

5.0 COMPENSATORY MITIGATION STATEMENT

Construction of the proposed project would result in the loss of 8.86 acres of submerged aquatic vegetation and 0.80 acres of direct impacts and 0.15 acres of indirect impact to emergent estuarine wetland, totaling 0.95 acres of wetland impact.

The first priority of the proposed project was avoidance and minimization. The applicant has avoided and minimized project impacts to the maximum extent practicable. Minimization and avoidance efforts include project alterations, design changes, the addition of stabilization features to protect nearby resources, and the implementation of Best Management Practices (BMPs) into the project construction requirements. Section 4.0 outlines the alternatives analysis.

The Clean Water Act 404(b)(1) guidelines (40 CFR 230) are regulations that constitute the substantive environmental criteria used in evaluating activities regulated under Section 404. Within 40 CFR 230, compensatory mitigation for losses of aquatic resources is described under Subpart J. Additional regulations for general compensatory mitigation requirements are described in 33 CFR 332, finalized in 2008. This rule states that compensatory mitigation requirements must be commensurate with the amount and type of aquatic resources impacts associated with permit actions.

“There are three mechanisms for providing compensatory mitigation: permittee-responsible compensatory mitigation, mitigation banks and in-lieu fee mitigation” (40 CFR 230). Purchase of credits from a mitigation bank is the preferred method of compensatory mitigation. However, no mitigation banks are available to serve the project area. The next preferred method of compensatory mitigation is the purchase of in-lieu fee program credits; the project area is not located within the service area of an in-lieu fee program. The next preferred method of permittee responsible mitigation (PRM). “Compensatory mitigation can be carried out through four methods: the restoration of a previously-existing wetland or other aquatic site, the enhancement of an existing aquatic site’s functions, the establishment (i.e., creation) of a new aquatic site, or the preservation of an existing aquatic site” (40 CFR 230).

The applicant proposes to mitigate for losses of jurisdictional waters of the United States with a combination of preservation and establishment (creation) of a new aquatic site.

Preservation:

For impacts to aquatic resources totaling 9.81 acres (8.86 acres of submerged aquatic vegetation and 0.95 acres of estuarine wetland), the applicant proposes the preservation of 50 acres (5.09:1) of forested land that includes a mosaic of pothole wetlands. Pothole wetlands are a valuable habitat being lost across Texas due to urbanization, agriculture, and other development activities. Of the few remaining undeveloped tracts with these land features in the Ingleside area, there is significant threat for development since most lands with pothole wetlands are typically isolated and non-jurisdictional under existing federal regulations. For example, the 592-acre tract situated immediately to the north of the applicant’s property, has an unexpired Approved Jurisdictional Determination (AJD) that states that the property is non-jurisdictional. That property, in combination with the applicant’s property constitutes the majority of the contiguous undeveloped land in this region where this habitat type can still be found. In a 2014 permit comment letter for SWG-2014-00381, the Texas Parks and Wildlife Department (TPWD) emphasized the extremely high value of this undeveloped habitat, stating that the pothole wetlands are threatened in much of their known range by drainage alterations associated with both development and grazing pressures and further stating that for that project TPWD may consider a preservation alternative to preserve this valuable habitat type.

The applicant will obtain the appropriate conservation easements and land management plans to preserve the acreages appropriately and in perpetuity. **Exhibit A** includes an overview map depicting the property proposed for preservation.

Creation:

In addition to preservation, the applicant will compensate for the loss of 8.86 acres of submerged aquatic vegetation by creating not less than 9.3 acres of submerged aquatic vegetation. The applicant will develop a plan that includes the planting of 13.3 acres of seagrass species. The plan will include an ultimate success criterion to achieve not less than 70% seagrass coverage (13.3 acres planted X 70% coverage = 9.3 acres of seagrass creation).

The applicant is working with the Port of Corpus Christi Authority (PCCA) to determine the precise location of the proposed mitigation site within submerged PCCA property. PCCA has approved approximately 1,600 acres along the shoreline of Indian Point for habitat creation and enhancement projects that will address the needs of the watershed and provide shoreline protection. PCCA supports the applicant's intent to complete mitigation within their submerged land and has agreed to provide sufficient acreage to meet the project's needs. The applicant intends to propose a site-specific mitigation project that will consist of a breakwater constructed on bay bottom, situated such that wind and wave reduction will be sufficient to successfully establish seagrass shoreward of the breakwater. Following breakwater installation, the applicant would harvest and transplant appropriate seagrass species. The breakwater will be situated so that approximately 13.3 acres of seagrass can be planted shoreward of the breakwater. The breakwater would be installed at the approximate -4.0 to -4.5-foot NAVD 88 contour. Seagrass would be planted shoreward of the breakwater on three-foot centers. The applicant's proposed plan meets the stated goal of achieving no net loss of aquatic resources. A letter of support from PCCA, and an overview of the 1,600-acre area is included in **Exhibit B**.

