**Exhibit F**

**DEPARTMENT OF THE ARMY**
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640

REPLY TO
ATTENTION OF

January 25, 2016

North Dakota Regulatory Office [NWO-2012-2490-BIS]

Mr. Al Koeckeritz
Otter Tail Power Company
215 S Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538

Dear Mr. Koeckeritz

We have reviewed your request for Department of the Army (DA) authorization to construct a 345kV transmission line traversing about 162 miles through North Dakota and South Dakota, of which nine (9) miles will be in North Dakota. The project is located in Sections 9, 10, 15, 22, 23, 24, and 25, Township 129 North, Range 63 West, Sections 24, 25, 19, 20, 29, and 32, Township 129 North, Range 62 West, Dickey County, North Dakota.

We have prepared a preliminary jurisdictional determination (JD) for the site which is a written indication that the waters in the project area may be jurisdictional waters of the United States. Such waters have been treated as jurisdictional for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the preliminary JD, please sign it and return it to the letterhead address. If you believe the preliminary JD is inaccurate, you may request this office complete an approved JD prior to commencement of any work in waters of the US. An approved JD is an official determination regarding the presence or absence of such waters. Completion of an approved JD may require coordination with the US Environmental Protection Agency.

If you do not want the Corps to complete an approved JD, you may proceed with your project in accordance with the terms and conditions of DA Nationwide Permit No. 12], found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General, Regional and Water Quality Certification Conditions that must be adhered to for this authorization to remain valid. **Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.**

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal, and local approvals before beginning work.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit, **including the Regional Conditions specific to projects undertaken in North Dakota.** If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that

they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 30, **you are required to submit the following project compliance certification within thirty (30) days of project completion.** [Please check all applicable statements]

[ ] I certify that I have completed the projects as permitted.
[ ] I certify that I have completed a modified version of the projects.
[ ] I certify that I have completed all required mitigation.

**Permittee's Signature:**_____ **Date:**_____

This verification will be valid until **March 18, 2017.** If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to **March 18, 2017**. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

## Special Conditions

The project is located within the known range of the piping plover *(Charadrius melodus),* whooping crane *(Grus Americana),* red knot *(Calidris canutus rufa),* Dakota Skipper *(Hesperia dacotae),* Poweshiek skipperling *(Oarisma Poweshiek)*, and the Northern Long-eared Bat *(Myotis septentrionalis).* These species are listed as Threatened or Endangered under the Endangered Species Act. The required conditions are set forth by the U.S. Fish and Wildlife Service in its Intra-Service Section 7 Biological Evaluation Form – Region 6, dated January 5, 2016 (portions attached) that include conservation measures for grassland and wetland easements, and various Best Management Practices or conservation measures for wildlife and threatened and endangered species.

In addition, a transmission line marking plan has been developed to reduce the potential for bird strikes. The plan is consistent with the APLIC recommendations for *Avian Collisions with Power Lines; The State of the Art in 2012* (APLIC, 2012). The line marking plan is also attached and shall be implemented according to this plan.

A copy of this letter is being sent to Mr. Brian Hunker, Project Manager HDR, Inc., 701 Xenia Ave South, Suite 600, Minneapolis, MN 55416.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have Internet

access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination or jurisdiction, please feel free to contact Ms. Patsy Crooke of this office at (701) 255-0015, extension 2002, and reference Nationwide Permit No. **NWO-2012-2940-BIS**.

Sincerely,

Patricia L. McQueary
Regulatory Program Manager
North Dakota

Enclosures

# U.S. Army Corps of Engineers
# North Dakota Regulatory Office
**1513 South 12th Street**
**Bismarck, North Dakota 58504**
**Telephone (701) 255-0015 Fax (701) 255-4917**


## IMPORTANT INSTRUCTIONS FOR OUR PERMIT CUSTOMERS

Notice of the Reissuance of Nationwide Permits was published in the Federal Register [77 FR 10184] on February 21, 2012. The Nationwide Permits went into effect on March 19, 2012. Project compliance certification is required by General Condition 30. The following instructions are provided to clarify the information contained within the nationwide permit authorization letter and attachments. [1]

**STEP 1**

Review the permit authorization and be sure you understand the terms and conditions for the authorization to remain valid. If you do not understand, or have any questions, please do not hesitate to contact this office at the above address.

**STEP 2**

Complete your project in accordance with the permit terms and conditions. [Remember that any deviation from the original plans and specifications of your project could require additional authorization from this office.]

**STEP 3**

Within thirty (30) days of project completion, please complete the permit compliance certification contained within your permit authorization letter. A photocopy of the first page (marked with a colored COPY stamp) has been provided for this purpose. Mark the applicable statements, sign and date where indicated, and forward the COPY to this office at the above address.

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[1] There is no charge associated with any aspect of this nationwide authorization or the follow-up compliance certification.

they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

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# PRELIMINARY JURISDICTIONAL DETERMINATION FORM

## U.S. Army Corps of Engineers

## BACKGROUND INFORMATION

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):** January 20, 2016

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Mr. Al Koeckeritz
Otter Tail Power Company
215 S Cascade Street, PO Box 496
Fergus Falls, MN 56538

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CENWO-OD-RND Omaha, NWO-2012-2940-BIS, BSSE 345kV Transmission Line (Big Stone South to Ellendale, ND)

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**
***(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)***

State: North Dakota County: Dickey City: Ellendale

Center coordinates of site: Universal Transverse Mercator:

NAD 83/UTM Zone 15, 46.00848 Northing, -98.57031 Easting

Authority: ☑ Section 404 ☐ Section 10

Name of nearest waterbody: Sewer Branch to Sheyenne River

Identify (estimate) amount of waters in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Cowardin Class: Choose Class

Stream Flow: Choose Flow

Wetlands: 71.25 acres.

