

EXHIBIT 18

TO COMPLAINT FOR SPECIAL ACTION

FRANTI III HOLDINGS, LLC, ET AL V. CITY OF TUCSON



CITY OF TUCSON
ZONING EXAMINER'S OFFICE

ZONING EXAMINER DECISION

July 1, 2021

Brian Pugh
Tucson Electric Power Company
3950 E. Irvington Road
Tucson, AZ 85714

SUBJECT: SPECIAL EXCEPTION LAND USE
SE-21-06 TEP Patriot Substation – Escalante Road, SR (Ward 4)

Public Hearing: June 24, 2021

Dear Mr. Pugh:

SPECIAL EXCEPTION LAND USE REQUEST

Pursuant to the City of Tucson's Unified Development Code (UDC) and the Zoning Examiner's Rules of Procedure (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's findings and decision for the special exception case **SE-21-06 TEP Patriot Substation – Escalante Road, SR (Ward 4)**.

June 24, 2021 Zoning Examiner Hearing

On June 24, 2021, a public hearing was held on this special exception land use request, pursuant to UDC Section 3.4.3, Zoning Examiner's Special Exception Procedure.

The Applicant's representative spoke in support of the proposed special exception request. No other person.

As of the date of the Zoning Examiner hearing, there were no (0) written approvals and three (3) written protests.

FINDINGS

This is a request by Brian Pugh, Environmental and Land Use Planner at Tucson Electric Power Company (TEP), for approval of the construction of a new 138 kilovolt electric power substation as a special exception land use in the SR Suburban Ranch zone. The 15.8-acre project site is located at the southwest corner of Escalante Road and Kolb Road (see Case Location Map) and was purchased from the City of Tucson. The site is currently used by Davis-Monthan Air Force Base's military aircraft storage. The preliminary development plan (PDP) indicates the 15.8 acres are to be occupied by the substation equipment and enclosed with a 12-foot high decorative masonry wall. The project will also provide a 35-foot wide landscape border along the northern portion of the property, adjacent to the existing Aviation Greenway multiuse path on Escalante Road, and a 126-foot wide drainage border with landscaping along the east side, adjacent to the City's planned multi-use path along Kolb Road. The proposed Patriot Substation is one component of the larger 14-mile transmission line that will connect TEP's Irvington Campus to four substations, expanding capacity and connecting the local grid to new generating resources.

A Distribution System use of this type in the SR zone is subject to Section 4.9.11.A.1, .2, .5, .8, .9, and .11 of the *Unified Development Code (UDC)* and requires approval through a Zoning Examiner Special Exception Procedure, in accordance with *UDC* Section 3.4.3. A public hearing before the Zoning Examiner is required. The Zoning Examiner renders a decision to grant the use with or without conditions, or to deny the use. The Design Review Board (DRB) reviewed the project for design review on May 21, 2021 and recommended approval with the following recommendations: 1) Applicant to pursue coordination with the City of Tucson and Davis-Monthan Air Force Base for the potential addition of shade trees on the multi-use path area on Escalante Road and Kolb Road; and 2) The applicant to include micro-basin water harvesting in shrub areas to encourage passive water collection, in addition to the basins in tree plantings already shown in the application.

Background Information

Existing Land Use: Davis-Monthan Airforce Base (DMAFB) military aircraft storage.

Zoning Description:

SR: This zone provides for very low density, large lot, single-family, residential development and suburban ranch uses.

Surrounding Zones and Land Uses:

North: Zoned R-2 Residential

Existing Uses: Single-family residences

South & West: Zoned SR Suburban Ranch

Existing Uses: DMAFB military aircraft storage

East: Zoned SR, R-2 and C-1 Commercial

Existing Uses: Single-family residences and Tucson Water well site

Planning Considerations – Land use policy direction for this area is provided by *Plan Tucson* and the *South Pantano Area Plan*.

Plan Tucson

Plan Tucson, the City of Tucson's General & Sustainability Plan, identifies the site as part of DMAFB, and is excluded from the City's Future Growth Scenarios. However, *Plan Tucson* calls to invest in highest priority needs to manage and maintain public infrastructure and facilities that are fundamental to economic development and to sustaining and enhancing living conditions in the community (PT, PI1). *Plan Tucson* also provides policy direction to coordinate with utility companies and other public service providers for planning of infrastructure, facilities, and services, making sure infrastructure and facility construction is sensitive in design and location to environmental and historic resources (PT, PI7). It calls to expand the use of state-of-the-art, cost-effective technologies and services for public infrastructure and facilities (PT, PI3). PT also calls to improve the appearance of above-ground utilities and structures (PT, LT28.1.1), and supports methods to protect and improve air quality by reducing sources of air pollution (PT, LT28.1.9). *Plan Tucson* provides policy direction to protect established residential neighborhoods by supporting compatible development, which may include other appropriate non-residential uses (PT, LT28.5.9). It supports environmentally sensitive design that protects the integrity of existing neighborhoods, complements adjacent land uses, and enhances the overall function and visual quality of the street, adjacent properties, and the community (LT28.5.7).

