

# **Appendix D – Real Estate Plan**

## **Matagorda Ship Channel, Port Lavaca, Texas**

Feasibility Report and Environmental Impact Statement,  
Review of Completed Projects,  
Calhoun and Matagorda Counties

July 2019

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This Real Estate Plan has been prepared in accordance with ER 405-1-12 dated 1 May 1998.

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## Exhibits

- Exhibit A Project Maps
- Exhibit B Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability
- Exhibit C Special District Local Laws Code, Title 5, Subtitle A, Chapter 5003
- Exhibit D Selected Excerpts from Water Code, Title 4, Chapter 62
- Exhibit E Risk Letter

## Acronyms

AOM	Assumption of Maintenance
BCE	Baseline Cost Estimate
CBRA	Coastal Barrier Resources Act
CBRS	Coastal Barrier Resources Systems
CCND	Calhoun County Navigation District
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CPA	Calhoun Port Authority
DA	Disposal Area
DMMP	Dredged Material Management Plan
FEIS	Final Environmental Impact Statement
FWOPC	Future without Project Conditions
GIWW	Gulf Intracoastal Waterway
HTRW	Hazardous, Toxic, and Radioactive Waste
HQ	U.S. Army Corps of Engineers Headquarters
LERRD	Lands, Easements, Rights-of-way, Relocations, and Disposal
MCY	Million Cubic Yards
MLLW	Mean Lower Low Water
MLT	Mean Low Tide
MSC	Matagorda Ship Channel
MSCIP	Matagorda Ship Channel Improvement Project
NFS	Non-Federal Sponsor
NOAA	National Oceanic and Atmospheric Administration
NPL	National Priority List
ODMDS	Ocean Dredged Material Disposal Site
OMRR&R	Operations, Maintenance, Repair, Replacement, and Rehabilitation
PA	Placement Area(s)
PED	Preconstruction, Engineering, and Design
PGL	Policy Guidance Letter
PL	Public Law
PPA	Project Partnership Agreement
REP	Real Estate Plan
RHA	Rivers and Harbors Act
RRC	Railroad Commission of Texas
USACE	U.S. Army Corps of Engineers
WRDA	Water Resources Development Act

# 1 General Background

This Real Estate Plan (REP) is the real estate work product of the U.S. Army Corps of Engineers (USACE), Galveston District, Real Estate Division that supports project plan formulation for the Matagorda Ship Channel, TX Section 216-Review of Completed Projects Draft Integrated Feasibility Report and Environmental Impact Assessment. It identifies and describes the lands, easements, rights-of-way, relocations, and disposals (LERRD) required for the construction, operation and maintenance of the proposed project, including those required for relocations (i.e., P.L. 91-646 relocations and utility/facility relocations), borrow material, and dredged or excavated material disposal. Furthermore, the REP describes the estimated LERRD value, together with the estimated administrative and incidental costs attributable to providing LERRD, and the acquisition process.

## 2 Project Type & Applicability

The Galveston District of the Corps conducted a feasibility study and environmental impact statement of the Matagorda Ship Channel (MSC). The MSC is located 125 miles southwest of Galveston, Texas and 80 miles northeast of Corpus Christi, Texas (Figure 1). The MSC extends approximately 26 miles from the Port turning basin in Lavaca Bay into the Gulf of Mexico, providing deep-water access from the Gulf to the Port (Figure 2). The MSC entrance passes through a man-made cut in the western end of Matagorda Peninsula, a landform separating Matagorda Bay from the Gulf of Mexico (Figure 3). The channel runs through Matagorda Bay and Lavaca Bay to the Port. The northern portion of the MSC is located in Calhoun County and the southern portion and entrance channel are located in Matagorda County.

The MSC Federal deep-draft navigation channel serves Port Lavaca/Point Comfort operations such as Formosa Plastics Corporation U.S.A., Simplot Fertilizer, INEOS Nitriles, and Invista. The MSC is also used by barges, commercial fishermen, crew and supply boats, and other commercial traffic to Port O'Connor, Palacios, and Port Lavaca in Calhoun County, Texas. Construction of the MSC was completed in 1966.

### 2.1 Project Authority

- Congress originally authorized navigation improvements in the Matagorda Bay area under the Rivers and Harbors Act (RHA) of June 25, 1910. This authorization provided for an 8 mile long channel measuring 7 feet deep and 80 feet wide from deep water in lower Matagorda Bay to Port Lavaca.
- The RHA of August 30, 1935 authorized the upper end of the channel to be extended a distance of about 1 mile to the shoreline at the entrance of Lynn Bayou.
- The RHA of August 26, 1937 authorized the enlargement of the channel from Lynn Bayou at Port Lavaca to deep water in Matagorda Bay near Port O'Connor. This channel had a depth of 9 feet and a width of 100 feet and was approximately 11 miles long. This Act provided for a channel extension 100 feet wide and 6 feet deep from Port Lavaca, via Lavaca Bay, Lavaca River, and Navidad River, to Red Bluff located at about mile 3 on the Navidad River, for a total distance of 20 miles.
- The RHA of March 2, 1945 extended the channel and provided for a "harbor of refuge" 9 feet deep near Port Lavaca with an approach channel 9 feet deep and 100 feet wide.
- The RHA of July 3, 1958 as described in House Document 388, 84<sup>th</sup> Congress, second session, authorized the construction of a deep draft-navigation channel from the Gulf of

Mexico through Pass Cavallo, 38 feet deep, 300 feet wide and approximately 6 miles long; an inner channel 36 feet deep, 200 feet wide and approximately 22 miles long across Matagorda and Lavaca Bay, a turning basin at Point Comfort, 36 feet deep and 1,000 feet square; and dual jetties at the channel entrance (these are the dimensions of the present-day channel). During preconstruction project design, hydraulic modeling indicated the location of the entrance channel should be moved from Pass Cavallo to a man-made cut across Matagorda Peninsula. The relocated entrance channel would provide a shorter and straighter entrance channel, shorter jetties, a short length of channel in which current velocities would be relatively high, and the probability that periodic maintenance requirements would be reduced.

- The RHA of July 3, 1958, as described in House Document 131, 84<sup>th</sup> Congress, first session, also authorized the channel from Pass Cavallo to Port Lavaca to be deepened to 12 feet and widened to 125 feet from the 12-foot depth in Matagorda Bay to the Turning Basin at Port Lavaca. Authorization was given for the channel to the Harbor of Refuge near Port Lavaca to be enlarged to 12 feet and 125 wide over a distance of 2.1 miles.
- The Flood Control Act of 1970, Section 216, authorizes studies to review the operation of completed Federal projects, and recommends project modifications when found advisable due to significantly changed physical or economic conditions.

## 2.2 Proposed Project Alternatives

Below are the alternatives for the MSC, which were screened based on preliminary cost estimates from similar navigation studies and best professional judgment.

The proposed Matagorda Ship Channel Improvement Project consists of three reaches: Lavaca Bay Reach for Stations 118+502 to 75+000, including the Calhoun Port Authority (CPA) facilities and the turning basin; Matagorda Bay Reach from Stations 75+000 to 6+000; and Offshore Reach from Stations 6+000 to -23+000.

### 2.2.1 Future without Project Conditions

The Future without Project Conditions (FWOPC) would retain a 38-foot deep navigation channel with its current maintenance dredging program. The restrictive depth and width of the MSC would prevent some vessels from entering with full loads or prevent the use of the channel by larger vessels altogether. Table 1 lists the existing channel conditions.

**Table 1: Existing MSC Channel Sections and Dimensions**

Channel Section	Authorized Depth MLT (ft)	Authorized Depth MLLW (ft)	Width (ft)	Length
Outer Bar and Jetty Channel	40	41	300	3.2 mi
Channel to Point Comfort	38	39	200 – 300	20.9 mi
Approach Channel to Turning Basin	38	39	200 – 300	1.1 mi
Point Comfort Channel to Turning Basin	38	39	1,000	1,000 ft
Point Comfort Turning Basin Extension (North & South)	38	39	300	1,279 ft

The measures considered in the development of alternatives were:

#### *2.2.2 Structural Channel Modification*

- Deepening of Existing Channel – dredging the existing MSC deeper, by two-foot increments, from 41' MLLW depth in the main channel, and from the existing 43' depth in the entrance channel.
- Widening of Existing Channel – widening the existing MSC entrance channel from 300' to 600', and from 200' to 350' in the main channel.
- Vessel Passing Lane – widening a portion of the single lane channel towards the mid-point of the main channel such that vessels heading towards the port could pull over and stop to the side, in order to allow a ship returning to the Gulf to pass.
- Modification of Existing Turning Basin - physically expanding the existing 1,000' by 1,000' by 47' deep turning basin at Port Comfort, to 1,200' by 1,200' and by the new economically justified depth for the design vessel.
- New Turning Basin – dredging a 1,200' diameter turning-basin to the northwest side of the ship channel at STA 114+004.58 where the channel curves into the existing turning point/port.

#### *2.2.3 Non-Structural Modification*

- Modifications to Pilot's Rules – easing the current pilot's rules, as practicable, to allow for more efficient loading and maneuvering of vessels within the bay.
- Modification to Tug Assist – increase the number of tugs (from two to four) currently used to safely escort (pull/push) the design vessel.
- Split Deliveries – shipping and/or receiving large loads on two or more vessels.
- Light Loading – loading the design vessel below its maximum storage capacity.

#### *2.2.4 Recommended Plan*

The recommended plan, known as Alternative Plan A, for the project is to deepen the existing MSC from 41' to 47' MLLW within the main channel and deepen the existing entrance channel from 43' to 49' MLLW. The recommended plan would widen the existing MSC entrance channel from 300' to 600' bottom width, and from 200' to 350' in the main channel, and dredge the turning basin from 1,000' to 1,200'.

### **3 Purpose and Scope**

The purpose of this report is to reduce transportation costs and increase operational efficiencies of maritime commerce movement through the Port. A variety of products are transported along the MSC, including aluminum ore, chemicals, and allied products. The need for this project is derived from an analysis of current and projected vessel transits, cargo tonnage, and capacity at existing and proposed terminal facilities. This need is becoming more critical given increasing levels of maritime traffic, increasing vessel size, and growing numbers of channel users active in the oil and petrochemical industry. By expanding channel dimensions, cargo vessels could reduce or eliminate light loading measures, and larger cargo vessels, unable to transit the exiting channel configuration, could begin calling on the Port and adjacent facilities.

#### **3.1 Previous Studies**

There have been several previous studies performed related to the authorization and construction of the MSC.

- General Design Memorandum, (No. 3) Matagorda Ship Channel, (1963): this memorandum describes the design and specifications of the proposed deep-draft channel

from the Gulf through the Matagorda Peninsula, across Matagorda and Lavaca Bays, and includes a turning basin at Point Comfort, Texas, with jetties at the Gulf entrance. These improvements were proposed in lieu of a channel through Pass Cavallo.

- Matagorda Ship Channel Texas Reconnaissance Report, (1989): this report presents the results of a preliminary investigation of deep-draft navigation improvements to the MSC and concludes the Reconnaissance Study demonstrated that deepening the MSC to 42 ft MLT while maintaining the existing width was economically justified, in the Federal interest, and in accordance with current policies and budget priorities.
- Matagorda Ship Channel Jetties Section 216 Initial Appraisal Report, (2000): this study assessed the situation at the MSC jetties, identified preliminary alternatives, and recommended further study.
- Matagorda Ship Channel, Texas Reconnaissance Report, Section 905(b) Analysis, (2004): this 905(b) analysis was performed to determine whether there is a Federal interest in providing channel and jetty improvements to the MSC. The report documents the basis for the positive finding of Federal interest and established the scope of feasibility phase.
- Matagorda Ship Channel Point Comfort Channel Extension, Assumption of Maintenance Decision Document, (2006): this analysis addressed the requirements of Section 509 of WRDA 1996 for the Federal AOM for the Point Comfort Turning Basin.

## **4 Real Estate Requirements**

The MSC is an existing Federal project. The Non-Federal Sponsor (NFS) is required to furnish all LERRD for the proposed cost-share project. Figures 4 through 8 show the four (4) existing perpetual easements and eighteen (18) existing disposal areas. Described below are the existing easements, along with a brief description of the necessary additional easements required to support construction of the project and future operations, maintenance, repair, replacement, and rehabilitation (OMRR&R).

### **4.1 Existing Federal Interests and New Real Estate Requirements**

#### *4.1.1 Existing USACE Interests*

The following real estate interests are currently held by USACE:

- A perpetual easement and right-of-way for navigation purposes to construct, dredge, reconstruct, enlarge, replace, maintain, operate and repair a navigation channel and waterway and jetties and related facilities and spoil-disposal areas for the deposit of sand, silt and spoil from the original construction and future maintenance, enlargement, reconstruction and repair of said project in, over, on, along and across tract MSC3 100E-1 (528 acres) was acquired 9 August 1967 from the Matagorda County Navigation District No. 2, recorded 11 September 1967; Vol. 456/ Pg.725 (Figure 5).
- A perpetual right and easement to enter upon, dig or cut away and remove on tract MSC3 100E-2 (1,885 acres) in the prosecution of the work of constructing, maintaining or improving the Matagorda Ship Channel, or any enlargement thereof, and to maintain the portion so cut away and remove as a part of the navigable waters was acquired 7 August 1963 from Matagorda County Navigation District No. 2 (Figure 5).
- A perpetual easement to prosecute the work of constructing, maintaining or improving the Matagorda Ship Channel on tracts MSC3 100-1 and MSC3 100-2 was acquired 7 August 1963 from Matagorda County Navigation District No. 2 (Figure 5).

