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April 5, 2021

Mayor Bryant Cockran
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Mayor Bryant:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the City within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Mayor Pro Tem Randy Boyd
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Mayor Pro Tem Boyd:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Council Member Luin McConnell
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Council Member McConnell:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
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Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Council Member Elmerine Allen Bell
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Council Member Bell:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Council Member Raymond Mosley
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Council Member Mosley:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Council Member Vincent Fleming
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Council Member Fleming:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Amber Cunningham
City Secretary
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Ms. Cunningham:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Shawn Holden
Director of Public Works
City of Italy
161 West Main Street
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Director Holden:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Superintendent Rachel Kistner
Italy Independent School District
300 South College
Italy, Texas 76651

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Superintendent Kistner:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the Italy Independent School District within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

Kimberly Buckley

From: Rachel Kistner <rkistner@italyisd.org>
Sent: Friday, April 23, 2021 9:21 AM
To: Kimberly Buckley
Cc: Oscar Trevino
Subject: Italy ISD information request

This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

Hello Ms. Buckley,

I am writing to follow-up on Oncor's letter regarding the construction of a new transmission line. I have confirmed with Oystercatcher's representative that they are in communication with Oncor regarding the planned line.

Italy ISD does not have property within the study area and the Oystercatcher property will be served by the new line. Therefore, I do not have any environmental or land use information to provide to you other than that the potential Oystercatcher Solar LLC project will be within the project study area.

Please let me know if I may be of further assistance on this matter.

Rachel L. Kistner

Italy ISD

Superintendent

972-483-1815

rkistner@italyisd.org

Confidentiality Statement

This message and all attachments are confidential and may be protected by the attorney-client privilege or other legal privileges, the Family Educational Rights and Privacy Act, the Individual with Disabilities Education Act, as well as other state and federal laws. Any review, use, dissemination, forwarding, printing, copying, disclosure or distribution by persons other than the intended recipient(s) is prohibited and may be unlawful. If you received this transmission in error, please notify the sender by reply email and delete this message and any attachments, in any form, without disclosing it.

Unless expressly stated in this email, nothing in this message should be construed as a digital or electronic signature. Thank you for your cooperation.

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April 5, 2021

Mike Eastland
Executive Director
North Central Texas Council of Governments
616 Six Flags Drive
Arlington, Texas 76011

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Executive Director Eastland:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
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Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Monte Mercer
Deputy Executive Director
North Central Texas Council of Governments
616 Six Flags Drive
Arlington, Texas 76011

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Deputy Executive Director Mercer:

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Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Edith Marvin
Director of Environment & Development Dept
North Central Texas Council of Governments
600 Six Flags Drive
Arlington, Texas 76011

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Director Marvin:

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FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

Kimberly Buckley

From: Barbara Bradford <BBradford@nctcog.org>
Sent: Wednesday, May 12, 2021 2:33 PM
To: Kimberly Buckley
Cc: Tamara Cook; Elena Berg; Brian Geck; Sydni Ligons; Casey Cannon; Dalton Dickson
Subject: PDF Version: Freese Nichols - Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas
Attachments: Freese_Nichols_Letter.pdf; NCTCOG Transportation Attachment_Freese Nichols Letter.pdf

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Hi Kimberly,

Please accept and make use of the pdf versions of NCTCOG responses to your letter dated April 5, 2021.

Thank you.

April 27, 2021

Kimberly Buckley, PG
Associate, Project Manager
Freese and Nichols, Inc.

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis, County, Texas

Dear Ms. Buckley,

The North Central Texas Council of Governments (NCTCOG) has prepared the following comments regarding Freese and Nichols, Inc. proposed construction of a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities located in Ellis County, Texas, north-northwest of Italy, Texas. The proposed project was reviewed using NCTCOG's Economic and Environmental Benefits of Stewardship (EEBS) tool and NCTCOG's Regional Ecosystem Framework (REF) tool. More information about the EEBS can be found at http://eebs.nctcog.org/ and more information about the REF can be found at www.nctcog.org/ref. Both tools are intended as high-level, preliminary screening tools to identify potential environmental impacts.

The REF is a geographic information system (GIS) based tool that identifies areas of relative ecological importance in the Dallas/Fort Worth region at the subwatershed level. The REF tool designates scores based on the quantity of green infrastructure, ecosystem value and water elements. The attached map indicates the features as defined by the REF tool for the proposed project area. Subwatersheds are given REF composite scores that range from 5-50 based on their relative ecological importance. The analysis using the REF tool shows that the proposed project is located in the Baker Branch-Chambers Creek subwatershed, which has a composite score of 19. The individual criteria for this subwatershed with the highest score was agriculture, indicating the presence of agricultural land; and the scores for other indicators, such as flood, density, natural, and rarity were relatively low.

The EEBS tool is primarily used to estimate the return of investment of implementing environmental stewardship to reduce the environmental effects of transportation projects. Benefits are quantified when possible, and potential areas for mitigation are highlighted. In the case of this proposed project, the assumption was made that the proposed transmission line would be similar to a bike/pedestrian path that was 160 feet wide. Attached for your review are the inputs and results from the EEBS analysis, including the project boundary, data inputs, and project analysis reported from the EEBS tool. Also included are the potential environmental effects that EEBS shows for the proposed project, which are water quality impact and vegetation removal, the stewardship options for those environmental effects, and information about those stewardship options.

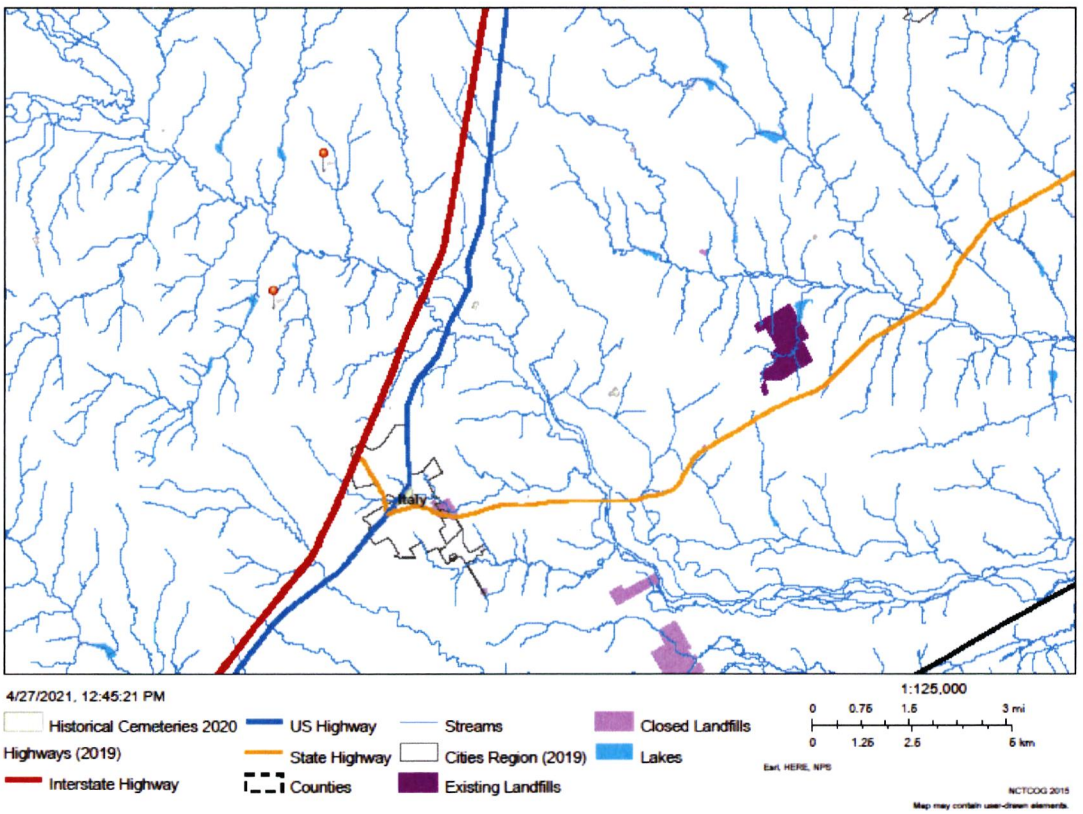
If you have any questions about these comments, please contact Elena Berg by phone at 817-608-2363 or by email at eberg@nctcog.

Sincerely,

Tamara Cook

Tamara Cook, Senior Program Manager
Environment and Development Department

Freese and Nichols Transmission Line Project, Ellis County, April, 2021



1. Draw Your Project Boundaries

2. Tell Us About Your Project

Project type:

Bike/Ped Trail

Total width of project (ft):

160

Run Analysis

3. Your Project Analysis

128.1 Total Acres

2309 Feet of Streams

18.7 Acres Flood Zone

6.5 Acres Wetlands

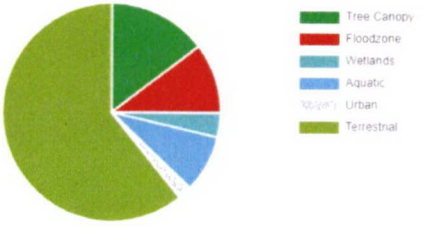
15.4 Acres Aquatic

26.5 Acres Tree Canopy

109.9 Acres Terrestrial

3.7 Acres Urban

Some datasets may overlap causing sum total of acres to be greater than actual total of acres.



Your project may affect a resource that may require regulatory compliance. Stewardship options provided may not meet the necessary requirements. Further coordination with regulatory agencies and mitigation may be required.

