

EXHIBIT 19

TO COMPLAINT FOR SPECIAL ACTION

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



Zoning Examiner

ZONING EXAMINER DECISION

May 13, 2021

Keri Silvyn
Lazarus & Silvyn, P.C.
5983 E. Grant Road, Suite 290
Tucson, AZ 85712

**SUBJECT: SPECIAL EXCEPTION LAND USE - SE-20-16 TEP Vine Substation –
Vine Avenue, R-2 (Ward 6)**

Public Hearing: May 6, 2021

Dear Ms. Silvyn:

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 land use case **SE-20-16 TEP – Vine Substation, R-2 (Ward 6)**.

May 6, 2021 Zoning Examiner Hearing

On May 6, 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 representatives spoke in support of the proposed special exception request.



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Four persons spoke in opposition to the special exception request. Concerns raised included: the proposed use belongs in an industrial zone, not a residential zone; the height of the

permanent crane that will be constructed as part of the substation is excessive and will adversely impact views; safety concerns relating to the gas insulated cooling system proposed to be used at the substation; the concern that if the proposed special execution is granted, the Applicant will use the fact of approval in pending proceedings before the Arizona Corporation Commission online-siting for the TEP Kino to DeMoss - Petrie project.

The Applicant's representative responded to these concerns and stated: the new station would retire an existing substation south of the special exception site and would improve the site by reducing the amount of impervious land surface, and by providing a screen wall surrounding the site and a landscaped buffer along Vine Avenue; the crane and canopy will be within the height permitted in the R-2 zone; gas insulated substations are commonly used by utilities and are safe; and the line-siting issue is one to be decided by the ACC and is separate from the special exception request.

As of the date of the Zoning Examiner hearing, there were two (2) written approvals and twenty-nine (29) written protests. The Zoning Examiner has reviewed each of the written approvals and each of the written protests.

FINDINGS

This is a request by Tucson Electric Power Company (TEP) for approval of an electric gas insulated substation (GIS) as a special exception land use in the R-2 zone. The project site is approximately 1.6 acres in size and located on North Vine Avenue near its intersection with East Lee Street and adjacent to the North Ring Road, a private roadway serving the Banner Campus, just northwest of Speedway Boulevard and Campbell Avenue (see Case Location Map). The revised preliminary development plan (PDP) indicates that 1.6 acres are to be occupied by the 138 kilovolt (138kV) GIS substation equipment and enclosed with a decorative masonry (brick) wall, 13.5 feet in height. The proposed Vine Substation is one component of the larger Kino to DeMoss-Petrie (Kino-DMP) Transmission Line Project.

A Distribution System use of this type in the R-2 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 may render a decision to grant the



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use with or without conditions, or to deny the use. The Design Review Board (DRB) also reviews the project for design review and recommendation.

Background Information

Existing Land Use: Multiple metal and manufacturing buildings that support UA operations, including grounds maintenance, parts storage, engine repair, materials storage and office space.

Zoning Description:

R-2: This zone provides for medium density, single-family and multi-family, residential development, together with schools, parks, and other public services necessary for an urban residential environment. Select other uses, such as, day care and urban agriculture, are permitted that provide reasonable compatibility with adjoining residential uses.

Surrounding Zones and Land Uses:

North: Zoned NR-1; Neighborhood Preservation Zone, Single-Family Residential
Existing Uses: UA Facilities Management & Maintenance Operations

South: Zoned R-2; Single-Family Residential & Multi-Family Residential
Existing Uses: TEP 46kv open-air electric substation & UA 46kv gas-insulated substation

East: Zoned R-2 and PAD-28; Single-Family Residential & Multi-Family Residential, Banner Planned Area Development
Existing Uses: Banner Medical Center, staff parking garage (5-stories)

West: Zoned R-2; Single-Family Residential & Multi-Family Residential
Existing Uses: Single- & Multi -Family residences (1- and 2-stories)

Planning Considerations

Land use policy direction for this area is provided by *Plan Tucson (PT)* and the *University Area Plan (UAP)*.

