Custom Soil Resource Report

Conservation Planning–Gaines County, Texas																		
Map symbol and soil name	Pct. of map unit	Slope RV	USLE Slope Length ft.	Runoff	T Factor	WEI	WEG	Erosion	Drainage	NIRR LCC	Hydrologic Group	Surface					
												Depths in.	Kf Factor	Frag-ments RV	Sand RV	Silt RV	Clay RV
Lr—Lofton and Randall soils, occasionally ponded																	
Lofton	60	0.5	98	—	5	48	6	—	Moderately well drained	3e	D	0 - 11	.32	—	33	31	35
Randall	40	0.5	98	—	5	38	7	—	Poorly drained	6w	D	0 - 5	.32	—	—	—	55
PfA—Midessa fine sandy loam, 0 to 1 percent slopes																	
Midessa	99	0.5	98	—	5	86	3	—	Well drained	3e	B	0 - 11	.24	4	65	19	15
PfB—Midessa fine sandy loam, 1 to 3 percent slopes																	
Midessa	99	2.0	298	—	5	86	3	—	Well drained	3e	B	0 - 11	.24	4	65	19	15
PmA—Portales loam, 0 to 1 percent slopes																	
Portales	85	0.5	98	Negligible	5	86	4L	Class 1	Well drained	3e	B	0 - 14	.32	0	49	30	19
Ps—Bippus and Sprone soils, 0 to 2 percent slopes, rarely flooded																	
Bippus, rarely flooded	45	0.5	98	Negligible	5	48	6	None - deposition	Well drained	5w	B	0 - 14	.28	0	43	29	28
Sprone, rarely flooded	35	0.3	98	Negligible	5	48	6	None - deposition	Well drained	5w	B	0 - 16	.32	—	39	30	31
Sa—Simona fine sandy loam																	
Simona	100	2.0	298	—	1	86	3	—	Well drained	7e	D	0 - 7	.28	—	63	19	17
Sb—Sharvana soils, 0 to 3 percent slopes																	
Sharvana	80	2.0	298	—	1	134	2	—	Well drained	6s	D	0 - 7	.17	2	85	6	7

Conservation Planning–Gaines County, Texas																	
Map symbol and soil name	Pct. of map unit	Slope RV	USLE Slope Length ft.	Runoff	T Factor	WEI	WEG	Erosion	Drainage	NIRR LCC	Hydrologic Group	Surface					
												Depths in.	Kf Factor	Fragments RV	Sand RV	Silt RV	Clay RV
Sm—Arvana soils																	
Arvana	80	2.0	298	—	2	134	2	—	Well drained	6s	D	0 - 7	.17	2	85	6	7
Sp—Springer loamy fine sand, 0 to 3 percent slopes																	
Springer	85	2.0	200	Very low	5	134	2	Class 1	Well drained	6e	A	0 - 3	.20	0	84	4	10
StA—Stegall loam, 0 to 1 percent slopes																	
Stegall	90	0.5	98	Low	2	56	5	Class 1	Well drained	3e	C	0 - 7	.28	—	49	31	19
Tx—Circleback-Potter complex, 5 to 12 percent slopes																	
Circleback	50	8.0	131	Very low	5	250	1	Class 1	Excessively drained	6e	A	0 - 5	.10	—	95	1	3
Potter	30	8.0	131	High	2	56	5	Class 2	Well drained	7s	C	0 - 5	.28	16	45	32	22
ZfA—Zita fine sandy loam, 0 to 1 percent slopes																	
Zita	85	0.4	98	Negligible	5	86	3	Class 1	Well drained	3e	B	0 - 5	.20	0	64	16	18

Conservation Planning–Yoakum County, Texas																	
Map symbol and soil name	Pct. of map unit	Slope RV	USLE Slope Length ft.	Runoff	T Factor	WEI	WEG	Erosion	Drainage	NIRR LCC	Hydrologic Group	Surface					
												Depths in.	Kf Factor	Fragments RV	Sand RV	Silt RV	Clay RV
AfA—Amarillo fine sandy loam, 0 to 1 percent slopes																	
Amarillo	90	0.5	98	Negligible	5	86	3	Class 1	Well drained	3e	B	0 - 10	.24	—	67	16	16

Conservation Planning–Yoakum County, Texas																	
Map symbol and soil name	Pct. of map unit	Slope RV	USLE Slope Length ft.	Runoff	T Factor	WEI	WEG	Erosion	Drainage	NIRR LCC	Hydrologic Group	Surface					
												Depths in.	Kf Factor	Frag-ments RV	Sand RV	Silt RV	Clay RV
ApB—Arvana loamy fine sand, 1 to 5 percent slopes																	
Arvana	85	3.0	196	Low	2	134	2	Class 2	Well drained	4e	C	0 - 12	.17	0	84	4	10
AvA—Arvana fine sandy loam, 0 to 1 percent slopes																	
Arvana	85	0.5	98	Low	2	86	3	Class 1	Well drained	3e	C	0 - 11	.32	0	67	17	14
DRC—Drake soils, 1 to 8 percent slopes																	
Drake	85	5.0	160	Medium	5	86	4L	Class 1	Well drained	6e	B	0 - 14	.37	0	50	30	19
GoB—Gomez loamy fine sand, 0 to 3 percent slopes																	
Gomez	85	2.0	298	Negligible	5	134	2	Class 1	Well drained	6e	A	0 - 14	.15	2	85	6	8
MdA—Midessa fine sandy loam, 0 to 1 percent slopes																	
Midessa	85	0.5	98	Negligible	5	86	3	Class 1	Well drained	3e	B	0 - 9	.28	0	68	15	16
MdB—Midessa fine sandy loam, 1 to 3 percent slopes																	
Midessa	85	2.0	298	Low	5	86	3	Class 1	Well drained	3e	B	0 - 8	.28	0	68	15	16
MPE—Midessa-Potter complex, 3 to 20 percent slopes																	
Midessa	50	8.0	131	Medium	3	86	3	Class 2	Well drained	6e	B	0 - 7	.24	0	68	15	16
Potter	40	8.0	131	High	1	56	5	Class 2	Well drained	7s	C	0 - 1	.32	16	45	32	22

Custom Soil Resource Report

Conservation Planning–Yoakum County, Texas																	
Map symbol and soil name	Pct. of map unit	Slope RV	USLE Slope Length ft.	Runoff	T Factor	WEI	WEG	Erosion	Drainage	NIRR LCC	Hydrologic Group	Surface					
												Depths in.	Kf Factor	Frag-ments RV	Sand RV	Silt RV	Clay RV
PAB—Patricia and Amarillo loamy fine sands, 0 to 3 percent slopes																	
Patricia	50	1.0	200	Very low	5	134	2	Class 2	Well drained	4e	B	0 - 11	.10	—	87	4	8
Amarillo	40	1.0	200	Low	5	134	2	Class 2	Well drained	4e	B	0 - 12	.20	—	85	5	9
PoA—Portales loam, 0 to 1 percent slopes																	
Portales	85	0.5	98	Negligible	5	86	4L	Class 1	Well drained	3e	B	0 - 14	.32	0	49	30	19
ShB—Sharvana fine sandy loam, 0 to 3 percent slopes																	
Sharvana	85	1.0	200	High	1	86	3	Class 2	Well drained	6s	D	0 - 6	.32	0	73	9	17
SvB—Sharvana loamy fine sand, 0 to 3 percent slopes																	
Sharvana	85	1.0	200	High	1	134	2	Class 2	Well drained	6s	D	0 - 6	.32	0	84	4	10
TaB—Tokio-Arvana complex, 0 to 3 percent slopes																	
Tokio	45	0.5	98	Very low	5	134	2	Class 1	Well drained	4e	B	0 - 11	.17	0	88	4	7
Arvana	40	1.0	200	Low	2	134	2	Class 1	Well drained	4e	C	0 - 12	.17	0	84	4	10
TkB—Tokio loamy fine sand, 0 to 3 percent slopes																	
Tokio	80	2.0	200	Very low	5	134	2	Class 1	Well drained	4e	B	0 - 11	.10	0	88	4	7