4. Potential Environmental Effect of Your Project

These numbers represent the environmental cost of one acre of transportation project if no stewardship efforts are implemented. The transportation project may be larger or smaller than one acre, affecting this cost. Not all environmental costs are represented here, only those that could be quantified for the North Central Texas region. Therefore, the project may have additional environmental costs.

5. Stewardship Options for Your Project

Water Quality/Quantity of Runoff, Flood Regulation

View Details

Water Quality/Quantity of Runoff, Flood Regulation, Biodiversity, Aesthetic Value

View Details

Water Quality/Quantity of Runoff, Flood Regulation, Biodiversity, Aesthetic Value, Recreation, Air Quality

View Details

Bioretention and Bioswales

Bioswales/Bioretention use vegetation, soils, rocks, and other natural materials to slow, capture, and filter stormwater runoff, mimicking natural hydrology. They may come in several forms including a basin, landscaped area, or channel.

The transportation project may require more or less than one acre of stewardship, affecting the total cost of the stewardship type. Each cost includes the total initial capital costs and the maintenance costs annualized for one acre of the stewardship type.

Cost Range

Bioretention or bioswales are estimated to cost $88,500 to $132,000 per acre.

Habitat Value

Bioswales can provide a small habitat benefit as they can be valuable for small species such as pollinators. These species are valuable for pollination of crops and in the wild. Efforts to preserve and enhance habitat and biodiversity are important to people.

Species also have intrinsic value, or their value outside of human uses. These are generally non-use values such as existence value, the value of conservation for future generations, or natural historical value. These may provide mental, spiritual, and social wellbeing to humans, but are often individual to each person.*1

Stormwater Benefits (Water Quantity/Quality of Runoff)

Each economic benefit is reported for one acre of stewardship. The transportation project may require more or less than one acre of stewardship, affecting the total economic benefit of the stewardship type. As there are several benefits that could not be quantified for the North Central Texas region, the total economic benefits could be higher.

Reducing stormwater volume can reduce the capacity requirements for this infrastructure, saving costs. Bioretention/bioswales can reduce the amount of runoff flowing into stormwater management systems and can reduce costs of stormwater management by approximately $1,000 to $1,100 per acre per year.

Stormwater runoff, with its pollutant loads, adversely effects surface water quality. Bioretention/bioswales may increase the water quality of runoff from transportation projects and may thus increase water quality in streams, rivers, and other waterbodies. Reduced nutrients in North Central Texas waterways may result in cost savings to jurisdictions that may otherwise have been required to reduce nutrient discharges. For each acre of bioretention/bioswale, there may be a total annual stormwater benefit of $1,050 to $4,730. For each acre of bioretention/bioswale stewardship, the annual value of pollutant reduction is $13 to $76 for sediment removal, $31-$3,140 for nitrogen removal,and $4 to $413 for phosphorous removal.

Enhanced water quality can also provide value in a variety of other ways including:

- Human health and wellbeing from drinking water and household water supplies.
- Improved recreational and aesthetic values to people who live, work, shop, and play near streams, rivers, and other waterbodies.
- Support for habitat and species dependent on clean water. This directly increases the intrinsic value to people of species and habitat. This indirectly supports commercial and recreational fisheries and other wildlife-dependent activities.

Aesthetic Benefits

Bioretention/bioswale facilities provide a small aesthetic benefit by increasing the greenness of an area. They have the potential to provide significant aesthetic value to nearby residents, businesses, and visitors. The value of bioretention/bioswale facilities may increase with the following:

- Education and awareness of the purpose of bioretention/bioswale facilities
- Type of design
- Maintenance of the facilities
- Integration with recreation facilities and parks

Other Health and Social Benefits

Bioretention/bioswales may provide a small physical and mental health benefit resulting from their greenness. Presence of greenness may result in greater outdoor physical activity because of an increase or perceived increase in scenic value (aesthetics, access, convenience).
This may result in improved physical activity and health, including:

- Social ties
- Recreation opportunity
- Lower body mass index
- Reduced mortality
- Less stress and obesity
- Increased perceived health

Mental health benefits of greenness may include:

- Stress reduction and restorative effects
- A coping technique for poverty
- Reduced domestic violence
- Attention deficit disorder symptom management
- Increased social cohesion
- Increased working wellbeing.

Bioretention/bioswales may also reduce traffic speeds and reduce crashes and injuries on urban roadways. For example, a study of Texas urban roads found crash rates decreased by 46 percent and pedestrian fatalities dropped markedly across the 10 urban arterial and highway sites after landscape improvements were installed.

Avoided Flooding

Bioretention/bioswales may provide a small avoided flooding benefit. The largest effect of transportation projects is the facilitation (indirect effect) of increased development in a drainage basin. Although the direct effect from a single transportation project may not be consequential, bioretention/bioswale facilities may provide a small benefit by helping to reduce peak flows and localized and downstream flooding, therefore reducing the associated damage costs. Reducing high-volume runoff and high-flow speed runoff can also reduce degradation of riparian and aquatic habitat.

*1 Sandler, R. (2012) Intrinsic Value, Ecology, and Conservation. *Nature Education Knowledge* 3(10):4 https://www.nature.com/scitable/knowledge/library/intrinsic-value-ecology-and-conservation-25815400

Native Tree Plantings

Native Tree Plantings involve planting trees that are native to the North Central Texas region.

The transportation project may require more or less than one acre of stewardship, affecting the total cost of the stewardship type. Each cost includes the total initial capital costs and the maintenance costs annualized for one acre of the stewardship type.

Cost Range

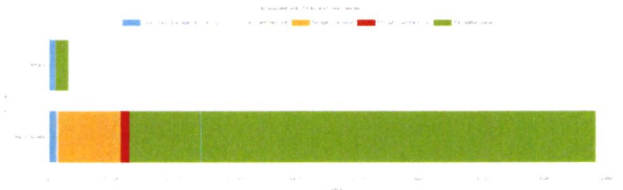
Trees are estimated to cost $36 to $57 per tree planted. Cost per acre is not available and would be subject to tree density planted.

Habitat Value

Native tree plantings can provide a moderate habitat benefit. Efforts to preserve and enhance habitat and biodiversity are important to people.

Species also have intrinsic value, or their value outside of human uses. These are generally non-use values such as existence value, the value of conservation for future generations, or natural historical value. These may provide mental, spiritual, and social wellbeing to humans, but are often individual to each person. [1]

Stormwater Benefits (Water Quantity/Quality of Runoff)



Individual trees have the ability to slow water and capture stormwater/associated pollutants; however, it is difficult to isolate the ability of individual trees quantitatively. Natural areas, including those with trees, can retain stormwater through slowing down surface flow runoff, enabling infiltration of water. They also retain stormwater through evapotranspiration. Reducing stormwater volume can reduce the capacity requirements for this infrastructure, saving costs. Tree canopy may reduce the amount of runoff flowing into stormwater management systems and can reduce costs of stormwater management by approximately $1,000 to $1,100 per acre per year.

Stormwater runoff, with its pollutant loads, adversely affects surface water quality. Tree canopy may increase the water quality of runoff from transportation projects and may thus increase water quality in streams, rivers, and other waterbodies. Reduced nutrients in North Central Texas waterways may result in cost savings to jurisdictions that may otherwise have been required to reduce nutrient discharges. For each acre of tree canopy, there may be a total annual stormwater benefit of $1,020 to $12,840. For each acre of tree canopy stewardship, the annual value of pollutant reduction is $6 to $322 for sediment removal, $16 to $10,027 for nitrogen removal, and $4 to $1,390 for phosphorous removal. Enhanced water quality can also provide value in a variety of other ways including:

- Human health and wellbeing from drinking water and household water supplies.
- Improved recreational and aesthetic values to people who live, work, shop, and play near streams, rivers, and other waterbodies.
- Support for habitat and species dependent on clean water. This directly increases the intrinsic value to people of species and habitat. This indirectly supports commercial and recreational fisheries and other wildlife-dependent activities.

Aesthetic Benefits

Property values in areas with trees may increase by approximately 1 percent to 20 percent, depending on the type of trees, the distance to the trees, and the total level of canopy cover in the neighborhood. Consumers have been shown to travel farther, stay longer, and willingly pay more for an item found in a shopping district that includes trees than they would for the same item in a non-treescaped retail location.

The annual increased property value could range between $300 to $900 per tree planted.

Other Health and Social Benefits

Native tree plantings may provide moderate physical and mental health benefits resulting from their greenness. Presence of greenness may result in greater outdoor physical activity because of an increase or perceived increase in scenic value (aesthetics, access, convenience). This may result in improved physical activity and health, including:

- Social ties
- Recreation opportunity
- Lower body mass index
- Reduced mortality
- Less stress and obesity
- Increased perceived health

Mental health benefits of greenness may include:

- Stress reduction and restorative effects
- A coping technique for poverty
- Reduced domestic violence
- Attention deficit disorder symptom management
- Increased social cohesion
- Increased working wellbeing

Native tree plantings may also reduce traffic speeds and reduce crashes and injuries on urban roadways. For example, a study of Texas urban roads found that crash rates decreased by 46 percent and pedestrian fatalities dropped markedly across the 10 urban arterial and highway sites after landscape improvements were installed

Avoided Flooding

Native tree plantings may provide a moderate avoided flooding benefit. The largest effect of transportation projects is the facilitation (indirect effect) of increased development in a drainage basin. Although the direct effect from a single transportation project on its own may not be consequential, native tree plantings may provide a moderate benefit by helping to reduce peak flows and localized and downstream flooding, therefore reducing the associated damage costs. Reducing high-volume runoff and high-flow speed runoff can also reduce degradation of riparian and aquatic habitat.

