

APPENDIX C

REAL ESTATE PLAN

BRAZOS ISLAND HARBOR CHANNEL IMPROVEMENT PROJECT CAMERON COUNTY, TEXAS

1. **Statement of Purpose:** This report is intended to supplement the integrated feasibility study-environmental assessment for channel improvements of the Brazos Island Harbor (BIH), Texas deep-draft navigation channel. This study is being conducted in order to help determine if there is a Federal interest in making channel improvements to the existing BIH.

The Real Estate Plan is tentative in nature; it is for planning purposes only and both the final real property acquisition lines and the real estate cost estimates provided are subject to change even after approval of this report.

2. **Project Authorization:** The Congress (Senate and/or House Committees) authorized the US Army Corps of Engineers (USACE) to conduct a study of BIH, Texas to determine whether the project should be modified in any way, particularly with a view to widening and deepening the existing channels, pursuant to a resolution of the Committee on Public Works, U.S. House of Representatives, dated May 5, 1966. The current Project dimensions were authorized by the Water Resources Development Act of 1986 (Section 201, Public Law 99-662). The Feasibility Cost Sharing Agreement for the feasibility study was signed on June 28, 2006, with the Brownsville Navigation District (BND), who is the non-federal sponsor (NFS) on this Project.

3. **Project Location & Description:** The BIH Channel is a navigational channel located in Cameron County, Texas, approximately three miles from the Texas and Mexico border. The BIH currently provides for 42-foot deep navigation on the inland portion of the channel and a 44-foot depth in the offshore entrance channel.

This plan will address the deepening of the main stem of the BIH Channel, which is currently 42 feet deep, 250-300 feet wide, and approximately 19.4 miles in length. The project area includes upland placement areas (PAs), as well as Ocean Dredge Material Disposal Sites (ODMDSs) and a nearshore feeder berm. There are 10 PAs available for the placement of dredged material from the BIH Project; two existing ODMDSs and one nearshore feeder berm, totaling 1,015 acres, can be used for the Entrance Channel. Seven upland PAs for containment of material, totaling 2,817 acres, can be used for the Main Channel (PAs 2, 4A, 4B, SA, 5B, 7, and 8), as shown on Exhibit "A". The three PAs for material from the Entrance Channel are within the navigable waters of the U.S. and are available to the Federal Government by navigation servitude, are all dispersive, and by their nature have unlimited capacity. The seven upland PAs are provided through a 50-year easement from the NFS to the U.S. Government, which was signed in January 1994.

The Recommended Plan is to deepen the offshore portion of the channel from the existing 44 foot depth to the new 54 foot depth and the inland portion of the channel from the existing 42 foot depth to the new 52 foot depth, with no widening of the main channel.

4. Real Estate Requirements: The offshore portion of the BIH Channel will be dredged to a depth of 54 feet. This dredging will occur from Station -17+000 to Station 0+000. From Station 0+000 to Station 84+200 dredging will be to a depth of 52 feet. New work dredged material, and all maintenance material for this reach of the Project, will be placed in the existing PAs.

The NFS is required to have fee title excluding minerals to the PAs utilized for this project (Engineering Regulation (ER) 405-1-12; 12-9). As previously mentioned, seven of the existing PAs are provided through a 50-year easement from the NFS to the U.S. Government issued on January 26, 1994.

BIH is a commercial navigation project in which the Federal Government has the responsibility of operating and maintaining the project after construction. Government responsibilities include, but are not limited to, dredging of the Federal project channel, assuring placement area capacity, and protecting the Government for environmental liabilities.

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.

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Based upon the above requirements to the non-standard perpetual easement estate, easement language below has been drafted for use in this project and submitted for approval in this report.

“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.