Cowardin Class: Emergent

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: N/A

Non-Tidal: *Waterbody*

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☑ Office (Desk) Determination. Date: January 20, 2016

☑ Field Determination. Date(s): October 6, 2014

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. §331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply) - checked items should be included in case file and, where checked and requested, appropriately reference sources below):**

- ☑ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Wetland information and delineation report submitted for application
- ☑ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☑ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☑ U.S. Geological Survey map(s). Cite scale & quad name: USGS 1:24K Quad – Ellendale NOrth
- ☑ USDA Natural Resources Conservation Service Soil Survey. Citation: Websoil survey for
- ☑ National wetlands inventory map(s). Cite name: USFWS/GIS
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:
  (National Geodectic Vertical Datum of 1929)
- ☑ Photographs: ☑ Aerial (Name & Date): Google Earth Pro; NAIP
- ☐ or ☑ Other (Name & Date): On-site photos
- ☑ Previous determination(s). File no. and date of response letter:AJD completed July 16, 2014
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☑ Other information (please specify): wetland delineation report and maps available

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

11/20/16
Signature and date of Regulatory Project Manager (REQUIRED)

1/29/16
Signature and date of person requesting preliminary JD (REQUIRED, unless obtaining the signature is impracticable)

| Site Number | Latitude/ Northing | Longitude/ Easting | Cowardin Class/ Stream Flow | Estimated Amount of Aquatic Resource in Review Area | Class of Aquatic Resource |
|---|---|---|---|---|---|
| SEE ATTACHED WETLAND | | | | | |
| TABLE | | | | | |
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| Waters_Typ | Waters_Name | Latitude | Longitude | Cowardin Class | Waters Size |
|---|---|---|---|---|---|
| DELINEATE | NWO-2012-2490-BIS #005AN | 45.99641 | -98.5617 | PEM-PALUSTRINE, EMERGENT | .011 ACRES |
| DELINEATE | NWO-2012-2490-BIS #005CN | 45.99392 | -98.5588 | PEM-PALUSTRINE, EMERGENT | .85 ACRES |
| DELINEATE | NWO-2012-2490-BIS #10N | 45.98394 | -98.5582 | PEM-PALUSTRINE, EMERGENT | .486 ACRES |
| DELINEATE | NWO-2012-2490-BIS #14N | 45.97368 | -98.5589 | PEM-PALUSTRINE, EMERGENT | 1.232 ACRE |
| DELINEATE | NWO-2012-2490-BIS #23N | 45.97352 | -98.5448 | PEM-PALUSTRINE, EMERGENT | .203 ACRES |
| DELINEATE | NWO-2012-2490-BIS #25N | 45.97405 | -98.5398 | PEM-PALUSTRINE, EMERGENT | .076 ACRES |
| DELINEATE | NWO-2012-2490-BIS #26N | 45.97324 | -98.5397 | PEM-PALUSTRINE, EMERGENT | .098 ACRES |
| DELINEATE | NWO-2012-2490-BIS #29N | 45.97344 | -98.5332 | PEM-PALUSTRINE, EMERGENT | .059 ACRES |
| DELINEATE | NWO-2012-2490-BIS #30N | 45.9735 | -98.5305 | PEM-PALUSTRINE, EMERGENT | .377 ACRES |
| DELINEATE | NWO-2012-2490-BIS #35N | 45.97317 | -98.5253 | PEM-PALUSTRINE, EMERGENT | .044 ACRES |
| DELINEATE | NWO-2012-2490-BIS #36N | 45.97315 | -98.5055 | PEM-PALUSTRINE, EMERGENT | 0 ACRES |
| DELINEATE | NWO-2012-2490-BIS #38N | 45.97349 | -98.5025 | PEM-PALUSTRINE, EMERGENT | .001 ACRES |
| DELINEATE | NWO-2012-2490-BIS #40N | 45.97306 | -98.5007 | PEM-PALUSTRINE, EMERGENT | .113 ACRES |
| DELINEATE | NWO-2012-2490-BIS #41N | 45.97345 | -98.4946 | PEM-PALUSTRINE, EMERGENT | .078 ACRES |
| DELINEATE | NWO-2012-2490-BIS #45N | 45.97349 | -98.4925 | PEM-PALUSTRINE, EMERGENT | .009 ACRES |
| DELINEATE | NWO-2012-2490-BIS #46N | 45.97311 | -98.4913 | PEM-PALUSTRINE, EMERGENT | .1 ACRES |
| DELINEATE | NWO-2012-2490-BIS #48N | 45.97361 | -98.4819 | PEM-PALUSTRINE, EMERGENT | .127 ACRES |
| DELINEATE | NWO-2012-2490-BIS #4N | 45.99618 | -98.566 | PEM-PALUSTRINE, EMERGENT | .03 ACRES |
| DELINEATE | NWO-2012-2490-BIS #55N | 45.96248 | -98.4751 | PEM-PALUSTRINE, EMERGENT | .001 ACRES |
| DELINEATE | NWO-2012-2490-BIS #56N | 45.95971 | -98.475 | PEM-PALUSTRINE, EMERGENT | .003 ACRES |
| DELINEATE | NWO-2012-2490-BIS #58N | 45.95781 | -98.4752 | PEM-PALUSTRINE, EMERGENT | .001 ACRES |
| DELINEATE | NWO-2012-2490-BIS #64N | 45.95099 | -98.4755 | PEM-PALUSTRINE, EMERGENT | .518 ACRES |
| DELINEATE | NWO-2012-2490-BIS #65N | 45.94899 | -98.4752 | PEM-PALUSTRINE, EMERGENT | .054 ACRES |
| DELINEATE | NWO-2012-2490-BIS #6N | 45.99153 | -98.559 | PEM-PALUSTRINE, EMERGENT | .101 ACRES |
| DELINEATE | NWO-2012-2490-BIS #72N | 45.94 | -98.4752 | PEM-PALUSTRINE, EMERGENT | .062 ACRES |
| DELINEATE | NWO-2012-2490-BIS #74N | 45.93726 | -98.4755 | PEM-PALUSTRINE, EMERGENT | .162 ACRES |
| DELINEATE | NWO-2012-2490-BIS #8N | 45.98889 | -98.5591 | PEM-PALUSTRINE, EMERGENT | .082 ACRES |
| DELINEATE | NWO-2012-2490-BIS #9N | 45.98641 | -98.9864 | PEM-PALUSTRINE, EMERGENT | .471 ACRES |
| DELINEATE | NWO-2012-2940-BIS #1N | 46.00653 | -98.5702 | PEM-PALUSTRINE, EMERGENT | .257 ACRES |
| DELINEATE | NWO-2012-2940-BIS #2N | 46.00516 | -98.569 | PEM-PALUSTRINE, EMERGENT | .927 ACRES |
| DELINEATE | NWO-2012-2940-BIS #J 01 | 45.97663 | -98.5583 | PEM-PALUSTRINE, EMERGENT | .018 ACRES |
| DELINEATE | NWO-2012-2940-BIS #J03-B | 45.97335 | -98.4883 | PEM-PALUSTRINE, EMERGENT | .054 ACRES |
| DELINEATE | NWO-2012-2940-BIS #O 01 | 46.00018 | -98.5683 | PEM-PALUSTRINE, EMERGENT | .332 ACRES |
| DELINEATE | NWO-2012-2940-BIS #O 03 | 45.99793 | -98.5665 | PEM-PALUSTRINE, EMERGENT | .097 ACRES |
| DELINEATE | NWO-2012-2940-BIS #R 03 | 45.95482 | -98.4756 | PEM-PALUSTRINE, EMERGENT | .073 ACRES |
| DELINEATE | NWO-2012-2940-BIS #J 01 | 45.97663 | -98.5583 | PEM-PALUSTRINE, EMERGENT | .018 ACRES |