Air Quality

Vegetation naturally removes air pollutants through respiration processes, and as a result, native tree plantings can provide a moderate benefit by improving air quality. Additionally, by cooling urban air temperatures and reducing the need for heating and cooling buildings, vegetation can improve air quality by reducing electricity production and any associated air pollutants. While these benefits are generally recognized for vegetation, they are most well-studied in regard to trees. Each tree can provide annual value of $0.07 to $1.47 per pound of SO_2 of removal, $0.23 to $1.73 per pound of NO_2 removal, and $1.10 to $15.51 per pound of $PM_{2.5}$ removal.

Temperature Regulation

Tree cover has the ability to regulate local temperature, thereby reducing energy costs for heating and cooling buildings. Trees can provide shade for buildings and reduce temperature through evapotranspiration, reducing the need for air conditioning in the summer; trees also can act as wind breaks, reducing building heating needs in the winter. For each tree planted, there is potential for an annual energy savings of $0.04 to $27.04.

Recreation

There is potential for each acre of tree canopy to have an annual recreational value of $2,100 to $75,000. The recreation value ranges depending on number of users, facilities, and type of use. Large green spaces and recreation areas may induce people from outside North Central Texas to visit, thereby increasing tourism revenue. However, stewardship from transportation projects is more likely to have enhanced recreation value to local residents.

It is important to keep in mind that not all land is public, and therefore, a recreational value may not apply.

*1 Sandler, R. (2012) Intrinsic Value, Ecology, and Conservation. *Nature Education Knowledge* 3(10):4 https://www.nature.com/scitable/knowledge/library/intrinsic-value-ecology-and-conservation-25815400

Pervious Pavement

Pervious pavement is a porous surface material that allows rainwater to infiltrate into the underlying soil where it falls.

The transportation project may require more or less than one acre of stewardship, affecting the total cost of the stewardship type. Each cost includes the total initial capital costs and the maintenance costs annualized for one acre of the stewardship type.

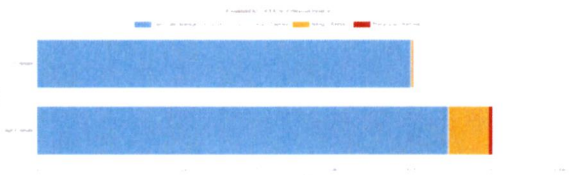
Stormwater Benefits (Water Quantity/Quality of Runoff)

Reducing stormwater volume can reduce the capacity requirements for stormwater infrastructure, saving costs. Pervious pavement can reduce the amount of runoff flowing into stormwater management systems and can reduce costs of stormwater management by approximately $1,000 to $1,100 per acre per year.

Stormwater runoff, with its pollutant loads, adversely affects surface water quality. Pervious pavement may increase the water quality of runoff from transportation projects and may thus increase water quality in streams, rivers, and other waterbodies. Reduced nutrients in North Central Texas waterways may result in cost savings to jurisdictions that may otherwise have been required to reduce nutrient discharges.

For each acre of pervious pavement, the annual value of pollutant reduction is $3 to $4 for sediment removal, $4 to $107 for nitrogen removal, and $1 to $10 for phosphorous removal.

For each acre of pervious pavement, there may be a total annual stormwater benefit of $1,010 to $1,220.



Cost Range

The tool assumes pervious pavement would replace the same quantity of traditional pavement. As several sources indicate life-cycle costs of pervious pavement may be similar or less expensive to install and maintain compared with traditional pavement, the tool does not include a cost for pervious pavement.

Avoided Flooding

Permeable pavement may provide a small avoided flooding benefit. The largest effect of transportation projects is the facilitation (indirect effect) of increased development in a drainage basin. Although the direct effect from a single transportation project on its own may not be consequential, pervious pavement may provide a small benefit by helping to reduce peak flows and localized and downstream flooding, therefore reducing the associated damage costs. Reducing high-volume runoff and high-flow speed runoff can also reduce degradation of riparian and aquatic habitat.

Transportation Department

NCTCOG's current metropolitan transportation plan, Mobility 2045, identifies one roadway project for expansion in the vicinity of Italy, Texas. However, the planned timing and location of the expansion makes it unlikely this roadway project could conflict with the transmission line project.

SH 34 Lake Bardwell Drive has been identified for expansion from SP 437 Clay Street to IH 35E. The roadway would gain two lanes to create a four-lane roadway. Construction is not expected to be completed until after 2028.

The transmission line project should ensure environmental impacts, displacements, or other impacts do not create a disproportionate burden on groups protected by federal laws or executive orders.

In the Census block group that includes the study area, about 31 percent of residents are a racial or ethnic minority and about 14 percent of residents live in households below poverty. Less than 2 percent of residents speak a foreign language at home with limited ability to communicate in English. About 15 percent of residents are age 65 or older. In the Census tract that includes the study area, about 18 percent of residents are people with disabilities. (These data are from American Community Survey 2018 5-Year Estimates.)

Efforts to meaningfully engage the public should include outreach by mail or phone, because 11 percent to 20 percent of households in the Census block group that includes the study area do not have internet access. (This data is from the American Community Survey 2019 5-Year Estimates.)

Questions or Comments, please contact:
Kate Zielke
Prin Trans/Air Quality Planner
Transportation Department
North Central Texas Council of Governments
KZielke@nctcog.org

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April 5, 2021

Chairman Christi Craddick
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Chairman Craddick:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the Railroad Commission within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Commissioner Wayne Christian
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Commissioner Christian:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Commissioner Jim Wright
Railroad Commission of Texas
P.O. Box 12967
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Commissioner Wright:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Kimberly Buckley

Kimberly Buckley, PG
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April 5, 2021

Sheila Weigand
Programs Specialist
Railroad Commission of Texas, Office of General Counsel
P.O. Box 12967
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Ms. Weigand:

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Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Director Brian Roberts
University of Texas at Austin
Texas Archaeological Research Laboratory
1 University Station, R7500
Austin, Texas 78712

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Director Roberts:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to Texas Archaeological Research Laboratory within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Associate Director Jonathan Jarvis
University of Texas at Austin
Texas Archaeological Research Laboratory
1 University Station, R7500
Austin, Texas 78712

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Associate Director Jarvis:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

Kimberly Buckley

From: Jarvis, Jonathan H. <jonathan@austin.utexas.edu>
Sent: Thursday, April 22, 2021 10:52 AM
To: Kimberly Buckley
Cc: Valdez, Fred
Subject: Oncor Old Country Switch 345 kV, Ellis Co., TX

This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

Kimberly:

We recently received your letter concerning Oncor's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas. To clarify: are you requesting a cultural resources constraints analysis to be conducted by TARL? Or simply seeking comments from interested parties? Our fee for cultural resources constraints analysis is $200/hr and we request GIS data (preferably an ArcGIS shapefile, but a .kml file from Google Earth or some such would suffice) of your project alignment. In either case, the map provided is likely insufficient for us to determine whether or not previously recorded archeological sites are present in the area of interest.

Best regards,
Jonathan

Jonathan H. Jarvis, MLA, M.S., RPA
Associate Director, Texas Archeological Research Lab
Lecturer, Department of Anthropology
The University of Texas at Austin
Phone: 512/471-5959
www.utexas.edu/cola/tarl
www.texasbeyondhistory.net

SEMPER PARATUS – TEAM COAST GUARD

Kimberly Buckley

From:	Kimberly Buckley
Sent:	Wednesday, April 28, 2021 10:53 AM
To:	Jarvis, Jonathan H.
Cc:	Valdez, Fred
Subject:	RE: Oncor Old Country Switch 345 kV, Ellis Co., TX
Attachments:	Study_Area.zip; Old Country Switch 345kV Tap Study Area kmz

Jonathan,
A cultural resources constraints analysis by TARL would be most welcome. I have attached the shapefile and KMZ of the study area. Please let me know if you have any additional information or have any issues with the attached files.

Thank you,
Kimberly

Kimberly Buckley, P.G.
Associate, Environmental Science

Freese and Nichols, Inc.
801 Cherry Street, Suite 2800
Fort Worth, TX 76102
817-735-7332 office
817-437-8811 cell
kmb@freese.com

Kimberly Buckley

From: Jarvis, Jonathan H. <jonathan@austin.utexas.edu>
Sent: Friday, April 30, 2021 3:46 PM
To: Kimberly Buckley
Subject: CR Constraints Analysis - Oncor Old Country Switch 345kV
Attachments: Freese_Old_Country_Switch_EllisCo.pdf

This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

Kimberly:

The cultural resources constraints analysis for your Oncor Old Country Switch 345kV Tap Transmission Line study area is attached. I'll drop the hardcopy in the mail along with the invoice. Please let me know if you have any questions.

Best regards,
Jonathan

Jonathan H. Jarvis, MLA, M.S., RPA
Associate Director, Texas Archeological Research Lab
Lecturer, Department of Anthropology
The University of Texas at Austin
Phone: 512/471-5959
www.utexas.edu/cola/tarl
www.texasbeyondhistory.net

Philosophìa Krateìto Photôn

Texas Archeological Research Laboratory
College of Liberal Arts

1 University Station •R7500 • Austin, TX 78712 • 512-471 5960 • FAX 512-232-6563
https liberalarts utexas edu tarl

29 April 2021

Kimberly Buckley, PG
Freese and Nichols, Inc.
801 Cherry Street, Suite 2800
Fort Worth, Texas 76102

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345kV Tap Transmission Line Project, Ellis County, Texas

Kimberly:

This letter is provided in response to a request for information received by the Texas Archeological Research Laboratory (TARL) on 22 April 2021 concerning the above referenced study area located on the 7.5' USGS Boz, Italy, Avalon and Forreston quadrangles and the possible location of archeological sites within its boundaries. Please note that information regarding archeological site locations is not intended for public disclosure; site location information is protected by the National Historic Preservation Act of 1966, Title III, §304, and by §191.004 of the Texas Antiquities Code. If you have any questions regarding this policy please feel free to contact me at the phone number or email address below.

