

Project Schedule and Achievements

We have Prepared a Formal Agreement on the Methodology of Economic Evaluation, including the Project Pro-Forma Statement of Revenues and Costs, and the inclusion of the Cost of Debt and Equity Financing

- **Done through the First and Second Implementation Agreement**

We have Prepared a Formal Agreement regarding City's intent to Provide Public Sector Financing Techniques

- **Done through the First and Second Implementation Agreement and the authorization to retain the TIRZ consultant by this action**

We have prepared a Formal Agreement regarding the Revitalization Development Team's Right to Recover Formation Costs and Pre-development costs as outlined in the budget submitted as part of this report

- **Done through the First and Second Implementation Agreement and the approval of the action taken with this report**

We have Prepared a Report Of Preliminary Tenant Interest

- **Done through this Second Report to City Commission resulting from First and Second Implementation Agreement**

Brownsville Crossings ...

The catalyst for downtown revitalization

Development Team, as of July 2007

1. Developer Ownership Group
SAPI, Inc., a California Corporation;
Brownsville Crossings Company LLC, a Texas Limited Liability Company, Doing business as "Brownsville Crossings"

Mr. Harold Elkan of Sports Arenas Properties, Inc;
Mr. C. Samuel Marasco of LandGrant Development;
Mr. Bob Elkan of Westmore Development;
2. TIRZ Specialist and Consultant
Hawes Hill Calderon of Houston, Texas;
Mr. William Calderon
3. Land Planner and Architectural Conceptualization
Thompson Nelson Group of Houston, Texas
4. Leasing and Marketing Consultant
Grubb and Ellis of Texas;
Mr. Michael Dee;
Ms. Gayle King;
5. Legal Advisor
Mr. Dennis Sanchez of Brownsville, Texas;

6. To be selected in the coming weeks
 - Civil Engineer;
 - Geotechnical Engineer;
 - Environmental Engineer;
 - Structural Engineer;
 - Traffic Engineer;
 - Construction cost estimator;
 - Financial Advisor;

**BROWNSVILLE CROSSINGS
PRE-DEVELOPMENT SCHEDULE**

The following project related tasks should be undertaken during the pre-development period. The following budget has been prepared in an effort to identify the costs associated with commencing and completing these suggested tasks in order to complete the pre-development work.

TASKS	SCHEDULE
1. Establish a land plan and schematic concepts with the assistance of consultants, e.g. architects and engineers. In particular, secure contract with Thompson Nelson Group.	Commence: June Complete: October
2. Establish a list of constraints that effect our ability to use the land for its intended purpose, and a list of parties /Agencies from whom we must obtain permission to construct the contemplated project;	Commence: July Complete: August
3. Retain the TIRZ Consultant to secure the right to use Tax Increment Financing and coordinate his findings and conclusions. In particular secure HawesHillCalderon	Commence: May Complete: December
4. Contract for a formal Retail Demand Study	Commence: July Complete: September
5. Meet with property owners to secure rights of Purchase;	Commence: August Complete: October
6. Contact potential tenants re their level of interest in the concept and establish sales and rent estimates;	Commence: September Complete: December
7. Contract with general Contractor to establish cost estimates;	Commence: September Complete: October

ID	Task Name	Duration	Start	Finish	Jun 3, '07									
					T	F	S	S	M	T	W	T	F	S
1	Select Consultant Team/Retain	45 days	Fri 6/1/07	Thu 8/2/07										
2	TIRZ Consultant	45 days	Fri 6/1/07	Thu 8/2/07										
3	Legal Counsel	45 days	Fri 6/1/07	Thu 8/2/07										
4	Architect	45 days	Fri 6/1/07	Thu 8/2/07										
5	Civil Engineer	45 days	Fri 6/1/07	Thu 8/2/07										
6	Leasing Consultant	45 days	Fri 6/1/07	Thu 8/2/07										
7	Other Engineers etc	45 days	Fri 6/1/07	Thu 8/2/07										
8	Cost Estimator GC	45 days	Fri 6/1/07	Thu 8/2/07										
9														
10	New Commission Seated	30 days	Fri 6/1/07	Thu 7/12/07										
11														
12	Budget Submittal / Approval	16 days	Wed 8/1/07	Wed 8/22/07										
13														
14	Land Plan & Project Concept	45 days	Thu 8/23/07	Wed 10/24/07										
15														
16	Land Assembly	245 days	Mon 8/27/07	Fri 8/1/08										
17	Environmental Assessment	31 days	Thu 10/25/07	Thu 12/6/07										
18														
19	TIRZ Formation / Approval	120 days	Thu 8/23/07	Wed 2/6/08										
20	Market Demand Study	30 days	Thu 8/23/07	Wed 10/3/07										
21														
22	Pre Leasing Revenue Estimates	60 days	Thu 8/23/07	Wed 11/14/07										
23														
24	Basis of Design Concept	30 days	Thu 11/15/07	Wed 12/26/07										
25	Cost Estimations by GC	30 days	Thu 11/15/07	Wed 12/26/07										
26														
27	Financial Model Approved	30 days	Thu 12/27/07	Wed 2/6/08										
28														
29	Leasing Secured	120 days	Thu 2/7/08	Wed 7/23/08										
30														
31	Banking letters of Interst	45 days	Thu 7/24/08	Wed 9/24/08										
32														
33	Project Application/Approval	45 days	Thu 7/24/08	Wed 9/24/08										
34														
35	Financing Secured	45 days	Thu 9/25/08	Wed 11/26/08										
36														
37	Construction Documents/Permits	90 days	Thu 9/25/08	Wed 1/28/09										
38														
39	Construction Period	200 days	Thu 1/29/09	Wed 11/4/09										
40	Grand Opening Spring 2010	60 days	Thu 11/5/09	Wed 1/27/10										

Project: Project schedule v1 07.20. 07 Date: Tue 8/14/07	Task		Project Summary	
	Split		External Tasks	
	Progress		External Milestone	
	Milestone		Deadline	
	Summary			

Pre-Development Budget - Summary & Detail Schedule	
Summary	
COST SCHEDULE	ESTIMATED BUDGET
1. Consultants	
Pre-development	
1.1. Architecture -land planning, concept schematics	\$75,000
1.2. Civil Engineering	10,000
1.3. Geotechnical	10,000
1.4. Cost estimator	10,000
1.5. HazMat engineer	15,000
1.6. Legal	20,000
1.7. Artist & graphics	10,000
Sub Total	\$150,000
2. Government & Utility Companies	
Pre-development	
2.1.TIRZ Consultant for City/Agencies	\$110,000
2.2 Application fees to Agencies	35,000
2.2 Legal advisor for City/Agencies	20,000
Sub total	\$165,000
3. Marketing –Pre leasing	
3.1. Market Study-retail demand	\$25,000
3.2. Leasing Package with graphics	15,000
3.3. Website-- add page	5,000
3.4. Travel	10,000
3.5. Legal Support	20,000
3.6. Architecture Graphic Support	30,000
3.7. Mixed use demand study	25,000
Sub total	\$130,000
4. Project Administration	
4.1. Project Coordination	\$75,000
4.2. Leasing/Marketing Coordination	75,000
4.3. TIRZ Coordination	50,000
4.4. Government Affairs Coordination	50,000
4.5. Public Relations Coordination	50,000
Sub total	\$300,000
5. Land Control Contracts	
5.1 Legal, title, & Deposits	\$150,000
Sub total	\$150,000
6. Financing Costs	
6.1 Costs of Funds at prime	\$74,480
Sub Total	\$74,480
Estimated Grand Total	\$969,480

Detail Schedule of Payments

COST SCHEDULE	Cost to Date Formation	Estimated Budget Predevelopment
1. Consultants		
Pre-development		
1.1. Architecture -land planning, concept schematics	\$25,000	\$75,000
1.2. Civil Engineering		10,000
1.3. Geotechnical		10,000
1.4. Cost estimator	\$3,500	10,000
1.5. Environmental Engineer		15,000
1.6. Legal	\$9,900	20,000
1.7. Artist & graphics		10,000
Sub Total	\$38,400	\$150,000
2. Government & Utility Companies		
Pre-development		
2.1.TIRZ Consultant for City/Agencies		\$110,000
2.2 Application fees to Agencies		35,000
2.3 Legal advisor for City/Agencies		20,000
Sub total		\$165,000
3. Marketing -Pre leasing		
3.1. Market Study-retail demand	\$22,400	\$25,000
3.2. Leasing Package with graphics		15,000
3.3. Website-add page		5,000
3.4. Travel	\$11,000	10,000
3.5. Legal Support		20,000
3.6. Architecture Graphic Support		30,000
3.7. Mixed use demand study	\$3,750	25,000
Sub total	\$37,150	\$130,000
4. Project Administration		
4.1. Project Development Coordination	\$28,000	\$75,000
4.2. Leasing/Marketing Coordination	\$6,250	75,000

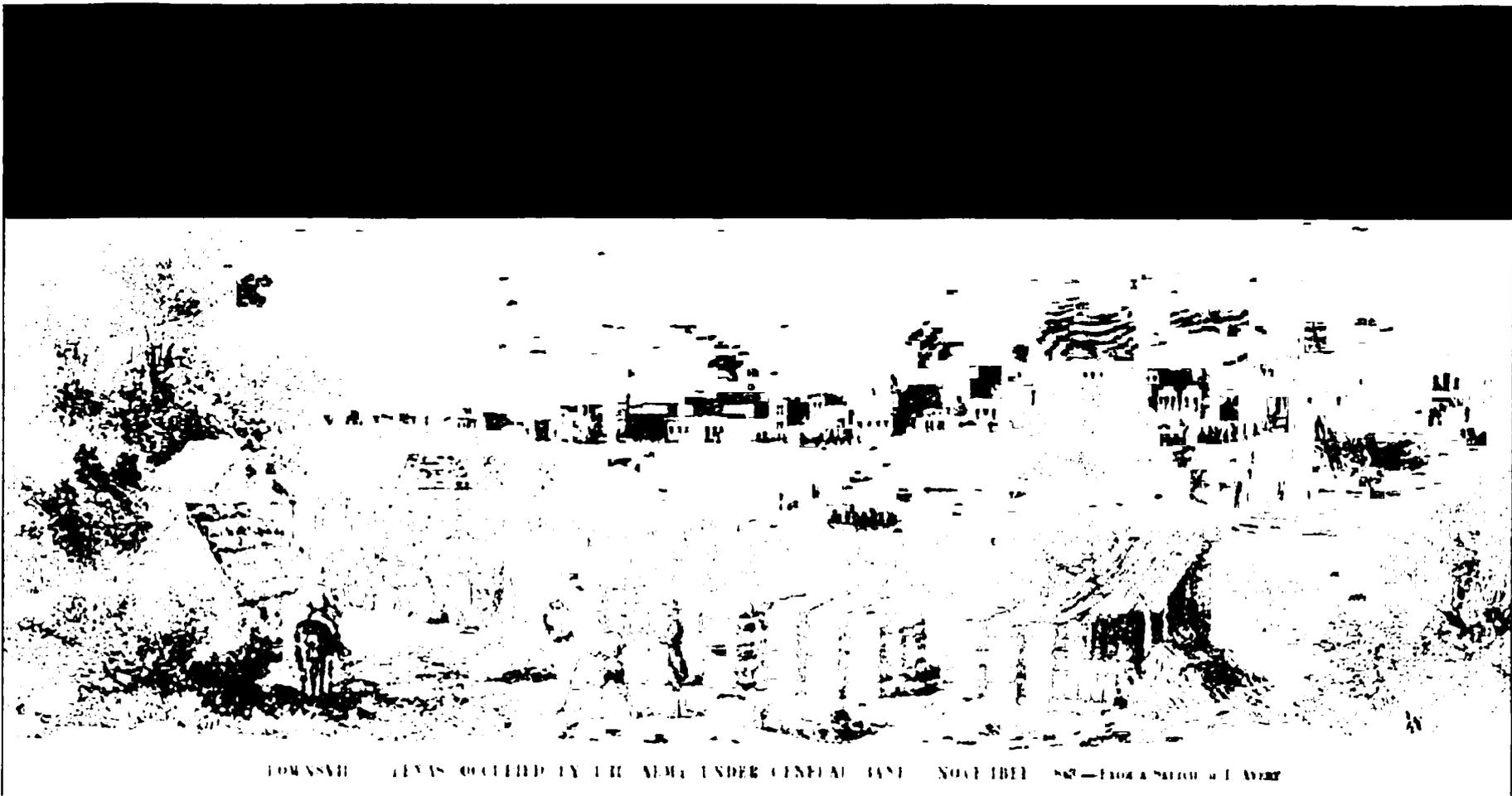
4.3. TIRZ Coordination		50,000
4.4. Financial management coordination (maintains running financial pro forma analysis)	\$7,500	50,000
4.5. Government Affairs and stakeholder relations (reports to city, tenants, owners)	\$9,900	50,000
Sub total	\$51,650	\$300,000
5. Land Contracts		
5.1. Legal, title deposits		\$150,000
6. Financing Costs		
6.1 Pre- construction Interest @ Prime	\$3,000	\$74,480
Estimated Grand Total	\$130,200	\$969,480
Estimated Predevelopment Budget One Year		\$969,480 (+/-)
Potential Use during First Six Months		\$625,000 (+/-)
Possible Unused During First Six Months		\$344,480 (+/-)

Brownsville Crossings ...

The catalyst for downtown revitalization

Report on the Potential Interest of Retail Tenants and Hotel/Motel Operators

The Development Team has commenced discussions with many retail tenants about the concept of participating with us in the development of Brownsville Crossings. We have appropriately reported this information. However, due to the confidentiality of these discussions with these businesses, some of which are publicly traded companies, we are restricted from making a public record of their interest until things are farther along in the planning, assessment and financial analysis.



