

1 Sammartino Law Group, P.L.L.C.

177 N. Church Ave., Suite 708

2 Tucson, AZ 85701

P. 520 955 5152

3 Carl Sammartino, Attorney for: Plaintiffs

State Bar Number: 025892

4 Pima County Computer Number: 66061

5 carl.sammartino@sammartinogroup.com

6 SUPERIOR COURT

7 PIMA COUNTY, ARIZONA

8 FRANTI III HOLDINGS, LLC, an Arizona
9 limited liability company, DESERT
10 SPRINGS CHILDREN'S CENTER, an
11 Arizona nonprofit corporation, STUART
12 AND ERIKA MITNIK, husband and wife,
13 and ROBERT L. SCHLANGER as trustee
14 of THE ROBERT L. SCHLANGER AND
MARSHA R. SCHLANGER FAMILY
LIVING TRUST,

15 Plaintiffs,

16 vs.

17 CITY OF TUCSON, a municipal
18 corporation,

19 Defendant
20

Case No.:

COMPLAINT FOR SPECIAL ACTION

21
22 Plaintiffs, Franti III Holdings, LLC, an Arizona limited liability company
23 ("Franti"), Desert Springs Children's Center, an Arizona nonprofit corporation ("Desert
24 Springs"), Stuart and Erika Mitnik, husband and wife ("Mitnik"), and Robert L.
25 Schlanger as trustee of The Robert L. Schlanger and Marsha R. Schlanger Family Living

Trust for their special action complaint against Defendant, the City of Tucson, a municipal corporation (the “City”) allege as follows:

The Parties

1. Franti is the owner of property known as Pima County Assessor Parcel 12315070B, which is located within the City of Tucson.
2. Desert Springs operates a preschool at property Desert Springs leases at 740 East Speedway Boulevard, which is located within the City of Tucson.
3. Mitnik is the owner of property known as Pima County Assessor Parcel 124070600, which is located within the City of Tucson.
4. Schlanger is the owner of property known as Pima County Assessor Parcel 12312207A, which is located within the City of Tucson.
5. Respondent City is a municipal corporation permitted to regulate land use within its geographical limits by A.R.S. § 9-462.01.

Jurisdiction and Venue

6. Petitioner and Respondent are located within Pima County, Arizona.
7. Respondent caused acts to occur in Pima County, Arizona, from which the allegations in this complaint arise.
8. This Court has jurisdiction over the parties to this action.
9. This Court has jurisdiction over the subject matter of this action under A.R.S. § 12-2001 *et seq.*, A.R.S. § 12-2021 *et seq.*, AZ St. Spec. Act., Rule 2(b)(1), and Article 6, Section 14 of the Arizona Constitution.
10. Venue is proper in this Court pursuant to AZ St. Spec. Act., Rule 6(a)(1).

Allegations

11. Tucson Electric Power (“TEP”) is an Arizona public utility and electricity provider that operates to provide electricity within the City.

1 12. On September 13, 2024, an Arizona Corporation Commission (“ACC”) order
2 approved and granted TEP a Certificate of Environmental Compatibility (the
3 “CEC”) authorizing construction of a 138 kilovolt transmission line in the City
4 that TEP calls the Midtown Reliability Project (“MRP” or the “Project”). **EXHIBIT**
5 **1.**

6 13. The CEC itself, which the ACC issued on July 29, 2024, contains specific,
7 important, and distinct conditions regarding whether and under what conditions
8 TEP may construct the Project. **EXHIBIT 2.**

9 14. First, the ACC required as a **condition** of the CEC that TEP “shall comply with
10 [...] all existing applicable statutes, ordinances, master plans and regulations of
11 any governmental entity having jurisdiction including [...] the City of Tucson [...] and [its] agencies and subdivisions, including but not limited to the following:

13 (a) All applicable land use regulations; [and]

14 (b) All applicable zoning stipulations and conditions including, but not
15 limited to, landscaping and dust control requirements [...].”

16 *Id.* at 7:3-12.

