any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. <u>Mitigation</u>. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) - (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring

requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. <u>Safety of Impoundment Structures</u>. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been

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independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. <u>Water Quality</u>. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. <u>Coastal Zone Management</u>. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. <u>Regional and Case-By-Case Conditions</u>. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. <u>Transfer of Nationwide Permit Verifications</u>. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

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30. <u>Compliance Certification</u>. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. <u>Pre-Construction Notification</u>. (a) <u>Timing</u>. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) <u>Contents of Pre-Construction Notification</u>: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate

that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) <u>Agency Coordination</u>: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a

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waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. If the proposed activity requires a PCN and will result in a loss of greater than 1/10acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (a) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to

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seek authorization under an individual permit; (b) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (c) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

#### E. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project.

#### F. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

<u>Compensatory mitigation</u>: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

<u>Currently serviceable</u>: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

<u>Enhancement</u>: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the

water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

<u>High Tide Line</u>: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

<u>Historic Property</u>: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

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<u>Non-tidal wetland</u>: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

<u>Perennial stream</u>: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

<u>Practicable</u>: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

<u>Pre-construction notification</u>: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

<u>Preservation</u>: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

<u>Re-establishment</u>: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

<u>Rehabilitation</u>: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

<u>Restoration</u>: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

<u>Riffle and pool complex</u>: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections

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of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

<u>Riparian areas</u>: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

<u>Stormwater management</u>: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

<u>Stormwater management facilities</u>: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

<u>Stream bed</u>: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

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Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent - meaning bordering, contiguous, or neighboring - to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

#### ADDITIONAL INFORMATION

This nationwide permit is effective March 19, 2012, and expires on March 18, 2017.

Information about the U.S. Army Corps of Engineers regulatory program, including nationwide permits, may also be accessed at http://www.swf.usace.army.mil/regulatory or http://www.usace.aumy.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx

#### NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS FOR THE STATE OF TEXAS

#### The following regional conditions apply within the entire State of Texas:

1. Compensatory mitigation is required at a minimum one-for-one ratio for all special aquatic site losses that exceed 1/10 acre and require pre-construction notification (PCN), and for all losses to streams that exceed 300 linear feet and require PCN, unless the appropriate District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement.

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2. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, 44, 51, and 52, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31, Pre-Construction Notification (PCN). The Corps of Engineers (Corps), except for the Tulsa District, will coordinate with the resource agencies as specified in NWP General Condition 31(d) (PCN). The habitat types or areas are:

a. Pitcher Plant Bogs: Wetlands typically characterized by an organic surface soil layer and include vegetation such as pitcher plants (<u>Sarracenia</u> sp.), sundews (<u>Drosera</u> sp.), and sphagnum moss (<u>Sphagnum</u> sp.).

b. Bald Cypress-Tupelo Swamps: Wetlands comprised predominantly of bald cypress trees (<u>Taxodium distichum</u>), and water tupelo trees (<u>Nyssa aquatica</u>), that are occasionally or regularly flooded by fresh water. Common associates include red maple (<u>Acer rubrum</u>), swamp privet (<u>Forestiera acuminata</u>), green ash (<u>Fraxinus pennsylvanica</u>) and water elm (<u>Planera aquatica</u>). Associated herbaceous species include lizard's tail (<u>Saururus cernuus</u>), water mermaid weed (<u>Proserpinaca spp.</u>), buttonbush (<u>Cephalanthus</u> occidentalis) and smartweed (<u>Polygonum spp.</u>). (Eyre, F. H. Forest Cover Types of the United

States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Bethesda, Maryland 20814-2198. Library of Congress Catalog Card No. 80-54185)

3. For all activities proposed for authorization under NWP 12 that involve a discharge of fill material associated with mechanized land clearing in a forested wetland, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification) prior to commencing the activity.

4. For all activities proposed for authorization under NWP 16, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification), and work cannot begin under NWP 16 until the applicant has received written approval from the Corps.