TOWNSHIP TEXAS OCCUPIED BY THE ARMY UNDER GENERAL BASTIEN NOVEMBER 1862 - FROM A PHOTO BY J. W. WOOD



1970
Rio Grande
1970

Rio Grande River

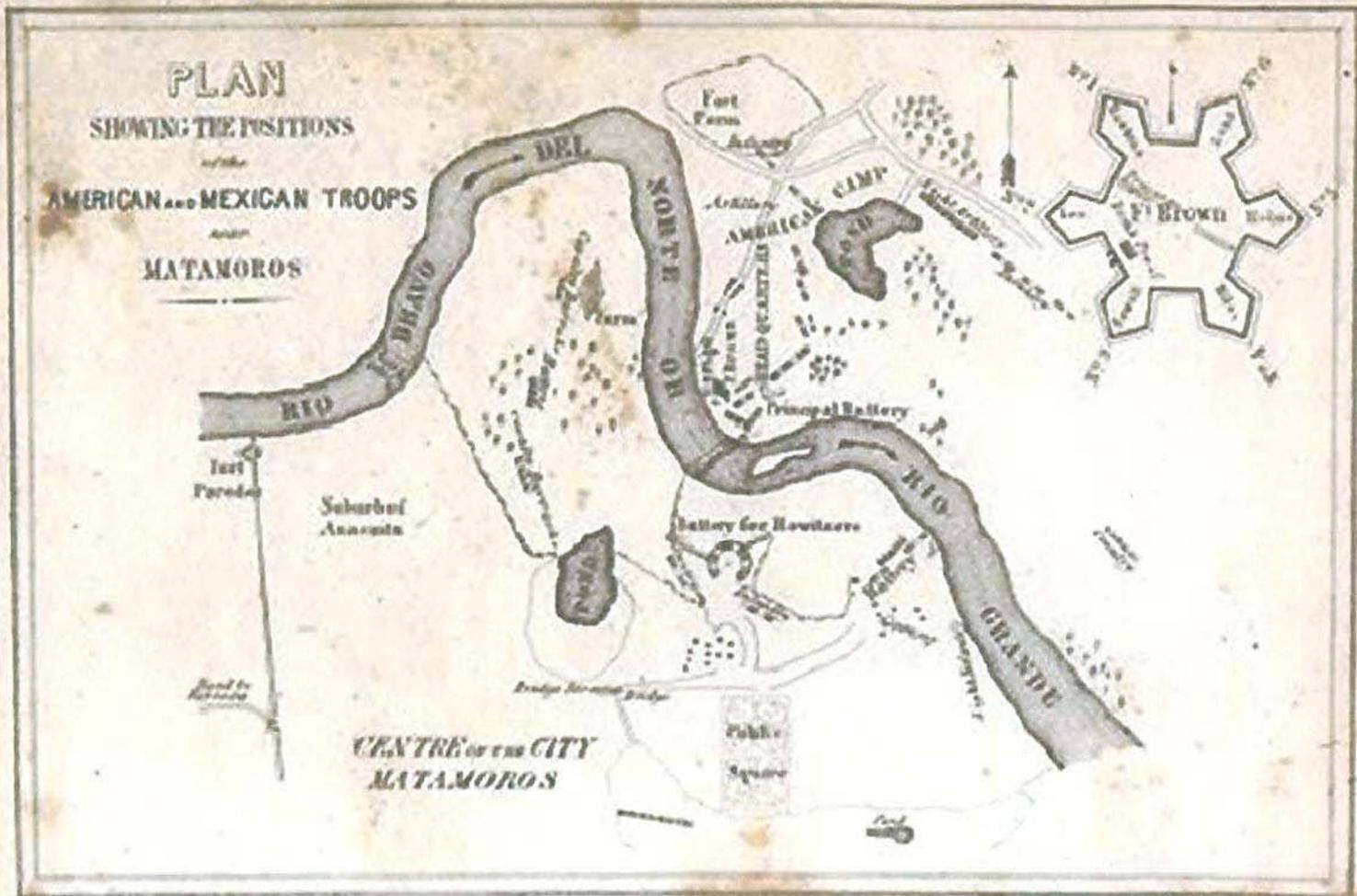
1970



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Riverboat

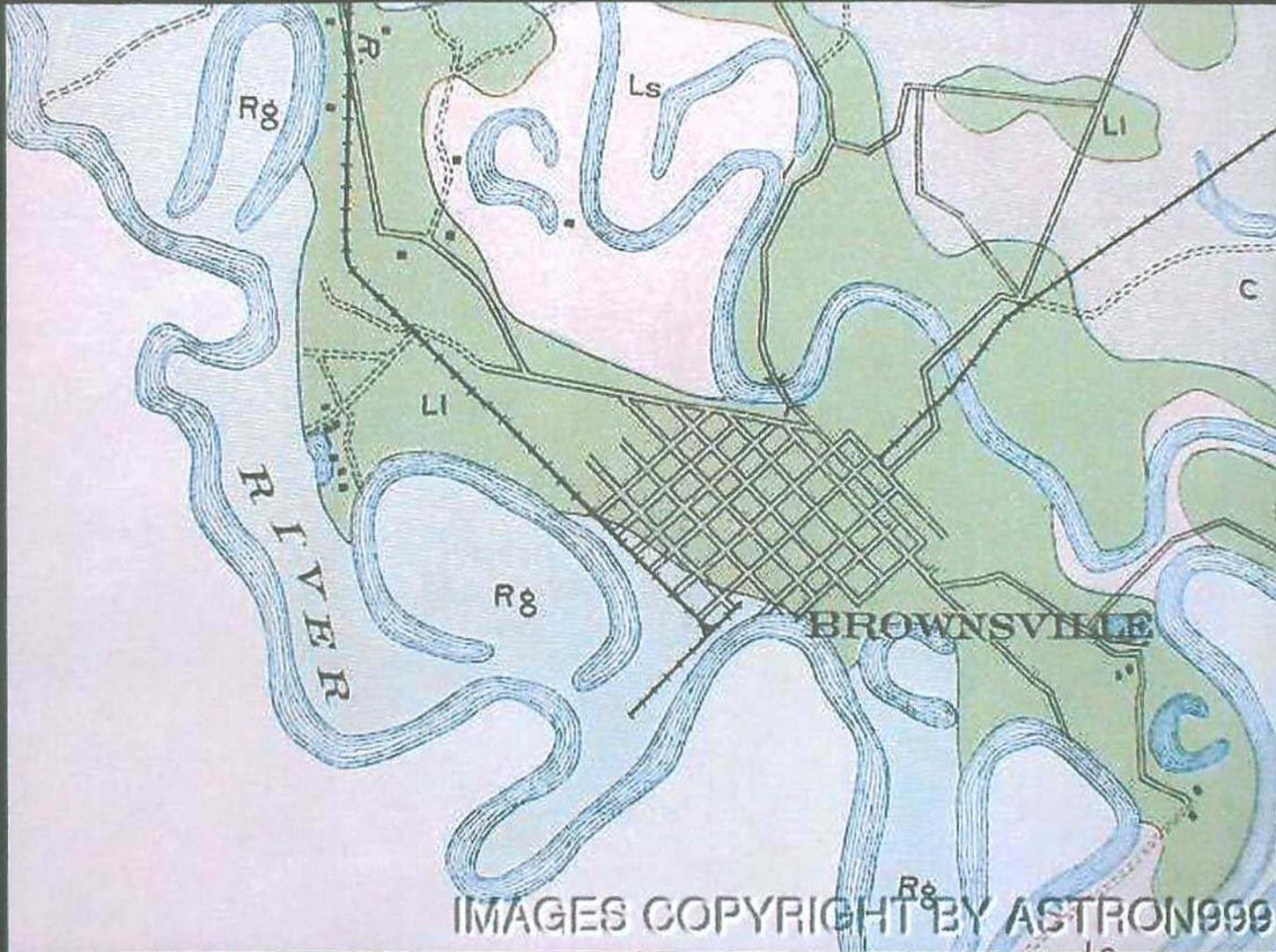




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Brownsville Map

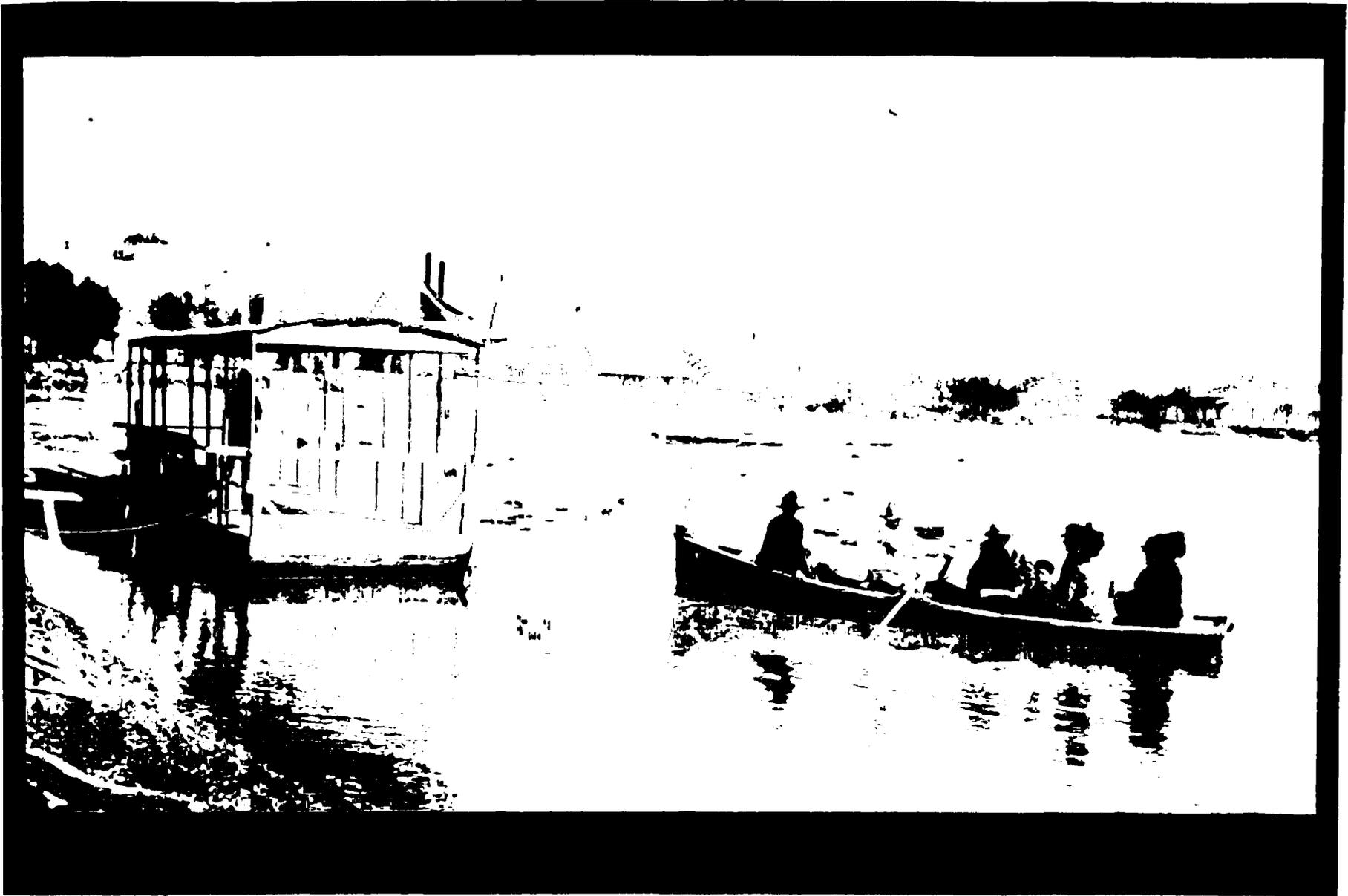




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Brownsville Map

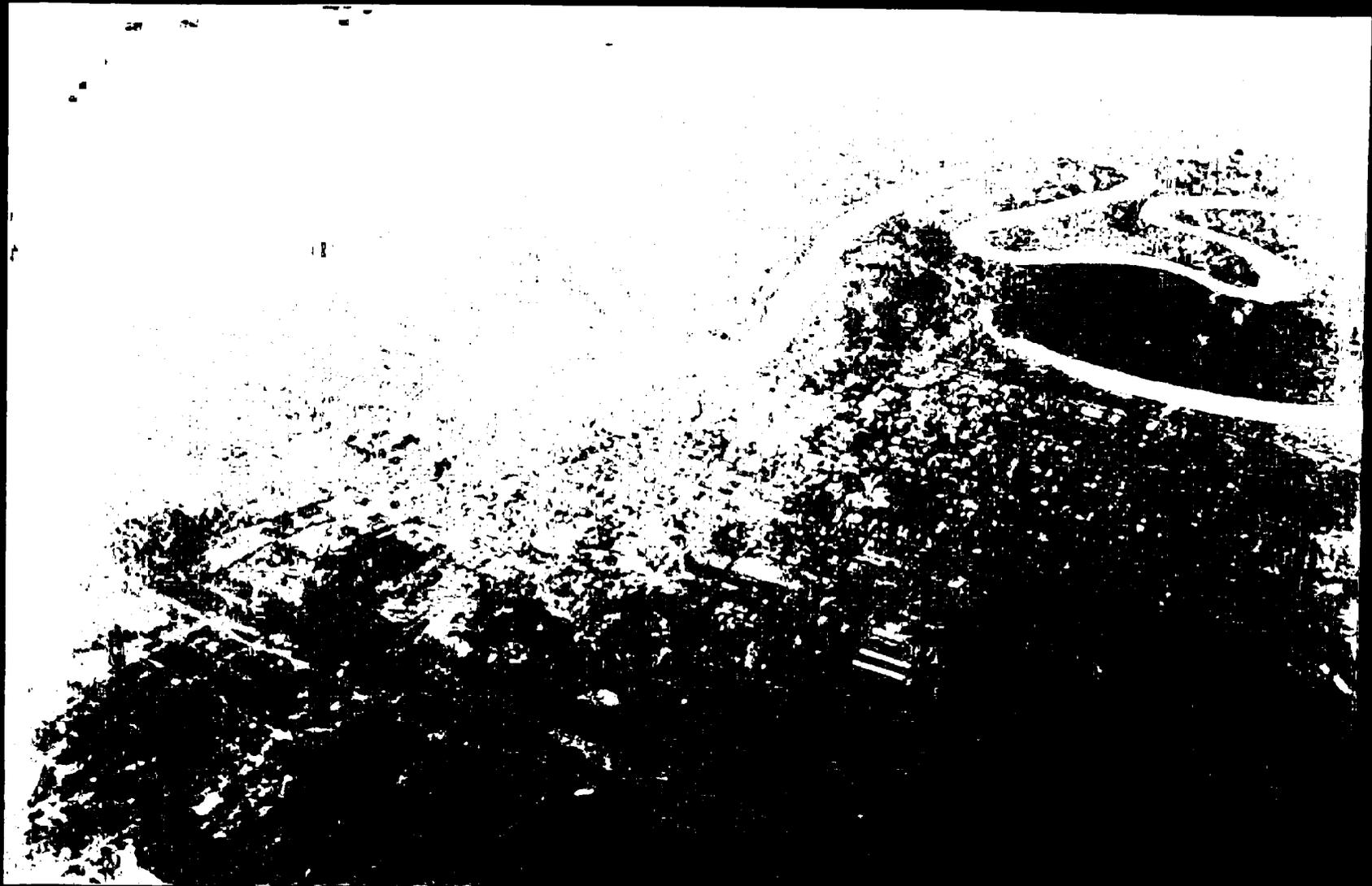




Stacy's
The City of Brownsville

Brownsville Ferry

1911



U.S. National Archives
and Records Administration

Brownsville Aerial View

1950s



San Francisco
City of San Francisco

AmigoLand Aerial

San Francisco
City of San Francisco



Rio Grande River

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Rio Grande River



10.03.07



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City Levee

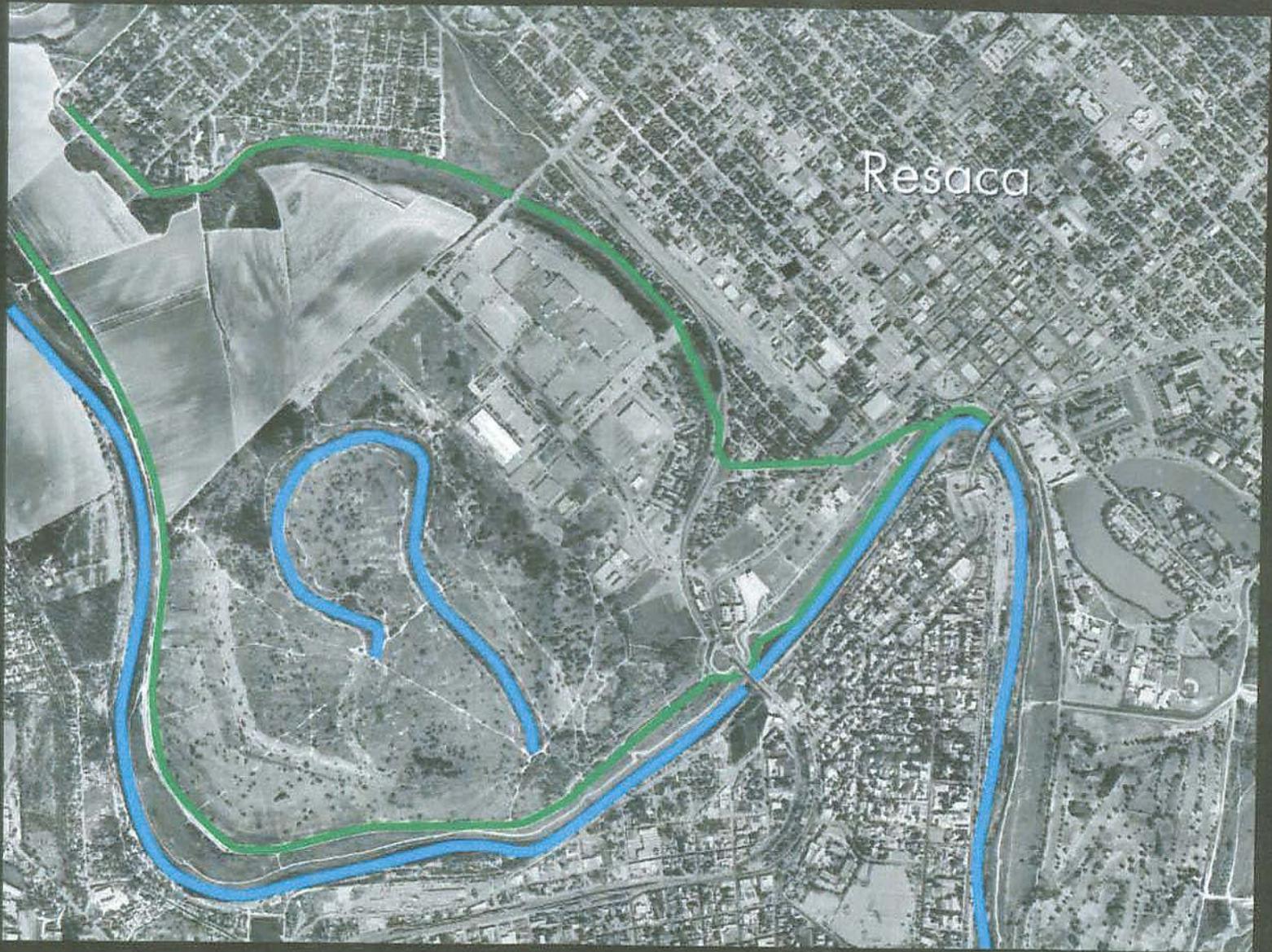




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IBWC Levee





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Resaca





ITEC Resaca

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ITEC Resaca





ITEC Campus

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ITEC Campus

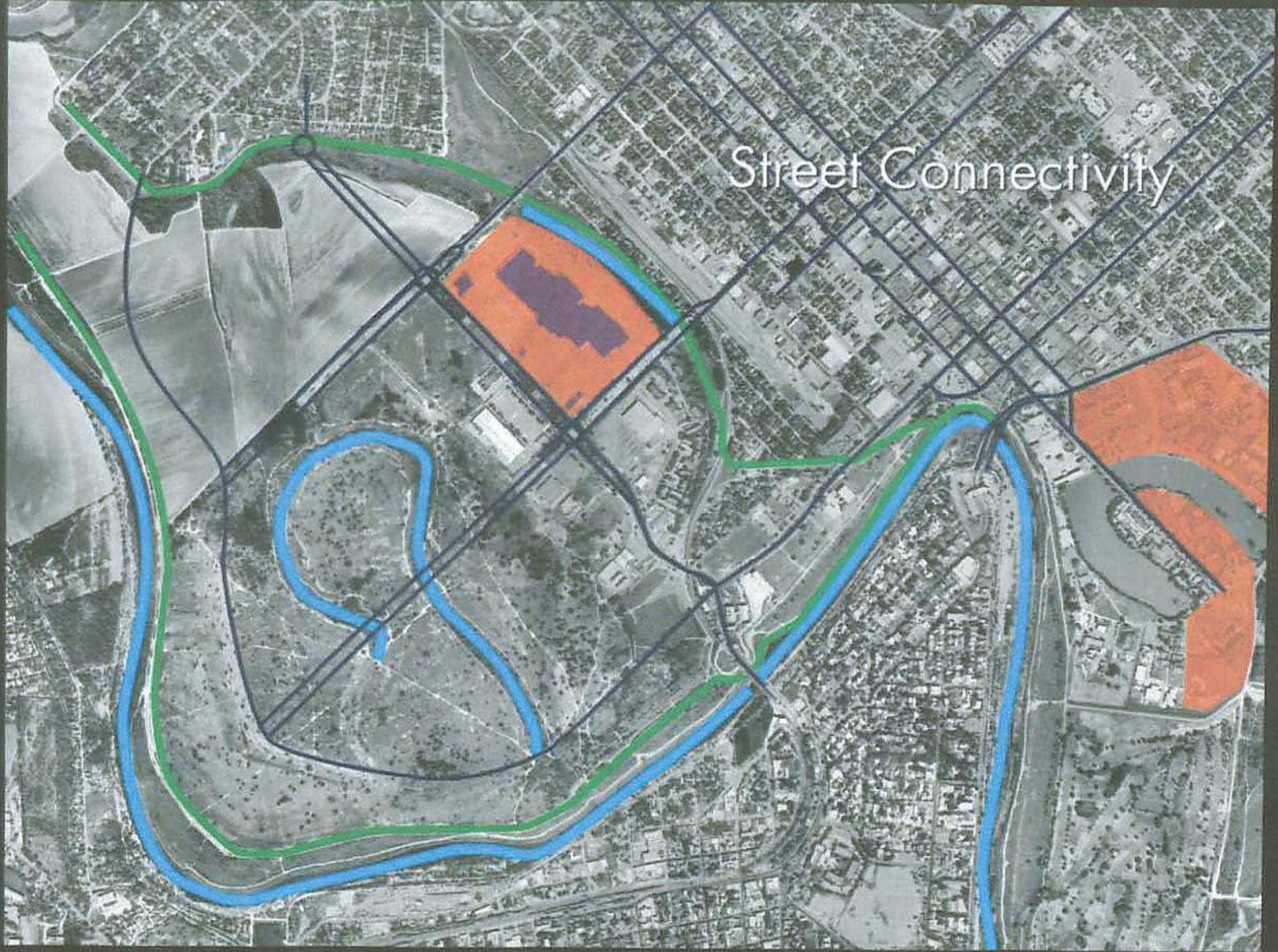




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Street Network





Street Connectivity

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Street Connectivity



10.01.07



Resaca Paseo

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Resaca Paseo





The Park on the Hill

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The Park on the Hill



10.02.07

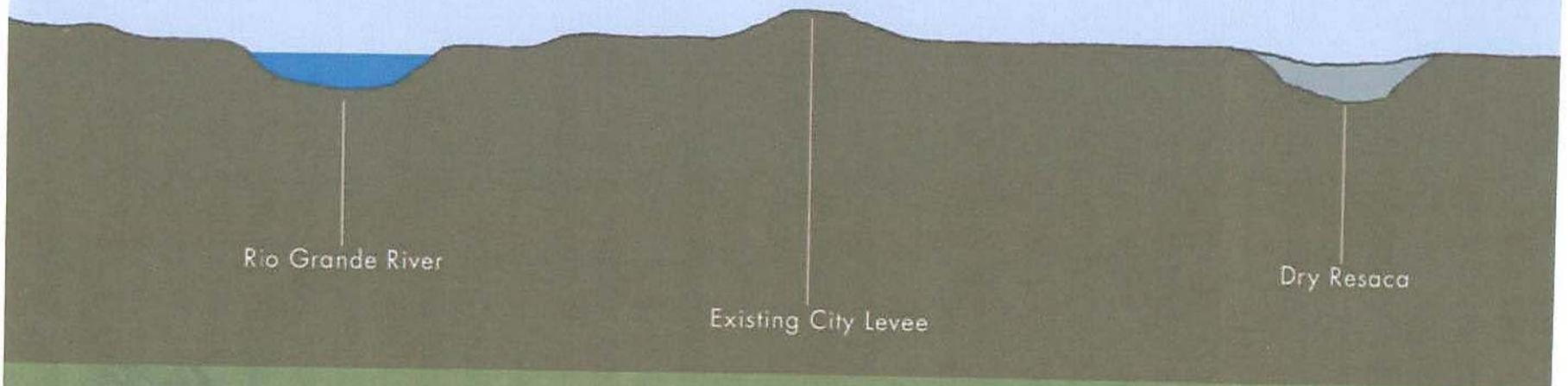


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New Town Plan



City of Brownsville River Front Security and Development Concept



Rio Grande River

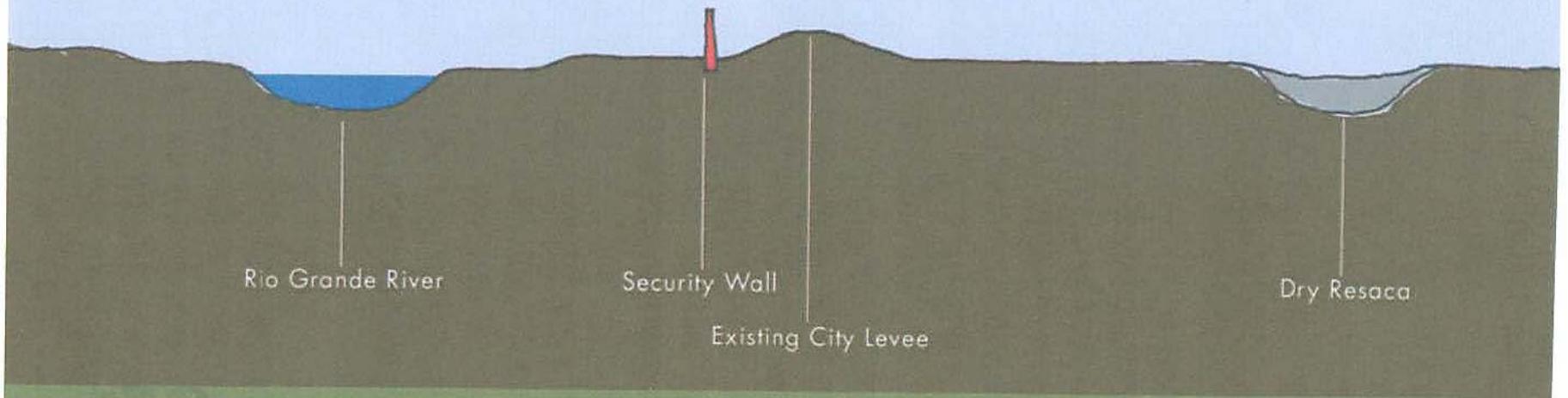
Existing City Levee

Dry Resaca

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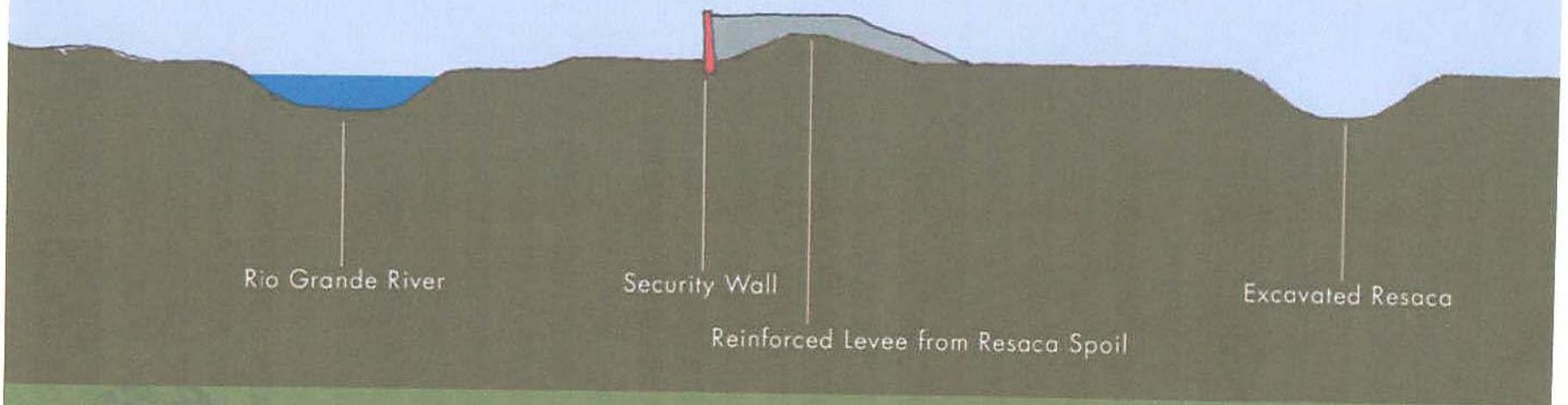
City of Brownsville River Front Security and Development Concept



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It's Our Future



City of Brownsville River Front Security and Development Concept



Rio Grande River

Security Wall

Reinforced Levee from Resaca Spoil

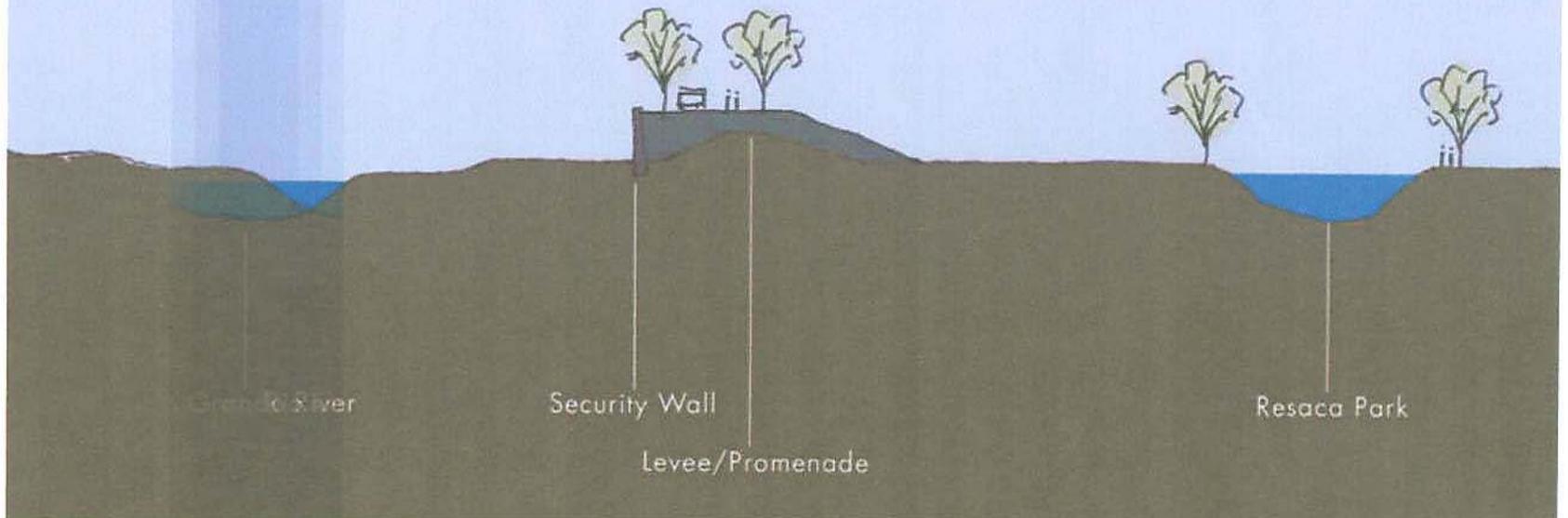
Excavated Resaca

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10.03.07

City of Bismville River Security and Development Concept



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It's Our Future

Imagine!
BISMVILLE
10.03.07

City of Brownsville River Front Security and Development Concept



Rio Grande River

Security Wall

Medium Density Housing

Resaca Park

Levee/Promenade

Street

Neighborhood Housing

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City of Brownsville River Front Security and Development Concept



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1 NAME: Jimmy Paz
2 ADDRESS: P. O. Box 5169, Brownsville, TX
3

4 I am the center director of the Sabal
5 Palm Grove Sanctuary in beautiful Brownsville,
6 Texas. This is in reference to Section 0-21, which
7 is the section that covers the Sabal Palm Sanctuary.
8 In the habitat description they describe it as
9 "there's an few palm trees out there" in 0-21. The
10 description that they give does not fit anything near
11 what we have out there. And I've been asking around,
12 you know, where did they get their information from?
13 Apparently some of the people that are not even from
14 this area were the ones that submitted this
15 information, and they are trying to make it look as
16 if there's nothing there. We have a complete
17 environmental system, the palm grove forest. It's a
18 complete, entirely complete, environmental system,
19 not just a few scattered palms as they say here.

20 Then in looking at some of the other
21 areas, area 5.4 or I guess it's 5.4 of that section,
22 the wetlands that they delineate and describe are
23 wrong, too. And based on what I've read here, I'm
24 sure some of the other information is wrong, and I'm
25 basing this because I've worked there the last 11

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1 years and I'm looking at some of the people that did
2 the report. They have never been around. They have
3 never even been there. How can they do this to us?
4 So I recommend that they do a study on what we have
5 just in this Section 0-21, and they are going to find
6 that the study they did before was completely
