

Draft Tiered Site-Specific Environmental Assessment

Port of Brownsville - Dock  
Construction, Pilings Installation, Boat  
Lift Project  
Brownsville, Texas

Port Security Grant Program  
Project # 2010-PU-T0-0118-IJ#2 (7058)

*September 2012*



**Federal Emergency Management Agency**  
**Department of Homeland Security**  
500 C Street, SW  
Washington, DC 20472

## **I. Background**

In accordance with 44 Code of Federal Regulations (CFR) for the Federal Emergency Management Agency (FEMA), Subpart B, Agency Implementing Procedures, Part 10.9, a Programmatic Environmental Assessment (PEA) for Grant Programs Directorate Programs was prepared and a Finding of No Significant Impacts (FONSI) was issued in July 2010 (Appendix B), pursuant to Section 102 of the National Environmental Policy Act (NEPA) of 1969, as implemented by the regulations promulgated by the President's Council on Environmental Quality (CEQ; 40 CFR Parts 1500-1508). This Tiered Site-Specific Environmental Assessment (SEA) is being prepared in accordance the July 2010 PEA. The focus of this Tiered SEA is on those areas of concern requiring additional discussion or analysis that are beyond the scope of the PEA.

The proposed project will involve the construction of approximately 100 feet of small vessel docks that will be use primarily by the Port of Brownsville Police Department, but will also provide space for U.S. Coast Guard (USCG) vessels, as well as the Texas Parks and Wildlife and General Land Office (GLO) vessels located at the end of the Brownsville Ship Channel in the Port of Brownsville, Brownsville, Texas (Latitude: 25.952125, Longitude: -97.403101) (Appendix A).

## **II. Purpose and Need**

The Brownsville Navigation District has applied for Port Security Grant Program funding under application number 2010-PU-T0-0118-IJ#2 (7058). The purpose of this program is to provide for activities which help to enhance the security and safety of ports in the United States.

The Port of Brownsville receives an annual average of 173 foreign flagged vessels, 85 petroleum product tankers, 506 various product barges (including petroleum products, containers carriers and construction material transporters), and is home to one of the largest shrimp fleets on the Gulf Coast. The port also supports a large infrastructure including one of the world's largest manufacturer of drilling vessels, petroleum storage facilities, and terminal switching railroad operations. In addition, there are three large-scale commercial ports in the vicinity of the Port of Brownsville.

Currently, the Port of Brownsville has very limited means of controlling access to the Main Ship Channel. The Port of Brownsville has no means interdicting a vessel-borne improvised explosive device (IED) attack in the channel, and the Port of Brownville cannot quickly deploy its' patrol boat.

To deploy maritime assets within the commercial portion of the Brownsville Ship Channel, the Port of Brownsville must tow their vessel from dry storage and use an existing ramp, that is in poor condition, to launch the vessel. This process wastes valuable time during times of possible response activities. This process also limits the amount and duration of patrol operations the Port Police undertakes, as well as leaves the Port of Brownsville Police Officers vulnerable during launching operations.

The Brownsville Navigation District has indicated that there is a need to increased presence of law enforcement on the water to improve the level of security due to many small crafts, primarily private fishing vessels, routinely enter the ship channel, which is not designated a security zone. An increased presence of law enforcement would improve the Port Police ability to screen for possible threats to the maritime domain and conduct waterside searches of port infrastructure.

### **III. Alternatives**

Two project alternatives are proposed in this SEA: 1) No Action and 2) Proposed Action Alternative – the construction of approximately 100 feet of small vessel docks with boatlifts and piling installation at the Port of Brownsville.

Under the No Action Alternative, no changes would be made to the existing site. As a result of this alternative, the Port of Brownsville would continue to lack the ability to quickly and safely deploy the current Port of Brownsville Police vessel. This increases the port’s vulnerability to potential vessel borne IED attack in the main Brownsville Ship Channel.

The Proposed Action Alternative will involve the approximately 100 feet of small vessel docks with boat lifts and piling installation to be used primarily by the Port of Brownsville Police Department, but will also provide space for USCG vessels, as well as the Texas Parks and Wildlife and Texas General Land Office vessels. The dock is planned to be located at the end of the Brownsville Ship Channel (Turning Basin) directly below the Harbor Master’s Office, which also currently operates as the Port’s Security Operations Center and Police Station, and also holds offices for Customs and Border Protection servicing the region. The docks will be outfitted with two automatic (2) boat lifts capable of lifting and lowering vessels with a maximum weight of approximately 6,000 pounds that will increase the speed and efficiency in which a vessel could be deployed for response and patrol operations.

The majority of disturbance activities will be associated with the placing of support pilings for the dock. Most of this area will take place on submerged land that ranges from approximately 3 feet to 30 feet deep. The proposed project will also include ground disturbance activities associated with general utility installation and fence post footings.

The proposed project is within previously disturbed ground. The submerged land on which the dock will sit has undergone periodic piling construction since the initial construction of the Brownsville Ship Channel in the 1930’s. The shoreline that will be utilized for the proposed project is previously disturbed commercial land. The shoreline has exposed riprap consisting of both natural rocks and chunks of cement. The entire Brownsville Ship Channel, including the shorelines, is considered previously disturbed land.

To minimize damage from flooding, the structure will be designed for a maritime environment. The docks and piers will be constructed with treated lumber. This proposed project is located at the end of the Brownsville Ship Channel in the Port of Brownsville, Brownsville, Texas (Latitude: 25.952125, Longitude: -97.403101) (Appendix A).

#### IV. Environmental Impacts

Discussion of the environmental impacts associated with the No Action Alternative is included in the July 2010 PEA. This document incorporates the PEA by reference. The PEA can be found in FEMA’s electronic library at <http://www.fema.gov/library/viewRecord.do?id=4143>.

Environmental impacts are not anticipated to occur as a result of the No Action Alternative. Therefore, only the environmental impacts associated with the Proposed Action Alternative were evaluated in this Environmental Assessment.

FEMA’s environmental planning and historic preservation review reveals that all environmental areas of concern are appropriately accounted for in the PEA with the exception of floodplain impacts. Table 1-1 provides a summary of the findings for the environmental areas of concern that FEMA typically reviews.

**Table 1-1. Summary of Other Environmental Areas of Concern**

| Area of Concern                                        | No Action Alternative                                                                                                                           | Proposed Action Alternative                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Historic properties                                    | No effects.                                                                                                                                     | FEMA made the determination of No Historic Properties Affected by the construction of the small vessel docks because the Area of Potential Effect (APE) for this project is limited to the proposed project parcel, and no buildings within the proposed project's view shed that are older than 45 years of age, and the ground was previously graded during the construction of the surrounding area. |
| Endangered and threatened species and critical habitat | No effects.                                                                                                                                     | No effects. The proposed site is heavily industrialized.                                                                                                                                                                                                                                                                                                                                                |
| Migratory birds                                        | No effects.                                                                                                                                     | No effects. The proposed site is heavily industrialized.                                                                                                                                                                                                                                                                                                                                                |
| Water quality                                          | No effects.                                                                                                                                     | The U.S. Army Corps of Engineers (USACE), Galveston District has approved the proposed project and has issued the Letter of Permission under Section 10 of the Rivers and Harbors Act of 1899 (Appendix C).                                                                                                                                                                                             |
| Coastal resources                                      | No effects.                                                                                                                                     | Based on a review of Coastal Coordination Council General Concurrence #5, FEMA has determined that the Proposed Action Alternative is deemed consistent with the goals and policies of the Texas Coastal Management Program and consistency review procedures as implemented by the Texas General Land Office (Appendix C)                                                                              |
| Wetlands                                               | No effects.                                                                                                                                     | The proposed site is heavily industrialized (Appendix A).                                                                                                                                                                                                                                                                                                                                               |
| Low-income and minority populations                    | The port community would continue to rely on delayed responses from security personnel. This results in a lower level of overall public safety. | The Proposed Action Alternative would benefit all populations in the project area by providing better response times for security personnel.                                                                                                                                                                                                                                                            |

In compliance with FEMA regulations implementing Executive Order 11988, Floodplain Management, FEMA is required to carry out the Eight-step decision-making process for actions that are proposed in the floodplain per 44 CFR §9.6. Executive Order 11988 requires federal agencies “to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of the floodplain and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.”

