

COHEN, DIPPELL AND EVERIST, P.C.

EXHIBIT E-6

ENVIRONMENTAL ASSESSMENT
PREPARED BY ENVIRONMENTAL CORPORATION OF AMERICA
PURSUANT TO SECTION 1.1307 OF THE FCC RULES
KBTV-DT, PORT ARTHUR, TEXAS

Environmental Assessment

Proposed 800-Foot Replacement Guyed-Type Communications Structure
(856-Foot Overall Height with Appurtenances)

KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas

submitted to

Morrison Hershfield Corporation
66 Perimeter Center East
Suite 600
Atlanta, Georgia 30346

by

Environmental Corporation of America
1375 Union Hill Industrial Court, Suite A
Alpharetta, GA 30004

ECA Project No. J-1010-2



ENVIRONMENTAL CORPORATION OF AMERICA

November 20, 2008

Morrison Hershfield Corporation
66 Perimeter Center East
Suite 600
Atlanta, Georgia 30346

Attention: Mr. Mike Khalil

Subject: **Environmental Assessment**
Proposed 800-Foot Replacement Guyed-Type Communications Structure
(856-Foot Overall Height with Appurtenances)
KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
ECA Project Number: J-1010-2

Dear Mr. Khalil:

Environmental Corporation of America (ECA) is pleased to provide this Environmental Assessment report for the proposed KBTV replacement television communications tower near the City of Vidor, Texas.

Based on our professional opinion, no significant adverse environmental impacts would occur as a result of the undertaking (the construction and operation of the facility). We base our opinion on the following:

- Orange County, Texas is a National Flood Insurance Program participating community. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Panel 4805100050 B, dated January 6, 1983, indicates that a portion of the subject facility is located in a Special Flood Hazard Area where the base flood elevation (BFE) has not been determined. The Federal Communications Commission (FCC) requires that buildings be constructed at least one foot above the BFE. Based on the current FEMA FIRM Panel, it has been determined that the base flood elevation (BFE) at the subject site is 20 feet above mean sea level (AMSL). It does not appear that the replacement tower would be located in a Special Flood Hazard Area of the 100-year floodplain. It appears that the guy anchors would be located in federal floodplains, and it is possible that equipment associated with the proposed replacement tower would be located within federal floodplains. Any proposed equipment buildings and/or cabinets and associated communications equipment for the subject communications facility would

be constructed at a finished floor elevation of 21 feet AMSL or higher. In our opinion, we find no significant impact or effect to federal floodplains.

- The existing fenced compound and the replacement tower and compound expansion areas are located in uplands. However, portions of the project site within and surrounding the existing guy anchor easements may contain jurisdictional wetlands. The Applicant has determined that it will assume that the guy anchors are located within jurisdictional areas. Based on the nature of the proposed activities (utility related) and the extent (less than 1/10 acre) of wetland loss, the proposed impacts can be authorized under Nationwide Permit (NWP) 12 (33 CFR Part 330). According to NWP 12, no Pre-Construction Notification (PCN) is required for work in Waters of the United States, as construction activities would result in a loss of less than 1/10th acre of wetlands. Since the proposed project is consistent with the activities authorized under NWP 12, and less than 1/10th acre of wetland loss would result, no PCN was submitted.

Our EA finding of no significant impact is subject to review by the Federal Communications Commission (FCC). Upon review, the FCC will issue its finding. This finding will consist of an official agency position regarding environmental consequences of the undertaking.

We appreciate this opportunity to provide you with these professional services. If you have any questions regarding this report or the project in general, please call.

Sincerely yours,
Environmental Corporation of America


Kimberly Morley
Project Scientist

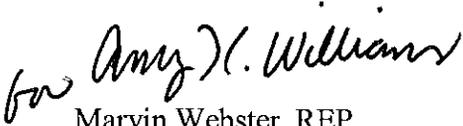

Marvin Webster, REP
Principal Scientist

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1.0 INTRODUCTION

Nexstar Broadcasting, Inc has proposed to replace an existing approximate 1,100-foot tall guyed-type communications structure with an 800-foot tall (856-feet tall, including appurtenances) guyed-type communications structure at the subject site. The six proposed guy wire anchors would be located within or adjacent to easements utilized by the existing tower and access route. The existing fenced compound would be expanded to accommodate the replacement tower and an addition to the existing equipment building.

A review of environmental and cultural resource issues revealed that a portion of the subject facility would be located within a federally designated Special Flood Hazard Area of the 100-year floodplain, Zone A. Zone A consists of areas of the 100-year floodplain where the base flood elevation (BFE) has not been determined. Additionally, it has been determined that portions of the project site may be located within jurisdictional wetlands.

No other FCC National Environmental Policy Act (NEPA) issues have been identified in connection with the subject facility.

In accordance with 47 CFR, Section 1.1307, et. seq., this environmental assessment has been prepared to address environmental effects associated with the construction and operation of the subject facility.

1.1 Site Location

The site is located at 1721 Evangeline Drive near Vidor, Orange County, Texas as shown on Figures 1 and 2 of Appendix A.

The subject site is a grassed area adjacent to an existing tower compound. The proposed guy anchors will be located within or adjacent to the easements utilized by the existing tower. Surrounding land uses primarily consist of wooded land.

1.2 Site Description

The subject site is situated in a grassed area adjacent to an existing tower compound on an approximate 40-acre tract of land owned by the Nexstar Broadcasting, Inc. The parent tract is occupied by an existing television broadcast tower, associated guy anchor easements, an access easement, and wooded land.

2.0 SITE INFORMATION

2.1 Zoning

The parcel is not zoned. There are no zoning requirements in unincorporated areas of Orange County, Texas.

2.2 Local Community

The Applicant is not aware of any concerns regarding environmental effects of the subject facility that have been expressed by planning or zoning officials or members of the local community.

2.3 Site Selection and Alternative Considered

The subject site currently consists of a broadcast facility that houses KBTV television equipment, together with an approximate 1,100-foot tall guyed broadcast tower inside a fenced compound. This facility dates back to 1969 and the existing 1,100-foot tower has been determined unable to support the equipment needed for the transition to digital broadcast in 2009. An alternative site was not considered because the subject site has been used as a television tower facility for nearly four decades. A "No Action" alternative would not be feasible because the tower is in need of replacement. Replacing the existing tower would minimize the potential impacts to other neighboring properties.

During the consultation and review of the NEPA categories, it was discovered that a portion of the subject facility is located in a floodplain. This determination was made using the appropriate Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Community Map Panel, 4805100050 B, dated January 6, 1983. Additionally, it has been determined that portions of the project site may be located within jurisdictional wetlands.

3.0 ENVIRONMENTAL ISSUES

In accordance with 47 CFR, Section 1.1307, the following issues must be addressed in an Environmental Assessment. Included in these regulations is the requirement to investigate each of the following items and provide a determination as to whether significant environmental impacts or effects are likely.

3.1 Wilderness Areas

The subject site is owned by Nexstar Broadcasting, Inc. and is not located in an officially designated wilderness area.

3.2 Wildlife Preserves

The subject site is owned by Nexstar Broadcasting, Inc. and is not located in an officially designated wildlife preserve.

3.3 Listed Threatened and Endangered Species and Critical Habitat

ECA does not believe that the undertaking would affect any Threatened or Endangered species or Critical Habitat. In reaching this finding, ECA reviewed the most recent U.S. Department of Interior, Fish and Wildlife Service (US FWS) List of Protected Species in Orange County, Texas (see Appendix D) and performed a detailed inspection of the subject site area.

ECA compared the habitat available at the subject site with the habitat requirements of federally protected species listed by the US FWS as occurring within Orange County, Texas. ECA found no evidence suggesting that federally protected species inhabit the site or the immediate site area (impact zone). Our finding was made by a qualified Biologist.

3.4 Proposed Threatened or Endangered Species and Proposed Critical Habitat

Based on the information reviewed, it is our opinion that the undertaking would not jeopardize proposed Threatened or Endangered species or result in the destruction or adverse modification of a proposed Critical Habitat. This is based on a review of the U.S. Department of Interior Fish and Wildlife Service List of Protected Species (see Appendix D) and our site inspections. Our finding was made by a qualified Biologist.

3.5 Migratory Birds

The proposed facility would be located near the Mississippi Flyway and the Central Flyway zones. However, the proposed tower 800-foot tall guyed-type tower would replace an existing 1,100-foot tall guyed-type tower. Therefore, ECA does not anticipate any negative impact to migratory bird populations.

3.6 Sites of Historic and Archeological Significance

The Federal Communications Commission (FCC) Nationwide Programmatic Agreement for Review Under the National Historic Preservation Act (NPA) signed into effect on March 7, 2005 stipulates that certain federal undertakings are not subject to individual Section 106 Review by the Commission or the State Historic Preservation Office (SHPO) / Tribal Historic Preservation Office (THPO) because certain types of undertakings are deemed unlikely to adversely affect Historic Properties. The FCC along with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers have agreed that construction of a replacement for an existing communications tower and any associated excavation that does not substantially increase the size of the existing tower and that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site are exempt from Section 106 review. See Appendix E for these stipulations and documentation that this undertaking is excluded from Section 106 Review.

3.7 Indian Religious Sites

According to the NPA, facilities that meet the replacement tower exclusion described in Section 3.6 are not required to complete the process of participation of Indian tribes.

3.8 Floodplains

According to the FEMA FIRM Community Panel 4805100050 B, dated January 6, 1983, a portion of the subject facility is located within a Special Flood Hazard Area, Zone A. Zone A consists of areas of the 100-year floodplain where the base flood elevation (BFE) has not been

determined. Based on the current FEMA FIRM Panel, it has been determined that the base flood elevation (BFE) at the subject site is 20 feet above mean sea level (AMSL). See Appendix B for the FEMA FIRM Community panel for the subject site.

The subject facility would be located in the jurisdiction of Orange County, Texas, a National Flood Insurance Program participating community. Federal standards require that buildings and equipment be constructed at least one foot above the base flood elevation. For the subject facility, this translates to an elevation of 21 feet AMSL or higher.

3.9 Surface Features

The existing fenced compound and the replacement tower and compound expansion areas are located in uplands. However, portions of the project site within and surrounding the existing guy anchor easements may contain jurisdictional wetlands (see Appendix C). The Applicant has determined that it will assume that the guy anchors are located within jurisdictional areas. Based on the nature of the proposed activities (utility related) and the extent (less than 1/10 acre) of wetland loss, the proposed impacts can be authorized under Nationwide Permit (NWP) 12 (33 CFR Part 330). According to NWP 12, no Pre-Construction Notification (PCN) is required for work in Waters of the United States, as construction activities would result in a loss of less than 1/10th acre of wetlands. Since the proposed project is consistent with the activities authorized under NWP 12, and less than 1/10th acre of wetland loss would result, no PCN was submitted.

3.10 High Intensity Lighting

High Intensity White Lights would be deployed in conjunction with this undertaking. However, the facility is not located in or near a residential neighborhood.

3.11 Radio Frequency Radiation

For RF Exposure assessment, ECA has relied solely on the project RF Engineers to determine that antennas located at the facility would result in RF exposures levels which fall within the FCC categorical exclusions and are not subject to routine environmental evaluation under Section 1.1307(b) of the Commission's rules.

