



PERMITTING COUNCIL

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Executive Director Determination re Extending FAST-41 Final Completion Date by More Than 30 Days

September 15, 2022

Port of Corpus Christi Port Authority Channel Deepening Project; Section 106 Review

I. Summary

The Port of Corpus Christi Port Authority Channel Deepening Project (Project), sponsored by the Port of Corpus Christi Authority (Project Sponsor), is a “covered project” under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41), 42 U.S.C.

§§ 4370m *et seq.* The United States Army Corps of Engineers (Corps) is the lead agency with principal responsibility for an environmental review for the Project under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.* The Corps is also the lead agency coordinating the review and consultations required by Section 106 of the National Historic Preservation Act (Section 106), 54 U.S.C. § 306108. On September 1, 2022, the Corps submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council to modify the Project’s permitting timetable on the Federal Permitting Dashboard by extending the final completion date by which the Corps will conclude its Section 106 consultation from October 18, 2022, to February 10, 2023. This is the Corps’ second extension request for the Section 106 consultation. The Corps requested the first 90-day extension because completion of marine archeological surveys had been delayed by weather. The Corps requests this second extension to accommodate the Project Sponsor’s completion of additional marine archeological surveys in areas that were not previously surveyed, and where the Project Sponsor proposes to relocate nearshore berms that are part of a revised Project design. For the following reasons, the extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

II. Legal Standard

A lead agency may modify a permitting timetable only after completing the following actions: (1) consulting with the Executive Director regarding the potential modification; (2) reaching agreement on a different completion date with the affected cooperating agencies, but only after consulting with the participating agencies, the Executive Director, and the project sponsor; and (3) providing a written justification for the modification. 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(I-III).

If the proposed modification entails extending a final completion date by more than 30 days beyond the original final completion date, the lead agency additionally must submit a request to the Executive Director. The Executive Director then must consult with the project sponsor and make a determination on the record, based on consideration of relevant factors, whether to grant the lead agency authority to make such modification. 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The “relevant factors” that the Executive Director is to consider include, but are not limited to, the following:

- (i) the size and complexity of the covered project;
- (ii) the resources available to each participating agency;
- (iii) the regional or national economic significance of the project;
- (iv) the sensitivity of the natural or historic resources that may be affected by the project;
- (v) the financing plan for the project; and
- (vi) the extent to which similar projects in geographic proximity to the project were recently subject to environmental review or similar procedures under State law.

42 U.S.C. § 4370m-2(c)(2)(B). Executive Director determinations to extend permitting timetables by more than 30 days beyond an original final completion date are not subject to judicial review. 42 U.S.C. § 370m-2(c)(2)(D)(iv)(I).

III. Background

The Corps initiated Section 106 consultation with the appropriate State Historic Preservation Officer as planned on May 18, 2022, but the Section 106 process initially was extended because spring weather and sea conditions prevented the Project Sponsor’s contractor from conducting marine archeological surveys. Due to these weather delays, the Corps requested, and the Executive Director granted, an approximately 90-day extension of the original final completion date for the Corps’ Section 106 consultation from July 20, 2022, to October 18, 2022.

The Project Sponsor provided the marine archeological surveys to the Corps on August 26, 2022. In reviewing the surveys, the Corps discovered that the Project Sponsor had not surveyed the entire Project area. The submitted surveys did not include certain locations that had not been part of the original Project design but later became part of the proposed Project when the Project Sponsor relocated and resized several nearshore berms.

The Project Sponsor’s modification of the proposed Project occurred in October 2021, the Corps and Project Sponsor were in regular communications about the Project and modified berm locations, and the modified berm locations were included in the draft environmental impact statement published in June 2022. Nonetheless, the Project Sponsor did not include the modified berm locations in the scope of work the Project Sponsor provided to its marine survey contractor. As a result, the marine archeological survey work completed by the contractor in the summer of 2022 and provided to the Corps in August 2022 did not include surveys for the modified nearshore berm locations. The Corps is requiring the Project Sponsor to conduct additional surveys in the areas to which the nearshore berms are being relocated.

Accordingly, the Corps, as the lead federal agency, has requested to modify the “Section 106 consultation concluded” milestone completion date from October 18, 2022, to February 10, 2023. The Corps represents that changing the Section 106 milestone date will not affect any other completion dates in the Project permitting timetable.

The Corps consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) and represents that the Project Sponsor has no objection to the proposed permitting timetable extension. The Executive Director also consulted with the Project Sponsor, as required by 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV), and confirmed the Project Sponsor does not object to the requested date change. The Project Sponsor conveyed that it would make every effort to provide the survey results well in advance of the modified completion date, and, weather-permitting, the revised completion date provides ample time to complete the work.

IV. Discussion

The FAST-41 statute expressly identifies the sensitivity of the natural or historic resources that may be affected by the Project as a relevant factor to consider when modifying the permitting timetable. Here, the Corps represents that more time is needed to adequately address the potential impacts of the Project on historic resources as the Project Sponsor did not include the modified berm locations in the marine survey work provided to the Corps to date. The Executive Director appreciates the Corps’ comprehensive coordination with all stakeholders, including the Project Sponsor, on the Section 106 consultation process and anticipates that the additional time invested now to complete surveys will result in better environmental and community outcomes. Additionally, the Executive Director finds it significant that extending the completion date for the Section 106 consultation will not extend the overall Project permitting timetable. Given these circumstances, extending the completion date for the Section 106 consultation is warranted.

V. Determination

For the reasons identified above, the Corps' extension request is **GRANTED**, and the permitting timetable is revised as requested.



Christine Harada
Executive Director
Federal Permitting Improvement Steering Council