7 erroneous.

8 I am for the security of the United
9 States. I don't feel that a wall is going to give us
10 that protection that we need. There are other
11 methods that we could use. One of those methods
12 which was thrown out -- and let me find the section.
13 One of the suggested methods that we could use is
14 described in this section, 2.3.3, on page 3-112. It
15 was completely disregarded as unusable, and that's
16 not so. Basically what we are describing here is a
17 native thorny scrub hedge, but it's not a narrow
18 hedge. We are talking about a hedge that may be a
19 hundred feet wide, which would furnish habitat for
20 wildlife, for birds. The wildlife would be able to
21 get through it, but it would be impenetrable by
22 humans. By vehicle, you would need a Sherman tank to
23 get through that. Sure, you could cut your way
24 through it, but it would take you quite a while. And
25 the smugglers or undocumented persons that are

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1 coming, they don't have the time to either cut or
2 negotiate such a hedge, a native thorny hedge.

3 And we have the native plants all the
4 way from the mouth of the river to El Paso that grow
5 native in their particular area. They don't take
6 very long to grow. They don't require any
7 maintenance. They just grow by themselves. Even if
8 they were to be burnt down, they come back very fast.

9 So without studying this, they just discarded it.
10 I think they need to take that into consideration.
11 Maintenance-wise, there's no maintenance. The
12 installation of such a thing would be minimal. They
13 certainly wouldn't spend millions, and it would be
14 probably more effective to deter humans coming
15 across.

16 As a citizen, we have people not only
17 in our community here, throughout the United States,
18 citizens of the United States, not aliens or illegal,
19 undocumented persons, but citizens of the United
20 States that are up in age. They are elderly,
21 retired, that every day they have to make a decision
22 whether to take their money, what little they have,
23 to buy medication or to buy food, and they opt to buy
24 the food so they can survive. Because it's either
25 one or the other; they can't afford to buy both.

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1 Probably some of this money that they are going to
2 build a fence with could be used to help some of
3 those people out. There's other programs that we
4 could put this money to good use, educational
5 programs, so that our people would be more educated,
6 so they can be more productive, so they can be assets
7 to our community.

8 My feeling is a fence has never
9 worked. I was in United States Army when they tore
10 the Berlin wall down. And America was behind that,
11 you know, getting that wall down. And here we are
12 trying to do the same thing. Put that money to
13 better use.

14

15

* * *

16

17

18

(WHICH WERE ALL OF THE ORAL
COMMENTS TAKEN BY ME IN SAID
CAUSE ON SAID DATE)

19

20

21

22

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24

25

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Rio Grande Valley Tactical Infrastructure EIS
c/o e²M
2751 Prosperity Avenue, Suite 200
Fairfax, Virginia 22031

December 27, 2007

I would like to submit a comment on behalf of No Border Wall regarding the Environmental Impact Statement for Construction, maintenance, and Operation of Tactical Infrastructure, Rio Grande Valley Sector, Texas issued in November of 2007. The opportunity to submit comments on the border wall's likely impacts is appreciated, particularly in light of the lack of public comment periods for sections of the wall currently under construction through the San Pedro Riparian National Conservation Area and in other sensitive areas along the border. Our organization hopes that this signals a new willingness on the part of Customs and Border Patrol and the Department of Homeland Security to actively engage with stakeholders and respect our nation's environmental laws, rather than using the provisions of the Real ID Act to waive federal statutes.