#### The following regional conditions apply only within the Fort Worth District in the State of Texas:

5. For all discharges proposed for authorization under all NWPs, into the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 31. The Corps will coordinate with the resource agencies as specified in NWP General Condition 31(d) (Pre-Construction Notification).

6. For all discharges proposed for authorization under NWP 43 that occur in forested wetlands, the applicant shall notify the Fort Worth District Engineer in accordance with the General Condition 31 (Pre-Construction Notification).

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7. For all discharges proposed for authorization under any nationwide permit in Dallas, Denton, and Tarrant Counties that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), the applicant shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website <u>www.swf.usace.army.mil</u> (select "Permits").

8. Federal Projects. The applicant shall notify the Forth Worth District Engineer in accordance with the NWP General Condition 31, Pre-Construction Notification (PCN) for any regulated activity where the applicant is proposing work that would result in the modification or alteration of any completed Corps of Engineer projects that are either locally or federally maintained and for work that would occur within the conservation pool or flowage easement of any Corps of Engineers lake project. PCN's cannot be deemed complete until such time as the Corps has made a determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10, 33 CFR Part 320, Section 320.4.

9. Invasive and Exotic Species. Best management practices are required where practicable to reduce the risk of transferring invasive plant and animal species to or from project sites. Information concerning state specific lists and threats can be found at: <u>http://www.invasivespeciesinfo.gov/unitedstates/tx.shtml</u>. Best management practices can be found at: <u>http://www.invasivespeciesinfo.gov/toolkit/prevention.shtml</u>. Known zebra mussel waters within can be found at: <u>http://nas.er.usgs.gov/queries/zmbyst.asp</u>.

10. For all discharges proposed for authorization under NWPs 51 and 52, the Corps will provide the PCN to the US Fish and Wildlife Service as specified in NWP General Condition 31(d)(2) for its review and comments.

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16. <u>Wild and Scenic Rivers</u>. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. <u>Tribal Rights</u>. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. <u>Endangered Species</u>. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete preconstruction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an

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US Army Corps of Engineers Fort Worth District General Recommendations for Department of the Army Permit Submittals June 11, 2001



The following recommendations from the U.S. Army Corps of Engineers (USACE), Fort Worth District, specify information that should be submitted with project proposals for review of permitting requirements under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899:

1. The purpose of, and need for, the project.

2. A delineation and description of wetlands and other waters of the United States in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at http://www.wes.army.mil/el/wetlands/wlpubs.html), including all supplemental guidance (currently includes guidance dated October 7, 1991, and March 6, 1992). The supplemental guidance is included in the on-line version and may also be obtained for more UDACE.

the on-line version and may also be obtained from your USACE district office. In addition, include the width and depth of the water body and the waterward distance of any structures from the existing shoreline.

3. A vicinity map (e.g., county map, USGS topographic map, etc.) showing the location of all temporary and permanent elements of the project, including the route of the entire highway or road, borrow pit(s), disposal site(s), staging area(s), etc. This map, or an additional map, should show the project area in relation to nearby highways and other roads, and other pertinent features. A ground survey is not required to obtain this information. (All maps and drawings must be submitted on 8½ by 11 inch sheets.)

4. Plan, profile, and cross-section views of all work (fills, excavations, structures, etc.), both permanent and temporary, in, or adjacent to, waters of the United States, including wetlands, and a description of the proposed activities and structures, such as the dimensions and/or locations of highways and roads (both temporary and permanent), coffer dams, equipment ramps, borrow pits, disposal areas, staging areas, haul roads, and other project related areas within the USACE permit area(s). The permit area(s) includes all waters of the United States affected by activities associated with the project, as well as any additional area of non-waters of the United States in the immediate vicinity of, directly associated with, and/or affected by, activities in waters of the United States. The USACE permit area(s) includes borrow pits, disposal areas, staging areas, etc. in many cases. A description of the proposed work should include such information as the height, width, and length of structures and fills, widths of cleared rights-of-way, location of all affected areas of waters of the United States, and the size and spacing of culverts, bridges and other crossings of waters of the United States. (All maps and drawings must be submitted on 8½ by 11 inch sheets.)

