

US EPA ARCHIVE DOCUMENT

**MEMORANDUM OF AGREEMENT
AMONG
THE ENVIRONMENTAL PROTECTION AGENCY,
THE TEXAS HISTORICAL COMMISSION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
PURSUANT TO
SECTIONS 110(f) AND 106
OF THE NATIONAL HISTORIC PRESERVATION ACT
REGARDING
THE BROWNSVILLE GENERATING STATION
CAMERON COUNTY, TEXAS**

RECITALS

WHEREAS, Tenaska Brownsville Partners, LLC (“Tenaska”) submitted to the U.S. Environmental Protection Agency, Region 6, (“EPA” or “Agency”) a Prevention of Significant Deterioration (“PSD”) permit application under Subchapter I, Part C of the Clean Air Act (“CAA”), and implementing regulations at 40 CFR § 52.21 for Greenhouse Gas (“GHG”) emissions from a proposed 400 MW (nominal, net) or 800 MW (nominal, net) natural gas-fired combined cycle electric power generating station (“Brownsville Generating Station” or “Station”) (hereinafter “Undertaking” as further described in Attachment 1) on a 275-acre parcel of land in Brownsville, Cameron County, Texas (“Station Site”); and

WHEREAS, the EPA’s issuance of a GHG PSD pre-construction permit to Tenaska for the construction of the Station is a federal action which makes the project an Undertaking subject to review under Section 106 of the National Historic Preservation Act (“NHPA”) (16 U.S.C. § 470) and its implementing regulations at 36 CFR Part 800 (“Protection of Historic Properties”); and

WHEREAS, based on information provided by Tenaska, the EPA determined that the Area of Potential Effect (“APE”) includes the Station Site, as well as a transmission interconnect line (“Transmission Interconnect”), water discharge pipeline, water reuse pipeline, natural gas pipeline interconnect, potable water interconnect line, sewer interconnect line, and supplemental water line (collectively, “Service Lines”) (collectively referred to as, “Proposed Project”), as well as an area around the Proposed Project to account for visual, auditory and atmospheric effects, as depicted in more detail in Attachment 2; and

WHEREAS, Tenaska, through its independent consultant, Environmental Resource Management (“ERM”), conducted a cultural resources assessment to support the Agency’s Section 106 obligations, as documented in a report titled *Cultural Resources Assessment: Tenaska Brownsville Generating Station* (“Report”) dated December 18, 2013; and

WHEREAS, based on the data provided in the Report and other information available to the Agency, the EPA determined that the APE contains the following five (5) historic properties that are listed in the National Register of Historic Places (“NRHP”), or that are eligible or

potentially eligible for listing in the NRHP: the Palo Alto Battlefield National Historical Park (“Palo Alto NHP”), the Cameron County Irrigation District No. 6 (“CCID6”), the Cameron County Irrigation District No. 2 (“CCID2”), the Cameron County Drainage District No. 1 (“CCDD1”), and the Port of Brownsville Historic District (collectively, the “Historic Properties”); and

WHEREAS, based on the data provided in the Report, the EPA determined that the APE also contains the Palo Alto Battlefield National Historic Landmark (“Palo Alto NHL”); and

WHEREAS, the EPA initiated consultation with Texas State Historic Preservation Officer (“TXSHPO”), Tenaska, and the National Park Service (“NPS”) on November 1, 2013; and

WHEREAS, the NPS was represented in the Section 106 consultation by representatives of the Palo Alto NHP, the NPS Intermountain Region’s Natural Sounds & Night Skies Division, the NPS Environmental Quality Division, the NPS National Historic Landmarks Program, and the NPS American Battlefield Protection Program; and

WHEREAS, although the EPA’s invitation to participate in the Section 106 process was not accepted by any of the following parties, on November 1, 2013, the EPA invited the Brownsville Historical Association and the Historic Brownsville Museum, and on January 10, 2014, the EPA invited the Cameron County Historical Commission, and 27 federally recognized Indian Tribes from Texas and Oklahoma; and

WHEREAS, relying on the data in the Report, information from the consulting parties, and the Criteria of Adverse Effect outlined in 36 CFR § 800.5(a), the EPA determined that the construction and operation of the Station will result in adverse visual, atmospheric (lighting) and audible effects on the Palo Alto NHL and the Palo Alto NHP, and the Transmission Interconnect Line will result in adverse visual and audible effects on the Palo Alto NHL and the Palo Alto NHP as documented in a report titled *EPA Adverse Effect Determination* dated October 14, 2014; and

WHEREAS, in accordance with 36 CFR §§ 800.6(a)(1) and 800.10(b), the EPA notified the Advisory Council on Historic Preservation (“ACHP”) of the adverse effects of the Proposed Project on the Palo Alto NHL and invited the ACHP to participate in the consultation process via letter dated May 19, 2014; the ACHP elected to participate and notified the EPA by letter dated September 29, 2014; and

WHEREAS, on January 10, 2014, the EPA also notified and invited representatives of the Secretary of the Interior to participate in the consultation pursuant to 36 CFR § 800.10(c) due to the adverse effects on a National Historic Landmark resulting in the NPS, Intermountain Region, National Historic Landmark program’s participation in the consultation; and

WHEREAS, the EPA considered the input of the TXSHPO, ACHP, the NPS, and Tenaska during the consultation process and has presented its formal Section 106 findings and determinations to the TXSHPO, ACHP, NPS, and Tenaska; and

WHEREAS, in addition to the TXSHPO and the ACHP (required signatories), the EPA has invited Tenaska and the NPS to be signatories on the Memorandum of Agreement (MOA) (collectively “Signatories”); and

WHEREAS, the Signatories agree that this MOA and the Stipulations put forth in the MOA resolve the adverse effects of the Undertaking on the Historic Properties and the Palo Alto NHL in accordance with the Section 106 requirements; and

WHEREAS, the NPS is authorized by 16 U.S.C. § 6 to receive moneys for the purposes of the national park and monument system and by 16 U.S.C. § 1j to engage in collaborative efforts to restore natural resources including native wildlife habitat and ecosystems on land inside and outside National Park System units; and

WHEREAS, on October 28, 2014, the EPA proposed to issue to Tenaska GHG PSD Permit No. PSD-TX-1350-GHG to authorize construction of the Station; and

WHEREAS, on December 5, 2014, the EPA provided a subsequent public notice of its formal NHPA Section 106 findings and determinations of effect, and this MOA, for which EPA received no comments; and

WHEREAS, the EPA may only issue the final EPA GHG PSD permit (the “Permit”) to Tenaska following the conclusion of the NHPA 30-day comment period and the conclusion of the NHPA Section 106 consultation, as evidenced by the execution of this MOA; and

WHEREAS, the Permit will become final and effective after the time for filing an administrative appeal has expired or all administrative and judicial appeals processes (including any associated remand actions) are complete (if applicable); and

WHEREAS, as of November 10, 2014, the EPA approved the majority of revisions to the Texas Commission on Environmental Quality’s (“TCEQ’s”) State Implementation Plan (“SIP”) for emissions of GHGs and rescinded the majority of the Federal Implementation Plan (“FIP”); the EPA also retained authority over various permits, such as Tenaska’s, that are covered by EPA’s Transition Process as outlined in 79 Fed. Reg. 66641, 66644 (Nov. 10, 2014); and

WHEREAS, in accordance with the transition process outlined in the FIP, when the Permit is final and effective, the EPA intends to transfer the Permit to TCEQ for future administration; and

WHEREAS, Tenaska has agreed in good faith to implement the terms of this MOA provided that Tenaska commences construction of the Station under authority to construct provided by the Permit, even when such Permit is in the future being administered by the TCEQ;

NOW, THEREFORE, if Tenaska commences construction of the Station as such phrase is defined in 40 C.F.R. § 52.21(b)(9)(i) (“Commence”) under authority to construct provided by the Permit, the EPA, TXSHPO, and the ACHP agree that the Undertaking shall be implemented

in accordance with the following stipulations in order to take into account the effect of the Undertaking on the Historic Properties and the Palo Alto NHL.

STIPULATIONS

The EPA shall ensure that, if Tenaska Commences construction of the Station under authority to construct provided by the Permit, the following Stipulations will be carried out.

I. MINIMIZATION MEASURES

Tenaska shall implement, or cause to be implemented, the following minimization measures:

A. Brownsville Generating Station

1. Paint Color – The taller features of the Station consisting of the combustion turbine (“CT”) enclosures, the heat recovery steam generators (“HRSGs”), the exhaust stacks, and the above ground storage tanks shall be painted in Brush Brown (Munsell Soil Color Chart 10YR 5/3), Shale Green (Munsell Soil Color Chart 5Y 4/2) or another color identified in the U.S. Bureau of Land Management Rocky Mountain Regional Coordinating Committee “Standard Environmental Colors for the painting of permanent Federal Oil and Gas Facilities” mutually agreed to in writing by Tenaska and the NPS. For pre-engineered buildings, Tenaska will choose from the available standard colors the one that most closely matches the color selected for the taller features referenced above or other standard color mutually acceptable to Tenaska and the NPS. Any repainting by Tenaska shall be in the same colors, if available, or, if not, another color mutually acceptable to Tenaska and the NPS.
2. Lighting Plan – The lighting of the Station shall incorporate the below measures, subject to the need to address safety concerns or to comply with applicable regulatory requirements:
 - a. The Station will use outdoor lighting fixtures that are shielded, pointing downward and inward.
 - b. The Station will use high-pressure sodium lamps outdoors that have a warm color in the 2,700-3,500 degree Kelvin range.
 - c. The Station will avoid the use of high mast poles for outdoor lighting.
 - d. The Station will use approximately 30-foot or shorter poles for roadway lighting.