# FACT SHEET
# NATIONWIDE PERMIT 12
# (2012)

## 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 the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, 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 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 also authorizes temporary structures, fills, and work 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. 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. (Sections 10 and 404)

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 31.)

Note 1: Where the proposed 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, copies of the pre-construction notification and 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: 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 3: 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 4: 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.

## 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.

**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.

**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 and storm water management activities, 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.

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

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

**18. Endangered Species.** (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical

habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

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

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

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

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. 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) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.noaa.gov/fisheries.html respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining 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. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect 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. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may 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 may be affected by the proposed work 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 resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, 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 and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may 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 or that consultation under Section 106 of the NHPA has been completed.

(d) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work 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 (16 U.S.C. 470h-2(k)) 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, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

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

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

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

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

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

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

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

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

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

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

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

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

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

parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

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

**24. 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. *Specifically for North Dakota, the North Dakota Department of Health has denied water quality certification for all projects proposed to affect Class 1 and 1a rivers or classified lakes, individual certification must be obtained. For project proposed to affect any other waters, the North Dakota Department of Health has issued water quality certification provided the attached Construction and Environmental Disturbance Requirements are followed.*

**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 any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

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

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

**31. 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 in the vicinity of the project, or to notify the Corps pursuant to general condition
20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any

consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *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 project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also

be used. (d) *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 project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

**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.

**2012 Nationwide Permits**
**Regional Conditions**
**Omaha District**
**State of North Dakota**

The following Nationwide Permit regional conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

## Wetlands Classified as Peatlands – Revoked for Use

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands in North Dakota.

Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

## Wetlands Classified as Peatlands – Pre-construction Notification Requirement

For Nationwide Permits 3, 5, 20, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition 31 (Notification) prior to initiating any regulated activity impacting peatlands in North Dakota.

## Waters Adjacent to Natural Springs – Pre-construction Notification Requirement

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in North Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

## Missouri River, including Lake Sakakawea and Lake Oahe within the State of North Dakota – Pre-construction Notification Requirement

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity in the Missouri River, including Lake Sakakawea and Lake Oahe, within the State of North Dakota.

**Borrow Site Identification – All Nationwide Permits**

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

**Counter-sinking Culverts and Associated Riprap – All Nationwide Permits**

That culverts and riprap proposed to be installed within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota shall be installed one foot below the natural streambed. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd_streams_readable.pdf

**REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS**

**Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities**

**Intake Structures** - Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed ½-foot per second.

Pumping plant sound levels will not exceed 75 dB at 50 feet.

Intakes located in Lake Sakakawea, above river mile 1519, are subject to the following conditions:

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to ¼ foot per second.

Intakes located in Lake Sakakawea, below river mile 1519, and in the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes shall be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity shall be limited to ¼-foot per second with the intake placed at the maximum practicable attainable depth.