#### 4.1.2 Existing USACE Placement Areas

Most existing USACE placement areas (PA) currently in use for maintenance dredge material placement (Figure 6, Figure 7, and Figure 8) will be excluded from this project as a result of a new dredged material management plan (DMMP). The new least cost placement plan creates several new in-bay placement areas (Figure 9).

Existing placement areas owned by USACE that will be used for construction and future OMRR&R include:

- Sundown Island, totaling 442 acres, is a designated placement area used for both Matagorda Ship Channel and Gulf Intracoastal Waterway maintenance material disposal, located near the Matagorda Ship Channel Entrance (Figure 10). Sundown Island has a capacity of 2.3 mcy of new and 12.9 mcy of work maintenance dredged material.
- PA 1 is an Ocean Dredged Material Disposal Site (ODMDS) located approximately 2 miles offshore of the Matagorda Peninsula, and about 1,000 feet southeast of the centerline of the MSC Entrance Channel. This rectangular site occupies an area of approximately 457 acres, with depths ranging from 25 to 40 feet and a capacity of 17.9 mcy of new work maintenance dredged material (Figure 11).

#### 4.1.3 New USACE Placement Areas

The new least cost placement plan creates several new placement areas (Table 2). The placement will be under USACE control and constructed under navigational servitude (Figure 11). These placement areas will be used for new work and future OMRR&R.

**Table 2: New USACE Placement Areas**

New Work and New Work Maintenance Placement Areas					
Placement Area	Ownership	Types of Placement Areas	New Work Capacity	New Work Maintenance Capacity	Acres
O5	Federal	Offshore Dispersive Site	3.2 mcy	0.0 mcy	2,663
Sand Engine	Federal	Unconfined	1.4 mcy	9.0 mcy	165

## 4.2 NFS Real Estate Interests and New Real Estate Requirements

### 4.2.1 Non-Federal Sponsor

The Non-Federal Sponsor (NFS) is the Calhoun Port Authority (CPA), formerly known as the Calhoun County Navigation District (CCND).

### 4.2.2 Assessment of Project Sponsor Land Acquisition Capabilities

The NFS, CPA, has the authority and capability to furnish lands, easements and rights-of-way. The CPA is highly capable of performing the real estate acquisition required by this project (Exhibit B). The CPA's authority to hold title to real estate emanates from the Special Districts Local Laws Code, Title 5 (Transportation), Subtitle A (Navigation Districts and Port Authorities), Chapter 5003 (Calhoun Port Authority) (Exhibit C). Section 5003.101 outlines CPA powers, which include the ability to exercise the rights, powers, duties, privileges, and functions conferred by Chapter 62 of the Water Code (Exhibit D) and cited in Exhibit B.

The CPA is well-acquainted with Federal Real Estate Acquisition Regulations, including the provisions of PL 91-646. The CPA has not had to acquire real estate in the past in support of the federal channel.

#### *4.2.3 Non-Federal Sponsor's Interest*

CPA holds several real estate interests required for this project:

- PA P1 is a 248-acre upland placement area (Figure 12). This placement area crosses three separate tracts of land totaling 993 acres of property acquired by CPA through a general warranty deed, with limited mineral reservations, on 29 February 2016 (Instrument #146815, Recorded 1 March 2016). It has the capacity to provide the project with space to place 22.6 mcy of material, however it will only be used if the additional capacity is determined necessary at 65% design during the Preconstruction, Engineering, and Design (PED) phase. Initial quantity calculations indicate it is unlikely PA P1 will be used due to the sufficient capacity of open water PAs. However, if PA P1 is used, the NFS will receive LERRD credit for this land, as they have not received credit previously.
- A 90-foot wide easement stretching from the bay at the end of Stephen Avenue across Farm-to-Market Road 2760 (Figure 13). This easement will partially meet the need for the pipeline(s) necessary to move dredged material from the bay to upland PA P1, if determined to be necessary for the project.
- 63,010 acres of bay bottom from which they can create land (Figure 14). CPA acquired 11,860 acres of submerged land from the State of Texas (state tract nos. 111, 111A, 112, 113, 137, 138, and 138A as well as Gulf of Mexico tract nos. 629S, 630S, 635S, 636S, 637S, 638S, 639S, 642S, 643S, 644S, 645S, 646S, 647S, 653S, and 654S) on 31 March 1998 recorded in Vol. 202/Pg. 619. CPA acquired 3,385 acres of submerged land from the State of Texas (state tract nos. 22, 23, 24, 26, 28, 38, 140, 141, and 142) on 25 April 1998 recorded in Vol. 202/ Pg.612. CPA also acquired 47,765 acres of submerged land from the State of Texas on 13 October 1956, recorded in Vol. 26-B/No. 369. The capacity of these areas are not defined by the current DMMP. Due to navigation servitude, these areas will not be creditable to the NFS.

#### *4.2.4 New Real Estate Requirements*

In the unlikely event additional capacity is needed, as determined when design reaches 65% during PED, and PA P1 is utilized, a utility/pipeline easement from the bay to PA P1 will be required. The NFS has already secured a 90-foot wide easement from the bay across Farm-to-Market Road 2760, however a new utility/pipeline easement will need to be acquired from the intersection of Farm-to-Market Road 2760 and Stephen Avenue south to PA P1 (Figure 13). The additional easement will be 30-feet wide by approximately 1,928 feet long, totaling 1.33 acres and impacting three tracts. If determined necessary for the project, the NFS will need to provide an easement to USACE for use of the utility/pipeline and PA P1.

In event contaminated dredged material is located within the dredge template, the NFS will assume the full responsibility to investigate and dispose of the material at their expense. The CPA has notified USACE of a legal agreement between the CPA and Alcoa, Inc. which states Alcoa will take responsibility for and dispose of contaminated dredged material.

### **4.3 Navigation Servitude**

Navigation Servitude emanated from the Commerce Clause of the Constitution of the United States, Article I; Section 8, Clause 3. The servitude gives the Federal Government the right to use the "Navigable Waters" of the United States without compensation for navigation projects. These are non-transferable rights, and are not considered interest in real property. The Federal Government's rights under navigation servitude exist irrespective of the ownership of the banks

and bed of a stream below the ordinary high water mark and irrespective of western water rights under prior appropriation doctrine.

There will be navigational servitude associated with the MSC project as it meets the two-step determination of availability process: the project is an aid to commerce and the lands are below the ordinary high water mark. The widening of the existing MSC and creation of the proposed open water placement areas (NP1-NP7 and OP1-OP10) would occur entirely within navigable waters and would be constructed under navigational servitude.

#### 4.4 NFS Real Estate Placement Area Interest

##### 4.4.1 New Work Placement Areas (Figure 15)

Table 3 illustrates the proposed placement areas that will be utilized for placement of dredged material from new work being performed. The CPA owns the submerged lands where the new, open water PAs will be created in Matagorda Bay, but navigational servitude is applicable. If determined to be necessary for the project, upland PA P1 will be designed and scaled as project needs are determined and the containment dike will be constructed utilizing existing material within the placement area. The acreage shown in the table below is the maximum footprint for this placement area. The combined capacities of NP 1 – NP 7 total 14 mcy.

**Table 3: New Work Placement Areas**

<b>New Work Placement Areas</b>			
<b>Placement Area</b>	<b>Ownership</b>	<b>Types of Placement Areas</b>	<b>Approx. Acres</b>
P1	CPA	Upland Confined PA	248
NP1	CPA	Unconfined PA	331
NP2	CPA	Unconfined PA	1,433
NP3	CPA	Unconfined PA	661
NP4	CPA	Unconfined PA	248
NP5	CPA	Unconfined PA	248
NP6	CPA	Unconfined PA	331
NP7	CPA	Unconfined PA	331

##### 4.4.2 New Work Maintenance Placement Areas (Figure 16)

Table 4 illustrates the proposed areas that will be utilized for placement of maintenance dredged material after new work has been performed. The capacity for OP 1 – OP 10 totals 114.2 mcy.

**Table 4: New Work Maintenance Placement Areas**

<b>New Work Maintenance Placement Areas</b>			
<b>Placement Area</b>	<b>Ownership</b>	<b>Types of Placement Areas</b>	<b>Approx. Acres</b>
OP1	CPA	Unconfined PA	331
OP2	CPA	Unconfined PA	331
OP3	CPA	Unconfined PA	331
OP4	CPA	Unconfined PA	331
OP5	CPA	Unconfined PA	331

OP6	CPA	Unconfined PA	331
OP7	CPA	Unconfined PA	331
OP8	CPA	Unconfined PA	248
OP9	CPA	Unconfined PA	331
OP10	CPA	Unconfined PA	331

**4.4.3 Estates Needed for New Work Requirements**

A non-standard perpetual dredged material placement easement will be required for the upland placement area PA P1, if needed for the project. The district will seek approval of the non-standard estate by separate request to HQ.

***Non-Standard Perpetual Dredged Material Placement Easement***

*A perpetual and assignable right and easement on, over, and across (the land described in Schedule A) (Tracts Nos.\_\_\_\_,\_\_\_\_, and \_\_\_\_\_), for the location, construction, operation, maintenance and patrol of a dredged material disposal facility, including the right to borrow and/or deposit fill, spoil and dredged material thereon, the right to move, store and remove equipment and supplies, and the right to perform any other work necessary and incident to said facility, together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any vegetation, structures, or obstacles within the limits of the easement; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.*

Maintenance dredging of the Federal Project channel is a 100% Federal responsibility and is accomplished through Federal dredging contracts. Perpetual easements conveyed to the Federal Government are needed to assure all project placement areas, which are built for the purpose of supporting the Federal navigation project, are available to the Government as often and for as long as they are needed to support the project. The Government is also responsible for managing the navigation project to assure sufficient placement area capacity exists to meet the needs of the Federal navigation project now and in the future.

Perpetual easements allow the Government to better restrict/control non-federal use, maximum quantities placed by non-federal interests, and remove any potential for interference with federal dredge contractors. Finally, the Government has certain Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liabilities already as an operator and transporter of materials put into the placement area. Perpetual easements provide the property interest necessary for the Government to issue outgrants to non-federal users that will require testing and approval of non-federal dredged materials prior to placement into the Federal project placement areas, thus protecting the Government from additional CERCLA liability.

To move dredged material from the bay to upland PA P1, a temporary pipeline easement will be required as outlined below and shown in Figure 13.

***Utility and/or Pipeline Easement***

*A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos.\_\_\_\_,\_\_\_\_and\_\_\_\_), for the location, construction, operation, maintenance, alteration; repair and patrol of (overhead) (underground) (specifically name type of utility or pipeline); together with the right to trim,*

*cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.*

#### **4.5 Mitigation**

Mitigation for oyster and marsh impacts from construction is required to be performed by the NFS.

Approximately 133 mitigation acres will be required for impacts to oyster reefs from placement of dredged material. Figure 17 shows oyster reefs located within the project area based on a 7 February 2013 survey completed by Benchmark Ecological Services, Inc. for the URS Corporation. It is expected these oyster maps will need to be updated prior to construction of the project. The proposed mitigation is the creation of new oyster reefs on the submerged bay bottom. During the development of the Mitigation Plan, potential locations will be reviewed by the PDT to ensure no one entity will benefit from the proposed Mitigation Plan. Exact locations have yet to be determined however, once selected and finalized, the REP will be updated to include this information. It is expected the 133 acres of oyster mitigation will occur within the more than 63,000 acres of submerged lands owned by CPA, therefore no real estate costs are anticipated for oyster mitigation.

If PA P1 is used, placement of that material in upland PA P1 would result in the loss of 1.5 acres of marsh. Locations for performing the mitigation have not yet been identified. The environmental lead is coordinating with local resource agencies to solidify a plan and this section of the REP will be updated once finalized. The cost to acquire two (2) acres of land for mitigation is included in the Baseline Cost Estimate for Real Estate (Table 5) in Section 7.

At this point in the feasibility stage, no mitigation related to shoreline erosion from larger vessels navigating the channel is expected. Engineering conducted a ship wake study and determined the 4" vertical difference in wakes to be insignificant and too minimal to cause beach erosion.

#### **4.6 Borrow Material**

The proposed project does not require borrow material.

#### **4.7 Access/Staging Area**

The project is not anticipated to require access or staging areas. If access or staging areas are required in the future, the REP will be updated in PED phase to include this information including cost associated with any temporary work area easements necessary and the duration of those easements.

#### **4.8 Recreation Features**

There are no recreation features proposed for this project.