- e. Switches will be provided at the Station for the cooling tower, exhaust stacks, pipe rack lights, and HRSG platform lighting. Other lighting fixtures at the Station will be controlled from the lighting power panels.

The measures above reflect consideration of current NPS lighting best practices. If the NPS updates or revises its lighting best practices to account for new information or improved technologies, Tenaska will give good faith consideration to recommendations received from the NPS in a written notice when maintaining, repairing, or updating lighting at the Station and may implement the NPS recommendations at Tenaska's sole discretion. The NPS notice will include the following text: "NPS requests that Tenaska respond in writing within 60 days, acknowledging receipt of this notice and that Tenaska will give the requested good faith consideration to these recommendations as set forth in the MOA." Tenaska will respond in writing within 60 days, acknowledging receipt of such information and indicating which, if any, of the updated lighting best practices it believes may be appropriate for the Station and, therefore, may receive further consideration as Tenaska maintains, repairs, or procures and installs lighting updates in due course.

3. Sound Barrier – Prior to the commencement of commercial operations, Tenaska shall construct on the Station Site, east of the Station, a 10-foot-tall earthen berm. The berm shall be approximately 1,100 feet in length and will be at a location within the Station's 275-acre parcel that is west of the Transmission Line depicted on Attachment 3, and east of the Station power block.

B. Service Lines

1. Boring and Ditch Restoration – Where the Service Lines will intersect with contributing ditches located within the boundaries of the CCID6, CCID2, and CCDD1 (that is, the NRHP-eligible and NRHP potentially-eligible irrigation and drainage districts), one of the following construction methods will be used: boring underneath the ditch through traditional or horizontal directional drilling; or open cut followed by restoration to pre-existing contours. All ditches currently within the management and/or jurisdiction of the active CCID6, CCID2, and/or CCDD1 will be treated as contributing ditches.
 - a. If using the open cut method to cross a contributing ditch within the boundaries of CCID6, CCID2, and/or CCDD1, Tenaska will be responsible for photographing the open cut site before, during, and after construction. Photographs must be taken looking upstream and downstream to document the ditch's pre- and post-construction condition and contours. The photographs must be submitted to the EPA and TXSHPO within thirty (30) days of the completion of the

open cut and restoration work. The submittal must also include a map or provide the latitude and longitude of the ditch crossing. Submittal of the photographs and location information via e-mail is acceptable.

- b. No pre- or post-construction documentation is required for crossing ditches within CCID6, CCID2, or CCDD1 by boring underneath using traditional or horizontal directional drilling.
2. Aboveground Appurtenances – Aboveground appurtenances for the Service Lines will not be located within two hundred (200) feet of contributing ditches located within the boundaries of the CCID6, CCID2, and CCDD1.

II. MITIGATION MEASURES

A. Funding

Tenaska shall contribute funds to an account managed by the National Park Foundation (“NPF”) for the implementation of mitigation measures (“Mitigation Project Funds”) and the maintenance of mitigation measures (“Mitigation Maintenance Funds,” which, together with the Mitigation Project Funds is referred to herein as the “Aggregate Mitigation Funds”) at the Palo Alto NHP in accordance with and subject to the conditions set forth in this Article II (see Attachment 4). The NPS may change the recipient for the contributions by notifying the Signatories in writing, and from and after the receipt of such notification by each Party, all references to NPF herein shall be deemed to refer to such alternate recipient.

1. Mitigation Project Funds

Tenaska shall contribute Mitigation Project Funds in the aggregate total of \$754,990.00 or, if Tenaska elects the Resaca Utility Alternative (as hereinafter defined), the aggregate total of \$703,490.00, by remitting to the NPF Initial Funding, Annual Project Funding, and, if applicable, Utility Funding, as defined and set forth below:

- a. Tenaska shall remit initial funding in the amount of \$131,840.00 (“Initial Funding”) within ten (10) calendar days of the Station Development Initiation Date, which shall be the latter of: (i) the date financial close has been achieved for the Station or (ii) the date Commencement of construction of the Station occurs pursuant to the Permit. Tenaska shall provide written notice to the Signatories of the Station Development Initiation Date.
- b. Within 120 calendar days after the Station Development Initiation Date, Tenaska shall remit utility funding in the amount of \$51,500.00 (“Utility Funding”) unless prior to such date Tenaska, in its sole discretion, has arranged for Brownsville Public Utilities Board (“BPUB”) to complete by September 30, 2015 the installation

of electric, potable water and sanitary connections of less than 100 yards in length at the Resaca de la Palma Battlefield (“Resaca Utility Alternative”). The NPS and Tenaska may mutually agree in writing to extend the deadlines for the Utility Funding and completion of the Resaca Utility Alternative and shall provide written notice to the EPA and TXSHPO of any such extensions. Tenaska shall provide written notice to the Signatories if it has made the necessary arrangements to implement the Resaca Utility Alternative.

- c. After commercial operation of the Station begins, Tenaska shall remit annual project funding in an aggregate amount of \$571,650 (“Annual Project Funding”), by remitting at least \$285,825 annually until the aggregate amount of the Annual Project Funding is remitted. The first annual payment shall be made within sixty (60) calendar days after commercial operation of the Station begins (“Commercial Operation Date”) and the second payment shall be made within one year of the Commercial Operation Date. Tenaska shall provide written notice to the Signatories of the Commercial Operation Date.

The NPS has indicated that the aggregate amount of the Mitigation Project Funds allows for implementation and/or substantial completion of the following Improvement Measures, including payment of the administrative fees to the NPF:

- Cultural landscape restoration for Palo Alto NHP
 - Spartina Grass Measure (hereinafter defined)
 - Cactus removal
 - Woody vegetation removal
- Interactive visitor information kiosk development and support at Palo Alto NHP
- Enhancement of Living History program – uniforms and supplies – at Palo Alto NHP
- Landscape enhancement at Palo Alto NHP/Palo Alto NHL
- Overlook landscape enhancement aluminum silhouettes at Palo Alto NHP
- Replica U.S. cannons for Palo Alto NHP
- Replica Mexican cannons for Palo Alto NHP
- Trail work at Palo Alto NHP
- Resaca Utility Measures (subject to the Resaca Utility Alternative)

Allocation and use of Mitigation Project Funds for the various Improvement Measures will be made at the sole discretion of the NPS. If excess funds from the Mitigation Project Funds are available following payment of the NPF’s administrative fees and completion of the Improvement Measures, as those Improvement Measures are prioritized by the NPS, those excess funds may be considered a donation to the NPS and used for other maintenance or improvements

to the cultural landscape or visitor experience at the Palo Alto NHP at the NPS's discretion.

Tenaska's sole obligation with respect to the implementation of the Improvement Measures is to contribute the Mitigation Project Funds to an account managed by the NPF. Tenaska makes no representation as to the cost, implementation or completion of the Improvement Measures.

2. Mitigation Maintenance Funds

Tenaska shall contribute Mitigation Maintenance Funds in the aggregate total of \$1,384,320.00 by remitting at least \$49,440.00 annually, commencing on the second anniversary of the Commercial Operation Date, and each subsequent anniversary thereafter, until such total Mitigation Maintenance Funds are remitted. The NPS shall use the Mitigation Maintenance Funds (1) for payment of the NPF's administrative fees and (2) for cyclical maintenance or replacement of the Improvement Measures in accordance with the NPS's priorities.

3. Administration

- a. The NPS shall be responsible for the direction and supervision of work plans, contractor engagement, and implementation of any Improvement Measures. Tenaska's sole obligation under this Section II (Mitigation Measures) is to remit the Aggregate Mitigation Funds to an account managed by the NPF subject to the conditions and schedule set forth above, or, at Tenaska's sole discretion, on a more expedited schedule.
- b. The NPS shall provide to Tenaska, by written notice, instructions for mailing or wiring the remittances of Aggregate Mitigation Funds to the NPF. Tenaska may rely on such instructions unless and until the date that is thirty (30) days after written notice from the NPS of a change in such instructions.
- c. If Tenaska does not remit a required minimum payment of the Aggregate Mitigation Funds by the applicable due date, before the NPS may make an objection pursuant to Section VII, the NPS shall notify Tenaska in writing and Tenaska may cure such defect by remitting the payment within thirty (30) days of such written notification.

B. Spartina Grass Measure

Tenaska agrees to allow appropriately qualified and insured contractors reasonable access to the Station Site to salvage spartina grass from the spartina grass salvage

area depicted on Attachment 5 and relocate it to the Palo Alto NHP (“Spartina Grass Measure”) on the following terms and conditions:

1. The NPS shall submit a proposed scope of work to Tenaska for approval, which approval shall not be unreasonably withheld, that identifies the means and schedule for the Spartina Grass Measure. The NPS shall not execute ground-disturbing activity in (i) the wetland area labeled “W1ACA001” on Attachment 6 (ii) the “Transitional area” labeled on Attachment 6, and (iii) in or within 25 feet of the Olmito Branch ditch that extends along the south Station Site boundary. The NPS shall specify that the spartina grass salvage area will be accessed by use of the existing road along the North fenceline of the Station Site. Tenaska will provide any comments or objections to the proposed scope of work within fifteen (15) calendar days of receipt. The NPS will revise the scope of work in response to Tenaska’s comments or objections.
2. The NPS shall require that any person, other than an employee of the United States, performing the Spartina Grass Measure on the Station Site shall maintain: (i) Worker’s Compensation Coverage, (ii) Auto Liability Coverage with a \$1,000,000 minimum limit for third party bodily injury and property damage, and (iii) General Liability Coverage with a \$1,000,000 minimum limit for third party bodily injury and property damage. The NPS shall require that any person performing any aspect of the Spartina Grass Measure on the Station Site, other than an employee of the United States, shall provide certificates of insurance to Tenaska before such work is commenced hereunder, which certificates shall name Tenaska and its affiliates as additional insured under all policies required above (except for workers compensation), and provide a waiver of subrogation.
3. The NPS shall use a private contractor to perform the Spartina Grass Measure on the Station Site and such private contractor (“Indemnitor”) shall indemnify and hold Tenaska and its grantees, successors and assigns harmless from any and all liability, claims, costs, losses or damages (including the reasonable costs and expenses of defending such claims), arising or alleged to arise in whole or in part as a result of the performance of the Spartina Grass Measure on the Station Site. The NPS and Tenaska shall give prompt notice to the other party and to the Indemnitor of any claim or alleged liability hereunder. Tenaska shall reasonably cooperate with the Indemnitor and the NPS in defending or resisting such claims. One or two NPS employees, as employees of the United States that cannot provide such indemnity, may observe and direct, but not perform, the Spartina Grass Measure.
4. The NPS shall require that any person performing the Spartina Grass Measure on the Station Site shall covenant and warrant that they will (i) comply with all federal, state and local environmental laws; (ii) be solely responsible for securing any necessary permits or authorizations; and (iii)

conduct the Spartina Grass Measure in a safe and workmanlike manner in a manner consistent with the generally accepted level of care and skill ordinarily exercised by professional contractors performing services of a similar nature.