17 15. Separately, the ACC required as a **condition** of the CEC that TEP “obtain all
18 approvals and permits necessary to construct, operate and maintain the Project
19 required by” the City and its subdivisions. *Id.* at 7:20-24.

20 16. In the CEC’s “FINDINGS OF FACT AND CONCLUSIONS OF LAW”, the
21 ACC stated that TEP must either separately fund the cost to construct the Project’s
22 transmission lines below ground or “obtain the City’s authorization to construct the
23 Project above ground through the City’s special exception or variance process
24 [...].” *Id.* at 15:22-23.
25

1 17. On July 19, 2021, TEP requested a Zoning Administrator Determination from the
2 City regarding the construction of overhead transmission lines for the Project
3 along an approximately 3.5 mile segment of Kino Parkway/Campbell Avenue in
4 the City that asked for a determination permitting TEP to construct overhead lines
5 along Kino Parkway/Campbell Avenue. **EXHIBIT 3.**

6 18. The City denied TEP's request for permission to build overhead lines along Kino
7 Parkway/Campbell Avenue. **EXHIBIT 4.**

8 19. This Court upheld the City's denial of TEP's request by judgment dated July 3,
9 2024, in a special action TEP filed against the City, case number C20235484.
10 **EXHIBIT 5, p. 8.**

11 20. After this Court upheld the City's denial of TEP's attempt to build the Project's
12 transmission lines above ground along Kino Parkway/Campbell Avenue, TEP
13 changed the route of the Project to a different CEC-approved alignment, Route 4
14 (the "Euclid Route"), which travels primarily along Grant Road, Park Avenue,
15 Euclid Avenue, and 36th Street. **EXHIBIT 6.**

16 21. On October 29, 2024, TEP submitted three Special Exception Land Use Permit
17 ("SELUP") applications associated with the Euclid Route: One for the
18 transmission lines crossing the Oracle Road and Grant Road intersection
19 (designated by the City as TP-ENT-1024-00022) **EXHIBIT 7**; one for the
20 transmission lines crossing the Broadway Boulevard and Euclid Avenue
21 intersection (designated by the City as TP-ENT-1024-00023) **EXHIBIT 8**; and one
22 for the transmission lines crossing the East 36th Street and South Kino Parkway
23 intersection (designated by the City as TP-ENT-1024-00024). **EXHIBIT 9.**

1 22. Each of the SELUP applications stated that it was limited to “one of the three
2 perpendicular crossings [...] on the Preferred Route.” **EXHIBIT 7**, p. 1; **EXHIBITS**
3 **8-9**, p. 7.

4 23. The City of Tucson Acting Zoning Examiner, Mr. Frank Cassidy, denied each of
5 those three SELUP applications. **EXHIBIT 10**, p. 12; **EXHIBIT 11**, p. 14; **EXHIBIT**
6 **12**, p. 13.

7 24. The City of Tucson Mayor and Council reversed two of those decisions (TP-ENT-
8 1024-00022 and TP-ENT-1024-00024) on August 6, 2025. TEP withdrew its
9 request in TP-ENT-1024-00023, resulting in TEP being required to place the
10 transmission lines for the Project underground at the Broadway Boulevard and
11 Euclid Avenue intersection crossing only. **EXHIBIT 13**, p. 2.

12 25. Sometime in late 2025, TEP submitted a fourth SELUP application (TP-ENT-
13 1025-00021) to the City for construction of the Vine Substation on a 1.6 acre site
14 located in the City at 1602 North Vine Avenue. *Id.*

15 26. The City specifically stated that the TP-ENT-1025-00021 application was “limited
16 to 1.6 acres for the proposed substation, consisting of aboveground equipment
17 such as transformers and switchgear. [...] [O]ff-site transmission and distribution
18 lines are not part of the current N Vine Substation Special Exception proposal.”
19 **EXHIBIT 14**, p. 2.

