



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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 SECRETARY OF THE
 COMMISSION
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 FEDERAL ENERGY
 REGULATORY COMMISSION

April 4, 2013

Kimberly D. Bose, Secretary
 Federal Energy Regulatory Commission
 888 First Street NE, Room 1A
 Washington, DC 20426

ORIGINAL

Subject: Detailed Scoping Comments for Preparing an Environmental Impact Statement (EIS) for the Proposed Excelerate Liquefaction Solutions, LLC and Lavaca Bay Pipeline System, LLC, Liquefied Natural Gas (LNG) Export Project, located in Calhoun and Jackson Counties, Texas

Dear Ms. Bose:

The Region 6 office of the U.S. Environmental Protection Agency (EPA) has reviewed the March 12, 2013, NOI to prepare an EIS for the proposed Excelerate Liquefaction Solutions, LLC and Lavaca Bay Pipeline System, LLC, LNG Export Project, located in Calhoun and Jackson counties, Texas. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

To assist in the scoping process for this project, we have identified several issues for your attention in the preparation of the EIS and enclosed detailed scoping comments for your consideration. EPA is most concerned about the following issues: mitigation, alternative development, impacts to water and biological resources, invasive species management, habitat protection, air quality, Greenhouse Gas (GHG) and National Pollutant Discharge Elimination System (NPDES) permitting, cumulative impacts, climate change, and environmental justice.

We appreciate the opportunity to review this NOI and are available to discuss our comments. Please send one hard copy of the Draft EIS and four CD ROM copies to this office when completed and submitted for public comment. If you have any questions, please contact Rhonda Smith or Michael Jansky of my staff at (214) 665-8006 or (214) 665-7451; or by e-mail at smith.rhonda@epa.gov or jansky.michael@epa.gov, respectively. You may now electronically file you EIS using our *e-NEPA Electronic Filing* by linking to EPA's web site at <http://www.epa.gov/compliance/nepa/submiteis/index.html>.

Sincerely,

Debra A. Griffin
 Associate Director
 Compliance Assurance and
 Enforcement Division

Enclosure

**DETAILED SCOPING COMMENTS
ON THE
NOTICE OF INTENT (NOI)
FOR THE FEDERAL ENERGY REGULATORY COMMISSION (FERC)
TO PREPARE AN
ENVIRONMENTAL IMPACT STATEMENT (EIS)
FOR THE PROPOSED
EXCELERATE LIQUEFACTION SOLUTIONS (ELS)
LAVACA BAY PIPELINE SYSTEM
CALHOUN AND JACKSON COUNTIES, TEXAS**

Proposed Action

In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Federal Energy and Regulatory Commission (FERC) intends to prepare an Environmental Impact Statement (EIS) analyzing the impacts of the proposed Excelerate Liquefaction Solutions, LLC and Lavaca Bay Pipeline System, LLC, Liquefied Natural Gas (LNG) Export Project located in Calhoun and Jackson counties, Texas. This EIS will be used by FERC in its decision making process to determine whether the project is in the public interest. FERC will serve as the lead Federal agency under the NEPA process and is responsible for the preparation of the EIS.

Project Components

ELS plans to develop, construct, and operate LNG terminal facilities that include two purpose-built floating liquefaction, storage, and offloading units (FLSOs) and a 29-mile long pipeline header system to transport natural gas from existing pipeline systems to the LNG terminal facilities. The project would be constructed in two phases:

Phase 1 would include a single FLISO with a storage capacity of about 250,000 cubic meters (m³) of LNG and the capacity to produce up to four million tons per annum (MTPA), nominally of natural gas. Phase 2 would include facilities to support a second FLISO that would double the production to eight MTPA, nominally.

