

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 4, 2008

SUBJECT: Utility Easement for PSNC Energy Pipeline Relocation
County of Henderson Parcel on Grove Bridge Road

ATTACHMENTS: Yes

1. Vicinity Map
2. Proposed Utility Easement
3. Memo from NCWRC
4. Indemnification

SUMMARY OF REQUEST:

PSNC Energy is requesting an easement on County property to relocate a gas pipeline currently located on the Grove Bridge Road Bridge over the French Broad River. To protect the structure of the bridge, the pipeline needs to be relocated adjacent to the bridge and underneath the river via directional bore. The attached vicinity map of the Etowah area of the County shows the location of the County's property in question. Also, the easement document shows a layout of the easement on the property, see attached. The property is used by the North Carolina Wildlife Resources Commission as a Public Fishing Area (river access). The attached memo from NCWRC describes their concurrence with the project. Lastly as requested by the County Attorney, PSNC Energy has provided Indemnification for the Easement, see attached.

BOARD ACTION REQUESTED:

The Board is requested to authorize the Chairman to execute the Utility Easement with PSNC Energy to relocate their gas pipeline onto the County's property located on Grove Bridge Road.

Suggested Motion:

I move that the Board of Commissioners authorize the Chairman to execute the Utility Easement with PSNC Energy to relocate their gas pipeline onto the County's property located on Grove Bridge Road.

STATE OF NORTH CAROLINA

INDEMNIFICATION

COUNTY OF HENDERSON

This Indemnification is made and entered into this the 15TH day of JANUARY, 2008 by and between Public Service Company of North Carolina, Incorporated, a South Carolina corporation d/b/a/ PSNC Energy ("PSNC Energy") in favor of Henderson County, a body corporate and politic ("County");

WITNESSETH:

WHEREAS, PSNC Energy has requested that County convey that easement attached hereto as Exhibit "A" and incorporated herein by reference (the "Easement") to PSNC Energy; and

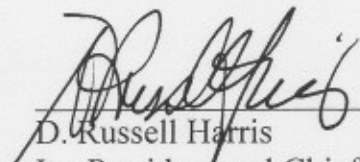
WHEREAS, County is only willing to convey the Easement if PSNC Energy grants to County this Indemnification;

NOW, THEREFORE, in consideration of the conveyance of the Easement and in consideration of the mutual covenants and agreement contained within the Easement, PSNC Energy agrees as follows:

PSNC will indemnify and hold harmless County from any and all liability proximately arising from the negligence of PSNC Energy in the construction or operation of the gas pipeline (that is the subject of the Easement), provided, however, that any liability resulting from the negligence of County is expressly excluded from this Indemnification.

IN WITNESS WHEREOF, this instrument is signed and sealed, the day and year first above written.

PUBLIC SERVICE COMPANY OF NORTH
CAROLINA, INCORPORATED
D/B/A PSNC ENERGY



D. Russell Harris
Its: President and Chief Operation Officer

STATE OF NORTH CAROLINA

COUNTY OF GASTON

I, CAROL G. O'SHIELDS, a Notary Public of GASTON County, State of North Carolina, do hereby certify that D. Russell Harris, President and Chief Operation Officer of Public Service Company Of North Carolina, Incorporated, D/B/A PSNC Energy, a North Carolina corporation (the "Signatory"), having been authorized to do so, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the corporation.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

- a driver's license or
- in the form of _____); or
- (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 15th day of JANUARY, 2008.