### **5 Existing Federal Projects and Federally Owned Lands**

The existing MSC is a Federal project that has used PA 1, PA 5 to 12, PA 14 to 19, PA 116-B, DA 2, and Sundown Island for unconfined placement of maintenance dredged material (Figures 6, 7, and 8). The Gulf Intracoastal Waterway (GIWW) crosses the MSC. There are no impacts anticipated to the GIWW, and no additional lands will be purchased or leased in this area. Within

the project area are Coastal Barrier Resources System, Texas Audubon Society bird sanctuary, and Otherwise Protected Areas (Figure 18).

The Coastal Barrier Resources Act (CBRA) of 1982 established the John H. Chafee Coastal Barrier Resources Systems (CBRS), a defined set of geographic units along the Atlantic, Gulf of Mexico, Great lakes, U.S. Virgin Islands, and Puerto Rico coasts. Most new Federal expenditures and financial assistance are prohibited within the CBRS, unless those activities qualify for an exception under Section 6 of CBRA (16 U.S.C. § 3505).

The RHA of July 3, 1958 authorized the construction of a deep draft-navigation channel from the Gulf of Mexico across Matagorda and Lavaca Bay. While the proposed project footprint is within the CBRS it is expected to receive an exception under Section 6:

A federal expenditure is allowable within the CBRS, if it meets any of the following exceptions (16 U.S.C § 3505(a)(1)-(5)):

The maintenance or construction of improvements of existing federal navigation channels (including the Intercostal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction. A federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System unit was included with the CBRS.

## **6 Induced Flooding**

There will be no induced flooding as a result of the construction of the project. The footprints of the placement areas relative to the entire bay system are insignificant, and widening and deepening the channel would not increase flooding. Construction of upland PA P1 is not anticipated to induce flooding as all dredged material will be placed within a levee system along with a de-watering system for drainage purposes (Figure 12).

## **7 Baseline Cost Estimate for Real Estate**

The costs listed in Table 5 reflect the estimated real estate costs for the proposed feasibility study. The baseline cost estimate is subject to change through final draft.

Four tracts, associated with the required mitigation and pipeline easement, will need to be acquired. The fifth tract is currently owned by CPA and will be credited to the NFS, if used for the project. The pipeline removal costs listed in the tables below are only the administrative costs associated with pipeline identification and removal.

**Table 5: Baseline Cost Estimate (BCE) for Real Estate**

	<b>Account</b>	<b>Activity</b>	<b>Amount</b>
<b>NON-FEDERAL COSTS</b>	102	Acquisition (20 hrs. x \$125 x 4 tracts for labor for negotiations, planning documents, verifying ownership, and mapping.)	\$10,000.00
	105	Appraisals (\$2,500 per tract x 5 tracts)	\$12,500.00
		Surveys (\$4,000 per tract x 5 tracts)	\$20,000.00
		Temporary Work Area Easement, Permits, Licenses (\$500 per owner x 4 owners)	\$2,000.00
		Land Value Estimate for Previously Acquired Land for PA P1 (\$881,275.00) and Pipeline Easement (\$48,960.00).	\$930,235.00
		Land Value Estimate for Additional Interest Required for Pipeline Easement	\$32,640.00
		Land Value Estimate for Mitigation (\$64,000 per acre x 2 acres)	\$128,000.00
	112	Project-Related Administration	\$50,000.00
	113	Pipeline Removal, Administrative Coordination Only (\$3,000 per pipeline x 16 pipelines)	\$48,000.00
	117	LERRD Crediting	\$5,000.00
		Title Commitment (\$1,000 per tract x 5 tracts)	\$5,000.00
		Subtotal	\$1,243,375.00
		Contingency (25%)	\$310,843.75
		<b>Non-Federal Total</b>	<b>\$1,554,218.75</b>
<b>FEDERAL COSTS</b>	102	Acquisition (4 hrs. x \$125 per tract x 5 tracts for reviewing RE planning documents and mapping.)	\$2,500.00
	105	Appraisal Review (10 hrs. x \$125 per tract x 5 tracts)	\$6,250.00
	112	Project-Related Administration	\$30,000.00
	113	Pipeline Removal, Administrative Coordination Only (\$2,000 per pipeline x 16 pipelines)	\$32,000.00
	117	LERRD Crediting and Real Estate Certification	\$10,000.00
		Subtotal	\$80,750.00
		Contingency (25%)	\$20,187.50
		<b>Federal Total</b>	<b>\$100,937.50</b>
<b>GRAND TOTAL (Non-Federal + Federal)</b>			<b>\$1,655,156.25</b>

## **8 Public Law 91-646 Relocations**

There are no residential houses, businesses, or farms that would require relocation associated with PL 91-646.

## **9 Mineral and Energy Activity**

No mineral activity is expected to interrupt or be interrupted by the project. Predominantly, the type of mineral activity in the project vicinity is oil and gas exploration and production. The upland area around PA P1 has several plugged wells and dry holes. A dry hole is defined by the Texas Railroad Commission as a well that failed to produce any oil or gas in commercial quantities. One well is located within the project area, but it is classified as a dry hole (Figure 19). This dry hole is located on upland PA P1, which will only be used in the unlikely event additional capacity is determined to be necessary during PED.

The CPA acquired the land for PA P1 in 2016 through a general warranty deed from Alamo Beach Limited Partnership (Instrument #146815, Recorded 1 March 2016). The general warranty deed assigns ownership of reserved minerals to the grantor. The grantor is limited to subsurface operations only, except as indicated by one of two indefinite term, 3-acre drillsite agreements impacting 6 acres of the PA. The grantor has limited rights of ingress and egress as outlined by the drillsite agreements. The general warranty deed conveyed minerals produced by surface destruction to the CPA, thereby giving the NFS the ability to limit future surface exploration.

The CPA has provided USACE with the drillsite location agreements for drillsites 4 and 6 on PA P1 (Instrument #146818, Recorded 29 February 2016). At this phase of the feasibility study, USACE has noted a discrepancy between the Texas Railroad Commission's report of the location of the dry hole and the legal descriptions within the drillsite location agreements. This discrepancy will be investigated further in PED if PA P1 is determined to be necessary to construct the project or perform OMRR&R. At this time, there are no drillsite agreements in place affecting the remaining 242 acres of PA P1. If determined to be necessary for the project, USACE may require the NFS to prohibit new surface mineral activity within PA P1.

At this time, the PDT does not anticipate the need for mineral rights to be acquired. The PDT considers the risk to be minimal due to the number of dry and plugged holes in the area hinting at inactivity of mineral extraction, the potential difficulties with title issues, the relatively small area of PA P1 affected (approximately 2.5% of the acreage), and the low probability PA P1 will be used due to sufficient open water capacity. If PA P1 is needed for the project, the PDT has determined mineral activity on the 6 acres covered under the current drillsite agreements would not adversely affect the ability to use PA P1. The PA would be designed and scaled to meet capacity needs and avoid impacting existing mineral rights.

## **10 Zoning in Lieu of Acquisition**

No zoning changes are anticipated for this project.

## **11 Acquisition Schedule**

The utilization of upland PA P1 will precipitate the acquisition of a 1.33 acre utility/pipeline easement impacting three tracts, as well as two acres of mitigation lands for the project. As mentioned above, PA P1 is already under the ownership of the NFS. The NFS will be required to acquire all LERRD, after a project Partnership Agreement (PPA) has been signed and prior to the advertisement for construction.

An initial description of the land acquisition schedule is listed below in Table 6. A detailed acquisition schedule will be prepared during PED once the 95% plans and specifications are prepared for the project. The land acquisition schedule below outlines the milestones and approximate durations for the acquisitions, which can be expected to take one and a half to two years. The durations shown below are the estimated maximum durations and the milestones may be reached quicker if preceding tasks are completed sooner than expected. It should be noted that each of the tracts to be acquired will move along the acquisition schedule independently of the other tracts.

**Table 6: Acquisition Schedule**

<b>Land Acquisition Schedule</b>		
<b>Milestone*</b>	<b>Predecessor</b>	<b>Maximum Duration</b>
<i>Transmittal of ROW drawings &amp; instruction to proceed with acquisition along with required estate(s)</i>	Immediately after PPA is signed	30 days
<i>Obtain Surveys</i>	Upon transmittal of ROW drawings and instruction to proceed with acquisition	120 days
<i>Obtain Title Evidence</i>	Upon completion of surveys	120 days
<i>Obtain Appraisals &amp; Reviews</i>	Upon obtaining title evidence	90 days
<i>Authorization to Proceed with Offer</i>	Upon obtaining appraisals and reviews	30 days
<i>Conclude Negotiations</i>	Upon obtaining authorization to proceed with offer	90 days
<i>Begin Condemnations</i>	Upon conclusion of negotiations	30 days
<i>Conduct Closings</i>	Upon conclusion of negotiations	90 days
<i>Conclude Condemnations</i>	Upon beginning condemnations	240 days
<i>Attorney Certifies Availability of LERRD</i>	Upon conclusion of condemnations	30 days

\*Milestones are based on the project Partnership Agreement (PPA) being signed.

## **12 Facility/Utility/Pipeline Relocations**

CPA is responsible to provide ROW for the recommended plan within the channel and remove any obstructions prior to the advertisement of the first contract. Clearance requirements for underground pipelines, cables, and conduits crossing deep draft channels are given in the USACE Galveston District (1998) SWGOM 1145-2-15: "Regulatory Permit Insurance, Inspection, Reporting, and Clearance Requirements Deep Draft Channels District Policies and Practices". The Galveston District's policy states that existing pipelines (measured from the top of the pipe) shall have, "a minimum of 20 ft. below the authorized project depth of the channel plus a distance of 50 ft. on each side of the channel measured from the bottom edge of cut and perpendicular to the centerline". Any pipelines that are not deep enough to comply with the District's clearance

requirements within the proposed channel template will have to be removed or relocated at no expense to the United States.

Several sources of information were used to gather information on possible pipelines in the MSC area: a June 2013 Marine Geophysical and Pipeline/Cable Locating Survey prepared by Fugro Pelagos, Inc.; a July 2014 Real Estate Appendix prepared by URS Corporation; a November 2017 Oil/Gas Wells and Petroleum Pipelines report prepared by Atkins; Railroad Commission of Texas (RRC) GIS data; and easement records held by the Calhoun Port Authority.

Based on available information, approximately 16 pipelines cross the channel and will need to be removed or relocated (Table 7, Figure 19). With the exception of the ammonia and acrylonitrile pipelines operated by Ineos USA Pipelines, the pipelines carry natural gas. Pipelines and their unknown depths have been identified as a risk to the project in the risk register. All information on the number of pipelines and their depths will need to be confirmed in the PED phase.

**Table 7: Pipelines that May Require Removal/Relocation**

	Approximate Channel Station	Quantity	T4 Permit No./ P5 No.	Operator	Size (in.)	Depth (ft.)	USACE Permit No.	T4 Permit Miles	Status (per RRC)
Lavaca Bay	+105+594	1	07368/605990	Neumin Production Company	4.5	-	-	2.88	In Service*
	+91+330	1	04143/845690	Texas Eastern Transmission, LP	30	-50	3560	3.99	In Service
	+91+330	1	05554/424191	Ineos USA LLC	8.63	-	-	24.48	In Service
	+91+330	1	05569/424191	Ineos USA LLC	8.63	-	-	24.47	In Service
	+82+960	4	00441/624246	Onyx Pipeline Company	8.63	-	-	4.34	Abandoned
	+76+314	1	90134/881288	Valero Interstate Transmiss Co.	6.63	-	82679	2.29	In Service
Matagorda Bay	+72+949	4	00276/489680	Lavaca Pipeline Company	8.63	-	4566	16.51	In Service**
	+43+000	1	07025/385533	High Island Gas LLC	16	-	6729	7.8	In Service**
	+22+472	1	06146/876520	Union Oil Company of California	8.63	-	-	8.14	Abandoned
Offshore	-18+472	1	02878/253368	Enterprise Products Operating LLC	24	-65	14794	26.21	In Service

\*This line has been cut, flushed, filled with bay water, and capped according to the CPA.

\*\*These lines are listed as in-service by the Railroad Commission of Texas, but as abandoned in July 2016 according to the CPA.

CPA owns the submerged lands where the pipelines cross the channel. CPA lease agreements with the pipeline companies require the pipeline owners to remove and/or relocate the lines at the owner's expense, if required for improvements to the MSC. However, since this is a deep-draft navigation project, the NFS must bear at least 50 percent of the cost of relocation as required by WRDA Section 101(a)(4) and explained in Policy Guidance Letter (PGL) 44. The law apportions the remaining payment responsibility to the pipeline owner. Costs borne by the NFS for utility relocations are credited toward the NFS's additional payment of 10% of the cost of the general navigation features. To the extent that the total amount eligible for credit under Section 101(a)(2) exceeds 10 percent of the total cost of the general navigation features, the NFS shall not be entitled to reimbursement.

Figure 20 provides a map of pipelines located around PA P1, but none are located within the PA. One well is located within PA P1. The Railroad Commission of Texas indicates that this well is a dry hole (a well drilled for oil or gas, but yielded none) and that no active wells are located within one mile of PA P1 (Figure 20).

ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REAL ESTATE PLAN, OR ELSEWHERE IN THIS PROJECT REPORT, THAT AN ITEM IS A UTILITY OR FACILITY RELOCATION TO BE PERFORMED BY THE NON-FEDERAL SPONSOR AS PART OF ITS LERRD RESPONSIBILITY IS PRELIMINARY ONLY. THE GOVERNMENT WILL MAKE A FINAL DETERMINATION OF THE RELOCATIONS NECESSARY FOR THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE PROJECT AFTER FURTHER ANALYSIS AND COMPLETION AND APPROVAL OF FINAL ATTORNEY'S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES.

### **13 Hazardous, Toxic, and Radioactive Waste or Other Environmental Contaminants**

An evaluation of the potential to encounter Hazardous, Toxic, and Radioactive Waste (HTRW) was conducted as part of the Final Environmental Impact Statement (FEIS) for the Matagorda Ship Channel project located in Matagorda and Calhoun counties, Texas dated July 2009. The evaluation included the MSC, inclusive of both dredge locations and adjacent properties within a 2 mile radius of the channel. The assessment consisted of a review of recent and historic aerial photographs and a review of regulatory agency database information. This evaluation concluded that the potential for encountering impacted material during the construction of the project is very limited.

The following text can be found in Section 4.8.2 of the FEIS:

Impacts associated with regulated facilities are most likely to be encountered near the source of the contaminants. These sources included, but are not limited to, industry located in the Point Comfort area. According to a review of the database records and research of the environmental history of the region, the industrial activity adjacent to Lavaca Bay has caused measureable impacts to the terrestrial and marine environments adjacent to this and adjacent waterways.

The industrial activity adjacent to Lavaca Bay is extensive and is primarily related to two large industrial complexes located immediately adjacent to the project. Industrial activity at the Alcoa Point Comfort Operation and Formosa has resulted in quantifiable impacts to groundwater, surface water, soil and sediment. Recent corrective action performed at both facilities has minimized the potential to encounter impacted media during project construction. However, in spite of prior remedial activities, the potential for the project to encounter impacted media remains. The documented areas impacted by previous industrial activity are isolated to the portion of Lavaca Bay adjacent to Point Comfort. According to the regulatory agency database report, the northern extent of the project enters into an area defined as a National Priority List (NPL) Superfund site. This area has been defined as having been impacted by contaminant releases from the Alcoa facility. Data provided by the National Oceanic and Atmospheric Administration (NOAA) delineates elevated levels of mercury within sediment in the vicinity of Dredge Island. The concentration of mercury within the impacted areas range from below detection limits to 2.00 mg/kg. Refinements of the project since the TSP have eliminated this area from the project footprint.

## **14 Attitudes of the Landowners and Stakeholders**

CPA, the NFS, is the owner of the majority of the project lands and is supportive of the project. During a public meeting held on 15 May 2018, some concerns were raised regarding erosion along the shoreline from wakes in the channel. However, overall comments from local landowners and oyster fishermen were positive.

## **15 Sponsor Notification of Risk**

A copy of the letter notifying the NFS of the risk in acquiring lands prior to the signing of the Project Partnership Agreement (PPA) is shown in Exhibit E. The risk letter has been signed by the NFS acknowledging their risks.

## **16 References**

2017. Atkins. Matagorda Oil and Gas Wells and Petroleum Pipelines.

2013. Fugro Pelagos, Inc. Marine Geophysical and Pipeline/Cable Locating Survey.

2018. Railroad Commission of Texas. Public GIS Viewer. <https://rrc.texas.gov/about-us/resource-center/research/gis-viewers/>