**Nationwide Permit 11 – Temporary Recreational Structures - Boat Docks**

a. 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.

b. No boat dock shall be located on a sandbar or barren sand feature located in or along the banks of the Missouri River.

c. The farthest point riverward on the dock located on the Missouri River proper shall not exceed a total length of 30 feet from the ordinary high water line found along the high bank out into the River. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.

d. Any boat dock located on the Missouri River shall be anchored to the top of the high bank.

e. Any boat dock located within an excavated bay or marina off the main river channel may be anchored to the bay or marina bottom with spuds.

**Nationwide Permit 13 - Bank Stabilization**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

**Nationwide Permit 23 - Approved Categorical Exclusions**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota. In addition to information required by General Condition 31, permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

**Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment and Enhancement Activities**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

## GENERAL CONDITIONS (REGIONAL ADDITIONS)

### General Condition 3- Spawning Areas

No regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July. North Dakota Public Fishing Waters can be accessed at: http://gf.nd.gov/fishing/where-to-fish. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/nd_streams_readable.pdf.

### General Condition 6 – Suitable Material

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Portals/23/docs/regulatory/ND/gen/prohibitionpnJuly2011.pdf.

### General Condition 9 - Management of Water Flows

Permittees are reminded that water flow management addressed in General Condition 9 is applicable to all aspects of a permitted project, including temporary features.

### General Condition 31 – Pre-construction Notification

Prospective permittees should be aware that a **field delineation** may be required for applications where notification is required in accordance with General Condition 31 and/or mitigation may be required. The Corps 1987 Wetland Delineation Manual and applicable Regional Supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at: http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx .

NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
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www.ndhealth.gov

## Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

### Soils

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

### Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

### Fill Material

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.

# Portion of Environmental Assessment Chapter 5

## Vegetation and Wetlands

The Applicants have, and will continue to, work closely with landowners and agencies to minimize impacts to existing vegetation within the proposed ROW. Final structure locations are being designed to minimize impacts to existing vegetation and land use. In particular, the following conservation measures are proposed for USFWS grassland and wetland easements.

- A construction monitoring plan will be developed to monitor the implementation of BMPs during construction.
- All on-site crews will be trained about the importance of staying on defined access routes and within the ROW.
- Aside from Structure 620, no site grading is anticipated. If grading is necessary, the WMD will be notified prior to work.
- Tree clearing activities will be minimized and disturbances will be stabilized as soon as practicable. No stump removal is anticipated as trees will be cut above ground level.
- The transmission line structures will be constructed within protected wetland basins during the winter, to the extent practicable. If summer construction becomes necessary, all fill placed in protected wetland basins for temporary construction access roads must be removed upon tower completion. The WMD will be notified when tower construction is complete and/or fill is removed so a visual inspection may be made of the site. No fill will be placed in protected basins.
- Non-native weeds will be controlled by limiting the number of construction vehicles, washing vehicles, and using weed-free seed and straw.
- All cultivated fields were tested for SCN by the proposed Project and mitigation techniques to minimize the spread of soil during construction have been identified.
- Utilizing a USFWS recommended native seed mix for restoration.

### 1.1.1 Grassland Easement Replacement

To the extent practicable, and while attempting to minimize impacts to other proposed Project routing criteria (e.g., existing residences, forest, cultural resources, etc.), the proposed Project has minimized the crossing of grasslands and grassland easements. For those grassland easements that could not be avoided, the proposed Project then attempted to minimize the number of transmission structures that will be required to be constructed within grassland easements. In addition, impacts on native vegetation have been minimized, when possible, by spanning habitats of higher quality. Where spanning has not been feasible, impacts on grassland easement vegetation will be mitigated by reestablishing similar native species once construction is complete. Areas disturbed during construction will be reseeded or otherwise stabilized with a native grass and forb mix specified by the USFWS.

The Applicants will work with the USFWS to coordinate the purchase of the replacement acres. The Applicants will provide funding to replace the acres of grassland easement lost through construction of the transmission line structures. Replacement will be acre for acre (for those contracts with less than one acre of loss, a minimum of one acre will be used for replacement of impacts to grassland easements). The Applicants propose to provide 1 acre replacement of grassland easement acreage for the 0.48 acres of direct permanent impacts from the proposed Project in South Dakota.

### 1.1.2 Wetland Easement Replacement

Minimizing impacts to wetlands and USFWS wetland easements was one of the routing criteria for the proposed Project. Once the route for the proposed Project was approved, the proposed Project attempted to further minimize impacts to wetlands by spanning wetlands to the extent practicable. Permanent impacts on jurisdictional wetlands will be permitted under U.S. Army Corps of Engineers (USACE) jurisdiction. Wetland replacement will occur as required by applicable permits. Temporary impacts will be minimized by utilizing erosion and sedimentation control BMPs that minimize or prevent sediment from reaching adjacent waterways and protect topsoil. The Applicants will use BMPs during construction and operation of the proposed Project to protect topsoil and adjacent wetland resources and to minimize soil erosion. Additional BMPs may be used to limit impacts include the use of tracked equipment, winter construction in wetlands, and matting. Practices may include containing excavated material, protecting exposed soil, stabilizing restored material, and re-vegetating disturbed areas. Areas on wetland easements disturbed during construction will be reseeded or otherwise stabilized with a native seed mix specified by the USFWS.

The Applicants will work with the USFWS to coordinate the purchase of the replacement acres in the appropriate state. The Applicants will provide funding to replace the acres of wetland easement lost through construction of the transmission line structures. Replacement will be acre for acre (for those contracts with less than one acre of loss, a minimum of one acre will be used for replacement for impacts to wetland easements).

~~The Project proposes to provide 1 acre replacement of wetland easement acreage for the 0.005 acres of~~ direct permanent impacts from the proposed Project in North Dakota.