20 27. The TP-ENT-1025-00021 application was not limited to the proposed substation
21 but rather included aboveground transmission line connections from off site to the
22 Vine Substation. TEP depicted, in a photo simulation, “New Drop Structures” to
23 be erected at the Vine Substation that would carry aboveground, high-voltage
24 transmission lines onto the substation site. **EXHIBIT 15**.

1 28. In three prior TEP applications for substations – the Vail Substation in 2023
2 (EXHIBIT 16, p. 2: “In addition, 85-foot-high transmission poles will be installed
3 to support the transmission lines entering and exiting the substation.”), the
4 Cottonwood Substation in 2022 (EXHIBIT 17, p. 4: “Tucson Electric Power is
5 requesting approval for a new 138 kilovolt (kV) distribution substation and
6 transmission and distribution power lines as a Special Exception Land Use in R-1
7 and R-2 residential zones.”), and the Patriot Substation in 2021 (EXHIBIT 18, p. 4:
8 “Transmission poles will be installed to support the transmission lines entering
9 and exiting the substation. The height of the transmission structures will be 85
10 feet.”) – TEP included transmission lines in each application, and the City
11 considered the impact of those transmission lines in considering those
12 applications.

13 29. In a decision denying TEP’s application for a SELUP for the Vine Substation in
14 2021, the City’s Zoning Examiner, Mr. John Iurino, concluded that any
15 determination regarding the proposed substation was inextricably bound to the
16 routing of the transmission lines:

17 Based on the testimony at the Zoning Examiner hearing and the
18 record, the Applicant does not intend to place the transmission lines
19 underground. While this proceeding is separate from the line-siting
20 process, as a practical matter the two are interrelated. Given the
21 uncertainty regarding the route(s) to be selected for the Kino DMP
Transmission Line Project, and the uncertainty of the location of the
power lines which will connect with the proposed Vine substation,
compliance with PT and UAP cannot be determined on the current
record.

22 EXHIBIT 19, p. 8.

23 30. No transmission lines currently exist along the proposed Project route, in the
24 vicinity of the proposed Vine Substation, or in any surrounding area.
25

1 31. The Vine Substation, like all substations, is an “unmanned” facility that is only
2 accessed by TEP “in the instances of maintenances or emergency”, making the
3 substation simply a connecting piece of different transmission line segments.

4 **EXHIBIT 20**, 22:1-4.

5 32. In a letter to the City of Tucson Zoning Examiner, TEP misrepresented the ACC’s
6 conditions for TEP’s CEC approval and whether all applicable land use approvals
7 had been obtained for the Project’s transmission lines:

8 To be crystal clear: the MRP Line has been approved for
9 construction in an overhead fashion, except for an underground
10 crossing at Broadway/Euclid, and TEP will build the line according
11 to requirements of the CEC and Mayor and Council crossing
12 authorizations regardless of whether the Vine SELUP [TP-ENT-
13 1025-00021] is approved or denied.

12 **EXHIBIT 21**, p. 2.

13 33. Members of the public vigorously insisted that the City of Tucson Zoning
14 Examiner should consider land use regulations applicable to the Project’s
15 overhead transmission lines during the Zoning Examiner’s public hearings on TP-
16 ENT-1025-00021 held on January 29, 2026, and February 12, 2026.

17 34. During those public hearings, TEP admitted that TEP had yet to apply for or even
18 identify the location of any transmission line poles as part of any application to the
19 City of Tucson:

20 ZONING EXAMINER: “[C]an TEP tell us where the poles are
21 going in relationship to historic neighborhoods; is that something
22 you can do or you can't do?”

22 [TEP representative] MR. EDDY: So, what was approved by the
23 Arizona Corporation Commission, in consultation with the City of
24 Tucson and numerous stakeholders that were a part of that line-siting
25 process, approved a route, and that route is a certain width within the
corridor that's approved. And so as we build out that transmission
line, we will need to identify actual pole placements, in terms of
where that line will go, to ensure that there are no conflicts with

1 residence -- residences, with other utilities. So, that is a process that
2 we will be pursuing as part of that project.

