argument – even if the argument
had merit (which it does not).

17 Finally, ASLD repeats another argument that it asserted during the hearing:
18 disproportionate burden. In the context of its Request, ASLD claims that its trust lands are
19 being unduly burdened because “over 80% of [the] line touches land controlled by ASLD.”
20 ASLD Request at p. 4. There are at least three (3) responses to that argument. First, assuming
21 for the sake of argument that ASLD’s stated percentage is correct, it does not follow that the
approved alignment unduly burdens ASLD trust lands. Even a cursory review of Exhibit A to

22 ² The inconsistency between ASLD’s positions regarding the alleged harm to its property from a development perspective
23 and its endorsement of GFD’s position regarding habitat preservation is worthy of note. If GFD is correct in its stated
24 concerns regarding habitat damage that would result from the construction of two (2) high voltage transmission lines on a
25 single set of power poles, ASLD’s trust lands could not be developed without inflicting much more damage on the wildlife
26 in the area. In other words, if ASLD’s lands suffer from development limitations, those limitations must result from the
wildlife resident in the area, not from the alignment of the proposed APS transmission lines.

³ At one point during the hearing, ASLD called a meeting at which it disclosed a “new” alternative route that it argued
should be considered in detail before the Committee made its final decision regarding the Application. As it turned out,
ASLD’s “new” route had been considered by APS and was rejected due to the fact that it directly impacted a substantial
number of existing residents.

1 this Memorandum reveals that ASLD holds title to a substantial portion of the lands within the
2 study area. Necessarily, therefore, the approved alignment is going to "touch" on a substantial
3 amount of ASLD trust lands. Second, because none of the ASLD lands have been planned for
4 development, they are not within the type of lands which are to be given special consideration
5 pursuant to A.R.S. § 40-360.06(A)(1). Third, because they have not yet been planned for
6 development, the ASLD lands will be able to formulate development plans which incorporate
7 the transmission lines in such a way as to minimize any perceived detrimental impact resulting
8 therefrom.

8 **3. Conclusion.**

9 For the reasons stated above, ASLD requests for relief should be denied. In the context
10 of a hearing that encompassed approximately 16 days over a period of four (4) months, the
11 Committee gave due consideration to all of the competing interests and considered alternate
12 routes and route adjustments right to the end of its deliberations. ASLD objects because it does
13 not like the result. ASLD's unhappiness, however, is not reflective of any error or defect in
14 the Committee's process, analyses and/or conclusions. The route selected by the Committee
15 (at least through Segment 3) represents a prudent, carefully-crafted resolution that will not
16 unduly harm ASLD's trust lands or the adjacent privately owned, planned and approved
17 properties. The Committee's decision should be affirmed and adopted by the Commission.

17 Respectfully submitted this 12th day of February, 2009.

18 **MARISCAL, WEEKS, McINTYRE**
19 **& FRIEDLANDER, P.A.**

20 By: _____

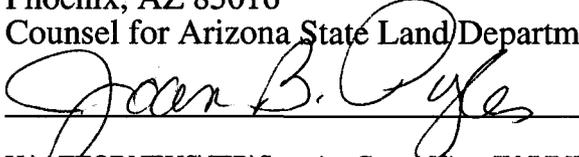
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Certificated Corridor

TS-5 to TS-9 500/230kV Project

- ### Legend
- Project Features**
- Certificated Corridor
 - Future Transmission Facilities
 - Approved High-Voltage Substation
 - Approved High-Voltage Transmission Line
- Existing Transmission Facilities**
- Existing High-Voltage Substation
 - Existing Substation
 - Existing 500kV Transmission Line
 - Existing 230kV Transmission Line
 - Existing 69kV Transmission Line

Surface Management

- Bureau of Land Management
- Bureau of Reclamation
- County Land
- Parks and Recreation
- Private Land
- State Trust Land

General Reference Features

- Major Road
- Railroad
- River or Stream
- Canal
- County Boundary
- Regional Park
- Central Arizona Project Canal
- Luke Air Force Base (AFB)
- Auxiliary Field #1
- Potential Zones
- Township and Range Line
- Section Line and Number