5. **Borrow Material:** The proposed Project does not require any borrow material.
6. **Access/Staging Area:** All of the proposed work will be performed within the existing right-of-way of the BIH Project. Access for construction will be by barge from the channel and existing access corridors will be utilized. All land that will be crossed is owned by the NFS and is available for this project.
7. **Recreation Features:** There are no recreation features for the proposed Project.
8. **Induced Flooding:** There will be no induced flooding by virtue of the construction of the proposed Project.
9. **Mitigation:** Section 6.0 of the main report states: "No environmental mitigation will be required for the Recommended Plan."
10. **Federally-Owned Land & Existing Federal Project:** There is no federally owned land within the project area. The NFS will not receive LERRD credit for lands made available for the Project by the Corps of Engineers or lands previously credited as a LERRD for a previous project with Federal funds participation.
11. **Non-Federal Sponsor Owned Land:** The Brownsville Navigation District owns all land required for the proposed Project, as shown on Exhibit A. The easement for the PAs is currently a 50-year easement and must be converted/extended to a perpetual easement. In order to credit the NFS for the administrative fees to complete this transaction, the NFS must furnish proper documentation.
12. **Navigation Servitude:** Navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. Art. I, §8, cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands hereunder for various commerce-related purposes including navigation and flood control. In tidal areas, the servitude extends to all lands below the mean high water mark. In non-tidal areas, the servitude extends to all

lands within the bed and banks of a navigable stream that lie below the ordinary high water mark. *United States v. Cress*, 243 U.S. 316, 37 S.Ct. 380, 61 L.Ed. 746 (1917), *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979). The Government's rights under the 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.

The channel itself, the two existing ODMDs, and the nearshore feeder berm are within the navigable waters of the United States and are available to the Federal Government via navigation servitude.

13. Public Law 91-646 Relocation Assistance: There are no persons or businesses that will need to be relocated due to project implementation.

14. Assessment of Non-Federal Sponsor Land Acquisition Capabilities: Should land acquisition become necessary during the PED phase, a Capability Assessment and Risk Notification of the NFS's capabilities has been completed and is attached as Exhibit "B".

15. Baseline Cost Estimate for Real Estate: The cost estimate below reflects the estimated Federal cost for the proposed Project. These costs include team meetings, mapping of Project and administrative costs. The estimated federal real estate costs for the proposed Project are \$11,250.00. The estimated non-federal real estate costs for the proposed Project are \$5,000.00.

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**BRAZOS ISLAND HARBOR, TX
CHANNEL IMPROVEMENT PROJECT
Real Estate Federal Cost Estimate**

REAL ESTATE COST ESTIMATE FOR PROJECT IMPLEMENTATION					
BRAZOS ISLAND HARBOR, TX- CHANNEL IMPROVEMENT PROJECT					
CAMERON COUNTY, TEXAS					
ACCOUNT	DESCRIPTION	ESTIMATE		CONTINGENCIES	
		TOTAL	MITIGATION	TOTAL	MITIGATION
0102	Acquisitions (Review RE Planning Documents & Mapping)	\$2,000.00		\$500.00	
0103	Condemnations				
0104	In-Lease				
0105	Appraisals				
0106	Real Estate PL 91-646 Relocation Assistance				
0107	Temporary Permits/Licenses/R.O.W.				
0108	Audits				
0109	Encroachments and Trespass				
0110	Disposals				
0111	Real Property Accountability				
0112	Project Related Administration	\$2,000.00		\$500.00	
0113	Facility/Utility Relocations				
0114	Withdrawals (Public Domains)				
0115	Real Estate Payments				
011501	Payments by Sponsor (Land & Improvements)				
011502	Payments by Sponsor (PL 91-646)				
011503	Payments by Sponsor (Damages)				
02	Planning by Non Federal Sponsor				
02-0117	LERRD Crediting (Technical, Appraisal, and	\$5,000.00		\$1,250.00	
	Total Admin & Payments (FED COSTS)	\$9,000.00			
	Total Contingencies (FED COSTS)			\$2,250.00	
	GRAND TOTAL FED COSTS	\$11,250.00			

