history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is 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.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for 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, 38, and 54, notification is required in accordance with general condition 32, 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. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than 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 individual and cumulative adverse environmental effects are no more than 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 environmental effects of the proposed activity are no more than minimal, and provides an activity-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 only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored 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 restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting 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 minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) 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 no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) 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) through (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)).

(5) 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.

(6) 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 (see 33 CFR 332.4(c)(1)(ii)).

(g) 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 NWP activity 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 an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must

consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible 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.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert 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 environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. 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 independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. 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. Coastal Zone Management. 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. Regional and Case-By-Case Conditions. 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. Transfer of Nationwide Permit Verifications. 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)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of 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 activity 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(l)(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 activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. 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 are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might 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 Act (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) Contents of Pre-Construction Notification: 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 activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and 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, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the

need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity 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);

(5) 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 wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) 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 environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will 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, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(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 an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (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 activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) 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; (ii) 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 stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, 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 notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental 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 of the proposed activity are no more than 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.

(4) 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.

(5) 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. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States 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 waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. 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 or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than 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 environmental effects are no more than 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 the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity 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 environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory 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 (see general condition 31).

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.

Compensatory mitigation: 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.

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

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: 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.

High Tide Line: 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.

Historic Property: 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 acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. 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 that do not require Department of the Army authorization, such as 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.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. 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 flowing or standing 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.

Perennial stream: 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.

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

Pre-construction notification: 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.

Preservation: 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.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Re-establishment: 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.

Rehabilitation: 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.

Restoration: 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.

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

Riparian areas: Riparian areas are lands next 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.

Stormwater management: 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.

Stormwater management facilities: 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.

Stream bed: 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.

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 jurisdictional wetland that is inundated by tidal waters. 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.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

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 wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any 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, 2017, and expires on March 18, 2022.

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

2017 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS FOR THE STATE OF TEXAS

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

1. For all discharges proposed for authorization under Nationwide Permits (NWP) 3, 6, 7, 12, 14, 18, 19, 21, 23, 25, 27, 29, 39, 40, 41, 42, 43, 44, 49, 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 32, Pre-Construction Notification (PCN). The Corps of Engineers (Corps) will coordinate with the resource agencies as specified in NWP General Condition 32(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 (*Sarracenia* spp.) and/or sundews (*Drosera* spp.).

    b. Bald Cypress-Tupelo Swamps: Wetlands dominated by bald cypress (*Taxodium distichum*) and/or water tupelo (*Nyssa aquatic*).

2. For all activities proposed for authorization under any Nationwide Permit (NWP) at sites approved as compensatory mitigation sites (either permittee-responsible, mitigation bank and/or in-lieu fee) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification prior to commencing the activity.

3. For all activities proposed for authorization under NWP 16, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) and must obtain an individual water quality certification (WQC) from the TCEQ. Work cannot begin under NWP 16 until the applicant has received written approval from the Corps and WQC.

NOTE: For all activities proposing to use equipment that has operated or been stored in a water body on the Texas list of zebra mussel (*Dreissena polymorpha*) infected water bodies, equipment should be decontaminated prior to relocation in accordance with Texas Administrative Code, Title 31, Part 2, Chapter 57, Subchapter A. The following decontamination Best Management Practices (BMPs), as a minimum, are indicated:

    a. Clean: Clean both the inside and outside of equipment and gear, by removing all plants, animals, and mud and thoroughly washing the equipment using a high pressure spray nozzle.

    b. Drain: Drain all water from receptacles before leaving the area, including livewells, bilges, ballast, and engine cooling water on boats.

    c. Dry: Allow time for your equipment to dry completely before relocating in other waters. Equipment should be dried prior to relocation. High temperature pressure washing (greater than or equal to 140F) or professional cleaning may be substituted for drying time.

The following regional condition only applies within the Albuquerque, Fort Worth, and Galveston Districts:

4. For all activities proposed for authorization under Nationwide Permit (NWP) 12 that involve a discharge of fill material associated with mechanized land clearing of wetlands dominated by native woody shrubs, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 – Pre-Construction Notification prior to commencing the activity. For the purpose of this regional condition, a shrub dominated wetland is characterized by woody vegetation less than 3.0 inches in diameter at breast height but greater than 3.2 feet in height, which covers 20% or more of the area. Woody vines are not included.

The following regional conditions apply within the Albuquerque District.

5. Nationwide Permit (NWP) 23 – Approved Categorical Exclusions. A pre-construction notification (PCN) to the District Engineer in accordance with General Condition 32 - PCN is required for all proposed activities under NWP 23.

6. Nationwide Permit (NWP) 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under NWP 27 that require pre-construction notification, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the Corps. (See "NWP 27 Guidelines" at http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx).

7. Channelization. Nationwide Permit (NWP) General Condition 9 for Management of Water Flows is amended to add the following: Projects that would result in permanent channelization to previously un-channelized streams require pre-construction notification to the Albuquerque District Engineer in accordance with NWP General Condition 32 – Pre-Construction Notification.

8. Dredge and Fill Activities in Intermittent and Perennial Streams, and Special Aquatic Sites: For all activities subject to regulation under the Clean Water Act Section 404 in intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), pre-construction notification (PCN) to the Albuquerque District Engineer is required in accordance with Nationwide Permit General Condition 32 - PCN.

9. Springs. For all discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs located in an aquatic resource, a pre-construction notification (PCN) is required to the Albuquerque District Engineer in accordance with Nationwide Permit General Condition 32 - PCN. A natural spring is defined as any location where ground water emanates from a point in the ground and has a defined surface water connection to another waters of the United States. For purposes of this regional condition, springs do not include seeps or other groundwater discharges which lack a defined surface water connection.

10. Suitable Fill. Use of broken concrete as fill or bank stabilization material is prohibited unless the applicant demonstrates that its use is the only practicable material (with respect to cost, existing technology, and logistics). Any applicant who wishes to use broken concrete as bank stabilization must provide notification to the Albuquerque District Engineer in accordance with Nationwide Permit General Condition 32 - Pre-Construction Notification along with justification for such use. Use of broken concrete with rebar or used tires (loose or formed into bales) is prohibited in all waters of the United States.

The following regional conditions apply only within the Fort Worth District.

11. For all discharges proposed for authorization under all Nationwide Permits (NWP) 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 32 – Pre-Construction Notification (PCN). The Fort Worth District will coordinate with the resource agencies as specified in NWP General Condition 32(d) - PCN.

12. Compensatory mitigation is generally required for losses of waters of the United States that exceed 1/10 acre and/or for all losses to streams that exceed 300 linear feet. Loss is defined in Section F of the Nationwide Permits (NWP). Mitigation thresholds are cumulative irrespective of aquatic resource type at each single and complete crossing. Compensatory mitigation requirements will be determined in accordance with the appropriate district standard operating procedures and processes. The applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification prior to commencing the activity.

13. For all activities proposed for authorization under Nationwide Permits (NWP) 12, 14 and/or 33 that involve a temporary discharge of fill material into 1/2 acre or more of emergent wetland OR 1/10 acre of scrub-shrub/forested wetland, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification prior to commencing the activity.

14. For all discharges proposed for authorization under Nationwide Permits (NWP) 51 and 52, the Fort Worth District will provide the pre-construction notification (PCN) to the U.S. Fish and Wildlife Service as specified in NWP General Condition 32(d)(2) - PCN for its review and comments.

The following regional conditions apply only within the Galveston District.

15. No Nationwide Permits (NWP), except NWP 3, shall be used to authorize discharges into the habitat types or specific areas listed in paragraphs a through c, below. The applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification prior to commencing the activity under NWP 3.

a. Mangrove Marshes. For the purpose of this regional condition, Mangrove marshes are those waters of the United States that are dominated by mangroves (*Avicennia* spp., *Laguncuaria* spp., *Conocarpus* spp., and *Rhizophora* spp.).
b. Coastal Dune Swales. For the purpose of this regional condition, coastal dune swales are wetlands and/or other waters of the United States located within the backshore and dune areas in the coastal zone of Texas. They are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting tidal waters of the United States.
c. Columbia Bottomlands. For the purpose of this regional condition, Columbia bottomlands are defined as waters of the United States that are dominated by bottomland hardwoods in the Lower Brazos and San Bernard River basins identified in the 1997 Memorandum of Agreement between the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resource Conservation Service, and Texas Parks and Wildlife Department for bottomland hardwoods in Brazoria County. (For further information, see http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/)

16. A Compensatory Mitigation Plan is required for all special aquatic site losses, as defined in Section F of the Nationwide Permits (NWP), that exceed 1/10 acre and/or for all losses to streams that exceed 200 linear feet. Compensatory mitigation requirements will be determined in accordance with the appropriate district standard operating procedures and processes. The applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification prior to commencing the activity.

17. For all seismic testing activities proposed for authorization under Nationwide Permit (NWP) 6, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification (PCN). The PCN must state the time period for which the temporary fill is proposed, and must include a restoration plan for the special aquatic sites. For seismic testing under NWP 6 within the Cowardin Marine System, Subtidal Subsystem; as defined by the U.S. Fish and Wildlife Service, Classification of Wetlands and Deepwater Habitats of the United States, December 1979/Reprinted 1992, the Corps will coordinate with the resource agencies in accordance with NWP General Condition 32(d) - PCN.

18. For all activities proposed under Nationwide Permits (NWP) 10 and 11 located in vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectively, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification. Examples include, but are not limited to: seagrass beds, oyster reefs, and coral reefs.

19. Nationwide Permit 12 shall not be used to authorize discharges within 500 feet of vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectively. Examples include, but are not limited to: seagrass beds, oyster reefs, and coral reefs.

20. For all activities proposed for authorization under Nationwide Permit 12 that involve underground placement below a non-navigable river bed and/or perennial stream bed there shall a minimum cover of 48 inches (1,219 millimeters) of soil below the river and/or perennial stream thalweg.

21. For all discharges and work proposed below the high tide line under Nationwide Permits (NWP) 14 and 18, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 - Pre-Construction Notification (PCN). The Galveston District will coordinate with the resource agencies in accordance with NWP General Condition 32(d) - PCN.

22. For all activities proposed for authorization under Nationwide Permit (NWP) 33 the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 – Pre-Construction Notification (PCN). The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. Activities causing the temporary loss, as defined in Section F of the NWPs, of more than 0.5 acres of tidal waters and/or 200 linear feet of stream will be coordinated with the agencies in accordance with NWP General Condition 32(d) - PCN.

23. No Nationwide Permits (NWP), except NWPs 3, 16, 20, 22, 37, shall be used to authorize discharges, structures, and/or fill within the standard setback and high hazard zones of the Sabine-Neches Waterway as defined in the Standard Operating Procedure - Permit Setbacks along the Sabine-Neches Waterway. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 - Pre-Construction Notification for all discharge, structures and/or work in medium hazard zones and all NWP 3 applications within the standard setback and high hazard zones of the Sabine-Neches Waterway.

24. No Nationwide Permits (NWP), except 20, 22, and 37, shall be used to authorize discharges, structures, and/or fill within the standard setback exemptions of the Gulf Intracoastal Waterway as defined in the Standard Operating Procedure- Department of the Army Permit Evaluation Setbacks along the Gulf Intracoastal Waterway. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 (Pre-Construction Notification) for all discharges, structures and/or work within the standard setback, shoreward of the standard setback, and/or standard setback exemption zones.

25. The use of Nationwide Permits in the San Jacinto River Waste Pits Area of Concern are revoked. (For further information, see http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/)

26. The use of Nationwide Permits 51 and 52 are revoked within the Galveston District boundaries.

27. Nationwide Permit (NWP) 53 pre-construction notifications will be coordinated with resource agencies as specified in NWP General Condition 32(d) – Pre-construction Notification.

28. For all activities proposed under Nationwide Permits (NWP) 21, 29, 39, 40, 42, 43, 44, and 50 that result in greater than 300 feet of loss in intermittent and/or ephemeral streams, as defined in Section F of the NWPs, require evaluation under an Individual Permit.

The following regional conditions apply only within the Tulsa District.

29. Upland Disposal: Except where authorized by Nationwide Permit 16, material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Tulsa District Engineer.

30. Major Rivers: The prospective permittee shall notify the Tulsa District Engineer for all Nationwide Permit 14 verifications which cross major rivers within Tulsa District. For the purposes of this condition, major rivers include the following: Canadian River, Prairie Dog Town Fork of the Red River, and Red River.

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 on the map. 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.);

   e. 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).

U.S. Army Corps of Engineers (USACE)
Fort Worth District

Nationwide Permit (NWP) Pre-Construction Notification (PCN) Form

This form integrates requirements of the Nationwide Permit Program within the Fort Worth District, including General and Regional Conditions. Please consult instructions included at the end prior to completing this form.

Contents

DESCRIPTION OF NWP 12 – UTILITY LINE ACTIVITIES

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States (U.S.), provided the activity does not result in the loss of greater than 1/2-acre of waters of the U.S for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, into waters of the U.S., provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio and television communication. The term "utility line" does not include activities that drain a water of the U.S., such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the U.S., provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the U.S. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the U.S. to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and

anchors in all waters of the U.S., provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the U.S., provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the U.S. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the U.S. and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the U.S. must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the U.S. even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (Authorities: Sections 10 and 404)

Part I: NWP Conditions and Requirements Checklist

To ensure compliance with the General Conditions (GC), in order for an authorization by a NWP to be valid, please answer the following questions:

1. **Navigation (Applies to Section 10 waters [i.e. navigable waters of the U.S.], see instruction 4 for link to list):**
   - **a.** Does the project cause more than a minimal adverse effect on navigation?
     ☐ Yes ☐ No ☐ N/A
   - **b.** Does the project require the installation and maintenance of any safety lights and signals prescribed by the U.S. Coast Guard on authorized facilities in navigable waters of the U.S.?
     ☐ Yes ☐ No ☐ N/A
   - **c.** Does the Applicant understand and agree that if future operations by the U.S. require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Applicant will be required, upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S.; and no claim shall be made against the U.S. on account of any such removal or alteration?
     ☐ Yes ☐ No ☐ N/A

   If you answered yes to question a. or b. above, or if you answered no to question c. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

2. **Aquatic Life Movements:**
   - **a.** Does the project substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area? ☐ Yes ☐ No
   - **b.** Is the project's primary purpose to impound water? ☐ Yes ☐ No
   - **c.** Will culverts placed in streams be installed to maintain low flow conditions to sustain the movement of those aquatic species? ☐ Yes ☐ No ☐ N/A

   If you answered yes to question a. or b. above, or if you answered no to question c. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

3. **Spawning Areas:**
   - **a.** Does the project avoid spawning areas during the spawning season to the maximum extent practicable? ☐ Yes ☐ No ☐ N/A
   - **b.** Does the project result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area?
     ☐ Yes ☐ No ☐ N/A

   If you answered no to question a. above, or if you answered yes to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

4. **Migratory Bird Breeding Areas:**
   - **a.** Does the project avoid waters of the U.S. that serve as breeding areas for migratory birds to the maximum extent practicable? ☐ Yes ☐ No ☐ N/A

   If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

5. Shellfish Beds:

a. Does the project occur in areas of concentrated shellfish populations? ☐ Yes ☐ No

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

6. Suitable Material:

a. Does the project use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.)? ☐ Yes ☐ No

b. Is the material used for construction or discharged in a water of the U.S. free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act)? ☐ Yes ☐ No

If you answered yes to question a. above, or if you answered no to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

7. Water Supply Intakes:

a. Does the project occur in the proximity of a public water supply intake? ☐ Yes ☐ No

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

8. Adverse Effects From Impoundments:

a. Does the project create an impoundment of water? ☐ Yes ☐ No

b. If you answered yes to question a. above, are the adverse effects (to the aquatic system due to accelerating the passage of water, and/or restricting its flow) minimized to the maximum extent practicable? ☐ Yes ☐ No ☐ N/A

If you answered no to question b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

9. Management of Water Flows:

a. Does the project maintain the pre-construction course, condition, capacity, and location of open waters to the maximum extent practicable, for each activity, including stream channelization and storm water management activities? ☐ Yes ☐ No

b. Will the project be constructed to withstand expected high flows? ☐ Yes ☐ No

c. Will the project restrict or impede the passage of normal or high flows? ☐ Yes ☐ No

If you answered no to question a. or b. above, or if you answered yes to question c. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

10. Fills Within 100-Year Floodplains:

a. Does the project comply with applicable FEMA-approved state or local floodplain management requirements? ☐ Yes ☐ No ☐ N/A

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

11. Equipment:

a. Will heavy equipment working in wetlands or mudflats be placed on mats, or other measures be taken to minimize soil disturbance? ☐ Yes ☐ No ☐ N/A

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

12. Soil Erosion and Sediment Controls:

a. Will the project use appropriate soil erosion and sediment controls and maintain them in effective operating condition throughout construction? ☐ Yes ☐ No

b. Will all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, be permanently stabilized at the earliest practicable date? ☐ Yes ☐ No

c. Be aware that if work will be conducted within waters of the U.S., Applicants are encouraged to perform that work during periods of low-flow or no-flow.