The Spartina Grass Measure shall be completed on a schedule that is consistent with Tenaska's site excavation and construction schedule. Tenaska shall provide the NPS with notice of the relevant deadlines for the Spartina Grass Measure at least ninety (90) calendar days in advance of such deadlines. Tenaska and the NPS shall work together in good faith to coordinate so that the NPS can execute the Spartina Grass Measure; however, Tenaska is not obligated to delay construction of the Station even if the NPS cannot timely execute the Spartina Grass Measure.

III. METAL DETECTING IN THE VICINITY OF THE FORMER MATAMOROS-PORT ISABEL ROAD

Prior to the initiation of any ground-disturbing pre-construction or construction activity associated with the proposed Transmission Interconnect, Tenaska shall undertake metal detecting within the below-specified portion of the APE for the Transmission Interconnect survey corridor to identify the presence or absence of artifacts or features associated with the use of the former Matamoros-Port Isabel Road during the Battle of Palo Alto ("Artifacts"). Tenaska shall inform the NPS of the date the metal detecting work will begin at least seven (7) calendar days in advance. The NPS may, if available, accompany Tenaska's consultants during the course of the metal detecting work.

A. Qualifications and Standards

Tenaska shall utilize archaeologists meeting the Secretary of the Interior's Professional Qualification Standards as required by NHPA section 112(a)(1)(A). Tenaska shall ensure that all work conducted under this section is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 Federal Register 44716-44740; September 23, 1983), as amended, to conduct this work and prepare associated documentation. Tenaska shall also ensure that the archaeologists are experienced with metal detecting equipment and methods.

B. Survey Investigations

Investigations shall be conducted in the 100-foot right-of-way for the Transmission Line within the area of interest identified by the NPS, consisting of an approximately 1500-foot-long corridor ("Metal Detection Area"), which investigation area is shown on the Figure appended to this MOA (Attachment 7). Vegetation within the Metal Detection Area will be cleared as level and as close to the ground as possible, while causing minimal ground disturbance prior to the investigations to facilitate the metal detecting for Artifacts. Metal detecting will be conducted along transects spaced at 1.5-meter intervals.

If investigations result in a recommendation by the qualified professional that additional work is required to determine whether NRHP-eligible resources are

present in the Metal Detection Area, then Tenaska can elect either to undertake such work, cause BPUB to undertake such work, or assume that the resource in question is NRHP eligible for the purposes of this MOA, in which case the procedures in this Section shall apply. If Tenaska determines to proceed with additional investigations to determine the NRHP eligibility of resources identified, then the qualified professional representing Tenaska shall consult with TXSHPO and the NPS in developing a work plan prior to commencing work, which will be performed in accordance with the procedures of this Section.

C. Results of the Survey

The principal investigator for the work will prepare a brief letter report summarizing the results of the survey. The report will include the following:

1. Documentation of any cultural materials found within the Metal Detection Area including the location and description of any Artifacts found consistent with general professional standards for Phase I archaeological investigations. If an archaeological site is identified, it will be recorded and registered with TexSite, TXSHPO's software used to record archaeological sites, and given a formal archaeological site number.
2. The qualified professional's recommendation on the NRHP eligibility of any identified cultural materials or additional work that is required to determine NRHP eligibility, and proposing disposition and curation of the Artifacts ("Letter Report").

D. Process for Review

Tenaska will submit the Letter Report electronically to the Superintendent of the Palo Alto NHP (NPS), TXSHPO, and the EPA for review and concurrence.

1. No Historic Properties. If investigations result in a recommendation by the qualified professional that no historic properties are present in the Metal Detection Area and no further work is required, and the NPS, TXSHPO, and the EPA concur or fails to respond within the time specified, then construction activities may proceed, utilizing the Chance Finds Procedures appended to this MOA (Attachment 8).
2. Historic Properties Present. If investigations result in a recommendation by the qualified professional that historic properties are present in the Metal Detection Area, the following steps will be followed:
 - a. Tenaska will consult with BPUB to determine if avoidance of direct effects to such historic properties is possible.
 - b. Tenaska shall schedule a consultation call between the NPS, TXSHPO, and the EPA to discuss the effects of the undertaking on the historic properties and the manner in which Tenaska proposes to

either avoid, or if avoidance is not feasible, mitigate adverse effects to the identified historic properties.

- c. For the purposes of this section, only direct effects to identified historic properties will be considered adverse.
- d. Following the conference call, Tenaska shall electronically submit a letter to the NPS, TXSHPO, and the EPA of either its proposed approach to avoid adverse effects or its proposed offer of mitigation for adverse effects to historic properties. The NPS, TXSHPO, and the EPA shall have ten (10) business days to review Tenaska's letter and provide their concurrence or comments electronically to Tenaska, with copies to the other parties. Tenaska may proceed with the proposed approach after taking into account any comments received from the NPS, TXSHPO, and the EPA. A Party will be deemed to have concurred if that Party provides no response within ten (10) business days from that agency's receipt of Tenaska's Letter Report.
- e. Within five (5) business days of the end of the review period referenced in Section III(D)(2)(d), Tenaska shall electronically submit a letter to the NPS, TXSHPO, and the EPA with their final offer for avoidance or mitigation, as applicable. The NPS, TXSHPO, and the EPA shall have ten (10) business days to review Tenaska's final offer and provide their concurrence to Tenaska, with copies to the other parties. Tenaska may proceed with the proposed avoidance or mitigation after taking into account any comments received from the NPS, TXSHPO, and the EPA and after resort to Stipulation III(D)(2)(f) below, as appropriate. A Party will be deemed to have concurred if that Party provides no response within ten (10) business days from that agency's receipt of Tenaska's final offer.
- f. If Tenaska, the NPS, TXSHPO, and the EPA cannot come to agreement regarding avoidance or mitigation per the above, then Section VII for Dispute Resolution of this MOA shall apply.

IV. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found during construction of the Proposed Project, Tenaska shall implement, or cause to be implemented, the discovery plan included as Attachment 8 of this MOA ("Chance Finds Procedures").

V. ADJUSTMENT TO THE UNDERTAKING

If refinements to the design of the Proposed Project result in segments of a Service Line or the Transmission Interconnect being established outside of the existing survey corridors in an area otherwise undisturbed and that require further identification efforts under Section 106, prior to

construction of such segment, Tenaska shall conduct or cause to be conducted, an archeological inventory consistent with the Texas Historical Commission's *Archeological Survey Standards for Texas* and an aboveground survey for historic properties within unsurveyed portions of the adjusted right-of-way for the segment as a reasonable and good faith effort to evaluate the effect of the adjusted segment of the Proposed Project on historic properties.

A. Qualifications and Standards

All cultural surveys and report preparation will be conducted by qualified persons that meet the professional standards established by the Secretary of the Interior as required by NHPA section 112(a)(1)(A). Tenaska shall ensure that all work conducted under this section is performed in a manner consistent with the Secretary of Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48 Federal Register 44716-44740; September 23, 1983), as amended.

B. Process for Review

The principal investigator for the work will prepare a letter report ("Supplemental Letter Report"). The Supplemental Report shall document the investigation and be processed as follows:

1. No Cultural Resources. If no cultural resources are identified, it will be documented, and Tenaska will maintain the Supplemental Letter Report for inspection by the EPA and TXSHPO.
2. Evaluation of National Register Eligibility. If cultural resources are identified, Tenaska shall determine their eligibility for the NRHP in accordance with the process described in 36 CFR § 800.4(c) and criteria established in 36 CFR Part 60. If archaeological sites are discovered during the inventory, they will be documented and registered with the Texas Archeological Research Laboratory (TARL) and assigned a site number. This information will be included in the Supplemental Report, if applicable, which shall be submitted to the TXSHPO electronically. The Supplemental Letter Report will also propose disposition and curation of artifacts.

The TXSHPO shall have thirty (30) calendar days in which to review the findings of eligibility and provide a written response to Tenaska. The TXSHPO shall provide a copy of the concurrence to the EPA. Tenaska may proceed upon receipt of written concurrence from the TXSHPO. Failure of the TXSHPO to respond within thirty (30) days of receipt of the finding shall be deemed agreement with the finding. If TXSHPO agrees that cultural resources are not eligible, such consensus shall be deemed conclusive for the purposes of the MOA. Should Tenaska and TXSHPO not agree regarding the eligibility of a property, the EPA may make the determination or may obtain a determination of eligibility from the Keeper of the National Register pursuant to 36 CFR Part 63.