3 **EXHIBIT 22**, 48:2-14.

4 35. On February 17, 2026, the City of Tucson Zoning Examiner, Mr. Jim
5 Mazzocco, approved TP-ENT-1025-00021, stating the decision specifically did
6 not consider or evaluate the Project's transmission lines:

7 Neither the UDC nor the 2000 Franchise Agreement grant the
8 Zoning Examiner the power to determine the above or below-ground
9 placement of transmission lines during a substation review. Outside
10 of Gateway and Scenic Corridors exemptions, transmission line
11 decisions remain subject to the terms of the Franchise Agreement
12 and the legislative authority of the Mayor and Council. Therefore,
13 the scope of this decision is limited to compliance and compatibility
14 of the 1602 Vine Avenue substation.

12 **EXHIBIT 13**, p. 6.

13 36. Members of the public appealed the City of Tucson Zoning Examiner's decision to
14 the City of Tucson Mayor and Council, which held a public hearing on TEP's
15 SELUP application TP-ENT-1025-00021 on June 9, 2026.

16 37. During the June 9, 2026, hearing, the City Attorney for the City of Tucson
17 repeatedly admonished the Mayor and Council that they had no power or ability to
18 consider the Project's transmission lines when considering the appeal in TP-ENT-
19 1025-00021 despite the Vine Substation proposal including aboveground
20 transmission lines on the site itself.

21 38. The City of Tucson Mayor and Council denied the appeal and granted TEP's
22 SELUP application TP-ENT-1025-00021 by a 4 to 3 vote on June 9, 2026.

23 **EXHIBIT 23**, p. 6.

24 39. The City of Tucson has not considered any application, request, plan, or proposal
25 from TEP regarding the entire Project itself or its transmission lines.

1 40. The City of Tucson has not and will not require TEP to submit any further
2 application, request, plan, or proposal regarding the entire Project itself or its
3 transmission lines.

4 41. TEP will not submit any further application, request, plan, or proposal regarding
5 the entire Project itself or its transmission lines.

6 42. While TEP has not yet disclosed the exact location of the poles required for the
7 Project's transmission lines, plaintiffs each own property adjacent to the right of
8 way along the Euclid Route, and each has suffered a particularized, palpable injury
9 due to the actions of defendant.

10 43. Each of the plaintiffs' properties is located directly within the Project's proposed
11 corridor, which means each property owner will have transmission lines, poles, or
12 both placed directly on their property. **EXHIBIT 24.**

13 44. Mr. Clark Bryner testified before the Arizona Power Plant and Transmission Line
14 Siting Committee on behalf of TEP that the physical sway of the transmission
15 lines may require acquisition of easements from directly adjacent property owners
16 to accommodate that sway. **EXHIBIT 25**, 518:2 – 519:4.

17 45. Mitnik has received a letter from TEP requesting a right of entry onto the Mitnik
18 property "to determine whether an easement may be required for the Project."
19 **EXHIBIT 26.**

20 46. Each of the plaintiff's properties is within the boundaries of the University Area
21 Plan ("UAP"), which is a "specific plan" pursuant to A.R.S. § 9-461.08.

22 47. The City of Tucson Unified Development Code ("UDC") states that area plans are
23 specific plans that regulate local land use: "A detailed policy plan or regulation
24 that implements the General Plan or any of the elements of that Plan. Specific
25 plans include subregional, area, and neighborhood plans; the Major Streets and

1 Routes (MS&R) Plan; the Unified Development Code (UDC); and any other
2 similar plan.” UDC § 11.4.20.

3 48. The UDC applies to all development and uses of land within the City. UDC §
4 1.4.1(A).

5 49. The UDC requires the City to review all land use proposals prior to any new
6 construction:

7 No land may be used or occupied; no site improvement,
8 modification, or construction started; no existing use or structure
9 expanded, reconstructed, changed, or otherwise altered; and no land
10 may be divided into multiple parcels until compliance with the
provisions of the UDC has been certified through a zoning review
process by PDSD.

