

ORDINANCE No. 100326

AUTHORIZING CITY PUBLIC SERVICE TO UTILIZE CERTAIN CITY-OWNED PROPERTY IN CONNECTION WITH THE CAGNON-TO-KENDALL PROJECT, INCLUDING AN ELECTRIC TRANSMISSION LINE, ELECTRIC DISTRIBUTION LINES, COMMUNICATION SYSTEMS AND RELATED APPURTENANCES; MAKING CERTAIN FINDINGS RELATING TO THE CAGNON-TO-KENDALL PROJECT; AUTHORIZING AMENDMENTS TO RELATED CONSERVATION EASEMENTS AND OTHER PROCEDURES RELATED THERETO; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City Public Service of San Antonio (CPS), the nation's largest municipally-owned energy company providing both electric and natural gas service, serves more than 600,000 electric customers and more than 300,000 natural gas customers in and around the City of San Antonio (City); and

WHEREAS, certain portions of the revenues of CPS are transferred to the City and account for more than one-fifth of the City's annual operating budget for police and fire protection, street improvements, parks and other services; and

WHEREAS, rapid growth in the area northwest of the City is stressing the existing electric transmission system, creating low-voltage conditions in some areas; and

WHEREAS, unless the capacity of the electric transmission system is addressed soon, continued growth in the area will cause system instability and could lead to power outages; and

WHEREAS, in order to avert electrical reliability problems resulting from continued growth and to ensure ongoing adequate service to CPS' customers, CPS and the Lower Colorado River Authority's subsidiary, the LCRA Transmission Services Corporation (LCRA-TSC), propose to construct a new 345-kilovolt (kV) electric transmission line to connect the CPS Cagnon substation with the LCRA Kendall substation, as part of the Cagnon-to-Kendall Project, which shall include such transmission line, electric distribution lines, communication systems and related appurtenances; and

WHEREAS, the CPS portion of the Cagnon-to-Kendall Project would originate at CPS's Cagnon Substation, located immediately west of Loop 1604 and just north of U.S. Highway 90, and terminate at a tie point at the edge of CPS's service area west of Boerne at or near the Kendall/Bexar County line; and

WHEREAS, the Electric Reliability Council of Texas (ERCOT), the independent system operator certified by the Public Utility Commission of Texas that is responsible for the operation of the state's electric grid, has recommended construction of the Cagnon-to-Kendall Project and has determined that it needs to be in service by June 2006; and

WHEREAS, CPS, utilizing its own staff and a team of engineering, environmental, and other professionals (CPS Project Team), followed the CPS Facility Routing/Siting Process (also known as the "12 Step Process") to identify a proposed route for the CPS portion of the Cagnon-to-Kendall Project that minimizes human and environmental impact to the greatest extent practicable; and

WHEREAS, the CPS Project Team reviewed more than fifty (50) potential route segments that were combined into twelve (12) complete route alternatives for detailed evaluation; and

WHEREAS, CPS conducted an extensive public involvement process that included five public open houses and a special website devoted to the Cagnon-to-Kendall Project, and has maintained an open line of communication with the citizens of the City, area landowners, CPS customers, and federal, state and local agencies that included numerous opportunities for interested parties to provide written comments or discuss the project with CPS staff members; and

WHEREAS, based on the results of the aforementioned process, the CPS Project Team recommended eliminating from consideration those route segments that would have had the most impact on residential areas and environmentally-sensitive areas; and

WHEREAS, the CPS Project Team identified a preferred route for the CPS portion of the Cagnon-to-Kendall Project that would run as follows: south from the Cagnon Substation along an existing transmission line and turning west-northwest, then turning north parallel to the proposed extension of State Highway 211 near the Bexar/Medina County line, then following existing SH 211 (on the west side of the highway to avoid residential development on the east side) to State Highway 16 (Bandera Road), where the route turns east along State Highway 16 and runs through undeveloped land until it meets the existing Helotes-to-Cico transmission line, and then running parallel to the Helotes-Cico line up to the Bexar/Kendall County line and the LCRATSC tie-in point; and