South Pantano Area Plan

The goal of the *South Pantano Area Plan* is to provide guidelines for proposed development, to protect existing development, and to create a sense of community within established neighborhoods. Policy direction calls to ensure compatibility of new development with existing and future operations of Davis-Monthan Air Force Base.

Project Background

In the process of routine system analysis, TEP's Asset Management Group determined that the existing 46 kV transformer and switchgear at the Davis-Monthan Substation were nearing their practicable end of life. This determination coincided with a 2017 Department of Defense (DOD) directive for all military installations to enhance energy resilience. The DOD declaration requires energy assurance and instructs all installations to target and eliminate vulnerabilities that threaten potential energy disruptions. The project will also allow TEP to strengthen and modernize the infrastructure that provides service to customers in the area, both on and outside the base, and will support TEP's long-term goal of retiring several older 46 kV substations in the area.

Design Considerations

Land Use Compatibility – The proposed substation will be bounded by DMAFB military aircraft storage on the west and south sides. Residential uses lie to the north 170

feet across Escalante Road, and over 250 feet to the east across Kolb Road. The proposal includes screening along the perimeter of the site, with a 12-foot high decorative wall (setback from the property boundary by 35 feet on the north and approximately 130 feet on the east), and a 35-foot wide landscape border along the northern portion of the property, adjacent to the existing Aviation Greenway multiuse path on Escalante Road, and a 126-foot wide drainage border with landscaping along the east side, adjacent to the City's planned multi-use path along Kolb Road.

The project proposes no landscape border along the west and south borders with military aircraft storage. This provides TEP security surveillance equipment and DMAFB security personnel to visually monitor the site.

The electric transformer equipment will be 25 feet high; bus work is 25 feet high; and the dead-end structures will be 65 feet high. In addition, five 70 foot high lightning protection masts will also be located within the substation enclosure. Transmission poles will be installed to support the transmission lines entering and exiting the substation. The height of the transmission structures will be 85 feet.

The proposed project as an unmanned electric substation and will generate on average only two trips per month, except in the case of an emergency. No designated vehicular use areas are required. TEP will access the site from the by two gated entries from Escalante Road, and will park within the substation enclosure area as needed for periodic servicing of the substation.

No buildings are proposed as part of the project. The substation conforms to the applicable use-specific standard and provides setbacks in excess of the minimum 20 feet requirement. The following setbacks are provided: North: 35 feet; East: 130 feet; South: 20 feet; and West: 57 feet.

The Project will have lighting installed around electrical equipment for emergency and maintenance work. There will be no dusk-to-dawn lighting.

There is a single constructed drainageway on the site that drains off-site into a catch basin at the intersection of Escalante Road and Kolb Road, eventually draining into the Alamo Wash. A future detention basin will be located south of the catch basin to manage stormwater flows leaving the site.

A Phase I Environmental Site Assessment was completed for the site and no hazardous materials or recognized environmental conditions were found (placed on the property or naturally occurring), such as landfills, "wildcat" dumps, dross, or radon gas.

Use-Specific Standards

The following Unified Development Code (UDC) Use-Specific Standards 4.9.11.A.1, 2, 5, 8, 9, and 11. apply to the Distribution system use under SR zone.