Carol G. O'Shields

Notary Public

Print Name: CAROL G. O'SHIELDS
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: July 02, 2010



[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

Exhibit "A"

UTILITY EASEMENT

PREPARED BY: JANE FOY PAINTER, MULLEN HOLLAND & COOPER P.A., ATTORNEYS AT LAW

RETURN TO: PSNC Energy

(Attn: Kenneth Owenby, Engineering Department)

15 Overland Industrial Boulevard

Asheville, North Carolina 28806

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

Project No.0042640

Know all men by these presents that for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration paid to **Henderson County, a body corporate and politic** (hereinafter designated "Grantor"), the receipt of which is hereby acknowledged, the Grantor hereby bargains, sells, and conveys unto **Public Service Company of North Carolina, Incorporated**, a South Carolina corporation, dba PSNC Energy (hereinafter designated "Grantee"), and its successors and assigns, a perpetual and exclusive utility easement twenty (20) feet in width for the purpose of installing, laying, constructing, maintaining, operating, repairing, altering, replacing, and removing gas pipeline equipment for the transportation and control of natural gas under, upon, over, through and across lands of Grantor, or in which Grantor has interest situate in Henderson County, North Carolina as described in that deed recorded in Book 557 at Page 533 in the Henderson County Registry, together with the rights of ingress and egress over and across the easement area and the remaining lands of the Grantor for the purpose of obtaining access to and from the easement area. The easement shall be generally located as shown on Exhibit "A" drawing attached hereto and incorporated herein by reference. The centerline of the pipeline as installed and/or constructed shall be the centerline of such right of way and easement hereby granted.

The Grantee shall have the right to assign this Easement in whole or part at any time.

The Grantee shall have the right to remove all trees, undergrowth, and other obstructions which may be located within the easement area that may injure, endanger, or interfere with the construction, operation, maintenance, and repair of said utility pipeline. Except as it related to the exercise of Grantee's rights hereunder to clear obstructions, Grantee agrees, to the extent reasonably possible, to restore any disturbed area of Grantor's property to its original condition upon the completion of any necessary installation, operation and/or maintenance work.

The Grantor for itself, its heirs and assigns agrees to do nothing inconsistent with the rights of the Grantee hereunder, specifically including, but not limited to the following: 1) no structure nor obstruction of a temporary or permanent nature (including, but not limited to, fences and/or walls) shall be constructed or allowed to remain upon the right of way herein granted; 2) nothing shall be done which would increase or decrease the depth of the pipeline below the surface of the ground; 3) roads, streets and/or public utility crossings may be built or erected by the Grantor or authorized agents crossing the easement, subject to the above restrictions and so long as a minimum of a one (1) foot vertical separation is maintained from Grantee's facilities by any such public or private facilities.

To have and to hold said utility pipeline easement unto the Grantee, its successors, and assigns, in title forever and the undersigned hereby bind themselves, their heirs, executors, administrators, successors, and assigns to warrant and forever defend all and singular said premises unto the Grantee, its successors, and assigns, against the claims of all persons whomsoever.

It is understood and acknowledged by the undersigned that the person securing this grant is without authority to make any agreement with regard to the subject matter hereof which is not expressed herein, and that no such agreement will be binding on the Grantee.

IN WITNESS WHEREOF this instrument is signed and sealed this _____ day of _____, 2008.

Henderson County, a body corporate and politic

By: _____
William L. Moyer, Chairman of the Board of
Commissioners of Henderson County

ATTEST

Elizabeth W. Corn, Clerk to the Board

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

I, _____, Notary Public for said County and State, have personal knowledge of the identity of Elizabeth W. Corn, and hereby certify that said Elizabeth W. Corn, Clerk to the Board, personally appeared before me this day and voluntarily acknowledged that she is Clerk to the Board of Commissioners of Henderson County and that William L. Moyer is the Chairman of the Board of Commissioners of Henderson County, and that by authority duly given and as the act of Henderson County, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of Henderson County, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the _____ day of _____, 2008.

Notary Public
Print Name: _____

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)



☒ North Carolina Wildlife Resources Commission ☒

Fred A. Harris, Interim Executive Director

MEMORANDUM

TO: Marcus A. Jones, P.E.
Henderson County Engineering and Facility Services

FROM: Mallory G. Martin, Regional Supervisor
Division of Inland Fisheries

A handwritten signature in cursive script that reads "Mallory G. Martin".