5. The volume of material proposed to be discharged into and/or excavated from waters of the United States and the proposed type and source of the material.

6. A written discussion of the alternatives considered and the rationale for selecting the proposed alternative as the least environmentally damaging practicable alternative. Practicable alternatives that do not involve a discharge into a special aquatic site, such as wetlands, are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise. The package should also include documentation that the amount of area impacted is the minimum necessary to accomplish the project.

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The U.S. Army Corps of Engineers Regulatory Program Overview	Page 2 c	of 2	2
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7. An assessment of the adverse and beneficial effects, both permanent and temporary, of the proposed work and documentation that the work would result in no more than a minimal adverse impact on the aquatic environment.

8. A compensatory mitigation plan for unavoidable adverse impacts to the aquatic environment. This plan should include a description of proposed appropriate and practicable actions that would restore, enhance, protect, and/or replace the functions and values of the aquatic ecosystem unavoidably lost in the project area because of the proposed work.

9. A discussion documenting whether any species listed as endangered or threatened under the Endangered Species Act might be affected by, or found in the vicinity of, the USACE permit area for the proposed project. Direct coordination with the FWS concerning the potential impact of the entire project on endangered and threatened species is strongly encouraged.

10. A discussion documenting whether any cultural resources, particularly those historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), would be affected by, or are in the vicinity of, the USACE permit area for the proposed project.

11. Documentation that any permanent above-grade fills in waters of the United States within the 100-year floodplain comply with FEMA, or FEMA-approved local, floodplain development requirements.

12. The applicant should include any other relevant information, including information on hydrology and hydraulics.

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US Army Corps of Engineers Fort Worth District General Recommendations for Department of the Army Permit Submittals for Linear Projects July 28, 2003



- 1. A detailed project description.
- 2. A large-scale map showing the entire route of the project.
- 3. The proposed route of the project on 8½ by 11-inch copies of 7.5-minute United States Geological Survey (USGS) quadrangle maps, national wetland inventory maps, published soil survey maps, scaled aerial photographs, and/or other suitable maps. Identify all base maps, (e.g. "Fort Worth, Texas" 7.5-minute USGS quadrangle, Natural Resources Conservation Service Tarrant County Soil Survey, sheet 10). Clearly mark (such as by circling) and number the location of each proposed linear project crossing of a water of the United States and any appurtenant structure(s) in waters of the United States include streams and rivers; most lakes, ponds, mudflats, sandflats, wetlands, sloughs, and wet meadows; abandoned sand, gravel, and construction pits, and similar areas.
- 4. For each potential linear project crossing or appurtenant structure in a water of the United States, the following site specific information when applicable:
  - a. 7.5-minute USGS quadrangle map name, universal transverse mercator (UTM) coordinates, county or parish, waterway name;
  - b. a brief characterization of the crossing area (stream, forested wetland, non-forested wetland, etc.) including the National Wetland Inventory classification and soil series;
  - c. distance between ordinary high water marks;
  - d. proposed method of crossing (bore, trench, fill with culvert, fill with bridge, etc.);
  - c. length of proposed crossing;
  - f. width of temporary and permanent rights-of-way;
  - g. type and amount of dredged or fill material proposed to be discharged;
  - h. acreage of proposed temporary and permanent adverse impacts to waters of the United States, including wetlands; and
  - i. a typical cross-section.

Please refer to the "General Recommendations for Department of the Army Permit Submittals" for additional details about what to submit for linear projects. Additional information, including more detailed jurisdictional determination data, may be needed to complete the Corps evaluation of a project in some cases. We encourage you to consult with a qualified specialist (biologist, ecologist or other specialist qualified in preliminary jurisdictional determinations) who is familiar with the 1987 Corps of Engineers Wetlands Delineation Manual and the USACE Regulatory Program (33 CFR Parts 320-331).