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Ademski, Thomas J (Tommy)

From: Morgan, Valerie <valerie_morgan@fws.gov>
Sent: Thursday, April 19, 2018 9:58 AM
To: Ademski, Thomas J (Tommy)
Subject: 2018-I-0788 XCEL Mustang to Seminole 115-kV Transmission Line Project

Mr. Ademski,

Thank you for your letter dated April 6, 2018, regarding XCEL's proposed Mustang to Seminole transmission line project in Gaines and Yoakum Counties, Texas. Our comments are offered in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

You have obtained a species list from the Service's Information for Planning and Conservation (IPaC) website. If there is a federal agency associated with the proposed action, you should provide the assessment and any other information leading to your determination to that agency. In general, a biologist or someone with expertise should use the Official Species List to determine if habitat to support the listed species exists within the project and surrounding area. If this area could support the species, then you should evaluate the project's effects on the habitat and species.

If no federal agency is involved, our office may provide assistance if the proposed actions may "take" a listed species and an incidental take permit was requested.

Thank you,

Valerie Morgan
Fish & Wildlife Biologist
Branch of Environmental Review, Classification & Recovery
U.S. Fish & Wildlife Service
2005 NE Green Oaks Blvd, Suite 140
Arlington, Texas 76006
(817) 277-1100 ext. 2106
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Website: https://www.fws.gov/southwest/es/arlingtontexas/

United States Department of the Interior

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http://www.fws.gov/southwest/es/EndangeredSpecies/lists/

In Reply Refer To: March 29, 2018
Consultation Code: 02ETAR00-2018-SLI-0788
Event Code: 02ETAR00-2018-E-01777
Project Name: XCEL Mustang to Seminole 115-kV Transmission Line Project

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

To Whom It May Concern:

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

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

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

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

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

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

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

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

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

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

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

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

Attachment(s):

- Official Species List

Official Species List

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

This species list is provided by:

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

Project Summary

Consultation Code: 02ETAR00-2018-SLI-0788

Event Code: 02ETAR00-2018-E-01777

Project Name: XCEL Mustang to Seminole 115-kV Transmission Line Project

Project Type: TRANSMISSION LINE

Project Description: XCEL is proposing to build a 115-kV transmission line in Gaines and Yoakum Counties, Texas.

Project Location:

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/place/32.87391947066865N102.72626118335398W

Counties: Gaines, TX | Yoakum, TX

Endangered Species Act Species

There is a total of 4 threatened, endangered, or candidate species on this species list.

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

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

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

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

Birds

NAME	STATUS
Least Tern *Sterna antillarum*	Endangered
Piping Plover *Charadrius melodus*	Threatened
Red Knot *Calidris canutus rufa*	Threatened
Whooping Crane *Grus americana*	Endangered

Least Tern *Sterna antillarum*
Population: interior pop.
No critical habitat has been designated for this species.
This species only needs to be considered under the following conditions:
- Wind Energy Projects

Species profile: https://ecos.fws.gov/ecp/species/8505

Piping Plover *Charadrius melodus*
Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered.
There is **final** critical habitat for this species. Your location is outside the critical habitat.
This species only needs to be considered under the following conditions:
- Wind Energy Projects

Species profile: https://ecos.fws.gov/ecp/species/6039

Red Knot *Calidris canutus rufa*
No critical habitat has been designated for this species.
This species only needs to be considered under the following conditions:
- Wind Energy Projects

Species profile: https://ecos.fws.gov/ecp/species/1864

Whooping Crane *Grus americana*
Population: Wherever found, except where listed as an experimental population
There is **final** critical habitat for this species. Your location is outside the critical habitat.
Species profile: https://ecos.fws.gov/ecp/species/758

Critical habitats

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

United States Department of the Interior

FISH AND WILDLIFE SERVICE
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http://www.fws.gov/southwest/es/arlingtontexas/
http://www.fws.gov/southwest/es/EndangeredSpecies/lists/

In Reply Refer To: September 05, 2018
Consultation Code: 02ETAR00-2018-SLI-0788
Event Code: 02ETAR00-2018-E-03763
Project Name: XCEL Mustang to Seminole 115-kV Transmission Line Project

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

To Whom It May Concern:

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

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

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

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

1. *No effect* - the appropriate determination when a project, as proposed, is anticipated to have no effects to listed species or critical habitat. A "no effect" determination does not require section 7 consultation and no coordination or contact with the Service is necessary. However, the action agency should maintain a complete record of their evaluation, including the steps leading to the determination of affect, the qualified personnel conducting the evaluation, habitat conditions, site photographs, and any other related information.
2. *May affect, but is not likely to adversely affect* - the appropriate determination when a proposed action's anticipated effects are insignificant, discountable, or completely beneficial. Insignificant effects relate to the size of the impact and should never reach the scale where "take" of a listed species occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects, or expect discountable effects to occur. This determination requires written concurrence from the Service. A biological evaluation or other supporting information justifying this determination should be submitted with a request for written concurrence.
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The Service recommends that candidate species, proposed species, and proposed critical habitat be addressed should consultation be necessary. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF

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

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

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

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

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

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

Attachment(s):

- Official Species List

Official Species List

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

This species list is provided by:

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

Project Summary

Consultation Code: 02ETAR00-2018-SLI-0788

Event Code: 02ETAR00-2018-E-03763

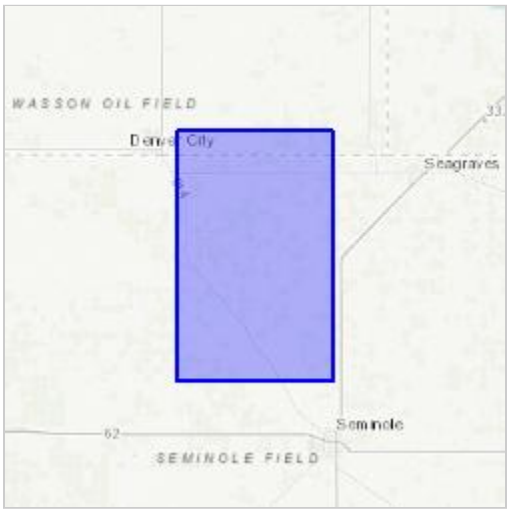
Project Name: XCEL Mustang to Seminole 115-kV Transmission Line Project

Project Type: TRANSMISSION LINE

Project Description: XCEL is proposing to build a 115-kV transmission line in Gaines and Yoakum Counties, Texas.

Project Location:

Approximate location of the project can be viewed in Google Maps: https://www.google.com/maps/place/32.87391947066865N102.72626118335398W



Counties: Gaines, TX | Yoakum, TX

Endangered Species Act Species

There is a total of 4 threatened, endangered, or candidate species on this species list.