4.0 FINDINGS, ISSUES, AND RECOMMENDATIONS

Federal Floodplains

Findings: According to the FEMA FIRM Community Panel 4805100050 B, dated January 6, 1983, a portion of the subject facility would be located within a Special Flood Hazard Area, Zone A. Zone A consists of areas of the 100-year floodplain where the base flood elevation (BFE) has not been determined. Based on the current FEMA FIRM Panel, it has been determined that the base flood elevation (BFE) at the subject site is 20 feet above mean sea level (AMSL). The federal standard requires that

buildings be constructed at least one foot above the base flood elevation. For the subject facility, this translates to an elevation of 21 feet AMSL or higher.

Issues: According to the FCC Environmental Rules, an Environmental Assessment must be prepared for facilities that are located within Special Flood Hazard Area of the 100-year floodplain. FCC guidelines specify that, avoiding adverse effects to floodplains may be accomplished by complying with local flood protection and building code ordinances within National Flood Insurance Program participating communities/jurisdictions or by elevating structures above the base flood elevation by at least one foot.

Recommendation: The finished floor of any equipment cabinets and/or shelters would be elevated to 21 feet AMSL or higher. In our opinion, we find no material impact to the flood storage capacity of the local floodplain. Therefore, we recommend that a finding of no significant impact (FONSI) be issued by the FCC relative to floodplains.

Wetlands

Findings: Portions of the project site within and surrounding the existing guy anchor easements may contain jurisdictional wetlands. The Applicant has determined that it will assume that the proposed guy anchors would be located within jurisdictional wetlands.

Issues: According to the FCC Environmental Rules, an Environmental Assessment must be prepared for facilities that result in Wetland Fill. FCC guidelines specify that, in order that adverse effects to wetlands may be avoided, the undertaking must be authorized by a U.S. Army Corps of Engineers permit.

Recommendation: Based on the nature of the proposed activities (utility related) and the extent (less than 1/10 acre) of wetland loss, the proposed impacts can be authorized under Nationwide Permit (NWP) 12 (33 CFR Part 330). According to NWP 12, no Pre-Construction Notification (PCN) is required for work in Waters of the United States, as construction activities would result in a loss of less than 1/10th acre of wetlands. Since the proposed project is consistent with the activities authorized under NWP 12, and less than 1/10th acre of wetland loss would result, no PCN was submitted. Based on the "insignificant" loss of waters of the U.S. associated with the project activities (below the required USACE PCN and mitigation thresholds), in our opinion, the proposed project will have no significant adverse impact on jurisdictional waters or wetlands. Therefore, we recommend that a finding of no significant impact (FONSI) be issued by the FCC relative to wetlands.

Other Items contained in 41 CFR 1.1307

Finding: No other findings of environmental significance were identified.

Issue: No further issues were identified.

Recommendation: No further action is recommended.

5.0 SUMMARY

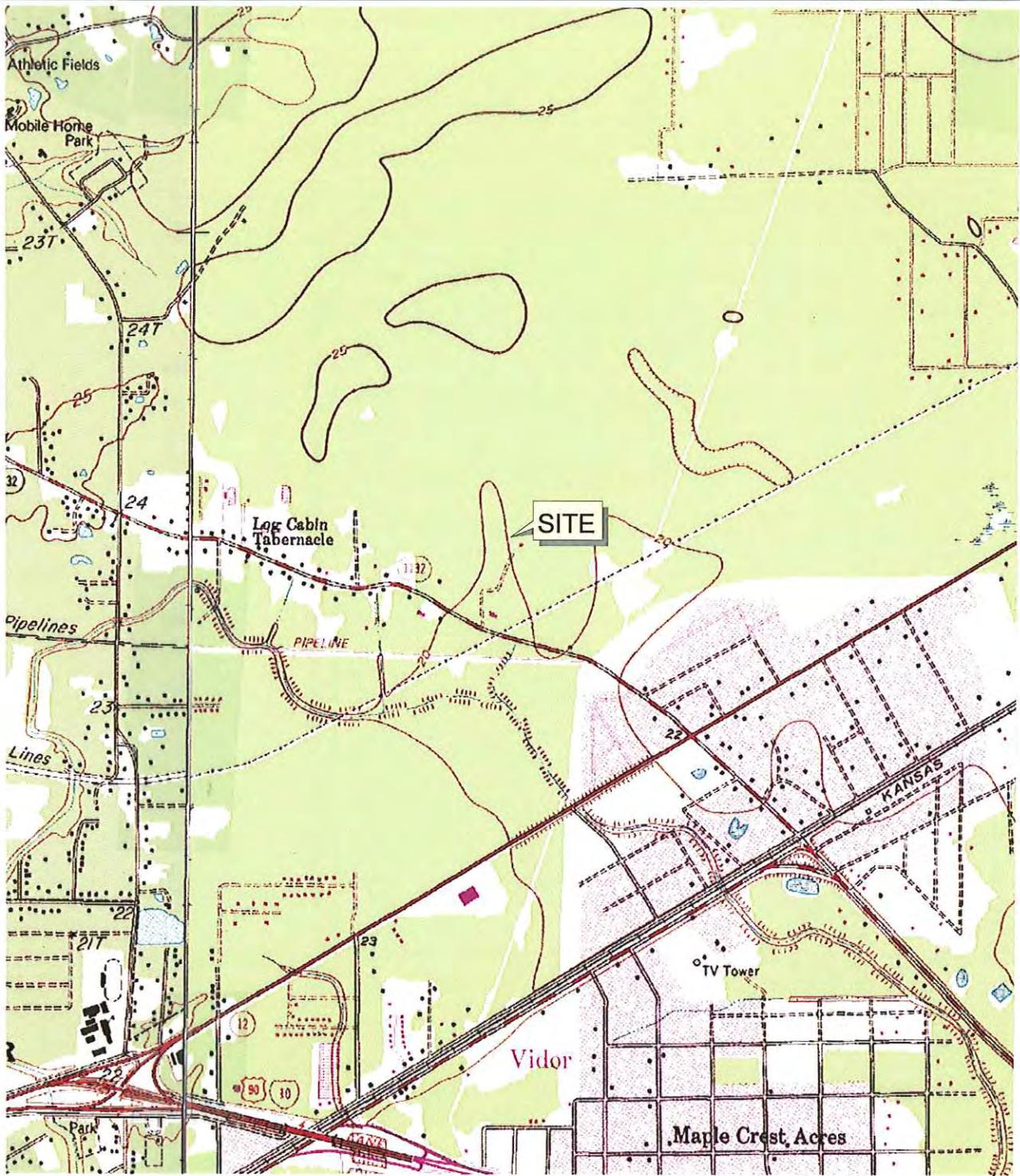
In summary, it is our opinion that no adverse environmental impacts or effects would result from the undertaking. We seek Commission concurrence with this finding.

6.0 LIMITATIONS

This Environmental Assessment was conducted in accordance with generally accepted practices of the profession for such studies, conducted during the same time period and in the geographical area as this study. ECA has exercised the same degree of care and skill generally exercised by environmental professionals under similar circumstances and conditions. No other warranty is expressed or implied.

The observations, opinions and conclusions presented are not scientific certainties, but are solely opinions based upon the information available to us and our professional judgment based upon that information. The services provided herein are in no way intended to be legal advice and should not be relied upon in any way for legal interpretations.

APPENDIX A
FIGURES



2000 0 2000 Feet

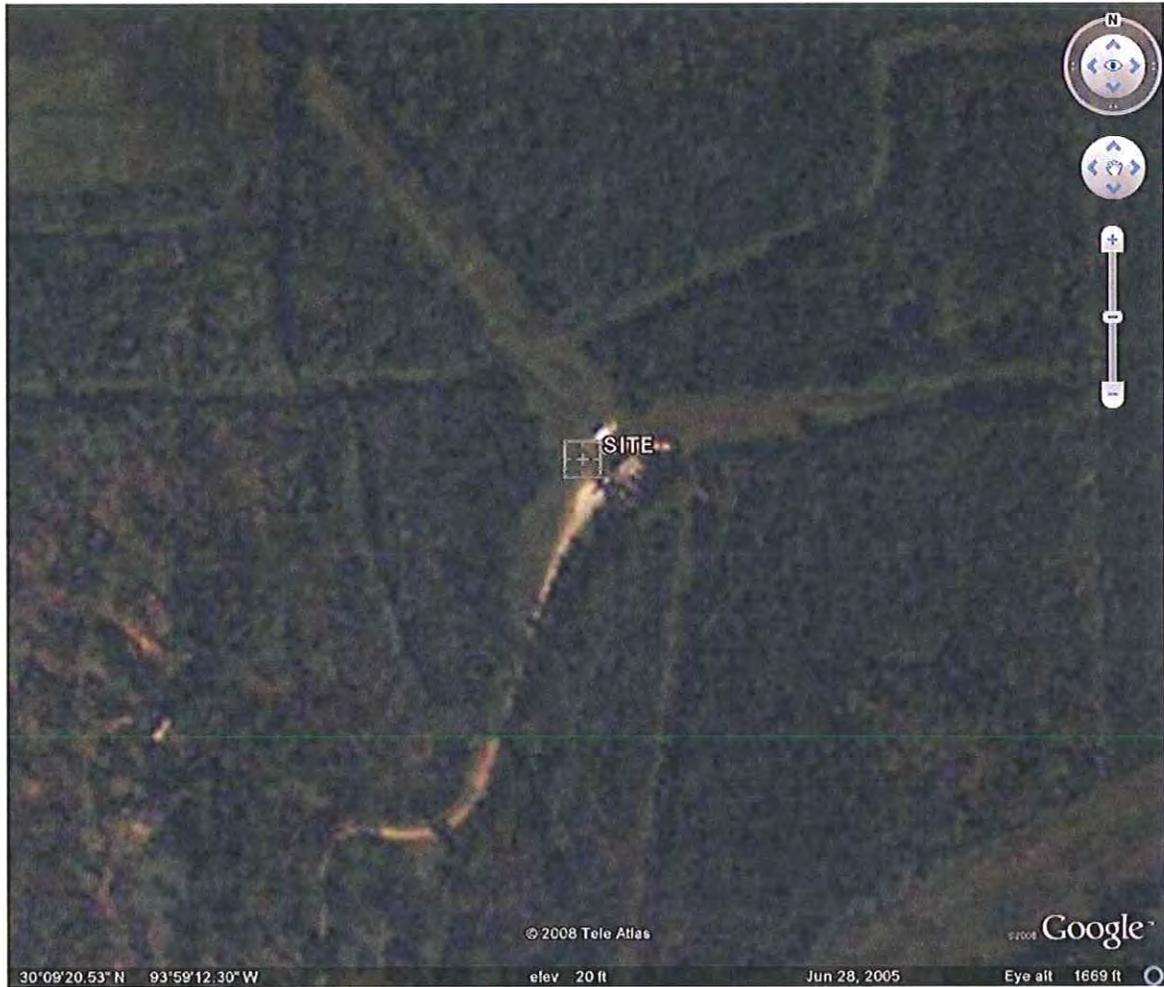
Source: USGS Topographic Quadrangle Maps, 7.5 Minute Series, Pine Forest (1993) and Texla (1957, photorevised 1970 and 1975), Texas.



KBTV Replacement Tower
 1721 Evangeline Drive
 Vidor, Orange County, Texas
 Figure 1: Site Location Plan



ECA Proj. #: J-1010-2



Source: Google Earth™ Mapping Service, 2005.

KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Figure 2: 2005 Aerial Photograph



ECA Proj. #:J-1010-2

APPENDIX B
FEMA FLOOD INSURANCE RATE MAP
AND PERTINENT DOCUMENTATION



APPROXIMATE SCALE



NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

ORANGE COUNTY,
TEXAS
(UNINCORPORATED AREAS)

PANEL 50 OF 250

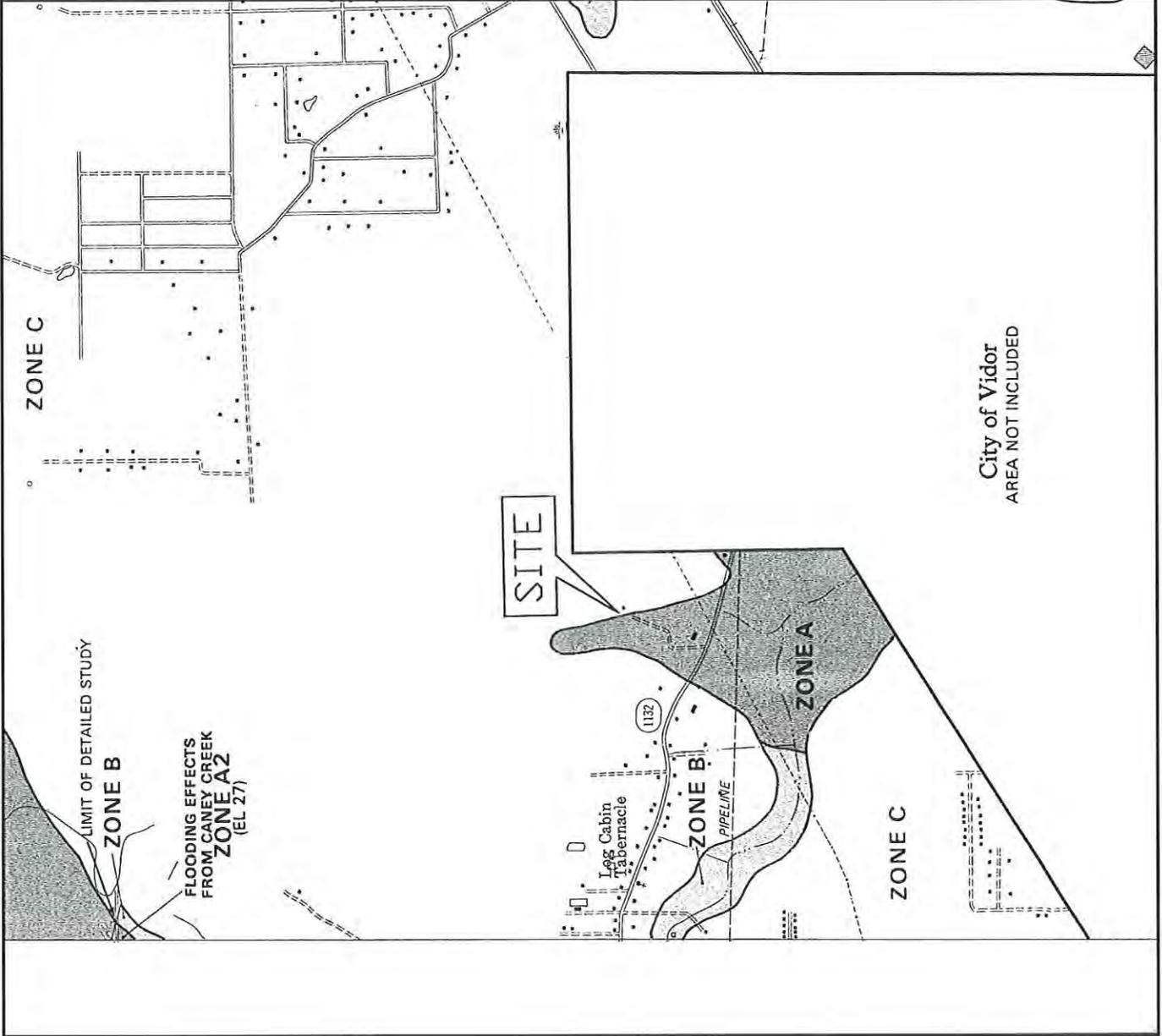
COMMUNITY-PANEL NUMBER
480510 0050 B

EFFECTIVE DATE:
JANUARY 6, 1983



Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



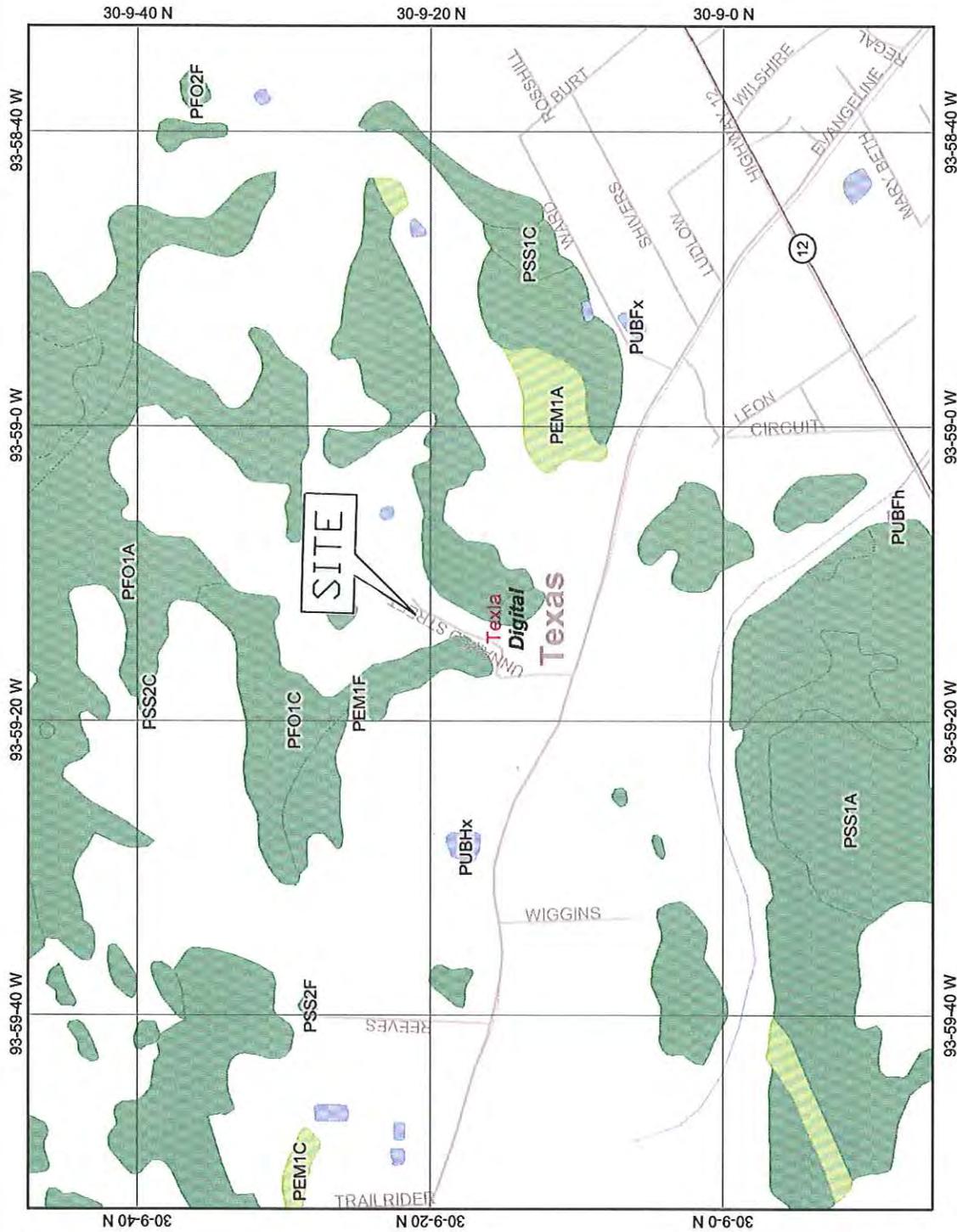
Federal Emergency Management Agency Community Status Book Report TEXAS

Communities Participating in the National Flood Program

CID	Community Name	County	Init FHBM Identified	Init FIRM Identified	Curr Eff Map Date	Reg-Emer Date	Tribal
481540#	OLMOS PARK, CITY OF USE UTAH COUNTY (495517) FIRM PANELS 205 and 210.	BEXAR COUNTY		02/16/96	(NSFHA)	05/28/99	No
480686#	OLNEY, CITY OF	YOUNG COUNTY	04/12/74	12/04/85	01/02/91	12/04/85	No
480896	OLTON, CITY OF	LAMB COUNTY	10/01/76	02/01/91	02/01/91(L)	02/01/91	No
480974	ONALASKA, CITY OF	POLK COUNTY	11/26/76	11/01/07	11/01/07(L)	11/01/07	No
481611#	OPDYKE WEST, TOWN OF USE THE HOCKLEY COUNTY [480352] FHBM.	HOCKLEY COUNTY			01/01/50	04/14/88(E)	No
480510#	ORANGE COUNTY *	ORANGE COUNTY	03/11/77	01/06/83	06/05/97	01/06/83	No
480395	ORANGE GROVE, CITY OF	JIM WELLS COUNTY	05/03/74		(NSFHA)	03/30/79	No
480512#	ORANGE, CITY OF	ORANGE COUNTY	06/14/74	01/06/83	06/05/97	01/06/83	No
481655#	ORCHARD, CITY OF	FORT BEND COUNTY		04/20/00	(NSFHA)	11/28/01	No
481038	ORE CITY, CITY OF	UPSHUR COUNTY	11/05/76	09/14/82	09/14/82(M)	09/14/82	No
481155#	OVILLA, CITY OF	DALLAS COUNTY/ELLIS COUNTY	07/11/75	04/15/80	01/05/06	04/15/80	No
481255#	OYSTER CREEK, VILLAGE OF	BRAZORIA COUNTY	05/08/71	11/19/76	09/22/99	11/19/76	No
480771	PADUCAH, CITY OF	COTTLE COUNTY	06/27/75		(NSFHA)	08/24/81	No
485495#	PALACIOS, CITY OF	MATAGORDA COUNTY	11/17/70	09/15/83	02/05/86	11/17/70	No
480004#	PALESTINE, CITY OF	ANDERSON COUNTY	05/31/74	02/18/81	03/01/84	02/18/81	No
481666#	PALISADES, VILLAGE OF	RANDALL COUNTY		09/30/82	01/01/50	06/12/95	No
481580#	PALM VALLEY, TOWN OF USE THE CAMERON COUNTY (480101) FIRM.	CAMERON COUNTY			01/01/50	09/08/82	No
480209#	PALMER, CITY OF	ELLIS COUNTY	08/13/76	06/01/90	01/05/06	06/01/90	No
480346	PALMHURST, CITY OF	HIDALGO COUNTY	09/12/75		01/01/50	11/25/02(E)	No
480516#	PALO PINTO COUNTY *	PALO PINTO COUNTY		08/02/90	08/18/92	12/19/84	No
480258	PAMPA, CITY OF	GRAY COUNTY	05/10/74	09/01/87	09/01/87(L)	09/01/87	No
480727#	PANHANDLE, TOWN OF	CARSON COUNTY	06/25/76	05/11/82	05/11/82(M)	05/11/82	No
480966	PANOLA COUNTY*	PANOLA COUNTY			01/01/50	03/06/01(E)	No
481263#	PANORAMA VILLAGE, CITY OF	MONTGOMERY COUNTY	12/31/76	08/01/84	09/22/99	08/01/84	No
481116#	PANTEGO, TOWN OF	TARRANT COUNTY	08/13/76	07/16/80	08/23/00	07/16/80	No
480427#	PARIS, CITY OF	LAMAR COUNTY	06/14/74	12/15/83	12/15/83	12/15/83	No
480520#	PARKER COUNTY *	PARKER COUNTY	12/27/77	09/27/91	09/26/08	09/27/91	No
480139#	PARKER, CITY OF	COLLIN COUNTY	10/01/76	08/15/79	12/19/97	08/15/79	No
480970	PARMER COUNTY*	PARMER COUNTY			01/01/50	01/16/01(E)	No
480307#	PASADENA, CITY OF	HARRIS COUNTY		05/24/74	06/18/07	07/02/71(E)	No
481527#	PATTISON, CITY OF	WALLER COUNTY	06/12/79	02/03/82	02/18/09(>)	10/29/04	No
480486#	PATTON VILLAGE, CITY OF	MONTGOMERY COUNTY	08/13/76	08/01/84	09/22/99	04/15/85	No
480077#	PEARLAND, CITY OF	FORT BEND COUNTY/HARRIS COUNTY/BRAZORIA COUNTY	01/31/75	07/05/84	06/18/07	07/05/84	No
480238#	PEARSALL, CITY OF	FRIO COUNTY	05/17/74	05/19/81	05/19/81	05/19/81	No
481486#	PECAN GROVE M.U.D.	FORT BEND COUNTY	11/01/77	08/04/87	11/07/01	08/04/87	No
481673#	PECAN HILL, CITY OF	ELLIS COUNTY		01/20/99	01/05/06	11/05/07	No
480538	PECOS, CITY OF	REEVES COUNTY	06/07/74	06/19/85	06/19/85(M)	06/19/85	No
481653#	PELICAN BAY, CITY OF	TARRANT COUNTY		08/02/95	08/23/00	03/06/08	No
480745#	PETROLIA, CITY OF	CLAY COUNTY	11/05/76	04/02/91	04/02/91	04/02/91	No
481028#	PFLUGERVILLE, CITY OF	TRAVIS COUNTY	05/02/75	05/01/78	09/26/08	05/01/78	No
480347#	PHARR, CITY OF	HIDALGO COUNTY	05/31/74	07/16/79	10/19/82	07/16/79	No
480783#	PILOT POINT, CITY OF	DENTON COUNTY	08/08/75	04/02/97	12/06/02	06/11/01	No
480697#	PINE FOREST, CITY OF	ORANGE COUNTY	12/13/74	02/16/83	02/16/83	02/16/83	No
480513#	PINEHURST, CITY OF	ORANGE COUNTY	05/24/74	01/06/83	01/06/83	01/06/83	No
480998	PINELAND, TOWN OF	SABINE COUNTY	10/22/76	06/01/88	06/01/88(L)	06/01/88	No
480308#	PINEY POINT VILLAGE, CITY OF	HARRIS COUNTY	06/28/74	06/28/74	06/18/07	12/02/80	No