This Eight-step process is applied to the proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project. The steps in the decision making process are as follows:

***Step 1 Determine if the Proposed Action Alternative is located in the Base Floodplain***

The Proposed Action Alternative involves the Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project. FEMA has determined that the Proposed Action Alternative is located in a 100-year floodplain, Zone A8 (Areas of 100-year flood; base flood elevations and flood hazards factors determined), as depicted on FIRM Community Panel 4801010350B, with the effective date September 15, 1983 (Appendix A).

***Step 2 Early public notice (Preliminary Notice)***

A public notice for the proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project will be published in the regional newspaper, *Brownsville Herald*, as part of the notice of availability for this SEA.

***Step 3 Identify and evaluate alternatives to locating in the base floodplain***

The proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project must take place in the floodplain because the project would be considered as functionally dependent use. Other sites were considered by the Port of Brownsville, but none offered the same access capabilities to support port security. Therefore no practicable alternative outside of the floodplain exists that would provide the port community adequate response times for security personnel.

***Step 4 Identify impacts of Proposed Action Alternative associated with occupancy or modification of the floodplain***

Impact on natural function of the floodplain

The proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project would not affect the functions and values of the 100-year floodplain nor would it impede or redirect flood flows. The Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project would be located in a partially developed area with existing infrastructure. When compared to the extensive floodplain area, the proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project will little potential to impact the floodplain. Therefore, the Proposed Action Alternative should not result in an increased base discharge or increase the flood hazard potential to other structures.

Impact of the floodwater on the proposed facilities

The proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project has been designed for maritime environment to minimize impacts from flooding. To minimize damage from flooding, the structure will be designed for a maritime environment. The docks and piers will be constructed with treated lumber. However, there is a potential that the proposed docks could be damaged if a catastrophic flooding event were to occur.

***Step 5 Design or modify the Proposed Action Alternative to minimize threats to life and property and preserve its natural and beneficial floodplain values***

In order to reduce the impact identified in Step 4 of flood hazards on the proposed new facilities, the proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project will be designed to be compliant with FEMA recommendations for construction in flood hazard areas.

The Applicant must follow all applicable local, state, and federal laws, regulations and requirements and obtain and comply with all required permits and approvals, prior to initiating work on this project. No staging of equipment or project activities shall begin until all permits are obtained.

***Step 6 Re-evaluate the Proposed Action Alternative***

Per the discussions above, the proposed site will be appropriately designed for the 100-year floodplain. The project would be considered as functional dependent use. The proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project is intended improve the patrol operation in the port region.

The Proposed Action Alternative will not aggravate the current flood hazard because the project would not impede or redirect flood flows. The project will not disrupt floodplain values because it will not change water levels in the floodplain. Therefore, it is still practicable to construct the proposed project within the floodplain. Alternatives consisting of locating the project outside the floodplain or taking “no action” are not practicable.

***Step 7 Findings and Public Explanation (Final Notification)***

In accordance with 44 CFR §9.12, the Brownsville Navigation District must prepare and provide a final public notice 15 days prior to the start of construction activities. Documentation of the public notices are to be forwarded to FEMA for inclusion in the permanent project files.

***Step 8 Implement the action***

The Brownsville Navigation District will incorporate into the design necessary mitigation efforts for building within a 100-year floodplain.

As a result of this Eight-step process, FEMA has determined that the proposed Port of Brownsville – Dock Construction, Pilings Installation, Boat Lift project is in compliance with 44 CFR §9.6 because there are no practicable alternatives outside the 100-year floodplain.

**V. Mitigation**

1. Significant change, addition, and/or supplement to the approved scope of work which alters the existing use and function of the structure, including additional work not funded by FEMA but performed substantially at the same time, will require re-submission of the application prior to construction to FEMA for re-evaluation under the National Environmental Policy Act.

2. The Brownsville Navigation District is required to comply with the conditions that are stated in the PEA FONSI, dated July 7, 2011, for the Preferred Action Alternative
3. The Brownsville Navigation District must conclude the consultation with the local floodplain administrator and obtain required permits prior to initiating work. All coordination pertaining to these activities and applicant compliance with any conditions should be documented and copies forwarded to the state and FEMA for inclusion in the permanent project files.
4. In accordance with 44 CFR §9.12, the Brownsville Navigation District must publish a public notice 15 days prior to the start of construction activities. Documentation of the public notice is to be forwarded to FEMA for inclusion in the permanent project files.
5. This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
6. The Brownsville Navigation District must comply with all USACE permit conditions in the Letter of Permission, Permit No. SWG-2011-00883, dated December 7, 2011.
7. Excavated soil and waste materials will be managed and disposed in accordance with applicable local, state and federal regulations. If contaminated materials are discovered during the construction activities, the work could cease until appropriate procedures and permits can be implemented. Hazardous materials discovered, generated, or used during construction must be handled and disposed of in accordance with applicable local, state, and federal regulations.
8. If required by the Texas Commission on Environmental Quality (TCEQ), a Storm Water Pollution Prevention Plan (SWPPP) will be prepared by the Brownsville Navigation District, which will include implementation of appropriate Best Management Practices (BMPs) at the construction location.
9. During construction, appropriate erosion control methods will be implemented to prevent erosion and sediment deposits into surface waters. Following construction, areas that were disturbed will be seeded, replanted, or receive an equivalent erosion control protection.
10. Construction contractors will be required to water down construction areas to control dust when necessary. Fuel-burning equipment running times will be kept to a minimum and engines will be properly maintained.
11. In the event that archeological deposits, including Native American pottery, stone tools, bones, or human remains, are uncovered, the project shall be halted and the Applicant shall stop work immediately in the vicinity of the discovery and take reasonable measures to avoid or minimize harm to the finds. All archeological findings will be secured by the Brownsville Navigation District and access to the sensitive area will be restricted by the Brownsville Navigation District. The Applicant will inform the State Administrative Agency and FEMA immediately, and FEMA will consult with the State Historic

Preservation Officer (SHPO). Work in sensitive areas shall not resume until consultation is completed and until FEMA determines that the appropriate measures have been taken to ensure the complete project is in compliance with the National Historic Preservation Act (NHPA) and its implementing regulations.

12. Construction activities will be performed using qualified personnel trained in the proper use of the appropriate equipment, including appropriate safety precautions. Additionally, activities will be conducted in a safe manner and in accordance with the standards specified in the Occupational Safety and Health Administration (OSHA) regulations. The appropriate signage and barriers will be in place prior to construction activities to alert pedestrians and motorists of project activities.

In addition, The Brownsville Navigation District will be required to comply with the conditions that are stated in the PEA FONSI, dated July 7, 2010, for the Proposed Action Alternative (see Appendix B).

## **VI. Correspondence and Agencies Consulted (see Appendix C)**

- U.S Army Corps of Engineers, Galveston District
- Texas Coastal Coordination Council