A search of the records on file at TARL indicates that two archeological sites, 41EL23 and 41EL24, have been documented within the study area on the Italy quadrangle. Recorded by avocational archeologist C.K. Chandler in 1969, both sites are characterized as prehistoric campsites presumed to date to the Archaic. There has been no determination or recommendation of eligibility (or lack thereof) for the National Register of Historic Places or as State Antiquities Landmarks for the sites.

TARL does not maintain cultural resource information other than the archeological site files and spatial data. As a courtesy, however, the current constraints analysis included a search of the Texas Historical Commission's (THC) restricted online Texas Archeological Sites Atlas and the publicly accessible Texas Historic Sites Atlas Based on the results of that search, no State Antiquities Landmarks or properties listed on the National Register of Historic Places are present within the study area.
There are three historic cemeteries in the study area. The High Springs Cemetery (EL-C079), located on the Boz quadrangle, dates to 1859. The Clay-Bell Cemetery (EL-C084) is located on the Italy quadrangle,

with burials spanning 1870 to 2004. The Hardeman Family Cemetery (EL-C088) is likewise located on the Italy quadrangle with burials dating from 1857 to 1910. There are also two Texas Historical Markers present within the study area. Marker No. 18603 is located on the Italy quadrangle, commemorating the Sims Family of Ellis County. Marker No. 7088, located on the Avalon quadrangle, provides details concerning the namesake of Chambers Creek.

Three linear archeological surveys have been conducted within (or crossing through) the study area. In 1976, the State Department of Highways and Public Transportation (now TxDOT) conducted a survey of an extension of FM 876 (Weir 1976). No archeological sites were identified during that survey. In 1991, AR Consultants, Inc. conducted a survey along a portion of Witten Road sponsored by the Farmers Home Administration (Skinner & Young 1991). No archeological sites were discovered during that survey. Southern Methodist University conducted archeological surveys (reports produced 1990 1998) for the proposed Superconducting Super Collider, a segment of which crosses through the current study area. Several archeological sites were documented during those survey, but none in the current study area

For regulatory matters pertaining to your project, contact the Archeology Division of the Texas Historical Commission at 512/463-6096. For any other questions, please contact me at 512/471-5959 or jjarvis@mail.utexas.edu.

Sincerely,

Jonathan H. Jarvis, RPA
Associate Director

JHJ\hs

Weir, Frank

1976 Letter Report: FM 876 from end of Present FM 876 South, 1.3 Miles, Cultural Resources Assessment, Ellis County [sic] State Department of Highways and Public Transportation. Austin, TX

Skinner, S. Alan and William Young

1991 *Cultural Resources Survey in the Files Valley Supply Area, Ellis County, Texas.* AR Consultants, Inc. Dallas, TX.

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April 5, 2021

Dan Harmon
Director
TxDOT Aviation Division
125 East 11th Street
Austin, Texas 78701

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Director Harmon:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the TxDOT Aviation Division within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Mohamed Bur, PE
District Engineer
TxDOT – Dallas District
4777 E. Highway 80
Mesquite, Texas 75150

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear District Engineer Bur:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the TxDOT Dallas District within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

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Sincerely,
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Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Carlos Swonke, PG
Director
TxDOT Environmental Affairs Division
125 East 11th Street
Austin, Texas 78701

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Director Swonke:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
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Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

George P. Bush
Commissioner
Texas General Land Office
1700 Congress Avenue
Austin, Texas 78701

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Commissioner Bush:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Mark Wolfe
Executive Director
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Executive Director Wolfe:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

Kimberly Buckley

From: noreply@thc.state.tx.us
Sent: Monday, May 3, 2021 2:30 PM
To: Kimberly Buckley; reviews@thc.state.tx.us
Subject: Section 106 Submission

This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

TEXAS HISTORICAL COMMISSION
real places telling real stories

Re: Project Review under Section 106 of the National Historic Preservation Act and/or the Antiquities Code of Texas
THC Tracking #202107922
Date: 05/03/2021
Oncor Electric Delivery Company
IH 35E and FM 876
,TX

Description: proposed Old Country Switch 345 kV tap transmission line

Dear Client:
Thank you for your submittal regarding the above-referenced project. This response represents the comments of the Executive Director of the Texas Historical Commission (THC), pursuant to review under the Antiquities Code of Texas.

The review staff, led by Rebecca Shelton, Caitlin Brashear, has completed its review and has made the following determinations based on the information submitted for review:

Archeology Comments

- THC/SHPO unable to complete review at this time based on insufficient documentation. A supplemental review must be submitted, and the 30-day review period will begin upon receipt of adequate documentation.

We have the following comments: Please provide more detailed maps that show the alternatives being considered. According to our maps, an archeological survey has not been conducted in the project vicinity. Chambers Creek watershed has high potential for archeological sites, therefore a detailed desktop analysis of the proposed project area should be conducted by a professional archeologist to determine the archeological potential within the project area.

We look forward to further consultation with your office and hope to maintain a partnership that will foster effective historic preservation. Thank you for your cooperation in this review process, and for your efforts to preserve the irreplaceable heritage of Texas. If the project changes, or if new historic properties are found, please contact the review staff. If you have any questions concerning our review or if we can be of further assistance, please email the following reviewers: rebecca.shelton@thc.texas.gov, caitlin.brashear@thc.texas.gov.

This response has been sent through the electronic THC review and compliance system (eTRAC). Submitting your project via eTRAC eliminates mailing delays and allows you to check the status of the review, receive an electronic response, and generate reports on your submissions. For more information, visit http://thc.texas.gov/etrac-system.

Sincerely,

Rebecca Shelton

for Mark Wolfe, State Historic Preservation Officer
Executive Director, Texas Historical Commission

Please do not respond to this email.

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April 5, 2021

Carter Smith
Executive Director
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Executive Director Smith:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to Texas Parks and Wildlife Department within the project study area. We have also requested information through the Wildlife Habitat Assessment Program. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Laura Zebehazy
Wildlife Habitat Assessment Program Leader
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Ms. Zebehazy:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

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Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

Online Automated Response from TPWD

Kimberly Buckley

From: WHAB <WHAB@tpwd.texas.gov>
Sent: Tuesday, April 6, 2021 10:10 AM
To: Kimberly Buckley
Cc: WHAB
Subject: TPWD has received your project review request

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This is an automated message to inform you that the Wildlife Habitat Assessment (WHAB) program has received your email. Please note that responses to requests for project review generally take **approximately 45 days** to complete, and project schedules should accommodate the review timeline. Responses may be delayed due to workload and lack of staff. If you wish to speak to the biologist who will review your project, please visit https://tpwd.texas.gov/huntwild/wild/wildlife_diversity/habitat_assessment/media/whab-map-2020.jpg for a staff directory by area of responsibility. Thank you.

Kimberly Buckley

From: Karen Hardin <Karen.Hardin@tpwd.texas.gov>
Sent: Monday, April 26, 2021 10:37 AM
To: Kimberly Buckley
Subject: RE: Project Review Request; TPWD Project 46388
Attachments: WL46388OncorOldCountrySwitch345kVTransmissionProjectC04-26-2021.pdf

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Dear Ms. Kimberly Buckley,

Please see the attached Texas Parks and Wildlife Department comments regarding the Oncor - Old Country Switch 345-kV Transmission 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

April 26, 2021

Ms. Kimberly Buckley
Freese and Nichols, Inc.
801 Cherry Street, Suite 2800
Fort Worth, TX 76102

RE: Oncor Proposed Old Country Switch 345-kilovolt (kV) Transmission Line Project in Ellis County

Dear Ms. Kimberly Buckley:

The Texas Parks and Wildlife Department (TPWD) received a project review request dated April 6, 2021, regarding the transmission project referenced above.

Project Description

Oncor Electric Delivery Company (Oncor) proposes to construct an approximately 3.5-mile long 345-kV transmission line between the proposed Oncor Old Country Switch and the Oystercatcher Solar facility in Ellis County. The proposed Old Country Switch will be located along an existing Oncor 345-kV transmission line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L. R. Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas.

In preparation of an Environmental Assessment and Alternative Route Analysis (EA) to support Oncor's application for a Certificate of Convenience and Necessity from the Public Utility Commission (PUC), Freese and Nichols, Inc. has requested input regarding the existing environment and environmental land use constraints within the project study area. The review request included a kmz file of the proposed study area and a map of the study area exhibiting existing transmission lines, the project endpoints, major and minor roads, city limits, and streams.

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 Code (PWC) section 12.0011, TPWD provides the following recommendations and informational comments to minimize adverse impacts to the state's fish and wildlife resources in the routing, construction, and operation of the proposed project.

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 transmission lines, roads, pipelines, 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 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 paths 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.

TPWD review of aerial imagery and vegetation data from the Texas Ecosystem Analytical Mapper (TEAM) indicates that the study area consists primarily of open agricultural lands including savanna grassland, disturbance or tame pastures, croplands, and hayfields, with Chambers Creek bisecting the study area from northwest to southeast. Chambers Creek is a major stream with an associated floodplain that provides an abundance of floodplain hardwood forest and floodplain herbaceous vegetation within the study area. Southwest of Chambers Creek, the study area includes oak and hardwood mottes and woodlands. High and low intensity urban development occurs near the City of Italy. Other habitat types occurring in smaller amounts within the study area include, slope forest and riparian woodlands along streams, barrens, swamps, ponds, and native savannahs invaded by mesquite, juniper, or deciduous woody species. Less prominent drainages include Baker Branch, Bell Branch, Bee Creek, and unnamed tributaries.