**BRAZOS ISLAND HARBOR, TX
CHANNEL IMPROVEMENT PROJECT
Real Estate Non-Federal Cost Estimate**

REAL EST ATE COST ESTIMATE FOR PROJECT IMPLEMENTATION					
BRAZOS ISLAND HARBOR, TX- CHANNEL IMPROVEMENT PROJECT					
CAMERON COUNTY, TEXAS					
ACCOUNT	DESCRIPTION	ESTIMATE		CONTINGENCIES	
		TOTAL	MITIGATION	TOTAL	MITIGATION
0102	Acquisitions				
0103	Condemnations				
0104	In-Lease				
0105	Appraisals				
0106	Real Estate PL 91-646 Relocation Assistance				
0107	Temporary Permits/Licenses/R.O.W.				
0108	Audits				
0109	Encroachments and Trespass				
0110	Disposals				
0111	Real Property Accountability				
0112	Project Related Administration	\$2,500.00		\$625.00	
0113	Facility /Utility Relocations				
0114	Withdrawals (Public Domains)				
0115	Real Estate Payments				
011501	Payments by Sponsor (Land)				
011502	Payments by Sponsor (PL 91-646)				
011503	Payments by Sponsor (Damages)				
02	Planning by Non Federal Sponsor				
02-0117	LERRD Crediting	\$1,500.00		\$375.00	
	Total Admin & Payments (NON-FED COSTS)	\$4,000.00			
	Total Contingencies (NON-FED COSTS)			\$1,000.00	
	GRAND TOTAL NON-FED COSTS	\$5,000.00			

16. Acquisition Schedule: There are no new lands needed for this project, however a perpetual easement shall be conveyed to the Government for all PAs owned by the NFS. The conveyance of the perpetual easements shall be completed within (12) twelve months from the signing of the PPA.

17. Minerals: The NFS owns fee, less and except minerals, for the 9 upland confined PAs for this project. According to Section 2.3.10 of the main report, there is mineral activity near the proposed project and currently there is no anticipated affect to construction, operation, or maintenance of the project. The 9 upland confined PAs for this project have been in continual use since 1994 and mineral activities have never posed a problem or interfered with surface disposal. We believe that the potential risks to the government associated with possible mineral extraction activities are sufficiently mitigated. The majority of mineral extraction activities currently taking place in this area are accomplished utilizing Horizontal Directional Drilling (HDD) techniques, which allow for the extraction of sub-surface minerals from locations horizontally removed from the drilling site. These techniques typically involve extracting sub-surface minerals at depths greater than 1000 feet below the surface and over a quarter mile distant from the drilling site. The potential risks to the government associated with the NFS not owning the mineral rights are sufficiently mitigated and there is no anticipated affect to construction, operation, or maintenance of the project because of nearby mineral activity. Accordingly, the additional cost and time associated with the NFS acquiring the mineral rights far outweigh the risks to the government

18. Facilities/Utilities/Pipeline Relocations & Removals: Two pipelines located within or near the proposed Project area were identified and investigated. The first pipeline located near the project area is a 4-inch gas gathering pipeline that runs parallel to the channel. This pipeline does not cross the main channel or any of the PAs, where the proposed dredging will take place; therefore it will not be affected by this Project. The second pipeline is a 10-inch refined products pipeline (-7 5 feet MLL W) located in the vicinity of Station 80+000 approximately 2.5 miles northeast of Brownsville, Cameron County, Texas. This pipeline was originally authorized under Department of the Army (DA) Regulatory Permit 14114(05) and is also covered by USACE Consent No. DACW64-9-06-03, which was issued by Galveston District Real Estate Division in October 2005. The channel deepening will not impact this pipeline; therefore, it does not require removal or relocation.