## **VII. Public Comment**

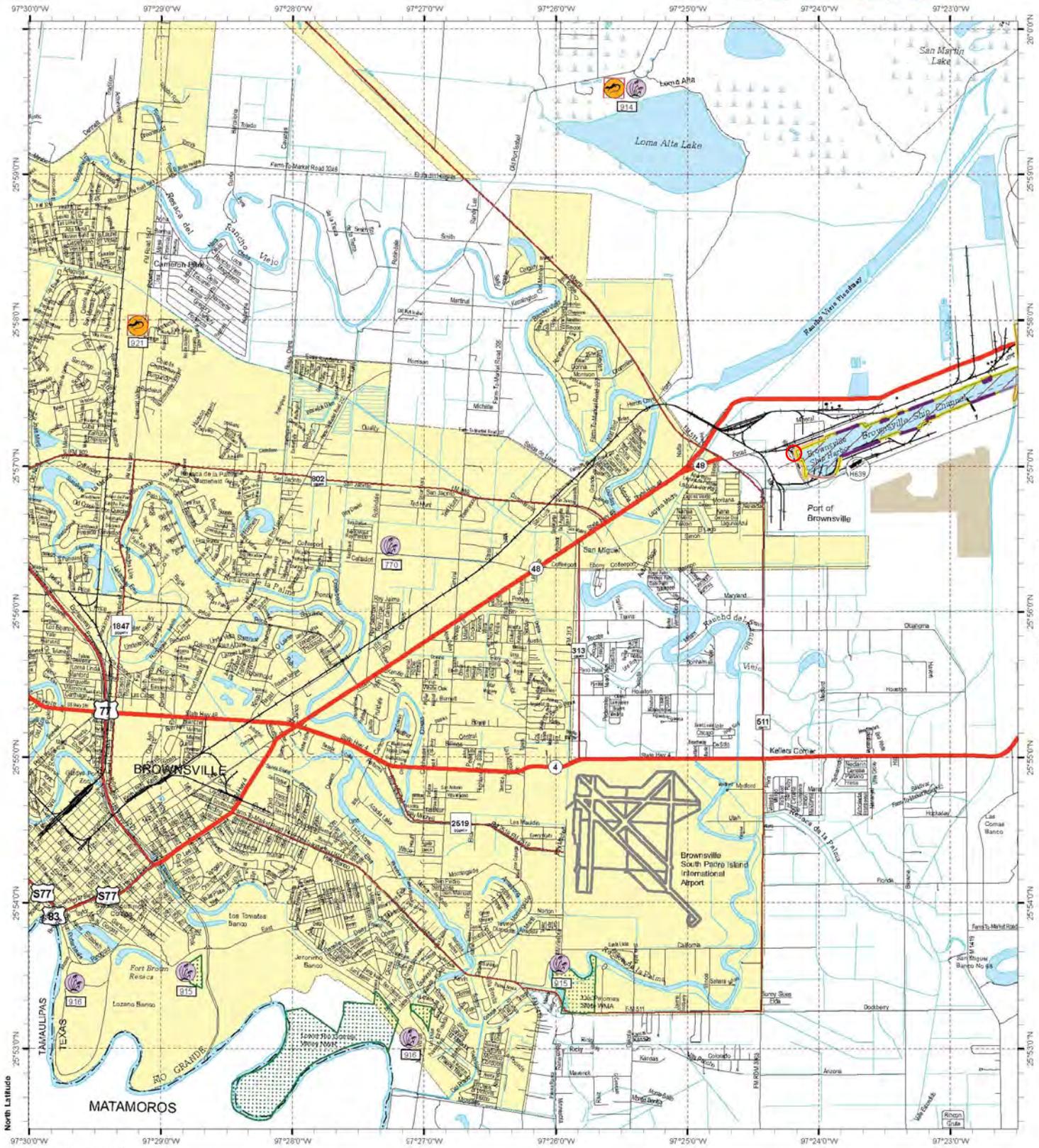
The public was notified of the availability of the Draft SEA through the publication of a public notice on September 24, 2012 in *Brownsville Herald*. The Draft SEA document was also made available for public review on the FEMA's website at <https://www.fema.gov/environmental-documents-and-public-notice-in-region-vi> and at any time at the Port of Brownsville's Harbor Master's office, 400 Windhaus Road, Brownsville, Texas 78521 between September 24, 2012 and October 9, 2012. A 15-day public comment period will commence on the initial date of the public notice. FEMA will consider and respond to all public comments in the Final SEA.

## **VIII. List of Preparers**

Kevin Jaynes, CHMM, Regional Environmental Officer, FEMA Region VI  
Alan Hermely, EHP Specialist, FEMA Region VI

## **Appendix A**

### **Maps and Photographs**

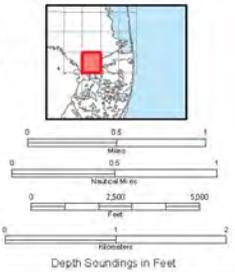


(PALMITO HILL, p.96)



Oil Spill Planning and Response Atlas Lower Coast of Texas Summer, 2008

The Texas Coastal Office makes no representations or warranties regarding the accuracy or completeness of the information depicted on this map or the data from which it was produced. This map is not suitable for navigational purposes and does not purport to depict boundaries of private and public land.



PRIORITY PROTECTION AREAS:  
 HIGH  
 MEDIUM  
 LOW

HUMAN-USE FEATURES



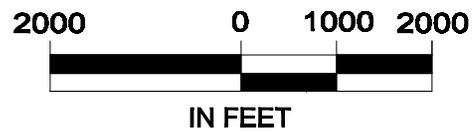
- 10D - Mangrove Marsh
- 10C - Freshwater Swamps
- 10B - Freshwater Marshes
- 10A - Salt and Brackish Marshes
- 9 - Sheltered Tidal Flats
- 8C - Sheltered Scarps
- 6D - Sheltered Rocky/Gravel Shores
- 8B - Sheltered Riprap Structures
- 8A - Sheltered Solid Manmade Structures
- 7 - Exposed Tidal Flats

ENVIRONMENTAL SENSITIVITY INDEX

- 6B - Exposed Riprap Structures
- 6A - Gravel or Shell Beaches
- 5 - Mixed Sand and Gravel or Shell Beaches
- 4 - Coarse-grained Sand Beaches
- 3B - Scarps and Steep Slopes in Sand
- 3A - Fine-Grained Sand Beaches
- 2D - Wave-cut Clay Platforms
- 2A - Scarps and Steep Slopes in Clay
- 1 - Exposed Walls and Other Solid Structures

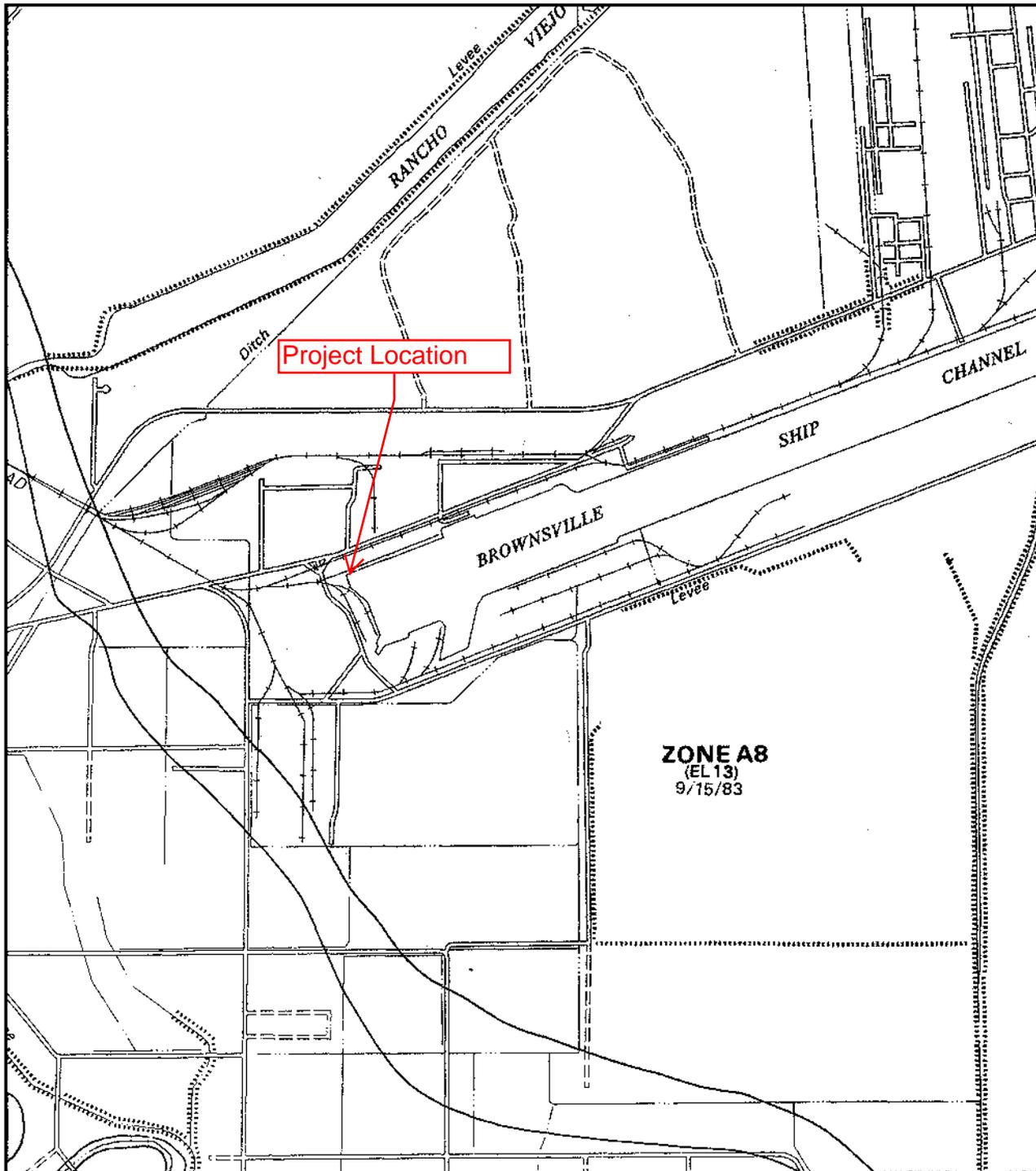
- State Parks/WMA
- Wildlife Refuges
- Counties
- Municipal