Plan Tucson

Plan Tucson identifies this area in the Future Growth Scenario Map as a "Campus Areas" which include and surround large master-planned educational, medical, or business facilities. A fully realized campus area serves the local workforce and student population and includes a range of



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housing, a variety of retail opportunities, and convenient transit options. Existing examples include the University of Arizona and Banner University Medical Center.

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). It 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). It also supports methods to protect and improve air quality by reducing sources of air pollution (*PT*, LT28.1.19). *PT* 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).

University Area Plan

The goal of the *University Area Plan* is to support new development which serves to enhance the character and quality of University Area neighborhoods. The *UAP* calls, wherever possible, to place utility and service equipment underground or in other visually screened locations (*UAP* Section 6, Policy 6). The *UAP* calls to complement surrounding development – utilize compatible building materials, setbacks, and step-backs, including buffering with appropriate screening techniques to mitigate the impact on adjacent uses (*UAP*, Design Guidelines Policy 1 and 3).

Project Description

Currently, TEP serves customers in this area (central Tucson) with a 46kV sub-transmission system. Due to increased energy demands, the system is becoming increasingly loaded, and there is now limited capacity in the event of an outage. The Applicant states that construction of the Vine Substation will resolve overloading and capacity concerns and improve overall service reliability in the area, replacing TEP's aging, lower capacity 46kV open-air substation. The project is one component of TEP's planned Kino-DMP 138kV Transmission Line Project, which will interconnect the Vine Substation with the Kino and DMP Substations. The Applicant states that this improves electric reliability by adding redundancy, allowing TEP to deliver energy from more than one direction. The Applicant states that this project also supports Tucson and the UA's renewable energy goals. TEP plans to design and construct this project as a gas-insulated substation to insulate electrical equipment in sealed steel vessels, which prevents emissions.



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Design Considerations

Land Use Compatibility – The proposed substation is located on the east side of N. Vine Avenue and west of the Banner staff parking garage on the Ring Road. The east boundary is adjacent to the Ring Road, which is a private driveway serving Banner, and the south boundary is adjacent to the existing TEP 46kV open-air electric substation which is to be replaced. The property to the north is a UA-owned salvaging and recycling operation. Residential uses lie to the west across N. Vine Avenue. The substation will be replacing the current UA Facilities Management & Maintenance Operations Center uses on this site.

The proposed project as an unmanned electric substation will generate quite fewer trips than the existing UA Facilities Center. The change in use for this site will relieve traffic and parking congestions along Vine Avenue. No designated vehicular use areas are required. TEP will access the site from the Ring Road, and by two gated entries from Vine Avenue, and will park within the substation enclosure area as needed for periodic servicing of the substation.

The substation will have a 13.5-foot decorative masonry wall (red brick) to match the height, materials and style of the wall surrounding the existing 46kV GIS substation south of the project site. The wall will be set on the north, east, and south property line, completely surrounding the use. Along the western boundary of the substation the wall will be setback 20 feet from the property boundary adjacent to N. Vine Avenue, and a landscape border will be installed within this setback. The N. Vine Avenue view corridor will be enhanced with the decorative wall and landscape border given that the existing UA Facilities Management & Maintenance Operations is screened by an open wrought-iron fencing around the entire site.

TEP is requesting relief from the 20-foot setback adjacent to residential zones to allow the substation's perimeter wall to be constructed on the property line, on the north, south, and east. It is also requesting relief from the required landscaping border along the north and east/northeast because the perimeter wall will be on the property line. These requests are reasonable given the adjacent land uses: north – UA salvaging & recycling center; south – 46kV open-air power utility substation; east – Ring Road which is a private driveway for Banner; and northeast – parking area.

No buildings are proposed as part of the project. A protective mechanical canopy, including a gantry crane, will be installed over the GIS equipment. This canopy will be 25 feet high in compliance with R-2 standards.

Lighting will be installed as part of the project strictly for emergency and maintenance situations that may occur at night. Post-development drainage conditions will resemble existing drainage conditions. The total runoff exiting the site is expected to be less than or equal to existing conditions.