APPENDIX C
WETLAND INFORMATION

KBTV



Map center: 30° 9' 17" N, 93° 59' 13" W



Legend

- Ohio_wet_scan
- 0
- 1
- Out of range
- Interstate
- Major Roads
- Other Road
- Interstate
- State highway
- US highway
- Roads
- Cities
- USGS Quad Index 24K
- Lower 48 Wetland Polygons
- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine
- Lower 48 Available Wetland Data
- Non-Digital
- Digital
- No Data
- Scan
- NHD Streams
- Counties 100K
- States 100K
- South America
- North America



Scale: 1:13,359

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.



Federal Register

**Monday,
March 12, 2007**

Part II

**Department of
Defense**

**Department of the Army, Corps of
Engineers**

Reissuance of Nationwide Permits; Notice

clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404)

6. Survey Activities. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

7. Outfall Structures and Associated Intake Structures. Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System

Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

8. Oil and Gas Structures on the Outer Continental Shelf. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 10)

9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Section 10)

11. Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. Utility Line Activities. Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss

of greater than ½ acre of waters of the United States.

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 ½ 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 and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than ½-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.

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 a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than ¼-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 27.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), 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, 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).

13. Bank Stabilization. Bank stabilization activities necessary for erosion prevention, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless this criterion is waived in writing by the district engineer;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;
- (e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow

into or out of any water of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and, (g) The activity is not a stream channelization activity.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.) (Sections 10 and 404)

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than ½-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than ¼-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. 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.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) The size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in species being cultivated; or (4) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (5) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.) (Sections 10 and 404)

Note: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

49. Coal Remining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond

forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined plus any unmined area necessary for the reclamation of the remined area.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

50. Underground Coal Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

C. Nationwide Permit General Conditions

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

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. Culverts placed in streams must be installed to maintain low flow conditions.

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.

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.

15. 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 in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. 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.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to 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 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.

(c) Non-federal permittees shall notify 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 may be affected by the proposed work or that utilize the designated critical habitat that may 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.

(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, both lethal and non-lethal "takes" of protected species are in violation of the ESA. 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/> and <http://www.noaa.gov/fisheries.html> respectively.

18. 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.

(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, 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)). 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 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.

(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, explaining 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.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 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 27, 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.

20. *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) 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 $\frac{1}{10}$ acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-

specific waiver of this requirement. For wetland losses of $\frac{1}{10}$ 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. 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.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, 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 $\frac{1}{2}$ acre, it cannot be used to authorize any project resulting in the loss of greater than $\frac{1}{2}$ 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 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. 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 arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(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.

21. *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.

22. *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.

23. *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.

24. *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 $\frac{1}{3}$ -acre.

25. *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)

26. *Compliance Certification.* Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

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

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

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

27. *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, as a general rule, 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:

(1) Until 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) If 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 17 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 18 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 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)) is 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 cannot 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; 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 result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, 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, where appropriate;

(5) If the proposed activity will result in the loss of greater than $\frac{1}{10}$ acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. 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 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than $\frac{1}{2}$ -acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the 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 then 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. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but 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 multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than $\frac{1}{10}$ acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. *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.

D. 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.

E. Definitions

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

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all

appropriate and practicable avoidance and minimization has been achieved.

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

Discharge: The term "discharge" means any discharge of dredged or fill material and any activity that causes or results in such a discharge.

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

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

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

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

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

Intermittent stream: An intermittent stream has flowing water during certain

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

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

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

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

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

APPENDIX D
PROTECTED SPECIES
DOCUMENTATION



ENVIRONMENTAL CORPORATION OF AMERICA

November 14, 2008

Morrison Hershfield Corporation
66 Perimeter Center East, Suite 600
Atlanta, Georgia 30346

Attention: Mr. Mike Khalil

**Subject: US Fish and Wildlife Service Documentation
Threatened, Endangered, and Proposed Threatened and Endangered Species
Replacement of an Existing 1,100-Foot Tall Guyed-Type Communications
Structure with an 800-Foot Tall Guyed-Type Communications Structure
(856-Feet Overall Height with Appurtenances)
KBTW Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Texla, TX USGS Quadrangle
Latitude: N 30° 09' 21" Longitude: W 93° 59' 12"
ECA Project # J-1010-1**

Dear Mr. Khalil:

The Clear Lake, Texas Field Office of the U.S. Fish and Wildlife Service (US FWS) does not wish to be consulted regarding proposed communications towers where a "no effect" determination has been made (see Appendix E for US FWS correspondence). A "no effect" determination is made when there is no suitable habitat for federally protected endangered or threatened species or species proposed for federal protection at the subject site. If suitable habitat for federally protected endangered or threatened species or species proposed for federal protection is present at the subject site, then the US FWS must be consulted.

No habitat suitable for federally protected species listed as occurring within Orange County, Texas is present at the subject site. Therefore, no documentation was sent to the US FWS and this communication documents our finding of "no effect" for federally protected species. Specific recommendations concerning tower height, design, lighting, and migratory birds were provided by the US FWS for all newly constructed towers and are included in Appendix E. These are only recommendations and are not requirements for the proposed undertaking.

Background

The subject site location is shown on Figure 1 of Appendix A. Figure 2 is a plan view that shows the site configuration and Figure 3 is a recent aerial photograph of the site area. Morrison Hershfield Corporation is assisting the Applicant, who plans to replace an existing 1,100-foot tall guyed-type communications structure with a proposed approximate 800-foot tall guyed-type communications structure (856-feet overall height with appurtenances) at the subject site. The existing fenced equipment compound and building within the compound would be expanded to accommodate the new tower and equipment. The proposed replacement structure would be lighted and guy wires would be used.

The subject site is located in a grassed area adjacent to an existing tower compound. The proposed guy anchors will be located in the easements utilized by the existing tower. The tract containing the existing tower contains approximately 40 acres. The proposed replacement tower will be accessible via an existing gravel drive off of Evangeline Drive, as shown on Figure 2 of Appendix A. The surrounding area primarily consists of wooded land. Photographs of the parent tract and access are provided in Appendix B. Descriptions are provided underneath each photograph and photograph locations are graphically depicted on Figure 2.

Purpose

The purpose of this letter is to provide Morrison Hershfield Corporation with documentation of our investigations and findings relative to federally protected species at the subject site.

Review of Available Documentation and Site Inspection

ECA has reviewed the most current *U.S. Fish and Wildlife Service County List of Protected Species* for Orange County, Texas. ECA has also reviewed information from various sources pertaining to the habitat requirements of any listed species. Habitat at the site was evaluated during our November 10, 2008 site visit, which was conducted by ECA Project Scientist, Kim Morley.

Discussion of Findings

The Bald Eagle (*Haliaeetus leucocephalus*) is the only species listed as federally protected in Orange County, Texas. The Bald eagle has been removed from the Endangered Species List as of a *Federal Register Final Rule* dated August 9, 2007. The Bald Eagle (*Haliaeetus leucocephalus*) nests in high treetops near open waters (typically along a lakeshore or on the coast). No open waters are located near the subject site. Further, ECA did not observe evidence of the Bald eagle at the site during our site inspection.

Conclusions

Based on the information reviewed and our site inspection, ECA has found no evidence to indicate that federally protected species inhabit the subject site or the immediate site area (impact zone). We have therefore determined that the proposed undertaking is unlikely to affect federally protected species.

Closure

Kim Morley of ECA collected the applicable information, compiled this report, and conducted the site visit and area inspection. Mr. Marvin Webster reviewed this report. Mr. Webster is a degreed Biologist. His resume is included in Appendix D.

A finding of "no effect" has been made concerning federally protected endangered and threatened species. Correspondence with the Arlington, Texas Field Office of the US FWS is provided in Appendix E.