DATE: November 30, 2007

SUBJECT: Gas Pipeline Right-of-Way, French Broad River

We have reviewed the request from Public Service of NC (PSNC) for a right-of-way easement on Henderson County property currently in use as a Public Fishing Area administered by the NC Wildlife Resources Commission. We understand that the project will comprise a directional bore under the river bed of French Broad River through which the pipeline will be installed. Our staff understands this project will have only temporary and minimal impacts to users of the Public Fishing Area, and that PSNC will restore all existing amenities and utilities to their current uses following project construction. Further, we understand that PSNC will continue to allow use of the property as a Public Fishing Area should Henderson County grant a utility easement on a portion of that property. Therefore, we have no objection to Henderson County granting the easement request based on continuing public use of the Public Fishing Area.

Please feel free to contact me if you need additional information.

UTILITY EASEMENT

PREPARED BY: JANE FOY PAINTER, MULLEN HOLLAND & COOPER P.A., ATTORNEYS AT LAW

RETURN TO: PSNC Energy

(Attn: Kenneth Owenby, Engineering Department)

15 Industrial Boulevard

Asheville, North Carolina 28806

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

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The Grantee shall have the right to assign this Easement in whole or part at any time.

The Grantee shall have the right to remove all trees, undergrowth, and other obstructions which may be located within the easement area that may injure, endanger, or interfere with the construction, operation, maintenance, and repair of said utility pipeline.

The Grantor for itself, its heirs and assigns agrees to do nothing inconsistent with the rights of the Grantee hereunder, specifically including, but not limited to the following: 1) no structure nor obstruction of a temporary or permanent nature (including, but not limited to, fences and/or walls) shall be constructed or allowed to remain upon the right of way herein granted; 2) nothing shall be done which would increase or decrease the depth of the pipeline below the surface of the ground; 3) roads, streets and/or public utility crossings may be built or erected by the Grantor or authorized agents over or upon the easement, subject to the above restrictions and so long as a minimum of a two (2) foot horizontal and a one (1) foot vertical separation is maintained from Grantee's facilities by any such public or private facilities.

To have and to hold said utility pipeline easement unto the Grantee, its successors, and assigns, in title forever and the undersigned hereby bind themselves, their heirs, executors, administrators, successors, and assigns to warrant and forever defend all and singular said premises unto the Grantee, its successors, and assigns, against the claims of all persons whomsoever.

It is understood and acknowledged by the undersigned that the person securing this grant is without authority to make any

agreement with regard to the subject matter hereof which is not expressed herein, and that no such agreement will be binding on the Grantee.

IN WITNESS WHEREOF this instrument is signed and sealed this _____ day of _____, 2007.

Henderson County, a body corporate and politic

By: _____
William L. Moyer, Chairman of the Board of
Commissioners of Henderson County

ATTEST

Elizabeth W. Corn, Clerk to the Board

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

I, _____, Notary Public for said County and State, have personal knowledge of the identity of Elizabeth W. Corn, and hereby certify that said Elizabeth W. Corn, Clerk to the Board, personally appeared before me this day and voluntarily acknowledged that she is Clerk to the Board of Commissioners of Henderson County and that William L. Moyer is the Chairman of the Board of Commissioners of Henderson County, and that by authority duly given and as the act of Henderson County, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of Henderson County, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the _____ day of _____, 2007.