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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 the R-2 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 zones, but there are no residential uses on three sides (north, south, and east). No building is 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 a 13.5-foot perimeter wall on the property line for safety purposes and has requested relief from the 20-foot setback on the three boundaries that do not have residential uses on them (north, south and east), so that the perimeter wall can be constructed on the lot lines on those three sides. Given the existing, non-residential uses on those adjoining properties, permitting the Applicant to build to the lot line is reasonable.

- 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 13.5-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. The wall height of 13.5 feet matches the existing UA 46kV GIS substation perimeter wall to the south.

- 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 project was reviewed by the City's DRB on April 9, 2021. The DRB found the project in compliance with the UDC use-specific standards, with the addition of a condition that the plant palette include hardy understory plant materials, that shade be provided along the



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sidewalk, and that existing vegetation be preserved to the extent possible (see PDSD Preliminary Condition 7).

- 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 13.5-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 and will replace TEP's existing 46kV open-air substation to the south.

Conclusion

Pursuant to UDC 3.4.5(A), to grant a special exception the Zoning Examiner must find that the requested special exception:

2. *Does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions as provided in Section 3.4.6; [and] ...*
5. *Complies with the General Plan and any applicable sub-regional, area, or neighborhood plan.*

The proposed special exception land use is a substation that will be part of the larger Kino to DeMoss-Petrie (Kino-DMP) Transmission Line Project. The Applicant has not finalized the design and location of the Kino-DMP and is considering several alternative routes. The decision on line-siting will be made in proceedings before the Arizona Corporation Commission (ACC) to be held in the future.



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Based on the information presented at the Zoning Examiner hearing, the proposed special exception is in compliance with the performance criteria of UDC 4.9.11.A.

At the present time, and on this record, the Zoning Examiner cannot determine whether the proposed special exception land use complies with *Plan Tucson* and the *University Area Plan*, or whether the proposed special exception would adversely affect the surrounding neighborhoods. The Applicant is considering several different transmission line routes for Kino-DMP and states that the final decision on line-siting will be made by the ACC. Based on the record, some of the routes being considered for the Kino-DMP Transmission Project would connect the proposed Vine substation with a transmission line running along Campbell Avenue. Other alternative routes would connect the proposed Vine substation to the Campbell Avenue transmission lines, but, in addition, new transmission lines would run from the proposed Vine substation to the west and north, or to the north, through the adjoining neighborhoods before connecting with a transmission line along Grant Road. The impacts on the affected neighborhoods of these alternative routes would be different, and the impact of the proposed special exception land use cannot be determined without knowing what transmission lines will connect with the proposed Vine substation.

As a result, compliance with *PT* and *UAP* cannot be determined at this time. *PT* provides policy direction to protect established residential neighborhoods by supporting compatible development and 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. The *UAP* specifically directs that utility lines be placed underground where possible to mitigate impacts on adjacent uses.

Based on the testimony at the Zoning Examiner hearing and the record, the Applicant does not intend to place the transmission lines underground. While this proceeding is separate from the line-siting process, as a practical matter the two are interrelated. Given the 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.

The Zoning Examiner denies the special exception request, without prejudice to the Applicant to resubmit its request when the additional information discussed above is available.

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



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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 denial of the special exception request, without prejudice to the Applicant to resubmit its request when the additional information discussed in the Zoning Examiner Decision is available.