A plan and section view are provided in **Exhibit C** as a visual demonstration of a typical seagrass site with breakwater protection. However, as stated above the precise location of the breakwater and planting area is still being coordinated with PCCA. Once the applicant and PCCA have determined the precise location of the mitigation site within PCCA's 1,600-acre dedicated habitat enhancement/creation area, a 12-Step Mitigation Plan will be provided with the above details and will conform with all regulatory guidance and regulations.

EXHIBIT A
PRESERVATION PROPERTY OVERVIEW

Exhibit A
Preservation Property Overview

-Prepared by: Belaire Environmental, Inc., January 10, 2020 (SKF).
-Basemap Source: NAIP 0.5 meter aerial imagery, obtained from TNRIS, Nueces County, 2015.
-For planning and permitting purposes only, not for construction.

0 400 800 1,200 1,600 Feet



N



Legend

 Preservation Consideration Area

EXHIBIT B
LETTER OF MITIGATION SUPPORT



December 19, 2019

Corpus Christi Field Office
Regulatory Division, CEWSG-RD-R
U.S. Army Corps of Engineers
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318

Subject: Mitigation for Moda Oil Terminal, LLC Berth Expansion Project

To Whom It May Concern:

On behalf of the Port Corpus Christi Authority (PCCA), this letter is to notify you that PCCA has conceptually agreed to enter into an agreement with Moda Oil Terminal, LLC (Moda) for utilization of Port owned submerged property for a permittee responsible mitigation project to compensate for unavoidable impacts that will result from the construction of Moda's proposed Berth Expansion Project (the Moda Dock Project) which is the subject of a pending Corps of Engineers permit application.

PCCA recognizes the need for habitat creation in the Corpus Christi Bay System as is evidenced by our Environmental Policy approved by the Port Commission. To that end the PCCA has recently identified approximately 1,600-acres of PCCA owned submerged property that appears suitable for the creation, restoration or enhancement of habitat and has begun progressing studies to identify current conditions. In October 2019, PCCA approved a Task Order under a Master Research Agreement with Texas A&M University – Corpus Christi to evaluate this area to determine its suitability for the creation, restoration or enhancement of oyster reefs. This is just one of several studies needed to fully evaluate the habitat potential of this area. Additionally, once the area has been adequately characterized, coordination with adjacent stakeholders will also be necessary for alignment on intended adjacent property uses. Exhibit A depicting the 1,600-acres of Port owned land is attached for reference.

PCCA understands that the Moda Dock Project will impact approximately nine (9) acres of seagrass. PCCA believes that within the approximately 1,600-acres along the northwest shoreline of Corpus Christi Bay from Indian Point to LaQuinta, there is acreage to accommodate the necessary mitigation for this project and that it will align with PCCA's intended habitat creation project. Since PCCA has only recently begun evaluating the area and the prioritizing of creation, enhancement, and restoration areas is yet to be developed, PCCA doesn't have a specific location within the 1,600-acres for the permittee responsible mitigation project at this time. However, we anticipate it being identified in early spring.

PCCA is committed to actively assisting Moda with identification and development of a permittee responsible project for the Moda Dock Project as will be required by the U.S. Army Corps of Engineers (USACE) permit for this project. PCCA understands that this commitment will require USACE's approval of the final mitigation plan and issuance of a USACE permit to Moda for the project including the mitigation area, unless the mitigation area is separately permitted by PCCA.



In the meantime, it is PCCA's intention to work with Moda and its environmental consultants to assist with the development of a 12-point mitigation plan as required by the USACE regulations and to develop a supporting mitigation agreement for the property for this purpose.

If you have any questions, please contact me by phone at (316) 885-6163 or email at sarah@pocca.com.