The Lavaca Bay LNG Project would consist of the following facilities:

- Two double-hulled, permanently moored, FLISOs, each containing 10 LNG storage tanks, four 1 MTPA system trains for liquefaction, centrifugal refrigerant compressors, and associated infrastructure;
- Mooring structures and fenders to provide support for the FLISOs and LNG carriers;
- A new 2,218-foot-diameter turning basin dredged to a depth of 45.5 feet below the site datum located adjacent to the existing Matagorda Ship Channel;
- Two berthing pockets each 450 feet wide by 1,310 feet long dredged to a depth of 60.5 feet below the site datum; and

- A 3,200-foot-long jetty with two reinforced concrete decked piers located adjacent to the turning basins. ELS would deepen and widen the Matagorda Ship Channel to a depth of 44 feet mean low tide and a channel bottom width up to 300 feet.
- A pig 1 launcher and receiver;
- Feed gas metering, compression, and pre-treatment;
- An inlet bulk separator;
- A condensate storage tank;
- A power generation system;
- A cooling water system and instrument air package;
- A cold vent/ground flare;
- A fire water system and water treatment plant; and
- Support buildings, including offices, control room, warehouse, and shop.
- A 29-mile-long, 42-inch-diameter natural gas pipeline extending northward from the shore side facilities to nine natural gas interconnects southwest of Edna, Texas.

The planned LNG terminal facilities (i.e., marine and shore side facilities) would be constructed on about 85 acres of land. Of this amount, about 45 acres includes existing uplands and the remaining 40 acres would be created using dredge spoil from construction of the turning basin and two berthing pockets. Construction of the pipeline header system would require about 327 acres of land for construction and 164 acres for operation. The Project would also require approximately 150 additional acres for temporary use for construction laydown/staging areas and parking areas.

The following detailed comments are offered for your consideration and incorporation into your Draft EIS (DEIS).

DETAILED COMMENTS

Statement of Purpose and Need

The DEIS should clearly identify the underlying purpose and need to which the FERC is responding in proposing the alternatives (40 CFR 1502.13). The purpose of the proposed action is typically the specific objectives of the activity, while the need for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity.

Recommendation:

The purpose and need should be a clear, objective statement of the rationale for the proposed project. The DEIS should discuss the proposed project in the context of the LNG supply and the need for an additional export capabilities.

Alternatives Analysis

The National Environmental Policy Act (NEPA) requires evaluation of reasonable alternatives, including those that may not be within the jurisdiction of the lead agency (40 CFR Section 1502.14(c)). A robust range of alternatives will include options for avoiding significant environmental impacts. The DEIS should provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail.

The environmental impacts of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g., acres of bay bottom impacted, tons per year of emissions produced).

Recommendations:

The DEIS should describe how each alternative was developed, how it addresses each project objective, and how it will be implemented. The alternatives analysis should include a discussion of alternatives. The DEIS should clearly describe the rationale used to determine whether impacts of an alternative are significant or not. The DEIS should describe the methodology and criteria used for determining project siting. Thresholds of significance should be determined by considering the context and intensity of an action and its effects (40 CFR 1508.27).

Water Supply and Water Quality

Public drinking water supplies and/or their source areas often exist in many watersheds. Source water is water from streams, rivers, lakes, springs, and aquifers that is used as a supply of drinking water. Source water areas are delineated and mapped by the state for each federally-regulated public water system. The 1996 amendments to the Safe Drinking Water Act require federal agencies to protect sources of drinking water for communities. The DEIS should address the potential effects of project discharges, if any, on surface water quality. Specific discharges should be identified and potential effects of discharges on designated beneficial uses of affected waters should be analyzed.

Recommendations:

The DEIS should address the potential effects of project discharges, if any, on surface water quality. Specific discharges should be identified and potential effects of discharges on designated beneficial uses of affected waters should be analyzed.

The DEIS should describe water reliability for the proposed project and clarify how existing and/or proposed sources may be affected by climate change. At a minimum, the EPA expects a qualitative discussion of impacts to water supply and the adaptability of the project to these changes.

Stormwater Considerations

The DEIS should describe the original (natural) drainage patterns in the project locale, as well as the drainage patterns of the area during project operations. Also, the DEIS should identify whether any components of the proposed project are within a 50 or 100-year floodplain. The DEIS should note that, under the Federal Clean Water Act, any construction project disturbing a land area of one or more acres requires a construction stormwater discharge permit.

Recommendations:

The DEIS should document the project's consistency with applicable stormwater permitting requirements. Requirements of a stormwater pollution prevention plan should be reflected as appropriate in the DEIS.

The DEIS should discuss specific mitigation measures that may be necessary or beneficial in reducing adverse impacts to water quality and aquatic resources.