If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

13. Removal of Temporary Fills:

a. Will temporary fills be removed in their entirety and the affected areas returned to pre-construction elevations? ☐ Yes ☐ No ☐ N/A

b. Will the affected areas be revegetated, as appropriate? ☐ Yes ☐ No ☐ N/A

If you answered no to question a. or b. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

14. Proper Maintenance:

a. Will any authorized structure or fill be properly maintained, including maintenance to ensure public safety? ☐ Yes ☐ No

If you answered no to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

15. Single and Complete Project:

a. Does the Applicant certify that the project is a "single and complete project" as defined below? ☐ Yes ☐ No

Single and complete project:

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.

Independent utility: Defined as 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.

16. Wild and Scenic River:

There are no Wild and Scenic Rivers within the geographic boundaries of the Fort Worth District. Therefore, this GC does not apply.

17. Tribal Rights:

a. Will the project or its operation impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights? ☐ Yes ☐ No ☐ N/A

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

18. Endangered Species (see also Box 8 in Part III):

a. Is the project 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 will the project directly or indirectly destroy or adversely modify the critical habitat of such species? ☐ Yes ☐ No

b. Might the project affect any listed species or designated critical habitat? ☐ Yes ☐ No

c. Is any listed species or designated critical habitat in the vicinity of the project? ☐ Yes ☐ No

d. If the project "may affect" a listed species or critical habitat, has Section 7 consultation addressing the effects of the proposed activity been completed? ☐ Yes ☐ No ☐ N/A

If you answered yes to question a. or b. or c. above, or if you answered no to question d. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

19. Migratory Birds and Bald and Golden Eagles:

a. Does the project have the potential to impact nests, nesting sites, or rookeries of migratory birds, bald or golden eagles? ☐ Yes ☐ No ☐ N/A

If you answered yes to question a. above, you are responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to obtain any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act.

20. Historic Properties (see also Box 9 in Part III):

a. Does the project have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties? ☐ Yes ☐ No ☐ N/A

If you answered yes to question a. above, please explain how the project would be in compliance with this GC or be aware that the project would require an individual permit application:

21. Discovery of Previously Unknown Remains and Artifacts:
If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, *you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed.* The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters:
a. Will the project impact critical resource waters, which include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment? ☐ Yes ☐ No

If you answered yes to question a. above, be aware that discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 12 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

23. Mitigation (see also Box 10 in Part III):
a. Will the project include appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal? ☐ Yes ☐ No

If you answered no to question a. above, please include an explanation in Box 10 of why no mitigation would be necessary in order to be in compliance with this GC or be aware that the project would require an individual permit application.

24. Safety of Impoundment Structures:
a. Has the impoundment structure been safely designed to comply with established state dam safety criteria or has it been designed by qualified persons? ☐ Yes ☐ No ☐ N/A

If you answered yes to question a. above, non-federal applicants may be required to provide documentation that the design has been independently reviewed by similarly qualified persons with appropriate modifications to ensure safety. If you answered no, please include an explanation in Box 10 of why the structure is exempt from state dam safety criteria or be aware that the project may require an individual permit application.

25. Water Quality (see also Box 11 in Part III):
a. If in Texas, does the project comply with the conditions of the TCEQ water quality certification for NWP 12? ☐ Yes ☐ No ☐ N/A
b. If in "Indian Country," does the project comply with the conditions of the EPA water quality certification for NWPs? ☐ Yes ☐ No ☐ N/A
c. If in Louisiana, does the project comply with the conditions of the LADEQ water quality certification for NWP 12? ☐ Yes ☐ No ☐ N/A
If you answered no to question a. or b. above, please be aware that the project would require an individual permit application.

26. Coastal Zone Management:
The Fort Worth District does not cover any Coastal Zone; therefore, this GC does not apply.

27. Regional and Case-By-Case Conditions:
See the Regional Conditions checklist to ensure compliance with this GC.

28. Use of Multiple Nationwide Permits:
a. Does the project use more than one NWP for a single and complete project? ☐ Yes ☐ No
b. If you answered yes to question a. above, be aware that unless the project's acreage loss of waters of the U.S. authorized by the NWPs is below the acreage limit of the NWP with the highest specified acreage limit, no NWP can be issued and the project would require an individual permit application.

If you answered yes to question a. above, please explain how the project would be in compliance with this GC and what additional NWP number you intend to use:

29. Transfer of Nationwide Permit Verifications:
a. Does the Applicant agree that if he or she sells the property associated with the nationwide permit verification, the Applicant may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate USACE district office to validate the transfer?
☐ Yes ☐ No

30. Compliance Certification:
a. Does the Applicant agree that if he or she receives the NWP verification from the USACE, they must submit a signed certification regarding the completed work and any required mitigation (the certification form will be sent by the USACE with the NWP verification letter)?
☐ Yes ☐ No

31. Activities Affecting Structure or Works Built by the United States
a. Does the project temporarily or permanently alter and/or occupy a USACE federally authorized Civil Works project? ☐ Yes ☐ No

If you answered yes to question a. above, notification is required in accordance with general condition 32, for any activity that requires permission from the Corps. The district engineer may authorize activities under these NWPs only after a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

32. Pre-Construction Notification:
a. Reason for notification:
- ☐ Mechanized land clearing in a forested wetland.
- ☐ Require a Section 10 permit.
- ☐ Utility line exceeds 500 feet in waters of the U.S., excluding overhead lines.
- ☐ Utility line is within a jurisdictional area (i.e., water of the U.S.), and the utility line runs parallel to or along a stream bed that is within that jurisdictional area.
- ☐ The loss of waters of the U.S. exceeds 1/10 acre.
- ☐ Permanent access roads are constructed above grade in waters of the U.S. for a distance of more than 500 feet.
- ☐ Permanent access roads are constructed in waters of the U.S. with impervious materials.
- ☐ Potential endangered species.
- ☐ Potential historic properties.
- ☐ Discharge into pitcher plant bog or bald cypress-tupelo swamp.
- ☐ Discharge into the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention.

☐ Work that would result in the modification or alteration of any completed Corps of Engineers projects that are either locally or federally maintained or if work would occur within the conservation pool or flowage easement of any Corps of Engineers lake project.
☐ Required by Louisiana Regional Conditions.
☐ Other:

b. Does the Applicant agree that he or she will not begin the project 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. ☐ Yes ☐ No

c. Does the Applicant agree that if the district or division engineer notifies the Applicant in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the Applicant cannot begin the activity until an individual permit has been obtained?
☐ Yes ☐ No

To ensure compliance with the NWP 12-specific requirements please answer the first question regarding all utility line activities and then answer the other questions as they apply to your project.

All utility line activities:

1. Does the project cause the loss of greater than 1/2-acre non-tidal waters of the U.S. at any crossing considered a single and complete project? ☐ Yes ☐ No

If you answered yes to question 1. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application or the use of regional general permit CESWF-05-RGP-2 (see USACE Fort Worth District website for information on conditions and requirements).

2. Does each activity/crossing considered a single and complete project have independent utility? ☐ Yes ☐ No ☐ N/A

If you answered no to question 2. above, be aware that the project may require an individual permit application.

3. **a.** Will any temporary structures, fills, and work necessary to construct the project meet the criteria for maintaining flows, minimizing flooding, and withstanding high flows? ☐ Yes ☐ No ☐ N/A

b. Will temporary structures and fills be removed in their entirety and the affected areas be returned to pre-construction elevations and revegetated, as appropriate? ☐ Yes ☐ No ☐ N/A

If you answered no to question a. or b. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

Utility lines:

4. Does the project involve a change in pre-construction contours? ☐ Yes ☐ No

If you answered yes to question 4. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

5. Does the project include activities that drain a water of the U.S., such as drainage tile or french drains? ☐ Yes ☐ No

If you answered yes to question 5. above, be aware that the project is not considered a "utility line" and would not be authorized by a NWP 12 and may require an individual permit application. Note: Pipes that convey drainage from another area are considered a "utility line."

6. **a.** Does the project involve leaving sidecasts from trench excavation in waters of the U.S. for more than three months? ☐ Yes ☐ No

b. Does the project involve placing sidecasts from trench excavation in waters of the U.S. in such a manner that the sidecasts are dispersed by current or other forces? ☐ Yes ☐ No

If you answered yes to question a. above, be aware that the district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate, and otherwise an individual permit application may be required. If you answered yes to question b. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

7. In wetlands, does the project involve backfilling the top 6 to 12 inches of the trench with topsoil from the trench? ☐ Yes ☐ No ☐ N/A

If you answered no to question 7. above, please explain how the project would be in compliance with this requirement and be aware that the project may not be authorized by a NWP 12 and may require an individual permit application:

8. Does the project involve constructing or backfilling a trench in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a french drain effect?
☐ Yes ☐ No

If you answered yes to question 8. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

9. Will the project, upon completion of the utility line crossing of each waterbody, immediately stabilize exposed slopes and stream banks? ☐ Yes ☐ No ☐ N/A

If you answered no to question 9. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

10. Does the project involve pipes or pipelines that will be used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the U.S.? ☐ Yes ☐ No ☐ N/A

If you answered yes to question 10. above, be aware that these pipes or pipelines are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the U.S. associated with such pipes or pipelines will require a Section 404 permit (see NWP 15).

Utility line substations:

11. Does the project involve discharges into non-tidal wetlands adjacent to tidal waters of the U.S.?
☐ Yes ☐ No

If you answered yes to question 11. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

Foundations for overhead utility line towers, poles, and anchors:

12. If the project includes construction or maintenance of foundations for overhead utility line towers, poles, and/or anchors in waters of the U.S., are these the minimum size necessary and are separate footings for each tower leg (rather than a larger single pad) used where feasible?
☐ Yes ☐ No ☐ N/A

If you answered no to question 12. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

Access Road(s):

13. Will the access road(s) be used for the construction and maintenance of utility lines, including overhead power lines and utility line substations, and, for a single and complete project, cause the loss of no greater than 1/2-acre of non-tidal waters of the U.S.? ☐ Yes ☐ No ☐ N/A
If you answered no to question 13. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

14. Does the project involve discharges into non-tidal wetlands adjacent to tidal waters of the U.S.?
☐ Yes ☐ No

If you answered yes to question 14. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

15. **a.** Will the access road(s) in waters of the U.S. be the minimum width necessary? ☐ Yes ☐ No
b. Will the access road be constructed so that the length of the road minimizes any adverse effects on waters of the U.S.? ☐ Yes ☐ No

If you answered no to question a. or b. above, be aware that the project would not be authorized by a NWP 12 and may require an individual permit application.

16. **a.** Will the access road(s) be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy road or geotextile/gravel road) so as to minimize any adverse effects on waters of the U.S.? ☐ Yes ☐ No
b. Will access roads constructed above pre-construction contours and elevations in waters of the U.S. be properly bridged or culverted to maintain surface flows? ☐ Yes ☐ No

If you answered no to question a. or b. above, be aware that the project may not be authorized by a NWP 12 and may require an individual permit application.

17. Will access roads used solely for construction of the utility line be removed upon completion of the work, in accordance with the requirement for temporary fills? ☐ Yes ☐ No

If you answered no to question 17. above, be aware that the project may not be authorized by a NWP 12 and may require an individual permit application.

REGIONAL CONDITIONS CHECKLIST

To ensure compliance with the Regional Conditions within the Fort Worth District, in the State of Texas, in order for an authorization by a NWP to be valid, please answer the following questions (for projects in Texas only):

1. Does the project involve a discharge into habitat types that are wetlands (typically referred to as pitcher plant bogs) that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia* sp.), sundews (*Drosera* sp.), and sphagnum moss (*Sphagnum* sp.) or wetlands (typically referred to as bald cypress-tupelo swamps) comprised predominantly of bald cypress trees (*Taxodium distichum*), and/or water tupelo (*Nyssa aquatica*)? ☐ Yes ☐ No

If you answered yes to question 1. above, notification of the District Engineer is required in accordance with NWP GC 32, and the USACE will coordinate with other resource agencies as specified in NWP GC 32(d).

2. Will the project include required compensatory mitigation at a minimum one-for-one ratio for all special aquatic sites that exceed 1/10 acre and require pre-construction notification, and for all losses to streams that exceed 300 linear feet and require pre-construction notification (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)? ☐ Yes ☐ No ☐ N/A

If you answered no to question 2. above, be aware that the project would not be authorized by a NWP and would require an individual permit application.

3. Is the project in the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention? ☐ Yes ☐ No

If you answered yes to question 3. above, notification of the District Engineer is required in accordance with NWP GC 32(d).

4. Would the proposed work involve a discharge of fill material associated with mechanized land clearing of wetlands dominated by native woody shrubs? ☐ Yes ☐ No

If you answered yes to question 4. above, notification of the District Engineer is required in accordance with NWP GC 32(d).

Note: For the purpose of this regional condition, a shrub dominated wetland is characterized by woody vegetation less than 3.0 inches in diameter at breast height but greater than 3.2 feet in height, which covers 20% or more of the area. Woody vines are not included.

5. Would the proposed work result in the modification or alteration of any completed Corps of Engineers projects that are either locally or federally maintained or if work would occur within the conservation pool or flowage easement of any Corps of Engineers lake project? ☐ Yes ☐ No

If you answered yes to question 5. above, the applicant shall notify the Fort Worth District Engineer in accordance with NWP GC 32. PCNs are not deemed complete until such a 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.

6. Is there is the risk of transferring invasive plants to or from your project site? ☐ Yes ☐ No

If you answered yes to question 6. above, information concerning state specific lists of invasive species and threats can be found at: http://www.invasivespeciesinfo.gov/unitedstates/tx.shtml. Best management practices can be found at Information concerning state specific lists and

threats can be found at: http://www.invasivespeciesinfo.gov/unitedstates/tx.shtml. Known zebra mussel waters within can be found at: http://nas.er.usgs.gov/queries/zmbyst.asp.

7. Will the proposed activity involve a temporary discharge of fill material into 1/2 acre or more of emergent wetland OR 1/10 acre or more of scrub0shrub/forested wetland? ☐ Yes ☐ No

If you answered yes to question 7. above, notification of the District Engineer is required in accordance with NWP GC 32(d).

8. Would your project meet the scope of work and conditions of NWPs 51 or 52? ☐ Yes ☐ No

If you answered yes to question 8. above, the Corps will provide the PCN to the US Fish and Wildlife Service as specified in NWP General Condition 32(d)(2) for its review and comments.

To ensure compliance with the Regional Conditions within the Fort Worth District, in the State of Louisiana, in order for an authorization by a NWP to be valid, please answer the following questions (for projects in Louisiana only):

1. Does the activity cause the permanent loss of greater than 1/2 acre of seasonally inundated cypress swamp and/or cypress-tupelo swamp? ☐ Yes ☐ No

If you answered yes to question 1. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

2. Does the activity cause the permanent loss of greater than 1/2 acre of pine savanna, pine flatwoods, and/or pitcher plant bogs? ☐ Yes ☐ No

If you answered yes to question 2. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

3. Has the activity been determined to have an adverse impact upon a federal or state designated rookery and/or bird sanctuary? ☐ Yes ☐ No

If you answered yes to question 3. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

4. While Endangered Species Act Section 7 consultation is no longer required for the Louisiana black bear (which has been delisted due to recovery), permittees are advised that the Louisiana black bear is still protected under State of Louisiana law, and the Louisiana Department of Wildlife and Fisheries (LDWF) will continue to actively manage this subspecies. To learn more about State law requirements for Louisiana black bear protection and habitat conservation, permittees shall contact Maria Davidson (Louisiana Department of Wildlife and Fisheries - Large Carnivore Program Manager) at (337) 948-0255.

5. Does the project involve instream activities in the following waterways: Abita River and tributaries; Amite River (LA Highway 37 at Grangeville to Port Vincent); Bayou Bartholomew in Morehouse Parish; Bayou Boeuf and Bayou Rapides Tributaries in Rapides Parish: (Bayou Clear, Brown Creek, Burney Branch, Castor Creek, Clear Creek, Haikey's Creek, Little Bayou Clear, Little Brushy Creek, Loving Creek, Little Loving Creek, Long Branch, Mack Branch, Patterson Branch, Valentine Creek, and Williamson Branch), Bayou Rigolette tributaries in Grant Parish (Beaver Creek, Black Creek, Chandler Creek, Clear Branch, Coleman Branch, Cress Creek, Cypress Creek, Glady Hollow, Gray Creek, Hudson Creek, James Branch, Jordon Creek, Moccasin Branch, and Swafford Creek); Bogue Falaya River and Tributaries, Bogue Chitto River and Tributaries, Lake Borgne, Lake Pontchartrain and its tributaries, Lake Saint Catherine, Little Lake, Tchefuncta River, Little Tchefuncta River, the Rigolets and West Pearl River? ☐ Yes ☐ No

If you answered yes to question 5. above, notification of the District Engineer is required in accordance with NWP GC 32 due to the occurrence of threatened or endangered species.