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

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

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

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

Birds

NAME	STATUS
Least Tern *Sterna antillarum*	Endangered

Population: interior pop.
No critical habitat has been designated for this species.
This species only needs to be considered under the following conditions:
- Wind Energy Projects

Species profile: https://ecos.fws.gov/ecp/species/8505

Piping Plover *Charadrius melodus* — Threatened

Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered.
There is **final** critical habitat for this species. Your location is outside the critical habitat.
This species only needs to be considered under the following conditions:
- Wind Energy Projects

Species profile: https://ecos.fws.gov/ecp/species/6039

Red Knot *Calidris canutus rufa* — Threatened

No critical habitat has been designated for this species.
This species only needs to be considered under the following conditions:
- Wind Energy Projects

Species profile: https://ecos.fws.gov/ecp/species/1864

Whooping Crane *Grus americana* — Endangered

Population: Wherever found, except where listed as an experimental population
There is **final** critical habitat for this species. Your location is outside the critical habitat.
Species profile: https://ecos.fws.gov/ecp/species/758

Critical habitats

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

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

April 13, 2018

Regulatory Division

SUBJECT: Project Number SWF-2018-00161, Mustang to Seminole 115-kV Transmission Line Project

Mr. Thomas Ademski
Burns & McDonnell
8911 North Capital of Texas Highway
Building 3, Suite 3100
Austin, Texas 78759

Dear Mr. Ademski:

Thank you for your letter received April 9, 2018, concerning a proposal by Southwestern Public Service Company to construct new electric transmission facilities located in Gains and Yoakum Counties, Texas. Ms. Katie Roeder has been assigned as the regulatory project manager. The project has been assigned Project Number SWF-2018-00161, 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 reference the Fort Worth District Regulatory Division homepage at www.swf.usace.army.mil/Missions/Regulatory and particularly guidance on submittals at www.media.swf.usace.army.mil/pubdata/environ/regulatory/introduction/submital.pdf and mitigation at www.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 at the address above or telephone 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

Stephen L Brooks
Chief, Regulatory Division

Ademski, Thomas J (Tommy)

From: Roeder, Katie O CIV (US) <Katie.O.Roeder@usace.army.mil>
Sent: Tuesday, May 8, 2018 9:05 AM
To: Ademski, Thomas J (Tommy)
Subject: SWF-2018-00161
Attachments: submittal guidance linear project_.pdf; NWP12TX (002).pdf

Dear Mr. Ademski,

Dear Mr./Ms. Ademski:

Thank you for your letter received 04/09/2018 concerning a proposal by Southwestern Public Service Company to construct new electric transmission facilities located in Gains and Yoakum Counties, Texas. Ms. Katie Roeder has been assigned as the regulatory project manager. The project has been assigned Project Number SWF-2018-00161, please include this number in all future correspondence concerning this project.

We have reviewed this project in accordance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Under Section 404, the U. S. Army Corps of Engineers (USACE) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. Our responsibility under Section 10 is to regulate any work in, or affecting, navigable waters of the United States. Any such discharge or work requires Department of the Army authorization in the form of a permit. For more information on the USACE Regulatory Program, please reference the Fort Worth District Regulatory Branch homepage at www.swf.usace.army.mil/regulatory.

We are unable to determine from the information that you provided in your letter whether Department of the Army authorization will be required, and if so, in what form. The proposed construction activities may be authorized by general permit, such as Nationwide Permit 12 for Utility Line Activities. We have enclosed a copy of these general permits for your reference. If the project does not meet the terms and conditions of a general permit, an individual permit would be required for authorization.

So that we may continue our evaluation of your proposed project, we request that you provide the following information:

1. A detailed project description.

2. A map (or maps) showing the entire route of the project.

3. The proposed route of the project on 8 ½ by 11-inch copies of 7.5-minute United States Geological Survey (USGS) quadrangle maps, national wetland inventory maps, published soil survey maps, scaled aerial photographs, and/or other suitable maps. Identify all base maps, (e.g. "Fort Worth, Texas" 7.5-minute USGS quadrangle, Natural Resources Conservation Service Tarrant County Soil Survey sheet 10). Clearly mark (such as by circling) and number the location of each proposed utility line crossing of a water of the United States and any appurtenant structure(s) in waters of the United States on the map. Waters of the United States include streams and rivers and most lakes, ponds, mudflats, sandflats, wetlands, sloughs, wet meadows, abandoned sand and gravel mining and construction pits, and similar areas.

4. For each potential utility line crossing or appurtenant structure in a water of the United States, the following site specific information when applicable:

a. 7.5-minute USGS quadrangle map name, universal transverse mercator (UTM) coordinates, county or parish, waterway name;

b. a brief characterization of the crossing area (stream, forested wetland, non-forested wetland, etc.) including the National Wetland Inventory classification and soil series;

c. distance between ordinary high water marks;

d. proposed method of crossing

e. length of proposed crossing;

f. width of temporary and permanent rights-of-way;

g. type and amount of dredged or fill material proposed to be discharged;

h. acreage of proposed temporary and permanent adverse impacts to waters of the United States, including wetlands; and

i. a typical cross-section.

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

We encourage you to avoid and minimize adverse impacts to streams, wetlands, and other waters of the United States in planning this project. Please forward your response to us as soon as possible so that we may continue our evaluation of your request. If we do not receive the requested information within 30 days of the date of this letter, we will consider your application administratively withdrawn. If withdrawn, you may re-open your application at a later date by submitting the requested information.

Please note that it is unlawful to start work without a Department of the Army permit when one is required.

You may be contacted for additional information about your request. For your information, please refer to the Fort Worth District Regulatory Division homepage at https://urldefense.proofpoint.com/v2/url?u=http-3A__www.swf.usace.army.mil_Missions_regulatory&d=DwIFAw&c=pgTKN5yjcEYSPUPpeP-zuA&r=M9YSAmyVX97oWLHPj680iF2psniBYCOqCOEIJGfoZnE&m=LNynLwrr3Vzli-lr2kiKboY-bHqHgrZTyDSFwDJjQpE&s=oDgu-5k5n76IvNCpcVdVBnAze3e4MSzEHuRux-O2kT4&e= and particularly guidance on submittals at https://urldefense.proofpoint.com/v2/url?u=http-3A__media.swf.usace.army.mil_pubdata_environ_Regulatory_introduction_submital.pdf&d=DwIFAw&c=pgTKN5yjcEYSPUPpeP-zuA&r=M9YSAmyVX97oWLHPj680iF2psniBYCOqCOEIJGfoZnE&m=LNynLwrr3Vzli-lr2kiKboY-bHqHgrZTyDSFwDJjQpE&s=76MFG-0WAq_7tAAiem_7knErcGGCgVzAl05f5d3D0Ho&e=, and mitigation at https://urldefense.proofpoint.com/v2/url?u=http-3A__www.swf.usace.army.mil_Missions_Regulatory_Permitting_Mitigation&d=DwIFAw&c=pgTKN5yjcEYSPUPpeP-zuA&r=M9YSAmyVX97oWLHPj680iF2psniBYCOqCOEIJGfoZnE&m=LNynLwrr3Vzli-lr2kiKboY-bHqHgrZTyDSFwDJjQpE&s=cSSaN6FixiyoWLxbvvGin2x0XiFliHmhI4b4zRhcprk&e= that may help you supplement your current request or prepare future requests.