Geographic Extent of Waters of the United States

The project applicant should coordinate with the U.S. Army Corps of Engineers to determine if the proposed project requires a Section 404 permit under the Clean Water Act (CWA). Section 404 regulates the discharge of dredged or fill material into waters of the United States (WUS), including wetlands and other *special aquatic sites*.

EPA recommends that FERC include a jurisdictional delineation for all WUS, including ephemeral drainages, in accordance with the 1987 *Corps of Engineers Wetlands Delineation Manual* and the December 2006 *Atlantic and Gulf Coast Region Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual*. A jurisdictional delineation will confirm the presence or absence of WUS in the project area and help determine whether or not the proposed project would require a Section 404 permit.

If a permit is required, the EPA will review the project for compliance with *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* (40 CFR 230), promulgated pursuant to Section 404(b)(1) of the CWA. Pursuant to 40 CFR 230, any permitted discharge into WUS must be the *least environmentally damaging practicable alternative* available to achieve the project purpose. The DEIS should include an evaluation of the project alternatives in this context in order to demonstrate the project's compliance with the 404(b)(1) Guidelines. If, under the proposed project, dredged or fill material would be discharged into WUS, the DEIS should discuss alternatives to avoid those discharges.

Recommendation:

The FERC should consult with the USACE to determine if there are jurisdictional waters of the U.S. present at the project site. If jurisdictional WUS are determined to be on the project site, the DEIS should include a final determination of the extent of WUS at the project site and address any other relevant requirements, pursuant to the CWA Section 404 (b)(1).

Clean Water Act (CWA) Section 303(d)

The CWA requires States to develop a list of impaired waters that do not meet water quality standards, establish priority rankings, and develop action plans, called Total Maximum Daily Loads (TMDL), to improve water quality. The DEIS should provide information on CWA Section 303(d) impaired waters in the project area, if any, and efforts to develop and revise TMDLs. The DEIS should describe existing restoration and enhancement efforts for those waters, and any mitigation measures that will be implemented to avoid further degradation of impaired waters.

Recommendation:

The DEIS should provide information on CWA Section 303(d) impaired waters in the project area, if any, and efforts to develop and revise TMDLs. The DEIS should describe existing restoration and enhancement efforts for those waters, how the proposed project will coordinate with on-going protection efforts, and any mitigation measures that will be implemented to avoid further degradation of impaired waters.

Biological Resources, Habitat and Wildlife

The DEIS should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area, including any areas. The DEIS should identify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative and describe possible mitigation for each of the species. EPA recommends that the FERC consultation with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act include consideration of all impacts related to EPA's Greenhouse Gas (GHG) Prevention of Significant Deterioration (PSD) permitting action and/or National Pollutant Discharge Elimination System (NPDES) permitting actions. We also recommend that the FERC coordinate across field offices and with USFWS, NMFS, and the Texas Parks and Wildlife Department (TPWD) to ensure that current and consistent surveying, monitoring, and reporting protocols are applied in protection and mitigation efforts.

Recommendations:

EPA recommends that FERC coordinate across field offices and with the USFWS,

NMFS and TPWD to ensure that current and consistent surveying, monitoring, and reporting protocols are applied in protection and mitigation efforts.

Analysis of impacts and mitigation on covered species should include:

- Baseline conditions of habitats and populations of the covered species.
- A clear description of how avoidance, mitigation and conservation measures will protect and encourage the recovery of the covered species and their habitats in the project area.
- Monitoring, reporting and adaptive management efforts to ensure species and habitat conservation effectiveness.
- A discussion of how the projects potential impacts such as air emissions and/or wastewater discharges may impact species.

If the applicant is to acquire compensation lands, the location(s) and management plans for these lands should be discussed in the DEIS.

Recommendations:

Incorporate, into the DEIS, information on the compensatory mitigation proposals (including quantification of acreages, estimates of species protected, costs to acquire compensatory lands, etc.) for unavoidable impacts to WUS and biological resources.

Identify compensatory mitigation lands or quantify, in the DEIS, available lands for compensatory habitat mitigation for this project, as well as reasonably foreseeable projects in the area. Specify, in the DEIS, provisions that will ensure habitat selected for compensatory mitigation will be protected in perpetuity.