3. Finding of No Adverse Effect on Historic Properties. Tenaska shall apply the criteria of adverse effect to identified historic properties in accordance with 36 CFR § 800.5. Tenaska may propose a finding of no adverse effect if the adjusted segment of the Proposed Project's effects do not meet the criteria of 36 CFR § 800.5(a)(1).

Tenaska shall provide to TXSHPO and the EPA documentation of this finding meeting the requirements of 36 CFR § 800.11(e). TXSHPO shall have thirty (30) calendar days in which to review the findings and provide a written response to Tenaska. TXSHPO shall provide a copy of the concurrence to the EPA. Tenaska may proceed upon receipt of written concurrence from TXSHPO. Failure of TXSHPO to respond within thirty (30) days of receipt of the finding shall be deemed agreement with the finding. The EPA shall maintain a record of the finding and provide information on the finding to the public upon request, consistent with the confidentiality requirements of 36 CFR § 800.11(c).

4. Resolution of Adverse Effect. If Tenaska determines that the adjusted segment of the Proposed Project will have an adverse effect on historic properties as measured by criteria in 36 CFR § 800.5(a)(1), Tenaska shall consult with the EPA and TXSHPO to resolve adverse effects in the following manner:

- a. For historic properties that the EPA, Tenaska, and TXSHPO agree will be adversely affected, Tenaska shall:
 - i. Consult with TXSHPO to identify other individuals or organizations to be invited to become consulting parties, including, as appropriate, the NPS. If additional consulting parties are identified, Tenaska shall provide them copies of documentation specified in 36 CFR § 800.11(e) subject to confidentiality provisions of 36 CFR § 800.11(c);
 - ii. Consult with TXSHPO to seek ways to avoid, minimize or mitigate adverse effects;
 - iii. Prepare an historic property treatment plan which describes mitigation measures Tenaska proposes to resolve the adjusted segment of the Proposed Project's adverse effects and provide this plan for review and comment to the EPA, TXSHPO, and consulting parties. All parties shall have twenty (20) calendar days in which to provide a written response to Tenaska. Treatment plans will consider the use of horizontal directional drilling ("HDD"), rerouting, or other prudent pipeline design or construction methods intended to preserve any substantial archaeological sites discovered.

- b. If adverse effects cannot be avoided, the EPA shall afford the public an opportunity to express its views on the proposed resolution of adverse effects in a manner appropriate to the magnitude of the likely effects on historic properties from the adjusted segment of the Proposed Project.
- c. If the EPA, Tenaska, and TXSHPO fail to agree on whether there are adverse effects on historic properties or how the adverse effects will be resolved, the EPA shall request that ACHP join the consultation and shall proceed in accordance with the dispute resolution process under Section VII.

VI. MONITORING AND REPORTING

By October 30th of each year following execution of the MOA, Tenaska shall provide all Signatories a summary report with a brief description of the status of Stipulations I, II, and III above, and notice of installment payments made during the previous twelve (12) months until the earlier of the dates on which such measures are completed or the MOA expires or is terminated.

VII. DISPUTE RESOLUTION

- A. Should any Signatory to this MOA object in writing to the EPA regarding any actions carried out or proposed with respect to the Proposed Project for implementation of this MOA, the EPA shall notify all the Signatories to this MOA. If after consultation with the Signatories, the EPA determines that the objection cannot be resolved, the EPA shall forward all documentation relevant to the objection to the ACHP, including the EPA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:
 - 1. Advise the EPA that the ACHP concurs in the EPA proposed response to the objection, whereupon the EPA shall respond to the objection accordingly;
 - 2. Provide the EPA with recommendations, which the EPA shall take into account in reaching a final decision regarding its response to the objection; or
 - 3. Notify the EPA that the objection will be referred for comment pursuant to 36 CFR § 800.7, and proceed to refer the objection and comment. The resulting comment shall be taken into account by the EPA in accordance with 36 CFR § 800.7(c)(4), and Part 110(1) of NHPA.
- B. Should the ACHP not exercise one of the above options within thirty (30) calendar days of receipt of all pertinent documentation, the EPA may make a final decision on the dispute and proceed accordingly.

- C. Prior to reaching such a final decision, the EPA shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the MOA, and provide the Signatories, including the ACHP with a copy of such written response.
- D. The Signatories shall take into account any comments of the ACHP provided in accordance with this stipulation with reference only to the subject of the objection. Tenaska's responsibility to carry out all other actions under this MOA that are not the subjects of the objection shall remain unchanged.

VIII. DURATION

The term of this MOA shall expire on the date that is thirty (30) days after the Tenaska issues written notice to all Signatories that all of the following have occurred: (a) construction of the Proposed Project is completed, including painting and installation of pre-engineered Station structures consistent with the color schemes in Section I(A)(1), installation of lighting on the Station consistent with Section I(A)(2)(a-e), and completion of the Service Lines construction consistent with Section I(B), including any necessary restoration of open cuts; (b) construction of the earthen berm is complete, consistent with Section I(A)(3); and (c) remittance of the Aggregate Mitigation Funds to the NPF is complete.

Provided that Tenaska Commences construction of the Station pursuant to the Permit, this MOA shall remain in effect and valid during its term notwithstanding any transfer of the Permit to the TCEQ for future administration.

IX. AMENDMENTS

Any Signatory to this MOA may request that this MOA be amended, whereupon the Signatories will consult with the EPA in accordance with 36 CFR § 800.6(c)(7). The MOA may only be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with ACHP.

If Tenaska determines that it cannot implement the terms of this MOA, or if any Party determines that the MOA is not being properly implemented, that Party may propose to the EPA that this MOA be amended. The EPA shall then notify all Signatories in writing, explaining the reasons for the proposed amendment and affording them at least thirty (30) calendar days to correct any identified deficiencies and/or consult and request that the MOA be amended.

X. TERMINATION

Any Signatory to this MOA may propose to terminate this MOA by providing notice to the other Signatories explaining the reasons for the proposed termination. The Signatories will consult to seek agreement on the amendments or other actions that will avoid termination.

If construction has Commenced under authority to construct provided by the Permit and the Stipulations herein are not yet completed, then prior to termination of this MOA, the EPA shall

either: (a) execute a new MOA pursuant to 36 CFR § 800.6, or; (b) request, take into account, and respond to the comments of the Signatories, including the ACHP in accordance with the procedures under 36 CFR § 800.7.

Following Tenaska's request to the EPA, this MOA shall terminate upon the EPA's confirmation in writing to the Signatories that one of the following events has occurred: (a) at the expiration of the Permit in accordance with the General Permit Condition – Permit Expiration provided no extension has been or will be sought by Tenaska; (b) if the Permit is voided or rescinded at the request of Tenaska prior to Commencing construction of the Station; or (c) as a result of a federal court decision that holds that no GHG PSD permit is required under the CAA prior to construction of the Station.

XI. ASSIGNMENT

This MOA shall be binding upon the Signatories and their respective successors and assigns. Upon written notice to all Signatories, Tenaska may assign this MOA to any entity that is or will be (A) constructing the Station pursuant to the Permit, or (B) operating the Station following construction pursuant to the Permit. Such notice shall include either a copy of the executed assignment document or a written acknowledgment signed by the successor or assign, and updated contact information for the Notice provision of Section XII below. Such assignee shall be deemed a successor to Tenaska and to have assumed Tenaska's obligations, and Tenaska shall be released of any obligations hereunder.

XII. NOTICES

Any notice as provided for in this MOA ("Notice") shall be sent by certified mail, courier service, hand delivery, or email if and only if confirmed by an email in response confirming receipt, as follows:

FOR EPA: U.S. EPA Region 6
 Attn: Wren Stenger, Director
 Multimedia Planning and Permitting Division (6PD)
 1445 Ross Avenue
 Dallas, TX 75202
 Telephone: (214) 665-6435
 Email:Stenger.Wren@epa.gov

FOR TXSHPO: Texas Historical Commission
 Attn: Mark Wolfe, State Historic Preservation Officer
 For Courier/Delivery:
 108 W. 16th Street
 Austin, TX 78701
 For U.S. Mail:
 P.O. Box 12276
 Austin, Texas 78711-2276
 Telephone: (512) 463.6100

Email: thc@thc.state.tx.us

FOR ACHP: Advisory Council on Historic Preservation
Attn: John M. Fowler
Office of the Executive Director
401 F Street NW, Suite 308
Washington DC 20001-2637
Telephone: (202) 517-0200
Email: jfowler@achp.gov

FOR NPS: Palo Alto Battlefield National Historical Park
Attn: Mark Spier, Superintendent
1623 Central Boulevard, suite 213
Brownsville, TX 78520-8326
Telephone: (956) 541-2785 x222
Email: Mark_Spier@nps.gov

FOR TENASKA: Tenaska Brownsville Partners, LLC
Attn: Larry Carlson
Vice President, Environmental Affairs
14302 FNB Parkway
Omaha, NE 68154
Telephone: (402) 938-1661
Email: lcarlson@tenaska.com

XIII. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that applications are made for federal funding or additional federal approvals for the undertaking and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this MOA and notifying and conferring with the EPA, TXSHPO, ACHP, and the NPS. Any necessary modifications will be considered in accordance with Section IX (Amendments).

XIV. EXECUTION

This MOA may be signed by the Signatories as one or more identical, duplicate documents with the same effect as if the Signatories had all signed a single document.

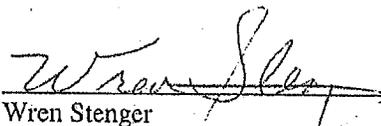
Execution of this MOA by the EPA, TXSHPO, ACHP, the NPS, and Tenaska and implementation of its terms is evidence that the EPA has taken into account the effects of the Proposed Project on the Historic Properties and Palo Alto NHL, and afforded the ACHP an opportunity to comment, concluding the National Historic Preservation Act Section 106 consultation process in accordance with applicable regulations.