6. To the best of the applicant's knowledge, is any excavated and/or fill material to be placed within wetlands free of contaminants? ☐ Yes ☐ No ☐ N/A

If you answered no to question 6. above, be aware that the project would not be authorized by a NWP 12 and would require an individual permit application.

7. Regional Condition 7 applies to work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana, and therefore does not apply in the USACE Fort Worth District. Work in these areas may require coordination with the USACE Galveston or New Orleans districts.

8. Does the activity adversely affect greater than 1/10 acre of wetlands, and/or adversely impact a designated Natural and Scenic River, a state or federal wildlife management area, and/or refuge? ☐ Yes ☐ No

If you answered yes to question 8. above, notification of the District Engineer is required in accordance with NWP GC 32.

9. For activities involving the installation of a culvert, is twenty percent (20%) of the culvert diameter (20 percent of the height of elliptical culverts) installed below the natural grade of the stream. ☐ Yes ☐ No

If you answered no to question 9. above, be aware that the project would not be authorized by a NWP 13and would require an individual permit application.

10. Pre-Construction Notification, as defined under nationwide general condition 32, is required for regulated utility line activities regardless of impact acreage for all projects located In Louisiana. The U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency and, if applicable, National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification for all NWP #12 activities.

11. A 50-foot gap shall be required for every 500 linear feet of sidecast material resulting from trench excavation activities associated with utility line construction. Under certain circumstances the gap intervals may be modified. Additionally, no fill shall be placed in a manner which would impede natural watercourses.

12. This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered denied without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.

Note: This specific regional condition for NWP 12 applies to work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana, and therefore does not apply in the USACE Fort Worth District. Work in these areas may require coordination with the USACE Galveston or New Orleans districts.

Additional Discussion:

Part II: Project Information (*Project No. SWF-*)

Box 1 Project Name:		**Applicant Name**	
Applicant Title		**Applicant Company, Agency, etc.**	
Mailing Address		Applicant's internal tracking number (if any)	
Work Phone with area code	Home Phone with area code	Fax #	E-mail Address
Relationship of applicant to property: ☐ Owner ☐ Purchaser ☐ Lessee ☐ Other:			
Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a USACE nationwide permit or permits as described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made the right to enter the above-described location to inspect the proposed, in-progress, or completed work. I agree to start work only after all necessary permits have been received.			
Signature of applicant			Date (mm/dd/yyyy)

Box 2 Authorized Agent/Operator Name and Signature: ***(If an agent is acting for the applicant during the permit process)***			
Agent/Operator Title		**Agent/Operator Company, Agency, etc.**	
Mailing Address			
E-mail Address			
Work Phone with area code	Home Phone with area code	Fax #	Cell Phone #
I hereby authorize the above-named agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent, and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit.			
Signature of applicant			Date (mm/dd/yyyy)
I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate.			
Signature of authorized agent			Date (mm/dd/yyyy)

Box 3 Name of property owner, if other than applicant: ☐ Multiple Current Owners ***(If multiple current property owners, check here and include a list as an attachment)***	
Owner Title	**Owner Company, Agency, etc.**
Mailing Address	

Work Phone with area code	Home Phone with area code

Box 4 Project location, including street address, city, county, state, and zip code where proposed activity will occur:
Nature of Activity (Description of project; include all features; see instructions)**:**
Project Purpose (Description of the reason or purpose of the project; see instructions)**:**
Has a delineation of waters of the U.S., including wetlands, been completed? (see instructions) ☐ Yes, Attached ☐ No If a delineation has been completed, has it been verified in writing by the USACE? ☐ Yes, Date of approved or preliminary jurisdictional determination (mm/dd/yyyy): USACE project: ☐ No
Are color photographs of the existing conditions available? ☐ Yes, Attached ☐ No Are aerial photographs available? ☐ Yes, Attached ☐ No
☐ **Multiple Single and Complete Crossings** ***(If multiple single and complete crossings, check here and complete the table in Attachment D)***
Waterbody(ies) (if known; otherwise enter "an unnamed tributary to")**:** Tributary(ies) to what known, downstream waterbody(ies):
Latitude & longitude (Decimal Degrees):
USGS Quad map name(s):
Watershed(s) and other location descriptions, if known:
Directions to the project location:

Part III: Project Impacts and Mitigation

Box 5 Reason(s) for Discharge into waters of the U.S.:
Type(s) of material being discharged and the amount of each type in cubic yards:
Total surface area (in acres) of wetlands or other waters of the U.S. to be filled:

Indicate the proposed impacts to **waters of the U.S.** in ACRES (for wetlands and impoundments) and LINEAR FEET (for rivers and streams), and identify the impact(s) as permanent and/or temporary for each waterbody type listed below. For projects with multiple single and complete crossings, the table below should indicate the cumulative totals of those single and complete crossings that require notification as outlined in Part I, GC question 32, and would not determine the threshold for whether a project qualifies for a NWP. The table below is intended as a tool to summarize impacts by resource type for planning compensatory mitigation and does not replace the summary table of single and complete crossings in Attachment D for those projects with multiple single and complete crossings.

	Permanent		Temporary	
Waterbody Type	**Acres**	**Linear feet**	**Acres**	**Linear feet**
Non-forested wetland				
Forested wetland				
Perennial stream				
Intermittent stream				
Ephemeral stream				
Impoundment				
Other:				
Total:				

Potential indirect and/or cumulative impacts of proposed discharge (if any):

Required drawings (see instructions):
Vicinity map: ☐ Attached
To-scale plan view drawing(s): ☐ Attached
To-scale elevation and/or cross section drawing(s): ☐ Attached

Is any portion of the work already complete? ☐ Yes ☐ No
If yes, describe the work:

Box 6 Authority: (see instructions)
Is Section 10 of the Rivers and Harbors Act for projects affecting navigable waters applicable?
☐ Yes ☐ No ***(see Fort Worth District Navigable Waters list)***

Is Section 404 of the Clean Water Act applicable? ☐ Yes ☐ No

Box 7 Larger Plan of Development:
Is the discharge of fill or dredged material for which Section 10/404 authorization is sought intended for a utility line project which is part of a larger plan of development?
☐ Yes ☐ No ***(If yes, please provide the information in the remainder of Box 7)***

Does the utility line project have independent utility in addition to the larger plan of development (e.g., major transmission line, main water line, etc.)? ☐ Yes ☐ No
If yes, explain:

If discharge of fill or dredged material is part of development, name and proposed schedule for that larger development (start-up, duration, and completion dates):

Location of larger development (If discharge of fill or dredged material is part of a plan of development, a map of suitable quality and detail for the entire project site should be included):

Total area in acres of entire project area (including larger plan of development, where applicable):

Box 8 Federally Threatened or Endangered Species (see instructions)
Please list any federally-listed (or proposed) threatened or endangered species or critical habitat potentially affected by the project (use scientific names (i.e., genus species), if known):

Have surveys, using U.S. Fish and Wildlife Service (USFWS) protocols, been conducted?
☐ Yes, Report attached ☐ No (explain):

If a federally-listed species would potentially be affected, please provide a description and a biological evaluation.
☐ Yes, Report attached ☐ Not attached

Has Section 7 consultation been initiated by another federal agency?
☐ Yes, Initiation letter attached ☐ No

Has Section 10 consultation been initiated for the proposed project?
☐ Yes, Initiation letter attached ☐ No

Has the USFWS issued a Biological Opinion?
☐ Yes, Report attached ☐ No
If yes, list date Opinion was issued (mm/dd/yyyy):

Box 9 Historic properties and cultural resources
Please list any historic properties listed (or eligible to be listed) on the National Register of Historic Places which the project has the potential to affect:

Has an archaeological records search been conducted?
☐ Yes, Report attached ☐ No (explain):

Are any cultural resources of any type known to exist on-site?
☐ Yes ☐ No

Has an archaeological pedestrian survey been conducted for the site?
☐ Yes, Report attached ☐ No (explain):

Has Section 106 or SHPO consultation been initiated by another federal or state agency?
☐ Yes, Initiation letter attached ☐ No

Has a Section 106 MOA been signed by another federal agency and the SHPO?
☐ Yes, Attached ☐ No
If yes, list date MOA was signed (mm/dd/yyyy):

Box 10 Proposed Conceptual Mitigation Plan Summary (see instructions)

Measures taken to avoid and minimize impacts to waters of the U.S. (if any):

Applicant proposes combination of one or more of the following mitigation types:
☐ Mitigation Bank ☐ On-site ☐ Off-site (Number of sites:) ☐ None

Applicant proposes to purchase mitigation bank credits: ☐ Yes ☐ No
Mitigation Bank Name:
Number of Credits:

Indicate in ACRES (for wetlands and impoundments) and LINEAR FEET (for rivers and streams) the total quantity of waters of the U.S. proposed to be created, restored, enhanced, and/or preserved for purposes of providing compensatory mitigation. Indicate mitigation site type (on- or off-site) and number. Indicate waterbody type (non-forested wetland, forested wetland, perennial stream, intermittent stream, ephemeral stream, impoundment, other) or non-jurisdictional (uplands[1]).

Mitigation Site Type and Number	Waterbody Type	Created	Restored	Enhanced	Preserved
e.g., On-site 1	*Non-forested wetland*	*0.5 acre*			
e.g., Off-site 1	*Intermittent stream*		*500 LF*	*1000 LF*	
	Totals:				

[1] **For uplands, please indicate if designed as an upland buffer.**

Summary of Mitigation Work Plan (Describe the mitigation activities listed in the table above):

If no mitigation is proposed, provide a detailed explanation of why no mitigation would be necessary to ensure that adverse effects on the aquatic environment are minimal:

Has a conceptual mitigation plan been prepared in accordance with the USACE regulations and guidelines?
☐ Yes, Attached ☐ No (explain):

Mitigation site(s) latitude & longitude (Decimal Degrees): | USGS Quad map name(s):

Other location descriptions, if known:

Directions to the mitigation location(s):

Box 11 Water Quality Certification (see instructions)**:**

For Texas:

Does the project meet the conditions of the Texas Commission on Environmental Quality (TCEQ) Clean Water Act Section 401 certification for NWP 12? ☐ Yes ☐ No

Does the project include soil erosion control and sediment control Best Management Practices (BMPs)? ☐ Yes ☐ No

Does the project include BMPs for post-construction total suspended solids control?
☐ Yes ☐ No

For Louisiana:

LDEQ has issued water quality certification for NWP 12 without conditions.

For Tribal Lands ("Indian Country"):
Does the project meet the conditions of the EPA water quality certification for NWPs?
☐ Yes ☐ No

Box 12 List of other certifications or approvals/denials received from other federal, state, or local agencies for work described in this application:

Agency	Approval Type[2]	Identification No.	Date Applied	Date Approved	Date Denied

[2] Would include but is not restricted to zoning, building, and floodplain permits

Part IV: Attachments

	Included
A. Delineation of Waters of the U.S., Including Wetlands	☐
B. Color Photographs	☐
C. Summary Table of Single and Complete Crossings	☐
D. Required Drawings/Figures	☐
E. Threatened or Endangered Species Reports and/or Letters	☐
F. Historic Properties and Cultural Resources Reports and/or Letters	☐
G. Conceptual Mitigation Plan	☐
H. Other:	☐

End of Form

Attachment D: Summary Table of Single and Complete Crossings

Waterbody ID[1]	Latitude and Longitude (Decimal Degrees)	Resource Type[2]	Linear Feet in Project Area	Acres in Project Area	Impact Type[3]	Linear Feet of Impact	Average Width and Length of Impact	Acres of Impact	Cubic Yards of Material to be Discharged	PCN Required	Reason[4]
e.g. W-1	*32.755°N, -97.755°W*	*NFW*	*-*	*0.25*	*D-P*	*-*	*-*	*0.15*	*1210*	*Y*	*E*

[1] Waterbody ID may be the name of a feature or an assigned label such as "W-1" for a wetland.

[2] Resource Types: NFW – Non-forested wetland, FW – Forested wetland, PS – Perennial Stream, IS – Intermittent Stream, ES – Ephemeral Stream, I – Impoundment

[3] Impact Types: D/P – Direct* and Permanent, D/T – Direct and Temporary, I/P – Indirect** and Permanent, I/T – Indirect and Temporary

* Direct impacts are here defined as those adverse affects caused by the proposed activity, such as discharge or excavation.

** Indirect impacts are here defined as those adverse affects caused subsequent to the proposed activity, such as flooding or effects of drainage on adjacent waters of the U.S.

[4] Reasons for PCN requirement:

A – Mechanized land clearing in a forested wetland
B – Require a Section 10 permit
C – Utility line exceeds 500 feet in waters of the U.S., excluding overhead lines
D – Utility line is within a jurisdictional area (i.e., water of the U.S.), and the utility line runs parallel to a stream bed that is within that jurisdictional area
E – The loss of waters of the U.S. exceeds 1/10 acre
F – Permanent access roads are constructed above grade in waters of the U.S. for a distance of more than 500 feet
G – Permanent access roads are constructed in waters of the U.S. with impervious materials
H – Potential endangered species
I – Potential historic properties
J – Discharge into pitcher plant bog or bald cypress-tupelo swamp
K– Discharge into the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention
L – Required by Regional Conditions
M – Other

Instructions: [please do not include these pages when submitting form]

1) **Complete Part I of the form first to determine if the project meets the conditions and requirements of NWP 12, including the General and Regional Conditions as well as the notification requirements. Additional information on the general conditions is available at the following website:**

   http://www.swf.usace.army.mil/Missions/Regulatory/Permitting/GeneralPermits.aspx

2) **Boxes 1 to 3:** Provide contact information for the Applicant, Agent, Owner, etc.

3) **Box 4:**
   a. **Nature of Activity:** Describe the overall activity or project. Give appropriate dimensions of structures such as wingwalls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms. The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach a separate sheet marked "Box 4 Nature of Activity."

   b. **Proposed Project Purpose:** Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project.

   c. **Delineation of waters of the U.S.:**
   Waters of the U.S. are defined under 33 CFR part 328.3 (a) as:
   (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
   (2) All interstate waters including interstate wetlands;
   (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
      (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
      (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
      (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;
   (4) All impoundments of waters otherwise defined as waters of the U.S. under the definition;
   (5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;
   (6) The territorial seas;
   (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

   In addition, 33 CFR part 328.3 (b) states: The term wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

   Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, the ordinary high water mark, as well as any adjacent wetlands, demarcate the limits of non-tidal waters of the U.S. Wetlands are identified and delineated using the methods and criteria

established in the USACE *Wetlands Delineation Manual* (1987 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils, and wetland hydrology) as well as any applicable interim regional supplements.

Applicants should follow the USACE Fort Worth District procedures for jurisdictional determinations found at the following website:

http://media.swf.usace.army.mil/pubdata/environ/regulatory/jurisdiction/jurisdictionaldeterminationprocedures.pdf

d. **Multiple Waters of the U.S.**: If the project impacts multiple waters of the U.S., include information for each water in the table in Attachment D.

4) **Box 5:**

Required drawings (see examples in separate file): Submit one legible copy of all drawings (8 1/2 x 11-inch or 11 x 17-inch) with a 1-inch margin around the entire sheet. The title box shall contain the title of the proposed project, date, and sheet number.

i. **Vicinity map:** Cover an area large enough so the project can be easily located; include arrow marking the project area, identifiable landmarks (e.g., named waterbody, county, city), name or number of roads, north arrow, and scale.
ii. **Plan view:** Include features such as existing bank lines, ordinary high water mark line(s), average water depth around the activity, dimensions of the proposed project, dimensions of any structures immediately adjacent to the proposed activity, north arrow, and scale.
iii. **Elevation and/or cross-section views:** Include features such as water elevation as shown on plan view drawing, existing and proposed ground level, dimensions of the proposed project, dimensions of any structures immediately adjacent to the proposed activity, and scale.