WHEREAS, the CPS Board of Trustees considered the CPS Project Team's recommendations and comments from the public at a public meeting held on August 10, 2004, and has also considered all of the public comments regarding the potential routes given to CPS staff during the five open house meetings, through correspondence and other contacts with the public, through communications with CPS staff, and through communications with the members of the CPS Citizens Advisory Committee, which has voted in support of constructing the CPS portion of the Cagnon-to-Kendall Project along the route recommended by the CPS Project Team; and

WHEREAS, the CPS Board of Trustees agreed with the CPS Project Team's determination that the recommended route for the CPS portion of the Cagnon-to-Kendall Project has the least overall impact of all the feasible route alternatives on both the human and natural environments because it utilizes existing right-of-way as much as possible, avoids impacts to natural resources and environmentally sensitive areas (such as endangered species and Edwards Aquifer recharge features) to the maximum extent practicable, avoids residential developments and habitable structures as much as possible, and is designed such that it considers future projects which may minimize the need to add additional facilities in future years; and

WHEREAS, the CPS Board of Trustees found necessary and desirable the construction of electric transmission and distribution lines, communication systems and related appurtenances and the acquisition of easement, permits, and related rights of ingress and egress over and across certain properties in Bexar and Medina Counties along the recommended route, for the construction, operation and maintenance of the CPS portion of the Cagnon-to-Kendall Project, either through purchase or other agreement, or by the process of eminent domain; and

WHEREAS, the CPS Board of Trustees, by resolution of September 10, 2004, approved the construction of the CPS portion of the Cagnon-to-Kendall Project on the recommended route, and directed CPS staff and attorneys to proceed with the necessary steps to undertake and complete the CPS portion of the Cagnon-to-Kendall Project, including coordination with the City to obtain authorization to place facilities on City property (that CPS Board Resolution being attached hereto as Exhibit A-1, including a depiction of the entire preferred route, and made a part hereof for all purposes); and

WHEREAS, the City Council agrees with CPS's determination that the preferred route for the CPS portion of the Cagnon-to-Kendall Project has the least impact of all the feasible route alternatives on both the human and natural environments; and

WHEREAS, the construction of the CPS portion of the Cagnon-to-Kendall Project along the preferred route will necessitate limited intrusions on two parcels of "Proposition 3" land located along State Highway 211 that the City acquired with the proceeds of bonds issued pursuant to Chapter 334 of the Texas Local Government Code (the Act), those two parcels being generally known as the "Mayberry Tract" and the "Chris Hill Tract"; and

WHEREAS, "Proposition 3" refers to the ballot measure regarding the "Parks Development and Expansion Venue Project," that was presented to the City's voters pursuant to the Act and approved by the voters at a special election held on May 6, 2000, authorizing the City to impose and levy a 1/8-cent sales and use tax to provide for the planning, acquisition, establishment, development, construction or renovation of various venue projects, including the acquisition of open space parks over the Edwards Aquifer Recharge Zone; and

WHEREAS, the CPS portion of the Cagnon-to-Kendall Project will transect approximately 470 feet of the entrance to the Mayberry Tract at the eastern edge of the property adjacent to State Highway 211 (as depicted on Exhibit A-2 attached hereto); and

WHEREAS, the CPS portion of the Cagnon-to-Kendall Project will transect approximately 5,000 feet of the eastern edge of the Chris Hill Tract adjacent to State Highway 211 (as depicted on Exhibit A-3 attached hereto); and

WHEREAS, CPS has committed to minimize the disturbance required to construct the CPS facilities across both tracts; and

WHEREAS, there being no anticipated need to install poles on the Mayberry Tract, the disturbance on that property was until recently expected to be limited to the clearing of approximately 0.17 acres in an area adjacent to State Highway 211 that would be needed to establish vehicular access for service and maintenance purposes; and

WHEREAS, the disturbance on the Chris Hill Tract is expected at this time to be limited to no more than five (5) pole locations adjacent to State Highway 211, and the total acreage disturbed as a result of the Cagnon-to-Kendall Project was until recently not expected to exceed approximately 3.25 acres needed to establish vehicular access for service and maintenance purposes; and