## Wildlife Best Management Practices

Various BMPs or conservation measures are proposed for the following protected wildlife species.

### 1.1.3 Migratory Birds

To discourage active nesting within temporary or permanent disturbance areas associated with construction, tree removal, ground clearing, or mowing, these proposed Project activities will occur in late fall to early spring (outside the bird breeding/nesting season). If ROW areas are not cleared in early spring before the breeding season, a survey of the construction areas for active nests of protected species will be conducted. If an active nest is found, a construction buffer around the nest will be established. Restricting construction activities during this time frame (May to August) will allow nesting birds to breed without direct disturbance. In areas where construction activity disturbs non-cropland vegetative cover, the areas will be reseeded or otherwise stabilized to a similar condition as it was before construction or per applicable permit requirements.

### 1.1.4 Raptors and Eagles

Tree clearing associated with the proposed Project is proposed to occur from November 2015 through February 2016. Residual clearing may need to be performed in the winter of 2016/2017 due to late acquired land rights on limited tracts of land requiring eminent domain actions. Although proposed Project tree clearing will not directly impact known raptor nests, construction activity could indirectly affect nesting activities.

If tree clearing is not finished before December 1st when bald eagles may begin building their nests, the proposed Project Applicants will notify USFWS. Proposed Project biologists and USFWS staff will monitor the eagle nest in vicinity of the proposed Project ROW while tree clearing continues, to ensure that clearing activity does not impact nesting activities. Bald eagles fledge by August 1, after which construction may resume as needed. To minimize impacts on breeding eagles, subsequent field

surveys will occur during the spring leaf-out period (anticipated to be April 2016) to locate any eagle nests that may have been built after the 2015 field surveys. If an active eagle nest is located in the proposed Project Area, the Applicants will follow USFWS guidelines to reduce impacts on breeding eagles, including but not limited to performing seasonal monitoring of known eagle nests along the route.

A transmission line marking plan has been developed to reduce the potential for bird strikes. The plan is consistent with the APLIC recommendations in *Avian Collisions with Power Lines: The State of the Art in 2012* (APLIC, 2012). Additional details on the line marking plan is included in Section 5.4.6.

### 1.1.5 Piping Plover

Pre-construction surveys for active nesting piping plovers within the proposed Project ROW will be conducted. If active nesting areas are identified during surveys, a 0.5-mile buffer from active nesting areas will be established to prevent proposed Project construction from disturbing nesting activities.

### 1.1.6 Red Knot

Since the presence of this migratory species along the proposed Project is rare, the length of presence would be short if it were to occur (presence would only be for stopover activities), and because collisions with a transmission line for a small shorebird such as a red knot is unlikely, no species specific mitigation is proposed.

### 1.1.7 Sprague's Pipit

A pre-construction survey for grassland birds, such as the Sprague's pipit, will be conducted prior to construction in grassland areas. If active nests are identified, a construction buffer from active nesting areas will be established to prevent proposed Project construction from disturbing nesting activities.

### 1.1.8 Whooping Cranes

A line marking plan will be part of the proposed Project to mitigate potential impacts to whooping cranes and other migratory birds that may use habitat along the proposed Project. As recommended by USFWS, the line marking plan includes marking sections of the proposed Project within one-mile of potentially suitable stopover habitat within the 95 percent whooping crane migration corridor.

In addition, the USFWS recommends marking an equal length of existing power lines within one-mile of suitable stopover habitat. However, it is not feasible to mark an existing distance of equal line due to the complexities of the proposed Project involving more than one utility owner and the shortage of suitable existing transmission lines within the 95 percent whooping crane migration corridor. In addition, the Applicants have found that the existing transmission lines have not been engineered to support the additional ice and wind loading associated with the line marking devices.

To meet the spirit of the USFWS Region 6 Guidance for line marking for migratory and grassland birds (including prairie grouse) and colonial nesting species, line marking will extend outside of the 95 percent whooping crane migration corridor. Agencies identified wetlands, open water habitats and high quality grasslands as the habitat of species of concern. Thus, line marking is planned at open water crossings (including major rivers), large wetland complexes, and flyways that may connect these types of resources. This will afford protection to species of concern, such as waterfowl, in addition to whooping cranes which may stray into potentially suitable habitat outside the 95 percent migration corridor. A total of almost 42 miles is proposed for marking outside of the 95 percent migration corridor, which exceeds the length of additional marking called for in the Region 6 Guidelines. Combined with the almost 15 miles proposed to be marked within the 95 percent migration corridor, over 56 miles of the 162 mile long proposed Project will be marked.

### 1.1.9 Topeka Shiner

No work within rivers or streams is proposed for the Project. In addition, soil erosion into streams and rivers will be minimized through the use of erosion and sediment BMPs during construction as discussed in Sections 5.1 and 5.2. No further mitigation for Topeka shiner is proposed.

### 1.1.10 Dakota Skipper

Travel routes to construction sites on Grassland Easements will be minimized to reduce impacts to potential Dakota skipper habitat. The preferred construction time frame is winter to further avoid impact to potential habitat.

The Applicants conducted three consecutive years of surveys and found no Dakota skippers, therefore no further mitigation is proposed.

### 1.1.11 Poweshiek Skipperling

Travel routes to construction sites on Grassland Easements will be minimized to reduce impacts to potential Poweshiek skipperling habitat. The preferred construction time frame is winter to further avoid impact to potential habitat.

The Applicants conducted three consecutive years of surveys and found no Poweshiek skipperlings, therefore no further mitigation is proposed.