- UDC 4.9.11.A.1 – The setback of the facility, including walls or equipment, shall be 20 feet from any adjacent residential zone. The property is surrounded on all sides by residential zoning, with residential uses across from Escalante Road and Kolb Road. As there is no building proposed with this project and the perimeter wall is over 10 feet in height, the project's screen wall will serve as the building wall for purposes of setbacks. TEP intends to construct the perimeter wall setback from the property boundary by 35 feet on the north and approximately 130 feet on the east.
- UDC 4.9.11.A.2 – Where a facility is not enclosed within a building, the surrounding screen shall be used as the building wall for purposes of setbacks. A 12-foot masonry wall will surround the entire facility, and it will constitute the building wall for purposes of setbacks. The proposed wall height is in accordance with federal critical infrastructure protection to ensure TEP's protection of its electric infrastructure.
- UDC 4.9.11.A.5 – The use shall not have any service or storage yards. No service or storage yards are proposed with this project.
- UDC 4.9.11.A.8 – Any building housing such facility shall be in keeping with the character of the zone in which it is located. The Design Review Board (DRB) shall review all applications and make recommendations to the Zoning Examiner. The DRB shall review architectural style, building elevations, materials on exterior facades, color schemes, new mechanical equipment locations, lighting of outdoor areas, window locations and types, screening, landscaping, vehicular use areas, and other contributing design features. The DRB reviewed the project for design review on May 21, 2021 and recommended approval with the following recommendations: 1) Applicant to pursue coordination with the City of Tucson and Davis-Monthan Air Force Base for the potential addition of shade trees on the multi-use path area on Escalante Road and Kolb Road; and 2) The applicant to include micro-basin water harvesting in shrub areas to encourage passive water collection, in addition to the basins in tree plantings already shown in the application (see Preliminary Conditions 7 and 8).
- UDC 4.9.11.A.9 – The use shall be located wholly within an enclosed building or within an area enclosed on all sides with a masonry wall or compact evergreen hedge, not less than six feet, nor more than ten feet, in height. The project will be completely surrounded by a 12-foot masonry wall to ensure protection of its electric infrastructure in accordance with federal CIP standards.
- UDC 4.9.11.A.11 – The use shall be limited to water pumping and storage facilities, telephone exchanges, and power substations with an input voltage of no greater than 138 kilovolts. The project is a 138kV power substation.

Conclusion

The proposed special exception is consistent with *Plan Tucson* and the *South Pantano Area Plan* and in compliance with performance criteria of UDC 4.9.11.A. Subject to compliance

with the attached preliminary conditions, approval of the special exception land use in the SR zone is appropriate.

APPEAL

The Zoning Examiner's decision may be appealed to the Mayor and Council pursuant to UDC Section 3.4.3.I. A notice of intent to appeal the Zoning Examiner's decision must be filed with the City Clerk, 255 West Alameda, Tucson, Arizona 85701 by a party of record in accordance with UDC Section 3.9.2 within fourteen days of the effective date of the Zoning Examiner's decision, with a copy delivered to PDSD.

The complete application materials must be filed with the City Clerk within 30 days of the effective date of this decision letter.

A copy of this decision letter can be obtained from either the Planning and Development Services Department (791-5550) or the City Clerk.

DECISION

The Zoning Examiner's decision is approval of the special exception request subject to the conditions proposed by PDSD, attached to this decision letter.