You may be contacted for additional information about your request. For your information, please reference the Fort Worth District Regulatory Branch homepage at www.swf.usace.army.mil/Missions/Regulatory and particularly guidance on submittals at www.media.swf.usace.army.mil/pubdata/environ/regulatory/introduction/submital.pdf and mitigation at www.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 https://urldefense.proofpoint.com/v2/url?u=http-3A__www.swf.usace.army.mil_Missions_Regulatory&d=DwIFAw&c=pgTKN5yjcEYSPUPpeP-zuA&r=M9YSAmyVX97oWLHPj680iF2psniBYCOqCOEIJGfoZnE&m=LNynLwrr3Vzli-lr2kiKboY-bHqHgrZTyDSFwDJjQpE&s=7QaG4YEqWXuLSylSnihSVOIMyY-J3C_acc0OXhlThrQ&e= or contact Ms. Katie Roeder at the address above or telephone (817) 886-1740 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: https://urldefense.proofpoint.com/v2/url?u=http-3A__corpsmapu.usace.army.mil_cm-5Fapex_f-3Fp-3Dregulatory-5Fsurvey&d=DwIFAw&c=pgTKN5yjcEYSPUPpeP-zuA&r=M9YSAmyVX97oWLHPj680iF2psniBYCOqCOEIJGfoZnE&m=LNynLwrr3Vzli-lr2kiKboY-bHqHgrZTyDSFwDJjQpE&s=cys-_8HXcQMK_WD5xhXDy4tlJ7kfqyot47AZ4P2NQnA&e=

Thanks,
Katie Roeder

US Army Corps
of Engineers
Fort Worth District

General Recommendations for Department of the Army Permit Submittals for Linear Projects

July 28, 2003

1. A detailed project description.

2. A large-scale map showing the entire route of the project.

3. The proposed route of the project on 8½ by 11-inch copies of 7.5-minute United States Geological Survey (USGS) quadrangle maps, national wetland inventory maps, published soil survey maps, scaled aerial photographs, and/or other suitable maps. Identify all base maps, (e.g. "Fort Worth, Texas" 7.5-minute USGS quadrangle, Natural Resources Conservation Service Tarrant County Soil Survey, sheet 10). Clearly mark (such as by circling) and number the location of each proposed linear project crossing of a water of the United States and any appurtenant structure(s) in waters of the United States on the map. Waters of the United States include streams and rivers; most lakes, ponds, mudflats, sandflats, wetlands, sloughs, and wet meadows; abandoned sand, gravel, and construction pits, and similar areas.

4. For each potential linear project crossing or appurtenant structure in a water of the United States, the following site specific information when applicable:

    a. 7.5-minute USGS quadrangle map name, universal transverse mercator (UTM) coordinates, county or parish, waterway name;

    b. a brief characterization of the crossing area (stream, forested wetland, non-forested wetland, etc.) including the National Wetland Inventory classification and soil series;

    c. distance between ordinary high water marks;

    d. proposed method of crossing (bore, trench, fill with culvert, fill with bridge, etc.);

    e. length of proposed crossing;

    f. width of temporary and permanent rights-of-way;

    g. type and amount of dredged or fill material proposed to be discharged;

    h. acreage of proposed temporary and permanent adverse impacts to waters of the United States, including wetlands; and

    i. a typical cross-section.

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

NATIONWIDE PERMIT 12

Utility Line Activities

Effective Date: March 19, 2017

(NWP Final Notice, 82 FR 4)

12. Utility Line Activities. Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, 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.

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

Material resulting from trench excavation may be temporarily sidecast into waters of the 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 utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the 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 into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the 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 utility lines, including overhead power lines and utility line 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 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 utility 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). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

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

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

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

Note 1: Where the utility line is constructed or installed 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 utility line to protect navigation.

Note 2: For utility line 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. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Utility 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 utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 6: This NWP authorizes utility 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 7: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 8: For NWP 12 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) 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).

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 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 Fills. 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. The permittee 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 NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

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 the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat 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. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the 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 critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific 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 their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts 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) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, 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. 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, which may include background research, consultation, oral

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

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

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

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

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

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

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic

environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

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

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

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

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

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

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

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

consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

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

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

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

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

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

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

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

_____
(Transferee)

_____
(Date)

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

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

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

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

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

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

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the

prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

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

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

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

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

(2) Location of the proposed activity;

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

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

need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

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

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

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

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

D. District Engineer's Decision

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

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of

the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

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

E. Further Information

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

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

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

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

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Definitions

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

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

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

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

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

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

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

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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

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

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of

traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

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

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

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

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

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

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

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

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

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

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

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

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

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

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

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

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

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

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

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

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

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

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

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

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

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

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

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

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

ADDITIONAL INFORMATION

This nationwide permit is effective March 19, 2017, and expires on March 18, 2022.

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

2017 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS

FOR THE STATE OF TEXAS

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

1. For all discharges proposed for authorization under Nationwide Permits (NWP) 3, 6, 7, 12, 14, 18, 19, 21, 23, 25, 27, 29, 39, 40, 41, 42, 43, 44, 49, 51, and 52, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32, Pre-Construction Notification (PCN). The Corps of Engineers (Corps) will coordinate with the resource agencies as specified in NWP General Condition 32(d) (PCN). The habitat types or areas are:

    a. Pitcher Plant Bogs: Wetlands typically characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia* spp.) and/or sundews (*Drosera* spp.).

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

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

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

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

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

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

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

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

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

The following regional conditions apply within the Albuquerque District.

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

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

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

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

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

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

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

11. For all discharges proposed for authorization under all Nationwide Permits (NWP) into the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 32 – Pre-Construction Notification (PCN). The Fort Worth District will coordinate with the resource agencies as specified in NWP General Condition 32(d) - PCN.

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

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

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

The following regional conditions apply only within the Galveston District.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following regional conditions apply only within the Tulsa District.

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

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

Ademski, Thomas J (Tommy)

From: Roeder, Katie O CIV (US) <Katie.O.Roeder@usace.army.mil>
Sent: Tuesday, May 8, 2018 9:21 AM
To: Ademski, Thomas J (Tommy)
Subject: SWF-2018-00161
Attachments: USACE_NWP_12_Application_Form_HJH (002).DOC

I apologize for all the separate emails, here is one last thing for you. It is an application form for the Nationwide permit 12

Katie Roeder

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

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

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

Contents

DESCRIPTION OF NWP 12 – UTILITY LINE ACTIVITIES

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

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

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

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

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

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

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

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

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

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

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

Part I: NWP Conditions and Requirements Checklist

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

1. Navigation (Applies to Section 10 waters [i.e. navigable waters of the U.S.], see instruction 4 for link to list):

a. Does the project cause more than a minimal adverse effect on navigation?
☐ Yes ☐ No ☐ N/A

b. Does the project require the installation and maintenance of any safety lights and signals prescribed by the U.S. Coast Guard on authorized facilities in navigable waters of the U.S.?
☐ Yes ☐ No ☐ N/A

c. Does the Applicant understand and agree that if future operations by the U.S. require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Applicant will be required, upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S.; and no claim shall be made against the U.S. on account of any such removal or alteration?
☐ Yes ☐ No ☐ N/A

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

2. Aquatic Life Movements:

a. Does the project substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area? ☐ Yes ☐ No

b. Is the project's primary purpose to impound water? ☐ Yes ☐ No

c. Will culverts placed in streams be installed to maintain low flow conditions to sustain the movement of those aquatic species? ☐ Yes ☐ No ☐ N/A

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

3. Spawning Areas:

a. Does the project avoid spawning areas during the spawning season to the maximum extent practicable? ☐ Yes ☐ No ☐ N/A

b. Does the project result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area?
☐ Yes ☐ No ☐ N/A

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

4. Migratory Bird Breeding Areas:

a. Does the project avoid waters of the U.S. that serve as breeding areas for migratory birds to the maximum extent practicable? ☐ Yes ☐ No ☐ N/A