Project Location



**PORT OF**  
**BROWNSVILLE**  
• WORLD CLASS •

PREPARED: JUNE 2009



APPROXIMATE SCALE

2000 0 2000 FEET

NATIONAL FLOOD INSURANCE PROGRAM

**FIRM**  
FLOOD INSURANCE RATE MAP

**CAMERON COUNTY,  
TEXAS**  
(UNINCORPORATED AREAS)

PANEL 350 OF 400

**COMMUNITY-PANEL NUMBER**  
480101 0350 B

**MAP REVISED:**  
SEPTEMBER 15, 1983



Federal Emergency Management Agency

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



# U.S. Fish and Wildlife Service National Wetlands Inventory

## Wetland Determination

Feb 1, 2011

### Wetlands

- Freshwater Emergent
- Freshwater Forested/Shrub
- Estuarine and Marine Deepwater
- Estuarine and Marine
- Freshwater Pond
- Lake
- Riverine
- Other

○ Proposed Project Location



This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

User Remarks:



Figure 1: Aerial view of the location of the proposed small vessel dock. The dock will be outfitted with two (2) automatic boat lifts for off water vessel storage.



Figure 2: Typical view of project area.



Figure 3: Typical view of project area.

**Appendix B**

**Finding of No Significant Impact (FONSI)**

**For**

**Final Programmatic Environmental Assessment  
for the Evaluation of FEMA's Grant Programs  
Directorate Programs**



**FEMA**

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)**

**FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

**FINAL PROGRAMMATIC ENVIRONMENTAL ASSESSMENT  
FOR THE EVALUATION OF FEMA'S GRANT PROGRAMS  
DIRECTORATE PROGRAMS**

**BACKGROUND**

In accordance with the National Environmental Policy Act (NEPA) of 1969, FEMA's regulations for implementing NEPA at 44 Code of Federal Regulations (CFR) Part 10, and the President's Council on Environmental Quality NEPA implementing regulations at 40 CFR Parts 1500-1508, FEMA prepared a draft Programmatic Environmental Assessment (PEA) to evaluate the potential impacts to the human environment resulting from typical actions funded by FEMA's Grant Programs Directorate (GPD) through the homeland security and emergency preparedness grant programs. These programs provide grant funding to States, territories, local and Tribal governments, and private entities to enhance their homeland security and emergency preparedness efforts. The PEA is incorporated by reference into this FONSI.

The PEA is intended for actions that are relatively minor in scale and typically considered for funding under the various GPD programs. The PEA evaluated two alternatives: no action and program implementation. Under the program implementation alternative, FEMA evaluated the following seven project types: planning; management and administration; training; exercises; purchase of mobile and portable equipment; modification of existing structures and facilities; and new construction. FEMA will develop Tiered Site-specific Environmental Assessments (SEA) for those GPD actions requiring evaluation under areas of concern not evaluated in this PEA, having impacts beyond those described in the PEA, requiring mitigation to reduce the level of impacts below significance, or otherwise requiring a Tiered SEA as identified in Table 5-1 in the PEA.

Notice of the availability of the PEA was published in the Federal Register on April 8, 2010, for a 30-day public comment period. Based on comments received, FEMA removed communication towers as a project type evaluated in the PEA. FEMA will develop a separate analysis tiered from this PEA to address communication towers and will provide a 15-day public comment period on that document.

## **CONDITIONS**

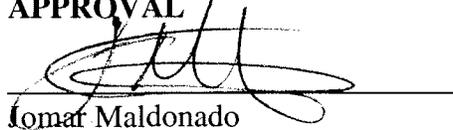
Actions under this PEA and FONSI must meet the following conditions. Failure to comply with these conditions would make the FONSI determination inapplicable for the project and could jeopardize the receipt of FEMA funding.

1. Excavated soil and waste materials will be managed and disposed of in accordance with applicable local, state, and federal regulations. If contaminated materials are discovered during construction activities, the work will cease until the appropriate procedures and permits are implemented.
2. The grantee and subgrantee will follow applicable mitigation measures as identified in Section 7 of the PEA to the maximum extent possible.
3. In the event that unmarked graves, burials, human remains, or archaeological deposits are uncovered, the grantee and subgrantee will immediately halt construction activities in the vicinity of the discovery, secure the site, and take reasonable measures to avoid or minimize harm to the finds. All archaeological findings will be secured and access to the sensitive area restricted. The grantee and subgrantee will inform FEMA immediately and FEMA will consult with the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) or appropriate Tribal official. Construction work cannot resume until FEMA completes consultation and appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act and other applicable Federal and State requirements.
4. The grantee and subgrantee must meet any project-specific conditions developed and agreed upon between FEMA and with environmental planning or historic preservation resource and regulatory agencies during consultation or coordination.
5. The grantee and subgrantee are responsible for obtaining and complying with all required local, State and Federal permits and approvals.

## **FINDING**

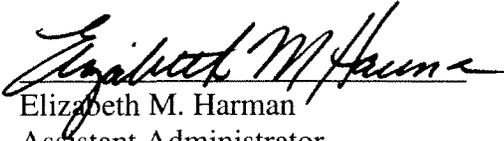
Based upon the information contained in the Final PEA, the potential impacts resulting from the seven project types analyzed in the PEA, and in accordance with FEMA's regulations at 44 CFR Part 10 and Executive Orders 11988 (Floodplain Management), 11990 (Protection of Wetlands), and 12898 (Environmental Justice), FEMA finds that the implementation of the proposed action will not have significant impacts to the quality of the human environment. Therefore, an Environmental Impact Statement (EIS) will not be prepared. This FONSI is based upon proposed actions fitting one of the seven project types described in the Final PEA and meeting all conditions prescribed for that particular project type.

**APPROVAL**



Omar Maldonado  
Environmental Officer

Date 7/2/10



Elizabeth M. Harman  
Assistant Administrator  
Grant Programs Directorate

Date 7/6/10

**Appendix C**  
**Agency Consultation**



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
**GALVESTON DISTRICT, CORPS OF ENGINEERS**  
Corpus Christi Regulatory Field Office  
5151 Flynn Parkway, Suite 306  
Corpus Christi, Texas 78411-4318

December 7, 2011

Regulatory Branch

SUBJECT: Permit No. SWG-2011-00883; Letter of Permission

Brownsville Navigation District  
Attn: Ariel Chavez, II  
1000 Foust Road  
Brownsville, Texas 78521-4592

Dear Mr. Chavez:

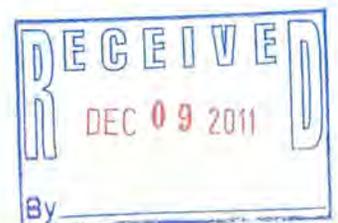
Your request, received September 12, 2011, to construct a fixed boat dock, is approved pursuant to Section 10 of the Rivers and Harbors Act of 1899. The structure will consist of a 100-foot-long by 8-foot-wide walkway with three perpendicular finger piers that will be 31 feet long and 6 feet wide, and cover approximately 1,358 square feet. The permit site is located in the Brownsville Ship Channel at the Brazos Island Harbor off of Windhaus Road, east of Brownsville, Cameron County, Texas. All work is to be performed in accordance with the enclosed plans in 3 sheets and the permit conditions.