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# BURNS MEDONNELL

October 27, 2015

Mr. Salvador Salinas State Conservationist Natural Resource Conservation Service 101 S Main St Temple, TX 76501

Re: Rusk - Panola Transmission Project

Dear Mr. Salinas:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

Enclosed with this letter is a map depicting the study area for the Project. Burns & McDonnell is requesting your assistance inventorying the human and natural resources in the Project area to identify any routing constraints or opportunities within the area that should be considered as part of the Project. The new transmission line in the Project, and the subject of the CCN application, will be double circuit, 345-kV AC. Routing constraints include those areas or resources which may not be compatible with transmission line construction, such as airports, protected species habitat, or dense residential areas. Route opportunities include such things as previously disturbed areas, industrial corridors, and existing utility rights-of-way. Your input will assist the project team in developing preliminary alternative routes that take advantage of opportunities while minimizing potential environmental and land use impacts, including the following:

- Land use (current or proposed land development projects, park/recreation areas, etc.)
- Aesthetics
- Water quality and wetlands
- Soils and geology
- Wildlife, vegetation, and fisheries (including threatened and endangered species)
- Socioeconomics (population, employment, growth, current/future development)
- Cultural resources (historic and archaeological)
- Transportation and roads (airport and roadway expansions, construction, operations, and maintenance)

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# BURNS MEDONNELL

Mr. Salvador Salinas Natural Resource Conservation Service October 27, 2015 Page 2

In addition to the above requested items, we are also requesting information regarding any permits or any type of approval for construction of the Project within your jurisdiction.

Your input is important. The information we collect will be used to help Burns & McDonnell develop alternative routes that are compatible with existing and planned land uses as well environmentally compatible. We request that responses be submitted by Monday, November 30<sup>th</sup> to allow us time to incorporate the information into the study and CCN application. Additional Project information can be found at the following website: <u>http://www.ruskpanolatransmissionproject.com/</u>

We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

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Dusty Werth Senior Environmental Scientist

DEW

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October 27, 2015

Mr. Jerome Faulkner, PhD National Easement Program Specialist Natural Resource Conservation Service 1400 Independence Ave SW, Room 6812-S Washington, DC 20250

Re: Rusk - Panola Transmission Project

Dear Mr. Faulkner, PhD:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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- Transportation and roads (airport and roadway expansions, construction, operations, and maintenance)

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Mr. Jerome Faulkner, PhD Natural Resource Conservation Service October 27, 2015 Page 2

In addition to the above requested items, we are also requesting information regarding any permits or any type of approval for construction of the Project within your jurisdiction.

Your input is important. The information we collect will be used to help Burns & McDonnell develop alternative routes that are compatible with existing and planned land uses as well environmentally compatible. We request that responses be submitted by Monday, November 30<sup>th</sup> to allow us time to incorporate the information into the study and CCN application. Additional Project information can be found at the following website: <u>http://www.ruskpanolatransmissionproject.com/</u>

We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

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Dusty Werth Senior Environmental Scientist

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Natural Resources Conservation Service

State Office

101 S. Main Street Temple, TX 76501 Voice 254.742.9800 Fax 254.742.9819 November 13, 2015

Burns and McDonnell 9400 Ward Parkway Kansas City, Missouri 64114

Attention: Dusty Werth

Subject: LNU-Farmland Protection Proposed Rusk-Panola Transmission Line Project Rusk County, Texas

We have reviewed the information provided in your correspondence dated October 27, 2015 concerning the transmission line project in Rusk County, Texas. This review is part of the National Environmental Policy Act (NEPA) evaluation for Public Utilities Commission of Texas (PUCT). We have evaluated the proposed site as required by the Farmland Protection Policy Act (FPPA).

Based on the information provided a full evaluation of the proposed project could not be completed. We will require exact location and acres of the proposed project.

If you have any questions, please contact me at (254) 742-9826 or by email at <u>micki.yoder@tx.usda.gov</u>.