Sincerely,
PORT OF CORPUS CHRISTI AUTHORITY



Sarah L. Gaza
Director of Environmental
Planning & Compliance

cc: Sean Strawbridge, Chief Executive Officer
Clark Robertson, Chief Operating Officer
Omar Garcia, Chief External Affairs Officer
Beatriz Rivera, Environmental Engineer
Robert Schulz, Senior Environmental Specialist
Yvonne Dives-Gomez, Environmental Permitting Specialist

Port Owned Submerged Properties

Proposed use for development of permittee responsible mitigation projects, for tenant and port use.



Portland

Northshore
Country
Club

South Bay
Boat Ramp

Approx 1,600 Ac



EXHIBIT C

SEAGRASS MITIGATION SITE TYPICAL PLAN AND SECTION VIEWS

**Seagrass Mitigation
Typical Plan View
Nueces County, TX**



-Prepared by: Belaire Environmental, Inc., January 10, 2020 (HER).
 -Basemap Source: NAIP 0.5 meter aerial imagery, obtained from TNRIS, Nueces County, 2015.
 -For planning and permitting purposes only, not for construction.



Sunset Lake

US 181

Typical Section View

Approximate 13.3-acre planting site with breakwater

Approximately 900-foot breakwater, placed at the approximate -4' contour

NOTES:

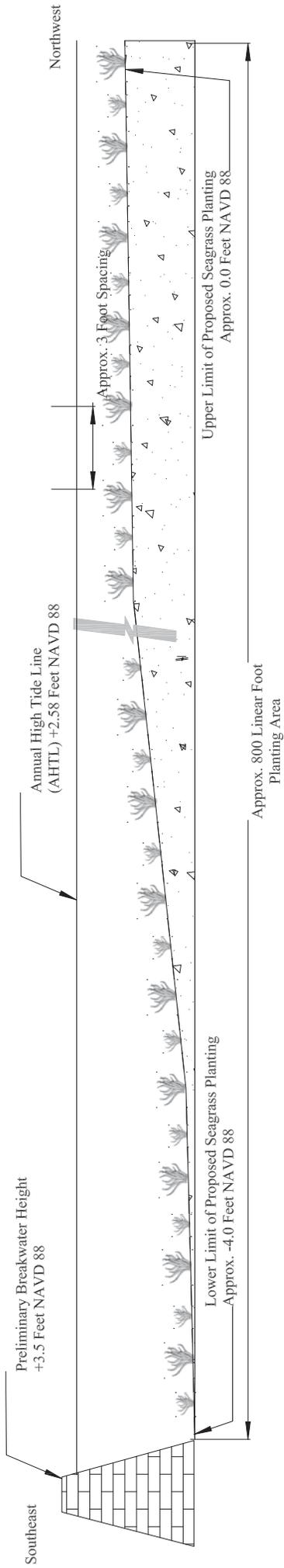
- This plan view provides a visual demonstration of a typical seagrass site with breakwater protection. The precise location of the breakwater and planting area is still being coordinated with PCCA. Once the applicant and PCCA have determined the precise location of the mitigation site within PCCA's 1,600-acre dedicated habitat enhancement/creation area, a 12-Step Mitigation Plan will be provided to conform with all regulatory guidance and regulations.
- The applicant will conduct a comprehensive seagrass, wetland, and bathymetric survey of the actual site selected.
- The breakwater will be constructed from rock, levee armored by articulated mat, or other material based upon specific location, further engineering and approvals from PCCA.
- This project proposes to plant seagrass on three-foot centers at elevations of -4 feet NAVD88 and higher, where bay bottom substrate is predominantly sand and supports little to no existing seagrass.
- The location, length, and dimensions of the breakwater may vary depending upon conditions at the actual site selected. The length may extend up to 1,500 feet.

Legend

- Typical Section View
- Potential Breakwater
- Planting Area
- PCCA Boundary

Corpus Christi Bay

Typical Section View Seagrass Mitigation Nueces County, Texas



NOTES:

- Cross section represents typical cross section for seagrass planting adjacent to breakwater and will be refined when a precise location is determined.
- Seagrass will be planted where bay bottom substrate is predominately sand with little to no existing seagrass.
- 13.3-acre site will be planted on three-foot centers from approximately -4.0 to 0.0 feet NAVD 88. Planting elevations will be refined based upon specific location and/or nearby reference bed.
- Breakwater height represented is typical but will be refined based upon specific location and further engineering analysis.
- Breakwater to be constructed from rock, levee armored by articulated mat, or other material based upon specific location, further engineering and approvals from PCCA.
- Prepared by Belaire Environmental, Inc. on January 10, 2020 (JAM).

Not To Scale