The following special conditions have been added to your authorization:

(1) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized; or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

(2) The permittee must coordinate any work with the Corps Galveston District's Southern Area Office, the Navigation Branch and the Operations Division, at least 60 days prior to conducting any and all work in or affecting the Brownsville Ship Channel to assure that the work will not conflict with U. S. Government dredging activities.

If you object to the work authorized by this Letter of Permission, you may request an administrative appeal under Corps regulations at 33 CFR Part 331.5. Also enclosed are a combined Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA to the Southwestern Division Office at the following address:



Mr. Elliott Carman  
Regulatory Appeals Officer  
Southwest Division USACE (CESWD-PD-O)  
1100 Commerce Street, Suite 831  
Dallas, Texas 75242-1317  
Telephone: 469-487-7061; FAX: 469-487-7199

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within **60 days** of the date of the NAP. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

If the authorized work is not completed by December 31, 2016, this authorization expires. Please notify the District Commander, in writing, upon completion of the authorized work. A pre-addressed postcard has been enclosed for your convenience.

If you have any questions concerning this matter, please contact Mark Pattillo at the letterhead address or by telephone at 361-814-5847. Also, to assist us in improving our service to you, please complete the survey found at: <http://per2.nwp.usace.army.mil/survey.html>

FOR THE DISTRICT COMMANDER:

  
Lloyd Mullins, Supervisor  
Corpus Christi Regulatory Field Office

Copies Furnished:

Eighth Coast Guard District, New Orleans, LA

U.S. Fish and Wildlife Service, Corpus Christi, TX

Texas General Land Office, Austin, TX

Texas General Land Office, Corpus Christi, TX

Southern Area Office, Corpus Christi, TX

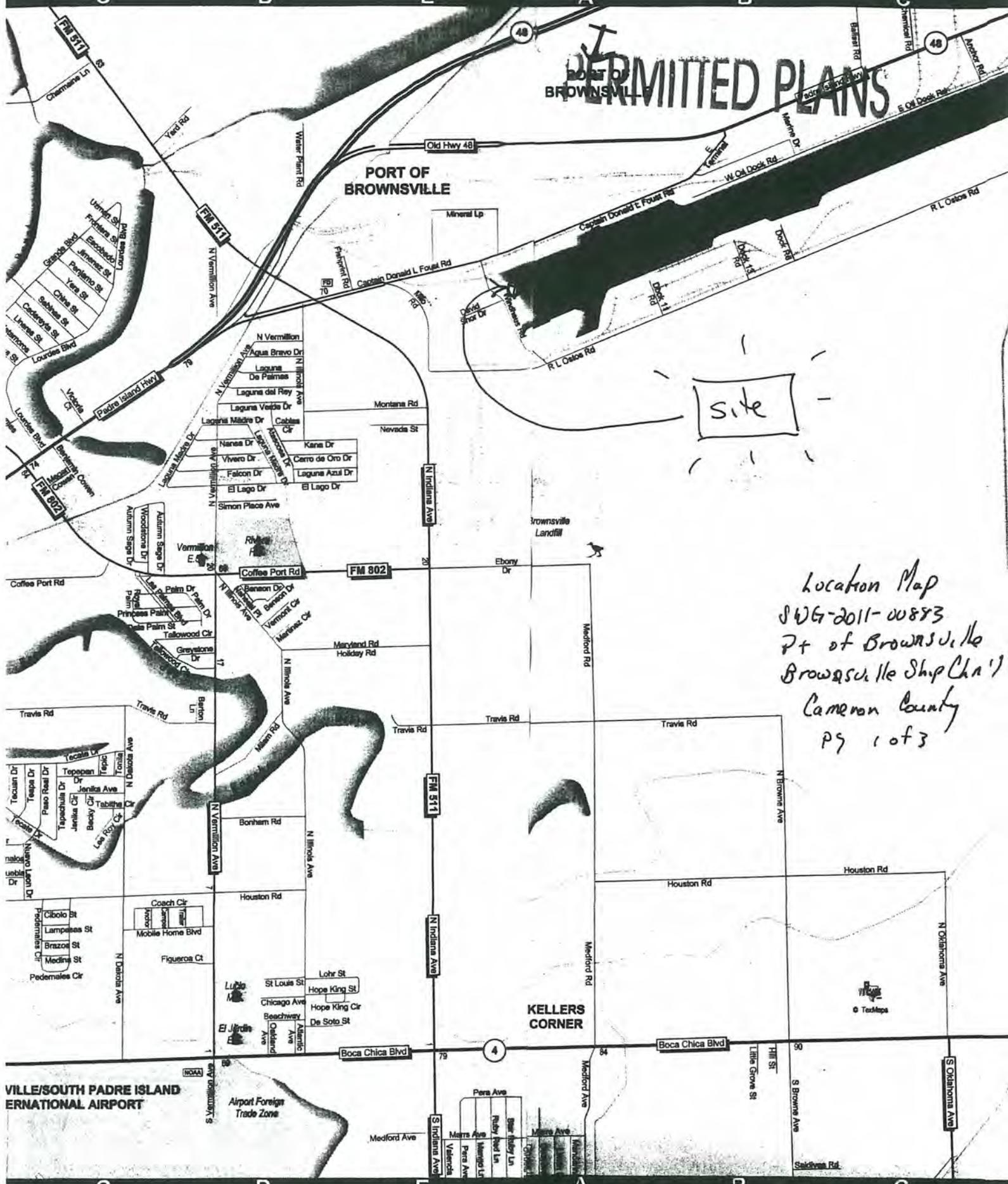
SWG-2011-00883

PORT OF BROWNSVILLE PERMITTED PLANS

PORT OF BROWNSVILLE

site

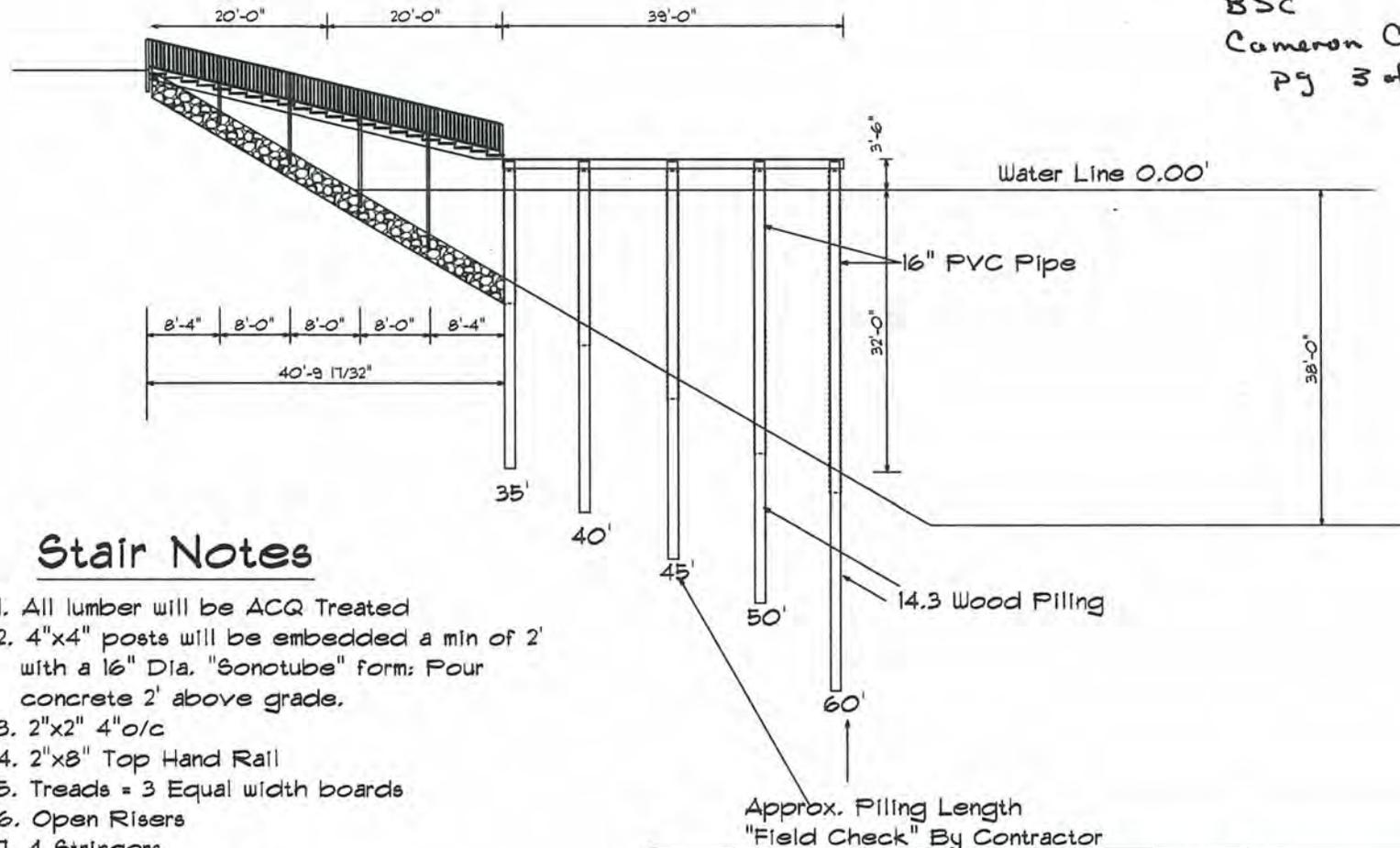
Location Map  
SWG-2011-00883  
Pt of Brownsville  
Brownsville Ship Chan'  
Cameron County  
Pg 1 of 3