Sincerely,

Micki Yoder NRCS Soil Conservationist

Attachment

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# BURNS MEDONNELL

October 27, 2015

Mr. Ron Curry Regional Administrator Environmental Protection Agency 1445 Ross Ave, Suite 1200 Dallas, TX 75202

Re: Rusk - Panola Transmission Project

Dear Mr. Curry:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

Enclosed with this letter is a map depicting the study area for the Project. Burns & McDonnell is requesting your assistance inventorying the human and natural resources in the Project area to identify any routing constraints or opportunities within the area that should be considered as part of the Project. The new transmission line in the Project, and the subject of the CCN application, will be double circuit, 345-kV AC. Routing constraints include those areas or resources which may not be compatible with transmission line construction, such as airports, protected species habitat, or dense residential areas. Route opportunities include such things as previously disturbed areas, industrial corridors, and existing utility rights-of-way. Your input will assist the project team in developing preliminary alternative routes that take advantage of opportunities while minimizing potential environmental and land use impacts, including the following:

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- Cultural resources (historic and archaeological)
- Transportation and roads (airport and roadway expansions, construction, operations, and maintenance)

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# BURNS MEDONNELL

Mr. Ron Curry Environmental Protection Agency October 27, 2015 Page 2

In addition to the above requested items, we are also requesting information regarding any permits or any type of approval for construction of the Project within your jurisdiction.

Your input is important. The information we collect will be used to help Burns & McDonnell develop alternative routes that are compatible with existing and planned land uses as well environmentally compatible. We request that responses be submitted by Monday, November 30<sup>th</sup> to allow us time to incorporate the information into the study and CCN application. Additional Project information can be found at the following website: <u>http://www.ruskpanolatransmissionproject.com/</u>

We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

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Dusty Werth Senior Environmental Scientist

DEW

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### BURNS MEDONNELL

October 27, 2015

Mr. Kelvin Solco Southwest Regional Administrator Federal Aviation Administration 2601 Meacham Blvd Fort Worth, TX 76137

Re: Rusk – Panola Transmission Project

Dear Mr. Solco:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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- Socioeconomics (population, employment, growth, current/future development)
- Cultural resources (historic and archaeological)
- Transportation and roads (airport and roadway expansions, construction, operations, and maintenance)

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Mr. Kelvin Solco Federal Aviation Administration October 27, 2015 Page 2

In addition to the above requested items, we are also requesting information regarding any permits or any type of approval for construction of the Project within your jurisdiction.

Your input is important. The information we collect will be used to help Burns & McDonnell develop alternative routes that are compatible with existing and planned land uses as well environmentally compatible. We request that responses be submitted by Monday, November 30<sup>th</sup> to allow us time to incorporate the information into the study and CCN application. Additional Project information can be found at the following website: <u>http://www.ruskpanolatransmissionproject.com/</u>

We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

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Dusty Werth Senior Environmental Scientist

DEW

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Southwest Region 10101 Hillwood Parkway Fort Worth, TX 76177

#### NOV 30 2015

Dusty Werth Burns & McDonnell 9400 Ward Parkway Kansas City, MO 64114

Dear Mr. Werth:

We recently received your letter dated October 27, 2015, concerning the proposed Rusk to Panola Transmission Project. As of August 10, 2015, I no longer represent the Airports Division or the Texas Airport Development Office (ADO). Mr. Edward Agnew is the current manager of the Texas ADO. His telephone number is (817) 222-5659.

Please refer to Title 14 Code of Federal Regulations (14 CFR) Part 77, Objects that Affect the Navigable Airspace to determine if the design and siting of the proposed transmission line will have an impact on the National Airport System or the National Airspace System. You can also visit oeaaa.faa.gov to learn more about obstruction evaluation and airport airspace analysis.

Sincerely

Kelvin L. Solco Regional Administrator Southwest Region

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### BURNS MEDONNELL

October 27, 2015

Ms. Sue Masica Regional Director National Parks Service 12795 Alameda Pkwy Denver, CO 80225

Re: Rusk - Panola Transmission Project

Dear Ms. Masica:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

Enclosed with this letter is a map depicting the study area for the Project. Burns & McDonnell is requesting your assistance inventorying the human and natural resources in the Project area to identify any routing constraints or opportunities within the area that should be considered as part of the Project. The new transmission line in the Project, and the subject of the CCN application, will be double circuit, 345-kV AC. Routing constraints include those areas or resources which may not be compatible with transmission line construction, such as airports, protected species habitat, or dense residential areas. Route opportunities include such things as previously disturbed areas, industrial corridors, and existing utility rights-of-way. Your input will assist the project team in developing preliminary alternative routes that take advantage of opportunities while minimizing potential environmental and land use impacts, including the following:

- Land use (current or proposed land development projects, park/recreation areas, etc.)
- Aesthetics
- Water quality and wetlands
- Soils and geology
- Wildlife, vegetation, and fisheries (including threatened and endangered species)
- Socioeconomics (population, employment, growth, current/future development)
- Cultural resources (historic and archaeological)
- Transportation and roads (airport and roadway expansions, construction, operations, and maintenance)

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### BURNS MEDONNELL

Ms. Sue Masica National Parks Service October 27, 2015 Page 2

In addition to the above requested items, we are also requesting information regarding any permits or any type of approval for construction of the Project within your jurisdiction.

Your input is important. The information we collect will be used to help Burns & McDonnell develop alternative routes that are compatible with existing and planned land uses as well environmentally compatible. We request that responses be submitted by Monday, November 30<sup>th</sup> to allow us time to incorporate the information into the study and CCN application. Additional Project information can be found at the following website: <u>http://www.ruskpanolatransmissionproject.com/</u>

We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

SustE Muts

Dusty Werth Senior Environmental Scientist

DEW

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#### BURNS MEDONNELL

October 27, 2015

Mr. John Herron Director of Conservation The Nature Conservancy 318 Congress Avenue Austin, TX 78701

Re: Rusk – Panola Transmission Project

Dear Mr. Herron:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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## BURNS MEDONNELL

Mr. John Herron The Nature Conservancy October 27, 2015 Page 2

In addition to the above requested items, we are also requesting information regarding any permits or any type of approval for construction of the Project within your jurisdiction.

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We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

DustEMut

Dusty Werth Senior Environmental Scientist

DEW

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# BURNS MEDONNELL

October 27, 2015

The Nature Conservancy P.O. Box 1440 San Antonio, TX 78295

Re: Rusk - Panola Transmission Project

Dear :

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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#### BURNS MEDONNELL

Mr. John Herron The Nature Conservancy October 27, 2015 Page 2

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Sincerely,

DustEllerts

Dusty Werth Senior Environmental Scientist

DEW

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#### BURNS MEDONNELL

October 27, 2015

Mr. Dennis Cooley District Engineer Texas Department of Transportation 2709 W Front Street Tyler, TX 75702

Re: Rusk – Panola Transmission Project

Dear Mr. Cooley:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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### BURNS MEDONNELL

Mr. Dennis Cooley Texas Department of Transportation October 27, 2015 Page 2

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We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

DustEMut

Dusty Werth Senior Environmental Scientist

DEW



November 9, 2015

Mr. Dusty Werth Senior Environmental Scientist Burns-McDonnell 9400 Ward Parkway Kansas City, MO 64114

Re: Rusk-Panola Transmission Project

Dear Mr. Werth:

We have reviewed your study area boundary map for the Rusk to Panola Transmission Project and have identified the following environmental and land use constraints associated with existing or proposed transportation projects within the project study area:

- We will be conducting ongoing preventative maintenance and rehabilitation activities on the state facilities within this boundary as pavement conditions warrant.
- Poles with bases great than 36 inches in diameter shall not be placed within the right-of-way.
- Overhead lines shall not be located below a bridge structure. If rerouting the line completely
  around the structure and approaches is not feasible, a minimum horizontal distance of 150 feet
  from the bridge abutment joint and a minimum vertical clearance of 30 feet above the point of
  crossing the bridge pavement and retaining walls is required to ensure adequate safety for the
  construction and maintenance operations.
- In accordance with Texas Administrative Code, Title 43, Part I, Chapter 21, Subchapter C, the minimum vertical clearance above state highways shall be 22 feet, and 18 feet for communication and cable television lines. These clearances may be greater, as required by National Electric Safety Code and governing laws. Overhead electric, communication, and cable television line crossings at bridges or grade separation structures are prohibited. New utility lines crossing the highway shall be installed at approximately 90 degrees to the centerline of the highway. Please review the Texas Administrative Code for further utility accommodation requirements.