WHEREAS, the Mayberry and Chris Hill Tracts are part of a "venue project" within the meaning of the Act, which recognizes the City's authority to dispose of an interest in a venue project under terms and conditions determined by the City; and

WHEREAS, the Texas Department of Transportation has recently granted CPS permission to utilize a portion of the right-of-way for State Highway 211 for the overhanging of the transmission facilities over state-owned right-of-way and more direct access to transmission poles, thereby further minimizing CPS's use of and disturbance to the Mayberry and Chris Hill Tracts for construction and maintenance of the transmission facilities; and

WHEREAS, the City previously conveyed to the San Antonio Water System (SAWS) a real estate interest in the nature of a conservation easement over the Chris Hill Tract, more particularly described in Exhibit B-1 (SAWS Easement); and

WHEREAS, on January 18, 2005, the SAWS Board of Trustees authorized the SAWS Director of Resource Protection and Compliance to report to the City and CPS that that the transmission facilities will not cause environmental degradation to the recharge features of the Edwards Aquifer Recharge Zone on the Chris Hill Tract, particularly in light of construction practices to be utilized by CPS, as indicated in Exhibit B-2 (SAWS Resolution No. 05-050); and

WHEREAS, CPS has committed to provide the City with property over the Edwards Aquifer Recharge Zone contiguous to other City property of value equivalent or greater than the venue project property to be used by CPS for the Cagnon-to-Kendall Project; and

WHEREAS, City, SAWS and CPS staff have initiated discussions to amend the SAWS Easement to allow the CPS use of the Chris Hill Tract for the construction and maintenance of the transmission facilities, subject to (1) City Council adoption of this Ordinance; (2) SAWS' receipt of an additional property interest in the nature of a conservation easement of equivalent or greater value than the property to be used by CPS on the Chris Hill Tract, over the Edwards Aquifer Recharge Zone and contiguous to other City property; (3) SAWS' acceptance of certain water quality commitments by CPS; and (4) entry of a common defense funding arrangement proposed by CPS; and

WHEREAS, the City Council finds that CPS has taken into account the appropriate environmental, health and safety concerns in designing the preferred route with respect to the Mayberry and Chris Hill Tracts, and has determined that CPS will take all necessary and reasonable steps to ensure that the area disturbed on both tracts is minimized; and

WHEREAS, the City Council further finds that, given the consequences of the other route alternatives, there are no feasible and prudent alternatives to the limited impacts to the Mayberry and Chris Hill Tracts that are necessitated by the Cagnon-to-Kendall Project along the preferred route identified by CPS; and

WHEREAS, in view of the measures being taken by CPS described herein and the fact that the CPS portion of the Cagnon-to-Kendall Project crosses only those portions of the respective tracts that are directly adjacent to State Highway 211, the City Council finds that the limited intrusions caused by the Cagnon-to-Kendall Project will not interfere with the use of either the Mayberry Tract or the Chris Hill Tract for the purposes for which they were acquired under Proposition 3 and will not materially detract from the benefits gained by their acquisition; and

WHEREAS, the City Council finds that the authorization to CPS for the utilization of a portion of the Mayberry and Chris Hill Tracts does not constitute a sale of public parkland; and

WHEREAS, the City Council further finds that the Cagnon-to-Kendall Project is a public project of paramount importance, which necessitates the City exercising its authority under the

constitution and laws of the State of Texas and the City Charter to provide for the health, safety and welfare of its citizens to approve CPS's request to place the Cagnon-to-Kendall Project on the portions of the Mayberry and Chris Hill Tracts as described herein; and

WHEREAS, the City Council further authorizes City staff to execute any and all documents necessary to accept the property to be added by CPS to the venue project program, effectuate the common defense funding arrangement contemplated by CPS, amend or modify the SAWS Easement, provide SAWS with an additional property interest in the nature of a conservation easement of value equivalent or greater than the portion of the Chris Hill Tract to be used by CPS, and otherwise give effect to this Ordinance; and