# PERMITTED PLANS

Section View  
 SWG-2011-00883  
 Pt of Brownsville  
 BSC  
 Cameron Co.  
 Pg 3 of 3



## Stair Notes

01. All lumber will be ACQ Treated
02. 4"x4" posts will be embedded a min of 2' with a 16" Dia. "Sonotube" form; Pour concrete 2' above grade.
03. 2"x2" 4"o/c
04. 2"x8" Top Hand Rail
05. Treads = 3 Equal width boards
06. Open Risers
07. 4 Stringers
08. SS fastners throughout.

Project: Marine Response Capabilities Enhancement Project  
 Address: 25.9519N / 97.4031W  
 Port of Brownsville, Texas  
 Drawn By: D. Muhs

|                |          |                     |
|----------------|----------|---------------------|
| Side Elevation | 05/27/11 | PAGE #:<br><b>6</b> |
|----------------|----------|---------------------|

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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

---

(*TRANSFEEE*)

---

(*DATE*)

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

|                                            |                                                                    |                        |                   |
|--------------------------------------------|--------------------------------------------------------------------|------------------------|-------------------|
| Applicant: Brownsville Navigation District |                                                                    | Permit: SWG-2011-00883 | Date: 7 Dec 2011  |
| Attached is:                               |                                                                    |                        | See Section below |
|                                            | INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission) |                        | A                 |
| X                                          | PROFFERED PERMIT (Standard Permit or Letter of Permission)         |                        | B                 |
|                                            | PERMIT DENIAL                                                      |                        | C                 |
| X                                          | APPROVED JURISDICTIONAL DETERMINATION                              |                        | D                 |
|                                            | PRELIMINARY JURISDICTIONAL DETERMINATION                           |                        | E                 |

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Lloyd Mullins, Leader  
U.S. Army Corps of Engineers  
Corpus Christi Regulatory Field Office  
5151 Flynn Parkway, Suite 306  
Corpus Christi, Texas 78411-4318  
Telephone: 361-814-5851

If you only have questions regarding the appeal process you may also contact:

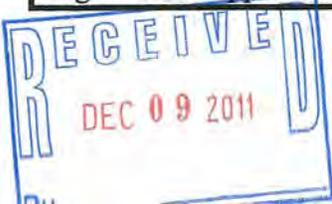
Elliott N. Carman, Appeal Review Officer  
CESWD-PDS-O, 1100 Commerce Street, Ste. 831  
Dallas, Texas 75242-1317  
Telephone: 469-487-7061; FAX 469-487-7199  
Email: [elliott.n.carman@usace.army.mil](mailto:elliott.n.carman@usace.army.mil)

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or authorized agent.

Date:

Telephone number:



**COASTAL COORDINATION COUNCIL  
GENERAL CONCURRENCE #5**

**Regarding Federal Emergency Management Agency (FEMA) assistance to areas of  
Texas designated as major disaster areas**

Pursuant to 31 Texas Administrative Code (TAC) §§506.28 & 506.35 and 15 Code of Federal Regulations (CFR) §930.53(b), the Coastal Coordination Council (Council) issues the following General Concurrence #5 (GC5) for FEMA assistance in federally declared disaster areas.

**Section 1: Purpose and Intent**

- A. The purpose of this GC5 is to assist FEMA by expediting consistency review of certain FEMA-funded activities under the Texas Coastal Management Program (CMP) and to identify the certain activities affecting certain coastal natural resource areas (CNRAs) that must undergo a full consistency determination. The purpose of the GC5 is to minimize the number of consistency reviews that must be performed for activities that are minor in scope and that do not have significant adverse effects on CNRAs within the Texas CMP boundary. The CMP boundary is depicted in Appendix A of this document and is more particularly described in 31 TAC §503.1.
- B. FEMA and the Council acknowledge that the implementation of disaster assistance will be more effective if specific procedures are developed to expedite consistency review activities by the Council for activities with little potential to affect CMP Areas. This GC5 should shorten the time needed to comply with the Texas CMP for FEMA-funded projects and allow FEMA to more readily provide assistance following a federally declared disaster on the Texas coast.
- C. FEMA and DEM implement the Individual and Public 'grants' under FEMA's Individual and Public Assistance programs, as defined in 44 CFR §206.2(15)&(20). FEMA has determined that the implementation of the programs in 44 CFR Part 206 may have an effect upon properties within the Texas CMP boundary. Therefore, FEMA and the Council agree that these disaster assistance programs shall be administered in accordance with the following Sections, which will ensure compliance under the CMP.

**Section 2: Activities Covered**

- A. This GC5 is intended to incorporate FEMA's existing process for providing assistance for projects in major disaster areas. FEMA proposes to administer federal programs pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), and its implementing regulations contained in Title 44 CFR Part 206, regarding assistance for the repair or replacement of damaged facilities and structures,

including approved Stafford Act Section 404 and 406 mitigation measures, 42 U.S.C. §§5170c & 5172.

B. The Council finds that the following assistance activities will not have direct or significant adverse effects on CNRAs and determines that FEMA or its grantees and subgrantees need not submit consistency findings for the following activities within the Texas CMP boundaries:

1. Funding of emergency response activities as provided under Stafford Act Section 403 (42 U.S.C. §5170b), Category A: Debris Removal and Category B: Emergency Protective Measures that are necessary when there is an unacceptable hazard to life, when there is an immediate threat of significant loss of property, or where an immediate and unforeseen economic hardship is likely if corrective action is not taken within a time period less than the normal time needed under standard procedures in 31 TAC §506.51. This includes activities that are necessary to protect public health and safety, as defined in Emergency 44 CFR §206.2(9), including direct federal assistance, funded by FEMA, such as water, ice, and power generation teams.
2. Individual 'grants' under FEMA's Individual Assistance Program, as defined in 44 CFR § 206.2(15).
3. Repair and construction projects that are covered under Categories C: Roads and Bridges, D: Water Control Facilities, E: Buildings and Equipment, F: Utilities, and G: Parks, Recreational Facilities, and other Items included in Stafford Act Section 403 (42 U.S.C. §5170b), and that have the same function, capacity, and footprint as existed prior to the major disaster, including upgrades to current codes and standards, provided that all three conditions are met. These projects are only exempt from the consistency requirements if they do not fall within the CNRAs listed in subsection "C" below. Even if all three conditions are met, a project may require a consistency determination, as outlined in subsection "C" below.
4. Repair or replacement of automobiles and equipment.
5. Repairs and construction inside or outside of structures in the same footprint, even if the repairs have a different function and capacity than previously existed; and which may occur in previously disturbed areas around the exterior of the structure.
6. Reconstruction of Coastal Historic Areas. A historic area is defined as a site that is specially identified in rules adopted by the Texas Historical Commission as being coastal in character and that is: (A) a site on or eligible for the National Register of Historic Places, designated under 16 USC §470a and 36 CFR, Part 63, Chapter 1: or (B) a state archaeological landmark, as defined by Texas Natural Resource Code (TNRC), Subchapter D, Ch. 191. These are governed by the *Programmatic Agreement Among the Federal Emergency Management Agency, the Texas State Historic Preservation Office, the Texas Department of Public*

