



PERMITTING COUNCIL

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

June 14, 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 U.S. Army Corps of Engineers (Corps) is the lead agency for the National Historic Preservation Act section 106 (Section 106) consultation. On June 3, 2022, the Corps submitted a request to the Federal Permitting Improvement Steering Council Executive Director (Executive Director) to extend the final completion date from July 20, 2022, to October 18, 2022, for the Corps’ Section 106 consultation. The Corps requests this extension to accommodate the project sponsor’s completion of marine archeological surveys, which have been delayed by weather. For the following reasons, the extension request is **GRANTED**, and the Project permitting timetable will be revised accordingly.

II. Legal Standard

Pursuant to 42 U.S.C. §§ 4370m-2(c)(2)(D)(i)(II) & (IV), a lead agency may extend a final completion date by more than 30 days beyond the original final completion date only after consulting with the project sponsor and obtaining Executive Director approval. After receiving an extension request, the Executive Director must consult with the project sponsor and make a determination on the record whether to grant the requested date change. The Executive Director’s determination is based on consideration of “relevant factors,” including, but 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)(D)(i)(IV). Executive Director determinations made pursuant to 42 U.S.C. § 4370m-2(c)(2)(D)(i)(IV) 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 as planned on May 18, 2022, through submittal of the results of the Terrestrial Cultural Resources Report to the State Historic Preservation Officer (SHPO). However, the Corps and SHPO are not able to conclude the Section 106 consultation until certain marine archaeological surveys are completed by the project sponsor. According to the Corps and the project sponsor, for the past six months, the project sponsor has had contractors on standby to conduct the surveys, but unusual spring weather and sea conditions have prevented the survey crew from conducting the work.

The Corps and project sponsor meet biweekly to discuss pending actions, identify potential issues, and review project milestones, including the Section 106 consultation final completion date. During these biweekly meetings, the Corps and project sponsor established that the soonest the weather likely will permit the marine archaeological survey work is June 20, 2022. Once the surveys are completed, the project sponsor's contractors will prepare a report for the Corps and SHPO to review. If mitigation is required, a Section 106 memorandum of agreement also will need to be developed.

The current target date for completion of the Section 106 consultation, listed on the Permitting Dashboard as "Section 106 consultation concluded," is July 20, 2022. After coordinating with the cooperating agencies and the project sponsor, the Corps and all relevant parties agree that 90 additional days likely will be needed to complete the marine cultural resource surveys, develop and coordinate reports, and develop mitigation (if necessary). Accordingly, the Corps, as the lead federal agency, has requested to change the Section 106 consultation concluded milestone target date to October 18, 2022. The Corps represents that changing the Section 106 milestone date from July 20, 2022 to October 18, 2022, will not affect any other milestone target dates in the 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), to confirm the project sponsor concurs with the requested date change.

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. Weather-related delays for archeological survey work are not within the control of the lead agency or project sponsor. The need to wait for weather and sea conditions conducive to completing survey work, which the Corps and project sponsor represent are necessary to adequately assess the potential impacts of the project on potentially sensitive historic resources, justifies extending the completion date for the Section 106 consultation.

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