Sincerely yours,

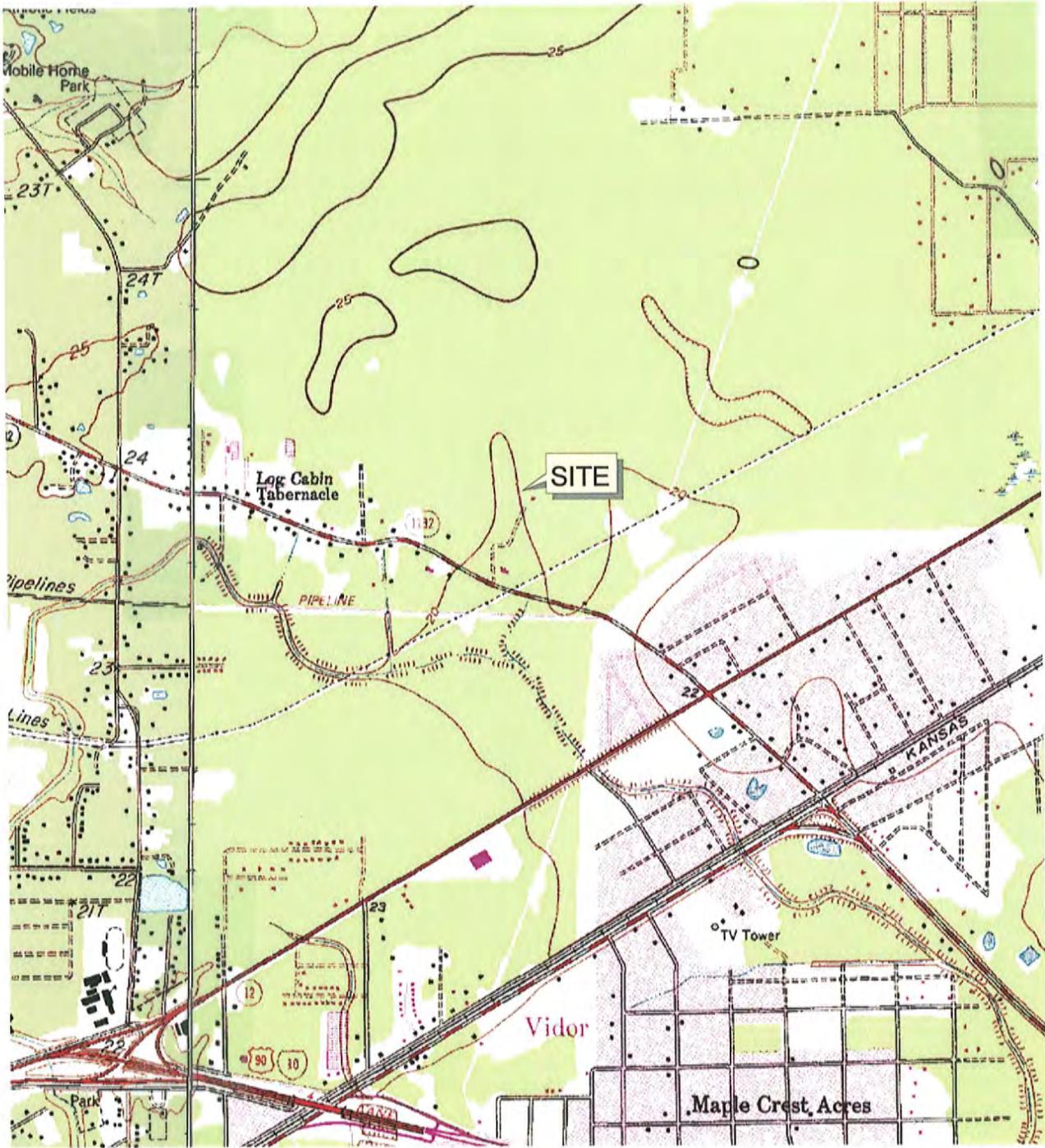
Environmental Corporation of America


Kim Morley
Project Scientist


Marvin Webster, REP
Principal Biologist

APPENDIX A

FIGURES



2000 0 2000 Feet

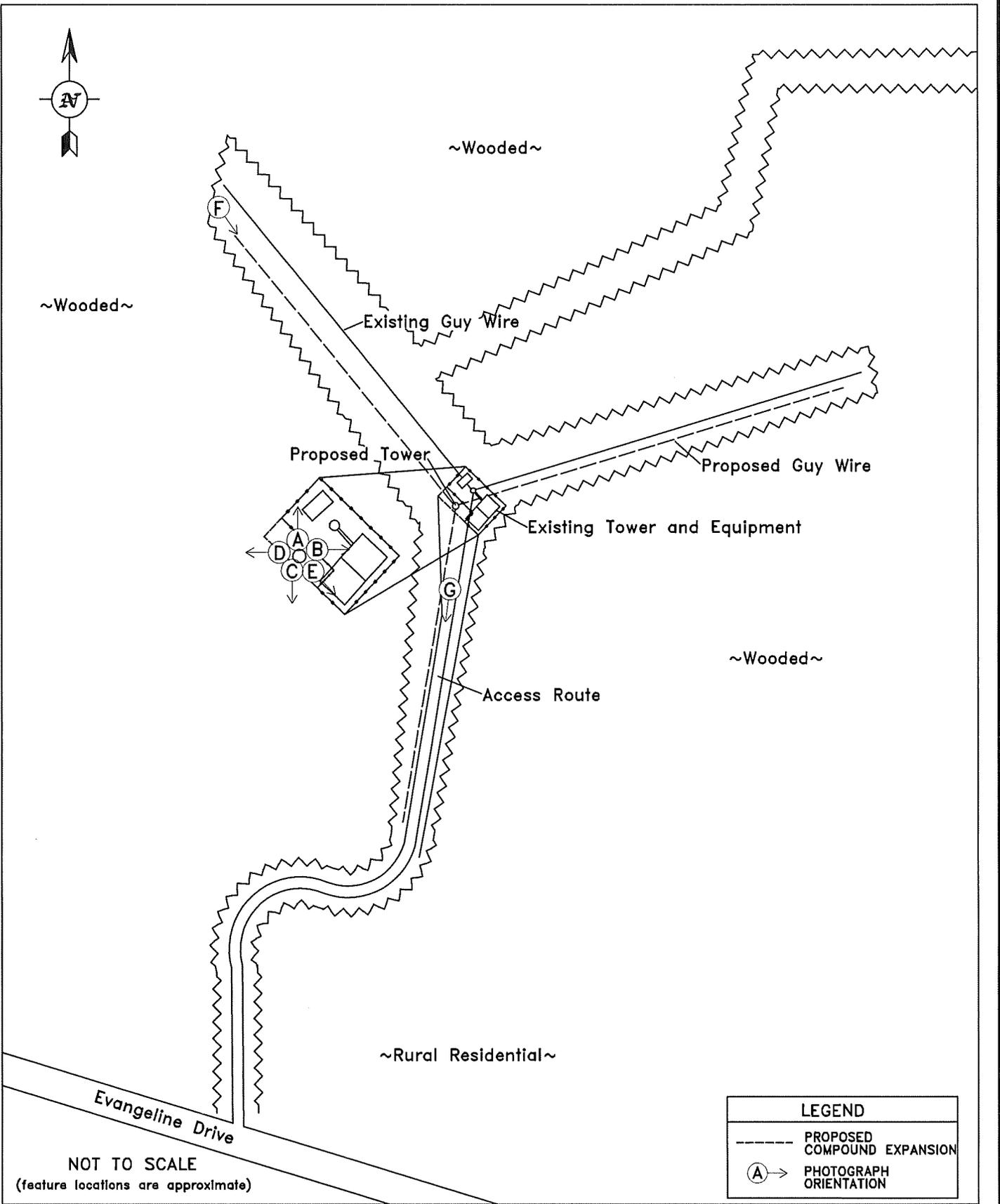
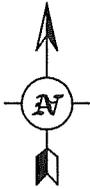
Source: USGS Topographic Quadrangle Maps, 7.5 Minute Series, Pine Forest (1993) and Texla (1957, photorevised 1970 and 1975), Texas.



KBTV Replacement Tower
 1721 Evangeline Drive
 Vidor, Orange County, Texas
 Figure 1: Site Location Plan



ECA Proj. #: J-1010-1



NOT TO SCALE
(feature locations are approximate)

LEGEND	
---	PROPOSED COMPOUND EXPANSION
(A) →	PHOTOGRAPH ORIENTATION

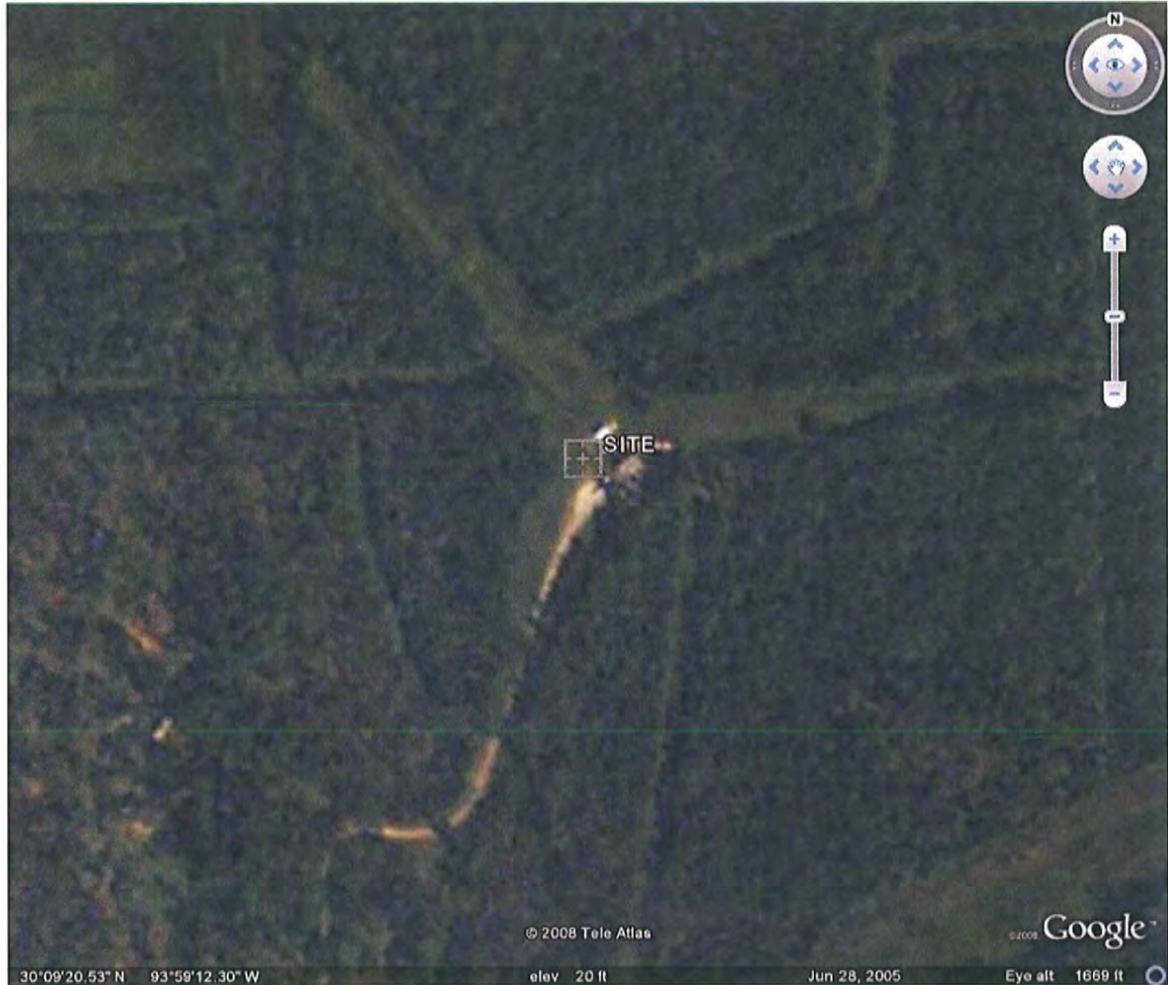
KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Figure 2: Site Vicinity Plan

SOURCE: Google Earth Aerial Photography,
Site Sketch, and ECA Site Visit

DRAWN BY: KMM DATE: 11/14/2008
FILE NAME: F:\%J1010_fws.dwg



ECA Project # J-1010-1



Source: Google Earth™ Mapping Service, 2005.

KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Figure 3: 2005 Aerial Photograph



ECA Proj. #:J-1010-1

APPENDIX B

PHOTOGRAPHS



A: Northerly View From Proposed Tower Location



B: Easterly View From Proposed Tower Location

KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Photographs



ECA Proj. #:J-1010-1



C: Southerly View From Proposed Tower Location



D: Westerly View From Proposed Tower Location

KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Photographs



ECA Proj. #:J-1010-1



E: Southeasterly View Of Proposed Compound Expansion Area



F: Southeasterly View Of Existing Guy Anchor Easement

KBTv Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Photographs



ECA Proj. #:J-1010-1



G: Southwesterly View Of Existing Access Road

KBTV Replacement Tower
1721 Evangeline Drive
Vidor, Orange County, Texas
Photographs



ECA Proj. #:J-1010-1

APPENDIX C

PROTECTED SPECIES INFORMATION



U.S. Fish & Wildlife Service

Endangered Species List

[← Back to Start](#)

List of species by county for Texas:

Counties Selected: Orange

Select one or more counties from the following list to view a county list:

Anderson	▲
Andrews	▲
Angelina	▲
Aransas	▲
Archer	▼

[View County List](#)

Orange County

Common Name	Scientific Name	Species Group	Listing Status	Species Image	Species Distribution Map	Critical Habitat	More Info
bald eagle	<i>Haliaeetus leucocephalus</i>	Birds	DM				P



Bald Eagle

Home

Conservation and Life History

Bald Eagle Population Size

Laws that Protect Eagles

Bald Eagle Management Guidelines

Places to See Eagles and Eagle Images

Slideshow

Links

Archives: 1999 Delisting Proposal

Midwest Region Endangered Species

Midwest Region Migratory Birds

Bald Eagle



Photo by Mike Lockart/USFWS

Bald and Golden Eagle Permits:

[Draft Environmental Assessment \(DEA\) for bald eagle and golden eagle permits](#)

Bald Eagle Recovered and Delisted

On August 9, 2007, the bald eagle was removed from the federal list of threatened and endangered species. After nearly disappearing from most of the United States decades ago, the bald eagle is now flourishing across the nation and no longer needs the protection of the Endangered Species Act.

The two main factors that led to the recovery of the bald eagle were the banning of the pesticide DDT and habitat protection afforded by the Endangered Species Act for nesting sites and important feeding and roost sites. This recovery could not have been accomplished without the support and cooperation of many private and public landowners.

- [Go here for more information about the recovery and delisting of the Bald Eagle.](#)
- To ensure that eagles continue to thrive, the U.S. Fish and Wildlife Service will work with state wildlife agencies to monitor eagles for at least five years. If it appears that bald eagles again need the protection of the Endangered Species Act, the Service can propose to relist the species. The Service is made the draft post-delisting monitoring plan for public review and comment. We are now evaluating those comments and finalizing the Bald Eagle Monitoring Plan [Federal Register: Notice of availability of draft post-delisting monitoring plan; request for comments \(July 9, 2007\)](#)
[Draft Post-Delisting Monitoring Plan](#)

- Even though they are delisted, bald eagles are still protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. These Acts require some measures to continue to prevent bald eagle "take" resulting from human activities. The three actions described below pertain to implementation of the Bald and Golden Eagle Protection Act.

1) The U.S. Fish and Wildlife Service finalized modifications to a [regulatory definition of "disturb"](#) under the Bald and Golden Eagle Protection Act (Eagle

Desert Bald Eagle

[U.S. Fish and Wildlife Lists the Desert Bald Eagle As Threatened Under the Endangered Species Act](#)

Act).

2) The Service released the final [National Bald Eagle Management Guidelines](#) which provide guidance to the public on how to prevent impacts to bald eagles that could violate the Eagle Act.

- o [For the Upper Midwest, follow this link for an easy to use website that steps you through the Bald Eagle Management Guidelines.](#)

3) On June 5, 2007, the Service opened a 90-day public comment period on a [proposal to create a permit program](#) to authorize limited "take" of bald and golden eagles where the "take" is associated with, and not the purpose of, otherwise lawful activities. The comment period closed on September 4, 2007.

Follow the links to the left for information about bald eagle life history, population, photos, and more.

Last updated: November 12, 2008

USFWS Midwest Region Sites

[Home](#) | [Migratory Birds](#) | [Ecological Services](#) | [Endangered Species](#) | [Ecological Services Field Offices](#)

USFWS National Sites

[Bald Eagle](#) | [Migratory Birds](#) | [Endangered Species](#) | [Fisheries and Habitat Conservation](#)

**U.S. FISH AND WILDLIFE SERVICE
DIVISION OF ENDANGERED SPECIES**

v=v=v=v=====O [[Return to the Endangered Species Home Page.]
..... [Click the ^ symbol anywhere below to return here.]

BALD EAGLE *

(Haliaeetus leucocephalus)

The bald eagle is a member of the family Accipitridae and was initially listed on February 14, 1978 as an endangered species throughout the lower 48 states, except in Minnesota, Michigan, Wisconsin, Washington, and Oregon, where it was listed as a threatened species. On July 12, 1995, the U.S. Fish and Wildlife Service announced that the bald eagle would be reclassified from endangered to threatened in the lower 48 states, effective August 11, 1995. In those states where the species was already listed as threatened, it remains classified that way.

The bald eagle is considered to be one of the greatest success stories since the Endangered Species Act was passed in 1973. Appointed our Nation's symbol, it seems only fitting that the bald eagle's recovery can be attributed, partly, to a combined nationwide awareness to conserve and protect a species that has come to represent the United States.

DESCRIPTION

The bald eagle is a large raptor. The characteristic adult plumage consists of a white head and tail with a dark brown body. Juvenile eagles are completely dark brown and do not fully develop the majestic white head and tail until the fifth or sixth year. Fish are the primary food source but bald eagles will also take a variety of birds, mammals, and turtles (both live and as carrion) when fish are not readily available. Adults average about three feet from head to tail, weigh approximately 10 to 12 pounds and have a wingspread that can reach seven feet. Generally, female bald eagles are somewhat larger than the males.

Breeding pairs of bald eagles unite for life or until the death of their mate. The breeding season varies throughout the U.S., but typically begins in the winter for the southern populations and progressively shifts toward spring the further north the populations occur. The typical nest is constructed of large sticks and lined with soft materials such as pine needles and grasses. The nests are very large, measuring up to six feet across and weighing hundreds of pounds. Many nests are believed to be used by the same pair of eagles year after year. Female eagles lay an average of two eggs; however, the clutch size may vary from one to three eggs. The eggs are incubated about 35 days. The young fledge 9 to 14 weeks after hatching and at approximately 4 months the young eaglets are on their own.

BACKGROUND

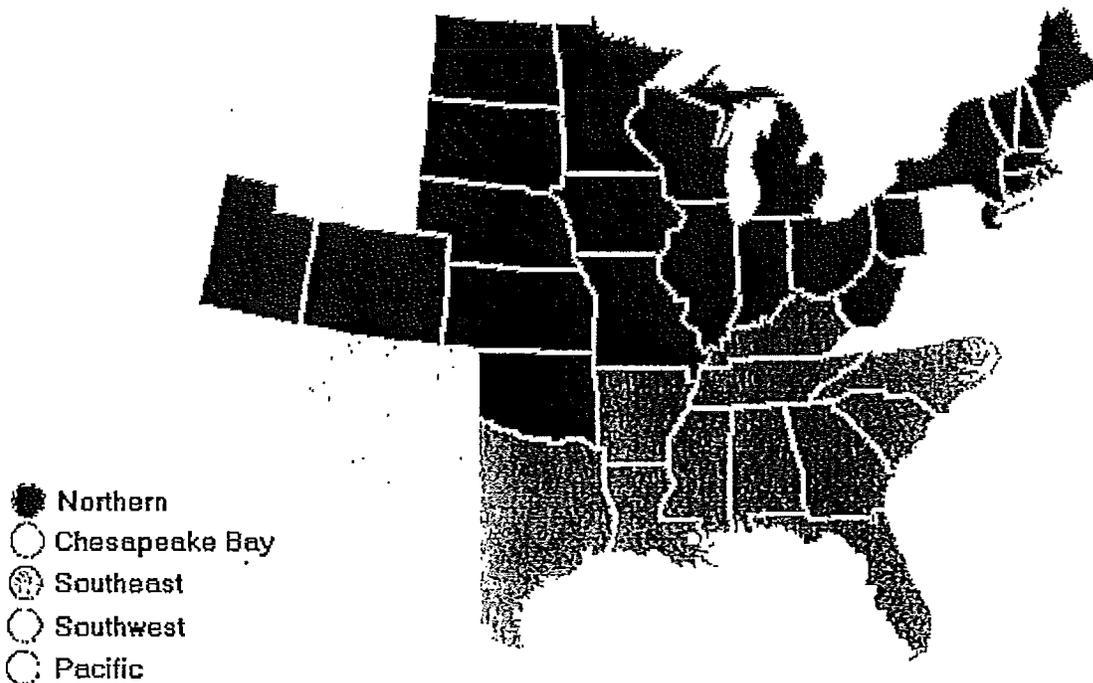
The bald eagle historically ranged throughout North America except extreme northern Alaska and Canada, and central and southern Mexico. Prior to 1940, the eagle population began to decrease. This decrease was directly related to the decline in numbers of prey species, as well as direct killing and loss of habitat. In 1940, the Bald Eagle Protection Act was passed. This law made it illegal to kill, harm, harass, or possess bald eagles, alive or dead, including eggs, feathers and nests. As a result of the passing of this law, the bald eagle began to partially recover. However, this was just the beginning of what this remarkable creature would have to endure that brought it to the brink of extinction. Subsequent

to World War II, the use of dichloro-diphenyl-trichloroethane (DDT) to control mosquitos became very widespread along coastal and wetland areas. This had a drastic effect on the bald eagle, and as a result of foraging on contaminated food, the species' population plummeted. It was determined in the later 1960's and early 1970's, that DDE, the principal breakdown product of DDT, built up in the fatty tissues of adult females. This prevented the calcium release necessary to produce strong egg shells, and consequently, caused reproductive failure. In response to the decline, the Secretary of the Interior, on March 11, 1967, listed those populations of the bald eagle south of the 40th parallel as endangered under the Endangered Species Preservation Act of 1966. However, the decline continued until DDT was banned from use in the United States on December 31, 1972.

DISTRIBUTION/RANGE

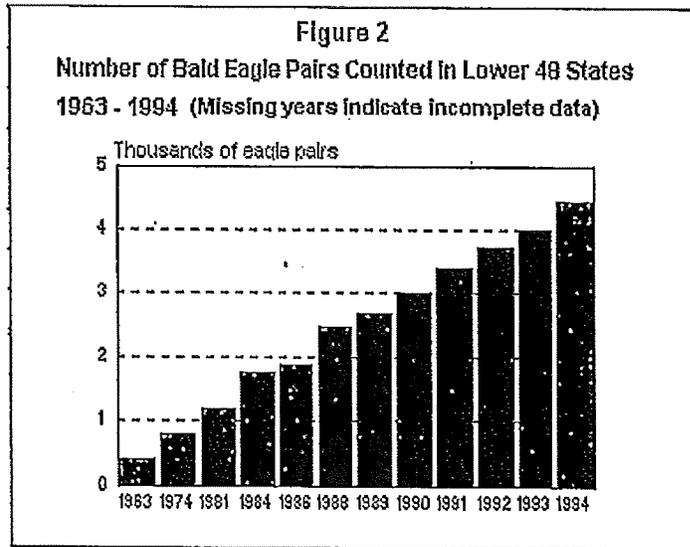
After the Endangered Species Act was passed in 1973, the bald eagle was listed as endangered throughout the lower 48 states, except in five states, Michigan, Minnesota, Wisconsin, Washington, and Oregon, where it was listed as threatened. Based on geographic location, the Service established five recovery regions. The distribution, recovery goals, and implementation of protection for the bald eagle varied widely from region to region. A recovery team was established for each region which prepared a recovery plan describing the terms and tasks necessary to help improve the bald eagle populations specific to each location. The five regions are as follows: Northern States, Chesapeake Bay, Southeast, Southwestern, and Pacific (Figure 1).