*Safety, Division of Emergency Management, and the Advisory Council on Historic Preservation (PA) or any subsequent replacement documents. Compliance with the PA satisfies the requirements of 31 TAC §501.14(o), and no separate consistency review is required.*

- C. Consistency determinations are required for activities over which the Council has jurisdiction, if they occur in certain CNRA areas within the CMP boundary, even if the project has the same function, capacity, and footprint as existed prior to the major disaster. FEMA may fund a necessary emergency response activity within a CNRA without a consistency determination when the emergency response activity was performed to prevent an unacceptable hazard to life, an immediate threat of significant loss of property, or where an immediate and unforeseen economic hardship is likely if corrective action were not taken within a time period less than the normal time needed under standard procedures in 31 TAC §506.51. Maps and information on all of the CNRA areas below may be found on the General Land Office's web site at <http://www.glo.state.tx.us/gisdata/gisdata.html>. FEMA must provide consistency determinations for projects that fall within the following CNRA areas.
1. Critical Areas. These are defined in TNRC §33.203(8) and 31 TAC §501.3(a)(8) as a coastal wetland, oyster reef, hard substrate reef, submerged aquatic vegetation, or tidal sand or mud flat. Each of these critical areas is more specifically described under 31 TAC §501.3(b) (See Appendix B). Dredging and construction of structures in, or the discharge of dredged or fill material into critical areas must comply with the policies in 31 TAC §501.14(h).
  2. Submerged Lands "Submerged land" means land located under waters under tidal influence or under waters of the open Gulf of Mexico, without regard to whether the land is owned by the state or a person other than the state. TNRC §33.203(15) and 31 TAC §501.3(b)(12). Development on submerged lands must comply with the policies in 31 TAC §501.14(i).
  3. Beach/Dune System and Critical Dune Areas. "Critical dune area" is defined as a protected sand dune complex on the Gulf shoreline within 1,000 feet of Mean High Tide in TNRC §33.203(9) and 31 TAC §501.3(b)(6). Construction in critical dune areas and adjacent to Gulf beaches must comply with the policies in 31 TAC §501.14(k).
  4. Coastal Hazard Areas. These are defined in 31 TAC §501.3(a)(4) as special hazard areas and critical erosion areas. Definitions of special hazard areas and critical erosion areas may be found in Appendix C. Goals and policies for determining the consistency of development in coastal hazard areas are found in 31 TAC §501.14(l).
  5. Coastal Barriers. These are defined in TNRC §33.203(2) and 31 TAC §501.3(b)(1) as an undeveloped area on a barrier island, peninsula, or other protected area, as designated by United States Fish and Wildlife Service maps. Development of new infrastructure or major repair of

existing infrastructure within or supporting development within Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), must comply with the policies in 31 TAC §501.14(m).

6. State Parks, Wildlife Management Areas or Preserves. "Coastal preserve" is defined in 31 TAC §501.3(b)(3) as any land, including a park or wildlife management area, that is owned by the state and that is subject to Chapter 26, Parks and Wildlife Code, because it is a park, recreation area, scientific area, wildlife refuge, or historic site; and designated by the Texas Parks and Wildlife Commission as being coastal in character. Under 31 TAC §501.14(n), development by a person other than the Parks and Wildlife Department that requires the use or taking of any public land in such areas must comply with Texas Parks and Wildlife Code, Chapter 26.
7. Coastal shore areas, defined in TNRC §33.203(5) as an area within 100 feet landward of the highwater mark on submerged land.
8. Water under tidal influence, defined in TNRC §33.203(19) as water in this state, as defined by Section 26.001(5), Water Code, that is subject to tidal influence according to the Texas Commission on Environmental Quality's (formerly the Texas Natural Resource Conservation Commission's) stream segment map. The term includes coastal wetlands. The Council shall provide FEMA a detailed map indicating these areas influenced by tidal waters.

### **Section 3: Notification Procedures**

For those proposed activities that will be reviewed for consistency with the CMP under the Council's rules (31 TAC §§506.50-506.52), FEMA shall submit to the Council Secretary FEMA's project worksheet, proposed work, and the name, address and telephone number for a point of contact. A description of the project must include at least the application, and location map, and supporting material required by FEMA, as well as the information required by Council rules at 31 TAC §506.50(c), which includes a brief evaluation on the relationship of the proposed activity to the CMP goals and policies and an evaluation of any reasonably foreseeable coastal effects. Under 31 TAC §506.51(d), if three members do not refer an application to the Council within 30 days of the date the Council Secretary receives a copy of the application, then the application is conclusively presumed to be consistent with the CMP.

### **Section 4: Interagency Coordination Procedures**

The Council will work with FEMA and DEM in scoping meetings to identify CMP concerns and CMP applicability to FEMA activities following a federally declared disaster. FEMA and the Council may adopt amendments to this GC5 based on the scope of an individual disaster.

## Section 5: Termination

- A. The Council may modify this GC5 by issuing another general concurrence, amendment or further revision. Prior to issuing any general concurrence or amendment that modifies or revises this GC5, the Council shall coordinate any modifications or revisions with FEMA.
- B. After consultation with FEMA, the Council may terminate this GC5 by publishing notice of the termination in the *Texas Register* at least thirty days prior to the termination date.
- C. FEMA may terminate this GC5 by providing 30 days written notice to the Council, provided that FEMA and the Council will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. This GC5 may be terminated by the execution of a subsequent GC that explicitly terminates or supersedes its terms.

Coastal Coordination Council  
General Concurrence #5

David Dewhurst

David Dewhurst  
Chairman  
Coastal Coordination Council

10-25-2002

Date

Ron Castleman

Ron Castleman  
Regional Director  
FEMA, Region VI

11-6-02

Date

~~Jack Colley  
State Coordinator  
Texas Department of Public Safety  
Division of Emergency Management~~