The Parties acknowledge that there is no certainty that the Proposed Project will be developed and agree that nothing in this MOA is intended or shall be construed to require Tenaska to develop, finance or complete construction of the Station or to take any action other than those actions set forth herein and subject to the terms herein.

[Remainder of Page Blank; Signature Page Follows]

SIGNATORIES:

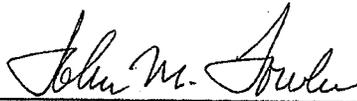
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

By:  Date: 1/14/15
Wren Stenger
Division Director, Multimedia Permitting
and Planning Division

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
Mark Wolfe
Texas State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 1/23/15
John M. Fowler
Executive Director

NATIONAL PARK SERVICE

By: _____ Date: _____
Mark Spier
Superintendent,
Palo Alto Battlefield National Historical
Park

By: _____ Date: _____
Sue E. Masica
Regional Director,
Intermountain Region

SIGNATORIES:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

By: _____ Date: _____
Wren Stenger
Division Director, Multimedia Permitting
and Planning Division

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: Mark Wolfe Date: 1/9/15
Mark Wolfe
Texas State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 1/23/15
John M. Fowler
Executive Director

NATIONAL PARK SERVICE

By: _____ Date: _____
Mark Spier
Superintendent,
Palo Alto Battlefield National Historical
Park

By: _____ Date: _____
Sue E. Masica
Regional Director,
Intermountain Region

SIGNATORIES:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6

By: _____ Date: _____

Wren Stenger
Division Director, Multimedia Permitting
and Planning Division

TEXAS STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Mark Wolfe
Texas State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____

John M. Fowler
Executive Director

NATIONAL PARK SERVICE

By: Mark E. Spier Date: Jan. 7, 2015

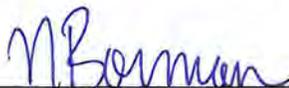
Mark Spier
Superintendent,
Palo Alto Battlefield National Historical
Park

By: Sue E. Masica Date: 1/14/15

Sue E. Masica
Regional Director,
Intermountain Region

TENASKA BROWNSVILLE PARTNERS, LLC
a Delaware limited liability company

By: Tenaska Brownsville I, LLC, Its Manager

By: 
Nicholas N. Borman
Senior Vice President

Date: January 12, 2015

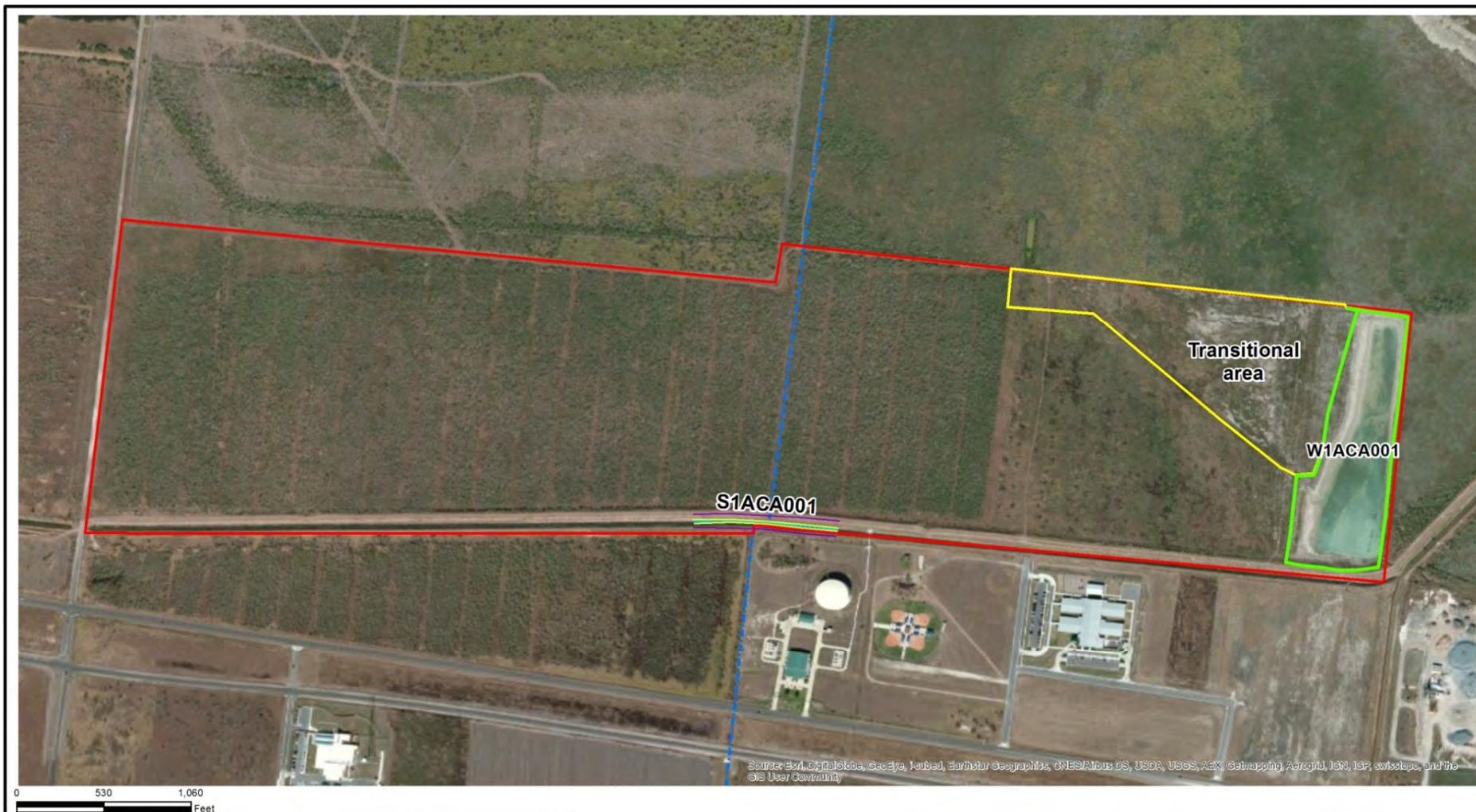
ATTACHMENT 1

Tenaska proposes to construct a natural gas-fired, combined-cycle gas turbine (CCGT) electric generating plant, known as the Tenaska Brownsville Generating Station (TBGS), to be located in Brownsville, Cameron County, Texas. The TBGS will generate either 400 MW or 800 MW of net electrical power depending on whether one or two Mitsubishi 501 GAC CCGTs are constructed. TBGS will consist of the following components:

- Two natural gas-fired Mitsubishi 501 GAC CCGTs equipped with lean pre-mix, low-NO_x combustors;
- Two natural gas-fired duct burner systems inside the heat recovery steam generators (HRSGs);
- One natural gas-fired auxiliary boiler;
- Natural gas piping and metering;
- One diesel fuel-fired emergency electrical generator engine;
- One diesel fuel-fired fire water pump engine; and
- Electrical equipment insulated with sulfur hexafluoride (SF₆).

Along with this power plant, Tenaska or Brownsville Public Utility Board will construct seven different interconnect lines (also referred as 'linear facilities') that will provide services to the TBGS. The seven linear facilities include (all lengths approximate): a 11.05-mile water discharge pipeline, a 11.7-mile transmission interconnect line, a 7.75-mile water reuse pipeline, a 49.62-mile natural gas transmission pipeline, a 250-foot supplemental water supply line, a 250-foot potable water line, and a 800-foot sanitary sewer line.

ATTACHMENT 3



| | | |
|---|-----------------|-------------------|
| Environmental Resources Management | | |
| DESIGN: A Ragatz | DRAWN: S King | CHKD.: K Schlicht |
| DATE: 12/2/2014 | SCALE: AS SHOWN | REVISION: 0 |
| FILE: | | |

Brownsville Generating Station
Brownsville, TX
MOA Attachment 3: Project Site
(Berm location to the west of the Transmission Line)

Legend

| | |
|----------------------|-------------------|
| Delineated Waterbody | Wetland |
| OHWM | Transitional area |
| TOB | Site |
| WW | Transmission Line |

N

ERM

ATTACHMENT 4

Payment Tracking Chart

Station Development Initiation Date _____

Commercial Operation Date _____

| Operational Year | Minimum Timing* | Minimum Payment** | Date of Payment | Amount of Payment | Remaining Balance |
|---|--|-------------------|-----------------|--|---|
| Aggregate Mitigation Funds | | | | (add payments) | \$2,139,310 (subtract payments) |
| - Pre-construction financing and construction period | Within 10 days after Station Development Initiation Date | \$131,840 | | | |
| - | Within 120 Days after Station Development Initiation Date | \$51,500*** | | (***note payment or subtract as not due if alternative selected) | |
| 1 | Within 60 days after Commercial Operation Begins (“Commercial Operation Date”) | \$285,825 | | | |
| 2 | Within one year of Commercial Operation Date | \$285,825 | | | |
| 3 | Annually by anniversary of Commercial Operation Date until reaching a total of \$1,384,320 | \$49,440 | | | |
| 4 | | \$49,440 | | | |
| 5 | | \$49,440 | | | |
| 6 | | \$49,440 | | | |

| | | | | | |
|-----------|--|----------|--|--|--|
| 7 | | \$49,440 | | | |
| 8 | | \$49,440 | | | |
| 9 | | \$49,440 | | | |
| 10 | | \$49,440 | | | |
| 11 | | \$49,440 | | | |
| 12 | | \$49,440 | | | |
| 13 | | \$49,440 | | | |
| 14 | | \$49,440 | | | |
| 15 | | \$49,440 | | | |
| 16 | | \$49,440 | | | |
| 17 | | \$49,440 | | | |
| 18 | | \$49,440 | | | |
| 19 | | \$49,440 | | | |
| 20 | | \$49,440 | | | |
| 21 | | \$49,440 | | | |
| 22 | | \$49,440 | | | |

| | | | | | |
|--------------|--|----------|--|--|------------|
| 23 | | \$49,440 | | | |
| 24 | | \$49,440 | | | |
| 25 | | \$49,440 | | | |
| 26 | | \$49,440 | | | |
| 27 | | \$49,440 | | | |
| 28 | | \$49,440 | | | |
| 29 | | \$49,440 | | | |
| 30 | | \$49,440 | | | |
| Total | | | | | \$0 |

* Payments may be made sooner at Tenaska’s sole discretion.