Unfortunately, recent statements and actions by the Department of Homeland Security do not provide us with confidence that their actions in South Texas will be much different from those in California, Arizona, or New Mexico. In those cases utterly inadequate and highly biased Environmental Assessments were issued which invariably concluded that the wall would have "no significant impact." Though an Environmental Impact Statement is being prepared for the Rio Grande Valley instead of an Environmental Assessment, it appears that just as in previous cases the outcome has been predetermined. There is clear evidence of bias in the writing that gives the appearance that this document was intended to justify the actions that the Department of Homeland Security intends to carry out rather than objectively evaluate their likely impacts. This is in direct opposition to the regulations set out by the Council on Environmental Quality to implement the National Environmental Policy Act. There is also a tremendous amount of important data that could be readily obtained that is inexplicably missing. Without this data, which ranges from impacts on endangered species and the economy to hydrological modeling of the effects of the wall during flooding or a hurricane, decision makers, municipalities, stakeholders, and the general public can not adequately analyze the reasonably foreseeable impacts of the border wall.

The flaws in this document are so numerous and so egregious that the only way to correct them is to rewrite and reissue the Draft Environmental Impact Statement rather than rushing to issue the Final EIS. The Council on Environmental Quality provided for this possibility in the regulations that govern Environmental Impact Statements, directing that,

“... if a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” (Sec. 1502.9(a))

This is precisely what must occur in this instance if the process is to have any credibility. In this comment many of the inadequacies of the Draft EIS, though certainly not all of them, will be presented in the hope that they may be addressed in a revised Draft EIS. Anything less would fail to comply with the National Environmental Policy Act.

The Proposed Action and Alternatives

In determining what alternatives to study and what criteria to use in evaluating them, the Council on Environmental Quality mandates that an Environmental Impact Study should “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” (Sec.1502.13) For example, in this instance the goal might be to improve national security, stop or reduce unauthorized entries into the United States, etc.

Instead, the Draft EIS establishes the preferred action as the “purpose and need” of the action:

“The purpose of the Proposed Action is to increase border security within the USBP Rio Grande Valley Sector through the construction, operation, and maintenance of tactical infrastructure in the form of fences, roads, and supporting technological and tactical assets.” (1.2 – 4)

On the same page the “proposed action” is described as follows:

“USBP proposes to construct, maintain, and operate tactical infrastructure consisting of pedestrian fence and associated patrol roads, and access roads along 21 discreet areas of the U.S./Mexico international border in the USBP Rio Grande Valley Sector, Texas.” (1.3 – 4)

If the purpose and the proposed action are one and the same - the construction, operation, and maintenance of “tactical infrastructure” - then by definition no other alternatives will be able to achieve the stated purpose. “Additional USBP Agents in Lieu of Tactical Infrastructure” (2.3.1 – 11) may in fact be highly effective at preventing unauthorized entries into the United States, but because it is “in Lieu of Tactical Infrastructure” it will never bring about the stated goal of “the construction, operation, and maintenance of tactical infrastructure.” The same holds true for all of the other “Alternatives Considered but Eliminated from Further Detailed Analysis.” In each case, the phrase “in Lieu of Tactical Infrastructure” is attached, so by definition none will align with the stated purpose.

This is a clear violation of the Council on Environmental Quality’s regulations governing Environmental Impact Statements. They state,

“Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” (Sec. 1502.2)

If the Draft EIS is to comply with Council on Environmental Quality regulations the stated purpose must be rewritten. As all other assessments regarding alternatives and effectiveness are derived from the stated purpose of the proposed actions, this is a fatal flaw for the Draft EIS. The Executive Summary, Introduction (Section 1), and Proposed Action and Alternatives (Section 2) are completely undermined by this, and should therefore be removed and replaced. A revised Draft Environmental Impact Statement, released for public scrutiny and comment before the Final EIS is produced, is the only viable solution.