Sincerely,



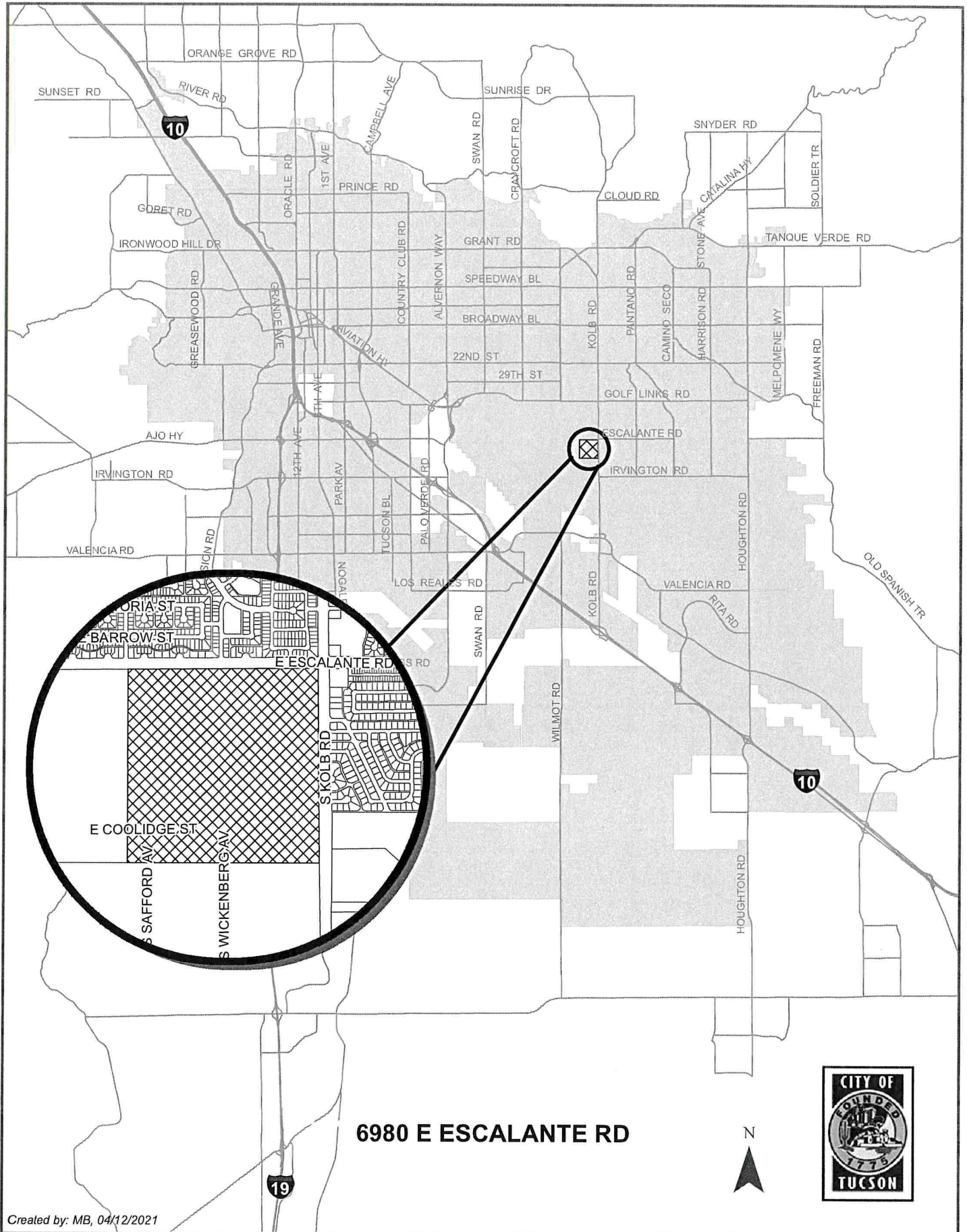
John Iurino
Zoning Examiner

ATTACHMENTS:

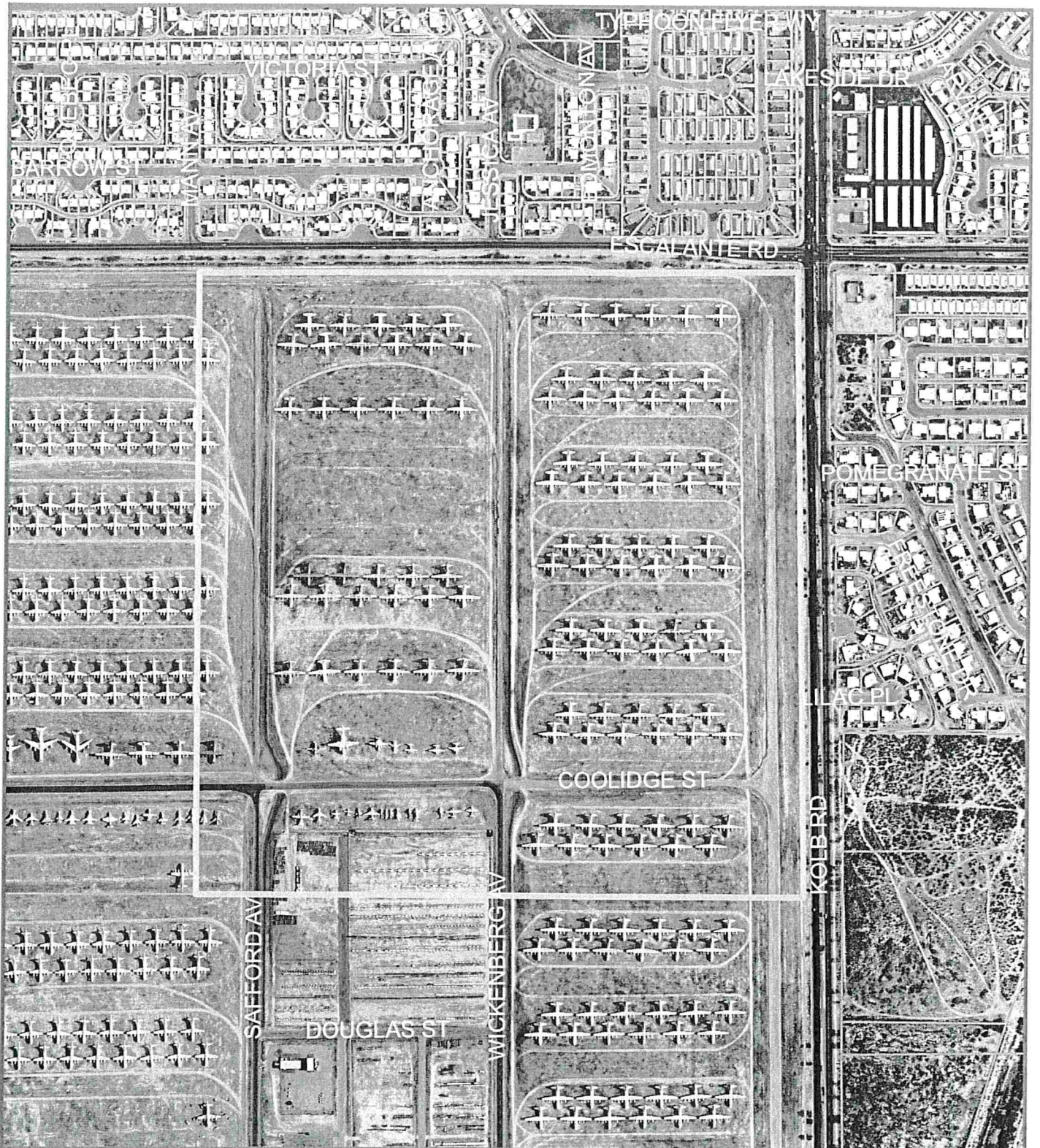
Case Location Map
Zoning Case Map
Preliminary Conditions