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

5. Shellfish Beds:

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

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

6. Suitable Material:

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

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

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

7. Water Supply Intakes:

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

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

8. Adverse Effects From Impoundments:

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

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

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

9. Management of Water Flows:

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

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

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

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

10. Fills Within 100-Year Floodplains:

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

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

11. Equipment:

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

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

12. Soil Erosion and Sediment Controls:

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

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

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

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

13. Removal of Temporary Fills:

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

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

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

14. Proper Maintenance:

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

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

15. Single and Complete Project:

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

Single and complete project:

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

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

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

16. Wild and Scenic River:

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

17. Tribal Rights:

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

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

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

a. Is the project likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or will the project directly or indirectly destroy or adversely modify the critical habitat of such species? ☐ Yes ☐ No

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

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

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

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

19. Migratory Birds and Bald and Golden Eagles:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Does the Applicant agree that he or she will not begin the project until either:
1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. ☐ Yes ☐ No

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

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

All utility line activities:

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

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

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

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

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

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

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

Utility lines:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Utility line substations:

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

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

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

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

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

Access Road(s):

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

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

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

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

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

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

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

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

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

REGIONAL CONDITIONS CHECKLIST

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

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

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

2. Will the project include required compensatory mitigation at a minimum one-for-one ratio for all special aquatic sites that exceed 1/10 acre and require pre-construction notification, and for all losses to streams that exceed 300 linear feet and require pre-construction notification (unless the appropriate District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement)? ☐ Yes ☐ No ☐ N/A

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

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

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

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

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

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

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

If you answered yes to question 5. above, the applicant shall notify the Fort Worth District Engineer in accordance with NWP GC 32. PCNs are not deemed complete until such a time as the Corps has made a determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10, 33 CFR Part 320, Section 320.4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Additional Discussion:

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

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

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

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

Work Phone with area code	Home Phone with area code

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

Part III: Project Impacts and Mitigation

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

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

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

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

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

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

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

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

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

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

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

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

Box 8 Federally Threatened or Endangered Species (see instructions) **Please list any federally-listed (or proposed) threatened or endangered species or critical habitat potentially affected by the project (use scientific names (i.e., genus species), if known):**
Have surveys, using U.S. Fish and Wildlife Service (USFWS) protocols, been conducted? ☐ Yes, Report attached ☐ No (explain):
If a federally-listed species would potentially be affected, please provide a description and a biological evaluation. ☐ Yes, Report attached ☐ Not attached
Has Section 7 consultation been initiated by another federal agency? ☐ Yes, Initiation letter attached ☐ No
Has Section 10 consultation been initiated for the proposed project? ☐ Yes, Initiation letter attached ☐ No
Has the USFWS issued a Biological Opinion? ☐ Yes, Report attached ☐ No If yes, list date Opinion was issued (mm/dd/yyyy):

Box 9 Historic properties and cultural resources **Please list any historic properties listed (or eligible to be listed) on the National Register of Historic Places which the project has the potential to affect:**
Has an archaeological records search been conducted? ☐ Yes, Report attached ☐ No (explain):
Are any cultural resources of any type known to exist on-site? ☐ Yes ☐ No
Has an archaeological pedestrian survey been conducted for the site? ☐ Yes, Report attached ☐ No (explain):
Has Section 106 or SHPO consultation been initiated by another federal or state agency? ☐ Yes, Initiation letter attached ☐ No
Has a Section 106 MOA been signed by another federal agency and the SHPO? ☐ Yes, Attached ☐ No If yes, list date MOA was signed (mm/dd/yyyy):

Box 10 Proposed Conceptual Mitigation Plan Summary (see instructions)
Measures taken to avoid and minimize impacts to waters of the U.S. (if any):
Applicant proposes combination of one or more of the following mitigation types: ☐ Mitigation Bank ☐ On-site ☐ Off-site (Number of sites:) ☐ None

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

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

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

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

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

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

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

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

Other location descriptions, if known:

Directions to the mitigation location(s):

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

For Texas:

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

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

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

For Louisiana:

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

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

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

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

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

Part IV: Attachments

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

End of Form

Attachment D: Summary Table of Single and Complete Crossings

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

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

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

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

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

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

[4] Reasons for PCN requirement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4) **Box 5:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ademski, Thomas J (Tommy)

From: Doug.CTR.Felix@faa.gov
Sent: Tuesday, April 10, 2018 2:49 PM
To: Ademski, Thomas J (Tommy)
Subject: FAA Aeronautical Study Electronic Filing (E-filing) Information for the proposed Mustang to Seminole 115-kV Transmission Line Project in Gains and Yoakum Counties, Texas
Attachments: Burns and McDonnell - Mustang to Seminole 115-kV Transmission Line Project.pdf

Mr. Ademski,

In response to the attached Burns and McDonnell letter dated April 6, 2018 regarding the Mustang to Seminole 115-kV Transmission Line Project in Gains and Yoakum Counties, Texas, the following information is provided.

As stated in Title 14 of the Code of federal Regulations (14 CFR) Part 77, Objects that Affect the Navigable Airspace, the primary objectives of the Federal Aviation Administration (FAA) are to promote air safety and the efficient use of the navigable airspace.

To accomplish this mission, aeronautical studies are conducted based on information provided by proponents on FAA Form 7460-1, Notice of Proposed Construction or Alteration. If Burns and McDonnell sponsors any construction or alterations which may affect navigable airspace and the proposals meet FAA notice filing criteria, the FAA requests that FAA Forms 7460-1 be filed ELECTRONICALLY via https://oeaaa.faa.gov/oeaaa/external/portal.jsp as necessary for each of the proposals. The website contains instructions for using the program and contains a "Notice Criteria Tool" to determine if notice to the FAA is required for locations included in the proposals. If notice to the FAA is required, instructions are available at the website for electronically filing proposals for transmission line structures as necessary.

For future reference, you may contact the Obstruction Evaluation Group at 10101 Hillwood Parkway, Fort Worth, Texas 76177 or (817) 222-5934.

Thank you,

Doug Felix
Federal Aviation Administration
Obstruction Evaluation Group
AJV-15
Tetra Tech AMT Support
10101 Hillwood Parkway
Fort Worth, TX 76177

Office: 817-222-5934
doug.ctr.felix@faa.gov

Please visit our website:
https://oeaaa.faa.gov

TEXAS PARKS & WILDLIFE

Life's better outside.®

May 8, 2018

Mr. Thomas Ademski
Burns & McDonnell
8911 North Capital of Texas Highway
Building 3, Suite 3100
Austin, TX 78759

RE: Mustang to Seminole 115- kilovolt Transmission Line Project

Dear Mr. Ademski:

Texas Parks and Wildlife Department (TPWD) has received the preliminary information request regarding the above-referenced proposed transmission line project. TPWD staff has reviewed the information provided and offers the following comments concerning this project. For tracking purposes, please refer to TPWD project number 39729 in any return correspondence regarding this project.

Project Description

Southwestern Public Service Company, is proposing to design and construct new electric transmission facilities in Gaines and Yoakum Counties, Texas. The proposed project will consist of constructing a new 115-kilovolt transmission line between the existing Mustang Substation, located in the northern portion of the study area, and the existing Seminole Substation, located in the southeastern portion of the study area. The proposed transmission line will require a 70-foot right-of-way.

Recommendation: TPWD recommends using existing facilities whenever possible. Where new construction is the only feasible option, TPWD recommends routing new transmission lines along existing roads, pipelines, transmission lines, or other utility ROW and easements to reduce habitat fragmentation. By utilizing existing utility corridors, county roads and highway ROWs, adverse impacts to fish and wildlife resources would be mitigated by avoiding and/or minimizing the impacts to undisturbed habitats. Please review the TPWD Recommendations for Electrical Transmission/Distribution Line Design and Construction found on the Wildlife Habitat Assessment Program website.