Incorporate, into the DEIS, mitigation, monitoring, and reporting measures that result from consultation with the USFWS or NMFS that incorporate recently released guidance to avoid and minimize adverse effects to sensitive biological resources.

The DEIS should describe the potential for habitat fragmentation and obstructions for wildlife movement from the construction of this project and other projects in the area.

Discuss the need for monitoring, mitigation, and if applicable, translocation management plans for the sensitive biological resources, approved by the USFWS, NMFS and the biological resource management agencies.

EPA is also concerned about the potential impact of construction, installation, and maintenance activities (deep trenching, grading, filling, and fencing) on habitat. The DEIS should describe the extent of these activities and the associated impacts on habitat and threatened and endangered species, including all interrelated and interdependent facilities. We encourage habitat conservation alternatives that avoid and protect high value habitat and create or preserve linkages between habitat areas to better conserve the covered species.

Recommendations:

The DEIS should describe the extent of potential impacts from construction, installation, and maintenance activities, including all interrelated and interdependent facilities.

The DEIS should describe the ROW vegetation management techniques to be used and potential associated environmental impacts, especially if mechanical methods or herbicides are to be used.

The DEIS should indicate the location of important marine and wildlife habitat areas. The DEIS should describe what measures will be taken to protect important wildlife habitat areas and to preserve linkages between them.

The DEIS should provide detailed information on any proposed fencing design and placement, and its potential effects on drainage systems on the project site. Fencing proposed for this project should meet appropriate hydrologic, wildlife protection and movement, and security performance standards.

Invasive Species

Human actions are the primary means of invasive species introductions. Pipeline construction causes disturbance of ROW soils and vegetation through the movement of people and vehicles along the ROW, access roads, and lay down areas. These activities can contribute to the spread of invasive species. Parts of plants, seeds, and root stocks can contaminate construction equipment and essentially “seed” invasive species wherever the vehicle travels. Invasive species infestations can also occur during periodic ROW maintenance activities especially if these activities include mowing and clearing of vegetation. Once introduced, invasive species will likely spread and impact adjacent properties with the appropriate habitat.

Executive Order 13112, *Invasive Species* (February 3, 1999), mandates that federal agencies take actions to prevent the introduction of invasive species, provide for their control, and minimize the economic, ecological, and human health impacts that invasive species cause. Executive Order 13112 also calls for the restoration of native plants and tree species. If the proposed project will entail new landscaping, the DEIS should describe how the project will meet the requirements of Executive Order 13112.

In addition, we encourage alternative management practices that limit herbicide use (as a last resort), focusing instead on other methods to limit invasive species vegetation and decrease fire risk. Possible alternatives include mowing and weed control fabric, which may need a layer of soil to prevent degradation due to ultraviolet light.

Recommendations:

The DEIS should describe the invasive plant management plan used to monitor and control noxious weeds. If herbicides or pesticides will be used to manage vegetation, the DEIS should disclose the projected quantities and types of chemicals. The invasive plant

management plan should identify methods that can be used to limit the introduction and spread of invasive species during and post-construction. These measures can include marking and avoidance of invasives, timing construction activities during periods that would minimize their spread, proper cleaning of equipment, and proper disposal of woody material removed from the ROW.

Because construction measures may not be completely effective in controlling the introduction and spread of invasives, the DEIS should describe post-construction activities that will be required such as surveying for invasive species following restoration of the construction site and measures that will be taken if infestations are found.

Air Quality

The DEIS should provide a detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards (NAAQS) and non-NAAQS pollutants, criteria pollutant nonattainment areas, and potential air quality impacts of the proposed project (including cumulative and indirect impacts). Such an evaluation is necessary to understand the potential impacts from temporary, long-term, or cumulative degradation of air quality.

The DEIS should describe and estimate air emissions from potential construction and maintenance activities, as well as proposed mitigation measures to minimize those emissions. EPA recommends an evaluation of the following measures to reduce emissions of criteria air pollutants and hazardous air pollutants (air toxics).