cc: Mayor and Council

SE-21-06 TEP Patriot Substation



SE-21-06 TEP Patriot Substation
Zoning Examiner Special Exception



Address: 6980 E ESCALANTE RD
Base Maps: Twp. 14S Range 15E Sec. 31
Ward: 4



2020 Aerial

Created by: MB, 04/13/2021

0 280 560
Feet

1 inch = 563.161304 feet



Preliminary Conditions

PROCEDURAL

1. A development package, in substantial compliance with the preliminary development package and required reports dated April 8, 2021, is to be submitted and approved in accordance with the *Administrative Manual*, Section 2-06.
2. Historic or prehistoric features or artifacts discovered during future ground disturbing activities should be reported to the City of Tucson Historic Preservation Officer. Pursuant to A.R.S. 41-865 the discovery of human remains and associated objects found on private lands in Arizona must be reported to the Director Arizona State Museum.
3. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
4. Five years are allowed from the date of initial authorization to implement and effectuate all Code requirements and conditions of the special exception.

LAND USE COMPATIBILITY

5. The development shall include, a 12-foot decorative masonry (brick) wall surrounding the entire site. The perimeter wall is to be constructed with a setback from the property boundary by 35 feet on the north and approximately 130 feet on the east.
6. There is to be a 35-foot wide landscape border along the northern portion of the property, adjacent to the existing Aviation Greenway multiuse path on Escalante Road, and a 126-foot wide drainage border with landscaping along the east side, adjacent to the City's planned multi-use path along Kolb Road.
7. Applicant to pursue coordination with the City of Tucson and Davis-Monthan Air Force Base for the potential addition of shade trees on the multi-use path area on Escalante Road and Kolb Road.
8. The applicant to include micro-basin water harvesting in shrub areas to encourage passive water collection, in addition to the basins in tree plantings already shown in the application.

TUCSON AIRPORT AUTHORITY NOTICE

9. According to the FAA Notice Criteria Tool, this project is located in proximity to a navigation facility and could impact navigation signal reception. The applicant shall file Form 7460 with the FAA at least 45 days before construction activities begin for

Preliminary Conditions

the project. It is highly recommended that the applicant file earlier than 45 days to provide the applicant with sufficient time to respond to any concerns which are identified by the FAA. Any cranes used which are used must also be identified with Form 7460. Please file Form 7460 at <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

Documentation of compliance with this condition must be provided to the Planning & Development Services Entitlements Division prior to scheduling the case for ordinance adoption.

10. Should there be any encroachments into City right-of-way by aerial or subsurface, the applicant will need to contact the City's Real Estate Division.



**CITY OF
TUCSON**

Office of the
Zoning Examiner

The Public Meeting Minutes of the June 24, 2021 Zoning Examiner Hearing will be sent upon receipt.