11 UDC § 10.2.1.

12 50. The UDC requires that a development “incorporate, to the greatest extent
13 possible” the design provisions of the adopted area plan. UDC § 7.6.7.

14 51. The UDC requires that “[a]ll provisions of the UDC shall be consistent with, and
15 conform to, the General Plan and other related plans and policies adopted by the
16 Mayor and Council”, which includes area plans like the UAP. UDC § 1.4.1(D).

17 52. The UDC must be interpreted in alignment with UAP policy. UDC § 1.4.1(D).

18 53. To grant a SELUP application, the UDC requires that the City of Tucson Zoning
19 Examiner “must find that the requested special exception [...] [c]omplies with
20 [...] any applicable sub-regional, area, or neighborhood plan.” UDC § 3.4.5(A)(5).

21 54. Section 6, Policy 6 of the UAP requires undergrounding of electric transmission
22 lines wherever possible: “Wherever possible, place utility and service equipment
23 underground or in other visually screened locations.” **EXHIBIT 27**, § 6, ¶ 6.

24 55. Whether by design or dereliction, TEP and defendant City have joined forces to
25 impermissibly ignore or subvert the CEC, the UDC, and applicable Arizona

1 statutes by failing to consider, both generally with regards to the entire Euclid
2 Route and specifically with regards to the Vine Substation, how the UDC and
3 UAP apply to the Project.

4 **Count I –Special Action**

5 56. All previous paragraphs are incorporated herein by reference.

6 57. The City failed to perform a duty required by law for which the City has no
7 discretion in failing to require TEP to submit any request or application for
8 approval of the Project's transmission lines.

9 58. The City failed to perform a duty required by law for which the City has no
10 discretion in failing to apply the UAP when considering TEP's SELUP application
11 TP-ENT-1025-00021, which included aboveground transmission lines on the Vine
12 Substation site.

13 59. The City proceeded without or in excess of its jurisdiction or legal authority by
14 failing to require TEP to submit any request or application for approval of the
15 Project's transmission lines.

16 60. The City proceeded without or in excess of its jurisdiction or legal authority by
17 failing to consider how the UAP impacts the Project's transmission lines when
18 processing all of TEP's SELUP applications.

19 61. The City proceeded without or in excess of its jurisdiction or legal authority by
20 failing to apply the UAP when considering TEP's SELUP application TP-ENT-
21 1025-00021, which included aboveground transmission lines on the Vine
22 Substation site.

23 62. The City made a decision that was arbitrary and capricious or an abuse of
24 discretion by failing to require TEP to submit any request or application for
25

1 approval of the Project's transmission lines unlike comparable TEP applications
2 for substations.

3 63. The City made a decision that was arbitrary and capricious or an abuse of
4 discretion by determining the City should not consider how the UAP impacts the
5 Project's transmission lines when processing all of TEP's SELUP applications.

6 64. The City made a decision that was arbitrary and capricious or an abuse of
7 discretion by determining the City should not consider how the UAP impacts
8 TEP's SELUP application TP-ENT-1025-00021, which included aboveground
9 transmission lines on the Vine Substation site.

10 WHEREFORE, Plaintiffs request that the Court enter judgment against the City:

11 A. Mandating that the City to require TEP to submit a land use application for
12 the Project's transmission lines;

13 B. Mandating that the City review the land use application thus submitted by
14 TEP for compliance with the UDC, including for compliance with
15 applicable area plans;

16 C. Reversing the grant of the SELUP application TP-ENT-1025-00021;

17 D. For costs pursuant to A.R.S. § 12-341;

18 E. For attorney's fees and costs pursuant to A.R.S. § 12-348(A)(4); and

19 F. For such other and further relief the Court deems proper and as justice may
20 require.

21 Dated August 18, 2026.

23 s/Carl Sammartino

24 Carl Sammartino

25 Attorney for Plaintiffs

1 ORIGINAL e-filed via TurboCourt on August 18, 2026.
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