Recommendations:

- *Existing Conditions* – The DEIS should provide a detailed discussion of ambient air conditions, National Ambient Air Quality Standards, and criteria pollutant nonattainment areas in the vicinity of the project.
- *Quantify Emissions* – The DEIS should estimate emissions of criteria and hazardous air pollutants (air toxics) from the proposed project and discuss the timeframe for release of these emissions over the lifespan of the project. The EIS should describe and estimate emissions from potential construction activities, as well as proposed mitigation measures to minimize these emissions.
- *Specify Emission Sources* – The DEIS should specify all emission sources by pollutant from mobile sources (on and off-road), stationary sources (including portable and temporary emission units), fugitive emission sources, area sources, and ground disturbance. This source specific information should be used to identify appropriate mitigation measures and areas in need of the greatest attention.
- *Construction Emissions Mitigation Plan* – The DEIS should include a draft Construction Emissions Mitigation Plan and ultimately adopt this plan in the Record

of Decision. In addition to all applicable local, state, or federal requirements, we recommend the following control measures (Fugitive Dust, Mobile and Stationary Source and Administrative) be included in the Construction Emissions Mitigation Plan in order to reduce impacts associated with emissions of particulate matter and other toxics from construction-related activities:

- **Fugitive Dust Source Controls:** The DEIS should identify the need for a Fugitive Dust Control Plan to reduce Particulate Matter 10 and Fine Particulate Matter 2.5 emissions during construction and operations. We recommend that the plan include these general commitments:
 - Stabilize heavily used unpaved construction roads with a non-toxic soil stabilizer or soil weighting agent that will not result in loss of vegetation, or increase other environmental impacts.
 - During grading, use water, as necessary, on disturbed areas in construction sites to control visible plumes.
 - Vehicle Speed
 - Limit speeds to 25 miles per hour on stabilized unpaved roads as long as such speeds do not create visible dust emissions.
 - Limit speeds to 10 miles per hour or less on unpaved areas within construction sites on un-stabilized (and unpaved) roads.
 - Post visible speed limit signs at construction site entrances.
 - Inspect and wash construction equipment vehicle tires, as necessary, so they are free of dirt before entering paved roadways, if applicable.
 - Provide gravel ramps of at least 20 feet in length at tire washing/cleaning stations, and ensure construction vehicles exit construction sites through treated entrance roadways, unless an alternative route has been approved by appropriate lead agencies, if applicable.
 - Use sandbags or equivalent effective measures to prevent run-off to roadways in construction areas adjacent to paved roadways. Ensure consistency with the project's Storm Water Pollution Prevention Plan, if such a plan is required for the project
 - Sweep the first 500 feet of paved roads exiting construction sites, other unpaved roads en route from the construction site, or construction staging areas whenever dirt or runoff from construction activity is visible on paved roads, or at least twice daily (less during periods of precipitation).
 - Stabilize disturbed soils (after active construction activities are completed) with a non-toxic soil stabilizer, soil weighting agent, or other approved soil stabilizing method.
 - Cover or treat soil storage piles with appropriate dust suppressant compounds and disturbed areas that remain inactive for longer than 10 days. Provide vehicles (used to transport solid bulk material on public roadways and that have potential to cause visible emissions) with covers. Alternatively, sufficiently wet and load materials onto the trucks in a manner to provide at least one foot of freeboard.

- Use wind erosion control techniques (such as windbreaks, water, chemical dust suppressants, and/or vegetation) where soils are disturbed in construction, access and maintenance routes, and materials stock pile areas. Keep related windbreaks in place until the soil is stabilized or permanently covered with vegetation.
- Mobile and Stationary Source Controls:
- If practicable, lease new, clean equipment meeting the most stringent of applicable Federal¹ or State Standards². In general, commit to the best available emissions control technology. Tier 4 engines should be used for project construction equipment to the maximum extent feasible³.
 - Where Tier 4 engines are not available, use construction diesel engines with a rating of 50 hp or higher that meet, at a minimum, the Tier 3 California Emission Standards for Off-Road Compression-Ignition Engines⁴, unless such engines are not available.
 - Where Tier 3 engine is not available for off-road equipment larger than 100 hp, use a Tier 2 engine, or an engine equipped with retrofit controls to reduce exhaust emissions of nitrogen oxides and diesel particulate matter to no more than Tier 2 levels.
 - Consider using electric vehicles, natural gas, biodiesel, or other alternative fuels during construction and operation phases to reduce the project's criteria and greenhouse gas emissions.
 - Plan construction scheduling to minimize vehicle trips.
 - Limit idling of heavy equipment to less than 5 minutes and verify through unscheduled inspections.
 - Maintain and tune engines per manufacturer's specifications to perform at CARB and/or EPA certification levels, prevent tampering, and conduct unscheduled inspections to ensure these measures are followed.
- Administrative controls:
- Develop a construction traffic and parking management plan that maintains traffic flow and plan construction to minimize vehicle trips.
 - Identify any sensitive receptors in the project area, such as children, elderly, and the infirm, and specify the means by which impacts to these populations will be minimized (e.g. locate construction equipment and staging zones away from sensitive receptors and building air intakes).