Recommendation: TPWD recommends Oncor route transmission lines to avoid crossing streams, riparian areas, wetlands, and open water habitat, to the extent feasible. When crossing streams, TPWD recommends crossing in a perpendicular manner and avoiding placement of lines parallel to streams and their associated wooded and herbaceous floodplain and riparian corridors to minimize risk of collision. Where lines cross or are located near creeks, drainages, wetlands, and lakes, TPWD recommends Oncor proactively install line markers to reduce potential collisions of birds utilizing these habitats. 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 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 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 proposed disturbance areas for nests with eggs or young. If active nests are observed during surveys, TPWD recommends a 150-foot disturbance-free buffer until the eggs have hatched and the young have fledged.

Sky glow because of light pollution can have negative impacts on wildlife and ecosystems by disrupting natural diurnal and nocturnal behaviors such as migration, reproduction, nourishment, rest, and cover from predators.

Recommendation: As bird protection measures for migrant and resident birds as well as other wildlife, TPWD recommends Oncor construct substations and retrofit existing substations to utilize the minimum amount of permanent night-time lighting needed for safety and security. TPWD recommends minimizing the project's contribution toward skyglow by focusing light downward, with full cutoff luminaries to avoid light emitting above the horizontal, and to use dark-sky friendly lighting that is illuminated only when needed, down-shielded, as bright as needed, and minimizes blue light emissions. Appropriate lighting technologies, beneficial management practices (BMPs), and other dark sky resources can be found at the International Dark-Sky Association and McDonald Observatory websites.

Federal Regulations: Clean Water Act Section 404

Section 404 of the Clean Water Act (CWA) 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.

Recommendation: Waterways, floodplains, riparian corridors, lakes, and wetlands provide valuable wildlife habitat, and TPWD recommends protecting them to the maximum extent possible. TPWD recommends establishing disturbance-free buffers contiguous to wetlands or aquatic systems to preserve wildlife cover, food sources, and travel corridors and constructing the transmission line to span all creeks. 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.

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 (IPaC) 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 Oncor conduct site surveys of the route to identify suitable habitat for federally-listed species, to assess potential impacts to federally-listed species, and to determine route adjustments to avoid or minimize adverse impacts to federally-listed, candidate, and proposed species. If impact to a federally-listed species is anticipated, TPWD recommends that Oncor 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.

The whooping crane (*Grus americana*) is listed endangered in the entire U.S. except where it is listed as an experimental, non-essential population. The Aransas-Wood Buffalo National Park population is the only self-sustaining wild population and had a 2019-2020 estimated size of 506 birds (Butler and Harrell 2020). The Aransas-Wood Buffalo National Park population migrates across and winters in Texas utilizing a variety of wetland and other habitats, including coastal marshes and estuaries, inland marshes, lakes, ponds, wet meadows, rivers, and agricultural fields. During migration, roosting occurs in shallow, seasonally and semi-permanently flooded palustrine wetlands. During migration, feeding occurs in wetlands and harvested grain fields for a diet of frogs, fish, crayfish, insects, and agricultural grains.

The study area occurs within the core migration corridor that represents 95% of the sightings during whooping crane migration (Pearse et al., 2018). The *Characterization of whooping crane migrations and stopover sites used in the Central Flyway, 2010-2016* and the associated companion publication indicate that the study area does not exhibit known core or peripheral stopover sites (Pearse et al., 2019 and 2020). However, the margins of larger lakes, flooded herbaceous areas, and croplands within the study area may serve as potential stopover habitat for the whooping crane.

Recommendation: To avoid potential collision risk when whooping cranes access stopover habitat, TPWD recommends avoiding project development within areas that may provide stopover habitat for whooping cranes during migration. If

proposed transmission lines must occur within the vicinity of the margins of lakes, herbaceous floodplains, or cropland, TPWD recommends proactively installing bird flight diverters to reduce potential whooping crane collision risk.

State Regulations

State Regulations – Chapter 64, Birds

PWC 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. PWC 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. PWC 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 because they are also applicable for compliance with PWC.

State Regulations: State-listed Species

PWC regulates state-listed threatened and endangered animal species. The capture, trap, take, or killing of state-listed threatened and endangered animal species is unlawful unless expressly authorized under a permit issued by USFWS or TPWD. The TPWD online application identifying rare, threatened, and endangered species by county (RTEST) provides information regarding state-listed threatened and endangered species with potential to occur within each county in Texas, as well as other rare species considered Species of Greatest Conservation Need (SGCN).

TPWD also maintains location-specific records of known occurrences for SGCN, threatened, and endangered species within the Texas Natural Diversity Database (TXNDD), and these data are available by request. The TXNDD indicates no known occurrences of state-listed threatened or endangered species within the project study area, however, Ellis County is not well-represented by the TXNDD, and state-listed species could occur if suitable habitat is present.

Recommendation: TPWD recommends the EA identify the state-listed threatened and endangered species with potential to occur within the study area using the RTEST list for Ellis County. TPWD recommends Oncor conduct site surveys of the route to identify suitable habitat for state-listed species, to assess potential impacts to state-listed species, and to determine beneficial practices to avoid or minimize adverse impacts to state-listed species. TPWD recommends the EA identify impact avoidance and minimization measures that Oncor will implement to protect state-listed species, rare vegetation communities, and SGCN that may occur within the study area.

Terrestrial State-listed Threatened Species: Based on TPWD review of RTEST for Ellis County, other than birds or federally-listed species addressed above, the state-listed threatened Texas horned lizard (*Phrynosoma cornutum*) has potential to occur in in the study area and has risk for being impacted by construction activities. This species

is at risk due to limited mobility and potentially suitable habitat in the study area, including native openings, savanna grasslands, and barrens. The Texas horned lizard, which hibernates only a few inches underground, would be susceptible to earth moving equipment and compaction. Additionally, the Texas horned lizard and other small vertebrates including snakes, lizards, toads, and mice can fall into trenches, become trapped, and would be susceptible to loss from backfilling activities, trench inundation, starvation, dehydration, predation, and exposure to elements.

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

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, biological monitors or consultants may only handle terrestrial state-listed species after obtaining authorization through the TPWD Wildlife Permits Office.

Recommendation: If trenching is involved, TPWD recommends minimizing the length 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. Because microplastic pollution is a concern for wildlife food chains, hydromulch containing plastic ingredients and 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 SGCN, threatened, and

endangered species to the TXNDD according to the data submittal instructions found on the TXNDD website. An alternative method for reporting observations of species is the iNaturalist citizen science app in which plant and animal observations are uploaded from a smartphone. The observer then selects to add the observation to specific TPWD Texas Nature Tracker Projects appropriate for the taxa observed, including Herps of Texas, Birds of Texas, Texas Eagle Nests, Texas Whooper Watch, Mammals of Texas, Rare Plants of Texas, Bees & Wasps of Texas, Terrestrial Mollusks of Texas, Texas Freshwater Mussels, Fishes of Texas, and All Texas Nature.

Aquatic State-listed Threatened Species: Creeks and other waters within the study area may provide suitable habitat for the state listed threatened alligator snapping turtle (*Macrochelys temminckii*), sandbank pocketbook (*Lampsilis satura*), 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 ONCOR protect state-listed threatened 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 creeks, avoiding the placement of tower structures in creeks, retaining riparian and stream bank vegetation, and employing sediment controls. Please review the *Clean Water Act Section 404* section above for additional BMPs that are also applicable for protecting aquatic species of concern and state-listed threatened aquatic species.

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

PWC section 1.011 grants TPWD authority to regulate and conserve aquatic animal life of public waters. Texas Administrative Code (TAC) section 57.157 regulates take of mussels, including mussels that are not state-listed. TPWD regulates the introduction and stocking of fish, shellfish, and aquatic plants into public waters of the state under PWC sections 12.015, 12.019, and 66.015 and TAC 52.101-52.105, 52.202, and 57.251-57.259.

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 PWC 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 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 Bregan Brown TPWD Region 2 KAST available at Kirian.Brown@tpwd.texas.gov and 903-566-2518.

State Regulations: Invasive Species

Per TAC chapter 57, 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). The full list of prohibited species can be found on the TPWD website regarding prohibited aquatic species.

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 ONCOR 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 ONCOR 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 old-world privets (*Ligustrum* spp.), Johnson grass (*Sorghum halepense*), bermudgrass (*Cynodon dactylon*), 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 ONCOR plant only native species and 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

PWC chapter 26 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 any public parks and recreation areas within the study area. Please note that other parks and recreation areas not in the LWRCP inventory may occur in 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 the proposed 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 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 Viewer, and the National Conservation Easement Database did not reveal any conservation easements 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 that properties protected by conservation easements be identified in the constraints analysis and avoided during development of routes. If a property protected by a conservation easement is unavoidable and would be crossed by a route, TPWD recommends the length of route through the property be included in any accounting of route impacts presented in the EA. TPWD also recommends avoiding impacts to existing mitigation banks if they occur within the study area. If impacts to conservation easements or mitigation banks cannot be avoided, TPWD recommends mitigation for the impacts. If a conservation easement occurs within a route alternative, the entity holding the easement should be contacted early in the project planning process.

State Fish and Wildlife Resources

The Texas Conservation Action Plan (TCAP) contains handbooks for each ecoregion of the state for use by all entities for guidance regarding SGCN and important habitats. The TCAP identifies threats affecting native species and habitats such as loss due to development. 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. SGCN are included in the above-referenced RTEST application.