### 1.1.12 Northern Long-eared Bat

Tree clearing will be minimized to the extent possible and conducted between November 1 and March 31 to avoid the incidental take of summer roosting northern long-eared bats.

# BSSE - Line Marking Plan

The US Fish and Wildlife Service (USFWS), ND Game and Fish (NDGF), and SD Game, Fish and Parks (SDGFP) (collectively, known as Agencies) outlined Project issues and conservation measures during multiple agency meetings and through correspondence addressed to the Project. The Agencies identified the whooping crane (a Federally Endangered species), piping plover (a Federally Threatened species), migratory birds (Federally protected by the Migratory Bird Treaty Act [MTBA]), prairie grouse, native prairie/grasslands and wetland easements as important resources associated with the Project. Also, native grasslands were identified as important breeding resources for waterfowl and other migratory species. This document will serve as the line marking plan to aid in maintaining the baseline condition from the potential effect of the proposed Project to the whooping crane, piping plover and migratory birds.

In addition to the above identified resources, palustrine wetlands (emergent wetlands dominated by herbaceous vegetation with a seasonal to permanent component of standing water) were noted as potentially suitable stopover habitat for migrating whooping cranes. In correspondence dated November 1, 2012, the USFWS recommended line marking along new transmission lines within one-mile of potentially suitable whooping crane stopover habitat within the 95% whooping crane migration corridor. In addition, the USFWS recommended marking an equal length of existing transmission/distribution line within one-mile of suitable stopover habitat, preferably within the 75% whooping crane migration corridor, but at a minimum within the 95% whooping crane migration corridor.

The Project briefly enters the eastern edge of 95% whooping crane migration corridor in two locations in Brown County, South Dakota, for a total distance of about 15 miles. The landscape in this vicinity is characterized by a dense mosaic of palustrine, emergent, "pothole" type wetlands scattered throughout agricultural row crop fields. This interface between wetlands and croplands has been noted as significant during migration because both roosting and foraging opportunities are available in close proximity (Austin & Richert 2005).

Due to the densely distributed wetlands, the Project proposes to mark the entire length of the new line within the 95% whooping crane migration corridor, a total of 15 miles, per *Region 6 Guidance for Minimizing Effects from Power Line Projects Within the Whooping Crane Migration Corridor* (USFWS 2010) and *Reducing Avian Collisions with Power Lines: The State of the Art in 2012* (APLIC 2012). These segments are shown on Figures 1 through 4 of the attached mapbook. However, it is not feasible to mark an equal distance of existing line within the 95% corridor, due to the complexities of the Project involving more than one owner and the shortage of suitable existing transmission lines within the 95% whooping crane migration corridor. In many instances, Project Proponents have found that existing transmission lines have not been engineered to support the additional ice and wind loading associated with the marking devices.

To meet the spirit of Region 6 Guidance, avoid impacts to piping plover (Federally Threatened), the MBTA, and agency comments regarding impacts to avian species of concern, such as waterfowl, secretive marsh birds, grassland birds (including prairie grouse) and colonial nesting species, line marking will take place outside of the 95% corridor. Agencies identified wetlands, open water habitats and high quality grasslands as the habitat of species of concern. Line marking is planned at open water crossings (including major rivers), large wetland complexes, and flyways that may connect these types of resources. This will afford protection to species of concern, such as waterfowl, in addition to whooping cranes which may stray into potentially suitable habitat outside the 95% migration corridor. A total of 41.92 miles is proposed for marking outside of the 95% migration corridor, which exceeds the length of additional marking called for in the Region 6 Guidelines. The attached mapbook depicts the spans which will receive line markers.

Table 1 displays the length of line marking within the 95% corridor and the length of line proposed for marking outside the 95% corridor compared to the overall length of the project.

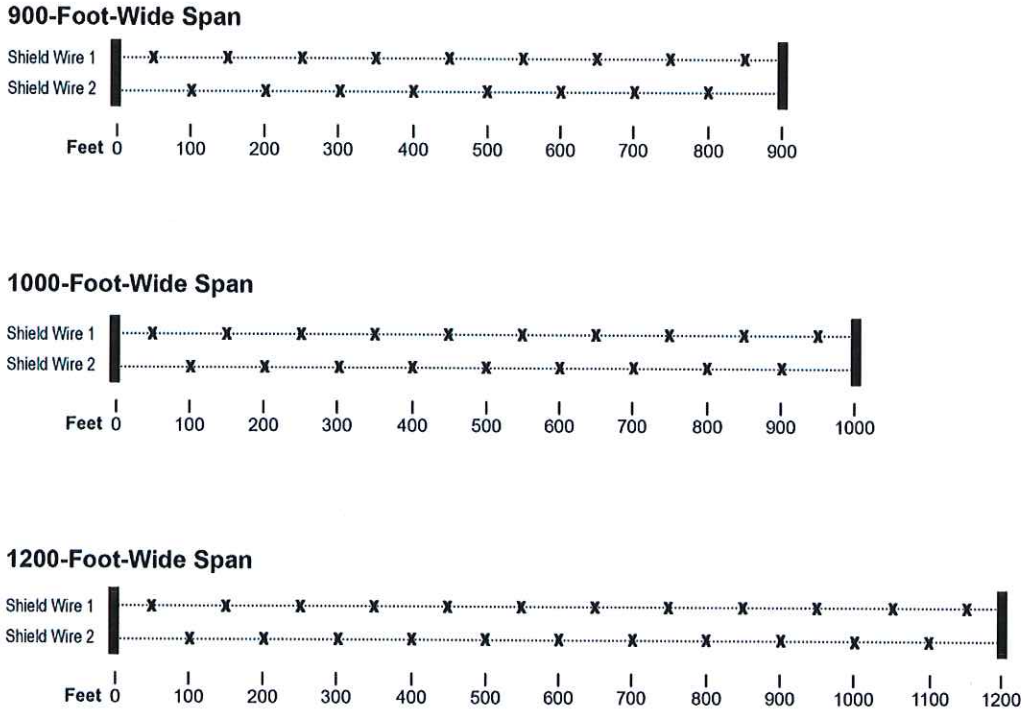
**Table 1: Project Line Marking Lengths in Miles**