Figure 1: Bald Eagle Recovery Regions



Through implementation of the tasks and priorities included in each recovery plan; strict enforcement of the Endangered Species Act; and the banning of DDT, the bald eagle population has clearly increased. Public awareness has also been instrumental in saving the eagle from extinction. Educating the public, helps people understand the significance of individual species and the importance of protecting and

conserving habitat. The U.S. Fish and Wildlife Service is dedicated to protecting the bald eagle through programs such as law enforcement, habitat protection, contaminant studies and outreach.



As Figure 2 shows, the population of bald eagles in the lower 48 states has certainly increased within the past 31 years.

Though the bald eagle has recently been reclassified to threatened, this action does not alter those conservation measures already in effect to protect the species and its habitat. Periodic review of the status of the species will continue through annual surveys and bird banding.

The success of the bald eagle clearly represents the effectiveness of the Endangered Species Act and the dedication of all who believe that natural resources and the environment are worth protecting. □

APPENDIX D

QUALIFIED BIOLOGIST RESUME

MARVIN G. WEBSTER, JR., REP

POSITION: President/Principal Scientist

EDUCATION: Master of Environmental Studies
The Evergreen State College, Olympia, WA, 1993

Bachelor of Science, Biology
Georgia College, Milledgeville, GA, 1989

**PROFESSIONAL
REGISTRATION:** National Registry of Environmental Professionals -
Registered Environmental Professional #5822
USACE Certified Wetland Delineator

**PROFESSIONAL
EXPERIENCE:**

1993 - Present Principal Scientist, President & CEO; Environmental Corporation of
America; Alpharetta, Georgia

1990-1993 Micropropagation Grower, Brigg's Nursery, Olympia, WA

Responsible for all aspects of crop management, tissue culture
propagation, and production of landscape ornamental plants.
Responsible for pest and disease control, environmental control, and
research pertinent to related crop management responsibilities.

1988-1989 Environmental Education Intern, University of Georgia Extension
Service, Athens, GA

Prior Years Held various jobs in public, college, and commercial radio.

SHORT COURSES: Risk Assessment and Management, Olympia, WA, February 1993
The National Environmental Policy Act, Review and Process, Olympia,
WA, February 1992
Growth Management, Olympia, WA, February 1993
Environmental Law Review Seminar, Savannah, GA, October 1994
Environmental Law Review Seminar, Savannah, GA, July, 1999
USACE Wetland Delineation & Management, Atlanta, GA,
March 2000

REPRESENTATIVE PROJECTS

Project Principal; Protected Species Evaluations/ FWS Consultations; over 1,100 Sites, Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, New York, North Carolina, South Carolina, Tennessee, Virginia, West Virginia; Various Wireless Telecommunications Clients.

Project Principal; Biological Assessment, Greensboro, Greene County Georgia Telecommunications Tower; Crown Castle International Georgia Region, Atlanta, Georgia.

Project Principal; Wetlands Delineation; 279 Acre Industrial Park Property, Stevens County Development Authority, Stephens County, Georgia.

Project Principal, National Environmental Policy Act Evaluations and Environmental Assessments, Over 300 Georgia Region Sites; Crown Castle International, Atlanta, Georgia.

Project Manager and Project Principal; Phase I Site Assessments, Phase II Site Assessments, Wetlands Services; 90 Projects throughout Georgia, BellSouth; Atlanta, Georgia.

Project Principal; Wetlands Permitting; 105 Acre Power Center Development; Hampton, Virginia; JDN Development Company, Atlanta, Georgia.

Project Principal; Wetlands Permitting; 2 Acre Commercial Property Development; Enterprise Drive, LLC; Buford, Georgia.

Project Principal; Environmental Assessments; BellSouth Mobility, Inc./Cingular Wireless; Tower Sites in Georgia, Louisiana, and South Carolina.

Project Principal; Wetlands Delineation and COE Verification, Gwinnett Center Technical College Site; Georgia Board of Regents, Atlanta, Georgia.

Project Principal; Board of Regents Environmental Policy Act Evaluation, Parks Nursing and Health Sciences Buildings, Georgia College and State University, Milledgeville, Georgia.

Project Principal; Phase I Environmental Site Assessment; 500 Acre Dawson Woods Site; Wachovia Bank; Dawson County, Georgia.

Project Principal; Multiple Phase I and Phase II Site Assessments, Wetlands Delineations, and Environmental Assessments; Cingular Wireless/BellSouth Mobility, Inc., Over 300 Tower Sites in Georgia, Northern Carolina, and South Carolina.

Project Manager; Multiple Phase I Site Assessments, Wetland and Protected Species Evaluations; Georgia Power Company; Over 30 Wireless Telecommunication Sites in Georgia.

Project Manager; Wetlands Delineation; Hampton Greene Mixed Use Development; Norcross, Georgia.

Project Manager; Wetlands Delineation; 83 Acre Post Road Tract; Paces Properties; Forsyth County, Georgia.

Project Manager; Phase I and II Site Assessments and Wetlands Assessment; 951 Acre Tract; Sanford H. Orkin; Clarke and Oconee Counties, Georgia.

Project Manager; Environmental Assessment; Cellular One of Virginia, Inc.; Henrico County, Virginia.

Project Manager; Georgia Environmental Policy Act Environmental Effects Evaluation and Wetlands Delineation; Georgia College and State University, Milledgeville, Georgia.

Project Manager; Phase I Environmental Site Assessment and Water Rights Assessment; 1550 Acre Ranch; Dow Lohnes & Albertson, San Miguel County (Telluride), Colorado.

Project Manager; Vegetation Survey and Analysis; CSX - Vaughn Coal Gassification Landfill Site; AT&E; Greenville, South Carolina.

PUBLICATIONS:

Webster, Marvin G., Jr. 1993. *Ecological Principles for Selecting Optimal Reserves for Wild Plant Conservation*. Essay of Distinction, The Evergreen State College, Olympia, WA.

Webster, Marvin G., Jr. 1994. *William Bartram; A History of Ecological Thought from Bartram to Present*. Presented at Georgia College, Milledgeville, GA, June 1994.

Webster, Marvin G., Jr. and Brown, Ralph E., Ph.D., PE. 1995. *Scoring Sites Using the Reportable Quantities Screening Method (RQSM); A Two Case Evaluation of Input Category Sensitivities*. Presented at the Georgia Water & Pollution Control Association 1995 Industrial Pollution Control Conference & Exposition, February 1995.

Webster, Marvin G., Jr. and Brown, Ralph E., Ph.D., PE. 1995. *Environmental Impact Assessment; BellSouth Mobility, Inc.; Murray County, GA Cellular Installation in BellSouth Cellular Corporation FCC Environmental Compliance Manual*, BellSouth Cellular Corporation. Atlanta, GA.

Webster, Marvin G. Jr., REP. 1997. *A User's Guide to Real Estate Transaction Assessments*. Presented at the Georgia Water & Pollution Control Association 1997 Pollution Control Conference and Exposition, March 1997.

APPENDIX E

**US FWS CORRESPONDENCE
AND RECOMMENDATIONS**

Alicia Murphy

From: <Sean_Edwards@fws.gov>
To: "Alicia Murphy" <alicia.murphy@eca-usa.com>
Sent: Monday, May 07, 2007 10:12 AM
Subject: Re: Cell Tower Review Projects

Ms. Murphy,

You are correct in your understanding that contact with the Service would only be necessary when it has been determined that a proposed action would have the potential to impact federally listed species. We are available to offer technical assistance in making this determination so do not hesitate to inquire if needed. The language below summarizes our position.

An updated county-by-county list of federally threatened, endangered, and candidate species, critical habitat designations, as well as information on the general biology of these species can be found at our website at <http://www.fws.gov/southwest/es/arlingtontexas/>. A qualified person, preferably a biologist, should use this information along with other current available information to evaluate project sites and adjacent areas for the presence of suitable habitat for the listed species occurring in a specific Texas County. If this assessment indicates that there is the potential for a proposed action to affect listed species (i.e., suitable habitat for listed species is present within or adjacent to the action area), you should contact this office for further coordination. If the assessment concludes that a proposed project would have no effect on listed species, section 7 consultation is not required and contact with this office would not be necessary. Your determination of "no effect" and the rationale to support it would then be provided to the appropriate federal agency (FCC in this case).

Kind Regards,

Sean Patrick Edwards
Wildlife Biologist
U.S. Fish & Wildlife Service
Ecological Services Field Office
711 Stadium Drive, Suite 252
Arlington, TX 76011
817-277-1100
sean_edwards@fws.gov

"Alicia Murphy" <alicia.murphy@eca-usa.com>

To <sean_edwards@fws.gov>

05/03/2007 03:38 PM

cc
Subject Cell Tower Review Projects

Dear Mr. Edwards,

I believe you spoke with one of my colleagues last month regarding cell tower review projects. We understand that if our site assessment reveals that federally protected species will not be adversely affected, then the Arlington, Texas Ecological Services Field Office does not wish to be consulted. Can you verify this?

Thank you for your help.

5/9/2007

Sincerely,

Alicia Murphy
Environmental Corporation of America
1375 Union Hill Industrial Court
Suite A
Alpharetta, GA 30004
(770) 667-2040 x114
(770) 667-2041 fax

5/9/2007

United States Department of Interior
Fish and Wildlife Service
Washington, DC 20240

September 14, 2000

To: Regional Directors

From: Director /s/ Jamie Rappaport Clark

Subject: Service Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers

Construction of communications towers (including radio, television, cellular, and microwave) in the United States has been growing at an exponential rate, increasing at an estimated 6 percent to 8 percent annually. According to the Federal Communication Commission's *2000 Antenna Structure Registry*, the number of lighted towers greater than 199 feet above ground level (AGL) currently number over 45,000 and the total number of towers over 74,000. Non-compliance with the registry program is estimated at 24 percent to 38 percent, bringing the total to 92,000 to 102,000. By 2003, all television stations must be digital, adding potentially 1,000 new towers exceeding 1,000 feet AGL.

The construction of new towers creates a potentially significant impact on migratory birds, especially some 350 species of night-migrating birds. Communications towers are estimated to kill 4-5 million birds per year, which violates the spirit and the intent of the Migratory Bird Treaty Act and the Code of Federal Regulations at Part 50 designed to implement the MBTA. Some of the species affected are also protected under the Endangered Species Act and Bald and Golden Eagle Act.