19. HTRW or Other Environmental Contaminants: Section 2.3.8 of the main report states, “The assessment of existing Hazardous, Toxic and Radioactive Waste Concerns (HTRW) conditions was conducted in general accordance with procedures described in the USACE Engineer Regulation (ER) 1165-2-132 - Water Resource Policies and Authorities Hazardous, Toxic, and Radioactive Waste Guidance for Civil Works Projects (USACE, 1992). The assessment aims to identify the existence of, and potential for, HTRW contaminations on lands in the project area, or external contamination, which could impact or be impacted by the project.”

Section 7.8 of the main report continues by stating, “Potential HTRW impacts would be similar for both the No Action and Recommended Plan. Based on current sediment and water quality analysis, no sites in the study area are causing regulatory threshold exceedances in channel sediments at this time. No sites on the National Priorities List were identified along the Main Channel, and recent chemical analyses of sediments in the channel indicate no cause for concern

for the Main, Jetty, or Entrance Channels. No change to this status quo is anticipated in the FWOP condition.

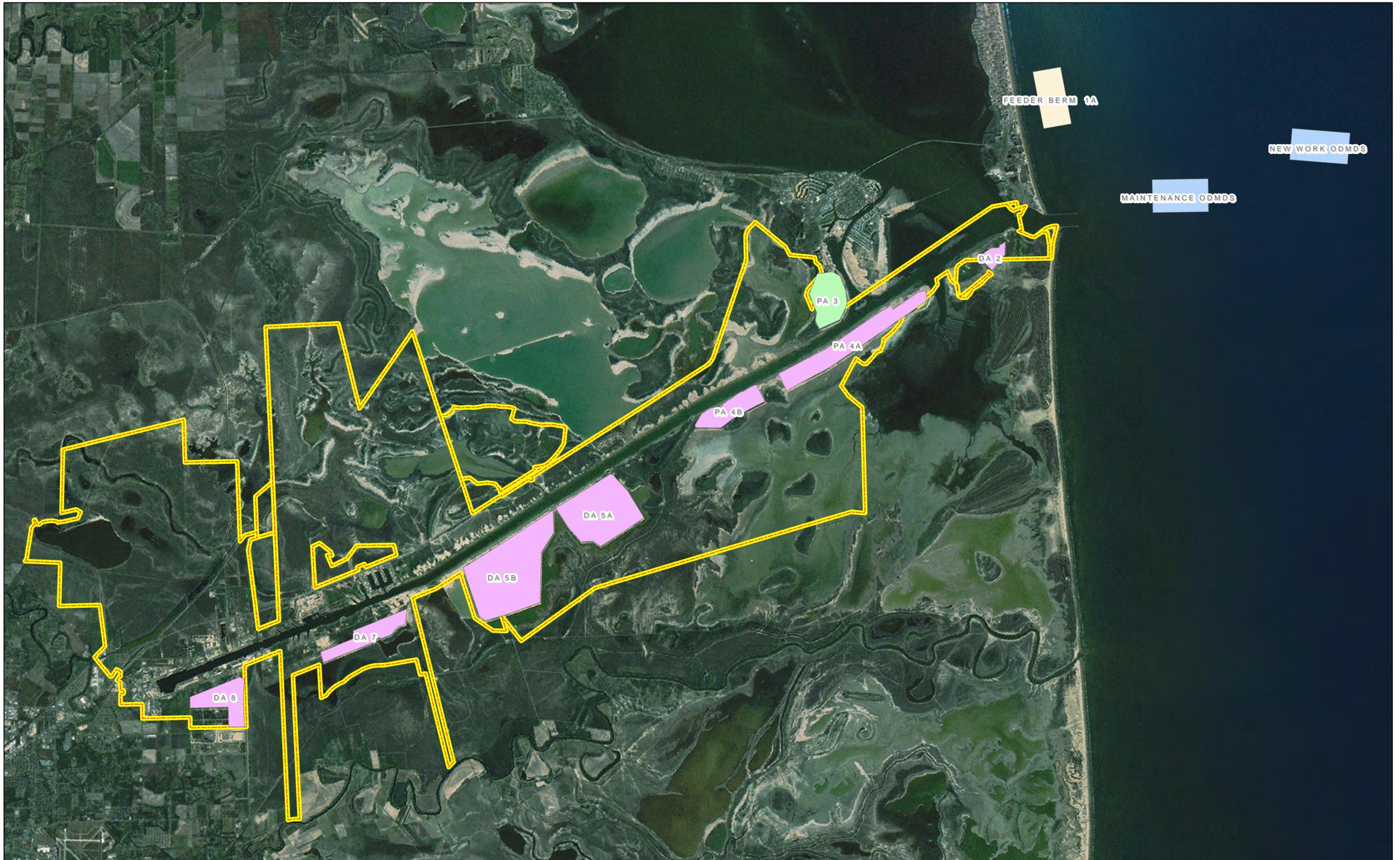
The Recommended Plan is not expected to induce changes in land use or industrial practices that would increase the occurrence or impact of HTRW sites in the project area. Future releases from known sites in the study area (see Section 2.3.8) may impact the channel, regardless of channel deepening activities. However, no evidence exists that demonstrates a known contaminant migration pathway from these sites to the channel. Therefore, no impacts are expected due to the presence of HTRW sites in the study area.”