Thank you for providing this information and allowing us to comment. If you have any other questions or concerns, please contact Steven Hall, Director of Maintenance, at (903) 510-9244.

Sincerel Dennis R. Cooley, P.E. Tyler District Engineer

VIA

cc: Steven W. Hall, P.E., Director of Maintenance, Tyler, TxDOT

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#### BURNS MEDONNELL

October 27, 2015

Ms. Cheryl Flood District Engineer Texas Department of Transportation 1805 N. Timberland Drive Lufkin, TX 75901

Re: Rusk - Panola Transmission Project

Dear Ms. Flood:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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# BURNS MEDONNELL

Ms. Cheryl Flood Texas Department of Transportation October 27, 2015 Page 2

In addition to the above requested items, we are also requesting information regarding any permits or any type of approval for construction of the Project within your jurisdiction.

Your input is important. The information we collect will be used to help Burns & McDonnell develop alternative routes that are compatible with existing and planned land uses as well environmentally compatible. We request that responses be submitted by Monday, November 30<sup>th</sup> to allow us time to incorporate the information into the study and CCN application. Additional Project information can be found at the following website: <u>http://www.ruskpanolatransmissionproject.com/</u>

We appreciate your assistance. If you have any questions or require additional information please contact me at (816) 822-3446 or dwerth@burnsmcd.com.

Sincerely,

JustEMut

Dusty Werth Senior Environmental Scientist

DEW



October 27, 2015

Mr. Robert Ratcliff District Engineer Texas Department of Transportation 701 E Main Street Atlanta, TX 75551

Re: Rusk - Panola Transmission Project

Dear Mr. Ratcliff:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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# BURNS MEDONNELL

Mr. Robert Ratcliff Texas Department of Transportation October 27, 2015 Page 2

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Sincerely,

SustE Mut

Dusty Werth Senior Environmental Scientist

DEW



November 5, 2015

Dusty Werth Senior Environmental Scientist Burns & McDonnell 9400 Ward Parkway Kansas City, MO 64114

Re: Rusk-Panola Transmission Project

Dear Mr. Werth:

This letter is in response to your October 27, 2015 letter regarding the study you are conducting for the Rusk to Panola Transmission Project. We appreciate you notifying us of this proposed project. As always, the Texas Department of Transportation will work with you regarding utility accommodations on State Right-of-Way. We will follow TxDOT policies and procedures and Title 43, Chapter 21, Sub-chapter C of the Texas Administrative Code which governs the placement of utilities on State Right-of-Way. If you have any questions regarding the approval process feel free to contact my office at any time.

Feel free to call me at 903-799-1248 or e-mail me at jason.dupree@txdot.gov if you have any questions.

Sincerely,

Jason Dupree, P.E. Atlanta District Director of Operations

OUR GOALS MAINTAIN A SAFE SYSTEM • ADDRESS CONGESTION • CONNECT TEXAS COMMUNITIES • BEST IN CLASS STATE AGENCY

An Equal Opportunity Employer

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# BURNS

October 27, 2015

Mr. Mark Wolfe State Historic Preservation Officer Texas Historical Commission 108 W 16th St Austin, TX 78701

Re: Rusk - Panola Transmission Project

Dear Mr. Wolfe:

Garland Power and Light and Rusk Interconnection LLC (Rusk) are developing the Rusk to Panola Transmission Project (Project) in order to interconnect the Electric Reliability Council of Texas (ERCOT) transmission grid to the Southern Cross electric transmission line that is planned to connect ERCOT and the southeastern United States. We are requesting your input on the Project, which will be submitted to the Public Utility Commission of Texas for approval of a Certificate of Convenience and Necessity (CCN). The Project will begin at a new switching station in Rusk County and extend eastward for approximately 40 miles to a new switchyard adjacent to a new converter station, both to be located at the border of Texas and Louisiana (see enclosed map of the Project study area). Rusk and Garland have retained Burns & McDonnell to assist in the alternative route development and route selection for the Project.

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