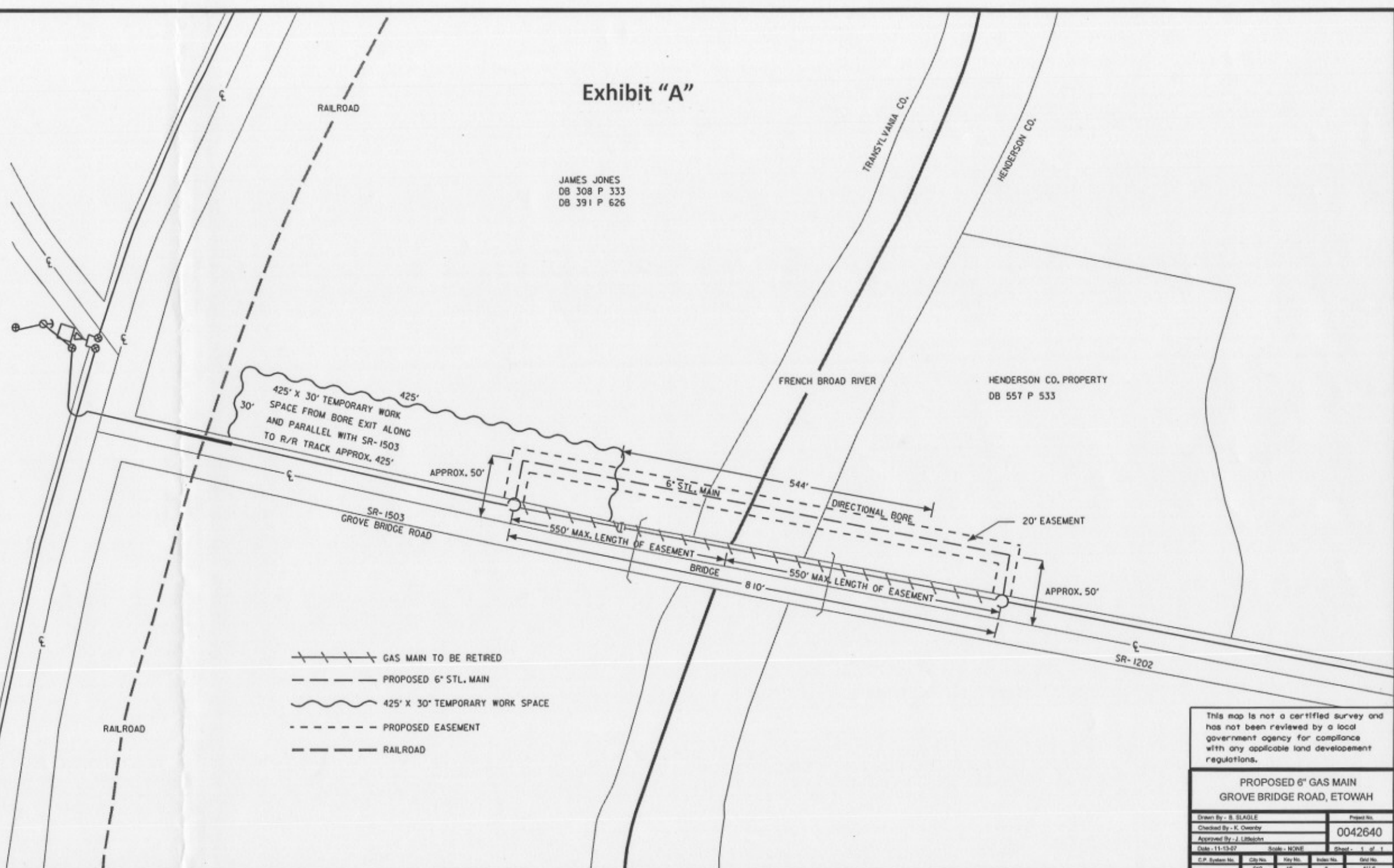
Notary Public
Print Name: _____
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: _____

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

Exhibit "A"

JAMES JONES
DB 308 P 333
DB 391 P 626



- GAS MAIN TO BE RETIRED
- PROPOSED 6" STL. MAIN
- 425' X 30' TEMPORARY WORK SPACE
- PROPOSED EASEMENT
- RAILROAD

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

| | | | |
|---|----------------|----------------|----------|
| PROPOSED 6" GAS MAIN GROVE BRIDGE ROAD, ETOWAH | | | |
| Drawn By - B. SLAGLE | Project No. | | |
| Checked By - K. Overby | 0042640 | | |
| Approved By - J. Littlejohn | | | |
| Date - 11-13-07 | Scale - NHP | Sheet - 1 of 1 | |
| C.P. System No. | City No. | Sty No. | Dist No. |
| | 50 | 16 | 6 |
| | | | ALL-6 |

Vicinity Map, PSNC Easement