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

Federal Laws

Clean Water Act

Section 404 of the Clean Water Act establishes a federal program to regulate the discharge of dredged and fill material into the waters of the U.S., including wetlands. The U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency are responsible for regulating water resources under this act. Although the regulation of isolated wetlands has been removed from the USACE permitting process, both isolated and jurisdictional wetlands provide habitat for wildlife and help protect water quality.

Recommendation: If the proposed project would impact waterways or associated wetlands, TPWD recommends consulting with the USACE for potential impacts to waters of the U.S. including jurisdictional determinations, delineations, and mitigation. All waterways and associated floodplains, riparian corridors, playa lakes, and wetlands provide valuable wildlife habitat and should be protected to the maximum extent possible. Natural buffers contiguous to any wetlands or aquatic systems should remain undisturbed to preserve wildlife cover, food sources, and travel corridors. During construction, trucks and equipment should use existing bridge or culvert structures to cross creeks. Destruction of inert microhabitats in waterways such as snags, brush piles, fallen logs, creek banks, pools, and gravel stream bottoms should be avoided, as these provide habitat for a variety of fish and wildlife species and their food sources. Erosion controls and sediment runoff control measures should be installed prior to construction and maintained until disturbed areas are permanently revegetated using site specific native vegetation. Measures should be properly installed in order to effectively minimize the amount of sediment and other debris from entering the waterway.

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) prohibits taking, attempting to take, capturing, killing, selling/purchasing, possessing, transporting, and importing of migratory birds, their eggs, parts and nests, except when specifically authorized by the Department of the Interior. This protection applies to most native bird species, including ground nesting species.

Recommendation: TPWD recommends excluding vegetation clearing activities during the general bird nesting season, March through August, to

avoid adverse impacts to this group. If clearing vegetation during the migratory bird nesting season is unavoidable, TPWD recommends surveying the area proposed for disturbance to ensure that no nests with eggs or young will be disturbed by operations. Any vegetation (trees, shrubs, and grasses) or bare ground where occupied nests are located should not be disturbed until the eggs have hatched and the young have fledged.

The potential exists for birds to collide with power lines and associated guy wires and static lines. Bird fatalities can also occur due to electrocution if perching birds simultaneously make contact with energized and grounded structures.

Recommendation: For additional information, please see the guidelines published by U.S. Fish and Wildlife Service (USFWS) and the Avian Power Lines Interaction Committee (APLIC) in the updated guidance document Reducing Avian Collisions with Power Lines: State of the Art in 2012. This manual, released on December 20, 2012, identifies best practices and provides specific guidance to help electric utilities and cooperatives reduce bird collisions with power lines. A companion document, Suggested Practices for Avian Protection on Power Lines, was published by APLIC and the USFWS in 2006. For more information on both documents, please visit the APLIC website.

State Law

Parks and Wildlife Code, Section 68.015

Section 68.015 of the Parks and Wildlife Code regulates state-listed species. Please note that there is no provision for the capture, trap, take, or kill (incidental or otherwise) of state-listed species. A copy of *TPWD Guidelines for Protection of State-Listed Species*, which includes a list of penalties for take of species, can be found on the TPWD website. State-listed species may only be handled by persons with appropriate authorization from the TPWD Wildlife Permits Office. For more information, please contact the Wildlife Permits Office at (512) 389-4647.

Texas horned lizard (*Phrynosoma cornutum*) – State-listed Threatened

The Texas horned lizard can be found in open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees. Suitable habitat may be present for the Texas horned lizard in the study area. Texas horned lizards are generally active in this part of Texas from mid-April through September. At that time of year, they may be able to avoid slow (less

than 15 miles per hour) moving equipment. The remainder of the year, this species hibernates only a few inches underground and they will be much more susceptible to earth moving equipment and compaction.

Recommendation: TPWD recommends that a pre-construction survey be conducted to determine if horned lizards are present on the project site or directly adjacent to the construction area. A useful indication that the Texas horned lizard may occupy the site is the presence of harvester ant (*Pogonomyrmex barbatus*) nests since harvester ants are the primary food source of horned lizards. The survey should be performed during the warm months of the year when the horned lizards are active. If horned lizards are found on site, TPWD recommends the use of the best management practices (BMPs) described in the *Texas Horned Lizard Watch – Management and Monitoring Packet* and the *Texas Tortoise Best Management Practices*. These documents are available on the TPWD website. Please note that Texas tortoise BMPs are applicable to the Texas horned lizard.

Species of Concern/Special Features

In addition to state and federally-protected species, TPWD tracks special features, natural communities, and rare species that are not listed as threatened or endangered. TPWD actively promotes their conservation and considers it important to evaluate and, if necessary, minimize impacts to rare species and their habitat to reduce the likelihood of endangerment and preclude the need to list. These species and communities are tracked in the Texas Natural Diversity Database (TXNDD).

Based on a review of TXNDD records and publically available aerial imagery, the following rare species and special features could potentially be impacted by project activities:

Species of Concern
Ferruginous hawk *(Buteo regalis)*
Western burrowing owl *(Athene cunicularia hypugaea)*
Black-tailed prairie dog *(Cynomys ludovicianus)*
Plains spotted skunk *(Spilogale putorius interrupta)*

Special Features
Prairie dog colonies

The black-tailed prairie dog is a keystone species which provides food and/or shelter for rare species tracked by TPWD such as the ferruginous hawk and the western burrowing owl, as well as many other wildlife species.

Recommendation: TPWD recommends surveying the study area for prairie dog colonies and the species that depend on them. If prairie dog colonies are found in the study area, TPWD recommends avoiding these areas during construction of the transmission line.

The western burrowing owl is a ground-dwelling owl that uses the burrows of prairie dogs and other fossorial animals for nesting and roosting. The western burrowing owl is protected under the MBTA. Potential impacts to the western burrowing owl could include habitat removal as well as displacement and/or destruction of nests and eggs if ground disturbance occurs during the breeding season.

Recommendation: If prairie dog colonies would be disturbed as a result of the proposed project, TPWD recommends the burrows be surveyed for burrowing owls. If nesting owls are found, disturbance should be avoided until the eggs have hatched and the young have fledged.

The plains spotted skunk is found in open grasslands, brushy areas, and cultivated lands. Their dens are located below ground in grassy banks, rocky crevices, or along fence rows.

Recommendation: TPWD recommends that precautions be taken to avoid impacts to the plains spotted skunk if encountered in the project area during construction.

Please note that the absence of TXNDD information in an area does not imply that a species is absent from that area. 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. 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. The most current and accurate TXNDD data can be requested from the TXNDD website.

Recommendation: Please review the TPWD county lists for Gaines and Yoakum Counties, as rare species in addition to those discussed above could be present depending upon habitat availability. These lists are available on the Rare, Threatened, and Endangered Species of Texas website. If during construction, the project area is found to contain rare species, natural plant communities, or special features, TPWD recommends that precautions be taken to avoid impacts to them. The USFWS should be contacted for species occurrence data, guidance, permitting, survey protocols, and mitigation for federally listed species. For USFWS threatened and endangered species lists, please see the USFWS Information for Planning and Consultation website.

Determining the actual presence of a species in a given area depends on many variables including daily and seasonal activity cycles, environmental activity cues, preferred habitat, transiency and population density (both wildlife and human). The absence of a species can be demonstrated only with great difficulty and then only with repeated negative observations, taking into account all the variable factors contributing to the lack of detectable presence.