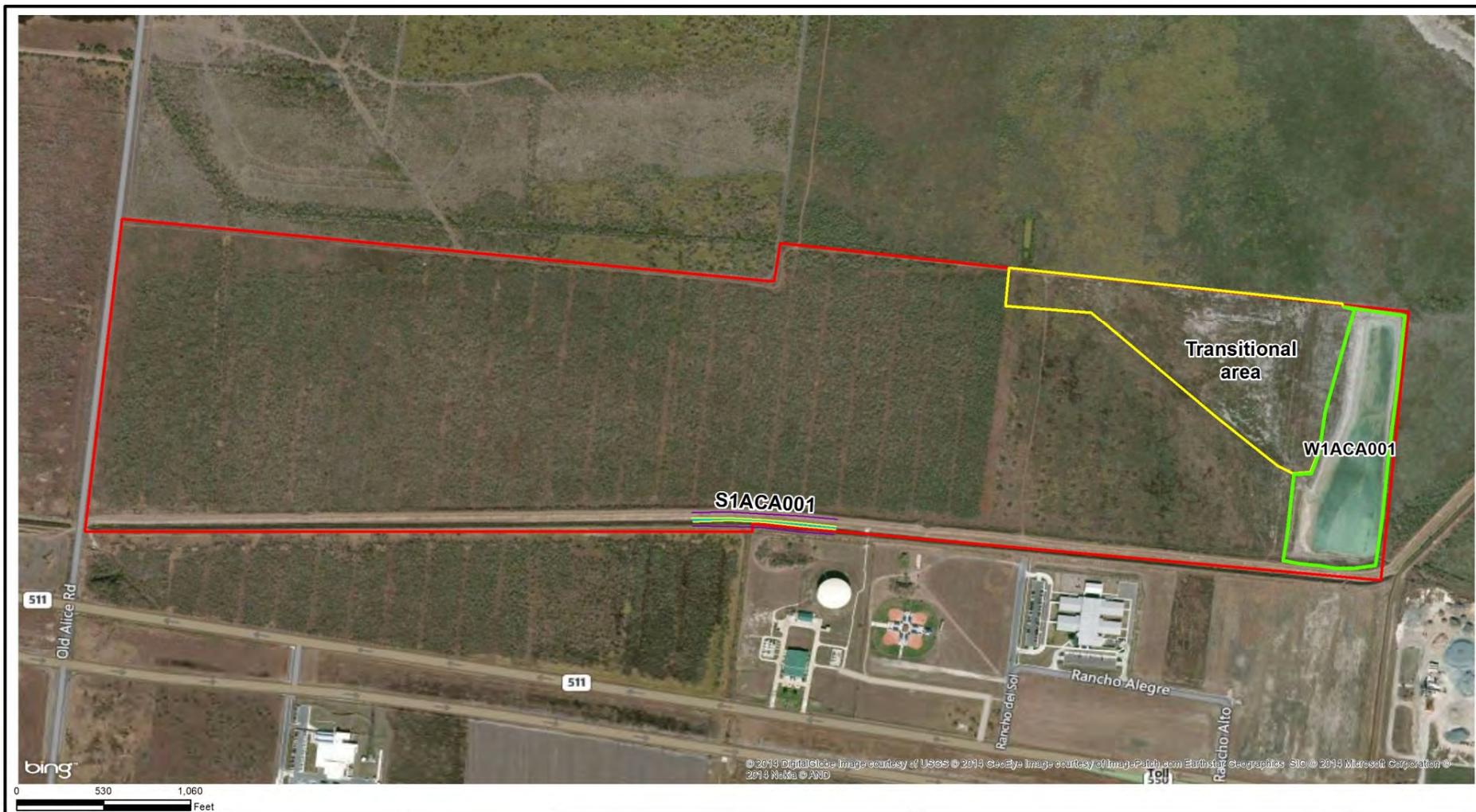
** Fixed values; no future adjustment.

*** If Tenaska elects to arrange for BPUB to complete the Resaca Utility Alternative (see Section II(A)(1)(b)), this payment would no longer be due. The Aggregate Mitigation Funds amount would then be reduced by \$51,500 to \$2,087,810.

ATTACHMENT 5



ATTACHMENT 6



| | | |
|---|-----------------|-------------------|
| Environmental Resources Management | | |
| DESIGN: A Ragatz | DRAWN: S King | CHKD.: K Schlicht |
| DATE: 12/2/2014 | SCALE: AS SHOWN | REVISION: 0 |
| FILE: | | |

Brownsville Generating Station
Brownsville, TX

MOA Attachment 6: Limits on Spartina Grass Measure

Legend

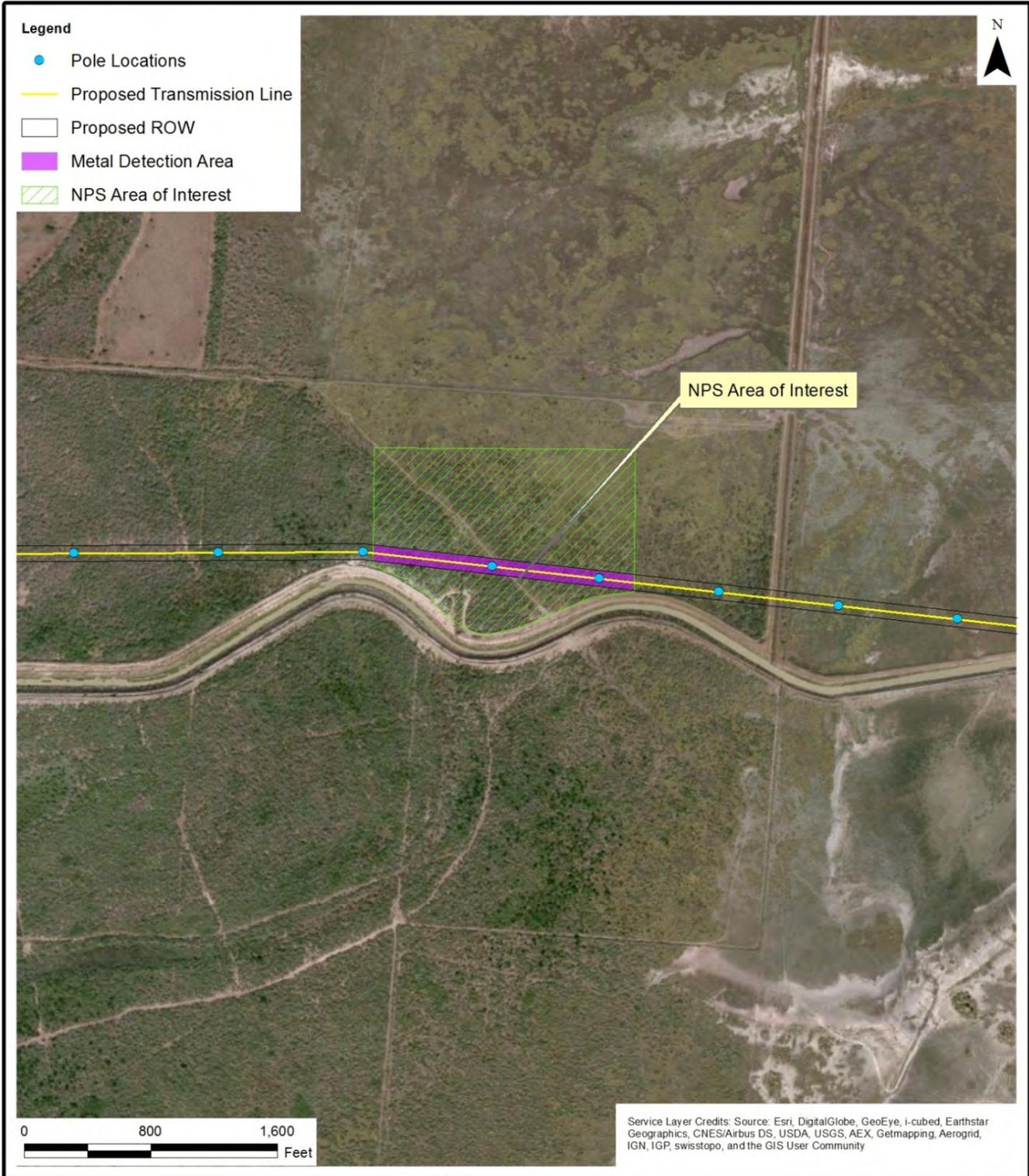
Delineated Waterbody

- OHWM
- TOB
- WW

- Wetland
- Transitional area
- Site



ATTACHMENT 7



Environmental Resources Management

Brownsville Generating Station
Brownsville, TX

MOA Attachment 7: Metal Detection Area



| | | |
|------------------|-----------------|-----------------|
| DESIGN: T Cannon | DRAWN: T Cannon | CHKD.: T Cannon |
| DATE: 12/2/2014 | SCALE: AS SHOWN | REVISION: 0 |
| FILE: | | |

CHANCE FINDS PLAN

PREPARED FOR



Tenaska Brownsville Partners, LLC

November 12, 2014

XV. Introduction

The purpose of this document is to address the possibility of archeological deposits, finds, and features becoming exposed during earthmoving and ground altering activities associated with the project construction, operations or decommissioning and to provide procedures to follow in the event of a chance archeological find. “Chance finds” are previously unknown or unrecorded cultural resources discovered during project activities. A series of steps to minimize physical impacts to cultural resources are outlined in this Chance Finds Plan (the Plan).