Source: Arizona State Land Department 2000, 2007
URS Corporation 2007

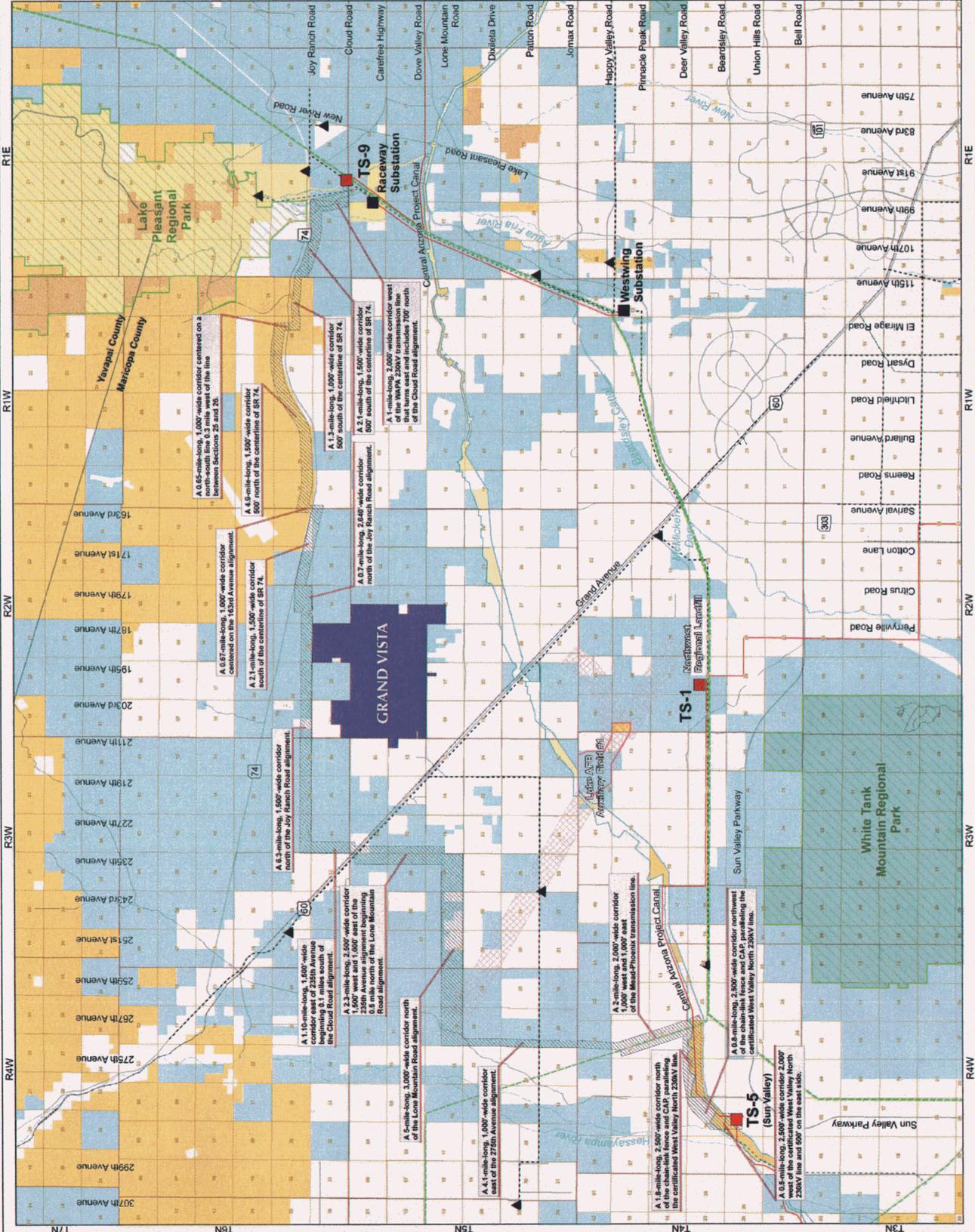


EXHIBIT "A"