~~Date~~

Tom Haas

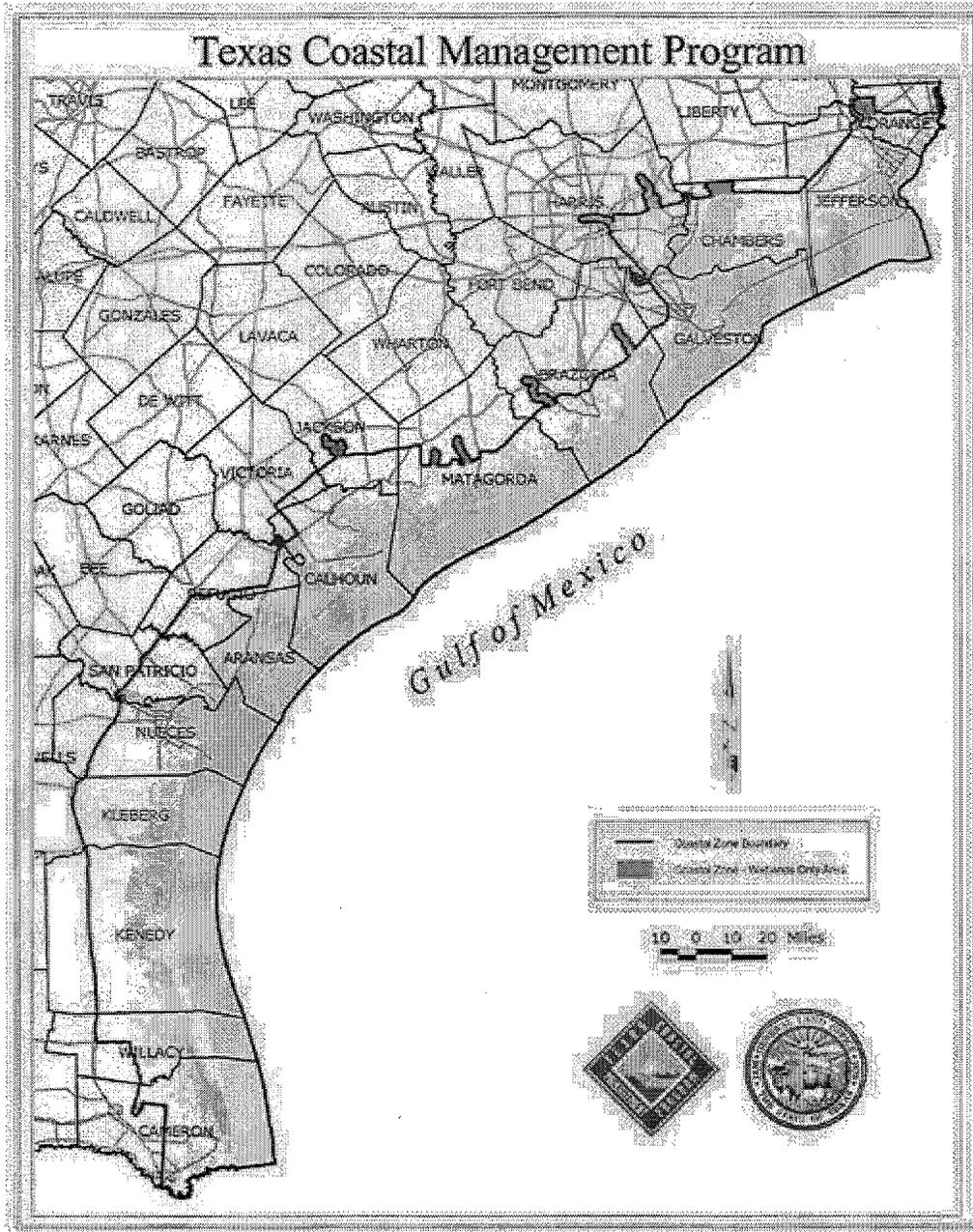
Tom Haas

11-13-02

Date

Chief Financial Officer  
Texas Department of Public Safety

FEMA General Concurrence 5  
APPENDIX A – MAP OF COASTAL MANAGEMENT PROGRAM BOUNDARY



FEMA General Concurrence 5  
APPENDIX B – CRITICAL AREAS

Critical Areas. Defined in Texas Natural Resource Code (TNRC) §33.203(8) and 31 TAC §501.3(a)(8) as a coastal wetland, oyster reef, hard substrate reef, submerged aquatic vegetation, or tidal sand or mud flat. Dredging and construction of structures in, or the discharge of dredged or fill material into critical areas must comply with the policies in 31 TAC §501.14(h).

a. Coastal Wetlands. Defined in TNRC §33.203(7) and 31 TAC §501.3(b)(5), are Wetlands, as the term is defined by Texas Water Code §11.502, located:

(1) seaward of the Coastal Facility Designation Line, established by rules adopted under Texas Natural Resources Code, Chapter 40;

(2) within rivers and streams to the extent of tidal influence, as shown on the Texas Natural Resource Conservation Commission's stream segment maps and described as follows:

(a) Arroyo Colorado from FM Road 1847 to a point 100 meters (110 yards) downstream of Cemetery Road south of the Port of Harlingen in Cameron County;

(b) Nueces River from US Highway 77 to the Calallen Dam 1.7 kilometers (1.1 miles) upstream of U.S. Highway 77 in Nueces/San Patricio County;

(c) Guadalupe River from State Highway 35 to the Guadalupe-Blanco River Authority Salt Water Barrier at 0.7 kilometers (0.4 miles) downstream of the confluence with the San Antonio River in Calhoun/Refugio County;

(d) Lavaca River from FM Road 616 to a point 8.6 kilometers (5.3 miles) downstream of US Highway 59 in Jackson County;

(e) Navidad River from FM Road 616 to Palmetto Bend Dam in Jackson County;

(f) Tres Palacios Creek from FM Road 521 to a point 0.6 kilometer (0.4 mile) upstream of the confluence with Wilson Creek in Matagorda County;

- (g) Colorado River from FM Road 521 to a point 2.1 kilometers (1.3 miles) downstream of the Missouri-Pacific Railroad in Matagorda County;
  - (h) San Bernard River from FM Road 521 to a point 3.2 kilometers (2.0 miles) upstream of State Highway 35 in Brazoria County;
  - (i) Chocolate Bayou from FM Road 2004 to a point 4.2 kilometers (2.6 miles) downstream of State Highway 35 in Brazoria County;
  - (j) Clear Creek from Interstate Highway 45 to a point 100 meters (110 yards) upstream of FM Road 528 in Galveston/Harris County;
  - (k) Buffalo Bayou (Houston Ship Channel) from Interstate Highway 610 to a point 400 meters (440 yards) upstream of Shepherd Drive in Harris County;
  - (l) San Jacinto River from Interstate Highway 10 upstream to the Lake Houston dam in Harris County;
  - (m) Cedar Bayou from Interstate Highway 10 to a point 2.2 kilometers (1.4 miles) upstream of Interstate Highway 10 in Chambers/Harris County;
  - (n) Trinity River from Interstate Highway 10 to the border between Chambers and Liberty Counties;
  - (o) Neches River from Interstate Highway 10 to a point 11.3 kilometers (7.0 miles) upstream of Interstate Highway 10 in Orange County;
  - (p) Sabine River from Interstate Highway 10 upstream to Morgan Bluff in Orange County; or
- (3) within one mile of the mean high tide line of the portion of rivers and streams described by subparagraph (2) of this paragraph, except for the Trinity and Neches rivers.
- (a) For the portion of the Trinity River described by subparagraph (2) of this paragraph, coastal wetlands include those wetlands located between the mean high tide line on the western shoreline of that portion of the river and FM Road 565 and FM Road 1409 or located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 563.

(b) For the portion of the Neches River described by subparagraph (2) of this paragraph, coastal wetlands include those wetlands located within one mile of the mean high tide line of the western shoreline of that portion of the river or located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 105.

b. Oyster reef. Defined in TNRC §33.203(13) and 31 TAC §501.3(b)(10), as a natural or artificial formation that is:

- (1) composed of oyster shell, live oysters, and other living or dead organisms;
- (2) discrete, contiguous, and clearly distinguishable from scattered oyster shell or oysters; and
- (3) located in an intertidal or subtidal area.

c. Hard substrate reef. A naturally occurring hard substrate formation, including a rock outcrop or serpulid worm reef, living or dead, in an intertidal or subtidal area. TNRC §33.203(12) and 31 TAC §501.3(b)(9).

d. Submerged aquatic vegetation. Rooted aquatic vegetation growing in permanently inundated areas in estuarine and marine systems. TNRC §33.203(16) and 31 TAC §501.3(b)(13).

e. Tidal sand or mud flat. A silt, clay, or sand substrate, without regard to whether it is vegetated by algal mats, that occur in intertidal areas and that are regularly or intermittently exposed and flooded by tides, including tides induced by weather. TNRC §33.203(17) and 31 TAC §501.3(b)(14).

FEMA General Concurrence 5  
APPENDIX C – COASTAL HAZARD AREAS

Coastal Hazard Areas are defined in 31 TAC §501.3(a)(4) as special hazard areas and critical erosion areas. Goals and policies for determining the consistency of development in coastal hazard areas are found in 31 TAC §501.14(1).

a. A “special hazard area” is defined in TNRC §33.203(14) and 31 TAC §501.3(b)(11) as an area designated under 42 USCA §4001 et seq. as having special flood, mudslide or mudflow, or flood-related erosion hazards and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E. Under 31 TAC §501.14(1)(1), subdivisions participating in the National Flood Insurance Program shall adopt ordinances or orders governing development in special hazard areas.

b. A “critical coastal erosion area” or “critical erosion area” is defined in TNRC §33.601(4) and 31 TAC §501.3(b)(7) as a coastal area that is experiencing historical erosion, according to the most recently published data of the Bureau of Economic Geology of The University of Texas at Austin, that the commissioner finds to be a threat to:

1. Public health, safety, or welfare;
2. Public beach use or access;
3. General recreation;
4. Traffic safety;
5. Public property or infrastructure;
6. Private commercial or residential property;
7. Fish or wildlife habitat; or
8. An area of regional or national importance.