WHEREAS, it is deemed necessary and advisable and in the best interests of the City, and its voters and citizens that this Ordinance be passed and approved; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551 of the Texas Government Code and Section 26.002 of the Texas Parks and Wildlife Code; and

WHEREAS, it is also hereby officially found and determined that the public hearing held in accordance with Section 26.002 of the Texas Parks & Wildlife Code afforded all interested persons the opportunity to be heard; and that the City Council considered all such comments before adopting this Ordinance;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. AUTHORIZATION TO UTILIZE PORTIONS OF CERTAIN CITY-HELD LANDS FOR THE CPS PORTION OF THE CAGNON-TO-KENDALL PROJECT. In accordance with chapter 26, Texas Parks & Wildlife Code, the City Council finds that there is no feasible and prudent alternative to City Public Service's use of portions of those properties generally known as the Mayberry Tract and the Chris Hill Tract and more particularly described in Exhibits A-2 and A-3, for the purpose of constructing, maintaining, and operating the Cagnon-to-Kendall Project, including transmission lines, communication systems and related appurtenances; and that the City Public Service Cagnon-to-Kendall Project includes all reasonable planning to minimize harm to the land, as a park, resulting from the City Public Service use. In accordance with Article XI, Section 128 of the City Charter, City Public Service is hereby authorized to construct, maintain, and operate the Cagnon-to-Kendall Project over park properties described in Exhibits A-2 and A-3. The public purpose to be served by the Cagnon-to-Kendall Project is paramount to any private or public uses that may be encountered along the route. Public necessity also requires the City of San Antonio to acquire the right of ingress and egress over and across these lands and adjacent lands and to take all other lawful action necessary or incidental to such acquisitions to survey, specify, define and secure the necessary property rights. The Interim City Manager, or his representative, is hereby directed and authorized to execute any and all documents necessary to grant City Public Service these rights to the Mayberry Tract and the Chris Hill Tract and to accept the property to be added to the venue project program by CPS.

SECTION 2. AUTHORIZATION TO AMEND CONSERVATION EASEMENT. The Interim City Manager, acting by and through the City's attorneys, is hereby authorized and directed to

negotiate to amend or modify any conservation easement on these properties in order to allow CPS to proceed with the CPS portion of the Cagnon-to-Kendall Project in a timely basis, including, entry into a common defense funding arrangement and provision of an additional conservation easement to SAWS as described herein, as may be appropriate to effectuate this Ordinance.

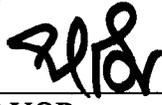
SECTION 3. ORDINANCE TO CONTROL. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 4. INCORPORATION OF RECITALS. The City hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City hereby incorporates such recitals as a part of this Ordinance.

SECTION 5. SEVERABILITY. If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof, or provisions or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion hereof and all provisions of this Ordinance are declared to be severable for that purpose.

SECTION 6. EFFECTIVE DATE. This ordinance shall be effective on the tenth day after passage.

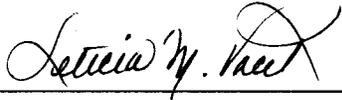
PASSED AND APPROVED this 21st day of January, 2005.



MAYOR

EDWARD D. GARZA

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

Agenda Voting Results

Name: 5B.

Date: 01/21/05

Time: 01:32:32 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing CPS to utilize certain City-owned property in connection with the Cagnon to Kendall Project, including an electric transmission line, electric distribution lines, communication systems and related appurtenances; making certain findings relating to the Cagnon to Kendall Project; authorizing amendments to related conservation easements and other procedures related thereto; and providing for an effective date.

Notes: Motioned: RICHARD PEREZ Seconded: JOEL WILLIAMS Notes:

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1	Not present			
JOEL WILLIAMS	DISTRICT 2		x		
RON H. SEGOVIA	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5			x	
ENRIQUE M. BARRERA	DISTRICT 6		x		
JULIAN CASTRO	DISTRICT 7			x	
ART A. HALL	DISTRICT 8			x	
CARROLL SCHUBERT	DISTRICT 9		x		
CHRISTOPHER "CHIP" HAAS	DISTRICT_10		x		
MAYOR ED GARZA	MAYOR		x		