20. Landowner Opposition: There is no known opposition to the Project. Public input was solicited via a public scoping meeting held in 2007. The attendees were overwhelmingly in favor of the Project because of the economic benefits it would apparently generate.

21. Zoning: There are no special zoning ordinances proposed to be enacted in connection with this Project.

EXHIBIT A

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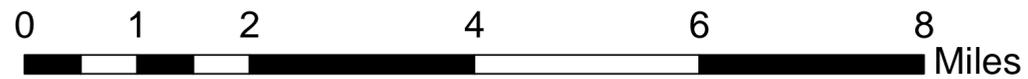
Legend
Project PA NAD 83 SPSC  BND Prop Boundary

USAGE

-  FEEDER BERM
-  ODMS
-  INLAND PLACEMENT AREAS
-  NOT TO BE USED



BIH PLACEMENT AREAS
Channel Improvement Project
Cameron Co. TX



PREPARED BY:
REAL ESTATE DIVISION
DATE: 20 AUG 13

Sheets 1 of 1



US Army Corps
of Engineers
Galveston District

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

**Brownsville Navigation District (Port of Brownsville)
Brazos Island Harbor, TX
Channel Improvement Project
Cameron County, Texas**

I. Legal Authority

- a. Does the Sponsor have the legal authority to acquire and hold title to real property for project purposes? Yes.
- b. Does the Sponsor have the power of eminent domain for this project? Yes.
- c. Does the Sponsor have "quick-take" authority for this project? Yes.
- d. Are there any of the lands/interests in land required for the project outside the Sponsor's political boundary? No.
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the Sponsor cannot condemn? No.

II. 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 PL 91-646, as amended? Training should not be needed, as no additional land is to be acquired.
- b. If the answer to II.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.
- d. Is the Sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule? Yes.
- e. Can the Sponsor obtain contractor support, if required, in a timely fashion? Yes.
- f. Will the sponsor likely request USACE assistance in acquiring real estate? No.

III. 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? Yes.

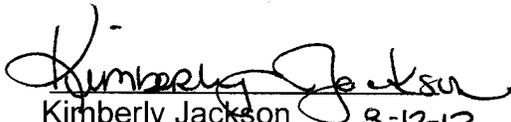
IV. Overall Assessment

- a. Has the Sponsor performed satisfactorily on other USACE projects? Yes.
- b. With regard to this project, the Sponsor is anticipated to be: Fully Capable

V. Coordination

- a. Has this assessment been coordinated with the Sponsor? Yes.
- b. Does the Sponsor concur with this assessment? Yes.

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