5) **Box 6:** A list of navigable waters in the Fort Worth District can be found at the following website:

http://media.swf.usace.army.mil/pubdata/environ/regulatory/introduction/navlist.pdf

Under Section 404 of the Clean Water Act, the USACE regulates the discharge of dredged or fill material into waters of the U.S. More information on regulated activities can be found at the following website:

http://www.swf.usace.army.mil/Missions/Regulatory/RegulatedActivities.aspx

6) **Box 8:** Information on federally threatened or endangered species may be found on the U.S. Fish and Wildlife Service website and the Texas Parks and Wildlife Department website. Include an attachment if additional space is required for listing species or critical habitat potentially affected by the project.

http://www.fws.gov/southwest/es/ES_ListSpecies.cfm

http://www.tpwd.state.tx.us/huntwild/wild/species/endang/index.phtml

http://www.tpwd.state.tx.us/landwater/land/maps/gis/ris/endangered_species/index.phtml

7) **Box 10:** When completing this box, be aware that the USACE will consider if the project has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site when determining appropriate and practicable mitigation necessary to ensure that adverse effects to the aquatic environment are minimal. The USACE may also require compensatory mitigation at a minimum one-for-one ratio for losses of wetlands, streams, and open waters to ensure that the project results in

minimal adverse effects on the aquatic environment. See the USACE Fort Worth District Regulatory Branch website for a mitigation plan template and requirements.

http://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Mitigation.aspx

8) **Box 11:** Projects in Texas should meet the conditions of the Texas Commission on Environmental Quality (TCEQ) Clean Water Act Section 401 certification for NWP 3. The TCEQ conditions of Section 401 certification for NWP 3 as well as a description of Best Management Practices can be found at the following website:

http://www.swf.usace.army.mil/Portals/47/Users/053/21/821/NWP%202017%20Texas%20401cert.pdf

Projects in Louisiana require water quality certification from the Louisiana Department of Environmental Quality (LDEQ). LDEQ has issued water quality certification for NWP 3 without conditions. Information about water quality certification from LDEQ can be found at the following website:

http://www.swf.usace.army.mil/Portals/47/Users/053/21/821/NWP2017Louisiana401cert.pdf?ver=2017-03-24-115120-290

9) **Attachments:** Check the boxes in Part IV for those attachments that are included, and place a cover sheet or tab with each attachment behind the last page of the form. If Attachment D is not needed, discard this page, but if more room is necessary, include an additional table.

From:	Owens, Nathan D CTR (USA) <nathan.d.owens12.ctr@mail.mil>
Sent:	Monday, July 22, 2019 1:03 PM
To:	Santos, Anastacia
Cc:	Lignowski, Michael J CTR (USA)
Subject:	DoD Siting Clearinghouse - E Burgess to Morton Informal Review - Request for Additional Data
Signed By:	OWENS.NATHAN.DAVID.1548954980

Ms. Santos,

Thank you for submitting the E Burgess to Morton transmission line project for an informal review. We have mapped the project and will be sending it to the services in the coming days. To expedite their review, are you able to provide the structure heights above ground level for the transmission infrastructure? Any additional information you could provide, such as GIS shapefiles or Google Earth KMZs, would also be helpful.

Very Respectfully,

Nathan Owens
Military Aviation & Installation Assurance Siting Clearinghouse
Office of the Assistant Secretary of Defense (Sustainment)
Mark Center 16F18
Office# 703-571-9057
nathan.d.owens12.ctr@mail.mil

From:	Hodge, Karla A CTR OSD OUSD A-S (USA)
To:	Santos, Anastacia
Cc:	Sample, Steven J CIV OSD OUSD A-S (USA)
Subject:	Response Letter for the E Burgess to Morton 138kV Transmission Line Project
Date:	Thursday, September 12, 2019 11:18:30 AM
Attachments:	IR - E Burgess to Morton 138kV Transmission Line Project - Response Letter.pdf

Ms. Santos,

Please see attached the response letter for E Burgess to Morton 138kV Transmission Line Project. If you have any questions, please contact Nathan Owens at 703-571-9057 or nathan.d.owens12.ctr@mail.mil .

V/R,

Karla Hodge
Military Aviation and Installation Assurance Siting Clearinghouse
Office of the Assistant Secretary of Defense (Sustainment)
Ph: 703-571-9078
Email: karla.a.hodge.ctr@mail.mil

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

SUSTAINMENT

September 11, 2019

Anastacia Santos
Project Manager
Power Engineers
16825 Northchase Dr Ste 1200
Houston, TX 77060

Dear Ms. Santos,

As requested, the Military Aviation and Installation Assurance Siting Clearinghouse coordinated within DoD an informal review of the E Burgess to Morton 138kV Transmission Line Project. The results of our review indicated that the transmission line project located in Van Zandt County, Texas, as proposed, will have minimal impact on military operations conducted in the area.

Please note that this informal review by the DoD Military Aviation and Installation Assurance Siting Clearinghouse does not constitute an action under 49 United States Code Section 44718 and that the DoD is not bound by the conclusion arrived at under this informal review. To expedite our review in the Obstruction Evaluation Airport Airspace Analysis (OE/AAA) process, please add the project number 2019-07-T-ERC-11 in the comments section of the filing. If you have any questions, please contact me at steven.j.sample4.civ@mail.mil or at 703-571-0076.

Sincerely,

Steven J. Sample
Deputy Director
Military Aviation and Installation
Assurance Siting Clearinghouse

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Arlington Ecological Services Field Office
2005 Ne Green Oaks Blvd
Suite 140
Arlington, TX 76006-6247
Phone: (817) 277-1100 Fax: (817) 277-1129
http://www.fws.gov/southwest/es/arlingtontexas/
http://www.fws.gov/southwest/es/EndangeredSpecies/lists/

In Reply Refer To:
Consultation Code: 02ETAR00-2019-SLI-1560
Event Code: 02ETAR00-2019-E-03372
Project Name: E. Burgess

June 12, 2019

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, which may occur within the boundary of your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.).

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under section 7(a)(1) of the Act, Federal agencies are directed to utilize their authorities to carry out programs for the conservation of threatened and endangered species. Under and 7(a)(2) and its implementing regulations (50 CFR 402 et seq.), Federal agencies are required to determine whether their actions may affect threatened and endangered species and/or designated critical habitat. A Federal action is an activity or program authorized, funded, or carried out, in whole or in part, by a Federal agency (50 CFR 402.02).

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For Federal actions other than major construction activities, the Service suggests that a biological evaluation (similar to a Biological Assessment) be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

After evaluating the potential effects of a proposed action on federally listed species, one of the following determinations should be made by the Federal agency:

1. *No effect* - the appropriate determination when a project, as proposed, is anticipated to have no effects to listed species or critical habitat. A "no effect" determination does not require section 7 consultation and no coordination or contact with the Service is necessary. However, the action agency should maintain a complete record of their evaluation, including the steps leading to the determination of affect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related information.
2. *May affect, but is not likely to adversely affect* - the appropriate determination when a proposed action's anticipated effects are insignificant, discountable, or completely beneficial. Insignificant effects relate to the size of the impact and should never reach the scale where "take" of a listed species occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects, or expect discountable effects to occur. This determination requires written concurrence from the Service. A biological evaluation or other supporting information justifying this determination should be submitted with a request for written concurrence.
3. *May affect, is likely to adversely affect* - the appropriate determination if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action, and the effect is not discountable or insignificant. This determination requires formal section 7 consultation.

The Service recommends that candidate species, proposed species, and proposed critical habitat be addressed should consultation be necessary. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/

eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (http://www.fws.gov/windenergy/) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm; http://www.towerkill.com; and http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html.

For additional information concerning migratory birds and eagle conservation plans, please contact the Service's Migratory Bird Office at 505-248-7882.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Arlington Ecological Services Field Office
2005 Ne Green Oaks Blvd
Suite 140
Arlington, TX 76006-6247
(817) 277-1100

Project Summary

Consultation Code: 02ETAR00-2019-SLI-1560

Event Code: 02ETAR00-2019-E-03372

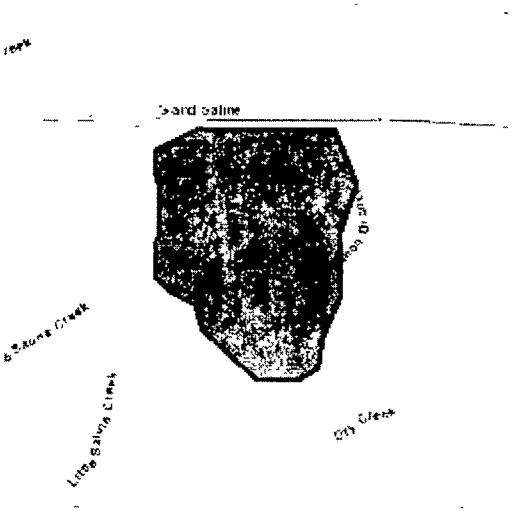
Project Name: E. Burgess

Project Type: TRANSMISSION LINE

Project Description: Transmission

Project Location:

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/place/32.64247801260845N95.68379499222155W



Counties: Van Zandt, TX

Endangered Species Act Species

There is a total of 3 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 3 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries[1], as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Birds

NAME	STATUS
Least Tern *Sterna antillarum*	Endangered
Population: interior pop. No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: ▪ Wind Energy Projects Species profile: https://ecos.fws.gov/ecp/species/8505	
Piping Plover *Charadrius melodus*	Threatened
Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is **final** critical habitat for this species. Your location is outside the critical habitat. This species only needs to be considered under the following conditions: ▪ Wind Energy Projects Species profile: https://ecos.fws.gov/ecp/species/6039	
Red Knot *Calidris canutus rufa*	Threatened
No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: ▪ Wind Energy Projects Species profile: https://ecos.fws.gov/ecp/species/1864	

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION

From:	Texas Natural Diversity Database
To:	Teta, Sairah
Cc:	Williams, Denise; Santos, Anastacia; Moore, Virginia; Hicks, Steve
Subject:	RE: TXNDD Data Request - E. Burgess
Date:	Friday, June 14, 2019 3:40:15 PM
Attachments:	Teta_20190611.zip

The Texas Natural Diversity Database (TXNDD) staff provides the following information in response to your request for data. Please read this entire message for important information regarding your request, additional data sources, and project review.

As of June 1, 2019, each information request may contain additional spatial and report information. Be aware of files labeled in the following format (sfpt_(*requestor_name*)_yyyymmdd.zip, sfln_(*requestor_name*)_yyyymmdd.zip, or sfpy_(*requestor_name*)_yyyymmdd.zip). The additional files contain Source Features (observations) of tracked species or communities that haven't been added to an Element Occurrence (EO) record yet. You may also see reports that have file names starting with sf. All data, regardless of the record being an Element Occurrence (EO) or Source Feature (SF) should be considered when evaluating the impact of any project. If you have any questions about Source Feature data or how to use that information, please contact Bob Gottfried at (512)389-8744.

Data

The TXNDD includes federal and state listed and tracked Threatened, Endangered, and Rare species. Please note that **areas where Element Occurrence (EO) and Source Feature (SF) data are absent should not be interpreted as an absence of Threatened, Endangered, and Rare species.** *Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state. Data from the TXNDD do not provide a definitive statement as to the presence, absence, or condition of special species, natural communities, or other significant features within your project area. These data cannot substitute for an on-site evaluation by qualified biologists.*

Attached documents

The attached .zip file contains several documents that will guide you in appropriate use, restrictions, and interpretation of TXNDD data as well as a reporting form for submitting data to the TXNDD. The .zip file also includes additional supplemental documents. Below is a list of the files in the attached folder:

- **Shapefile** (*eo_[last name of requestor]_yyyymmdd.zip*) of the Threatened, Endangered and Rare species Element Occurrences made from information the TXNDD presently has available for the requested quad(s) (or within the requested county, by requested species when applicable).

- **EO Report** (*eoreport_[last name of requestor]_yyyymmdd.pdf*) of the EOs in the shapefile mentioned above. The **EO Report** includes more detailed information about each EO than what is contained in the attribute table of the shapefile. Link the information in the shapefile to the information in the **EO Report** by *EO ID*. Note that if the number of records in your request area is large, this report may not be included; however, if, in this circumstance, you would like more detailed information about a particular EO, species, or smaller geographic area, you may request those data.

- **EO List** (*eolist_[last name of requestor]_yyyymmdd.pdf*) for those requests made by USGS 7.5 minute quadrangles. The **EO List** is a list of species for which we have records in the database in the USGS 7.5 minute quadrangles *surrounding* your request area The **EO List** is to inform you of federal and state listed and tracked Threatened, Endangered, and Rare species in the area. Note that the EO list is not included in county requests.

- **SF Report** (*sfreport_[last name of requestor]_yyyymmdd.pdf) of the Source Features* in the shapefile mentioned above. The **SF Report** includes more detailed information about each Source Feature than what is contained in the attribute table of the shapefile. Link the information in the shapefile to the information in the **SF Report** by *Source Feature ID*. Note that if the number of records in your request area is large, this report may not be included; however, if, in this circumstance, you would like more detailed information about a particular Source Feature, species, or smaller geographic area, you may request those data.

- **SF List** (*sflist_[last name of requestor]_yyyymmdd.pdf*) for those requests made by USGS 7.5 minute quadrangles. The **SF List** is a list of species for which we have Source Feature records in the database in the USGS 7.5 minute quadrangles ***surrounding*** your request area. The **SF List** is to inform you of federal and state listed and tracked Threatened, Endangered, and Rare species in the area. Note that the **SF List** is not included in county requests.

- **County List FAQ** (*County_lists_FAQ_20150415.pdf*) produced by the Wildlife Habitat Assessment Program.

- **TXNDD Information** document (*txndd_information.pdf*) that includes a background of the TXNDD, a description of past and current spatial methodology employed, and an explanation of interpretation of the data. Global and subnational (state) conservation ranks are also explained in this document as are the shapefile attributes and EO report sections.

- **TXNDD Reporting Form** (*txndd_reporting_form.doc*) for reporting observations of tracked elements to the Texas Natural Diversity Database. To submit data, fill out this form and send it to TexasNatural.DiversityDatabase@tpwd.texas.gov. Note that you can also submit data in the form of an Excel spreadsheet or written report.

Project Review, Rare Species County Lists, Project Planning, and BMPs
This email cannot substitute for an environmental review of your project by TPWD. For information on project review and to access the county lists of protected species and species of greatest conservation need with potential to occur in the county, please visit the Wildlife Habitat Assessment (WHAB) website at http://tpwd.texas.gov/huntwild/wild/wildlife_diversity/habitat_assessment/. The WHAB website includes several resources to consider while planning your project to minimize impacts to fish and wildlife resources, including information /guidelines on Wind Energy projects, Transmission Line projects, Communication Towers, and Karst Zones (Travis, Williamson, and Bexar Counties).

TPWD Managed Areas
We are no longer providing Managed Area shapefiles and associated Managed Area Reports. To obtain shapefiles for Wildlife Management Areas and State Park Boundaries, please visit the Texas Parks and Wildlife Department GIS Data Download page (https://tpwd.texas.gov/gis/data/).

Sincerely,

Sandy Birnbaum
Texas Natural Diversity Database manager
Texas Parks & Wildlife Dept.
4200 Smith School Rd.
Austin, TX 78744
Phone: 512-389-8729
Fax: 512-389-4599

Texas Natural Diversity Database information

From: sairah.teta@powereng.com <sairah.teta@powereng.com>
Sent: Tuesday, June 11, 2019 4:45 PM
To: Texas Natural Diversity Database <TexasNatural.DiversityDatabase@tpwd.texas.gov>
Cc: denise.williams@powereng.com; anastacia.santos@powereng.com; virginia.moore@powereng.com; steve.hicks@powereng.com
Subject: TXNDD Data Request - E. Burgess

Hi Bob,

POWER Engineers Inc. is requesting a TXNDD review for a transmission line project on behalf of Southwestern Electric Power Company. The proposed project is within **Van Zandt County**. The USGS 7.5 minute quadrangles listed below are located within the study area boundaries.

Grand Saline
Van

The TXNDD data review information will assist us during the routing process and drafting the environmental assessment for the project. The review deliverable should include an ArcGIS file of element occurrences, Element Occurrence Record List and EOR Report.

Thank you!

Sairah

SAIRAH TETA
BIOLOGIST

One American Place
301 Main Street, Suite 2284
Baton Rouge, LA 70801

Office: 512-735-1801
Cell: 225-405-1198

POWER Engineers, Inc.
www.powereng.com

From:	Karen Hardin <Karen.Hardin@tpwd.texas.gov>
Sent:	Tuesday, July 23, 2019 11:17 AM
To:	Santos, Anastacia
Cc:	'Karen.Hubbard@puc.texas.gov'
Subject:	TPWD Scoping Comments for SWEPCO E Burgess 138kV Transmission Line; TPWD Project 42109
Attachments:	WL42109SWEPCO_EBurgess138kVtranslineC07-23-2019.pdf

Dear Ms. Anastacia Santos,

Please see the attached Texas Parks and Wildlife Department scoping comments regarding the proposed E Burgess 138-kV transmission line project.