2014. URS Corporation. DRAFT Section 204(f) Feasibility Report – Matagorda Ship Channel Improvement Project.

1989. U.S. Army Corps of Engineers. Matagorda Ship Channel, Texas – Reconnaissance Report.

# Exhibits A

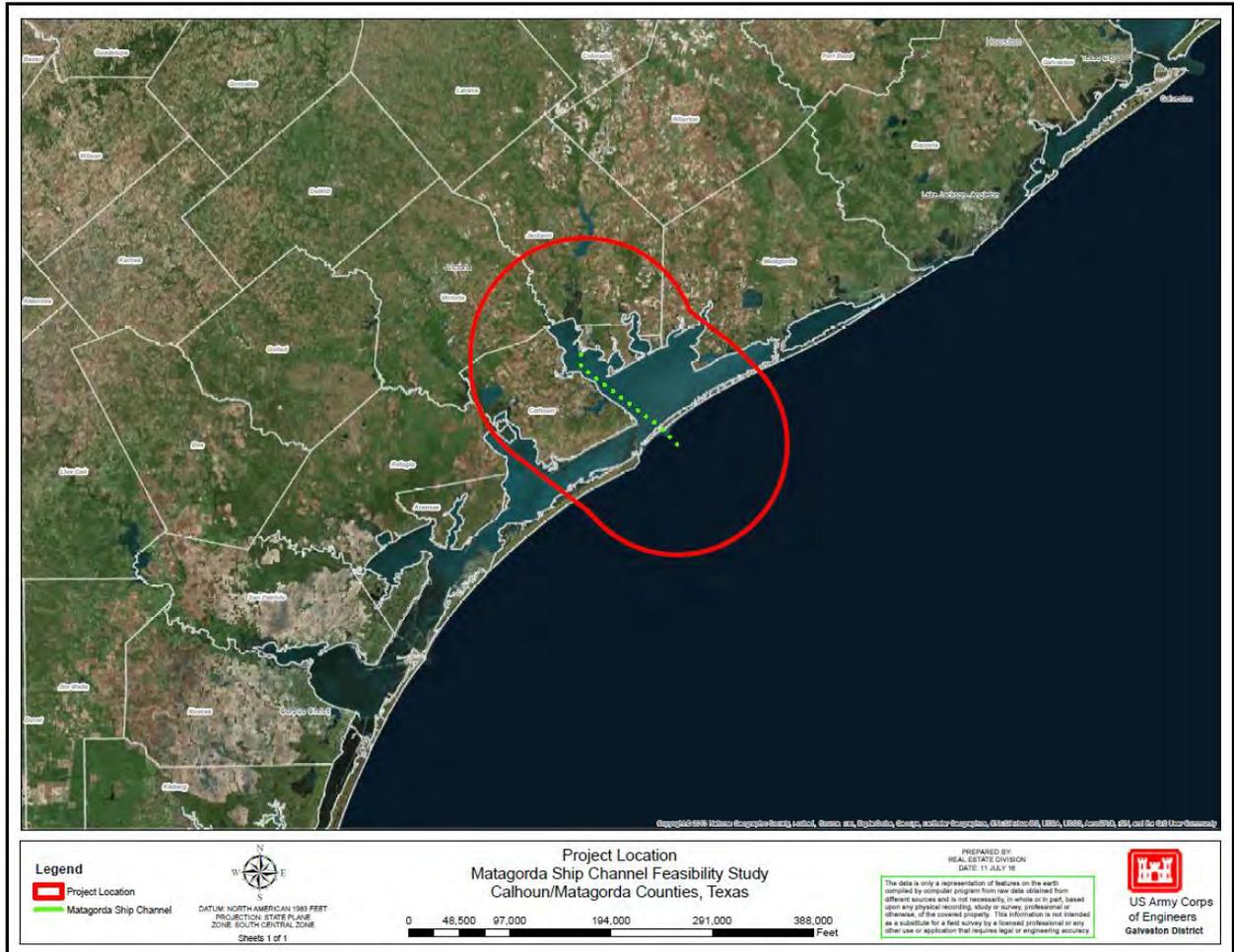


Figure 1: Project Location



**Figure 2: Matagorda Ship Channel Project Area**



**Figure 3: Matagorda Ship Channel Entrance**



**Figure 4: SWG Existing Interests (Easements/Placement Areas)**



**Figure 5: Existing Real Estate Easements**



Figure 6: Existing Real Estate Placement Areas



**Figure 7: Existing Real Estate Placement Areas**



Figure 8: Existing Real Estate Placement Areas

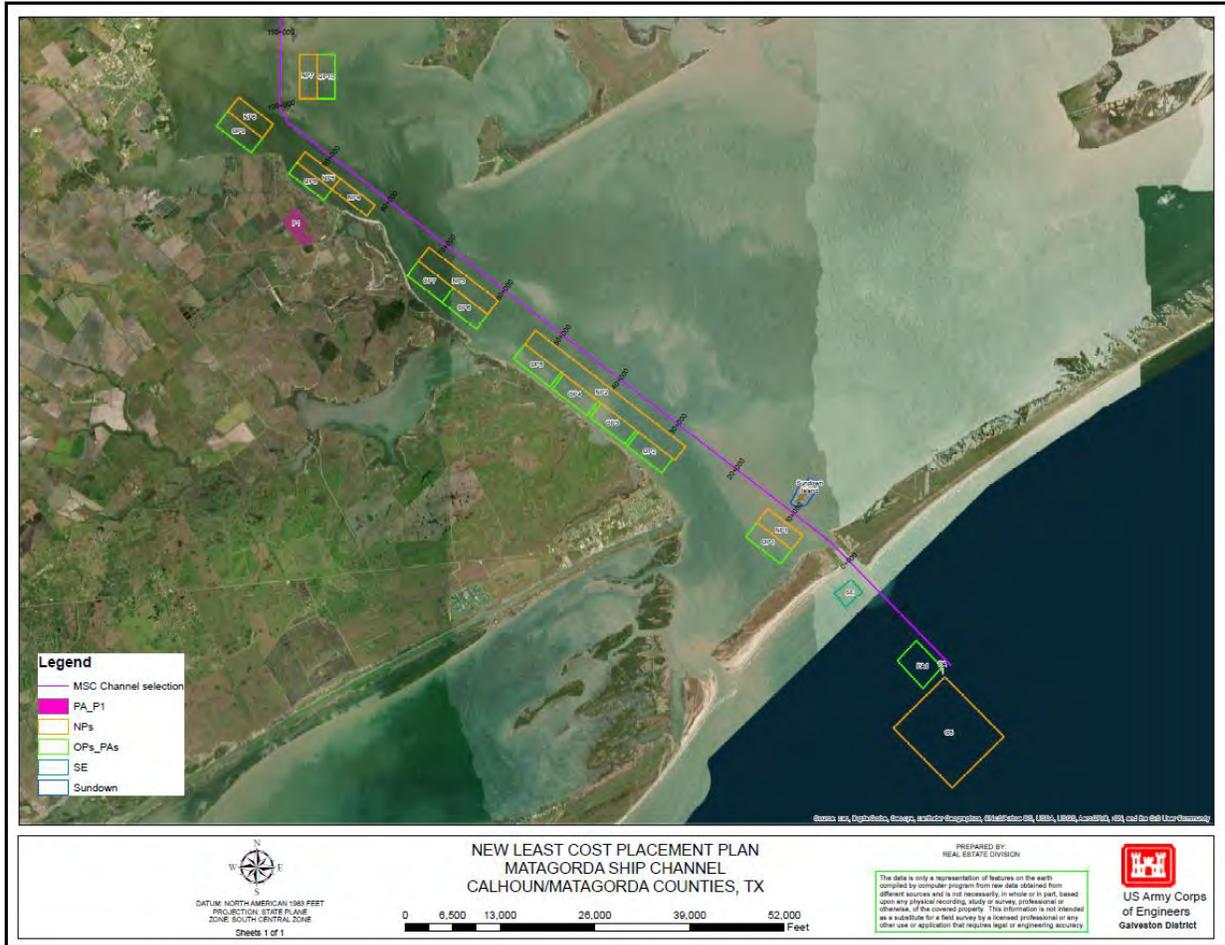


Figure 9: New Least Cost Placement Plan



**Figure 10: Sundown Island**

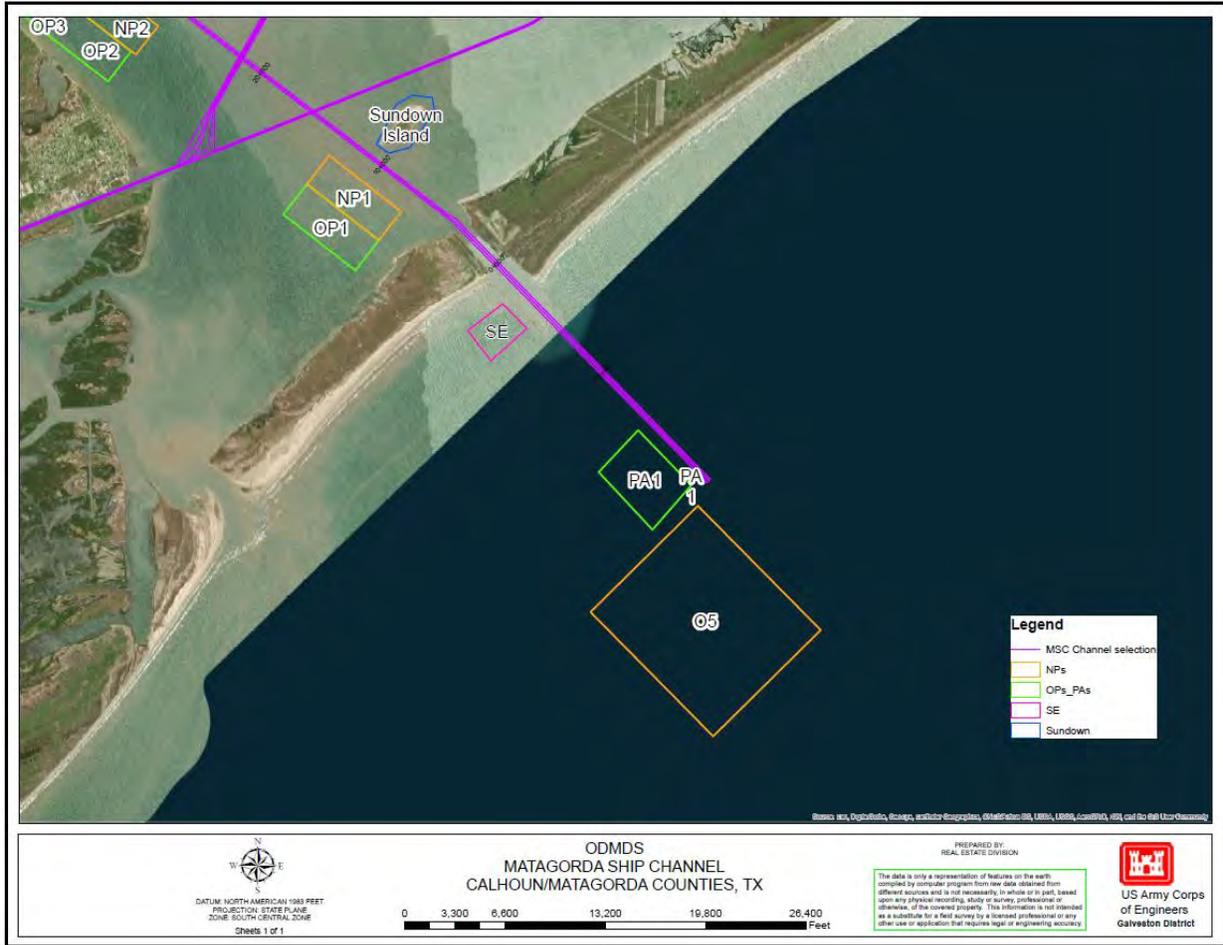


Figure 11: ODMDS



**Legend**

 NEW WORK PA



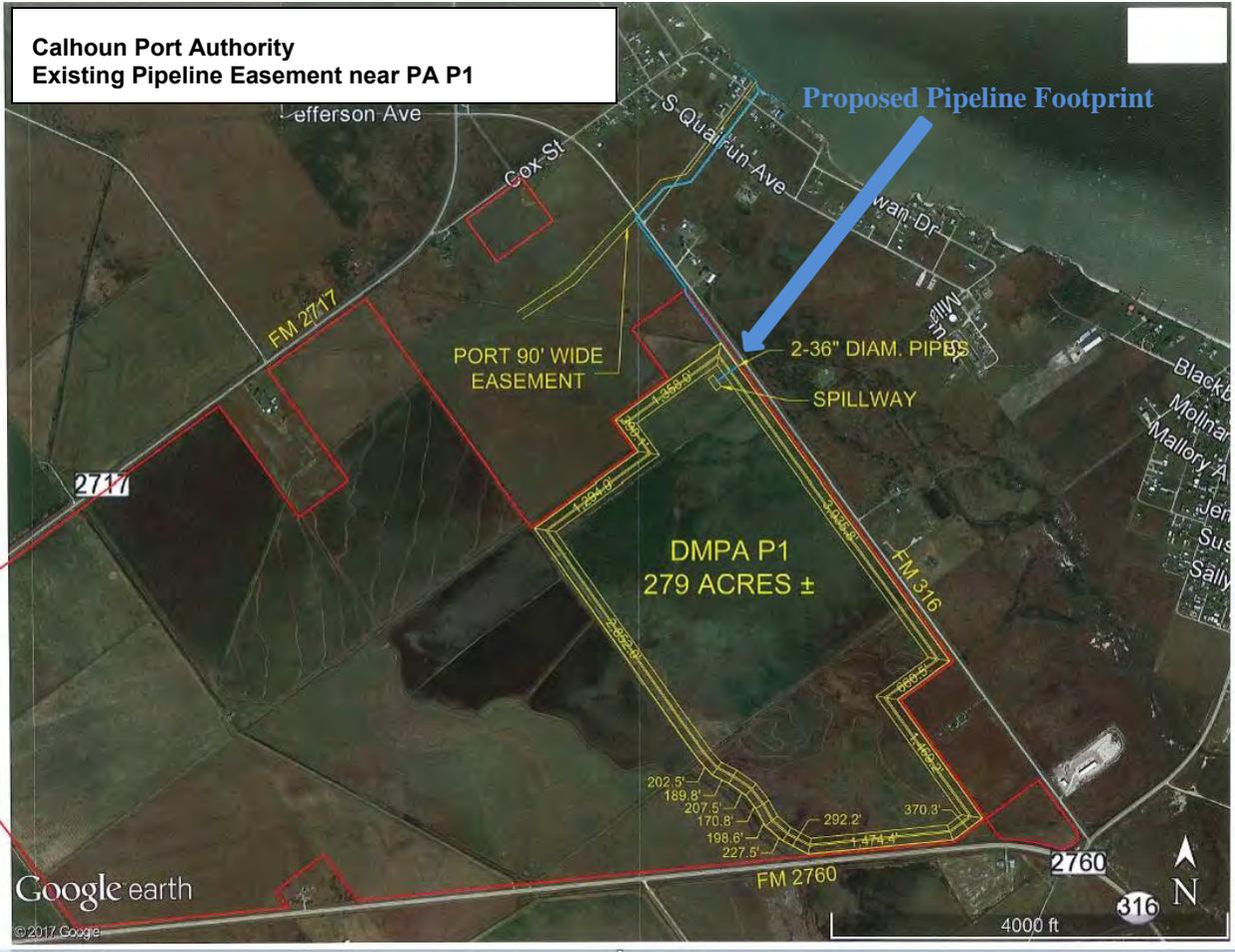
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MATAGORDA SHIP CHANNEL  
CALHOUN/MATAGORDA COUNTIES, TEXAS**

0 475 950 1,900 2,850 3,800 Feet

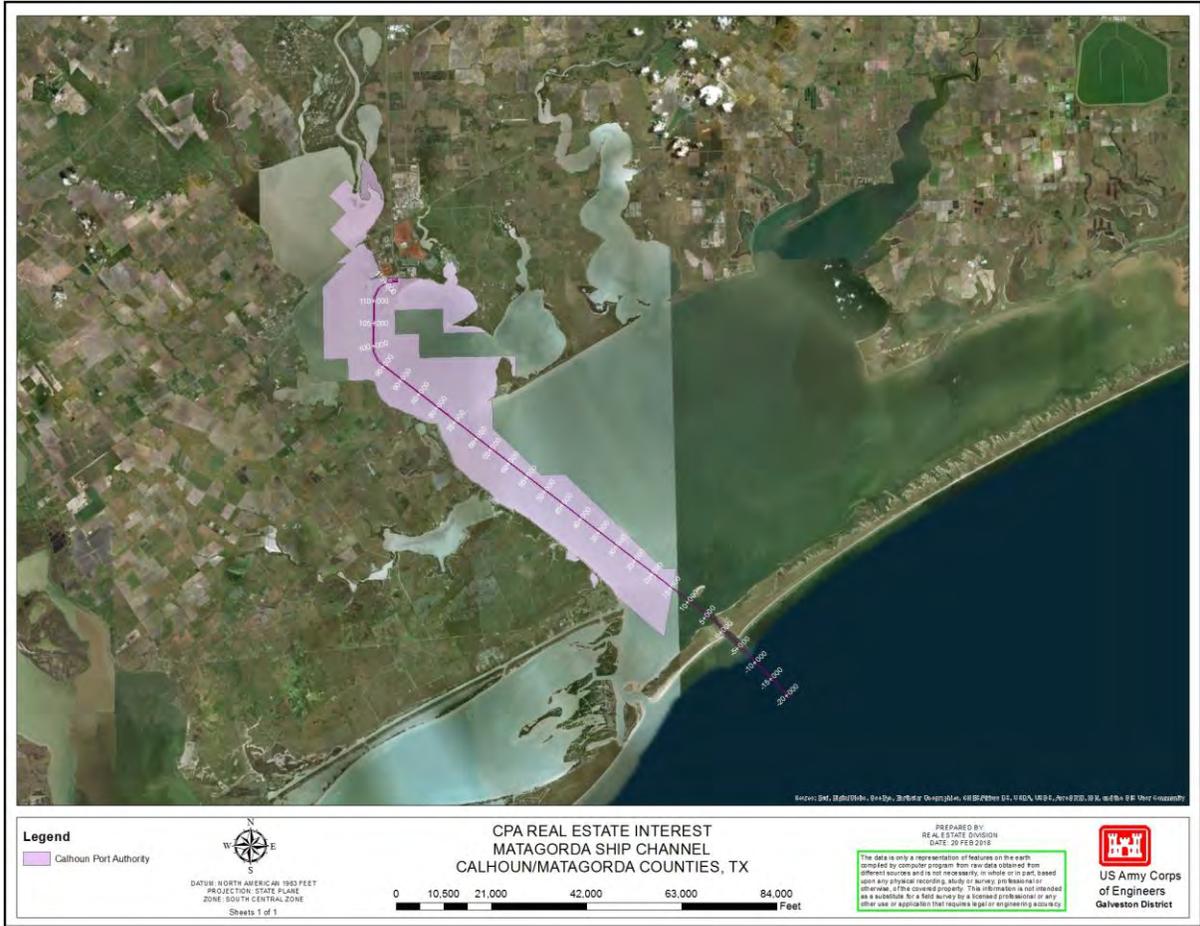
PREPARED BY:  
REAL ESTATE DIVISION  
DATE: 5 FEB 2016

The data is only a representation of features on the earth completed by a computer program from raw data obtained from different sources and is not necessarily in shape or content based upon any physical recording, study or survey, professional or otherwise, of the covered property. This information is not intended to be a substitute for a field survey by a professional or any other use or application that requires legal or engineering accuracy.