The project study area is located within EPA Level III Texas Blackland Prairies Ecoregion. Within the Texas Blackland Prairies ecoregion, priority habitats identified in the TCAP for conservation of SGCN for the study area include barrens, tallgrass prairie communities, slope forest/woodlands, riparian and bottomland woodlands, freshwater wetlands, seeps, springs, and savannahs and woodlands.

The TPWD Landscape Ecology Program's Ecological Mapping Systems (EMS) data are available for download or available for use in the TPWD TEAM online interactive mapping tool. The EMS provides 10-meter resolution ecological 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. 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 utilize the TCAP and EMS data to assist in identifying and avoiding areas of priority habitats including barrens, tallgrass prairie communities, slope forest/woodlands, riparian and bottomland woodlands, freshwater wetlands, seeps, springs, and savannahs and woodlands. 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.

The RTEST lists for Ellis County identifies the following SGCN flora and fauna with potential to occur in the study area and potential to be impacted by habitat disturbance associated with construction, operation, and maintenance activities. Habitats descriptions for these species are included on the RTEST lists:

Taxon	SName	CName	GRank	SRank
Amphibians	Anaxyrus woodhousii	Woodhouse's toad	G5	SU
Amphibians	Pseudacris streckeri	Strecker's chorus frog	G5	S3
Amphibians	Lithobates areolatus areolatus	southern crawfish frog	G4T4	S3
Birds	Haliaeetus leucocephalus	bald eagle	G5	S3B,S3N
Birds	Leucophaeus pipixcan	Franklin's gull	G5	S2N
Birds	Athene cunicularia hypugaea	western burrowing owl	G4T4	S2
Mammals	Myotis austroriparius	southeastern myotis bat	G4	S3
Mammals	Myotis velifer	cave myotis bat	G4G5	S4
Mammals	Perimyotis subflavus	tricolored bat	G2G3	S3S4
Mammals	Eptesicus fuscus	big brown bat	G5	S5
Mammals	Sylvilagus aquaticus	swamp rabbit	G5	S5
Mammals	Microtus pinetorum	woodland vole	G5	S3
Mammals	Mustela frenata	long-tailed weasel	G5	S5
Mammals	Spilogale putorius	eastern spotted skunk	G4	S1S3
Mammals	Conepatus leuconotus	western hog-nosed skunk	G4	S4
Mammals	Puma concolor	mountain lion	G5	S2S3
Reptiles	Terrapene carolina	eastern box turtle	G5	S3
Reptiles	Terrapene ornata	western box turtle	G5	S3
Reptiles	Ophisaurus attenuatus	slender glass lizard	G5	S3
Reptiles	Thamnophis sirtalis annectens	Texas garter snake	G5T4	S1
Reptiles	Crotalus horridus	timber (canebrake) rattlesnake	G4	S4
Insects	Bombus pensylvanicus	American bumblebee	G3G4	SNR
Insects	Amblycorypha uhleri	a katydid	G2G3	SNA
Insects	Arethaea ambulator	No accepted common name	GNR	SNR
Plants	Physaria engelmannii	Engelmann's bladderpod	G4	S3
Plants	Dalea hallii	Hall's prairie clover	G3	S2

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.

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 when developing the route alternatives, while working in Ellis County, or if encountered during project construction, operation, and maintenance activities.

Recommendation: TPWD recommends assessing the route alternatives 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 taking 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.

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 publications that found on TPWD's Native Pollinator website and TPWD's Monarch Butterfly website.

Recommendation: To accrue benefits for pollinators, TPWD recommends ONCOR 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 ONCOR incorporate native grass and floral species into the permanent revegetation plan for the project 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, such as scheduling ROW maintenance to occur once the seed from pollinator plants has been released.

Please note that 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.

TPWD appreciates the opportunity to provide 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:46388

cc: Ms. Rachelle Robles, PUC

References

Butler, Matthew J. and Wade Harrell. 2020. *Whooping Crane Survey Results: Winter 2019-2020.* U.S. Fish and Wildlife Service, Aransas National Wildlife Refuge, Whooping Crane Updates. Available at https://www.fws.gov/refuge/Aransas/wwd/science/updates.html. Accessed: April 26, 2021.

Pearse, A.T, Brandt, D.A., Bidwell, M.T., Metzger, K.L., Harner, M.J., Baasch, D.M., and Harrell, W., 2019, Characterization of whooping crane migrations and stopover sites used in the Central Flyway, 2010-2016: U.S. Geological Survey data release, https://doi.org/10.5066/P9NRAY6F.

Pearse, A.T., K.L. Metzger, D.A. Brandt, M.T. Bidwell, M.J. Harner, D.M. Baasch, and W. Harrell. 2020. Heterogeneity in migration strategies of whooping cranes. The Condor: Ornithological Applications 122:1-15. https://doi.org/10.1093/condor/duz056.

Pearse, A.T., Rabbe, Matt, Bidwell, M.T., Juliusson, L.M., Craig-Moore, Lea, Brandt, D.A., and Harrell, Wade, 2018, Map of whooping crane migration corridor: U.S. Geological Survey data release, https://doi.org/10.5066/F7FT8K74.

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April 5, 2021

Chairman Scott Born
Ellis-Prairie Soil and Water Conservation District
1822 FM 66, Suite 102
Waxahachie, Texas 75167

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Chairman Born:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the Ellis-Prairie Soil and Water Conservation District within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Jeff Walker
Executive Director
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Executive Director Walker:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the Texas Water Development Board within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

John Dupnik
Deputy Executive Administrator, Water and Science Conservation
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Mr. Dupnik:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the Texas Water Development Board within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Jessica Zuba
Deputy Executive Administrator, Water Supply and Infrastructure
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Ms. Zuba:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the Texas Water Development Board within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

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April 5, 2021

Kathy Turner Jones
General Manager
Prairielands Groundwater Conservation District
208 Kimberly Drive
Cleburne, Texas 76031

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Ms. Turner Jones:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the Prairielands Groundwater Conservation District within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

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April 5, 2021

Colonel Kenneth Reed
District Commander
US Army Corps of Engineers - Fort Worth District
819 Taylor Street
Fort Worth, Texas 76102

Re: Oncor Electric Delivery Company's Proposed Old Country Switch 345 kV Tap Transmission Line Project in Ellis County, Texas

Dear Colonel Reed:

Oncor Electric Delivery Company LLC (Oncor) proposes to construct a 345 kilovolt (kV) transmission line between the proposed Oncor Old Country Switch and Oystercatcher Solar's facilities in Ellis County. The proposed Oncor Old Country Switch will be located along the existing Oncor 345 kV Transmission Line approximately two miles to the west of Interstate Highway 35E and approximately 0.3 miles to the east of Farm to Market Road (FM) 876. The Oystercatcher Plant Switch is located proximal to the intersection of Iola Lane and L R Campbell Road approximately 3.5 miles to the north-northwest of Italy, Texas. The distance between these project endpoints as shown in the attached map is approximately three miles.

Freese and Nichols, Inc. is preparing an Environmental Assessment (EA) and Alternative Route Analysis to support an application for a Certificate of Convenience and Necessity (CCN) from the Public Utility Commission of Texas (PUCT). Freese and Nichols is currently in the process of gathering data on the existing environment and identifying environmental land use constraints within the project study area that will be used in the creation of an environmental and land use constraints map. Freese and Nichols will identify potential alternative routes that consider environmental and land use constraints.

Freese and Nichols is requesting that your office provide environmental and land use constraints information regarding existing or planned land development projects, city projects, or other areas of interest to the US Army Corps of Engineers – Fort Worth District within the project study area. Your comments will be an important consideration in the evaluation of alternative routes and in the assessment of impacts. Upon certification of the final route for the proposed project, Oncor will determine the need for other approvals and/or permits. If your jurisdiction has approvals and/or permits that would apply to this project, please identify them in response to this inquiry. If permits are required from your office, Oncor will contact your office following certification of this project.

Thank you for your assistance with this transmission line project. If you have any questions or require additional information, please contact me at (817) 735-7332 or Kimberly.Buckley@freese.com. Your earliest reply will be appreciated.

Sincerely,
FREESE AND NICHOLS, INC.

Kimberly Buckley

Kimberly Buckley, PG
Associate, Project Manager

Attachment

Initial Email Response from USACE

Kimberly Buckley

From:	Gray, Natasha A CIV USARMY CESWF (USA) <Natasha.A.Gray@usace.army.mil>
Sent:	Thursday, April 22, 2021 1:50 PM
To:	Kimberly Buckley
Cc:	Roeder, Katie O CIV USARMY CESWF (USA)
Subject:	SWF-2021-00241 (Old Country Switch 345kV Tap Transmission Line)
Attachments:	image001.emz

This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

Dear Ms. Buckley:

Thank you for your letter received April 20, 2021, concerning a proposal by Oncor Electric Delivery Company LLC to construct a 345kV transmission line located in Ellis County, Texas. The project has been assigned Project Number SWF-2021-00241, please include this number in all future correspondence concerning this project.

Ms. Katie Roeder has been assigned as the regulatory project manager for your request and will be evaluating it as expeditiously as possible.

You may be contacted for additional information about your request. For your information, please refer to the Fort Worth District Regulatory Division homepage at http://www.swf.usace.army.mil/Missions/regulatory and particularly guidance on submittals at https://swf-apps.usace.army.mil/pubdata/environ/regulatory/introduction/submital.pdf and mitigation at https://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Mitigation that may help you supplement your current request or prepare future requests.