Sincerely,

Karen Hardin
Natural Resource Specialist
Wildlife Habitat Assessment Program
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, TX 78744
(903) 322-5001

TEXAS PARKS & WILDLIFE

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July 23, 2019

Ms. Anastacia Santos
POWER Engineering
16825 Northchase Dr, Suite 1200
Houston, TX 77060

RE: Southwestern Electric Power Company (SWEPCO)
E. Burgess 138-kilovolt (kV) Transmission Line Project, Van Zandt County

Dear Ms. Anastacia Santos:

The Texas Parks and Wildlife Department (TPWD) received the request for environmental or land use concerns and potential environmental effects from the construction of the transmission line referenced above. TPWD, as the state agency with primary responsibility for protecting the state's fish and wildlife resources and in accordance with the authority granted by Texas Parks and Wildlife (TPW) Code §12.0011, hereby provides the following recommendations and informational comments to minimize the adverse impacts to the state's fish and wildlife resources in the routing, construction and operation of the proposed transmission project.

Project Description

SWEPCO proposes to construct a new 138-kV transmission line in Van Zandt County extending approximately three miles from the existing Morton Substation, located south of Grand Saline and east of State Highway 110, to the existing East Texas Electric Cooperative (ETEC) Wood County 138-kV transmission line located east to southeast of Grand Saline and south of U.S. Highway 80.

In preparation of an environmental assessment to support SWEPCO's application for a Certificate of Convenience and Necessity from the Public Utility Commission (PUC), POWER provided a map of the approximately 13 square mile study area identifying the existing Morton Substation, the existing E. Burgess Substation, existing transmission lines, streams, rivers, lakes, and primary highways.

Recommendation: TPWD recommends using existing transmission facilities wherever possible and minimizing the transmission line length. Where new construction is the only feasible option, TPWD recommends routing new transmission lines along existing roads, pipelines, transmission lines, or other utility rights-of-way (ROW) to reduce habitat fragmentation and minimize loss of undisturbed habitats.

Federal Regulations

Federal Regulations: Migratory Bird Treaty Act (MBTA)

The MBTA prohibits direct and affirmative purposeful actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control, except when

4200 SMITH SCHOOL ROAD
AUSTIN, TEXAS 78744-3291
512.389.4800
www.tpwd.texas.gov

specifically authorized by the Department of the Interior. This protection applies to most native bird species, including ground nesting species. The U.S. Fish and Wildlife Service (USFWS) Migratory Bird Office can be contacted at (505) 248-7882 for more information on potential impacts to migratory birds.

Birds typically establish flight corridors along river and creek drainages. Riparian corridors, creeks, wetlands, and lakes provide habitat for a host of wildlife species including wading birds, waterfowl, and predator species. There is potential for collision of birds with electrical wires near water features. Measures should be taken to ensure that migratory bird species within and near the project area are not adversely impacted by construction, maintenance, and operation activities.

The study area contains primarily rural residences, savanna grasslands, post oak mottes and woodlands, and riparian forests and wet prairies along primary drainages and streams. The study area includes small lakes and stock ponds interspersed throughout the study area. Prominent drainages include Grand Saline Creek, Chrestman Branch, and their unnamed tributaries of these creeks.

Recommendation: TPWD recommends SWEPCO route transmission lines to avoid crossing riparian areas, wetlands and open water habitat, to the extent feasible. TPWD recommends crossing streams in a perpendicular manner and avoiding placement of lines parallel to streams and their associated wooded and wet prairie corridors. Where lines cross or are located near creeks, drainages, wetlands, and lakes, TPWD recommends line markers be installed at the crossings or closest points to the drainages to reduce potential collisions by birds flying along or near the drainages. TPWD recommends the use of raptor protection measures such as adequate conductor spacing, perch guards, and insulated jumper wires to prevent electrocution of perching raptors. For additional information, please refer to the guidelines published by USFWS and the Avian Power Lines Interaction Committee (APLIC) found in *Reducing Avian Collisions with Power Lines: State of the Art in 2012,* which identifies best practices and provides specific guidance to help electric utilities reduce bird collisions with power lines, and the 2006 companion document, *Suggested Practices for Avian Protection on Power Lines.*

Within the project area, potential impacts to migratory birds may occur during site preparation and grading activities through the disturbance of existing vegetation and bare ground that may harbor active bird nests, including nests that may occur in grass, shrubs and trees and on bare ground including gravel pads and roads.

Recommendation: TPWD recommends excluding vegetation clearing activities during the general bird nesting season, March 15 through September 15, to avoid adverse impacts to breeding birds. If clearing vegetation during the migratory bird nesting season is unavoidable, TPWD recommends surveying the area proposed for disturbance to ensure that no nests with eggs or young will be disturbed by operations. TPWD recommends retaining a 150-foot buffer of vegetation around active nests that are observed prior to disturbance. Any vegetation or areas where occupied nests are located should not be disturbed until the eggs have hatched and the young have fledged.

The project area is located within the Central Flyway, a major bird migration corridor that leads to the Texas coast and Central/South America. Artificial nighttime lighting can attract and disorient night-migrating birds. Birds circling the lights' glare can cause exhaustion mortality or collision with substation structures.

Recommendation: As bird protection measures, TPWD recommends SWEPCO construct substations and retrofit existing substations to utilize the minimum amount of night-time lighting needed for safety and security and to use dark-sky friendly lighting that is on only when needed, down-shielded, as bright as needed, and minimizes blue light emissions. Appropriate lighting technologies and best management practices (BMPs) can be found at the International Dark-Sky Association website.

Federal Regulations: Endangered Species Act (ESA)

Federally-listed animal species and their habitat are protected from take on any property by the ESA. Take of a federally-listed species can be allowed if it is incidental to an otherwise lawful activity and must be permitted in accordance with Section 7 or 10 of the ESA. Take of a federally-listed species or its habitat without allowance from USFWS is a violation of the ESA. The USFWS rare species lists can be obtained at the USFWS Information Planning and Consultation website.

Recommendation: TPWD recommends that the EA identify the federally-listed, candidate, and proposed species with potential to occur within the study area. TPWD recommends SWEPCO conduct site surveys of the route alternatives to identify suitable habitat for federally-listed species, to assess potential impacts to federally-listed species, and to determine route alignments to avoid or minimize adverse impacts to federally-listed, candidate, and proposed species.

Recommendation: If impact to a federally-listed species is anticipated, TPWD recommends that SWEPCO consult with USFWS – Arlington Ecological Services at (817) 277-1100 pursuant to the ESA. The USFWS should be contacted for additional species occurrence data, guidance, permitting, survey protocols, and mitigation for federally-listed species.

Federal Regulations: Clean Water Act (CWA)

Section 404 of the Clean Water Act establishes a federal program to regulate the discharge of dredge and fill material into the waters of the U.S., including wetlands. The United States Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) are responsible for regulating water resources under this act. Although isolated wetlands may not be applicable to the USACE permitting process, both isolated and jurisdictional wetlands are essential in providing habitat for wildlife and helping to protect water quality.

Recommendation: If the proposed project would impact waterways or associated wetlands, TPWD recommends consulting with the Regulatory Branch of the Fort Worth District of the USACE at (817) 886-1731 pursuant to the CWA, including jurisdictional determinations, delineations, and mitigation. Waterways, floodplains,

riparian corridors, lakes, and wetlands provide valuable wildlife habitat, and TPWD recommends protecting them to the maximum extent possible. TPWD recommends allowing natural buffers contiguous to wetlands or aquatic systems to remain undisturbed to preserve wildlife cover, food sources, and travel corridors. During construction, trucks and equipment should use existing bridges to cross creeks. TPWD recommends avoiding disturbance to inert microhabitats in waterways such as snags, brush piles, fallen logs, creek banks, pools, and gravel stream bottoms, as these provide habitat for a variety of fish and wildlife species and their food sources. Erosion control measures should be installed prior to construction and maintained until disturbed areas are permanently revegetated using site specific native vegetation.

State Regulations

State Regulations – Chapter 64, Birds

TPW Code Section 64.002, regarding protection of nongame birds, provides that no person may catch, kill, injure, pursue, or possess a bird that is not a game bird. TPW Code Section 64.003, regarding destroying nests or eggs, provides that, no person may destroy or take the nests, eggs, or young and any wild game bird, wild bird, or wild fowl. TPW Code Chapter 64 does not allow for incidental take and therefore is more restrictive than the MBTA.

Recommendation: Please review the *Migratory Bird Treaty Act* section above for recommendations as they are also applicable for compliance with TPW Code.

State Regulations: State-listed Species

TPW Code Section 68.015 regulates state-listed species. Please note that there is no provision for the capture, trap, take, or kill (incidental or otherwise) of state-listed species. The *TPWD Guidelines for Protection of State-Listed Species*, which includes a list of penalties for take of species, can be found on the Wildlife Habitat Assessment Program website. The TPWD web tool identifying rare, threatened, and endangered species by county (RTEST) provides information regarding state-listed species that have potential to occur within each county in Texas. State-listed species could potentially be impacted if suitable habitat is present at or near the project site.

Recommendation: TPWD recommends the EA identify the state-listed species with potential to occur within the study area using the RTEST list for Van Zandt County. TPWD recommends SWEPCO conduct site surveys of the route alternatives to identify suitable habitat for state-listed species, to assess potential impacts to state-listed species, and to determine route alignments to avoid or minimize adverse impacts to state-listed species.

Impact avoidance and minimization measures to protect state-listed species can be chosen based on species and their habitat. For instance, aquatic species can be protected by avoiding placement of structures or equipment in wetlands and streams, by spanning wetlands and streams, by retaining riparian and stream vegetation, by employing

sediment controls, and by utilizing existing road and bridge crossings rather than creating temporary roads and culverted crossings.

Many mitigation strategies can be utilized for avian and terrestrial species including, but not limited to:

- Avoiding vegetation clearing by co-locating the proposed transmission line onto existing transmission line structures and ROW,
- Reducing fragmentation and edge effect impacts by placing the route within or parallel to an existing utility or road ROW, *except* when placing the line along an existing ROW would have a greater impact on a sensitive natural resource,
- Routing through developed areas, non-native grassland, and previously cleared areas to avoid native habitats and to avoid forest clearing,
- Mitigating avian collisions by reducing the number of stream and wetland crossings and appropriately marking lines,
- Fencing or flagging work zone exclusion areas to prevent disturbance when sensitive species or habitats are located within the proposed ROW,
- Reducing risk of injury or harm to state-listed species by educating SWEPCO and contract personnel about the state-listed species with potential to occur and establishing company policies regarding wildlife encounters within the ROW during construction, operation and maintenance, and
- Promoting the establishment of native species of grasses, forbs, and shrubs within the ROW for the benefit of wildlife, including pollinators.

Recommendation: TPWD recommends the EA identify impact avoidance and minimization measures that SWEPCO commits to employ to protect state-listed species and other sensitive resources that may occur within the study area.

Terrestrial State-listed Species: Of the terrestrial species listed as potentially occurring in Van Zandt County, the state-threatened bald eagle (*Haliaeetus leucocephalus*), Texas horned lizard (*Phrynosoma cornutum*), and northern scarlet snake (*Cemophora coccinea copei*) are more at risk for being impacted by construction activities than other state-listed terrestrial species due to limited mobility. The bald eagle may nest in trees near larger lakes within the study area, and bald eagle nests would be susceptible to loss during vegetation clearing. The Texas horned lizard, which hibernates only a few inches underground, would be susceptible to earth moving equipment and compaction. The Northern scarlet snake is semi-fossorial, spending much of its time underground, and would be susceptible to compaction or disturbance by construction equipment. Various small vertebrates including snakes, lizards, toads, and mice fall into trenches, become trapped, and are susceptible to loss from backfilling activities, starvation, dehydration, predation, and exposure to elements.

Recommendation: TPWD recommends SWEPCO inform employees and contractors of the potential for state-listed species to occur in the study area. Contractors should be advised to avoid impacts to all wildlife that are encountered.

Recommendation: TPWD recommends the EA identify potential bald eagle nesting habitat within the study area and recommends SWEPCO survey for eagle nests within suitable habitat in the route alternatives.

Recommendation: If the Project is found to contain unavoidable habitat of a state-listed species, then TPWD recommends a biological monitor be present during clearing and construction activities to assist in detecting state-listed species in the ROW. If the presence of a biological monitor during construction is not feasible, state-listed threatened species observed during construction should be allowed to safely leave the site or be translocated by a permitted individual to a nearby area with similar habitat that would not be disturbed during construction. TPWD recommends that any translocations of reptiles be the minimum distance possible no greater than one mile, preferably within 100-200 yards from the initial encounter location. For purposes of relocation, surveys, monitoring, and research, terrestrial state-listed species may only be handled by persons authorized through the TPWD Wildlife Permits Office.

Recommendation: If trenching is involved, TPWD recommends minimizing the amount of trenches left open at any given time during construction. Trenches left open for more than two daylight hours should be inspected for the presence of trapped wildlife prior to backfilling. If trenches cannot be backfilled the day of initial trenching, then escape ramps, in the form of short lateral trenches or wooden planks sloping to the surface at an angle of less than 45 degrees, should be installed at least every 90 meters.

Recommendation: For soil stabilization and revegetation of disturbed areas within the proposed project area, TPWD recommends erosion and seed/mulch stabilization materials that avoid entanglement hazards to snakes and other wildlife species. Because the mesh found in many erosion control blankets or mats pose an entanglement hazard to wildlife, TPWD recommends the use of no-till drilling, hydromulching and/or hydroseeding rather than erosion control blankets or mats due to a reduced risk to wildlife. If erosion control blankets or mats will be used, the product should contain no netting or contain loosely woven, natural fiber netting in which the mesh design allows the threads to move, therefore allowing expansion of the mesh openings. Plastic mesh matting should be avoided.

Recommendation: To aid in the scientific knowledge of a species' status and current range, TPWD encourages reporting encounters of rare, threatened, and endangered species to the Texas Natural Diversity Database (TXNDD) according to the data submittal instructions found on the TXNDD website.

Aquatic State-listed Species: The project occurs within the Sabine River Basin. Project area waters may contain suitable habitat for the state-threatened alligator snapping turtle (*Macrochelys temminckii*), Texas pigtoe (*Fusconaia askewi*), sandbank pocketbook (*Lampsilis satura*), southern hickorynut (*Obovaria jacksoniana*), Louisiana pigtoe (*Pleurobema riddellii*), and Texas heelsplitter (*Potamilus amphichaenus*). Project activities involving work within streams, temporary or permanent haul roads within streams, and dewatering activities may impact state-listed aquatic resources if occurring within the Project area.

Recommendation: TPWD recommends that SWEPCO ensure protection of state-listed aquatic resources during construction activities. TPWD recommends utilizing construction methodologies and BMPs to avoid or minimize adverse impacts to state-listed aquatic species, such as avoiding unnecessary temporary or permanent access roads across streams, avoiding the placement of tower structures in streams, retaining riparian and stream vegetation, and employing sediment controls.

Recommendation: If the project would require work within streams, the project may need to be coordinated with the TPWD Kills and Spills Team (KAST) for appropriate authorization and to ensure protection of native aquatic wildlife, see *Aquatic Resources* section below for more information.

State Regulations: Aquatic Resources

TPW Code Section 1.011 grants TPWD authority to regulate and conserve aquatic animal life of public waters. Title 31, Chapter 57, Subchapter B, Section 57.157 of Texas Administrative Code (TAC) regulates take of mussels, including mussels that are not state-listed. Under TPW Code Section 12.015, 12.019, 66.015 and TAC 52.101-52.105, 52.202, and 57.251-57.259, TPWD regulates the introduction and stocking of fish, shellfish, and aquatic plants into public waters of the state.

Dewatering activities can impact aquatic resources through stranding fish and mussels. Other harmful construction activities can trample, dredge or fill areas exhibiting stationary aquatic resources such as plants and mussels. Relocating aquatic life to an area of suitable habitat outside the project footprint avoids or reduces impacts to aquatic life. Relocation activities are done under the authority of a TPWD *Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters* with an approved Aquatic Resource Relocation Plans (ARRP). The permit allows for movement (i.e., introduction, stocking, transplant, relocation) of aquatic species in waters of the state. ARRPs are used to plan resource handling activities and assist in the permitting process. If dewatering activities and other project-related activities cause mortality to fish and wildlife species, then the responsible party would be subject to investigation by the TPWD KAST and will be liable for the value of lost resources under the authority of TPW Code Sections 12.0011 (b) (1) and 12.301.

Recommendation: TPWD recommends that impact avoidance measures for aquatic organisms, including all native fish and freshwater mussel species, regardless of state-listing status, be considered during project planning and construction activities.

Recommendation: TPWD recommends avoiding placement of temporary fills, culverts, or structures into waters serving as suitable habitat for freshwater mussels. If construction occurs during times when water is present in streams and dewatering, fill, or trampling activities are involved, then TPWD recommends relocating native aquatic resources, including fish and mussels, in conjunction with a *Permit to Introduce Fish, Shellfish or Aquatic Plants into Public Waters* and an ARRP. The ARRP should approved by the department 30 days prior to activity within project waters or resource relocation and submitted with an application for a no-cost

permit. ARRPs can be submitted to Adam Whisenant TPWD Region 2 KAST available at Adam.Whisenant@tpwd.texas.gov and 903-566-8387.