Monarch Conservation Plan

Significant declines in the population of migrating monarch butterflies (*Danaus plexippus*) have led to widespread concern about this species and the long-term persistence of the North American monarch migration. Augmenting larval feeding and adult nectaring opportunities is part of an international conservation effort for the monarch.

Recommendation: For disturbed sites within the monarch migration corridor, TPWD recommends revegetation efforts include planting or seeding native milkweed (*Asclepias* spp) and nectar plants as funding and seed availability allow. Where appropriate and sustainable, TPWD recommends landscaping plans incorporate monarch-friendly plants and/or butterfly gardens. Information about monarch biology, migration, and butterfly gardening can be found on the Monarch Watch website.

Vegetation

Based on Ecological Mapping Systems data, the following vegetation types are found in the study area:

- Barren
- CRP / Other Improved Grassland
- High Plains: Active Sand Dunes

- High Plains: Floodplain Herbaceous Vegetation
- High Plains: Mesquite Shrubland
- High Plains: Riparian Deciduous Shrubland
- High Plains: Riparian Herbaceous Vegetation
- High Plains: Sand Prairie
- High Plains: Sandhill Deciduous Shrub Duneland
- High Plains: Sandy Deciduous Shrubland
- High Plains: Shortgrass Prairie
- Native Invasive: Deciduous Shrubland
- Native Invasive: Mesquite Shrubland
- Non-Native Invasive: Elm – Olive Woodland
- Open Water
- Rolling Plains: Mixedgrass Prairie
- Row Crops
- Urban High Intensity
- Urban Low Intensity

Additional information about Ecological Mapping Systems data including a link to download shapefiles, can be found on the TPWD Landscape Ecology Program website.

Conservation Easements

A conservation easement is a legal agreement between a landowner and a land trust or governmental agency that permanently limits uses of the land (including future fragmentation) to protect and conserve the land's natural values such as 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. Potential 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.

Recommendation: TPWD recommends properties protected by conservation easements be identified in the constraints analysis and avoided during development of alternative routes. Data sources for the location of these properties include, but are not limited to, online databases such as the Protected Areas Data Portal and the National Conservation Easement Database, as well as available county records. If properties protected by conservation easements would be affected, TPWD recommends the length of

routes through these properties be included in any accounting of alternative route impacts.

I appreciate the opportunity to provide preliminary input on potential impacts related to this project, and I look forward to reviewing the Environmental Assessment.

Please contact me at (806) 761-4936 or Richard.Hanson@tpwd.texas.gov if you have any questions.

Sincerely,

Rick Hanson

Rick Hanson
Wildlife Habitat Assessment Program
Wildlife Division

RH: 39729

cc: Karen Hubbard, Public Utility Commission

TEXAS GENERAL LAND OFFICE
GEORGE P. BUSH, COMMISSIONER

April 12, 2018

Thomas Ademski
Burns McDonnell
8911 North Capital of Texas Highway, Building 3, Suite 3100
Austin, TX 78759-7285

Re: Mustang to Seminole 115-kV Transmission Line Project

Dear Mr. Ademski:

On behalf of Commissioner Bush, I would like to thank you for your letter concerning the above-referenced project.

Using your map depicting the project's study area, it does not appear that the General Land Office will have any environmental issues or land use constraints at this time.

When a final route for this proposed project has been determined, please contact me and we can assess the route to determine if the project will cross any streambeds or Permanent School Fund (PSF) land that would require an easement from our agency.

In the interim, if you would like to speak to me further about this project, I can be reached by email at glenn.rosenbaum@glo.texas.gov or by phone at (512) 463-8180.

Again, thank you for your inquiry.

Sincerely,

Glenn Rosenbaum

Glenn Rosenbaum
Manager, Right-of-Way Department
Leasing Operations

TEXAS HISTORICAL COMMISSION
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May 2, 2018

Thomas J. Ademski
Burns and McDonnell Consultants
8911 North Capital of Texas Highway
Building 3, Suite 3100
Austin, TX 78759

Re: Project review under the National Historic Preservation Act: Proposed Mustang to Seminole 115-kV Transmission Line Project, Gaines and Yoakum Counties (Public Utilities Commission; Track #201808676)

Dear Mr. Ademski:

Thank you for your correspondence describing the above referenced project. This letter serves as comment on the proposed undertaking from the State Historic Preservation Officer, the Executive Director of the Texas Historical Commission.

The review staff, led by David Camarena Garcés, has examined our records. After reviewing the documentation and our maps, no archeological sites are recorded within the Area of Potential Effects (APE). However, the APE is located on a landform that has moderate to high probability of containing significant cultural resources due to its proximity to numerous prominent draws. Therefore, once the transmission line route has been selected, the project area will need to be surveyed by a professional archeologist prior to initiating any ground disturbance in order to demonstrate a good faith effort to identify historic properties that may be adversely affected by these activities as defined in 36 CFR 800. We also recommend consulting with a professional archeologist to perform a records search and identify high probability areas for further investigation. Please submit these results, recommended survey areas, and a scope of work for our concurrence.

If the survey is being performed on public land such or within a public easement your contract archeologist must obtain an Antiquities Permit from our office before any investigations are undertaken. An Antiquities Permit can be issued as soon as we have a completed permit application. A report of the investigations should be produced in conformance with the Secretary of the Interior's Guidelines for Archaeology and Historic Preservation, and submitted to this office for review.

Thank you for your cooperation in this review process, and for your efforts to preserve the irreplaceable heritage of Texas. **If you have any questions concerning our review or if we can be of further assistance, please contact David Camarena Garcés at 512/463-6252 or david.camarena@thc.state.tx.us.**

Sincerely,

for
Mark Wolfe, State Historic Preservation Officer

Ademski, Thomas J (Tommy)

From: Kylan Francis <Kylan.Francis@txdot.gov>
Sent: Tuesday, April 10, 2018 11:04 AM
To: Ademski, Thomas J (Tommy)
Subject: Mustang to Seminole Transmission Line Project

Mr. Ademski,

After receiving the letter you sent concerning the proposed project area for the Mustang to Seminole Transmission Line, there are only a couple of things that need to be brought to your attention from TxDOT's point of view. A utility permit will have to be obtained using the Utility Installation Request System (UIR) if entering/crossing TxDOT's ROW. The Lubbock District has a construction project on SH 214 from Seminole to Denver City that will be letting in June 2018. The project will take approximately 30 months to complete. Thanks.

Kylan Francis, P.E.
Director of TP&D
Lubbock District | 135 Slaton Hwy | Lubbock, TX 79404
Phone 806/748-4490 | Email Kylan.Francis@txdot.gov | Cell 806/470-4412
Texas Department of Transportation

Ademski, Thomas J (Tommy)

From: Kylan Francis <Kylan.Francis@txdot.gov>
Sent: Monday, April 23, 2018 12:31 PM
To: Ademski, Thomas J (Tommy)
Subject: RE: Mustang to Seminole Transmission Line Project
Attachments: 168 SH 83 PLAN AND PROFILE.pdf; 170 CONNECTOR ONE PLAN AND PROFILE.pdf; 385 SH 214 HIGH MAST ILLUMINATION.pdf; 006 SH 214 TYPICAL SECTION PROPOSED.pdf

No, the SH 214 project will not include widening existing TxDOT ROW. We are building Super 2 roadways, widening portions of the existing road to allow for safe passing zones. There will not be any overpasses built. The only intersection that will be changed would be US 83 E and SH 214; there will be an added free-right lane from US 83 westbound to SH 214 northbound built in the existing ROW. At that intersection, we are also adding high mast safety lighting on the NE quadrant.

Let me know if you need any more information. Thanks.