If you have any questions about the evaluation of your submittal or would like to request a copy of one of the documents referenced above, please refer to our website at http://www.swf.usace.army.mil/Missions/Regulatory or contact Ms. Katie Roeder by telephone (817) 886-1740, or by email Katie.O.Roeder@usace.army.mil, and refer to your assigned project number. Please note that it is unlawful to start work without a Department of the Army permit if one is required.

Please help the regulatory program improve its service by completing the survey on the following website: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey

Brandon W. Mobley
Chief, Regulatory Division

Please do not mail hard copy documents to Regulatory staff or office, unless specifically requested. For further details on corresponding with us, please view our Electronic Application Submittals special public notice at: https://www.swf.usace.army.mil/Portals/47/docs/regulatory/publicnotices/2020/PublicNoticeElectronicApplications.pdf?ver=2019-11-21-123723-627

USACE Fort Worth District Regulatory Division Website http://www.swf.usace.army.mil/Missions/Regulatory.aspx

Please assist us in better serving you by completing the survey at the following website: https://regulatory.ops.usace.army.mil/customer-service-survey/

Subsequent Email Response from USACE

Kimberly Buckley

From: Madden, David E CIV USARMY CESWF (USA) <David.E.Madden@usace.army.mil>
Sent: Monday, April 26, 2021 3:06 PM
To: Kimberly Buckley
Cc: CESWF-Permits@usace.army.mil
Subject: Oncor Old Country Switch 345kV Tap and future projects

This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

Kimberly, thanks for the information regarding the Oncor project in Ellis County. To make sure these submissions "land" in the correct place and save you mailing costs, we are accepting projects via e-mail. Submissions may be sent to CESWF-Permits@usace.army.mil

This e-mail is checked throughout the day as compared to paper mail which may only be processed once a week since most of our staff are working remotely.

I hope you find this useful for future submissions. For more information and instructions, go to; https://www.swf.usace.army.mil/Missions/Regulatory/Electronic-Submittal-Instructions/

v/r,
David
David Madden
Chief, Compliance and Enforcement Branch, Regulatory Division
U.S. Army Corps of Engineers (CESWF-RDC)
819 Taylor Street, Room 3A37
P.O. Box 17300
Fort Worth, Texas 76102-0300
817.886.1741

Note: Most Regulatory Program staff are teleworking at this time. If possible, please send any correspondence to our e-mailbox at CESWF-Permits@usace.army.mil or CESWF-Compliance@usace.army.mil using our instructions at: https://www.swf.usace.army.mil/Missions/Regulatory/Electronic-Submittal-Instructions/

I am committed to providing great service to you,
please complete the customer survey found at: https://regulatory.ops.usace.armi.mil/customer-service-survey/

Final Formal Response from USACE

Kimberly Buckley

From: Roeder, Katie O CIV USARMY CESWF (USA) <Katie.O.Roeder@usace.army.mil>
Sent: Tuesday, May 4, 2021 2:39 PM
To: Kimberly Buckley
Subject: SWF-2021-00241
Attachments: NWP57TX.pdf; USACE_NWP_12_Application_Form_HJH (002).DOC; submittal guidance linear project_.pdf

This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.

Ms. Buckley:

This is concerning a proposal by Oncor Electric Delivery Company LLC to construct a 345kV transmission line located in Ellis County, Texas. This would be permitted through our Nationwide Permit 57 for Electric Utility Line and Telecommunications Activities (see attached.) I have also attached a Pre-construction notification template (it is for NWP 12 but fill out all that applies) as well as a guidance for linear project submittals. If there are no aquatic resources being impacted you can apply for a no permit required. Would just need maps showing project boundary and work to be done demonstrating that there are no resources.

Thank you,

Katie Roeder
Regulatory Specialist, Evaluation Branch Regulatory Division U.S. Army Corps of Engineers Ft. Worth District
819 Taylor Street
Fort Worth, Texas 76102-00300
Phone: 817-886-1740

Please do not mail hard copy documents to Regulatory staff or office, unless specifically requested. For further details on corresponding with us, please view our Electronic Application Submittals special public notice at: https://www.swf.usace.army.mil/Portals/47/docs/regulatory/publicnotices/2020/PublicNoticeElectronicApplications.pdf?ver=2019-11-21-123723-627

USACE Fort Worth District Regulatory Division Website: http://www.swf.usace.army.mil/Missions/Regulatory.aspx

Please assist us in better serving you by completing the survey at the following website: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey

NATIONWIDE PERMIT 57
Electric Utility Line and Telecommunications Activities

Effective Date: March 15, 2021
(NWP Final Notice, 86 FR 8)

57. Electric Utility Line and Telecommunications Activities. Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in pre-construction contours of waters of the United States. An "electric utility line and telecommunication line" is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States 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 United States (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 electric utility line or telecommunication line crossing of each waterbody.

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, 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 United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, 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 electric utility lines or telecommunication lines,

including overhead lines and substations, in non-tidal waters of the United States, 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 United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States 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 United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or telecommunication 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 electric utility lines or telecommunication 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 electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric 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 of dredged or fill material, 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: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the electric utility line is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP

verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the electric utility line to protect navigation.

Note 2: For electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require pre-construction notification, the PCN must include 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 that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

2021 Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently

relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States 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 or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may 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, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water,

adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity 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 permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for

that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: http://www.rivers.gov/.

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

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-

construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available

under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or 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.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has 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. 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. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they 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, 52, 57 and 58 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 by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines 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) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-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. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-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. 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. If restoring riparian areas involves planting vegetation, only native species should be planted. 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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(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 or federal, 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. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority 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)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. 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 CWA 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 authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot 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.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 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 review by, or 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 and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review 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. 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) (i) 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.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, 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 (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) 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 and intermittent 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 or 3/100-acre of stream bed 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) 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 NWP activity that requires permission from, or review by, 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, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. 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 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 (iii) 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 that 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.

2021 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 single and complete crossings of waters of the United States that require PCNs 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 of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, 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.

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 an 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 or 3/100-acre of stream bed, 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. 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 that 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), 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.

2021 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).

2021 Nationwide Permit 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.

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.

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. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation 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 or wetlands 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. 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: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

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.

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 jurisdictional 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 "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)).

The following regional conditions apply within the Fort Worth District

1. Notification to the appropriate District Engineer in accordance with Nationwide Permit General Condition 32 - Pre-Construction Notification (PCN) is required for all activities proposed for authorization by any NWP into the below listed ecologically unique and sensitive areas located within waters of the United States. The Corps will coordinate with the resource agencies as specified in NWP General Condition 32(d)(3).
    a. Pitcher plant bogs ((*Sarracenia* spp.) and/or sundews (*Drosera* spp.) and/or Bald Cypress/Tupelo swamps ((*Taxodium distichum*) and/or water tupelo (*Nyssa aquatica*)).
    b. Karst Zones 1 and 2 located in Bexar, Travis and Williamson Counties (see https://www.fws.gov/southwest/es/AustinTexas/Maps_Data.html).
    c. Caddo Lake and associated areas that are designated as "Wetland of International Importance" under the Ramsar Convention (see

http://caddolakedata.us/media/145/1996caddolakeramsar.pdf or http://caddolakedata.us/media/144/1996caddolakeramsar.jpg).

d. Reaches of rivers (and their adjacent wetlands) that are included in the Nationwide Rivers Inventory (see https://www.nps.gov/subjects/rivers/nationwide-rivers-inventory.htm).

2. For all activities proposed for authorization under any 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 Nationwide Permit General Condition 32 - PCN prior to commencing the activity.

ADDITIONAL INFORMATION

This nationwide permit is effective March 15, 2021, and expires on March 14, 2026.

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

December 18, 2020

Colonel Timothy R. Vail
Galveston District
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Re: 2020 USACE Nationwide Permits Reissuance

Dear Colonel Vail:

This letter is in response to your October 19, 2020, letter requesting Clean Water Act Section 401 certification of the United States Army Corps of Engineers (Corps) Nationwide Permits (NWPs). The Proposal to Reissue and Modify Nationwide Permits was published in the Federal Register (Vol. 85, No. 179, pages 57298-57395) on September 15, 2020. Regional conditions for NWPs in Texas were proposed in public notices on September 30, 2020 (Corps Galveston District) and October 1, 2020 (Corps Fort Worth District).

The Texas Commission on Environmental Quality (TCEQ) has reviewed the Proposal to Reissue and Modify Nationwide Permits and the proposed regional conditions. On behalf of the Executive Director and based on our evaluation of the information contained in these documents, the TCEQ certifies that any discharge associated with the activities authorized by NWPs 1, 2, 4, 5, 8, 9, 10, 11, 20, 23, 24, 28, 34, 35, 48, A, and B will comply with water quality requirements as required by Section 401 of the Federal Clean Water Act and pursuant to Title 30, Texas Administrative Code (TAC), Chapter 279.

The TCEQ conditionally certifies that any discharge associated with the activities authorized by NWPs 3, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 25, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, C, D, and E will comply with water quality requirements as required by Section 401 of the Federal Clean Water Act and pursuant to Title 30, Texas Administrative Code, Chapter 279. Conditions for each NWP are defined in Attachment 1 and more detail on specific conditions is given below, including information explaining why the condition is necessary for compliance with water quality requirements as well as the supporting regulatory authorizations.