State Regulations: Invasive Species

Per TAC Title 31, Part 2, Chapter 57, Subchapter A, it is an offense for any person to possess, transport, or release into the water of this state any species, hybrid of a species, subspecies, eggs, seeds, or any part of any species defined as a harmful or potentially harmful exotic fish, shellfish, or aquatic plant. This rule applies not only to zebra mussels (*Dreissena polymorpha*) (live or dead) and their larvae but also to any species or fragments thereof designated as harmful or potentially harmful under this subchapter (e.g., giant salvinia, hydrilla, Eurasian watermilfoil).

Although surface waters are generally spanned by transmission lines, temporary and permanent stream crossings installed to accommodate machinery and vehicle access may require work within surface waters. Equipment coming in contact with surface waters could transport invasive species where mud, plant debris, or water accumulate.

Recommendation: If equipment will come in contact with inland streams or waterbodies, such as during construction or demolition of temporary and permanent crossings, TPWD recommends SWEPCO prepare and follow an aquatic invasive species (AIS) transfer prevention plan which outlines BMPs for preventing inadvertent transfer of aquatic invasive plants and animals on project equipment and materials. To minimize the risk of transporting aquatic invasive species, TPWD recommends SWEPCO and its contractors review and adhere to the AIS BMPs identified in the ARRP guidelines packet and the *TPWD Clean/Drain/Dry Procedures and Zebra Mussel Decontamination Procedures for Contractors Working in Inland Public Waters.*

Disturbed areas are especially susceptible to infestation of invasive terrestrial plant species such as Johnson grass (*Sorghum halepense*), bermudgrass (*Cynodon dactylon*), bahiagrass (*Paspalum notatum*) King Ranch bluestem (*Bothriochloa ischaemum var. songarica*), other old-world bluestems, and bastard cabbage (*Rapistrum rugosum*). Other species with potential to invade portions of the project ROW can be identified at the Texas Invasives website.

Recommendation: TPWD recommends SWEPCO prepare and follow a revegetation and maintenance plan to monitor, treat, and control invasive species within the construction and operation ROWs.

State Regulations: Parks, Public Recreation Areas, Scientific Areas, Wildlife Refuges, or Historic Sites

Chapter 26 of the Parks and Wildlife Code requires that before a state agency can approve any project that will result in the use or taking of public land designated and used as a park, public recreation area, scientific area, wildlife refuge, or historic site, that state agency must provide certain notices to the public, conduct a hearing, and render a finding that there is no feasible and prudent alternative and that the project includes all reasonable planning to minimize harm to the property. Additionally, per

Section 6(f) of the U.S. Land and Water Conservation Fund Act (LWCF), no public outdoor recreation areas acquired or developed with LWCF assistance can be converted to non-recreational uses without Department of Interior approval. The conversion must be in accordance with the statewide outdoor recreation plan and replaced with other recreation land of reasonable equivalent usefulness and location.

A review of the TPWD Land and Water Resources Conservation and Recreation Plan (LWRCRP) 2012 statewide inventory of conservation and recreation lands in Texas did not reveal any TPWD owned or managed properties or other public parks and recreation areas within the study area. Please note that parks and recreation areas not in the LWRCP inventory may occur within the study area.

> **Recommendation:** TPWD recommends avoiding lands owned or managed for conservation or recreation by city, county, state, and federal entities. Such entities should be contacted early in the planning process to determine if a transmission line may impact their property.

Conservation Easements

A conservation easement is a legal agreement between a landowner and a land trust or governmental agency that permanently limits uses of the land, including future fragmentation, to protect and conserve the land's natural values such as wetlands, fertile soils, mature trees, and wildlife habitat. Lands with conservation easements protect existing wildlife habitat from future fragmentation and therefore have greater environmental integrity than comparable lands without conservation easements. Fragmentation of wildlife habitat from transmission line construction on properties where conservation agreements serve to protect the state's natural resources now and in the future is of concern to TPWD. A review of the TPWD LWRCRP inventory, the United State Geological Survey Protected Areas Data Portal, and the National Conservation Easement Database did not reveal a conservation easement within the study area. Please note that these data sources may be incomplete, and county records may provide a greater accounting of conservation easements in the study area.

> **Recommendation:** TPWD recommends properties protected by conservation easements be identified in the constraints analysis and avoided during development of alternative routes. If a property protected by a conservation easement is unavoidable and would be crossed by a route alternative, TPWD recommends the length of routes through the property be included in any accounting of alternative route impacts presented in the routing analysis and EA. TPWD also recommends avoiding impacts to existing mitigation banks if they occur within the study area.

State Fish and Wildlife Resources

The Texas Conservation Action Plan (TCAP) contains a statewide handbook and handbooks for each ecoregion of the state for use by all entities for guidance regarding species of greatest conservation need (SGCN) and important habitats. The TCAP identifies threats affecting native species and habitats such as development and invasive species. In addition to state- and federally-listed species, TPWD tracks SGCN and natural plant communities and actively promotes their conservation. TPWD considers

it important to evaluate and, if feasible, minimize impacts to SGCN and their habitat to reduce the likelihood of endangerment and preclude the need to list as threatened or endangered in the future.

The Project study area is located within the EPA Level IV Northern Post Oak Savanna Ecoregion, known as the East Central Texas Plains in the TCAP. Within the ecoregion, priority habitats identified in the TCAP for conservation of SGCN for the study area include barren/sparse vegetation, saline prairies, xeric sandylands, tallgrass prairie and savanna communities, riparian woodlands, glades, seeps/springs/bogs, and oak savannas and woodlands. TPWD encourages landowners and land agents to conserve priority habitats of the ecoregion and discourages fragmentation and loss to such habitats.

> **Recommendation:** TPWD recommends the EA and routing study utilize the TCAP and Ecological Mapping Systems (EMS) vegetation data, discussed in the *Vegetation* section below, to assist in identifying and avoiding areas of potential priority habitats. TPWD recommends using the EMS in conjunction with other resources such as stream, wetland, floodplain, and soils datasets as well as on-the-ground assessments of potential transmission line routes.

Within the Texas prairie regions, native grasslands have become lost due to agricultural practices, development, and woody encroachment. With the loss of native grasslands, wildlife associated with grassland habitats have declined including the loss of pollinators due to declining floral resources. TPWD encourages landowners and land agents to conserve pockets of remaining native grassland habitats that are typically found along older ROW, forest edges, and areas less accessible to cattle and plow. A review of the TXNDD revealed Vertisol Blackland Prairies (*Schizachyrium scoparium – Sorghastrum nutans – Andropogon gerardii - Bifora Americana* Vertisol Grassland) Series G1G2SNR Communities within Van Zandt County. These occurrences indicate that prairie remnants have been found near Project area and that other areas not currently accessible to researchers or the public may also exhibit native prairie remnants.

After reviewing the RTEST list for Van Zandt County and based on potentially suitable habitat and the species' life requisite requirements, SGCN flora and fauna with potential to occur in the project area and with greater potential to be impacted by project activities include the following:

Taxon	Scientific Name	Common Name	GRank	SRank
Amphibians	*Desmognathus conanti*	southern dusky salamander	G5	S1
Amphibians	*Anaxyrus woodhousii*	Woodhouse's toad	G5	SU
Amphibians	*Pseudacris streckeri*	Strecker's chorus frog	G5	S3
Amphibians	*Pseudacris fouquettei*	cajun chorus frog	G5	SU
Amphibians	*Lithobates areolatus areolatus*	southern crawfish frog	G4T4	S3
Birds	*Athene cunicularia hypugaea*	western burrowing owl	G4T4	S2
Mammals	*Blarina carolinensis*	southern short-tailed shrew	G5	S4

Mammals	*Myotis austroriparius*	southeastern myotis bat	G4	S3
Mammals	*Perimyotis subflavus*	tricolored bat	G2G3	S3S4
Mammals	*Eptesicus fuscus*	big brown bat	G5	S5
Mammals	*Lasiurus borealis*	eastern red bat	G3G4	S4
Mammals	*Lasiurus cinereus*	hoary bat	G3G4	S4
Mammals	*Tadarida brasiliensis*	Mexican free-tailed bat	G5	S5
Mammals	*Sylvilagus aquaticus*	swamp rabbit	G5	S5
Mammals	*Ictidomys tridecemlineatus*	thirteen-lined ground squirrel	G5	S5
Mammals	*Microtus pinetorum*	woodland vole	G5	S3
Mammals	*Mustela frenata*	long-tailed weasel	G5	S5
Mammals	*Neovison vison*	mink	G5	S4
Mammals	*Taxidea taxus*	American badger	G5	S5
Mammals	*Spilogale putorius*	eastern spotted skunk	G4	S1S3
Mammals	*Spilogale putorius interrupta*	plains spotted skunk	G4T4	S1S3
Reptiles	*Terrapene carolina*	eastern box turtle	G5	S3
Reptiles	*Terrapene ornata*	western box turtle	G5	S3
Reptiles	*Alligator mississippiensis*	American alligator	G5	S4
Reptiles	*Ophisaurus attenuatus*	slender glass lizard	G5	S3
Insects	*Bombus pensylvanicus*	American bumblebee	G3G4	SNR
Plants	*Coreopsis intermedia*	goldenwave tickseed	G3	S3
Plants	*Symphyotrichum puniceum var. scabricaule*	rough-stem aster	G5T2	S1S2
Plants	*Cuscuta attenuata*	marsh-elder dodder	G1G3	S2
Plants	*Astragalus soxmaniorum*	Soxman's milkvetch	G3	S3
Plants	*Rhododon ciliatus*	Texas sandmint	G3	S3
Plants	*Clematis carrizoanus*	Carrizo sands leather-flower	G2	S2
Plants	*Cyperus grayioides*	Mohlenbrock's sedge	G3G4	S3S4
Plants	*Eriocaulon koernickianum*	small-headed pipewort	G2	S1S2
Plants	*Calopogon oklahomensis*	Oklahoma grass pink	G3	S1S2
Plants	*Xyris chapmanii*	Chapman's yellow-eyed grass	G3	S3

Recommendation: TPWD recommends that precautions be taken to avoid impact to SGCN flora and fauna, natural plant communities, and priority habitat types of the ecoregion (barren/sparse vegetation, saline prairies, xeric sandylands, tallgrass prairie and savanna communities, riparian woodlands, glades, seeps/springs/bogs, and oak savannas and woodlands) when developing the route alternatives, while

working in Van Zandt County, or if encountered during project construction, operation, and maintenance activities.

Recommendation: TPWD recommends assessing the project sites for native vegetative species and considering disturbance minimization practices to avoid or minimize loss of native vegetation if occurring in the project area. TPWD recommends micro-siting the disturbance footprint to areas of non-native habitat. Areas exhibiting a native grass and forbs component should be protected from disturbance and from introduction of non-native vegetation during construction, maintenance, and operation activities. TPWD recommends practicing prairie conservation measures in areas of the ROW that exhibit native species diversity such as special precautions regarding revegetation, mowing, herbicide use, and invasive species prevention. TPWD encourages clearly marking individual rare plants or areas found to contain rare plants as work zone avoidance areas prior to construction, maintenance and operation activities.

Recommendation: If native prairie remnants or rare plants cannot be avoided by the proposed project activities, please make a detailed record of the occurrence and contact TPWD to determine if additional conservation practices are available.

The TXNDD is intended to assist users in avoiding harm to rare species or significant ecological features. Given the small proportion of public versus private land in Texas, the TXNDD does not include a representative inventory of rare resources in the state. Please note that absence of information in the database does not imply that a species is absent from that area. Although it is based on the best data available to TPWD regarding rare species, the data from the TXNDD do not provide a definitive statement as to the presence, absence, or condition of special species, natural communities, or other significant features within your project area. These data are not inclusive and **cannot be used as presence/absence data**. This information cannot be substituted for on-the-ground surveys. The TXNDD is updated continuously based on new, updated and undigitized records. For questions regarding a record or to obtain digital data, please visit the TXNDD website for guidance.

Vegetation

The TPWD Landscape Ecology Program's EMS data are available for download or available for use in the TPWD online interactive mapping tool, Texas Ecosystem Analytical Mapper. The EMS provides systems, mapping subsystems, and vegetative types for Texas and can assist in planning projects to avoid impacts to important habitats or SCGN in an ecoregion. For example, in the study area, the EMS identifies small stream and riparian wet prairie which is suitable habitat for the southern crawfish frog.

Recommendation: TPWD recommends minimizing impacts to native vegetation during project design and construction. TPWD recommends avoiding sensitive ecological areas and routing through lower-quality habitat that is developed or has been converted to cropland or introduced pasture for livestock.

Significant declines in the population of migrating monarch butterflies (*Danaus plexippus*) have led to widespread concern about this species and other native insect

pollinator species due to reductions in native floral resources. To support pollinators and migrating monarchs, TPWD encourages the establishment of native wildflower habitats on private and public lands across the state. Please refer to recent publications that can be found on TPWD's Native Pollinator website and TPWD's Monarch Butterfly website.

> **Recommendation:** To accrue benefits for grassland wildlife and pollinators, TPWD recommends SWEPCO revegetate areas disturbed by project activities with site-specific native species to mitigate for unavoidable loss of native vegetation, with attention to providing habitat for pollinator species. TPWD recommends that SWEPCO incorporate native grass and floral species into the permanent revegetation plan for its ROWs as funding and seed availability allow. TPWD recommends incorporating pollinator conservation into maintenance plans for the ROW, to promote and sustain the availability of flowering species throughout the growing season. TPWD recommends scheduling ROW maintenance to occur once the seed from pollinator plants has been released.

TPWD appreciates the opportunity to provide preliminary project input on potential impacts to the fish and wildlife resources of Texas. Please contact me at Karen.Hardin@tpwd.texas.gov or (903) 322-5001 if you have any questions.

Sincerely,

Karen B. Hardin
Wildlife Habitat Assessment Program
Wildlife Division

KBH:42109

cc: Ms. Karen Hubbard, PUC

SOUTHWESTERN ELECTRIC POWER COMPANY

An AEP Company

BOUNDLESS ENERGY

Southwestern Electric Power Company
400 west 15th Street, Suite 1520
Austin, TX 78701
swepco.com

November 5, 2019

Name
Title
Address
Street

Dear

Southwestern Electric Power Company (SWEPCO) invites you to attend an open-house format public meeting to learn about and provide input on an SWEPCO plan to construct a new 138-kV single-circuit transmission line in northeast Van Zandt County, TX (Project).

You are receiving this notice because your property has been identified as being crossed by, or in close proximity to preliminary routing links that are being considered for the Project.

SWEPCO invites you to attend the open-house public meeting – Numerous stations will be manned by SWEPCO representatives to provide information on the Project, the routing and regulatory process to obtain approval for a route, and the type of structures being considered. Large aerial-photography based maps that show the preliminary routing links will be available for review.

Tuesday November 19, 2019
5:00 – 7:00 P.M.
Grand Saline Middle School
Cafetorium
400 W. Stadium Drive
Grand Saline, TX 75140

Come and go any time at your convenience – You are invited to arrive any time after 5:00 p.m. Usually, the time required for attendees to walk through the stations and provide input is approximately 30 minutes. The open-house format is used to encourage individual participation, to ensure that participants get questions answered, and provide their input. This informal public meeting process provides interaction that is more personal so each attendee has an opportunity to participate equally.

Project Description – The transmission Project is planned as a 138-kV single-circuit transmission line that will begin at an existing SWEPCO point of connection on either the south tap line into Morton Salt Substation located south of Grand Saline off State Highway 110 just southeast of the Morton Salt plant location or a point of connection on an existing SWEPCO transmission line approximately 0.4 miles south of that point. The new transmission line will extend from one of these points generally to the east to southeast depending on the tap point interconnection to the Wood County Electric Cooperative 138 kV transmission line that runs north to south in northeast Van Zandt County. The final location of the Project will depend on what route (or combinations of routing links) is approved by the Texas Public Utility Commission (PUC).

The PUC - The PUC is the state agency of Texas that was created by the Texas Legislature to provide statewide regulation of the rates and services of electric, water, and telecommunications utilities. SWEPCO activities in Texas are regulated by the PUC. SWEPCO must submit a Certificate of Convenience and Necessity (CCN) Application with the PUC with an adequate number of alternative routes along with the need for the new transmission line for its review and route approval.