**Figure 10: Upland Placement Area P1**



**Figure 13: CPA Existing Pipeline Easement and Proposed Pipeline Footprint**



**Figure 14: Calhoun Port Authority Real Estate Interest**

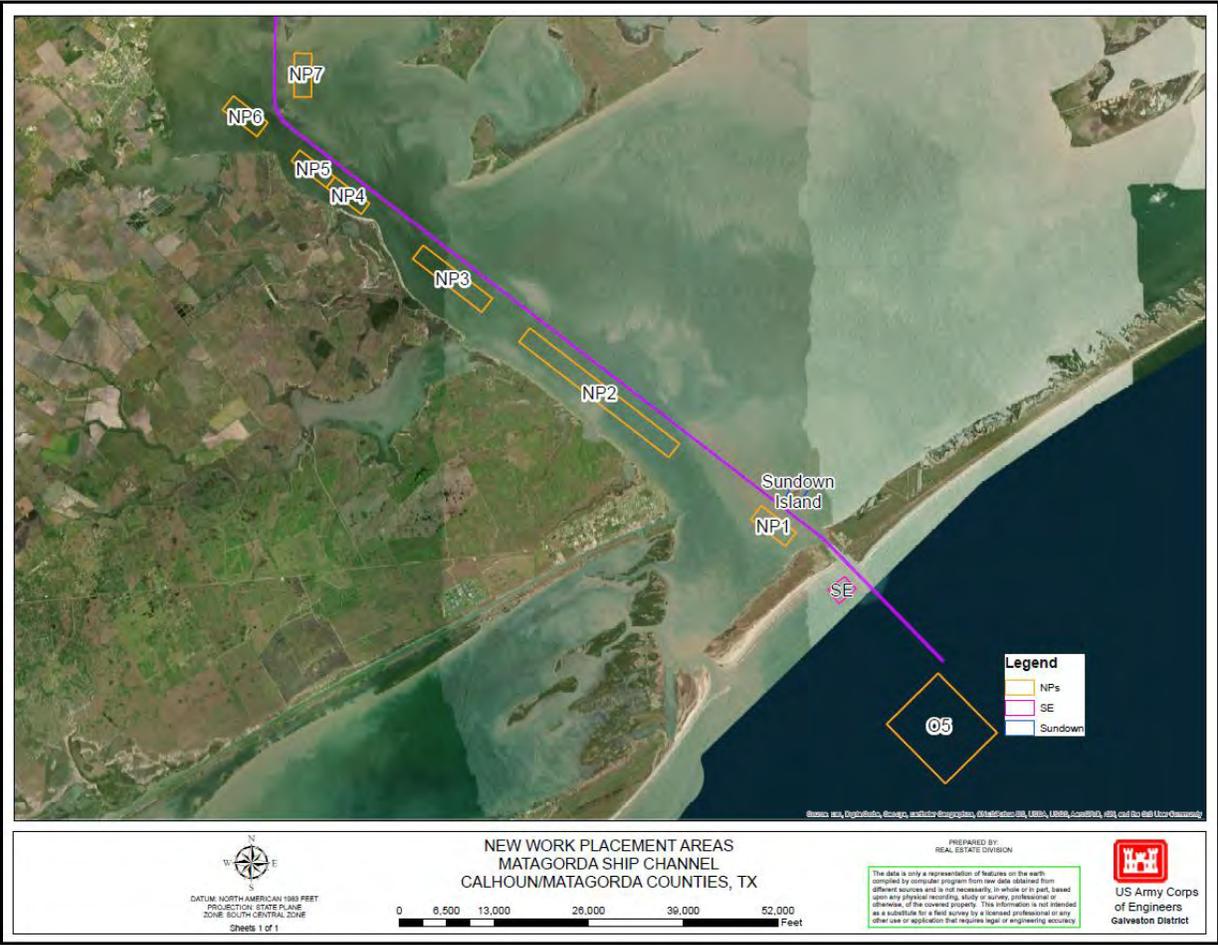


Figure 15: New Work Placement Areas

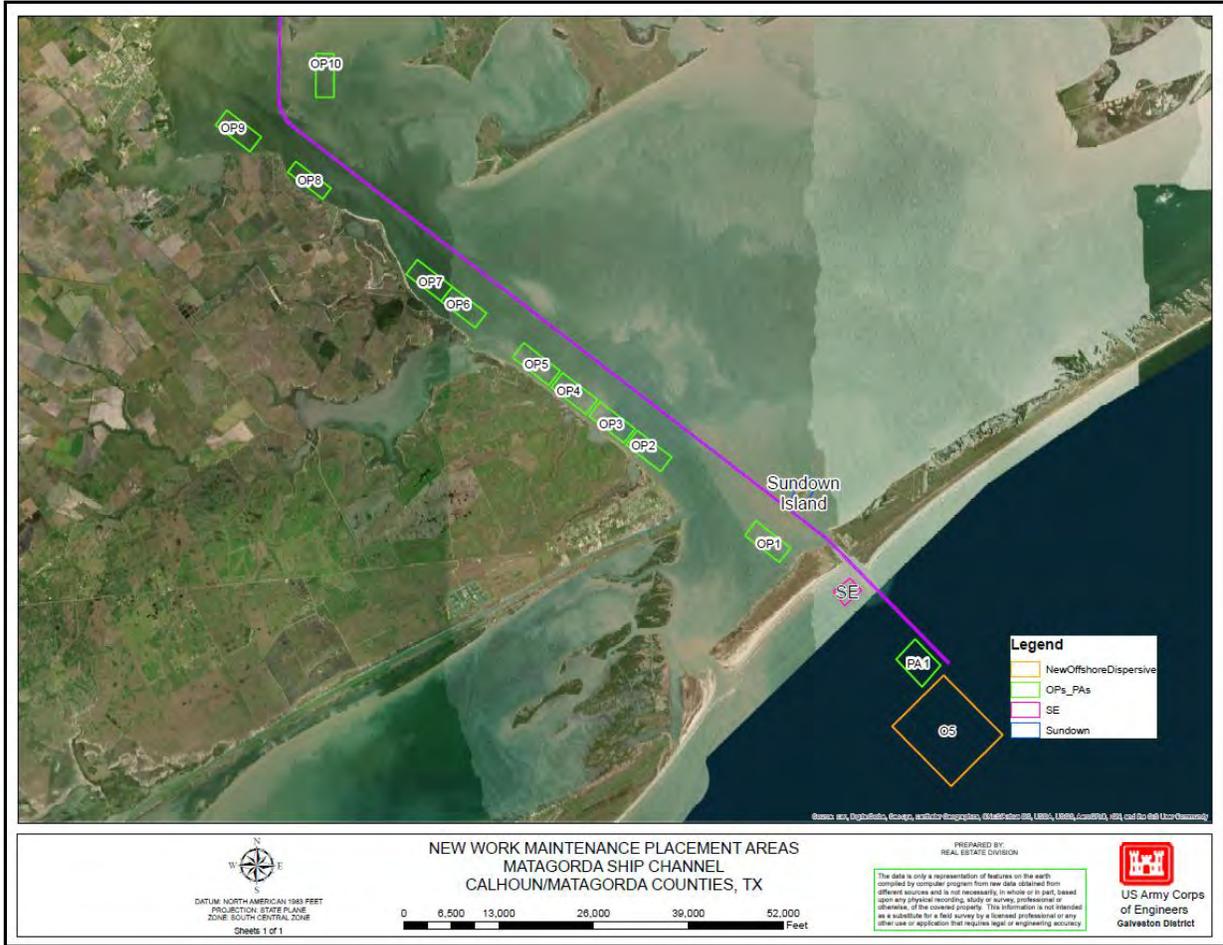


Figure 16: New Work Maintenance Placement Areas

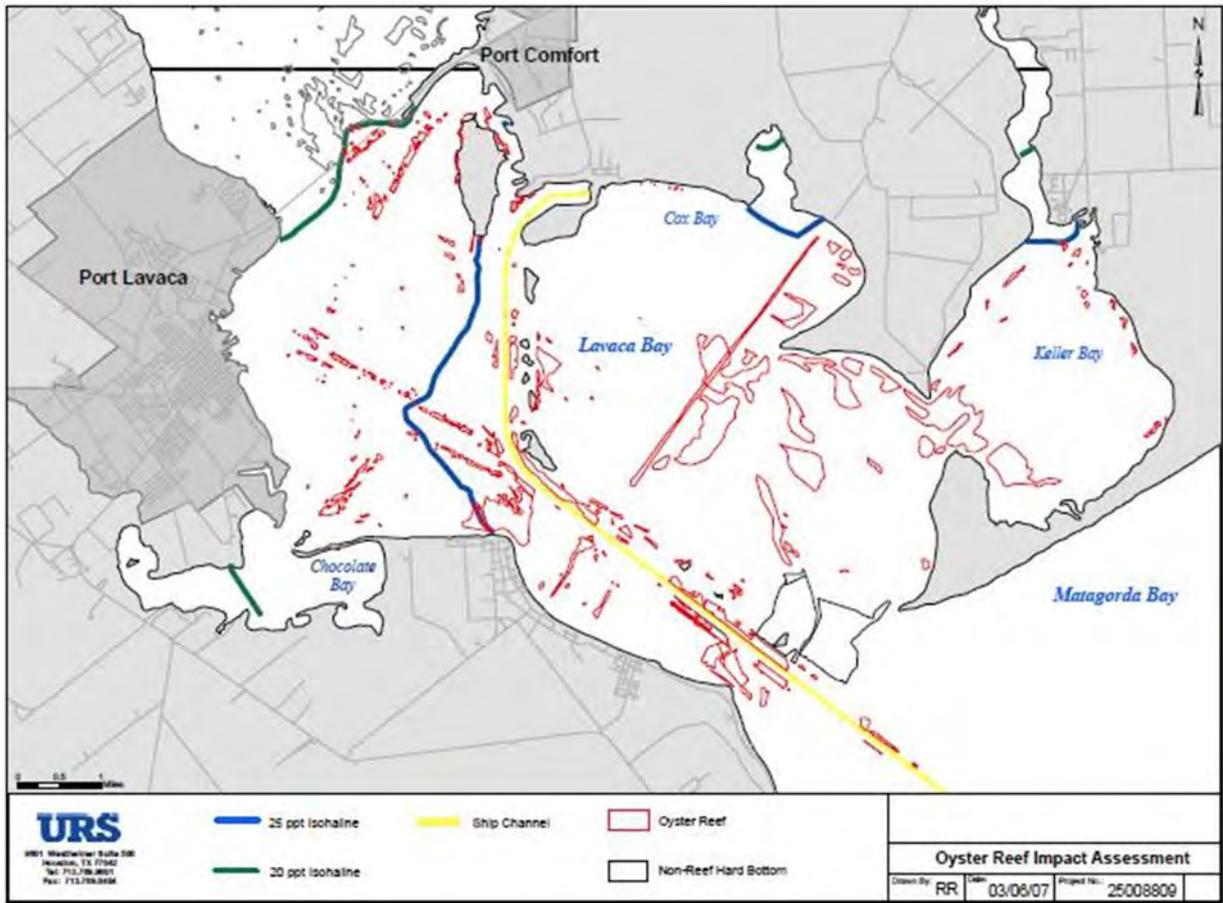


Figure 17: Oyster Reefs within Lavaca Bay

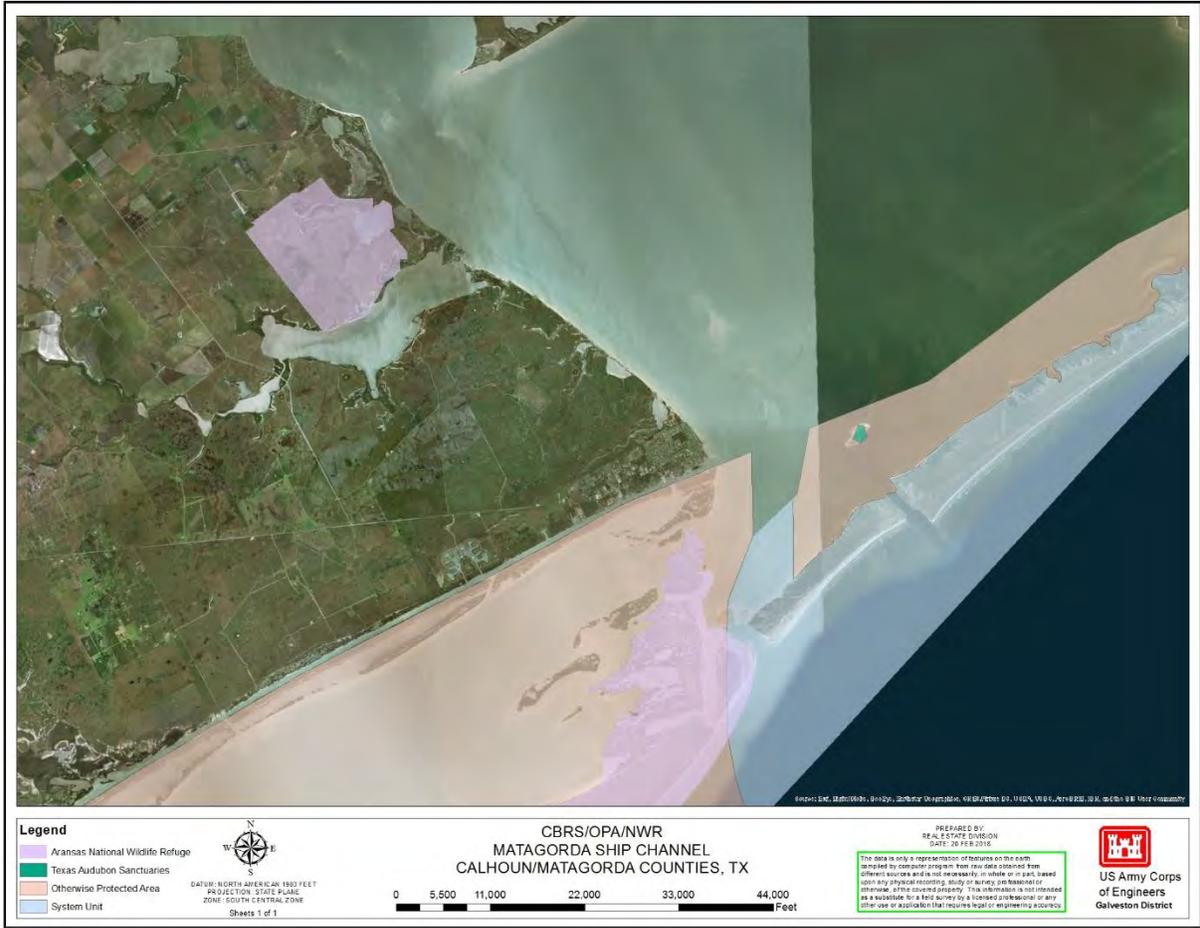


Figure 18: Coastal Barrier Resources System/Otherwise Protected Area

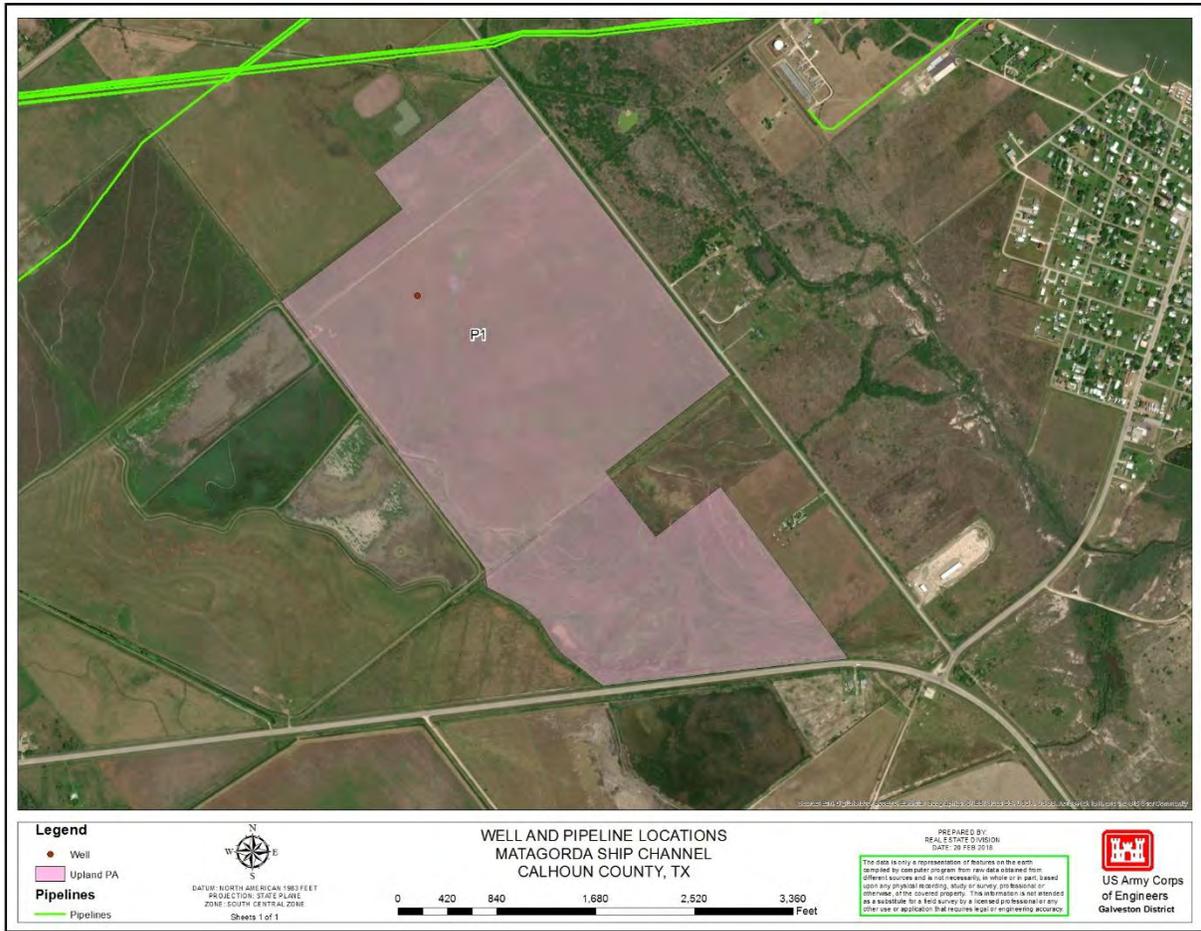


Figure 19: Dry Hole Within and Pipelines around PA P1

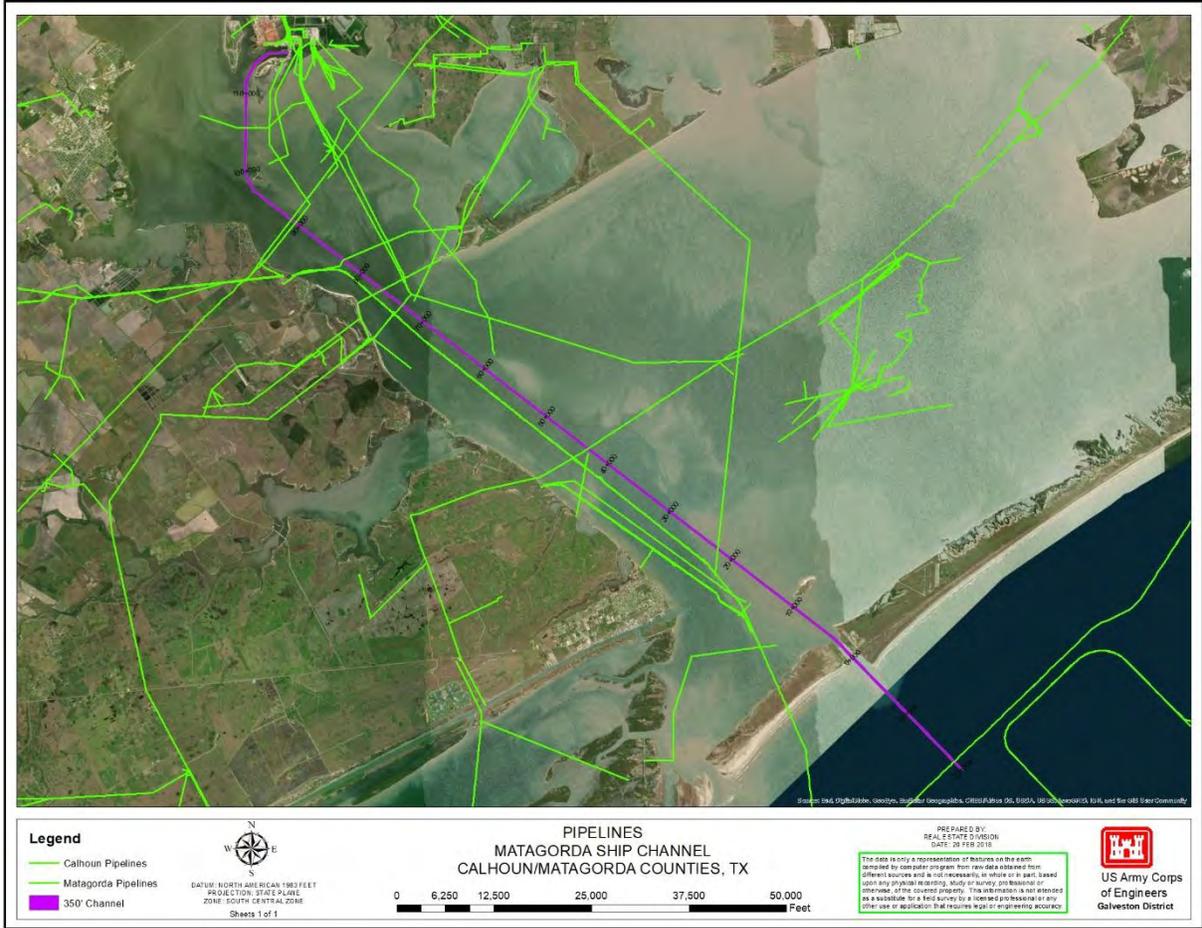


Figure 20: Pipelines within Project Area

## **Exhibit B**

### **Assessment of Non-Federal Acquisition Capability**



DEPARTMENT OF THE ARMY  
GALVESTON DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 1299  
GALVESTON, TEXAS 77653-1299

REPLY TO  
ATTENTION OF: USACE-SWG-RE

**MATAGORDA SHIP CHANNEL, TEXAS  
SECTION 216 – REVIEW OF COMPLETE PROJECTS INTEGRATED DRAFT  
FEASIBILITY REPORT AND ENVIRONMENTAL IMPACT ASSESSMENT**

**CALHOUN PORT AUTHORITY – NON-FEDERAL SPONSOR**

**ASSESSMENT OF NON-FEDERAL SPONSOR'S  
REAL ESTATE ACQUISITION CAPABILITY**

**I. LEGAL AUTHORITY:**

- a. **Does the sponsor have legal authority to acquire and hold title to real property for project purposes?** Yes. Water Code Title 4, General Law Districts Chapter 62, Section 62.107 provides, (a) Any district created under this chapter may acquire by gift, purchase, or condemnation and may own land adjacent or accessible to the navigable water and ports developed by it which may be necessary or required for any and all purposes incident to or necessary for the development and operation of the navigable water or ports within the district, or may be necessary or required for or in aid of the development of industries on the land. (b) The district may lease any part of the acquired land to any individual or corporation and may charge for the lease reasonable tolls, rents, fees, or other charges. The district may use the proceeds both for the maintenance and operation of the business of the district and for the purpose of making the district self-supporting and financially solvent and returning the construction costs of the improvements within a reasonable period. (c) The acquisition of land for the purposes included in this section and the operation and industrial and business development of ports and waterways are a public purpose and a matter of public necessity. (Acts 1971, 62<sup>nd</sup> Leg., p. 110, ch. 58 § 1, eff. Aug. 30, 1971. Amended by Acts 2011, 82<sup>nd</sup> Leg., ch. 1027 (H.B. 2770), § 19, eff. June 17, 2011)

Sec. 62.105. Right of Way. The commission may by gift, grant, purchase, or condemnation acquire the necessary right-of-way and

property of any kind for all necessary improvements contemplated by this chapter. (Acts 1971, 62<sup>nd</sup> Leg. P. 110, ch. 58 § 1, eff. Aug. 30, 1971.)

Sec. 5003.101. GENERAL NAVIGATION DISTRICT POWERS. The port authority and the board, except as specifically restricted by this chapter, have the powers of government and may exercise the rights, powers, duties, privileges, and functions conferred by Chapter 60, 61, 62, or 63, Water Code, on a navigation district created under Section 59, Article XVI, Texas Constitution, that are appropriate to the accomplishment of the purposes stated in Subchapter A.

Added by Acts 2007, 80<sup>th</sup> Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009