Service personnel may become involved in the review of proposed tower sitings and/or in the evaluation of tower impacts on migratory birds through National Environmental Policy Act review; specifically, Sections 1501.6, opportunity to be a cooperating agency, and 1503.4, duty to comment on federally-licensed activities for agencies with jurisdiction by law, in this case the MBTA, or because of special expertise. Also, the National Wildlife Refuge System Improvement Act requires that any activity on Refuge lands be determined as compatible with the Refuge system mission and the Refuge purpose(s). In addition, the Service is required by the ESA to assist other Federal agencies in ensuring that any action they authorize, implement, or fund will not jeopardize the continued existence of any Federally endangered or threatened species.

A Communication Tower Working Group composed of government agencies, industry, academic researchers and NGO's has been formed to develop and implement a research protocol to determine the best ways to construct and operate towers to prevent bird strikes. Until the research study is completed, or until research efforts uncover significant new mitigation measures, all Service personnel involved in the review of proposed tower sitings and/or the evaluation of the impacts of towers on migratory birds should use the attached interim guidelines when making recommendations to all companies, license applicants, or licensees proposing new tower sitings. These guidelines were developed by Service personnel from research conducted in several eastern, midwestern, and southern states, and have been refined through Regional review. They are based on the best information available at this time, and are the most prudent and effective measures for avoiding bird strikes at towers. We believe that they will provide significant protection for migratory birds pending completion of the Working Group's recommendations. As new information becomes available, the guidelines will be updated accordingly.

Implementation of these guidelines by the communications industry is voluntary, and our recommendations must be balanced with Federal Aviation Administration requirements and local

community concerns where necessary. Field offices have discretion in the use of these guidelines on a case by case basis, and may also have additional recommendations to add which are specific to their geographic area.

Also attached is a Tower Site Evaluation Form which may prove useful in evaluating proposed towers and in streamlining the evaluation process. Copies may be provided to consultants or tower companies who regularly submit requests for consultation, as well as to those who submit individual requests that do not contain sufficient information to allow adequate evaluation. This form is for discretionary use, and may be modified as necessary.

The Migratory Bird Treaty Act (16 U.S.C. 703-712) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the Act has no provision for allowing unauthorized take, it must be recognized that some birds may be killed at structures such as communications towers even if all reasonable measures to avoid it are implemented. The Service's Division of Law Enforcement carries out its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals and industries that proactively seek to eliminate their impacts on migratory birds. While it is not possible under the Act to absolve individuals or companies from liability if they follow these recommended guidelines, the Division of Law Enforcement and Department of Justice have used enforcement and prosecutorial discretion in the past regarding individuals or companies who have made good faith efforts to avoid the take of migratory birds.

Please ensure that all field personnel involved in review of FCC licensed communications tower proposals receive copies of this memorandum. Questions regarding this issue should be directed to Dr. Benjamin Tuggle, Chief, Division of Habitat Conservation, at (703)358-2161, or Jon Andrew, Chief, Division of Migratory Bird Management, at (703)358-1714. These guidelines will be incorporated in a Director's Order and placed in the Fish and Wildlife Service Manual at a future date.

Service Interim Guidelines For Recommendations On

Communications Tower Siting, Construction, Operation, and Decommissioning

1. Any company/applicant/licensee proposing to construct a new communications tower should be strongly encouraged to collocate the communications equipment on an existing communication tower or other structure (*e.g.*, billboard, water tower, or building mount). Depending on tower load factors, from 6 to 10 providers may collocate on an existing tower.
2. If collocation is not feasible and a new tower or towers are to be constructed, communications service providers should be strongly encouraged to construct towers no more than 199 feet above ground level (AGL), using construction techniques which do not require guy wires (*e.g.*, use a lattice structure, monopole, etc.). Such towers should be unlighted if Federal Aviation Administration regulations permit.
3. If constructing multiple towers, providers should consider the cumulative impacts of all of those towers to migratory birds and threatened and endangered species as well as the impacts of each individual tower.
4. If at all possible, new towers should be sited within existing "antenna farms" (clusters of towers). Towers should not be sited in or near wetlands, other known bird concentration areas (*e.g.*, state or

Federal refuges, staging areas, rookeries), in known migratory or daily movement flyways, or in habitat of threatened or endangered species. Towers should not be sited in areas with a high incidence of fog, mist, and low ceilings.

5. If taller (>199 feet AGL) towers requiring lights for aviation safety must be constructed, the minimum amount of pilot warning and obstruction avoidance lighting required by the FAA should be used. Unless otherwise required by the FAA, only white (preferable) or red strobe lights should be used at night, and these should be the minimum number, minimum intensity, and minimum number of flashes per minute (longest duration between flashes) allowable by the FAA. The use of solid red or pulsating red warning lights at night should be avoided. Current research indicates that solid or pulsating (beacon) red lights attract night-migrating birds at a much higher rate than white strobe lights. Red strobe lights have not yet been studied.
6. Tower designs using guy wires for support which are proposed to be located in known raptor or waterbird concentration areas or daily movement routes, or in major diurnal migratory bird movement routes or stopover sites, should have daytime visual markers on the wires to prevent collisions by these diurnally moving species. (For guidance on markers, see *Avian Power Line Interaction Committee (APLIC). 1994. Mitigating Bird Collisions with Power Lines: The State of the Art in 1994. Edison Electric Institute, Washington, D.C., 78 pp*, and *Avian Power Line Interaction Committee (APLIC). 1996. Suggested Practices for Raptor Protection on Power Lines. Edison Electric Institute/Raptor Research Foundation, Washington, D.C., 128 pp*. Copies can be obtained via the Internet at <http://www.eei.org/resources/pubcat/enviro/>, or by calling 1-800/334-5453).
7. Towers and appendant facilities should be sited, designed and constructed so as to avoid or minimize habitat loss within and adjacent to the tower "footprint". However, a larger tower footprint is preferable to the use of guy wires in construction. Road access and fencing should be minimized to reduce or prevent habitat fragmentation and disturbance, and to reduce above ground obstacles to birds in flight.
8. If significant numbers of breeding, feeding, or roosting birds are known to habitually use the proposed tower construction area, relocation to an alternate site should be recommended. If this is not an option, seasonal restrictions on construction may be advisable in order to avoid disturbance during periods of high bird activity.
9. In order to reduce the number of towers needed in the future, providers should be encouraged to design new towers structurally and electrically to accommodate the applicant/licensee's antennas and comparable antennas for at least two additional users (minimum of three users for each tower structure), unless this design would require the addition of lights or guy wires to an otherwise unlighted and/or guyed tower.
10. Security lighting for on-ground facilities and equipment should be down-shielded to keep light within the boundaries of the site.
11. If a tower is constructed or proposed for construction, Service personnel or researchers from the Communication Tower Working Group should be allowed access to the site to evaluate bird use, conduct dead-bird searches, to place net catchments below the towers but above the ground, and to place radar, Global Positioning System, infrared, thermal imagery, and acoustical monitoring equipment as necessary to assess and verify bird movements and to gain information on the impacts of various tower sizes, configurations, and lighting systems.

12. Towers no longer in use or determined to be obsolete should be removed within 12 months of cessation of use.

In order to obtain information on the extent to which these guidelines are being implemented, and to identify any recurring problems with their implementation which may necessitate modifications, letters provided in response to requests for evaluation of proposed towers should contain the following request:

“In order to obtain information on the usefulness of these guidelines in preventing bird strikes, and to identify any recurring problems with their implementation which may necessitate modifications, please advise us of the final location and specifications of the proposed tower, and which of the measures recommended for the protection of migratory birds were implemented. If any of the recommended measures can not be implemented, please explain why they were not feasible.”

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Mississippi Flyway



Central Flyway



APPENDIX E
HISTORIC AND ARCHEOLOGICAL
DOCUMENTATION



ENVIRONMENTAL CORPORATION OF AMERICA

Replacement Tower Exclusion Checklist

Site Name: KBTV Replacement Tower

Tower Height: 800' (856-feet overall height with appurtenances)

Site Address: 1721 Evangeline Drive, Vidor, Orange County, Texas

Tower Owner: Nexstar Broadcasting, Inc.

Construction Date: Prior to March 16, 2001 (Based on FCC ASR documentation)

Please fill out the following form by checking the appropriate boxes.

YES NO

1. Will the replacement tower result in a substantial increase in size from the existing tower¹?

YES NO

2. Will the replacement tower result in excavation outside the current boundaries of the site or leased or owned property surrounding the tower site (plus 30 feet in any direction)?

YES NO

3. Was the tower constructed after March 16, 2001? Proceed to Question 4 if answered "Yes".

NA YES NO

4. Has the tower completed the Section 106 Review process? Section 106 Review is required if answered "No".

If any question 1 through 3 are answered "YES," consultation with the SHPO is required prior to constructing a replacement tower.

I, the undersigned, have reviewed and completed this checklist and certify that the answers contained herein are truthful and accurate to the best of my knowledge.

Environmental Corporation of America (Consultant)

K. Mark

(Date)

November 14, 2008

¹ "Substantial increase in size of the tower" means: 1) an increase in the tower height of more than 10% or by the height of one antenna array with a separation distance from the nearest existing array not to exceed 20 feet, whichever is greater; 2) the installation of more than 4 new equipment cabinets or more than 1 new equipment building; 3) the addition of an appurtenance that would protrude from the edge of the tower more than 20 feet or more than the width of the tower at the level of the appurtenance, whichever is greater.



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Antenna Structure Registration

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[FCC Site Map](#)

ASR Registration Search

Registration 1054182

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Registration Detail

Reg Number	1054182	Status	Constructed
File Number	A0360170	Constructed	01/01/1969
FAA Study	98-ASW-2510-OE	EMI	No
FAA Issue Date	06/25/1998	NEPA	No

Antenna Structure

Structure Type TOWER - Free standing or Guyed Structure used for Communications Purposes

Location (in NAD83 Coordinates - [Convert to NAD27](#))

Lat/Long 30-09-21.0 N 093-59-11.0 W 2.4 MI S OFF HWY 12
 City, State VIDOR , TX
 Center of
 AM Array

Heights (meters)

Elevation of Site Above Mean Sea Level	Overall Height Above Ground (AGL)
6.0	374.0
Overall Height Above Mean Sea Level	Overall Height Above Ground w/o Appurtenances
380.0	374.0

Painting and Lighting Specifications

FCC Paragraphs 1, 3, 9, 18, 21

Owner & Contact Information

FRN	0009961889	Licensee ID	L00777482
Assignor FRN	0004265385	Assignor ID	L00307771

Owner

Nexstar Broadcasting, Inc.
 Attention To: Perry Sook
 909 Lake Carolyn Parkway, Ste 1450
 Irving , TX 75039

P: (972)373-8800
 E:

Contact

Hammond , Elizabeth
 1500 K Street, NW, Suite 1100
 Washington , DC 20005

P: (202)842-8800
 E: ehammond@dbr.com

Last Action Status

Status	Constructed	Received	01/13/2004
Purpose	Change Owner	Entered	01/13/2004
Mode	Interactive		

Related Applications

01/13/2004	A0360170 - Change Owner (OC)
04/12/2003	A0320729 - Admin Update (AU)
07/13/1998	A0063705 - New (NE)

Comments**Comments**

None

Automated Letters

01/14/2004	Ownership Change, Reference 316975
01/14/2004	Authorization, Reference 317026
04/14/2003	Authorization, Reference 280385

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Federal Communications Commission
 445 12th Street SW
 Washington, DC 20554

Phone: 1-877-480-3201
 TTY: 1-717-338-2824
[Submit Help Request](#)

APPENDIX F
NATIVE AMERICAN
DOCUMENTATION

No Tribal Consultation Required

APPENDIX G
BUILDING PERMIT

TO BE SUBMITTED AS A SUPPLEMENT