In this plan, it is assumed that a pre-construction survey was completed and the resources uncovered were not previously known to be present. The protocols and procedures in the plan outline actions to be taken if a chance finds is encountered during construction and operations. The plan is applicable to ground disturbing work associated with the project during the pre-construction, construction, operations, and decommissioning phases. It may be revised from time to time to make adjustments in accordance with regulatory changes, approved practices, or expansion into previous non-project areas.

The Plan includes procedures requested by the Texas Historical Commission (THC) for compliance with state requirements. In addition, general requirements for meeting National Historic Preservation Act (NHPA) are included in the Plan.

The objectives of these procedures are to identify and promote avoidance and/or the preservation and recording of any archeological material discovered. A key component of the Plan is notification of archeological authorities to resolve any archeological issue that may arise from chance finds.

Note: Responsibilities for action if the Engineering, Procurement and Construction (EPC) Contractor encounters a chance finds are as stated in the EPC Agreement, Article 2 (m). This article states that the EPC contractor’s responsibility ends with notification of the appropriate individual, and the Owner takes responsibility at that point.

XVI. Regulatory Background and Authority

The Plan is designed to meet Texas and federal regulations governing the discovery of previously unknown or unrecorded archeological materials and human remains. The applicable state and federal regulations are:

- Texas Antiquities Code, Title 9, Chapter 191, 1969;
- *Texas Health & Safety Code Chapter 711.010 – Unknown or Abandoned Cemetery*, 1989;
- *Texas Administrative Code Title 13 Part 2 Chapter 22*, 2003; and
- Section 106 of the National Historic Preservation Act (NHPA), 1966, as Amended.

The U. S. Environmental Protection Agency (EPA) is considering issuance of a Prevention of Significant Deterioration Greenhouse Gas permit associated with the power plant construction and operation. That permit issuance is a federal action that makes the undertaking subject to review under Section 106 of the NHPA and its implementing regulations, “Protection of Historic Properties” (36 CFR 800). The EPA’s compliance with Section 106 is reflected in a Memorandum of Agreement (MOA), which resolves adverse effects on historic properties.

Texas statutes and regulations applicable to all ground disturbing activities encountering human remains are intended to protect unmarked graves. Unmarked graves are defined in *Texas Administrative Code Title 13, Part 2, Chapter 22, Rule § 22.1* as any location where human remains are found and there is no surficial evidence of a grave such as a tombstone or grave marker, or burial artifacts in an unmarked grave. Unmarked burials protected by Texas law could include prehistoric or historic Native American burials, historic Euro-American burials, or African-American burials and includes abandoned cemeteries that are no longer being used for internments or being maintained in good condition, including historic cemeteries. Texas law makes knowing and intentional damage or destruction inflicted on a human burial site a state felony. Texas Penal Code § § 28.03(f), 42.08.

If any previously unknown historic properties are discovered while conducting an activity under the permit and depending on the significance of the chance finds, then the EPA may consider re-engaging public hearings, comments, and/or consultations, including Tribal consultation.

XVII. Chance Finds Procedures

The general process for managing chance finds is outlined in the following section, followed by information specific to archeological sites and human remains or unmarked burials.

A. Archeological Finds or Sites

A responsible person who will be involved with all aspects of project-related ground disturbing work during the pre-construction, construction, operations, and decommissioning phases should be identified. The designated responsible person (Cultural Liaison) should be present onsite during most project activities and have some level of training, awareness, and sensitivity to the cultural resources that may be encountered within the project site. This person will act as the project liaison with the Owner, Project Archeologist, and cultural resources authorities in the event of chance finds. S/he also will serve as the initial contact in the event of chance finds during project activities and be listed in the contacts information in this Plan.

During the project kick-off meeting, all contractors will be made aware of the Plan and will be provided contact information for the Cultural Liaison, who will contact the Project Archeologist to evaluate the need for further action. Whenever new personnel are brought onsite, they also will be informed of the Plan and the contact information. A copy of the Plan, including contact information, shall be posted in an accessible location onsite for reference as needed.

For purposes of the plan, “archeological material” could be from prehistoric or historic periods and includes, though not exclusively, the following types of materials (see Appendix A for additional examples):

- An area of charcoal or charcoal stained soils associated with historic period or prehistoric remains, such as bones, pottery sherds, shell, stone tools or chips;
- An arrowhead, pottery sherds, shell, stone tool, or stone chips;
- An historic bottle, old glass fragments, square nails, bricks and mortar, decorated white ware ceramics, etc.;
- A cluster of shell, sherds, and/or bones or large field stones or burned rocks in association with stone tools or chips;
- Dredging, pumping, industrial, and/or agricultural equipment older than 50 years;
- Buried structures, brick foundation piers or concrete slabs from remnant outbuildings or residences;
- A cluster of darkened soils in association with bones; and
- Undisturbed mounds of soil in areas that were once wetlands or shorelines.

The following general procedure is to be executed if archeological material is discovered.

1. The site supervisor/foreman is informed of the find. The site supervisor/foreman will then contact the Cultural Liaison.
2. All construction activity within 100 feet of the find/feature/site will cease immediately.

3. All remains or materials are to be left in place unless in jeopardy because of project activities.
4. The area will be secured to prevent any damage or loss of removable objects. If feasible, a fence or other barrier will be erected to demarcate and protect the find.
5. The Cultural Liaison will contact the Project Archeologist, who will record the find location and delineate the extent of the find relative to planned project activities.
6. The Project Archeologist will assess, record, and photograph the find.
7. Within 48 hours of the find, the Project Archeologist will notify the EPA and THC. If cultural resources or remains associated with the Palo Alto Battlefield are found, the National Park Service (NPS) will also be contacted. If cultural resources or remains have the potential to be culturally significant to a living Native American Tribe, the EPA will notify the appropriate Tribes.
8. The Project Archeologist will make a recommendation on the NRHP eligibility of the resources, the effect of project activity on historic properties, if present, and a proposed treatment to resolve adverse effects, if applicable.
9. The parties will have 48 hours to provide comments on the approach proposed by the Project Archeologist, after which period the EPA will determine the appropriate course of action, taking into consideration input from the parties.
10. If human remains or unmarked burial sites are discovered, procedures in the associated Plan section should be followed.

B. Human Remains and Unmarked Burials

The following procedure is based in part on the reporting requirements established under *Texas Health & Safety Code Chapter 711.010 – Unknown or Abandoned Cemetery* and *Texas Administrative Code, Title 13, Part 2, Chapter 22*. Although not required under state law, it is recommended that the project follow the chance finds protocol outlined in this section if any human remains or unmarked burial sites are discovered during project activities.

Human remains may include any human body parts. Burial artifacts and burial sites are not easily recognized, but generally would include intact prehistoric pots, clusters of artifacts, or modern grave features (e.g., headstones, coffin parts, etc.). If in doubt whether the bones or other materials are human, it is best to stop work in the immediate area of the discovery and seek advice from the Project Archeologist.

Procedures for chance finds involving human remains or unmarked burials are outlined below. In the event that human remains, an unmarked burial, or an abandoned cemetery is encountered by project staff, the following procedures are applicable.

1. On discovery of the remains, construction activities (including excavation or any other below ground work) in the immediate vicinity of the find will cease.
2. The site supervisor/foreman will be informed of the find. The site supervisor/foreman will then notify the Cultural Liaison.

3. Temporary site protection measures (e.g., high visibility warning tape and stakes, avoidance signs in language[s] understandable to the project team, etc.) will be installed around the find to prevent unintentional incursion and potential damage to the remains.
4. The Cultural Liaison will contact local law enforcement (e.g., police department, the county sheriff). Local law enforcement will notify the appropriate coroner's office.
5. The Cultural Liaison will contact the Project Archeologist, who will be or will engage a qualified professional archeologist who is permitted in Texas and who has a background in osteology, forensic anthropology, physical anthropology, or equivalent.
6. Tenaska or their agent will file the Notice of Existence of Cemetery discovery form with the Cameron County Clerk's office within 10 days of the find.
7. The Project Archeologist will notify the EPA and the THC's State Archeologist within 72 hours of the find.
8. The local law enforcement officials must be given site access to assess the nature and age of the find. If the coroner's office determines that the human remains are older than 50 years of age and there is no need for a legal inquiry or criminal investigation, the State Archeologist will have jurisdiction over the find.
9. If the State Archeologist believes the find may have ethnic affinity with a living Native American Tribe, the THC will provide the EPA with the Tribal contact and will facilitate notification of the find with the appropriate Tribal Historic Preservation Officer (THPO).
10. Consultation will be initiated between the project (consisting of Tenaska or their agent, the Project Archeologist or qualified professional archeologist, and the Cultural Liaison), the EPA, and the State Archeologist to determine the final disposition of the find. The below will be considered during consultation.
 - a. NPS' Native American Graves Protection and Repatriation Act (NAGPRA) (U.S. Code 25, §3001, et seq.) database and Tribal websites.
 - b. Southern Plains Regional Office of the Bureau of Indian Affairs.
 - c. The potential interest of additional state-recognized Tribes. Contact information on these additional Tribes can be provided by the State Archeologist. State-recognized Tribes may be contacted at the recommendation of the EPA or State Archeologist.

No work that will cause a direct effect to the find will proceed until all human remains and associated artifacts have been recovered and, where applicable, the appropriate regulatory agencies have given clearance for the project work to proceed.

XVIII. Archeological Contacts

In the event of a chance find, the people or offices listed below should be contacted consistent with the steps outlined above.