Following its severely flawed statement of purpose, the Draft EIS rejects a number of alternatives to building the border wall, including increasing the number of Border Patrol Agents or using so-called “virtual fencing” such as cameras and sensors, without any indication that they were seriously studied or evaluated. The “No Action” alternative is dismissed with the statement, “The No Action Alternative would not meet USBP mission or operational needs.” (ES-2) There is no further explanation as to why it would not meet these needs. If one were to

look objectively at the facts, it would appear that the needs of the stated USBP mission (as opposed to the impermissibly narrow purpose put forward by the Draft EIS) are currently being met without border walls. No terrorists or terrorist weapons have ever come across the border in the Rio Grande Valley. More strikingly, the number of illegal crossers apprehended by the Border Patrol in the Rio Grande Valley sector dropped by 34% in 2007, bringing apprehensions in the area to a 15 year low.

Missing Information

There was a great deal of vital information that would be necessary for a comprehensive evaluation of the impacts of the border wall that was not presented in the Draft EIS. The Council on Environmental Quality has developed regulations addressing data that is missing from an Environmental Impact Statement:

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

1. A statement that such information is incomplete or unavailable;
2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

The Draft EIS does not make clear the fact that there is much incomplete or missing information. This should occur early in the document, preferably in the Executive Summary, so that decision makers are aware of the document's limitations. In most instances there is no "statement that such information is incomplete or unavailable" as Council on Environmental Quality regulations require. On the contrary, there are many instances in which it is either implied or explicitly stated that there is complete information when in fact there is not. The false impression given to the reader is so egregious that it warrants the issuance of a revised Draft Environmental Impact Statement before the Final EIS is released, in which the limitations of the data may be presented honestly.

The Draft EIS was published before US Fish and Wildlife had issued Natural Resource Survey and Cultural Resource Survey Compatibility Determinations. Yet in the Draft EIS it states:

"Surveyors walked the entire length of the proposed project corridor for each tactical infrastructure section, and examined in more detail areas containing unique species compositions of habitat that might be conducive to sensitive species." (Appendix I 6)

Either this statement is inaccurate, or e2M employees violated USFW regulations and entered refuge tracts to conduct surveys without the necessary permits. If they violated USFW regulations, please explain the reason that this violation was determined to be necessary. If the Draft EIS was published without accessing USFW refuge tracts, why was its completion rushed without carrying out surveys that e2M thought were important when they requested Compatibility Determinations? How is it possible to accurately assess the natural and cultural resources that are in the path of the border wall without setting foot on any refuge tracts? A revised Draft EIS which incorporates the information that is gathered by surveyors in the manner described in Appendix I 6 should be issued ahead of the Final EIS so that their findings may be evaluated and commented upon by stakeholders and the general public.

The lack of on the ground survey activities creates a number of "holes" in the data used to create the Draft EIS. One glaring example of "incomplete information relevant to reasonably foreseeable significant adverse impacts" (Sec. 1502.22(b)2) is the lack of data on wetlands along the routes proposed for the wall. In Appendix I it states:

"Wetland delineations have not yet been conducted. The most current information available to identify wetlands in Route B is the NWI (USFWS 2007). No NWI coverage is currently available for Sections 0-1, 0-2, 0-3, 0-5, 0-6, 0-7, and 0-8. Approximately 7.3 acres of wetlands are within the remaining sections of the proposed project corridor of Route B." (Appendix I 58)

Interestingly, when this statement was brought into the main body of the Draft EIS the limited nature of the data is deemphasized:

"The most current information available to identify wetlands in Route B is the NWI (USFWS 2007). No NWI coverage is currently available for Sections 0-1, 0-2, 0-3, 0-5, 0-6, 0-7, and 0-8. Approximately 7.3 acres of wetlands are within the remaining sections of the proposed project corridor of Route B." (3.8 24)

The opening sentence "Wetland delineations have not yet been conducted" has been dropped. As no surveys had been done on USFW refuge tracts, or on the property of a number of landowners who had refused access to surveyors, there is a logical explanation for the lack of survey data. Why downplay it? There is the appearance that rather than openly discuss the missing survey data, e2M chose to gloss over it to push ahead with publication of the Draft EIS.

Whether this is due to deadline pressures imposed upon the contractor or carelessness in the draft's preparation, the outcome is unacceptable. A revised Draft EIS should be issued and commented upon by stakeholders and the general public before the Final EIS, so that complete data on wetlands in the path of the border wall can be gathered and presented.

Both Routes A and B take the border wall through a number of communities, including Roma, Rio Grande City, Granjeno, and Brownsville. The Draft EIS mentions the fact that some residential properties will either be impacted or destroyed:

“...several proposed sections along the levee ROW would require the relocation of private residences or other structures that encroach upon the levee ROW.” (2.2.2.7)

And again:

“Minor to moderate adverse indirect impacts would be expected from the imminent dislocation of some families due to property acquisition. Some housing properties would either be removed or visually impaired by the pedestrian fence and adjacent patrol roads. The social aspects of dislocation could be disruptive. Many families in the proposed project corridor have lived there for decades, some even centuries, and have strong emotional ties to the family land and homes.”

(4.12.55)

The Draft EIS does not provide any specific details, however. The number of homes that will be impacted is not given, nor is the number that will be “relocated” or “removed”. These numbers would be different for each of the options. Will 4 houses be bulldozed, or 40, or 400? The EIS must provide specific numbers for route A, route B, and the Secure Fence Act Alignment alternative. Letters have been sent out to homeowners and landowners who have refused access to their properties, so DHS apparently knows which properties will be affected. A tally of the number of homes that would be impacted by each section should be presented.

How did the preparers of the Draft EIS come to the conclusion that the “dislocation of some families” would only have “minor to moderate adverse impacts” without information regarding the number of families that would lose their homes? In this instance, what is the criterion for “minor to moderate”, and how does the removal of a family's home fall short of “major”? Without exact numbers it is impossible to evaluate the border wall's impact on the “human environment” as required by NEPA.

Another important issue is the limited nature of the Rio Grande Valley Environmental Impact Statement. In the initial phase that the Draft EIS addresses, 21 segments of “primary fence” totaling 69.89 miles will be constructed. However, the Secure Fence Act of 2006 mandates, “[at] least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors... extending 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry.” This is over 200 highway miles, and far longer if the “reinforced fencing” follows the contours of the Rio Grande. As the sections of border wall that are being studied in the Draft EIS are being built to comply with the Secure Fence Act, it makes no sense to separate their individual impacts from the impact of the entire wall. Some sections are listed as less than a mile long, but if the Secure Fence Act is fully implemented they will be part of a continuous wall that is over 200 miles long. An ocelot may be able to travel around a shorter, isolated section of the wall to reach water, mates, or habitat, but it may not be able to travel over a hundred miles to reach these necessities. The 508 acres that will be cleared

of vegetation to construct the initial 21 segments of the wall will cause great hardships for plants and animals that already lack sufficient habitat, but this is only 30% or less of the total that will be cleared, assuming the same footprint for the rest of the Laredo to Brownsville stretch of border wall. Isolating the impacts of pieces of the border wall does not give an accurate assessment of the effects that it will have, and it is therefore important that the scope of the Environmental Impact Statement be expanded to include all of the areas listed in the Secure Fence Act.

Apparent Bias in the Draft EIS

To comply with the National Environmental Policy Act of 1969 (NEPA), Environmental Impact Statements must present an objective, unbiased overview of the impacts that a course of action will have on both the human and natural environments. This information is used by decision makers to evaluate whether the costs of an action outweigh its intended benefits. In the regulations that govern Environmental Impact Statements the Council on Environmental Quality clearly states, "Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made." (Sec. 1502.2)

The Draft Environmental Impact Statement for the Rio Grande Valley border wall ignores this regulation. Rather than objectively evaluating all of the negative impacts that a wall will have in South Texas, it repeatedly presents Department of Homeland Security justifications for the wall as facts without any corroborating evidence. It assumes that the border wall will be a resounding success, and that Texas and the other 49 states will reap the benefits. One passage in particular promotes this idea:

"The cumulative impacts of USBP activities to reduce the flow of illegal drugs, terrorists, and terrorist weapons into the United States and the concomitant effects upon the Nation's health and economy, drug-related crimes, community cohesion, property values, and traditional family values would be long-term and beneficial, both nationally and locally. Residents of the border towns would benefit from increased security, a reduction in illegal drug-smuggling activities and the number of violent crimes, less damage to and loss of personal property, and less financial burden for entitlement programs. This would be accompanied by the concomitant benefits of reduced enforcement and insurance costs." (5.11.17)

This reads like a sales pitch, not an unbiased assessment. No evidence is presented to back up any of these claims. But the words used to frame the first sentence, "The cumulative impacts... would be long-term and beneficial" employ precisely the same language that is used elsewhere to evaluate scientifically quantifiable impacts.

In an effective ad campaign it is important to inflate the positive aspects of the product and minimize or ignore the negative. If you go to a used car lot, you know that the sales person is going to tell you that the car has A/C, but probably won't mention the rust in the wheel wells. The claims made in the Draft EIS must be viewed with the same level of skepticism. A prime example of this is the repeated use of terrorism as a justification for building the wall. Since no terrorists or terrorist weapons have ever entered the United States by crossing the southern

border, the border wall cannot possibly “reduce their flow” into the U.S. How can they go below zero?

Illegal drugs, on the other hand, do cross the southern border into the United States. However, no data is presented in the Draft EIS to support the assertion that building 70 miles of wall in 21 separate sections along our 1,933 mile long southern border, while ignoring the 3,987 mile long northern border and 12,479 miles of coastline, will in any way impact “drug-related crimes... both nationally and locally.” There have been walls along the southern border near San Diego for over a decade, but according to the Border Patrol nearly 33% of the drugs that they confiscated in 2006 came through the San Diego sector, up from 24% the previous year. The border wall has apparently failed to bring about a “reduction in illegal drug-smuggling activities” in southern California.

The statement that the border wall’s impact upon “community cohesion, property values, and traditional family values would be long-term and beneficial” falls somewhere between George Orwell and Alice in Wonderland. How does one objectively measure “community cohesion” or “traditional family values?” This statement is directly contradicted by an earlier passage:

“Minor to moderate adverse indirect impacts would be expected from the imminent dislocation of some families due to property acquisition. Some housing properties would either be removed or visually impaired by the pedestrian fence and adjacent patrol roads. The social aspects of dislocation could be disruptive. Many families in the proposed project corridor have lived there for decades, some even centuries, and have strong emotional ties to the family land and homes.”
(4.12.55)

How will the “dislocation of some families” and the removal of houses have a beneficial impact on “community cohesion, property values, and traditional family values?” Wouldn’t bulldozing a house lower the property’s value? Is homelessness now a “traditional family value?” At least there is the tepid admission that evicting families from their homes and lands “could be disruptive”, particularly for families that have occupied plots of land for many generations. In some instances ownership stretches back to the Spanish land grants of the 1760’s. Removing families with such deep roots will destroy “community cohesion”, no matter what definition of the term is used. But even in this statement the negative impacts are downplayed. When a family is evicted from their home and the building is knocked down, the impacts are certainly not “indirect”, and they are by no means “minor to moderate.”

Not only are the claims that those border residents who don’t have their homes bulldozed will see a reduction in violent crime, less damage to private property, and lower entitlement program costs made without any empirical evidence, they run counter to the evidence that does exist. All of the imagined benefits of the border wall flow from the baseless assumption that if sections of border wall are built in the Rio Grande Valley they will stop illegal traffic from coming across. They will not. In its June 5, 2007 report Border Security: Barriers Along the U.S. International Border the Congressional Research Service concluded that the border wall “did not have a discernible impact on the influx of unauthorized aliens coming across the border in San Diego.” The San Diego wall consists of two parallel walls, the first made of steel slabs and the second made of steel mesh, each 16 feet tall. Between them there is a cleared area 100 feet wide with a graded patrol road and light and camera towers. This is much more robust than the various types

of “tactical infrastructure” mentioned in the Draft EIS, yet it is claimed that the Texas border wall will be much more effective than the walls near San Diego.

The Draft Environmental Impact Statement is very selective about what information is included and what is left out. Even the words of the head of the Department of Homeland Security were excluded when they failed to endorse the wall’s effectiveness. Discussing the border wall in July 2007, DHS Secretary Michael Chertoff said,

“But I do have to say that for people who believe the answer is just fence, yesterday we discovered a tunnel. So fencing is not the cure- all for the problem at the border. We’ve got 40 percent of our illegals coming through the ports of entry using legal visas and overstaying. We’ve got people concealing themselves in vehicles coming through the ports of entry. I’ve seen this myself.

Fencing is not the cure-all for the problem at the border. I think the fence has come to assume a certain kind of symbolic significance which should not obscure the fact that it is a much more complicated problem than putting up a fence which someone can climb over with a ladder or tunnel under with a shovel.”

Coming from the man who recently threatened to condemn people’s homes if they refused access to surveyors, this is a telling comment. The fact that this evaluation is not reflected anywhere in the Draft EIS gives the appearance of “cherry picking” information which supports the preferred option, while ignoring and excluding that which does not.

Extreme selectivity is also apparent in which portions of studies are cited in the Draft EIS. This is particularly blatant in a reference to the Congressional Research Service report Border Security: Barriers Along the U.S. International Border, which was updated in June of 2007. The Draft EIS says this about the report,

“A Congressional Research Service (CRS) report (CRS 2006) concluded that USBP border security initiatives such as the 1994 “Operation Gatekeeper” required a 150 percent increase in USBP manpower, lighting, and other equipment. The report states that “It soon became apparent to immigration officials and lawmakers that the USBP needed, among other things, a ‘rigid’ enforcement system that could integrate infrastructure (i.e., multi-tiered fence and roads), manpower, and new technologies to further control the border region” (CRS 2006).” (2.3.1 – 11)

This is presented as evidence showing that an increase in the number of Border Patrol agents, absent a wall, will not accomplish the Border Patrol’s mission. It is in fact a misrepresentation of the Congressional Research Service’s report. The Congressional Research Service did not come to the conclusion that further “infrastructure” such as walls were needed. The report is instead passing along the opinions of “immigration officials and lawmakers.” The actual conclusion that the Congressional Research Service arrived at is the following:

“While the San Diego fence, combined with an increase in agents and other resources in the USBP’s San Diego sector, has proven effective in reducing the number of apprehensions made in that sector, there is considerable evidence that the flow of illegal immigration has adapted to this enforcement posture and has shifted to the more remote areas of the Arizona desert. Nationally, the USBP made 1.2 million apprehensions in 1992 and again in 2004, suggesting that the increased enforcement in San Diego sector has had little impact on overall apprehensions.”