¹ EPA's website for nonroad mobile sources is <http://www.epa.gov/nonroad/>.

² For California, see ARB emissions standards, see: <http://www.arb.ca.gov/msprog/offroad/offroad.htm>.

³ Diesel engines < 25 hp rated power started phasing in Tier 4 Model Years in 2008. Larger Tier 4 diesel engines will be phased in depending on the rated power (e.g., 25 hp - <75 hp: 2013; 75 hp - < 175 hp: 2012-2013; 175 hp - < 750 hp: 2011 - 2013; and \geq 750 hp 2011- 2015).

- Include provisions for monitoring fugitive dust in the fugitive dust control plan and initiate increased mitigation measures to abate any visible dust plumes.

Climate Change

Scientific evidence supports the concern that continued increases in greenhouse gas emissions resulting from human activities will contribute to climate change. Global warming is caused by emissions of carbon dioxide and other heat-trapping gases. On December 7, 2009, the EPA determined that Greenhouse Gases (GHG)s contribute to air pollution that “endangers public health and welfare” within the meaning of the Clean Air Act. Higher temperatures and increased winter rainfall will be accompanied by a reduction in snow pack, earlier snowmelts, and increased runoff. Some of the impacts, such as reduced groundwater discharge, and more frequent and severe drought conditions, may impact the proposed projects. The DEIS should consider how climate change could potentially influence the proposed project, specifically within sensitive areas, and assess how the projected impacts could be exacerbated by climate change.

Recommendation:

The DEIS should consider how climate change could potentially influence the proposed project, specifically within sensitive areas. Also, the DEIS should assess how the projected impacts could be exacerbated by climate change, and strategies for climate change adaptation planning. For example, measures for climate change adaptation should consider potentially increased drainage needs.

Greenhouse Gas (GHG) Emissions

On February 18, 2010, the CEQ issued draft guidance to Federal Agencies on analyzing the effects of Greenhouse Gas (GHG) emissions and climate change when describing the environmental effects of a proposed agency action in accordance with NEPA CEQ's draft guidance defines GHG emissions in accordance with Section 19(i) of *E.O. 13514 Federal Leadership in Environment, Energy, and Economic Performance (October 5, 2009)* to include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorcarbon (HFCs), perfluorcarbon (PFCs), and sulfurhexafluoride (SF₆). Because CO₂ is the reference gas for climate change based on their potential to absorb heat in the atmosphere, measures of non-CO₂ GHGs should be reflected as CO₂-equivalent (CO₂e) values. The EPA supports evaluation and disclosure of GHG emissions and climate change effects resulting from the proposed project during all project phases, including (1) pre-construction (e.g., transportation, mobilization, and staging), (2) construction, (3) operation, (4) maintenance, and (5) decommissioning. We recommend that the GHG emission accounting/inventory include each proposed stationary source (e.g., power plant, liquefaction facility, compressor and metering stations, etc.) and mobile emission source (e.g., heavy equipment, supply barges, rail transports, etc.). We also recommend that the DEIS establish reasonable spatial and temporal boundaries for this analysis, and that the DEIS quantify and disclose the expected annual direct and indirect GHG emissions for the proposed action. In the analysis of direct effects, we recommend that the DEIS quantify cumulative emissions over the life of the project, discuss measures to reduce GHG emissions, including consideration of reasonable alternatives. EPA recommends that the DEIS consider mitigation measures and reasonable alternatives to reduce action related GHG emissions, and include

a discussion of cumulative effects of GHG emissions related to the proposed action.