- b. Does the sponsor have the power of eminent domain for this project?** Yes. Water Code Title 4. General Law Districts Chapter 62. Section 62.106. Condemnation Proceedings. (a) The district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through any and all public and private land necessary: (1) for the improvement of any river, bay, creek, or stream; (2) for the construction and maintenance of any canal or waterway; and (3) for any and all purposes authorized by this chapter. (b) Condemnation proceedings instituted under Subsection (a) of this section shall be instituted under the direction of the commission and in the name of the district. The assessment of damages shall be in conformity with the laws of the State of Texas for condemnation and acquisition of rights-of-way by railroads. (c) No appeal from the finding and assessment of damages by the commissions shall have the effect of causing a suspension of work by the commission in prosecuting the work of improvement in all of its details. (d) No right-of-way may be condemned through any part of any incorporated city or town without the consent of the lawful authorities of that city or town. (e) A district created under this chapter may elect to take advantage of the condemnation procedure provided in Subchapter F of Chapter 51 of this code. (Acts 1971, 62<sup>nd</sup> Leg. P. 110, ch. 58, § 1, eff. Aug. 30, 1971)
- c. Does the sponsor have “quick-take” condemnation authority for this project? Please cite specific authority (i.e. local/state law).** No. Property Code Title 4, Actions and Remedies, Chapter 21. Eminent Domain Subchapter A. Jurisdiction, Section 21.021. Possession Pending

Litigation states: (a) After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor: (1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner;

(2) deposits with the court either the amount of money awarded by the special commissioners as damages or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages by the court in excess of the award of the special commissioners; and

(3) executes a bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or an appeal.

(b) A court shall hold money or a bond deposited under Subdivision (1) or (2) of Subsection (a) to secure the payment of the damages that have been or that may be awarded against the condemnor.

(c) This state, a county, or a municipal corporation or an irrigation, water improvement, or water power control district created under legal authority is not required to deposit a bond or the amount equal to the award of damages under Subdivision (2) and (3) of Subsection (a).

(d) If a condemnor deposits money with a court under Subdivision (2) of Subsection (a), the condemnor may instruct the court to deposit or invest the money in any account with or certificate or security issued by a state or national bank in this state. The court shall pay the interest that accrues from the deposit or investment to the condemnor. (Acts 1983, 68<sup>th</sup> Leg., p. 3502, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68<sup>th</sup> Leg., 2<sup>nd</sup> C.S., ch. 18, Sec. 1(b), eff. Oct. 2, 1984.)

- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? No.

- e. Any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn?
  - i. Private Property: Yes
  - ii. State-Owned Property: No
    - 1. See response I.d. above. CPA does not have the right of condemnation for bay bottom owned by the Texas General Land Office.

**2. HUMAN RESOURCE REQUIREMENTS:**

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? No
- b. If the answer to 2(a) is "yes", has a reasonable plan been developed to provide such training? n/a
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? Yes, but also has a law firm on retainer to assist with real estate acquisition.
- d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule? No
- e. Can the sponsor obtain contractor support, if required, in a timely fashion? Yes, if needed.
- f. Will the sponsor likely request USACE assistance in acquiring real estate? (If "yes", provide description). Yes. Use of Navigation Servitude in pipeline relocations and/or removals.

**3. OTHER PROJECT VARIABLES:**

- a. Will the sponsor's staff be located within reasonable proximity to the project site? Yes
- b. Has the sponsor approved the project/real estate schedule milestones (answer is contingent upon whether the real estate milestones have been defined at this point in the project)? No. Updated Project/Real Estate Schedule/Milestones have not been provided to NFS.