This more complete picture of the limited effectiveness of barriers along the border is entirely absent from the Draft EIS, even when they cite the report from which it came. Misrepresentations of source materials such as this are clear evidence that the report is in fact "justifying decisions already made" in violation of Section 1502.2 of the Council on Environmental Quality's regulations. Such evidence of bias is pervasive throughout this document, and requires a complete rewrite to root out.

"Terrorists and Terrorist Weapons"

On the first page of the Draft Environmental Impact Statement it states, "The mission of CBP [Customs and Border Patrol] is to prevent terrorists and terrorist weapons from entering the United States, while also facilitating the flow of legitimate trade and travel." (ES-1) Building the wall will allegedly aid them in this narrow goal by, "preventing terrorists and terrorist weapons from entering the United States." (ES-2) The phrase "terrorists and terrorist weapons" is used over and over, showing up more frequently than references to drug-smuggling or undocumented immigrants. The pre-9/11 functions of the Border Patrol seem to have faded into the background, despite the fact that no terrorists or terrorist weapons have ever come across our southern border.

While the Draft EIS makes grand claims for the efficacy of the border wall, spokespersons for DHS and the Border Patrol describe it much more modestly. Del Rio, Texas, Border Patrol Chief Randy Hill was quoted by the Dallas Morning News as saying, "We're going to see steel barriers erected on the borders where U.S. and Mexican cities adjoin. These will slow down illegal crossers by minutes." Not "prevent terrorists and terrorist weapons from entering the United States," or prevent anyone or anything else from entering the United States, but "slow down illegal crossers by minutes." Katherine Cesinger, who is a spokesperson for Texas Governor Rick Perry, said, "Building a wall along the border is not an answer to securing the border. It would create a false sense of security."

If a border wall had stretched from sea to shining sea before September 11, 2001, it would have made no difference to the terrorists. None of the hijackers came into the United States across a land border. Instead, according to the 9/11 Commission, the 19 hijackers applied for and received visas which allowed them to enter and reenter the U.S. 33 times. Each time they came in through an airport, not by land. Only one terrorist is known to have tried to come into our nation by crossing a land border. The Millennium Bomber was caught trying to bring explosives across the Canadian border. To reach the nearest border wall, just south of San Diego on the U.S.-Mexico border, he would have needed to drive another 1,257 miles.

Survey Methods

The survey methods that were apparently used are utterly insufficient for the magnitude of this project. In one appendix it mentions, "Initial field surveys conducted on October 1 through October 7, 2007." (Appendix I 3) It is hard to imagine a thorough survey of the sites of seventy linear miles of wall in three counties occurring in just a week. Of course, the field surveys were made easier, if less accurate, by the fact that surveyors did not have permission to enter the US Fish and Wildlife tracts that the wall will impact. They were also denied access to numerous

private property parcels. According to newspaper accounts, letters threatening “temporary condemnation” were sent by the Department of Homeland Security to as many as 150 private landowners who had either refused access to surveyors or who had not responded to requests for access. With so much of the land unsurveyed, it is impossible to view the Draft EIS as more than an educated guess as to what the impacts will be. Since the Draft EIS was published USFW has issued a Compatibility Determination allowing natural and cultural resource surveys to be conducted on refuge tracts. A revised Draft EIS with results from the surveys of USFW tracts should be released and opened up for public comment before a Final EIS is written.

What is the definition of “Intuitive controlled investigations?” (Appendix I 6) Is this just a guess dressed up in pseudo-technical terminology?

The Funneling Effect

It has already been noted that the sections of border wall described in the Draft EIS will not achieve their stated objective of stopping undocumented immigrants from entering the United States or provide the Border Patrol with anything resembling “operational control” of the southern border. The Congressional Research Service stated in its June 2007 report Border Security: Barriers Along the U.S. International Border,

While the San Diego fence, combined with an increase in agents and other resources in the USBP’s San Diego sector, has proven effective in reducing the number of apprehensions made in that sector, there is considerable evidence that the flow of illegal immigration has adapted to this enforcement posture and has shifted to the more remote areas of the Arizona desert. Nationally, the USBP made 1.2 million apprehensions in 1992 and again in 2004, suggesting that the increased enforcement in San Diego sector has had little impact on overall apprehensions.

As walls have been erected in populous areas, the number of persons attempting to cross the border in less hospitable areas has increased dramatically. This has led to severe impacts in remote refuges and wilderness areas of Arizona, both from the crossers themselves and from the interdiction activities of the Border Patrol. This pattern is likely to repeat in the Rio Grande Valley, so the Environmental Impact Statement should look not only at the impacts to sensitive habitats that the wall will cut through, but also at the impacts to adjacent sensitive habitats that inhabit the gaps between walls where cross-border traffic will be rerouted. The Draft EIS largely fails to do this.

Of even greater concern is the dramatic increase in the number of undocumented migrants who die each year attempting to cross dangerous terrain. In August of 2006 the Government Accountability Office released a report titled Illegal Immigration: Border Crossing Deaths have Doubled Since 1995. Rather than deterring immigrants or stopping them from entering the United States, the border walls built so far have only succeeded in funneling some of them into dangerous areas where they die of exposure and dehydration. So many people are dying that national and international human rights groups have declared it a humanitarian crisis, and the Centers for Disease Control and Prevention deemed it a major public health issue. It is imperative that the Border Patrol address this issue as it stands today before exacerbating it with the construction of more

walls. This is also a serious impact on both the human and natural environments that the Draft EIS does not study.

Habitat Loss

While a border wall will not accomplish the goals laid out in the Draft EIS or the Secure Fence Act, it will have numerous negative repercussions that must be fully addressed by the Environmental Impact Statement. The most obvious of these is the destruction of wildlife habitat. The final stretch of the Rio Grande is one of the most biologically diverse areas in North America. Here subtropical climate, gulf coast, great plains and Chihuahuan desert come together to create a series of unique ecosystems. The area is home to over 1,100 plant species and 700 vertebrate species (including 484 bird species), 20 of which are listed as federally threatened and endangered. The riparian woodlands also provide habitat for about one half of all the butterfly species found in the United States. During fall and spring migrations millions of birds from the Central and Mississippi flyways funnel through the area on their way to and from Central and South America, as do migratory bats and butterflies. Of the original habitat that once supported this enormous diversity only 5% currently remains, so every acre that is lost to the border wall is important.

There are acknowledgements within the Draft EIS that many of the areas that the wall will impact contain vital habitats that are found no where else:

“Usually defined as Cameron, Willacy, Hidalgo, and Starr counties, the Rio Grande Valley contains the only subtropical area in Texas. ... This key community supports many rare, threatened, and endangered species and is a stopover for migrating neotropical birds (TPWD 2007a).” (3.8 29)

There is, however, no discussion of the actual impacts that the wall will have on these habitats or what steps might be taken toward mitigation. At the “open house” event in Rio Grande City e2M Vice President Brian Hoppy suggested that other tracts of land might be purchased to offset acres that were destroyed to make way for the wall. This possibility does not appear in the Draft EIS, so it is unclear whether this is a proposal that will appear in the Final EIS or if Mr. Hoppy was simply trying to present the wall’s environmental impact as less destructive than it will actually be.

Purchasing “replacement” lands as mitigation runs into the basic problem of availability. Over 95% of the habitat that originally existed in the Rio Grande Valley has been converted to uses that make it unsuitable for wildlife. This means that there is not an available pool of wild acreage waiting to be bought. There is farmland which might be revegetated, but there is a significant time lag between the time when the wall is built, destroying vital ecosystems, and the time when the revegetated former farmland can be considered viable habitat. The Draft EIS says,

“Particularly large, mature Texas ebony trees that are approximately 20-25 meters tall occur within floodplain habitat in Section 0-2 where they occupy the outer edge. The large trees have emerged from an understory of nonnative perennial grass, buffelgrass, and can exceed 100 years of age (Patterson 2007).” (Appendix I 11)

It takes 100 years to grow a 100 year old tree. In the interim the wildlife that inhabited the destroyed habitat has no place to call home.

Refuges in the Path of the Wall

Over the past 25 years the US Fish and Wildlife Service has spent \$90 million to purchase and revegetate land to restore a wildlife corridor along the Rio Grande. Thousands of school children and other volunteers have planted native plants and trees in tracts that have been added to the Lower Rio Grande Valley National Wildlife Refuge. Considered one of the most biologically diverse National Wildlife Refuges in the continental United States, LRGV represents 11 distinct biotic communities. Refuge lands are linked to other preserves along the river, including the Santa Ana National Wildlife Refuge, the Bentsen Rio Grande State Park and World Birding Center, the Roma Bluffs World Birding Center, the North American Butterfly Association Butterfly Park, the Nature Conservancy's Chihuahuan Woods and Southmost Preserves, and the Sabal Palms Audubon Sanctuary. Sections 0-1, 0-2, 0-3, 0-4, 0-5, 0-7, 0-8, 0-10, 0-11, 0-13, 0-16, 0-18, and 0-21 pass through parks or refuges. (3.11 46)

Walls built on refuge properties will do damage in terms of direct loss of vegetation, which will in turn eliminate opportunities for animals to find food and shelter. According to the Draft EIS, "The Proposed Action would result in the irretrievable loss of vegetation and wildlife habitat. In the long term, construction of the tactical infrastructure would result in the loss of 125 acres of potential wildlife habitat, force the relocation of wildlife, and require the removal of natural vegetation." (5.14 18)

The border wall will also lead to the fragmentation of habitat, both through the clearing of brush and the erection of impermeable barriers. The key goal of the Lower Rio Grande Valley National Wildlife Refuge is the establishment of a wildlife corridor along the Rio Grande. This means continuous habitat, allowing plants and animals to move from one area to another. Such movement is crucial for the maintenance of genetic viability within a given population. Habitat fragmentation may cause inbreeding because animals from one piece of habitat are unable to travel to reach mates that they are not related to. Inbreeding can lead to a weakened population that is less able to cope with environmental stresses or disease.

While some plants, birds, and smaller terrestrial animals may be able to pass through a border wall, depending on its design, larger terrestrial animals will not. Ocelots, jaguarundi, javelinas, deer, bobcats, coyotes, and other similar animals will find it impossible to climb over or dig under a wall that is 16 feet tall and sunk deep into the earth. Larger mammals, particularly predators, generally require large territories. Not only will the wall prevent them from reaching potential mates, those who live north of the wall will be unable to access the Rio Grande. In Starr County and many other areas the Rio Grande is the only reliable source of water for wildlife. In the summer, when temperatures top 100 degrees every day, animals may not survive the trek around a one mile section of wall, let alone a ten mile span.

Endangered Species

The ocelot, jaguarundi and red-billed pigeon are listed under the Endangered Species Act and face the real possibility of extinction. Ocelots, numbering less than 100 in the U.S, live in the Rio Grande Valley's remaining thorn scrub forests. There are believed to be only around 30 wild jaguarundi left in the United States, all of which live in the Lower Rio Grande Valley. Habitat

destruction and fragmentation are major causes of the decline of both species. The Draft EIS recognizes this, saying,

“Habitat loss and fragmentation especially along the Rio Grande pose a critical threat to the long-term survival of the ocelot. Efforts are underway to preserve key habitat and biological corridors necessary for ocelot survival (USFWS 1990).” (3.9 36)

And,

“The greatest threat to jaguarundi populations in the United States is habitat loss and fragmentation in southern Texas. The jaguarundi requires a large hunting area and appropriate habitat is being lost to development and agriculture. This creates islands of habitat where the jaguarundi cannot migrate from area to area leaving them vulnerable.” (3.9 35)

Inbreeding is already occurring as a result of the separation of isolated populations, threatening their genetic viability. Further fragmentation and the erection of impenetrable barriers will exacerbate this problem. Walls that limit access to water may put further stress on these animals. While it relates the fact that habitat fragmentation is a “critical threat” to these two endangered species, the Draft EIS ignores the fact that the wall will cause further fragmentation of their habitat. Projections of the impacts of habitat fragmentation must be included in a revised Draft EIS.

The only impact to endangered species that the Draft EIS mentions is the direct loss of habitat – land which is cleared of vegetation, bulldozed and graded.

“The loss of approximately 125 acres of disturbed thornscrub shrubland and woodland habitat, predominantly honey mesquite and retama, and of approximately 50 acres of disturbed floodplain shrubland, woodland, and forest habitat, predominantly honey mesquite and sugarberry and to a lesser extent sabal palm, would represent the loss of approximately 150 acres of potential ocelot and jaguarundi habitat.” (5.8.15)

Setting aside the question of how $125 + 50 = 150$, this estimation of the impact of the wall on endangered species never addresses the ramifications that this direct loss of habitat will have on the ocelot and jaguarundi’s prospects for survival. If “Habitat loss and fragmentation especially along the Rio Grande pose a critical threat to the long-term survival of the ocelot,” (3.9 36) then it is reasonable to assume that the loss of 150 – 175 acres of habitat may critically threaten these species. A revised Draft EIS must discuss in detail the ways that the combination of direct loss of habitat and the fragmentation and isolation of habitat are likely to impact the long-term chance of survival of endangered species.

