



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

**January 9, 2023**

**Port of Corpus Christi Authority Channel Deepening Project; EIS, Section 10/404/103, and  
Section 408 Reviews**

**I. Summary**

The Port of Corpus Christi Authority non-federal 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 Galveston District (USACE) 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.*, which makes USACE the NEPA lead agency and the lead agency for FAST-41.

USACE submitted a request to the Executive Director of the Federal Permitting Improvement Steering Council (Executive Director) to modify the Project’s permitting timetable on the Federal Permitting Dashboard by extending the following completion dates:

	Current Completion Date	Requested Completion Date
Notice of Availability (NOA) of Final Environmental Impact Statement (FEIS) ( <i>i.e.</i> , the “FEIS NOA completion date”)	February 10, 2023	April 10, 2024
Environmental Impact Statement - Record of Decision (ROD) ( <i>i.e.</i> , the “ROD final completion date”)	May 17, 2023	July 17, 2024
Final verification/permit decision under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403); Section 404 of the Clean	May 17, 2023	July 17, 2024

Water Act (33 U.S.C. § 1344); and Section 103 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. § 1413), ( <i>i.e.</i> , the “Section 10/404/103 final completion date”)		
Issuance of Decision under Section 408 (33 U.S.C. § 408) ( <i>i.e.</i> , the “Section 408 final completion date”)	May 17, 2023	July 17, 2024

USACE seeks these extensions primarily because the Project Sponsor must complete new sediment sampling and testing. Secondly, USACE needs time to review detailed beneficial use drawings that the Project Sponsor just recently submitted. 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: (1) consulting with the Executive Director regarding the potential modification; (2) reaching agreement on a different completion date with the affected cooperating agencies, 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 modification. 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV). The “relevant factors” that the Executive Director considers include, but are not limited to:

- (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. § 4370m-2(c)(2)(D)(iv)(I).

### **III. Background**

#### Sediment Sampling

The Project includes 47 million cubic yards of dredged material that the Project Sponsor proposes to place in approximately 1,200 acres of waters of the United States. The Project Sponsor has proposed a combination of ocean disposal and beneficial use, which for this purpose means environmental, economic, or aesthetic uses. In 2021, the Project Sponsor developed a Sampling Analysis Plan, which was approved by USACE and the Environmental Protection Agency (EPA), to determine whether the dredged material is suitable for the Project Sponsor's proposed ocean disposal and beneficial uses. In August 2022, the Project Sponsor's consultant collected sediment for sampling in accordance with the Sampling Analysis Plan.

In October 2022, the Project Sponsor notified USACE that several sediment samples exceeded the holding times specified in applicable guidance and in the approved Sampling Analysis Plan. USACE and EPA will not accept findings from the tests associated with these samples as scientifically sound. Accordingly, the Project Sponsor must re-sample and re-test these locations.

#### Detailed Beneficial Use Drawings

On December 8, 2022, the Project Sponsor provided detailed drawings of the proposed beneficial use placement sites. USACE is currently reviewing the detailed drawings for both the Section 408 and the Section 10/404/103 actions. USACE will not be able to finalize the EIS until it has confirmed whether the dredged material placement sites may remain as proposed or must be modified based on either the Section 408 or Section 10/404/103 analyses.

#### Requested Extensions

The current FEIS NOA completion date is February 10, 2023, and the current ROD final completion date is May 17, 2023. USACE has indicated it cannot meet these dates due to the Project Sponsor having to redo sediment sampling and testing and the fact that the Project Sponsor only recently provided detailed drawings of the dredged material placement beneficial use areas.

After the Project Sponsor's contractor collects new sediment samples, it will require approximately 9 months for the contractor to draft a report and for USACE and EPA to review and make a determination on the report. USACE estimates that it will take another 4-6 months to integrate the sediment sampling report into the FEIS, coordinate the FEIS internally and with cooperating agencies, and publish the NOA. Thus, USACE estimates it will take a total of 13-15 months from initiation of sediment collection to FEIS NOA issuance. The Project Sponsor intends to obtain new samples in January 2023, but there is considerable uncertainty in timing for obtaining new sediment samples due to potential issues around weather, sea state, and vessel ability.

Based on the Project Sponsor's intent to collect new sediment by January 16, 2023, USACE is requesting that the FEIS NOA completion date be extended to April 10, 2024, and the ROD be extended to July 17, 2024. USACE also requests that the Section 10/404/103 and Section 408 final completion dates be extended to July 17, 2024, because these decisions are dependent on completion of the ROD. Extending the Section 10/404/103 and Section 408 final completion dates additionally allows time for USACE to review the detailed beneficial use drawings and address concerns, if any, related to the Project Sponsor's proposed placement sites for disposal of dredged material.

USACE consulted with the Project Sponsor per 42 U.S.C. § 4370m-2(c)(2)(D)(i)(I) and represents that the Project Sponsor agrees that an extension is needed but does not agree with the extent of the date shift that USACE has proposed.

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, while concurring in the need for an extension, does not entirely agree to the risk-based approach USACE is utilizing to determine the length of the extension.

#### **IV. Discussion**

The Executive Director understands that the Project Sponsor must undertake new sediment sampling and that USACE is unable to complete the EIS or the Section 10/404/103 and Section 408 reviews until a new sediment sampling report is prepared and approved. Accordingly, given the facts as described above, the Executive Director concludes that extensions of the FEIS NOA completion date, ROD final completion date, Section 10/404/103 final completion date, and Section 408 final completion date are warranted.

**V. Determination**

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



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Christine Harada  
Executive Director  
Federal Permitting Improvement Steering Council