Project Need – Rayburn Country Electric Cooperative is in the process of moving its transmission facilities and electric load from the Southwest Power Pool (SPP) transmission network to the Electric Reliability Council of Texas (ERCOT) transmission network. These two transmission networks are not electrically connected. This move of transmission facilities results in the current reliability of electric service to load in this area being adversely impacted. To continue adequate electric service as well as provide some improvement in electric service this Project was determined necessary for this area where Rayburn Country Electric Cooperative transmission network interconnections are no longer available.

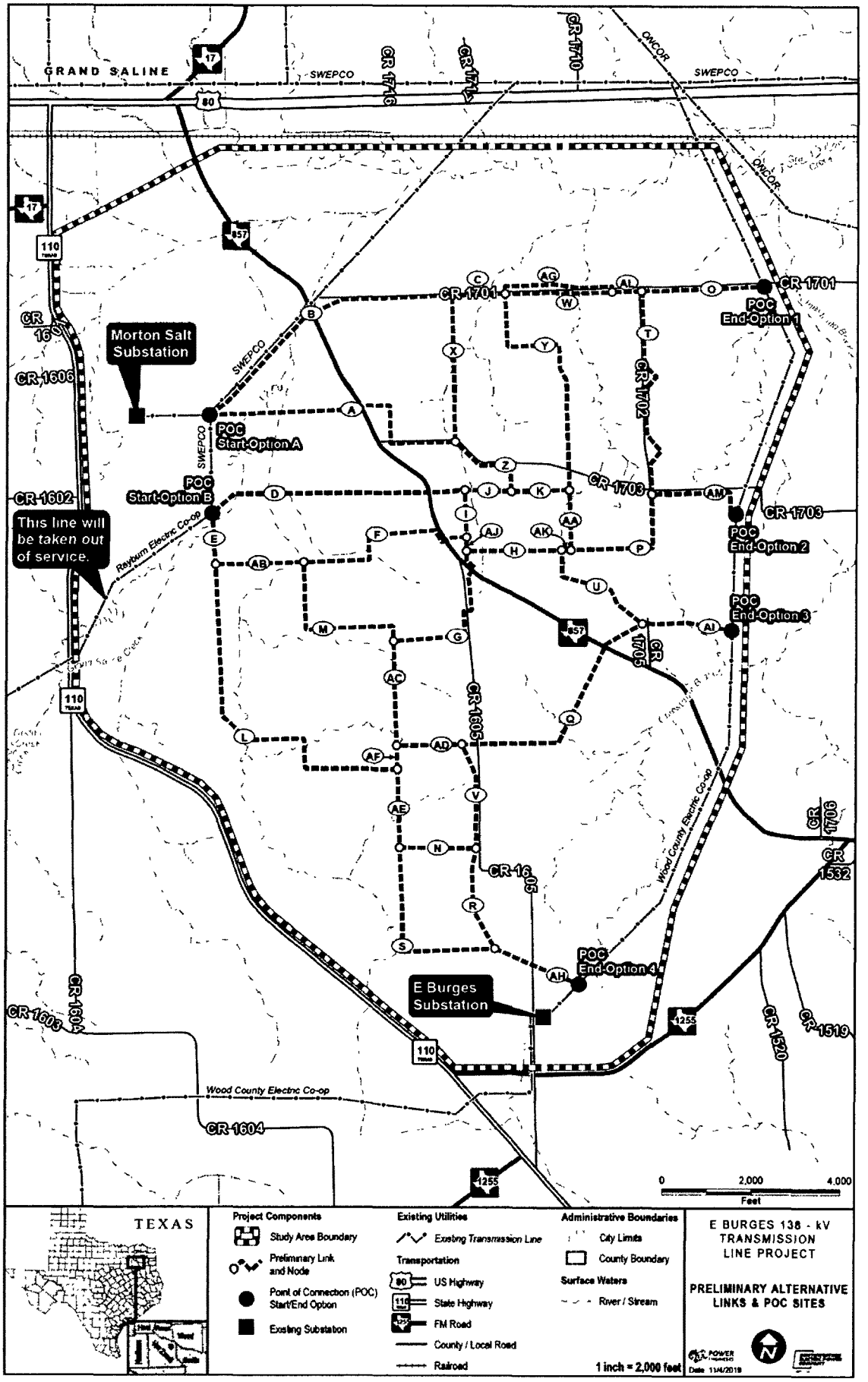
Only one route will be approved by the PUC – Enclosed is a map showing the current preliminary routing links that are being considered in the development of alternative routes for the new transmission line. The factors that have gone into the selection of these preliminary links will be discussed at the open house. Your participation will be helpful in refining these preliminary routing links, which might be modified based on input received at the open house. Multiple combinations of these links will make up alternative routes for the Project that will be submitted to the PUC in a future SWEPCO CCN Application. Only one route will ultimately be approved by the PUC.

If you would like to contact us regarding the upcoming open house, please call me at (512)481-4572, or Roy Bermea at (512)481-4575.

Sincerely,

Randal E. Roper
Regulatory Case Manager

Enclosures


GRAND SALINE
SWEPCO
ONCOR
CR 1710
CR 1716
CR 1714
Morton Salt Substation
POC Start-Option A
POC Start-Option B
CR 1602
CR 1606
CR 16
This line will be taken out of service.
Rayburn Electric Co-op
CR 1701
CR 1702
CR 1703
CR 1705
CR 1605
POC End-Option 1
POC End-Option 2
POC End-Option 3
POC End-Option 4
E Burges Substation
CR 1604
CR 1603
CR 1607
CR 1532
CR 1519
CR 1520
Wood County Electric Co-op
0 2,000 4,000
Feet
TEXAS
Project Components
Study Area Boundary
Preliminary Link and Node
Point of Connection (POC) Start/End Option
Existing Substation
Existing Utilities
Existing Transmission Line
Transportation
US Highway
State Highway
FM Road
County / Local Road
Railroad
Administrative Boundaries
City Limits
County Boundary
Surface Waters
River / Stream
1 inch = 2,000 feet
E BURGES 138 - kV TRANSMISSION LINE PROJECT
PRELIMINARY ALTERNATIVE LINKS & POC SITES
Date 11/4/2019

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Questionnaire
E Burgess 138-kV
Transmission Line Project

Thank you for taking the time to fill out this questionnaire regarding the proposed E Burgess 138-kV single-circuit transmission line project. Before SWEPCO and its routing consultant make any recommendations concerning which potential routes will be filed for consideration by the Public Utility Commission of Texas, we want to hear your opinion on several issues. Your responses will help SWEPCO and its routing consultant understand the community's concerns and better aid the project team as it incorporates the input received in the route development and evaluation process.

Again, thank you for your time and interest.

1. Did you attend the public meeting in Grand Saline?

   ☐ **Yes** ☐ **No**

2. In your opinion, has the purpose for the transmission project been adequately explained?

   ☐ **Yes** ☐ **No**

3. How could we have improved on this explanation? What did you not understand?

   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____

4. Do you believe the public open-house format and the information that was provided were helpful for understanding the transmission project?

   Open-house Format was Helpful ☐ **Yes** ☐ **No**

   Information Provided was Helpful ☐ **Yes** ☐ **No**

5. As explained at one of the open house stations, the routing of a transmission line project involves many considerations. Please circle the number corresponding to the level of importance that each specific factor in the routing of the transmission line is to you.

	FACTORS	RATINGS				
		Not Important	----------	Somewhat Important	----------	Very Important
a)	Maximize distance from residences	1	2	3	4	5
b)	Maximize distance from businesses	1	2	3	4	5
c)	Maximize distance from public facilities (e.g., parks & schools)	1	2	3	4	5
d)	Maximize length along existing transmission lines	1	2	3	4	5
e)	Maximize length along highways or other roads	1	2	3	4	5
f)	Maximize length along property boundary lines	1	2	3	4	5
g)	Maximize length through undeveloped land	1	2	3	4	5
h)	Minimize total length of line (reduces cost of line)	1	2	3	4	5
i)	Minimize visibility of the line	1	2	3	4	5
j)	Minimize loss of trees	1	2	3	4	5
k)	Minimize length across cropland	1	2	3	4	5
l)	Minimize length through grassland or pasture	1	2	3	4	5
m)	Minimize impacts on streams and rivers	1	2	3	4	5
n)	Minimize length through wetlands/floodplains	1	2	3	4	5
o)	Minimize impacts to archaeological and historic sites	1	2	3	4	5

6. If you wish to comment on the factors listed in the previous question, or add any factors that you think should be considered, please use the space below.

7. If there are any other features in the study area that you feel are important, please describe the locations and/or mark them on the attached map.

8. If you have a concern with a particular transmission line link shown on the maps, please identify the link and describe your concern.

Link	Concern
_____	_____
_____	_____
_____	_____

Link	Concern
_____	_____
_____	_____
_____	_____

9. Which of the following applies to your situation?

☐ Potential link is near my home. (Please specify which link_____)

☐ Potential link is near my business. (Please specify which link_____)

☐ Potential link crosses my land. (Please specify which link_____)

☐ My property is cultivated. ☐ Yes, all of it ☐ Yes, some of it

☐ My cultivated property is irrigated. ☐ Yes, by traveling system ☐ Yes, by gravity feed

☐ Other (please specify).

Please provide any additional comments below, if necessary.

_____

_____

_____

_____

_____

_____

THANK YOU FOR YOUR COMMENTS!

Name _____

Address _____

City _____ Zip Code _____

Phone (optional) _____

Email Address (optional) _____

Figure 3-3 Primary Alternative Routing Links With Environmental and Land Use Constraints

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Figure 5-1 Habitable Structures and Other Land Use Features in the Vicinity of the Primary Alternative Routes

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E BURGESS DELIVERY POINT AGREEMENT

This **Delivery Point Agreement** (the "Agreement") is entered into as of 12/22/2018 | 9:03 AM EST, (the "Execution Date") between **Southwestern Electric Power Company**, a Delaware corporation ("AEP") and **East Texas Electric Cooperative**, a generation and transmission electric cooperative corporation existing under the laws of the State of Texas ("ETEC""), on behalf of itself and member cooperative Wood County Electric Cooperative, Inc. ("WCEC", and together with ETEC, the "Customer"). AEP and Customer may be referred to individually as a "Party" and collectively as the "Parties").

RECITALS

A. AEP and Customer are parties to that certain Interconnection and Local Delivery Service Agreement identified in Schedule 3.1 (as amended, the "ILDSA").

B. The Parties desire to change, upgrade, retire, or replace Delivery Point facilities or establish a new Delivery Point, as described in Schedule 3.1 (such activity being herein called the "Project"). The Project will be undertaken within the control area of the independent system operator or regional transmission organization identified in Schedule 3.1 (the "ISO/RTO" with respect to this Project).

C. The Project has previously been the subject of certain requests by Customer; directives and approvals of the ISO/RTO or regulatory authority; and/or preliminary agreements and studies. All such requests, directives, approvals, agreements, and studies are herein referred to as the "Prior Project Documentation".

D. This Agreement is a "Facilities Agreement," as defined in, and entered into pursuant to, Section 2.3 of the ILDSA. This Agreement provides for the Parties to construct facilities to implement a delivery point. This Agreement does not provide for any other services and neither AEP nor Customer agrees hereunder to provide any other services.

AGREEMENTS

NOW, THEREFORE, the Parties hereby agree as follows:

1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used in this Agreement, terms defined in Exhibit 1.1 have the meanings set forth therein.

1.2. Rules of Construction. Unless the context of this Agreement requires otherwise, the plural includes the singular, the singular includes the plural. The words "include," "includes" and "including" are not limiting and have the inclusive meaning of "including without limitation." The words "hereof," "herein," "hereby," "hereunder" and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine,

feminine, or neuter, singular, or plural, as the identity of the Person or Persons may require. Unless otherwise expressly provided, any agreement, instrument, or Applicable Law defined or referred to herein means such agreement or instrument or Applicable Law as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Law) by succession of comparable successor law and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein. A reference to a Party includes its successors and permitted assigns. This Agreement is the result of negotiations between, and has been reviewed by, the Parties, and their respective counsel have had the opportunity to review this Agreement. Accordingly, this Agreement shall be deemed to be the product of all Parties hereto, and no ambiguity shall be construed in favor of or against any Party.

2. EFFECTIVE DATE; COMMENCEMENT DATE; TERM; TERMINATION

2.1. Commencement of Work. The Parties shall become obligated to commence the Work hereunder when both the Effective Date has occurred in accordance with Section 2.2 and the Commencement Date has occurred in accordance with Section 2.3.

2.2. Effective Date. AEP shall file this Agreement with the Commission within 30 days after the Parties execute the Agreement, and Customer agrees to cooperate with AEP and provide reasonable assistance to AEP in such filing and proceedings related thereto. This Agreement shall become effective on the date this Agreement has been accepted for filing and made effective by order of the Commission under the Federal Power Act, in which case the effective date of this Agreement shall be as specified in the said Commission order ("Effective Date"). However, if the Commission or any reviewing court, in such order or in any separate order, suspends this Agreement or any part thereof, institutes an investigation or proceeding under the provisions of the Federal Power Act with respect to the justness and reasonableness of the provisions of this Agreement or any other agreement referred to or contemplated by this Agreement, or imposes any conditions, limitation or qualifications under any of the provisions of the Federal Power Act which individually or in the aggregate are determined by AEP or Customer to be adverse to it, then either AEP or Customer may terminate this Agreement upon written notice to the other Party.

2.3. Commencement Date. The commencement date shall be the date on which each of the following events shall have occurred or been waived by the Parties ("Commencement Date"):

2.3.1. Receipt by both Parties of all necessary Governmental Approvals (in form and substance reasonably satisfactory to each of the Parties) in addition to the Governmental Approval specified in Section 2.2 hereof.

2.3.2. Notwithstanding Section 2.1, at the written request of Customer, AEP will waive one or all of the conditions specified in this Section 2.3 so that Work can proceed as soon as reasonably practicable after receipt of the request; provided, however, AEP will be entitled to reimbursement of costs pursuant to this Agreement as if the Work had been performed only after satisfaction of the waived condition. And provided further that: 1) AEP will not be

obligated to waive any conditions, other than the approvals specified in Section 2.2, which expressly require Governmental Approval prior to the commencement of work; and 2) AEP shall be allowed to terminate the Work in the event any necessary Governmental Approvals are denied.

2.4. Term. The term of this Agreement shall commence on the Effective Date and unless earlier terminated, shall terminate sixty (60) Calendar Days following the completion of all Work as provided for hereunder and satisfaction of all payment obligations of the Parties with respect to the Work, except as provided for in Section 2.3 of the ILDSA.

2.5. Events of Termination. This Agreement may be terminated by the Parties as follows:

2.5.1. This Agreement may be terminated by mutual written agreement of the Parties.

2.5.2. Either Party may terminate this Agreement upon termination of the ILDSA as provided in Section 2.7.

2.5.3. Either Party may terminate this Agreement if any Governmental Authority denies approval of any necessary or appropriate approvals for the Work.

2.5.4. Either Party may terminate this Agreement for default as provided in Section 7.2.

2.6. Regulatory Approval of Termination. Any termination of this Agreement provided for herein shall be subject to any necessary approval by the Commission, if applicable.

2.7. Termination of ILDSA. If the ILDSA is terminated, the Parties shall negotiate in good faith for thirty (30) Calendar Days, or such other period as the Parties may agree upon in writing, to revise this Agreement as necessary to reflect such termination. If the Parties are unable to reach agreement on such revisions by the end of such period, either Party may terminate this Agreement by written notice to the other Party.

2.8. Survival of Rights. Termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such termination, including, without limitation, payment obligations, remedies, indemnification obligations, confidentiality and any provisions of this Agreement that explicitly provide for survival after termination.

3. DEVELOPMENT OF THE PROJECT

3.1. Scope of Work. The "Work" with respect to the Project and the responsibility for costs associated with each element of the Work is described in Schedule 3.1 and any attachments referenced therein, and includes the provision of all design, engineering, construction, site preparation, excavation, acquisition of land rights, labor, materials, supplies, equipment supervision, testing, acquisition of Governmental Approvals and other activities necessary or appropriate for the completion of the Project in accordance with this Agreement.

3.2. Obligations of the Parties.

3.2.1. Each Party will undertake, directly or through its affiliates or contractors (or any combination thereof), the performance of its obligations with respect to the Work as indicated on Schedule 3.1. The Parties will exchange relevant information concerning the Project and the Work. The Project Facilities will be designed so as to render them compatible with AEP's existing transmission facilities in AEP's reasonable judgment. AEP will have the right to review and approve Customer's plans and specifications and construction of the Project Facilities. No such review and approval will constitute either a waiver by AEP of any provision of this Agreement or an endorsement by AEP of the design of the portion of the Project Facilities to be designed and constructed by Customer or a warranty or other assurance by AEP of the safety, durability or reliability of such portion of the Project Facilities.