Sincerely,

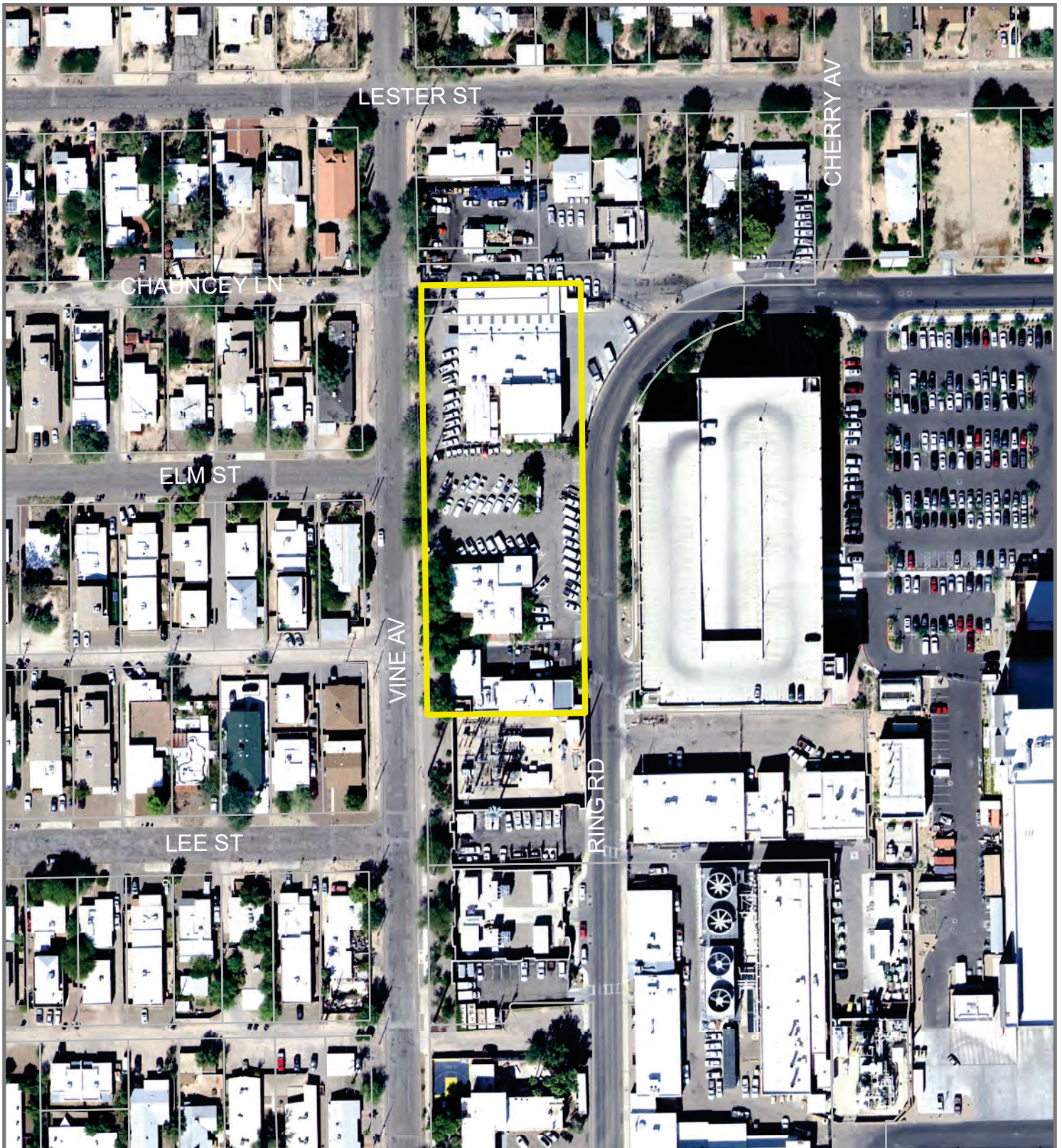
John Iurino
Zoning Examiner

ATTACHMENTS:

Case Location Map
Rezoning Case Map

cc: Mayor and Council

SE-20-16 TEP Vine Substation - Vine Avenue
Zoning Examiner Special Exception



Address: 1602, 1610, 1640, 1730 N Vine Ave
Base Maps: Sec.06 T.14 R.14
Ward: 6



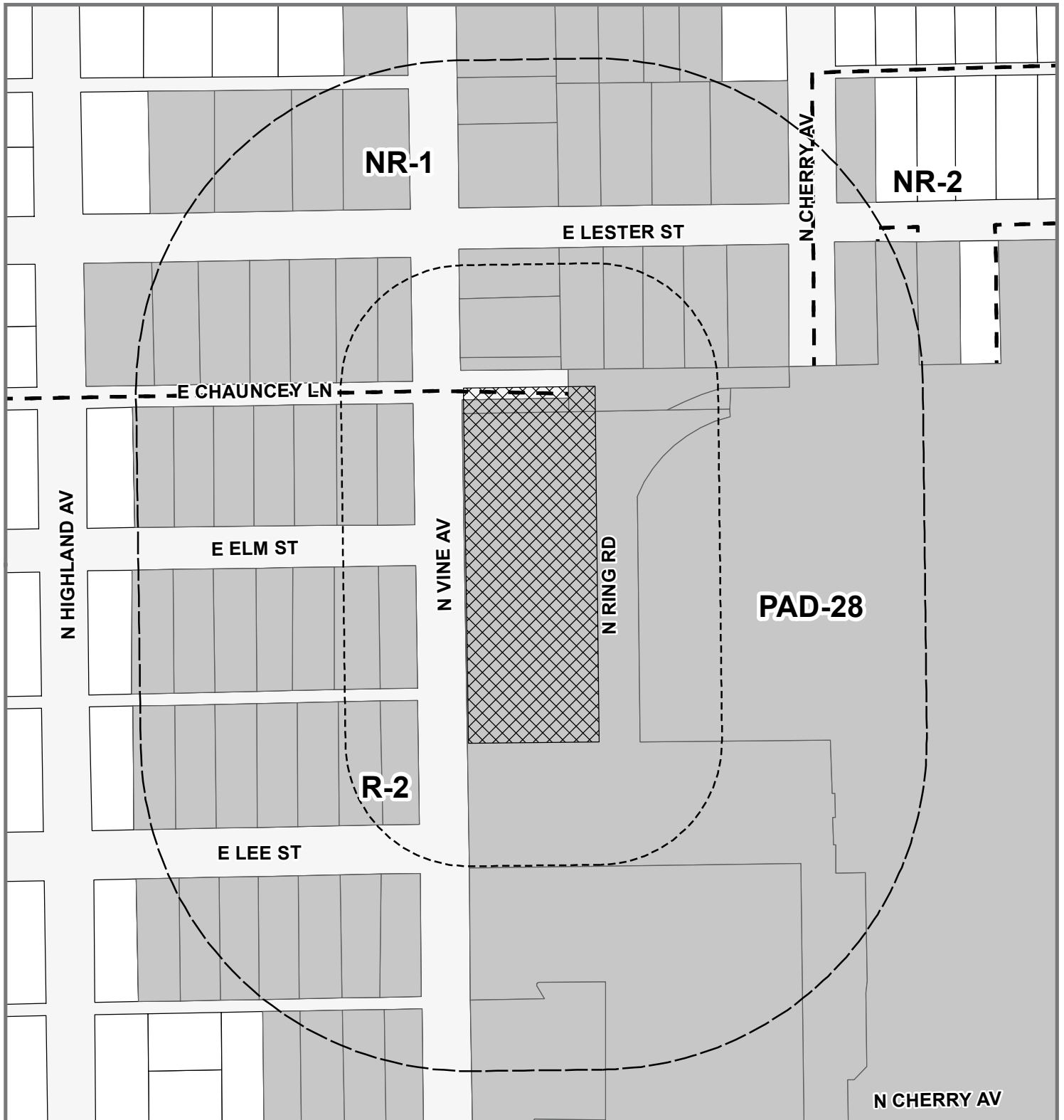
2019 Aerial

Created by: MB, 01/04/2021

0 60 120
Feet
1 inch = 137.9035 feet



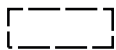
SE-20-16 TEP Vine Substation - Vine Avenue Zoning Examiner Special Exception



Area of Special Exception Request



Protest Area (150-foot Radius)



Notification Area (400 ft. Radius)



Properties Notified



Zone Boundaries

Address: 1602, 1610, 1640, 1730 N Vine Ave

Base Maps: Sec.06 T.14 R.14

Ward: 6



0 80 160 Feet

1 inch = 166.8 feet

N