Recommendation:

EPA recommends that this discussion focus on an assessment of annual and cumulative emissions of the proposed action and the difference in emissions associated with the alternatives. In addition, GHG emission sources in the petroleum and natural gas industry are required to report GHG emissions under 40CFR Part 98 (subpart W), the Greenhouse Gas Reporting Program. Consistent with draft CEQ guidance, we recommend that this information be included in the DEIS for consideration by decision makers and the public. Please see <http://www.epa.gov/climatechange/emissions/ghgmlemaking.html>.

GHG and NPDES Permitting and Informational Needs

We believe there is a potential that Excelerate's proposed project will require a GHG Prevention of Significant Deterioration (PSD) permit under the Clean Air Act and a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act. The NPDES permitting concern relates to operations and any special construction aspects not associated with stormwater such as needed hydrostatic test discharges for related pipelines and tanks; thermal discharges such as cooling waters impacts to receiving streams and their aquatic communities; and impacts of cooling water intake structures to Essential Fish Habitat (EFH). EPA Region 6 is the permitting authority for these permits in Texas, and we would appreciate the opportunity to meet with FERC staff and the applicant to discuss this permitting issues. If it is ultimately decided that these permits are required, we would like to be a Cooperating Agency with FERC in the preparation of this EIS, and to join with FERC in any consultations regarding compliance with the Endangered Species Act, the National Historic Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act in order to help support our permit decisions.

Hazardous Materials/Hazardous Waste/Solid Waste

The DEIS should address potential direct, indirect and cumulative impacts of hazardous waste from construction and operation of the proposed transmission line and other facilities. The document should identify projected hazardous waste types and volumes, and expected storage, disposal, and management plans. It should address the applicability of state and federal hazardous waste requirements. Appropriate mitigation should be evaluated, including measures to minimize the generation of hazardous waste (i.e., hazardous waste minimization). Alternate industrial processes using less toxic materials should be evaluated as mitigation since such processes could reduce the volume or toxicity of hazardous materials requiring management and disposal as hazardous waste.

Indirect Impacts

Per CEQ regulations at CFR 1508.8(b), the indirect effects analysis "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." The 2012 report from the Energy Information Administrations states that, "natural gas

markets in the United States balance in response to increased natural gas exports largely through increased natural gas production." That report also notes that about three-quarters of that increased production would be from shale resources. We recommend that FERC consider available information about the extent to which drilling activity might be stimulated by the construction of an LNG export facility on the Gulf coast, and any potential environmental effects associated with that drilling expansion.

Cumulative and Indirect Impacts

The cumulative impacts analysis should identify how resources, ecosystems, and communities in the vicinity of the project have already been, or will be, affected by past, present, or future activities in the project area. These resources should be characterized in terms of their response to change and capacity to withstand stresses. Trends data should be used to establish a baseline for the affected resources, to evaluate the significance of historical degradation, and to predict the environmental effects of the project components.

For the cumulative impacts assessment, we recommend focusing on resources of concern or resources that are "at risk" and/or are significantly impacted by the proposed project, before mitigation. For this project, the FERC should conduct a thorough assessment of the cumulative impacts, especially in the context of the other developments occurring and proposed in the area, including pending and proposed projects for which EPA may issue permits.

Recommendations:

The DEIS should consider the cumulative impacts associated with other development projects proposed in the area and the potential impacts on various resources including: air quality, water quality, water supply, threatened and endangered species, and terrestrial and aquatic habitats.

Coordination with Tribal Governments

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000), was issued in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian tribes. If applicable, the DEIS should describe the process and outcome of government-to-government consultation between the FERC and with any and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative.

Recommendation:

The DEIS should describe the process and outcome of government-to-government consultation between the FERC and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative.

National Historic Preservation Act and Executive Order 13007(NRHA)

Consultation for tribal cultural resources is required under Section 106 of the National Historic Preservation Act. Historic properties under the NHPA are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, consult with the appropriate State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO), Indian tribes, or any other interested party. Under NEPA, any impacts to tribal, cultural, or other treaty resources must be discussed and mitigated. Section 106 of the NHPA requires that Federal agencies consider the effects of their actions on cultural resources, following regulation in 36 CFR 800.