The TCEQ understands that a prohibition against the use of NWPs (except for NWP 3) in coastal dune swales, mangrove marshes, and Columbia Bottomlands in the Galveston District is included in the Draft 2020 Nationwide Permit (NWP) Regional Conditions for the State of Texas (Regional Conditions). A prohibition of using NWPs (except for NWP 3) in coastal dune swales, mangrove marshes, and Columbia bottomlands in the Galveston District is a condition of this TCEQ 401 certification. This condition is necessary to ensure compliance with water quality requirements because impacts to rare and ecologically significant aquatic resources such as coastal dune swales, mangrove marshes, and Columbia bottomlands would not be considered minimal but significant, and therefore would not meet the purpose of a nationwide permit to authorize activities that will result in no more than minimal adverse environmental effects. Furthermore, activities that would result in impacts to these unique resources are more appropriately authorized under an individual permit to ensure that unavoidable impacts are adequately minimized (30 TAC §279.11(c)(2)) and mitigated (30 TAC §279.11(c)(3) and 30 TAC §307.4(i)).

The TCEQ wants to clarify the application of NWP 16 in Texas. NWP 16 should be limited to the return water from upland contained dredged material disposal areas. It is important to emphasize the intent for dredged material disposal. The TCEQ understands dredged material to be associated with navigational dredging activities, not commercial mining activities. To avoid confusion, the TCEQ requests that a regional condition be added or that the Corps commits to prohibiting the use of NWP 16 for activities that would be regulated under Standard Industrial Classification (SIC) codes 1442 and 1446 (industrial and construction sand and gravel mining).

Consistent with previous NWPs certification decisions, the TCEQ is conditionally certifying NWP 16 for the return water from confined upland disposal not to exceed a 300 mg/L total suspended solids (TSS) concentration. This condition is necessary to ensure that return water discharges will comply with water quality requirements in accordance with Texas Water Code §26.003 and antidegradation policy in 30 TAC §307.5, and not result in violations of general water quality criteria in 30 TAC 307.4(b)(2)-(5). The TCEQ encourages the Corps to consider that TSS limits are promulgated as effluent limits under Title 40 of the Code of Federal Regulations, and that the TCEQ effectively imposes TSS effluent limits in thousands of wastewater discharge permits issued in Texas under Section 402 of the federal Clean Water Act.

The TCEQ recognizes the usefulness of having an instantaneous method to determine compliance with the 300 mg/L TSS limit. However, existing literature and analysis of paired samples of turbidity and TSS from the Texas Surface Water Quality Information System indicate this relationship must be a site-specific characterization of the actual sediments to be dredged. To address this approach, we have continued language in the NWP 16 conditional certification that allows flexibility to use an instantaneous method in implementing the TSS limit when a site-specific correlation curve for turbidity (nephelometric turbidity units (NTU)) versus TSS has been approved by TCEQ. The TCEQ remains interested in working with the Corps in the development of these curves and in working together to find the best methods to implement this limit.

Regional Condition 17 applies to NWP authorizations in the Area of Concern (AOC) of the San Jacinto River Waste Pits Superfund Site. The TCEQ conditionally certifies Regional Condition 17 provided that the Permit Evaluation Requirement Process (Process), effective November 1, 2009, is adhered to for all proposed and existing permits within the AOC. The Process requires that all permit applicants and existing permittees within the AOC perform sampling to ensure that any activities conducted, especially activities involving dredging or disposal of dredged materials, do not impact site investigation and remediation and that existing water quality is maintained and protected in accordance with the Texas Water Code §26.003 and TCEQ antidegradation policy in 30 TAC §307.5.

The TCEQ is conditionally certifying NWP General Condition 12 *Soil Erosion and Sediment Controls*, and General Condition 25 *Water Quality*. The conditions address three broad categories of water quality management with specific recommendations for Best Management Practices (BMPs) for each category. These BMP conditions are necessary to enhance the water quality protection of these General Conditions by requiring the use of specific BMPs to control erosion, sedimentation, and/or post-construction TSS in permitted activities and therefore prevent violation of state general water quality criteria (30 TAC §307.4) and antidegradation policy (30 TAC §307.5). Runoff from bridge decks has been exempted from the requirement for post-construction TSS controls under General Condition 25. A list of TCEQ-recommended BMPs is included as Attachment 2. Attachment 3 is provided as a quick reference table identifying the BMP categories that are required for each NWP. A detailed description of the BMPs is provided in Attachment 4.

The Corps is proposing to remove the 300 linear foot (LF) limit for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52, in part, to simplify the quantification of aquatic resource types (i.e., streams, wetlands, etc.) by using acreage as the preferred unit of measure. Removing the stream bed loss limit would mean that stream losses associated with activities covered by these 10 NWPs would only be limited by the existing ½-acre limit on overall impacts to waters of the U.S. This could significantly affect state stream resources by allowing upwards of several thousand linear feet of stream impacts under these permits, depending on the dimensions of the streams being impacted. The TCEQ has traditionally relied on and used linear feet as the preferred unit of measure of stream impacts and stream mitigation in our Section 401 water quality certification program. Therefore, the TCEQ does not support the proposed removal of the 300 LF stream bed loss limit in these NWPs and conditionally certifies NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 with a limit of 1,500 linear feet of stream bed loss. The condition is based on the amount of stream impacts considered minimal by the TCEQ, where certification is waived for projects impacting 1,500 LF of streams or less in accordance with the Memorandum of Agreement (August 2000) between the Corps and TCEQ. Any proposed impacts greater than 1,500 linear feet of impacts in stream length will need to undergo an individual TCEQ 401 certification review, preferably in the context of a Section 404 individual permit. This condition is necessary to ensure that the discharge associated with projects permitted using these 10 NWPs will comply with water quality requirements for aquatic life uses and habitat (30 TAC 307.4(i)), antidegradation implementation procedures (30 TAC

307.5(c)(1)(B), and minimization and mitigation requirements in 30 TAC 279.11(c)(2) and (3), as well as be consistent with the NWP goal of authorizing only minimal adverse environmental impacts.

This certification decision is limited to those activities under the jurisdiction of the TCEQ. For activities related to the production and exploration of oil and gas, a Railroad Commission of Texas certification is required as provided in the Texas Water Code §26.131.

The TCEQ has reviewed the Notice of Reissuance of Nationwide Permits for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the CMP regulations {Title 31, Texas Administrative Code (TAC), Chapter (§)505.30} and has determined that the action is consistent with the applicable CMP goals and policies.

This certification was reviewed for consistency with the CMP's development in critical areas policy {31 TAC §501.23} and dredging and dredged material disposal and placement policy {31 TAC §501.25}. This certification complies with the CMP goals {31 TAC §501.12(1, 2, 3, 5)} applicable to these policies.

The TCEQ reserves the right to modify this certification if additional information identifies specific areas where significant impacts, including cumulative or secondary impacts, are occurring, and the use of these NWPs would be inappropriate.

No review of property rights, location of property lines, nor the distinction between public and private ownership has been made, and this certification may not be used in any way with regard to questions of ownership.

If you require further assistance, please contact Ms. Lili Murphy, Water Quality Assessment Section, Water Quality Division (MC-150), at (512) 239-4595 or by email at lili.murphy@tceq.texas.gov.

Sincerely,

David W Galindo

David W. Galindo, Deputy Director
Water Quality Division
Texas Commission on Environmental Quality

DWG/LM/

Attachments

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General Condition 12 (Soil Erosion and Sediment Controls)
Erosion control and sediment control best management practices (BMPs) are required with the use of this general condition. Attachment 2 describes the BMPs and the Nationwide Permits (NWPs) to which they apply. If the applicant does not choose one of the BMPs listed in Attachment 2, an individual 401 certification is required.

General Condition 25 (Water Quality)
Post-construction total suspended solids (TSS) BMPs are required with the use of this general condition. Attachment 2 describes the BMPs and the NWPs to which they apply. If the applicant does not choose one of the BMP's listed in Attachment 2, an individual 401 certification is required. Bridge deck runoff is exempt from this requirement.

Regional Condition 17 condition
The Permit Evaluation Requirement Process, effective November 1, 2009, is required for all proposed and existing permits within San Jacinto River Waste Pits Superfund Site Area of Concern.

All NWPs except for NWP 3
These NWPs are not authorized for use in coastal dune swales, mangrove marshes, and Columbia bottomlands in the Galveston District, Texas.

NWP 3 (Maintenance)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 6 (Survey Activities)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 7 (Outfall Structures and Associated Intake Structures)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 12 (Oil or Natural Gas Pipeline Activities)
Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

NWP 13 (Bank Stabilization)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 14 (Linear Transportation Projects)
Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

NWP 15 (U.S. Coast Guard Approved Bridges)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 16 (Return Water From Upland Contained Disposal Areas)
Activities that would be regulated under Standard Industrial Classification (SIC) codes 1442 and 1446 (industrial and construction sand and gravel mining) are not eligible for this NWP. Effluent from an upland contained disposal area shall not exceed a TSS concentration of 300 mg/L unless a site-specific TSS limit, or a site-specific correlation curve for turbidity (nephelometric turbidity units (NTU)) versus TSS has been approved by TCEQ.

NWP 17 (Hydropower Projects)
Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

NWP 18 (Minor Discharges)
Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.

NWP 19 (Minor Dredging)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 21 (Surface Coal Mining Activities)
Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

NWP 22 (Removal of Vessels)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 25 (Structural Discharges)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 27 (Aquatic Habitat Restoration, Establishment, and Enhancement Activities)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 29 (Residential Developments)
Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required. Stream bed losses are limited to 1,500 linear feet.

NWP 30 (Moist Soil Management for Wildlife)
Soil Erosion and Sediment Controls under General Condition 12 are required.

NWP 31 (Maintenance of Existing Flood Control Facilities)
Soil Erosion and Sediment Controls under General Condition 12 are required. Post-construction TSS controls under General Condition 25 are required.