Another threat faced by the ocelot, jaguarundi, and many other nocturnal species is the impact of flood lights. This was an important component of a lawsuit brought by the Sierra Club, Audubon Society, and Defenders of Wildlife against the Border Patrol’s Operation Rio Grande in 2001. The Environmental Impact Statement that was produced as a result of the suit stated that, “Increased lighting from Operation Rio Grande may disrupt nocturnal behavior in portions of the project area, which could affect the ocelot and jaguarundi.” Specifically, the illumination of brush prevents the regular nocturnal habits of animals, which in the case of the ocelot and jaguarundi includes hunting. This makes otherwise vital habitat of limited value in sustaining their populations. In settling the lawsuit the Border Patrol agreed to limit the illumination of brush, particularly in refuge lands. The settlement is still in effect, and the Draft EIS provides no information as to how the lighting that will accompany the wall will comply with it. It is equally

unclear how lighting that negatively impacts the ability of federally endangered species to acquire food would comply with the Endangered Species Act.

The Draft EIS does not discuss the impacts of lighting on the ocelot, jaguarundi, or other special status species. In discussing lighting it states,

“portable lights would generally operate continuously every night and would require refueling every day prior to the next night’s operation. ... they are typically spaced approximately 100 to 400 feet apart, depending upon topography and operational needs. Each portable light would have a light fan directed toward the fence to produce an illuminated area of 100 ft².” (Appendix E-8)

Despite the admission in the Environmental Impact Statement for Operation Rio Grande, the November 2007 Draft EIS only says,

“The permanent lighting could have minor, adverse cumulative impacts on migration, dispersal, and foraging activities of nocturnal species.” (5.8.14)

As ocelots and jaguarundi are nocturnal, they will clearly be among the species suffering adverse impacts from lighting. As with other instances in which impacts are quantified, there is no indication as to how it was determined that the impact of lighting will be minor. Acreage beyond the 150 – 175 acres that will be destroyed which would otherwise be available for the “migration, dispersal, and foraging activities” of these endangered cats may be rendered unusable. This will put further stress on species that are already on the brink of extinction. These impacts should be explicitly acknowledged and analyzed in the Environmental Impact Statement.

In summing up the likely effects of the border wall on threatened and endangered species the Draft EIS states,

“In the context of the Rio Grande Valley, long-term loss of unique habitats for rare or sensitive species would be a significant adverse impact. This could include the loss of threatened or endangered or other special status species of vegetation. Although no direct impacts on special status wildlife are expected, the short-term loss of potential habitat for these species could result in long-term, moderately adverse impacts on ocelots and jaguarundi.” (5.15 19)

There are almost no specific details regarding the specific adverse impacts that sensitive species will suffer. This makes the development of mitigation plans or “best management practices” nearly impossible. Figures E-5 and E-6 show “migratory portals” which are apparently intended to allow animals to pass through the wall. The openings shown in the photographs are no more than a couple of inches wide, and would barely allow a field mouse to pass through. They would be useless for an ocelot or jaguarundi.

At the “open house” event in Rio Grande City held on December 13, 2007, e2M Vice President Brian Hoppy told me that in the “tactical infrastructure” similar “migratory portals” were being considered that would be large enough to allow an ocelot or jaguarundi to pass through. When asked how such an opening would allow wildlife to pass through but not humans, he brought up the possibility of using sensors or other technology to allow the Border Patrol to determine what was passing through the hole. Of course this does not appear in the Draft EIS. The Draft EIS does not discuss the varying impacts of different types of barrier on the migration of terrestrial

wildlife, nor does it specify any steps that might be taken to reduce their impact. Instead it puts off these issues until later:

“A part of the coordination between USBP and USFWS, best management practices are under development for the construction, operation, and maintenance of the proposed tactical infrastructure. The best management practices are designed to avoid and minimize impacts to biotic resources, specifically threatened and endangered resources. These measures will be presented in the Final Report.” (Appendix I 63)

This is unacceptable. Best management practices must be presented in a revised Draft EIS and reviewed by the public before they appear in the Final Report.

The Impact on Birds

The Draft EIS mentions the great abundance and diversity of avian species found in the Rio Grande Valley, saying

“Nearly 500 bird species, including neotropical migratory birds, shorebirds, raptors, and waterfowl, can be found in the Rio Grande Valley. For species such as the plain chachalaca, green jay, great kiskadee, and least grebe, this is the only area in the nation in which they can be observed (USFWS 2001). (3.9 38)

Despite this general admission of what is present, there is surprisingly little discussion of the foreseeable impacts that the border wall will have upon them.

The wall and the associated clearance of habitat will negatively impact migratory birds. The Central and Mississippi migratory flyways converge on the Rio Grande Valley, funneling millions of birds through the area each fall and spring. The Texas Parks and Wildlife Dept. and local municipalities have invested millions of dollars in nine World Birding Center sites that follow the Rio Grande from Roma to South Padre Island. Two of these, the Roma Bluffs World Birding Center and the Old Hidalgo Pumphouse World Birding Center, are in the direct path of the wall's initial segments. These were established to preserve habitat for both the native and migrant species that have been recorded in the area. Migrant species travel hundreds or even thousands of miles on their annual journeys, in some cases crossing the Gulf of Mexico before arriving in the Rio Grande Valley. They need intact habitat in which they can rest and refuel before continuing on. Without sufficient vegetation they may be too weak to complete their migration. Allowing this would be in violation of the International Migratory Bird Treaty and the Migratory Bird Treaty Act. The Draft EIS does not address the long term impacts that the border wall will have on birds due to habitat loss, and this lack should be corrected in a revised Draft EIS before a Final EIS is issued.

Rare birds such as the grey hawk, which nests in tall trees along the banks of the Rio Grande, will also struggle to survive with insufficient habitat. The Draft EIS states,

“There are 52 state-listed species that have the potential to occur within or proximal to the proposed project corridors in the southernmost portions of Starr, Hidalgo, and Cameron counties: 4 fish, 6 amphibians, 8 reptiles, 22 birds, 5 mammals, and 7 plants.

Of these, 12 are also federally listed species: 3 birds; 2 mammals; and 7 plants.” (3.9 37)

Some of these bird species are reliant upon riparian habitat for nesting sites and forage. The northern beardless-tyrannulet, rose-throated becard, and tropical parula are all in jeopardy if riparian habitat is lost through direct clearance of vegetation, as well as erosion and

sedimentation caused by the loss of vegetation. The Rio Grande Valley is in its name and essential nature inextricably bound to the river. If water quality is reduced there will be a decline in aquatic species. This may in turn lead to a decline in terrestrial or avian species that rely on aquatic species for food. The Draft Environmental Impact Statement does not address the multiple impacts that a wall will have on riparian habitat and the overall health of the river.

Light pollution has been shown to disrupt the migrations of a number of avian species, many of which travel at night. The Draft EIS states,

“portable lights would generally operate continuously every night and would require refueling every day prior to the next night’s operation. ... they are typically spaced approximately 100 to 400 feet apart, depending upon topography and operational needs. Each portable light would have a light fan directed toward the fence to produce an illuminated area of 100 ft².” (Appendix E-8)

As for the effects on birds and other wildlife, the Draft EIS only says,

“The permanent lighting could have minor, adverse cumulative impacts on migration, dispersal, and foraging activities of nocturnal species.” (5.8.14)

Without citing any studies, the adverse impact of lighting on the migration of species, which should include birds, is written off as minor. This dismissal appears to be lacking any empirical foundation. Before a Final EIS is written research into the impacts of the lighting associated with the border wall should be undertaken.

One likely impact that is addressed is the potential for construction activities to disturb or destroy the nests and nestlings of migratory birds. The Draft EIS states, “Cumulative, adverse impacts on migratory birds could be substantial due to the potential timing of fence construction.”

(5.8.15) To avoid the destruction of nests, which would be a violation of the Migratory Bird Treaty Act,

“Any groundbreaking construction activities should be performed before migratory birds return to the area (approximately 1 March) or after all young have fledged (approximately 31 July) to avoid incidental take.” (4.9.3.2.32)

This recommendation is directly contradicted by statements by the Department of Homeland Security, which appears to be bowing to political pressure, to the effect that construction will begin in the Spring of 2008 and continue through the end of the year. It is also contradicted by an earlier passage in the Draft EIS,

“If approved, construction of the proposed tactical infrastructure would begin in Spring 2008 and continue through December 2008.” (2.2.2.9)

To avoid violating the Migratory Bird Treaty Act the recommendation that no construction occur between March 1 and July 31 must be adopted, and the passage stating that construction will begin in the Spring of 2008 must be stricken.

Water Issues

The Draft EIS does not examine possible conflicts between the construction of such a project along the river and the Federal Water Pollution Control Act, commonly known as the Clean Water Act. Just as wildlife is dependent upon the Rio Grande for survival, humans also rely upon its water. Communities such as Brownsville, Hidalgo, and Roma were founded along the river before it became an international boundary. This close to the Gulf of Mexico the ground

water is too saline for wells, so the river is the sole source of fresh water. Communities rely on it for their municipal water supplies. Farmers rely on it for irrigation.

Even a chain link fence impedes the natural flow of water once debris accumulates on its surface. If barriers prevent the flow of water from smaller streams or other tributaries there may be a reduction in the amount of water in the river, which would in turn impede its ability to dilute and flush pollutants. Increased sedimentation resulting from erosion caused by the destruction of riparian vegetation would further reduce water quality. More than a million U.S. citizens live in the Rio Grande Valley and receive the river's water through their faucets. Millions more are equally dependent upon it on the Mexican side of the border. The Environmental Impact Statement must examine the effect that the wall will have on the water that sustains border communities in both countries. This examination should occur in a revised Draft EIS, rather than being put off until the Final EIS or ignored altogether.

In the Draft EIS it states,

“Wetland delineations have not yet been conducted. The most current information available to identify wetlands in Route B is the NWI (USFWS 2007). No NWI coverage is currently available for Sections 0-1, 0-2, 0-3, 0-5, 0-6, 0-7, and 0-8. Approximately 7.3 acres of wetlands are within the remaining sections of the proposed project corridor of Route B.” (Appendix I 58)

This information is crucial for assessing the impact of the border wall. Wetland delineations may show that the wall's proposed route will do damage to wetlands in violation of the Clean Water Act. Until studies are carried out on the ground there is no way to be certain, and it is therefore important to delay the issuance of a Final EIS until full surveys of wetlands can be carried out.

A related issue is access to the Rio Grande. When the king of Spain allotted land in the 1760's it was divided into strips that extended out from the banks of the river. At the time it was recognized that without river access farming and ranching would be impossible. Today pumps draw river water far inland. Those pumps need regular maintenance, and their owners need to be able to access them if there is a problem. Municipalities need the same access to the pumps and intakes that supply the Valley's cities. Some landowners have been promised thirty foot wide, remote controlled gates through sections of the border wall that cross their property, but the Draft EIS only mentions “secure gates” with no discussion of how landowners will access them. The EIS should examine the apparent conflict that arises between allowing landowners and municipalities unrestricted access to the river while preventing access to undocumented immigrants. A range of specific solutions should be presented to stakeholders before plans are finalized.

Safety Concerns

While the Draft EIS indicates that there will be “Access Gates” in the various sections of the border wall, they are not described in any detail. The exact location of gates, their size and type, and most importantly how they will be accessed, is not revealed. (Table D-1) e2M Vice President Brian Hoppy stated at the “open house” in Rio Grande City on December 13, 2007 that no decision had yet been made regarding the exact construction of the wall or the gates at the

time that the Draft EIS was written. He also said that issues of access were operational concerns of the Border Patrol which had not been shared with e2M.

There is no way to properly evaluate a whole host of concerns about the wall without information about the "access gates". Will there be a Border patrol agent stationed at each of the 87 gates 24 hours per day? Will property owners and municipalities be able to open gates in the absence of Border Patrol agents? If Border Patrol agents will not be permanently stationed at the gates and civilians will not get keys, will those who need to pass through the gates have to call the Border Patrol and then wait until an agent can be spared? These are not simply questions of convenience for property owners. Time lost while waiting for a gate to be opened will translate into money lost for farmers and ranchers whose lands will be bisected. If there is a medical emergency on the river side of the wall, emergency personnel will need access with a minimal amount of delay. In the event of a flood or hurricane emergency personnel will need access. During flooding events IBWC personnel will need ready access to every inch of levee to ensure their stability. Wildfires are a regular occurrence in refuge tracts. 500 acres burned for 3 days in late December 2007 in the El Rincon tract of the Lower Rio Grande National Wildlife Refuge. The burning of sugar cane also brings with it the risk of fires getting out of control. Firefighters will therefore also need access to both sides of the wall. Even if the gates are opened, firefighters will be at greater risk due to the possibility of being trapped by the flames against the wall. For all of these reasons and more there is no way to evaluate the impacts of the border wall without detailed information regarding the design and operation of "access gates." Economic impacts cannot be properly evaluated and impacts on public safety cannot be evaluated. A revised Draft EIS should be issued, rather than a Final EIS, so that the "access gates" can be studied and the public, whose safety may well depend on them, can evaluate and comment upon them.

The Wall's Impact on Flooding

Sections 0-1, 0-2, and 0-3 will be built in the 100-year floodplain of the Rio Grande in areas where there are no levees. (3.6 23-24) The rest of the wall will be constructed adjacent to levees. "In most cases, the proposed section alignments along the IBWC levee would be placed approximately 30 feet from the toe of the levee." (2.2.2.7) However, no information is provided regarding the effect of the walls in the event of flooding, which is not an uncommon occurrence in the area. The revised Draft EIS must thoroughly address the impact that building a wall adjacent to the levees maintained by the International Boundary Water Commission will have on flood control and the levees' structural integrity. No construction should begin without extensive IBWC input regarding their design, placement, and impacts on flood control. Will the IBWC have unfettered access to the levees for maintenance and inspections? Has there been any coordination to date with the Federal Emergency Management Agency? Will the occupants of homes and businesses that will be on the Mexico side of the barriers be able to evacuate rapidly when flooding does occur? As emergency planning involves the coordination of municipal governments, law enforcement, and emergency services as well as citizenry emergency planning should begin before designs are finalized and construction starts.