| | Within the 95% Sighting Corridor | Outside of the 95% Sighting Corridor | Total |
|---|---|---|---|
| Line Marking Proposed | 14.71 | 41.92 | 56.63 |
| Total Project Length | 14.71 | 147.25 | 161.97 |

The Project plans to install flight diverters, most likely a swan-type diverter, in an alternating pattern along the shield wires for the length of the Project where line marking is proposed. Per the 2012 APLIC Guidance, the Project proposes to mark each of the shield wires with flight diverters spaced approximately 100 feet apart. The diverters would be staggered with each other to give the appearance, looking from the side that they are 50 feet apart, making the shield wires more visible in a horizontal plane. The Project proposes to begin and end line marking about 50 feet from each structure. Diagram 1 shows the proposed alternating pattern of flight diverters. Bird flight diverters will be attached to the shield wires per manufacture instructions.

Based on the spacing guidelines, Diagram 1 outlines the average placement and approximate distances associated with different span lengths:

**Diagram 1: Proposed Alternating Pattern of Flight Diverters by Average Span Length as Seen from Above**



An average 1,000-foot-wide span (as proposed for the Project) would have about ten flight diverters on one shield wire and nine flight diverters on the second wire. Line marker installation would occur after construction and testing.

The Project will provide the USFWS South Dakota Ecological Services with written confirmation that the transmission line was marked.

The Project believes that this line marking plan, to the extent feasible, is consistent with USFWS Region 6 Guidelines and agency comments by marking the entire length of the Project within the 95% migration corridor, in addition to similar habitat adjacent to the corridor and elsewhere along the Project. This line marking plan will provide protection to whooping cranes and migratory birds utilizing habitats in the vicinity of the Project.

**References**

Austin, J., & Richert, A. (2005). *Patterns of Habitat Use by Whooping Cranes During Migration: Summary From 1977-1999 Site Evaluation Data*. USGS Northern Prairie Wildlife Research Center.Jamestown, ND.

Avian Powerline Interaction Committee (APLIC). 2012. *Reducing Avian Collisions with Power Lines: The State-of-the-Art in 2012*. Washington, D.C.: Edison Electric Institute and APLIC.

U.S. Fish & Wildlife Service. (2010). *Region 6 Guidance for Minimizing Effects from Power Line Projects Within the Whooping Crane Migration Corridor*. Lakewood, Colorado: U.S. Fish and Wildlife Service, Assistance Regional Director, Ecological Services, Region 6.