4. **OVERALL ASSESSMENT:**

- a. Has the sponsor performed satisfactorily on other USACE projects (if applicable)? Yes
- b. With regard to this project, the sponsor is anticipated to be: Fully capable

5. **COORDINATION:**

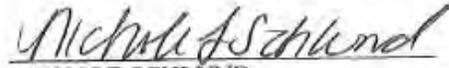
- a. Has this assessment been coordinated with the sponsor? Yes, the sponsor has been in coordination with the Galveston District RE Division regarding the proposed project.
- b. Does the sponsor concur with this assessment? Yes

Accepted by Non-Federal Sponsor:

Chad Han  
(Signature)

Port Director  
(Title)

**Prepared by:**



NICHOLE SCHLUND  
Realty Specialist  
Real Estate Division  
Galveston District  
US Army Corps Engineers

**Reviewed by:**



BRIAN MURPHY  
Branch Chief, Support Services Branch  
Real Estate Division  
Galveston District  
US Army Corps Engineers

**Approved by:**



TIMOTHY J. NELSON  
Chief, Real Estate Division  
Galveston District  
US Army Corps Engineers

## **Exhibit C**

Special District Local Laws Code, Title 5, Subtitle A, Chapter 5003

## SPECIAL DISTRICT LOCAL LAWS CODE

## TITLE 5. TRANSPORTATION

## SUBTITLE A. NAVIGATION DISTRICTS AND PORT AUTHORITIES

## CHAPTER 5003. CALHOUN PORT AUTHORITY

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5003.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of navigation commissioners of the port authority.
- (2) "Commissioner" means a board member.
- (3) "Port authority" means the Calhoun Port Authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.053, eff. September 1, 2009.

Sec. 5003.002. NATURE AND PURPOSE OF PORT AUTHORITY. The port authority is a navigation district. To the extent authorized by this chapter, the port authority is created to:

- (1) improve navigation in the port authority; and
- (2) maintain, develop, extend, and improve port facilities and wharf and dock facilities in the port authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.054, eff. September 1, 2009.

Sec. 5003.003. LEGISLATIVE FINDINGS. (a) The creation of the port authority is essential:

- (1) to accomplish the purposes of Section 59, Article XVI, Texas Constitution;
- (2) to the general welfare of this state; and
- (3) for the development of marine shipping.

(b) All property in the port authority benefits from the creation of the port authority by the improvements to be constructed or acquired by the port authority in carrying out the port authority's purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.055, eff. September 1, 2009.

Sec. 5003.004. PORT AUTHORITY TERRITORY. The port authority is composed of all the territory of Calhoun County, including all land and water areas of the county:

(1) except for territory included in the West Side Calhoun County Navigation District as described in Volume H, pages 568-570, of the minutes of the Commissioners Court of Calhoun County; and

(2) as that territory may have been modified under:

(A) Section 3 or Section 3a, Chapter 103, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8263a, Vernon's Texas Civil Statutes), before August 30, 1971;

(B) Subchapter H, Chapter 62, Water Code; or

(C) other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.056, eff. September 1, 2009.

#### SUBCHAPTER B. PORT AUTHORITY ADMINISTRATION

Sec. 5003.051. BOARD OF NAVIGATION COMMISSIONERS. The port authority is governed by a board of six commissioners.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.058, eff. September 1, 2009.

Sec. 5003.052. NAVIGATION PRECINCTS. (a) The board shall from time to time divide the port authority into six navigation commissioner precincts that are:

- (1) compact and contiguous; and
- (2) as nearly as practicable, of equal population.

(b) The board shall complete any division of the port authority into new precincts not later than the 90th day before the date of the first election of commissioners from those precincts.

(c) The voters of each precinct, in accordance with this subchapter, shall elect one commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.059, eff. September 1, 2009.

Sec. 5003.053. ELECTION; TERMS. (a) The six commissioners elected at the first election after a division of the port authority into new precincts under Section 5003.052 shall draw lots after the election to select three commissioners to serve two-year terms and three commissioners to serve four-year terms. Successor commissioners serve terms as provided by Subsection (b).

(b) Except as provided by Subsection (a), commissioners are elected for staggered four-year terms at elections held each odd-numbered year on the uniform election date in May.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.060, eff. September 1, 2009.

Sec. 5003.054. PLACING CANDIDATE ON BALLOT; QUALIFICATIONS. (a) A person qualified under this section to be a candidate for the office of commissioner may file an application with the board to have the person's name placed on the ballot. The application must be filed not later than 5 p.m. of the 45th day before the election date for that office.

(b) The application must include an affidavit made by the applicant under oath disclosing that the applicant is:

(1) a bona fide resident of the precinct that the person seeks to represent; and

(2) a qualified voter who owns real property in the area.

(c) If the application is timely filed in proper form, the board shall place the applicant's name on the official ballot.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Sec. 5003.055. VACANCY. (a) If a vacancy occurs on the board, a majority of the remaining commissioners shall appoint a successor to fill the vacancy for the remainder of the unexpired term.

(b) For purposes of this chapter, the successor commissioner is treated as an elected commissioner.

(c) The legislature finds that it is in the best interest of public welfare, general benefit, and the assurance of proper development of marine shipping that:

(1) the commissioners be representatives of all areas of the port authority; and

(2) if a commissioner no longer resides in the precinct from which elected, the commissioner's office is vacant.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.061, eff. September 1, 2009.

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 5003.101. GENERAL NAVIGATION DISTRICT POWERS. The port authority and the board, except as specifically restricted by this chapter, have the powers of government and may exercise the rights, powers, duties, privileges, and functions conferred by Chapter 60, 61, 62, or 63, Water Code, on a navigation district created under Section 59, Article XVI, Texas Constitution, that are appropriate to the accomplishment of the purposes stated in Subchapter A.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.062, eff. September 1, 2009.

Sec. 5003.102. AD VALOREM TAXES; BOND ELECTION. (a) If authorized by a majority vote of the port authority voters voting at an election held in the manner provided for a bond election under Subchapter F, Chapter 62, Water Code, the Commissioners Court of Calhoun County may:

- (1) impose maintenance taxes; or
- (2) issue tax bonds and impose taxes to pay for the bonds.

(b) The commissioners court shall impose the tax for:

- (1) the maintenance of the port authority and its property, including facilities; and
- (2) the payment of the principal of and interest on all bonds or other indebtedness issued by the port authority.

(c) The maximum tax rate for both maintenance and indebtedness purposes may not exceed a total of 15 cents on each \$100 of taxable property in the port authority.

(d) The Calhoun County tax assessor-collector shall assess and collect taxes imposed under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.063, eff. September 1, 2009.

Sec. 5003.103. CHANGE OF PORT AUTHORITY NOT AUTHORIZED. The board may not by a vote change the port authority from a navigation district to any other type of district authorized by general law.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.064, eff. September 1, 2009.

Sec. 5003.104. LIMIT ON EMINENT DOMAIN POWER. The port authority may not exercise the power of eminent domain outside Calhoun County in an area in another navigation district without the consent of the other district.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.065, eff. September 1, 2009.

Sec. 5003.105. AUTHORITY TO DESIGNATE INDUSTRIAL AREAS OR PLANT SITES; FINDINGS. (a) The board may adopt an order or resolution designating an area of land in the port authority that fronts on navigable water in the port authority as an industrial area or plant site for the aid of navigation. A defined area may not:

- (1) be located in the corporate limits of a municipality; or
- (2) exceed 1,000 yards in depth as measured from the shoreline.

(b) A certified copy of an order or resolution adopted under Subsection (a) shall be filed and recorded in the deed records of Calhoun County. After the copy is filed, a municipality may not include any part of the defined area in its boundaries.

(c) The board may adopt an order or resolution that removes all or part of a defined area from that designation if the board determines that:

- (1) the area is not suitable for or being used as an industrial area or plant site;
- (2) the area will not be suitable for or used as an industrial area or plant site within a reasonable time; and
- (3) the continued designation does not aid navigation.

(d) A certified copy of an order or resolution adopted under Subsection (c) shall be filed and recorded in the deed records of Calhoun County. After the copy is filed, any restriction imposed under this section by the previous designation on the area is removed.

(e) The legislature finds that the powers granted and restrictions imposed by this section are necessary:

- (1) for the proper exercise by the port authority of the powers granted by Section 59, Article XVI, Texas Constitution, and by this chapter; and
- (2) to promote and effect the navigation of the inland and coastal waters of the state.

Added by Acts 2007, 80th Leg., R.S., Ch. 920 (H.B. 3166), Sec. 1.04, eff. April 1, 2009.

Amended by:

3/26/2019

SPECIAL DISTRICT LOCAL LAWS CODE CHAPTER 5003. CALHOUN PORT AUTHORITY

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 21.066, eff.  
September 1, 2009.

## **Exhibit D**

Selected Excerpts from Water Code, Title 4, Chapter 62

Full text is available here: <https://statutes.capitol.texas.gov/Docs/WA/htm/WA.62.htm>

Sec. 62.105. RIGHT-OF-WAY. The commission may by gift, grant, purchase, or condemnation acquire the necessary right-of-way and property of any kind for all necessary improvements contemplated by this chapter.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.106. CONDEMNATION PROCEEDINGS. (a) The district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through any and all public and private land necessary:

- (1) for the improvement of any river, bay, creek, or stream;
- (2) for the construction and maintenance of any canal or waterway; and
- (3) for any and all purposes authorized by this chapter.

(b) Condemnation proceedings instituted under Subsection (a) of this section shall be instituted under the direction of the commission and in the name of the district. The assessment of damages shall be in conformity with the laws of the State of Texas for condemnation and acquisition of rights-of-way by railroads.

(c) No appeal from the finding and assessment of damages by the commissioners shall have the effect of causing a suspension of work by the commission in prosecuting the work of improvement in all of its details.

(d) No right-of-way may be condemned through any part of an incorporated city or town without the consent of the lawful authorities of that city or town.

(e) A district created under this chapter may elect to take advantage of the condemnation procedure provided in Subchapter F of Chapter 51 of this code.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Sec. 62.107. ACQUISITION AND CONVEYANCE OF LAND. (a) Any district created under this chapter may acquire by gift, purchase, or condemnation and may own land adjacent or accessible by road, rail, or water to the navigable water and ports developed by it which may be necessary or required for any and all purposes incident to or necessary for the development and operation of the navigable water or ports within the district, or may be necessary or required for or in aid of the development of industries and businesses on the land.

(b) The district may lease and grant easements on any part of the acquired land to any person and may charge for the lease or easement reasonable tolls, rents, fees, or other charges. The lease or easement may be on terms and conditions considered appropriate or advantageous to the district. The district may use the proceeds both for the maintenance and operation of the business of the district and for the purpose of making the district self-supporting and financially solvent and returning the construction costs of the improvements within a reasonable period.

(c) The acquisition and leasing of land for the purposes included in this section and the operation and industrial and business development of ports and waterways are a public purpose and a matter of public necessity.

Acts 1971, 62nd Leg., p. 110, ch. 58, Sec. 1, eff. Aug. 30, 1971.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 19, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 427 (S.B. 1395), Sec. 15, eff. June 1, 2017.

## **Exhibit E**

Risk Letter



DEPARTMENT OF THE ARMY  
GALVESTON DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 1229  
GALVESTON, TEXAS 77563-1229

REPLY TO  
ATTENTION OF:

Real Estate Division  
Support Branch

18 June 2018

David M. Knuckey, P.E.  
Director, Engineering Services  
Calhoun Port Authority  
2313 F.M. 1593 South  
P.O. Box 397  
Point Comfort, Texas 77978

**Subject:** Matagorda Ship Channel, TX, Section 216 – Review of Completed Projects  
Integrated Draft Feasibility Report and Environmental Impact Assessment

Dear Mr. Knuckey:

The intent of this letter is to formally advise the Calhoun Port Authority, as potential Non-Federal Sponsor for the proposed project, of the risks associated with land acquisition prior to the execution of a Project Partnership Agreement (PPA) or prior to the Government's formal notice to proceed with acquisition. If a Non-Federal Sponsor deems it necessary to commence acquisition prior to an executed PPA for whatever reason, the Non-Federal Sponsor assumes full and sole responsibility for any and all costs, responsibility, or liability arising out of the acquisition effort.

Generally, these risks include, but may be not be limited to, the following:

- (1) Congress may not appropriate funds to construct the proposed project;
- (2) The proposed project may otherwise not be funded or approved for construction;
- (3) A PPA mutually agreeable to the non-Federal sponsor and the Government may not be executed and implemented;
- (4) The non-Federal sponsor may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, state, or Federal laws or regulations including liability arising out of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended;
- (5) The non-Federal sponsor may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project;

(6) The non-Federal sponsor may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under P.L. 91-646 as well as the payment of additional fair market value to affected landowners which could have been avoided by delaying acquisition until after PPA execution and the Government's notice to commence acquisition and performance of Land, Easements, Right-of-Way, Relocations, and Disposals (LERRD);

(7) The non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PPA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662 or the PCA as referenced in *ER 405-1-12 (Change 31; 1 May 98) Section 12-31 Acquisition Prior to PCA Execution*.

Please acknowledge that the Non-Federal Sponsor for the proposed project has been notified and accepts these terms and conditions.

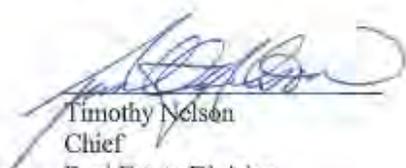
For any questions, please contact the Mrs. Lisa McCracken Mairs at [lisa.m.mairs@usace.army.mil](mailto:lisa.m.mairs@usace.army.mil) USACE Galveston District, Real Estate Division @ 409-766-3913.

Accepted on behalf of the Non-Federal  
Sponsor:

 (Signature)

 (Title)

Prepared by:

  
Timothy Nelson  
Chief  
Real Estate Division  
Galveston District  
U.S. Army Corps of Engineers