Cultural Liaison (initial contact after chance find)

[To Be Completed When Assigned by Tenaska]

Name

Title, if applicable

Street Address

City, TX zip

Phone

Mobile

e-mail address

State Archeologist

Mark Wolfe, RPA

THC State Archeologist and Executive Director

1511 Colorado Street

Austin, TX 78701

(512) 463-6100

Mark.Wolfe@thc.state.tx.us

Tenaska Contact

John Uphoff

Project Director

14302 FNB Parkway

Omaha, NE 68154

402-691-9726

402-690-8490

juphoff@tenaska.com

Cameron County Clerk

964 E. Harrison Street

2nd Floor Administration Building

Brownsville, TX 78520

956-544-0815

Cameron County Sherriff

7100 Old Alice Road

Olmito, TX 78575

Phone 956-554-6700

Fax: 956-554-6780

Cameron County Justice of the Peace

Judge Linda Salazar (Pct # 2-1)

Cameron County Courthouse, 2nd Floor

974 East Harrison Street
Brownsville, TX 78520
(956) 544-0857 phone

Judge Erin H. Garcia (Pct. 2-2)
Cameron County Courthouse, 2nd Floor
974 E. Harrison St.
Brownsville, TX 78521
(956) 544-0858 phone

EPA contact

Jeff Robinson,
Section Chief, Air Permitting
US EPA Region 6
1445 Ross Ave, Suite 1200
(214) 665-7250

Tribal Contacts

(as applicable in project region)

Absentee Shawnee Tribe of Oklahoma

Edwina Butler-Wolfe, Governor
2025 S. Gordon Cooper Dr.
Shawnee, OK 74801

Joseph Blanchard
Tribal Historic Preservation Officer
2025 S. Gordon Cooper Dr.
Shawnee, OK 74801

Alabama-Coushatta Tribe of Texas

Ronnie Thomas, Chairman Alabama-Coushatta Tribe of Texas
Attn: Bryant Celestine
571 State Park Rd. 56
Livingston, TX 77351
Phone: 936.563.1100 Fax: 936.563.3184

Alabama-Quassarte Tribal Town

Tarpie Yargee, Chief
Attn: Pare Bowlegs
P.O. Box 187
Wetumka, OK 74883
Phone: 405.452.3987 Fax: 405.452.3968

Apache Tribe of Oklahoma

Phillip Wetselline, Acting Chairman

Attn: Darrin Cisco
P.O. Box 1330
Anadarko, OK 73005
Phone: 405.247.9493 Fax: 405.247.2686

Caddo Nation

Brenda Edwards, Chairperson
P.O. Box 487
Binger, OK 73009
Phone: 405.656.2344 Fax: 405.656.2892

Robert Cast, Tribal Historic Preservation Officer
P.O. Box 487
Binger, OK 73009
Phone: 405.656.2901 Fax: 405.656.2386

Cherokee Nation of Oklahoma

Bill John Baker, Principal Chief
Attn: Richard Allen
P.O. Box 948
Tahlequah, OK 74465
Phone: 918.456.0671 Fax: 918.458.5580

Choctaw Nation of Oklahoma

Gregory E. Pyle, Chief
P.O. Drawer 1210
Durant, OK 74702

Ian Thompson
Tribal Historic Preservation Officer
P.O. Drawer 1210
Durant, OK 74701

Comanche Nation of Oklahoma

Wallace Coffey, Chairman
P.O. Box 908
Lawton, OK 73502
Phone: 580.492.4988 Fax: 580.492.3796

Jimmy Arterberry, Tribal Historic Preservation Officer
#6 SW "D" Ave., Suite A
Lawton, OK 73507
Phone: 580.595.9960, ext. 9618 Fax: 580.595.9733

Coushatta Tribe of Louisiana

Lovelin Poncho, Chairman

P.O. Box 818
Elton, LA 70532
Phone: 337.584.2261 Fax: 337.584.2998

Linda Langley, Tribal Historic Preservation Officer
P.O. Box 818
Elton, LA 70532
Phone: 337.584.1560

The Delaware Nation

C.J. Watkins, Acting President
Attn: Tamara Francis-Fourkiller
P.O. Box 825
Anadarko, OK 73005
Phone: 405.247.2448 Fax: 405.247.6329

Jicarilla Apache Nation

Ty Vicenti, President
P.O. Box 507
Dulce, NM 87528

Jeffrey Blythe
Tribal Historic Preservation Officer
P.O. Box 507
Dulce, NM 87528

Kialegee Tribal Town

Jeremiah Hobia, Mekko
Attn: Mary Givens
P.O. Box 332
Wetumka, OK 74883
Phone: 405.452.3262 Fax: 405.452.3413

Kickapoo Traditional Tribe of Texas

Don Spaulding, Tribal Administrator
Attn: Antonio Garza
162 Chick Kazen Street
Eagle Pass, TX 78852-2005
Phone: 830.773.2105 Fax: 830.757.9228

Kickapoo Tribe of Oklahoma

Gilbert Salazar, Chairperson
Attn: Historic Preservation Officer
P.O. Box 70
McLoud, OK 74851
Phone: 405.964.2075 Fax: 405.964.6211

Kiowa Tribe of Oklahoma

Amber Toppah, Chairperson
Attn: Amie Tah-Bone
P.O. Box 369
Carnegie, OK 73015
Phone: 580.654.2300 Fax: 580.654.2188

Mescalero Apache Tribe

Sandra Platero, President
P.O. Box 227
Mescalero, NM 88340
Phone: 575.464.4494 Fax: 575.464.9191

Holly Houghten, Tribal Historic Preservation Officer

P.O. Box 227
Mescalero, NM 88340
Phone: 575.464.3005 Fax: 575.464.3005

Muscogee (Creek) Nation

George Tiger, Principal Chief
P.O. Box 580
Okmulgee, OK 74447

Emman Spain
Tribal Historic Preservation Officer
P.O. Box 580
Ocmulgee, OK 74447

Osage Nation

The Honorable Scott Big Horse
Principal Chief
P.O. Box 779
Pawhuska, OK 74056

Andrea Hunter
Tribal Historic Preservation Officer
627 Grandview
Pawhuska, Oklahoma 74056

Poarch Band of Creek Indians

Buford L. Rolin, Chairman
5811 Jack Springs Rd.
Atmore, AL 36502
Phone: 251.368.9136 Fax: 251.368.1026

Robert Thrower, Tribal Historic Preservation Officer
5811 Jack Springs Rd.
Atmore, AL 36502
Phone: 251.368.9136, ext. 2656 Fax: 251.368.4502

Quapaw Tribe of Oklahoma

John L. Berrey, Chairman
P.O. Box 765
Quapaw, OK 74363
Phone: 918.542.1853 Fax: 918.542.4698

Jean Ann Lambert, Tribal Historic Preservation Officer
P.O. Box 765
Quapaw, OK 74363
Phone: 918.642.4724 Fax: 918.542.4694

Seminole Nation of Oklahoma

Leonard M. Harjo, Principal Chief
Attn: Natalie Harjo
P.O. Box 1498
Wewoka, OK 74884
Phone: 405.257.7200 Fax: 405.257.7209

Thlopthlocco Tribal Town

George Scott, Town King
Attn: Charles Coleman
P.O. Box 188
Okemah, OK 74859
Phone: 918.560.6198 Fax: 918.560.6196

Tonkawa Tribe of Oklahoma

Donald L. Patterson, President
1 Rush Buffalo Rd.
Tonkawa, OK 74653-4449
Phone: 580.628.2561 Fax: 580.628.3375

Tunica-Biloxi Tribe of Louisiana

Earl J. Barbry, Sr., Chairman
P.O. Box 1589
Marksville, LA 71351
Phone: 318.253.9767 Fax: 318.253.9791

Earl J. Barbry, Jr., Tribal Historic Preservation Officer
P.O. Box 1589
Marksville, LA 71351
Phone: 318.253.8174 Fax: 318.253.7711

United Keetoowah Band of Cherokee Indians

George Wickliffe, Chief
Attn: Lisa C. Baker
P.O. Box 746
Tahlequah, OK 74465
Phone: 918.431.1818 Fax: 918.431.1873

Wichita and Affiliated Tribes

Terri Parton, President
P.O. Box 729
Anadarko, OK 73005
Phone: 405.247.2425 Fax: 405.247.2430

Ysleta Del Sur Pueblo of Texas

Frank Paiz, Governor
Attn: Javier Loera
119 S. Old Pueblo Rd.
El Paso, TX 79907

Appendix A - Examples of Archeological Resources

Surface or subsurface structures, shelters, facilities, or features, including, but not limited to

- domestic structures
- storage structures
- cooking structures
- ceremonial structures
- artificial mounds
- earthworks
- fortifications
- canals
- reservoirs
- gardens or fields
- bedrock mortars
- grinding surfaces
- rock alignments
- cairns
- trails
- borrow pits
- cooking pits
- refuse pits
- burial pits or graves
- hearths
- kilns
- post molds
- wall trenches
- middens
- Surface or subsurface artifact concentrations or scatters
- Whole or fragmentary tools, implements, containers, weapons or weapon projectiles, clothing, and ornaments, including, but not limited to:
 - pottery
 - other ceramics
 - cordage
 - basketry

- other weaving
- bottles
- other glassware
- bone
- ivory
- shell
- metal
- wood
- hide
- feathers
- pigments
- flaked stone
- ground stone
- pecked stone
- By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials
- Organic waste, including, but not limited to: vegetal and animal remains, coprolites
- Human remains, including, but not limited to: bone, teeth, mummified flesh, burials, cremations
- Rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation
- Rock shelters and caves or portions thereof containing any of the above material remains
- All portions of shipwrecks, including, but not limited to: armaments, apparel, tackle, cargo
- Any portion or piece of any of the foregoing