**Exhibit F**

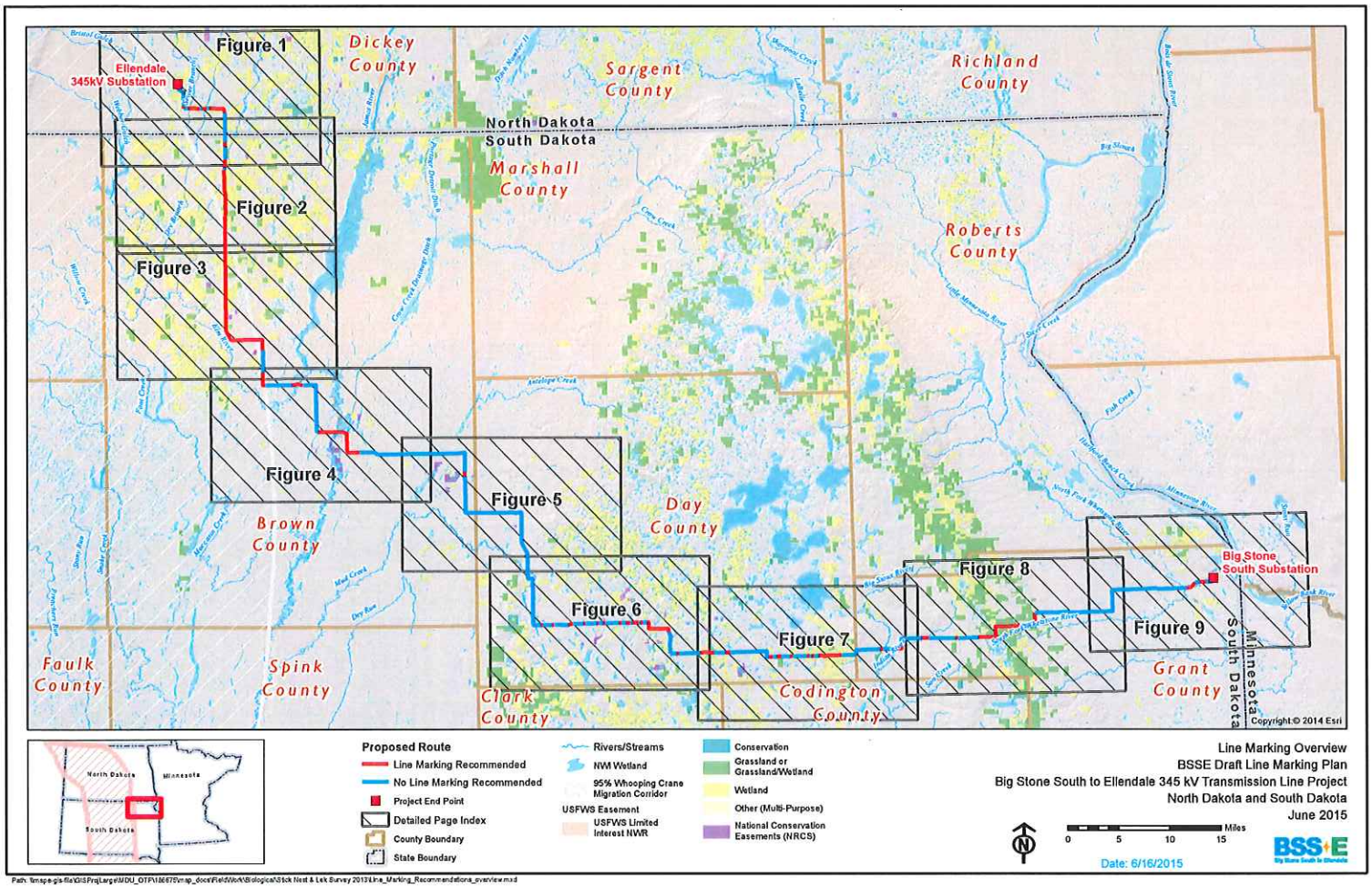



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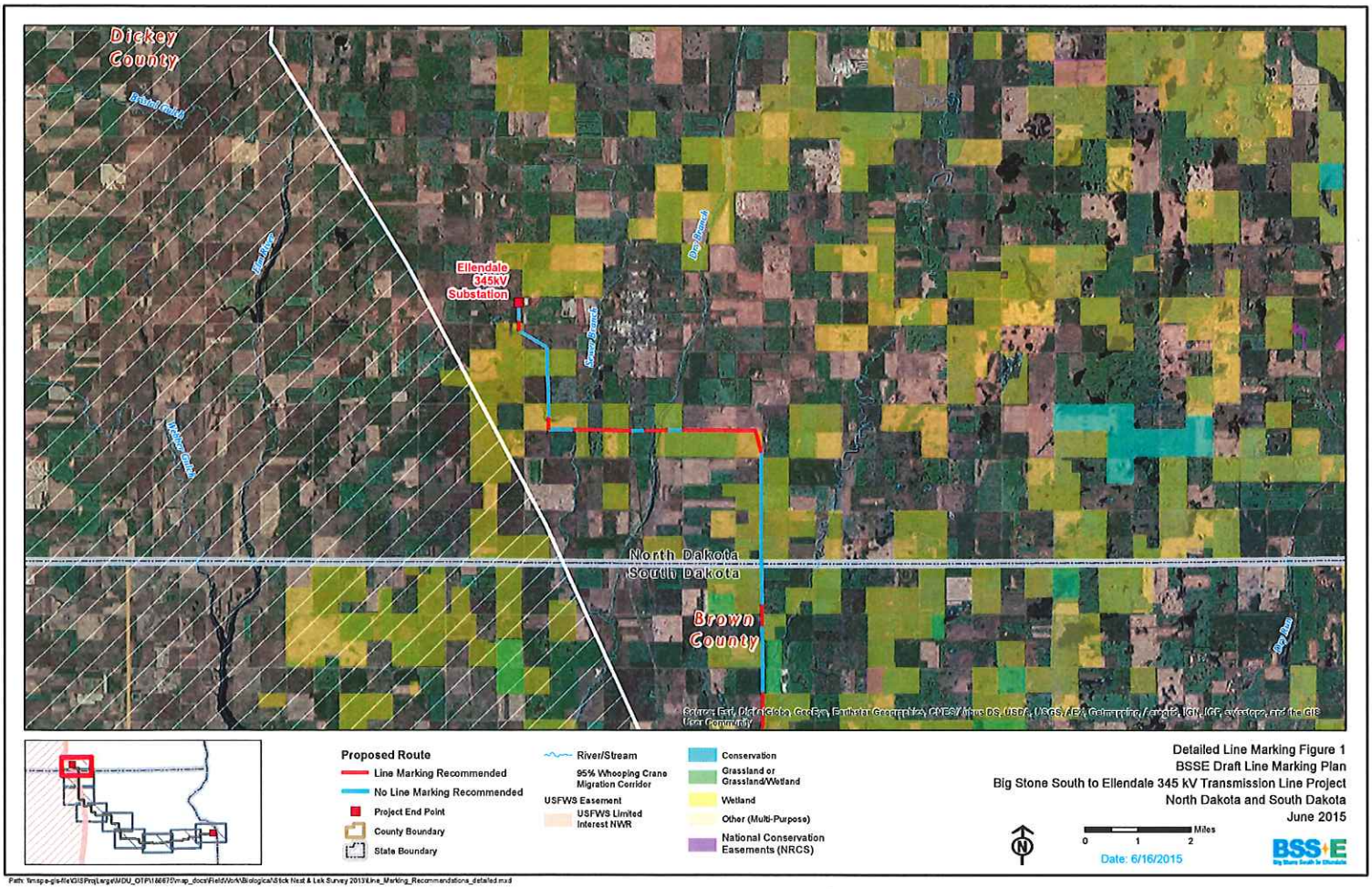
**Exhibit F**




Detailed Line Marking Figure 1
BSSE Draft Line Marking Plan
Big Stone South to Ellendale 345 kV Transmission Line Project
North Dakota and South Dakota
June 2015