Kylan Francis, P.E.
Director of TP&D
Lubbock District | 135 Slaton Hwy | Lubbock, TX 79404
Phone 806/748-4490 | Email Kylan.Francis@txdot.gov | Cell 806/470-4412
Texas Department of Transportation

From: Ademski, Thomas J (Tommy) [mailto:tjademski@burnsmcd.com]
Sent: Monday, April 23, 2018 11:34 AM
To: Kylan Francis
Subject: RE: Mustang to Seminole Transmission Line Project

Thank you very much for the information provided in your email. Can you please provide information on the proposed project on SH 214? Will that project include any widening outside of TxDOT's current ROW, or include the construction of overpasses? -Anything we would need to consider if we route near the highway or need to cross it.

Thank you,

Thomas Ademski
Project Manager, Environmental Services
Burns & McDonnell
8911 Capital of Texas Highway
Building 3, Suite 3100
Austin, TX 78759
Direct: 512-872-7131
Cell: 512-731-1526
tjademski@burnsmcd.com
www.burnsmcd.com

From: Kylan Francis <Kylan.Francis@txdot.gov>
Sent: Tuesday, April 10, 2018 11:04 AM
To: Ademski, Thomas J (Tommy) <tjademski@burnsmcd.com>
Subject: Mustang to Seminole Transmission Line Project

Mr. Ademski,

After receiving the letter you sent concerning the proposed project area for the Mustang to Seminole Transmission Line, there are only a couple of things that need to be brought to your attention from TxDOT's point of view. A utility permit will have to be obtained using the Utility Installation Request System (UIR) if entering/crossing TxDOT's ROW. The Lubbock District has a construction project on SH 214 from Seminole to Denver City that will be letting in June 2018. The project will take approximately 30 months to complete. Thanks.

Kylan Francis, P.E.
Director of TP&D
Lubbock District | 135 Slaton Hwy | Lubbock, TX 79404
Phone 806/748-4490 | Email Kylan.Francis@txdot.gov | Cell 806/470-4412
Texas Department of Transportation

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
3400 DEFENSE PENTAGON
WASHINGTON, DC 20301-3400

ENERGY,
INSTALLATIONS
AND ENVIRONMENT

August 9, 2018

Nisha Fleischman
Xcel Energy
790 S Buchanan St
Amarillo, TX 79101

Dear Ms. Fleischman,

As requested, the Military Aviation and Installation Assurance Siting Clearinghouse coordinated within DoD an informal review of the Mustang to Seminole Transmission Line Project. The results of our review indicated that the transmission line project located in Yoakum and Gaines Counties, TX, as proposed, will have minimal impact on military operations conducted in the area.

Please note that this informal review by the DoD Military Aviation and Installation Assurance Siting Clearinghouse does not constitute an action under 49 United States Code Section 44718 and that the DoD is not bound by the conclusion arrived at under this informal review. If you have any questions, please contact me at steven.j.sample4.civ@mail.mil or at 703-571-0076.

Sincerely,

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

APPENDIX B - PUBLIC INVOLVEMENT

Xcel Energy®
RESPONSIBLE BY NATURE™

June 5, 2018
(Via Mail)

Name
Address
City, State Zip

Dear Landowner,

Xcel Energy, Inc. (Xcel) is proposing to construct a new 115 kilovolt (kV) electric transmission line in Yoakum and Gaines County, Texas. The proposed Mustang to Seminole transmission line will be approximately 20 miles long, depending upon the route approved by the Public Utility Commission of Texas. The proposed transmission line will connect the existing Mustang Substation (located approximately 5.33 miles east of Denver City) to the proposed Seminole Substation (located approximately 4.91 miles northwest of Seminole). Please see the enclosed map.

You are receiving this notice regarding the aforementioned proposed project because one or more of the preliminary alternative route segments for the proposed transmission line may require an easement or other property interest across your property, or the centerline of one of the preliminary alternative routes may be located within 300 feet of your property.

Xcel is committed to routing the proposed transmission line in a manner consistent with the values of the local communities, the Texas Utilities Code, the Public Utility Commission of Texas Rules and Policies, and the need to provide reliable electric service to this area of North Texas. In support of the routing process, Xcel is holding a public participation meeting to solicit input for use in identifying alternative routes for the proposed transmission line and to share information about line routing alternatives. The public meeting will be held Tuesday June 19, 2018, at the Seminole Community Center located at 801 N. Main Street, Seminole, Texas from 5:00 to 7:00 pm.

Burns & McDonnell a consulting firm retained by Xcel, has identified preliminary alternative transmission line route segments for consideration which are shown as dashed lines on the map and will be available at the meeting to discuss these routes. Maps with greater detail will be exhibited at the meeting. Individuals attending this "come and go" open house meeting will have an opportunity to ask questions and provide information to representatives and technical experts from Xcel and Burns & McDonnell regarding the routing of the proposed transmission line. These preliminary alternative routes are subject to modification based on further study and information received at the public meeting. If you have any questions concerning this meeting, please contact Nisha Fleischman at (806) 378-2713. If you are unable to attend the open house, we encourage you to visit the project website, http://www.powerfortheplains.com/projects, to find more information.

Sincerely,

Nisha Fleischman

Nisha Fleischman
Xcel Energy
Enclosure

Existing Mustang Substation

Existing Seminole Substation

Yoakum County
Gaines County

CR 380 CR 390 CR 355 CR 435 CR 425/205 CR 203 CR 211 CR 217 CR 226 CR 222 CR 224 CR 126 CR 220 CR 218 CR 216 CR 207 CR 219 CR 215 CR 212 CR 210 CR 209 CR 205 FM 1757

83 214 62

1a 1b 2a 2b 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55

1 Segment ID Label
Segment Endpoint
Preliminary Route Segment
Existing Transmission Line
Project Endpoint
Study Area

NORTH
0 0.5 1 2
Miles

Xcel Energy
BURNS McDONNELL

Mustang to Seminole
115-kV Transmission Line Project
Xcel Energy
Gaines & Yoakum Counties, Texas

Source: USDA NAIP, "Texas" (2016); Burns & McDonnell Engineering Company, Inc

Issued: 5/23/2018

Siting and Land Rights
790 South Buchanan, 4th Floor
Amarillo, TX 79101
Telephone: (806) 378-2132
Facsimile: (806) 378-2142

PROPOSED MUSTANG TO SEMINOLE 115 kV TRANSMISSION LINE PROJECT PUBLIC OPEN HOUSE MEETING

TUESDAY
JUNE 19, 2018
5:00 PM – 7:00 PM
SEMINOLE COMMUNITY CENTER
801 N. MAIN STREET
SEMINOLE, TEXAS 79360

Welcome and thank you for taking the time to attend this public open-house meeting regarding the Proposed Xcel Energy Mustang to Seminole 115 kilovolt (kV) transmission line project. The purpose of the public meeting is to present information, receive your ideas and concerns, and answer your questions about the project. Before the electric utility and its routing consultant (Burns & McDonnell) make any final decisions concerning which potential routes will be filed by Xcel Energy for consideration by the Public Utility Commission of Texas (PUC), Xcel Energy and Burns & McDonnell would like to hear your opinion on several issues.

After you have visited the various display stations around the room and talked with the project representatives, please fill out this questionnaire and place it in the box marked questionnaires at the door before you leave. Your responses will help the utility company and Burns & McDonnell understand the community's concerns and better aid the project team as it incorporates the input received into the development of the route alternatives that will be submitted to the PUC for its consideration. Again, thank you for your time and interest.

1. Did you attend the open house meeting?

Yes ____ No ____