3.2.2. Each Party will perform its obligations with respect to the Work for which it is responsible consistent with Applicable Law, applicable Governmental Approvals, Good Utility Practice, and applicable standards set out in the ILDSA (including the Connection Guide and the Switching Guide, in each case as defined in Section 2.8 of the ILDSA). EACH PARTY HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE PERFORMANCE.

3.3. Completion and Commissioning of the Project Facilities. The Parties will use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.2.2 to have the Project Facilities ready for service by the "Projected In-Service Date" set out in Schedule 3.1 or any other date to which the Parties may subsequently agree in writing. The Projected In-Service Date will be extended to reflect any delays as a result of Force Majeure and extended to reflect any suspension of the Work as provided for and in accordance with the provisions of this Agreement. AEP will control (i) timing and implementation of the final connection and energization of the circuitry for the Project Facilities, and (ii) the matters over which AEP is given control in accordance with Sections 2.7 and 3.6 of the ILDSA, and in both cases Customer will reasonably cooperate with such activities.

3.4. [RESERVED]

3.5. Access and Land Rights.

3.5.1. Subject to any necessary Governmental Approvals and to the superior real property rights and interests of third persons and the receipt of all necessary consents of third parties in form and substance reasonably satisfactory to each of the Parties, a Party (the "Granting Party") will furnish to the other Party (the "Access Party") any rights of use, licenses, rights of way, and easements (including ingress and egress) with respect to lands owned or controlled by the Granting Party or any of its affiliates to the extent necessary to enable the Access Party to perform its portion of the Work and to operate, repair, maintain, and demolish any of the Project Facilities, and to otherwise perform its obligations under this Agreement (and, with respect to the Project Facilities, the ILDSA). If any part of the Project Facilities are to be installed on property owned or under the control of third persons, Customer will at its own expense use commercially reasonable efforts in accordance with the standards of performance set forth in Section 3.2.2 to procure from such persons property rights in form and substance reasonably acceptable to AEP necessary to enable AEP to perform its obligations under this Agreement. If AEP specifies that a fee interest for its Project Facilities is required, Customer shall grant or shall use commercially reasonable efforts to obtain from the appropriate third party, the necessary fee interest on terms acceptable to AEP and in a form consistent with AEP's standard real estate purchase form.

3.5.2. Upon reasonable notice and with supervision (or, in the case of emergency, without notice or supervision but in accordance with the standards of performance set forth in Section 3.2.2), either Party is hereby given the right to enter upon the lands occupied by the other Party on a temporary basis as necessary to enable such Party to perform its obligations under this Agreement, provided that the Party making such entry shall (a) comply with safety and security procedures as specified by the Party that occupies the land and (b) shall not interfere with the operations of the Party that occupies the land.

3.5.3. Neither Party will directly or indirectly do or permit any act or omission that would give rise, with respect to any obligation of such Party or any of its affiliates, subcontractors, or suppliers, to any lien or encumbrance on any real property interest or other property held by the other Party. A Party that becomes aware of any such lien or encumbrance on the property of the other Party shall promptly: (a) notify the other Party; and (b) at its own expense, take such action as may be necessary to duly discharge such lien or encumbrance.

3.5.4. Each Party shall be liable for any property damage and any injuries incurred by any of its employees, agents, contractors or other representatives while on property occupied by the other Party.

3.5.5. A Party shall notify the other Party immediately if that Party has knowledge that any Hazardous Materials are released on, about, under or in the immediate vicinity of the Project Facilities. A Party bringing any Hazardous Materials onto the other Party's property agrees to indemnify the other Party against all liability or expense in any way associated with or arising from such Hazardous Materials, except to the extent that the liability arises as a result of an act or omission of the other Party.

3.5.6. AEP shall retain access rights to Customer's or third party's property in accordance with Sections 3.5.1 and 3.5.2 if necessary to carry on AEP's operations following termination.

3.5.7. Sections 3.5.3 through 3.5.6 shall survive termination of this Agreement. To the extent referenced in Section 3.5.6, Sections 3.5.1 and 3.5.2 shall also survive termination of this Agreement.

4. [RESERVED]

5. INDEMNIFICATION

5.1. Parties' Indemnification. Subject to the other limitations set forth in this Agreement, each Party (an "Indemnifying Party") will be liable to and will indemnify the other Party, its affiliates, and its or their officers, employees, agents and subcontractors (each an "Indemnified Person") for any personal injuries suffered by third parties or damage to a third party's tangible property, reasonable attorney fees and other costs and expenses of defense, and (with the approval of the Indemnifying Party) costs and expenses of settlement, in each case incurred by the Indemnified Person, arising in connection with the prosecution of the Work, to the extent such injuries or damage are caused by the negligence, gross negligence, strict liability in tort, or willful misconduct of the Indemnifying Party or its officers, employees, agents or subcontractors but only to the extent the Indemnified Person is found liable to the third party. If such personal injury or property damage is caused by the joint or concurrent negligence of the Parties or their affiliates (or their respective officers, employees, agents, or subcontractors), the Parties and Indemnified Persons will bear the loss in proportion to their or their affiliates' (or their respective officers', employees', agents' or subcontractors') degree of negligence.

5.2. Indemnification Procedures. The Indemnified Person shall give notice as promptly as is reasonably practicable to the Indemnifying Party of any claim for indemnification under this Article 5; provided that the failure of the Indemnified Person to give notice shall not relieve the Indemnifying Party of its obligations under this Article 5, except to the extent (if any) that the Indemnifying Party shall have been materially prejudiced thereby. The Indemnified Person will have the right to control the defense and settlement of any third party claim that is the basis for a claim for indemnification with counsel of its own choice, provided that the Indemnifying Party may retain counsel at its expense to assist in the defense and settlement of such third party claim.

5.3. Non-Exclusive. The indemnification provided by this Article 5 shall be in addition to any other rights to which an Indemnified Person may be entitled under any

agreement, as a matter of law or otherwise, and shall continue as to an Indemnified Person who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnified Person.

5.4. Survival. The provisions of this Article 5 shall survive the termination of this Agreement.

6. FORCE MAJEURE

6.1. Effect of Force Majeure. In the event that either Party is rendered unable by reason of an event of Force Majeure occurring or arising without the fault or negligence of such Party, to perform, wholly or in part, any obligation or commitment set forth in this Agreement, then the obligations of such Party (except for the obligation to pay sums of money owing hereunder for periods prior to the event of Force Majeure) shall be suspended to the extent of such Force Majeure condition, and such Party shall not be deemed to be in default of this Agreement, for the period of such Force Majeure condition. A Party's lack of funds shall not be an event of Force Majeure. An adjustment shall be made to the Projected In-Service Date as the result of an event of Force Majeure in accordance with Section 3.3 hereof.

6.2. Notification. In the event of the occurrence of an event of Force Majeure, which prevents a Party from performing its obligations hereunder, such Party shall notify the other Party of such Force Majeure, in writing or by telephone as soon as reasonably possible after the determination that event of Force Majeure has occurred, but in any event within seven (7) Calendar Days thereafter (telephone notices to be confirmed in writing as soon as reasonably possible).

6.3. Labor Disputes. Neither Party will be required by this Agreement to settle any strike, walkout, lockout, or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood that the settlement of strikes, walkouts, lockouts, or other labor disputes will be at the sole discretion of the Party having the difficulty.

7. DEFAULT AND REMEDIES

7.1. Events of Default. An "Event of Default" will exist:

7.1.1. As to a Party, if such Party ceases to maintain any Governmental Approval (including any Commission acceptance or approval) necessary for such Party's performance of this Agreement or the contemplated ownership or operation of the Project Facilities, or if any Governmental Authority shall have issued an order, decree, ruling, or other action restraining, enjoining, or otherwise prohibiting such Party's performance of this Agreement or its contemplated ownership or operation of the Project Facilities;

7.1.2. As to a Party, if such Party fails to fully cure its breach of any other obligation under this Agreement within twenty (20) Calendar Days following written notification of such breach or such longer period, not to exceed a total cure period of one hundred eighty (180) Calendar Days, as

may be reasonably necessary to cure such breach, provided that such Party has commenced and is diligently pursuing such cure; or

7.1.3. As to a Party if it becomes Insolvent.

7.2. Termination. If an Event of Default in any material respect occurs as to a Party, the other Party will have the right to terminate this Agreement on ten (10) Calendar Days written notice to the defaulting Party, provided that this Agreement shall not be terminated if the Event of Default is cured within such 10-Calendar Day period.

7.3. Other remedies.

7.3.1. If an Event of Default in any material respect occurs and while it persists with respect to a Party, the other Party may suspend performance of its obligations with respect to the Work under this Agreement (other than its obligations to pay money) without prejudice to any other remedy that it may have under this Agreement or Applicable Law.

7.3.2. Whether or not a Party suspends performance of its obligations under, or terminates, this Agreement as a result of an Event of Default, such Party will have the right to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity due to such Event of Default, subject to the limitations of Section 7.4.

7.4. Exclusions and Limitations of Damages. In no event will either Party be liable under any provision of this Agreement for any special, indirect, incidental, consequential, punitive, or exemplary damages (including loss of profit or revenue, loss of use of equipment, cost of capital, or damage to reputation or relations) whether based in contract, tort, strict liability, statutory liability, or any other theory of liability.

8. CONFIDENTIALITY

8.1. Confidential Information. Each Party shall hold in strict confidence and shall not disclose or use any information obtained from the other Party hereunder that is marked confidential ("Confidential Information") for the period ending two (2) years after the date of termination of this Agreement.

8.2. Disclosure. Notwithstanding the foregoing, a recipient shall be entitled to disclose Confidential Information to its and its affiliates' officers, employees, agents, lenders, attorneys, and other advisors (collectively "Employees and Agents") for purposes of meeting its obligations and exercising its rights hereunder, provided that the Employees and Agents shall be informed of the confidentiality obligations provided herein. Each recipient agrees to be responsible for any breach of the confidentiality obligations under this Agreement by its Employees and Agents. Further, a recipient shall also be entitled to disclose Confidential Information to the extent such disclosure: (a) is necessary or convenient as part of any regulatory proceeding in which it is a party subject to a protective order or such other remedy as the disclosing Party may reasonably consider appropriate in the circumstances; (b) is required to be

disclosed by stock exchange requirements applicable to the recipient or its affiliates, (c) is necessary or otherwise reasonably deemed appropriate in connection with any dispute resolution commenced pursuant to this Agreement or any litigation commenced in respect of this Agreement, or (d) is disclosed to an entity whose primary business is the issuance of credit ratings, provided the information is disclosed pursuant to a customary confidentiality agreement, and is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available.

8.3. Exclusions. Notwithstanding anything to the contrary in this Article 8, Confidential Information will not include information that: (a) has become part of the public domain other than by acts or omissions of the recipient or its Employees and Agents, (b) to the recipient's knowledge, has been furnished or made known to the recipient by third Persons (other than those acting on behalf of the disclosing Party) as a matter of legal right and without relevant restriction on disclosure or use, (c) was in the recipient's possession prior to disclosure by the disclosing Party and was not previously acquired by the recipient or its Employees and Agents directly or indirectly from the disclosing Party, or (d) is independently developed by Employees and Agents of the recipient without access to Confidential Information.

8.4. Notification. Under circumstances other than those provided in Section 8.2, if a Party is required pursuant to Applicable Law or otherwise becomes legally compelled to disclose any of the Confidential Information or the fact that the Confidential Information has been made available to it, such Party shall (unless prohibited by Applicable Law from doing so) promptly notify the disclosing Party in order that the disclosing Party may seek a protective order or such other remedy as the disclosing Party may consider appropriate in the circumstances. In any event, the compelled Party may disclose only that portion of the Confidential Information which such Party is legally required to disclose in the judgment of the Party's legal counsel without any liability to the disclosing Party hereunder and such disclosure shall not be a breach of this Section 8.4.

8.5. Survival. The provisions of this Article 8 shall survive a termination of this Agreement.

9. OTHER PROVISIONS

9.1. Construction with ILDSA. The rights and obligations of the Parties under this Agreement are subject to the ILDSA, provided that to the extent there is any conflict between the provisions of this Agreement and the ILDSA or any other tariff or agreement, the provisions of this Agreement shall be controlling.

9.2. Notices. Any notice that is required or permitted under this Agreement may be given by personal delivery to the Party entitled thereto, by e-mail (with confirmation of receipt), by any courier service which guarantees overnight, receipted delivery, or by U.S. Certified or Registered Mail, return receipt requested, addressed to the Party entitled thereto, at:

If to Customer:
East Texas Electric Cooperative, Inc.
Attention: General Manager
P. O. Box 631623
Nacogdoches, TX 75963-1623
936-560-9532
e-mail: ryant@gtpower.com

with copy to:
Holland & Knight, LLP
Attention: Bill Burchette
800 17th Street NW, Suite 1100
Washington, DC 20006
e-mail: bill.burchette@hklaw.com

If to AEP:
Director, Transmission and Interconnection Services
American Electric Power Service Corporation
212 East 6th Street
Tulsa, OK 74119
e-mail: rlpennybaker@aep.com

with copy to:
John W. Seidensticker
Senior Counsel
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, OH 43215
e-mail: jwseidensticker@aep.com

Either Party may change its address or email for notice by written notice to the other Party in accordance with this Section 9.2. Any notice given (a) by personal delivery shall be deemed to be given upon such delivery, (b) by email shall be deemed given upon receipt, (c) by overnight courier service shall be deemed given on the date noted on the courier's receipt for delivery, or (d) by U.S. Certified or Registered Mail, return receipt requested, shall be deemed given upon the date noted on such return receipt, provided, however, that if in any case delivery is made on a day other than a Business Day or after 5:00 p.m. local time on a Business Day, delivery shall be deemed to be given upon the next Business Day.

9.3. Amendment. No amendment to this Agreement will be valid or binding unless and until (a) reduced to writing and executed by each Party's authorized representative and (b) the requirements of Section 2.2 have been satisfied with respect to such amendment to the extent

applicable. It is the intent of the Parties that, to the maximum extent permitted by law, the provisions of this Agreement shall not be subject to change under Sections 205 and 206 of the Federal Power Act absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party or the Commission, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County,* 554 U.S. 527, 128 S.Ct. 2733 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 130 S.Ct. 693 (2010).

9.4. Assignment. Except as otherwise provided in this Agreement, neither Party may assign any of its rights or delegate any of its duties under this Agreement to any person without the prior written consent of the other Party. Notwithstanding the foregoing, AEP may without the prior consent of Customer assign this Agreement to any of its affiliates or to any transmission joint venture of which it is then a member, and Customer may assign its rights under this Agreement to its lenders for collateral security purposes without AEP's prior consent; provided, however, in either event, the assigning party shall promptly provide written notice to the other party of such assignment. No assignment of this Agreement shall relieve the assignor of any obligation, duty or liability arising hereunder prior to such assignment, and in the event of an assignment by Customer to its lender, an assignment shall not relieve Customer of any obligation, duty or liability arising before or after such assignment. Neither Party's obligations shall be enlarged, in whole or in part, by reason of an assignment of this Agreement.

9.5. Merger and Integration; Binding on Successors; No Third Party Beneficiaries. This Agreement and the ILDSA set out the entire understanding of the Parties with respect to the matters they purport to cover and supersede all prior communications, agreements, and understandings, whether written or oral, concerning such matters. Except as otherwise expressly provided in this Agreement, the descriptions of the Project and Project Facilities set forth in any Prior Project Documentation are superseded by the descriptions given in this Agreement. No Party will be liable or bound to any Party in any manner by any warranties, representations, or covenants other than those set forth in or incorporated into this Agreement. The terms and conditions of this Agreement will inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9.6. Forbearance and Waiver. Except where a specific time period is provided hereunder for the exercise of a right or remedy, any Party's forbearance in the exercise or enforcement of any right or remedy under this Agreement will not constitute a waiver thereof, and a waiver under one circumstance will not constitute a waiver under any other circumstance.

9.7. Partial Invalidity. Any invalidity, illegality, or unenforceability of any provision of this Agreement in any jurisdiction will not invalidate or render illegal or unenforceable the remaining provisions hereof in such jurisdiction and will not invalidate or render illegal or unenforceable such provision in any other jurisdiction.

9.8. Governing Law. The interpretation, enforcement and performance of this Agreement shall be governed by the laws of the state in which the Delivery Point is located as specified in Schedule 3.1, without regard to the laws of such jurisdiction applicable to conflict of laws.

9.9. Multiple Counterparts. This Agreement may be executed by the Parties in multiple original counterparts, and each such counterpart will constitute an original hereof.

9.10. No Partnership. Nothing contained herein shall be deemed to create an association, joint venture, partnership, or principal/agent relationship between the Parties hereto or impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

9.11. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and shall not be used or relied upon in any manner in the construction or interpretation of this Agreement.

9.12. Sections. Unless otherwise specified, references in this Agreement to numbered Sections, Articles and Schedules shall be to Sections, Articles and Schedules of this Agreement.

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