Recommendation:

The DEIS should address the existence of cultural and historic resources, including Indian sacred sites, in the project areas, and address compliance with Section 106 of the NHPA. It should also address Executive Order 13007, distinguish it from Section 106 of the NHPA, and discuss how the applicant will avoid adversely affecting the physical integrity, accessibility, or use of sacred sites, if they exist. The DEIS should provide a summary of all coordination with Tribes, the SHPO/THPO, or any other party; and identify all NRHP listed or eligible sites, and the development of a Cultural Resource Management Plan.

Environmental Justice and Impacted Communities

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994) and the Interagency Memorandum of Understanding on Environmental Justice (August 4, 2011) direct federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process. Guidance⁵ by CEQ clarifies the terms low-income and minority population (which includes Native Americans) and describes the factors to consider when evaluating disproportionately high and adverse human health effects. The DEIS should include an evaluation of environmental justice populations within the geographic scope of the projects. Assessment of the projects impact on minority and low-income populations should reflect coordination with those affected populations. The DEIS should also describe outreach conducted to all other communities that could be affected by the project, since rural communities may be among the most vulnerable to health risks associated with the project.

Recommendations:

The DEIS should include an evaluation of environmental justice populations within the geographic scope of the projects. If such populations exist, the DEIS should address the

⁵ Environmental Justice Guidance under the National Environmental Policy Act, Appendix A (Guidance for Federal Agencies on Key Terms in Executive Order 12898), CEQ, December 10, 1997.

potential for disproportionate adverse impacts to minority and low-income populations, and the approaches used to foster public participation by these populations. Assessment of the projects impact on minority and low-income populations should reflect coordination with those affected populations.

The DEIS should describe outreach conducted to all other communities that could be affected by the project, since rural communities may be among the most vulnerable to health risks associated with the project.

Coordination with Land Use Planning Activities

The DEIS should discuss how the proposed action would support or conflict with the objectives of federal, state, tribal or local land use plans, policies and controls in the project areas. The term "land use plans" includes all types of formally adopted documents for land use planning, conservation, zoning and related regulatory requirements. Proposed plans not yet developed should also be addressed if they have been formally proposed by the appropriate government body in a written form (CEQ's Forty Questions, #23b).

Eminent domain

Because eminent domain laws vary from state to state, and the proposed pipeline will require many acres for easements and ROW, the DEIS should consider eminent domain issues during the evaluation of potential corridors. The findings should be documented in the DEIS.

Recommendations:

EPA recommends that the DEIS discuss the applicable eminent domain authority for the pipeline ROW.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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REGIONAL ENERGY
REGULATORY COMMISSION

IN REPLY REFER TO
2800 (ORV040)

APR 04 2013

Dear Interested Public:

This courtesy letter provides a Notice of Internet Availability that the Malheur Resource Area, Vale District BLM, has completed an Environmental Assessment (DOI-BLM-OR-V040-2012-015-EA), Finding of No Significant Impact (FONSI) and Decision Record (DR) identifying the proposed construction to realign approximately 1700 feet of Beulah Road (County Road #510), 900 of which is on BLM administered land, 12 miles north of Juntura, OR. The proposed action will be implemented in accordance with and subject to the guiding land use plan - the Southeastern Oregon Resource Management Plan and Final EIS.

The EA, FONSI, and DR can be viewed on the Vale District website at the following location:
<http://www.blm.gov/or/districts/vale/plans/index.php>.

Persons named in the Copies sent to: sections of this notification are considered to be persons "named in the decision from which the appeal is taken." Thus, copies of a notice of appeal and petition for a stay must also be served on these parties, in addition to any party who is named elsewhere in the decision (see 43 CFR 4.413(a) & 43 CFR 4.21(b) (3)) and the appropriate Office of the Solicitor (see 43 CFR 4.413(a), (c)) at the same time the original documents are filed with this office. For privacy reasons, if the decision is posted on the internet, the Copies sent to: section will be attached to a notification of internet availability and persons named in that section are also considered to be persons "named in the decision from which the appeal is taken."

If you wish to receive hard copies of these documents, or wish to be removed from the mailing list please call the District Office at 541-473-3144.

Sincerely,

Thomas Patrick "Pat" Ryan
Field Manager
Malheur Resource Area

ND

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