The Draft EIS states that the impact of the border wall on the floodplain will be "minor" (Section 5.5). The Draft EIS dismisses any potential detrimental effects of a wall based on the contention

that it is a water-permeable barrier. However, during a flooding event, debris accumulates in even a chain link fence, and the mesh of the border wall is expected to be much finer. When a permeable barrier becomes solid, it becomes capable of channeling water and creating strong currents. When water that is being channeled by the border wall reaches the end of the wall it, along with other water that is heading towards the gap, will pour through the gap and hit the levee with a great deal of force. In 2001 a survey by the IBWC and the Army Corps of Engineers found that the Rio Grande Valley's levees were crumbling in many places. In 2005 the IBWC reported that the levees would not be able to withstand severe rains. If the weakened levees are hit by water that has been channeled by the wall during a hurricane or other flooding event there is the potential for levee breaches. In addition, few structures can withstand the 150 mile an hour winds of a level 5 hurricane or the 200 mile an hour winds of the tornadoes spawned by a hurricane. If the wall topples and its base is uprooted, water could flow into the trench this creates and undermine the nearby levee. The Rio Grande Valley is in a hurricane zone, and we can definitely expect one or more major hurricanes in the future. The devastation brought by Hurricane Katrina in New Orleans highlighted the potential effects of such a large storm on a low-lying area. Yet the words "hurricane," "tropical storm," and "torrential rains" appear nowhere in 538-page Draft EIS, revealing that this very likely scenario was not even considered. The Council on Environmental Quality requires the study of impacts that would result from reasonably foreseeable but infrequent events such as a hurricane or 100 year flooding event. "For the purposes of this section, 'reasonably foreseeable' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason." (Sec. 1502.22(b)4) There is no indication in the Draft EIS that these possibilities were studied, but in the interest of the safety of Rio Grande Valley residents it is crucial that thorough investigations be carried out before the Final EIS is issued.

Communities in the Wall's Path

Many towns will be bisected by the border wall. Homes and businesses will be destroyed or will be isolated on the Mexican side. In the city of Roma many historic buildings will suffer this fate, including City Hall, the Roma Bluffs World Birding Center headquarters, and the office of Texas State Representative Ron Guillen, if route A or the Secure Fence Act Alternative are chosen. Similar impacts will be felt in Rio Grande City, Granjeno, Hidalgo, Los Indios, and Brownsville. Much of the land that will be lost to the wall has been in families for generations, in some cases dating back to the Spanish land grants of the 1700's. This will have a negative economic impact on cities in one of the poorest regions of the United States. Any study of the border wall's impact must take into account the human cost, in terms not only of lost property or reduced property values but also in terms of the severe damage that will be done to the sense of community. Will the owners of property on the Mexico side of the wall have free access to their homes or land? Will police, firefighters, and ambulance services be able to reach them rapidly? Will people whose property is adjacent to the wall be forced to live with floodlights and the atmosphere of a prison? Will families have access to cemeteries or historic sites that are on the other side of the wall?

Figures 4.11-1, 4.11-2, 4.11-3, and 4.11-4 purport to show “Typical views towards proposed project corridor, showing how the” park refuge land; rural land unit; town/suburban land unit; and urban industrial unit, “would appear with a fence and a patrol road.” These images are misleading and incomplete, not least because none of them have a patrol road in the image. Figures 4.11-3 and 4.11-4 conveniently stop next to existing structures rather than knocking them down to allow for the continuation of the wall. They also do not show any alteration to the 60-foot-wide corridor described for Alternative 2 (2.2.2-7) or the 150 foot wide corridor described for Alternative 3. If the various alternatives are actually being studied, rather than simply being mentioned to superficially comply with NEPA, accurate representations for each Alternative should be depicted.

Environmental Justice

Environmental justice is defined by the Environmental Protection Agency to mean that “no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal environmental programs and policies” (EPA Fact Sheet). This sentiment was codified by President Clinton in executive order 12898 (Federal Action to Address Environmental Justice [EJ] in Minority Populations and Low-Income Populations), which provides that “each Federal agency must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the U.S.”

In 2004, the Operation Rio Grande Environmental Impact Statement found that environmental justice was indeed an issue for projects in the Rio Grande Valley:

Approximately 85% of the population in the area can be classified as minority (well above the state average of 39.4%). The median annual household incomes for the counties in the project area (Starr, \$10,182; Hidalgo, \$16,703; and Cameron, \$17,336) are well below the state average of \$27,016 and, in the case of Starr County, below the \$15,000 established by the EPA for defining the economic status risk group. Therefore, many of the households in the project area doubtless have a high potential EJ index. (Operation Rio Grande EIS, Section 3.12.6)

However, in the 2007 Draft Rio Grande Valley Border Fence EIS, it is claimed that the protections of environmental justice do not apply. This questionable judgment is achieved by sleight of hand and is revealed in the following quote:

Of the 21 fence sections, 11 are within census bureau tracts in which a portion of the tracts have a higher proportion of minority or low-income residents. Of the proposed 70 miles of tactical infrastructure, substantially less than half is within census bureau tracts that have a higher proportion of minority or low-income residents—therefore the overall impacts of the proposed tactical infrastructure would not fall disproportionately on minority or low-income populations. (Section 5. 5.11)

Rather than stating that the majority of people who will be negatively impacted by the border wall are poor and/or minorities, which is what environmental justice is all about, the EIS counts miles. Miles that fall within US Fish and Wildlife refuge tracts, where no people live, are counted along with the miles that pass through poor communities, allowing for the dilution, at least on paper, the wall's impact on minority and low-income populations. Mileage is irrelevant to the question of environmental justice. The question is whether a disproportionately high number of the people who will be negatively affected are members of minority and/or low income populations.

The Draft EIS does mention in passing that people will lose their homes, stating that, "Construction of the project would require some acquisition of private property, including the potential dislocation of some property owners and tenants. Such dislocation could result in some population relocations within the region..." (4.12 – 53) "Dislocation" is of course a euphemism for eviction. In communities like Granjeno, where families have passed property down through the generations since the Spanish land grants of the 1760's, up to a third of the homes may be impacted.

Impacts on Ecotourism

The wall's toll on the natural environment will also have negative economic impacts. Ecotourism brings 200,000 visitors and more than \$150 million to the Rio Grande Valley each year, creating 2,500 jobs. As refuge lands and state parks are lost and endemic and migratory species decline, there will be less incentive for nature enthusiasts to visit the area. The Sabal Palm Audubon Sanctuary will be completely cut off by the border wall. This is the last remnant of the palm forests that formerly characterized the mouth of the Rio Grande, providing it with its earlier name of the Rio de las Palmas. Tourists come to Sabal Palms to see unique habitat and rare neotropical species. They are far less likely to be interested in passing through prison walls to see the former home of species that the border wall pushed into extinction, assuming the Border Patrol grants access at all. Once all of the walls called for by the Secure Fence Act are built the same issue will be faced by the Santa Ana National Wildlife Refuge, the Bentsen Rio Grande State Park and World Birding Center, and the NABA International Butterfly Park.

When the Draft EIS takes up the issue of the wall's impacts on ecotourism it resorts to absurd and baseless assertions rather than an exploration of facts and reasonable extrapolation.

"During the public scoping process, concerns were expressed that the project could hinder legitimate trade activities between the two border economies, and that environmental impacts associated with the construction and long-term presence of the project could detract from outdoor recreation and ecotourism, particularly birding – reported to contribute \$150 million to the local economy annually. Some pedestrian fence sections would be located on recreational lands. ... Indirect impacts on socioeconomics from recreation and ecotourism would be tied directly to the user's perception that Route A has altered their access to valued visual or recreational resources. However, Route A would help to deter cross border violators, which would make the area safer for recreational users, ecotourists, and USBP agents in the immediate area. This could bring

more users to the area that have felt it unsafe in the past. The net impacts on recreation and ecotourism are expected to be minor. (4.12.54)

Ecotourists will not come to the Rio Grande Valley if the animals and ecosystems that would have attracted them have been severely damaged or destroyed by a wall. If a rare bird's habitat is no longer present, the bird will not be present, so the birder will not travel to the area. If the birder stays away their money will not enter the local economy. No false sense of security will make up for the absence of the wildlife that they would otherwise travel to see. This section has no empirical basis and should be stricken from the Draft EIS and replaced with credible analysis.

Lost Retail Sales

Approximately 23 million Mexican nationals visit the Rio Grande Valley each year, contributing approximately \$3 billion to the local economy and supporting an estimated 41,000 jobs, \$560 million in wages, and \$203 million in business taxes. The Draft EIS states that because legal visitors would not be prevented from entering the United States, "no long-term impacts on legitimate regional income or economic structure are anticipated." (4.12 – 54) This completely ignores the psychological impact of the wall. If a store displayed a sign in its window that said "Mexicans Keep Out", they would not get much business from Mexican shoppers even if their doors were wide open. The border wall sends just such a message, and will certainly impact retail sales along the border.

Broad Opposition to the Border Wall

It is also important to note that the overwhelming majority of Rio Grande Valley residents oppose the border wall. If its impacts were likely to be as benign as the Draft EIS claims, and the safety benefits were likely to be so great, there would be overwhelming support for the wall. If the border was in fact being overrun by terrorists and smugglers who were causing us to live in a state of constant fear, and the wall was a viable solution to this dire situation, we would gather at the riverside with trowels in hand.

Instead, a broad cross-section of stakeholders has come together in opposition to the border wall. The Texas Border Coalition, made up of mayors, judges, and elected officials all along Texas' border with Mexico has been quite outspoken. The McAllen Chamber of Commerce, not generally known for its radical political leanings, sponsored a rally opposing the wall that coincided with the Draft EIS "open house" in McAllen on December 11. The Lone Star Sierra Club Chapter has passed a resolution opposing the border wall. Landowners, environmentalists, human rights activists, and otherwise apolitical citizens have formed the No Border Wall coalition. Bishop Peña of the Catholic Diocese of Brownsville spoke at the No Border Wall rally in Brownsville. Texas State Representatives Kino Flores and Aaron Peña spoke at the No Border Wall rally at the La Lomita mission. A number of municipalities have passed resolutions opposing the border wall. Following the passage of the Secure Fence Act, which mandates the walls that the Draft EIS promotes, the Cameron County Commissioners Court passed a resolution which says in part,

"Proponents of the fence, who are not residents of the border region, have wrongly used the construction of a fence as a rhetorical device to transform the issue of immigration from an economic concern to a matter of international relations and national security, and

to transfer responsibility for alleged defects in United States immigration policy and enforcement from the United States government to the government of Mexico.”

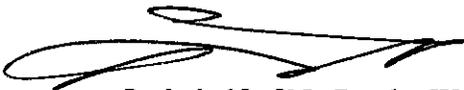
We are aware of the fact that the wall will have a tremendously negative impact on our communities and environment without bringing any of the wonderful benefits described in the Draft EIS. Opposition to the construction of destructive walls along the border is not restricted to those of us who will be forced to live with the immediate consequences. No Border Wall has circulated a petition that reads,

We oppose the construction of a solid wall along more than 700 miles of the United States / Mexico border. A wall that tears through border communities will cause terrible economic damage, impacting agriculture, ecotourism, retail sales, and private property. It will cause grave social harm, separating families and sending a terrible message to our neighbors. The route specified by the Secure Fence Act of 2006 will take it through National Wildlife Refuges, other parks, and riparian habitat critical for the survival of migrating birds as well as threatened and endangered species. The border wall will cost billions of dollars and even the Department of Homeland Security has said that it will only slow down, not stop, people who cross the border illegally.

In a short time we have gathered 3,308 signatures on paper and another 1,292 online, for a total of 4,600 signatures. Copies of the petitions are enclosed, and should be entered into the Environmental Impact Statement’s public comment section.

Again, we appreciate the opportunity to comment on the Draft Environmental Impact Statement for Construction, maintenance, and Operation of Tactical Infrastructure, Rio Grande Valley Sector, Texas. Please acknowledge receipt of this comment, and send copies of all documents relevant to the Environmental Impact Statement process to the address below.

Scott Nicol



On behalf of No Border Wall



PO Box 8124
Weslaco, TX 78599

**CC: Senator Kay Bailey Hutchison
Senator John Cornyn**

Chairman
Mayor Chad Foster
City of Eagle Pass

Vice-Chairman
Pat Townsend Jr.
City of Mission

Treasurer
Mike Allen
City of McAllen

Executive Committee

Judge Carlos H. Cascos
Cameron County

Judge J.D. Salinas
Hidalgo County

Judge Jose Aranda, Jr.
Maverick County

Judge Manuel Fernandez
Val Verde County

Judge Rosalva Guerra
Zapata County

Mayor Pat Ahumada
City of Brownsville

Mayor Efrain Valdez
City of Del Rio

Mayor Joe Ochoa
City of Edinburg

Mayor John F. Cook
City of El Paso

Mayor Chris Boswell
City of Harlingen

Mayor John David Franz
City of Hidalgo

Mayor Raul G. Salinas
City of Laredo

Mayor Richard Cortez
City of McAllen

Mayor Norberto Salinas
City of Mission

Mayor Rogelio Ybarra
City of Roma

Committee Chairs

Blas Castañeda
Education &
Workforce Development

Jose Rodriguez
Healthcare

Monica Stewart
Immigration

Jose Aranda, Jr.
Transportation

Mission:
To make Legislative
recommendations to help
the Texas Border Region
grow and prosper
economically.



December 31, 2007

Mr. Charles McGregor
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Transmitted electronically to RGVcomments@BorderFenceNEPA.com and through the Web site: <http://www.BorderFenceNEPA.com>

In re: Draft Environmental Impact Statement (DEIS) and Request for Public Comments Concerning Proposed Construction and Operation of Tactical Infrastructure for the U.S. Customs and Border Protection, Office of Border Patrol Rio Grande Valley (Texas) Sector, published in the Federal Register November 16, 2007

Dear Mr. McGregor:

The Texas Border Coalition (TBC) is the collective voice of border mayors, county judges, and communities on issues that affect the Texas-Mexico border region's quality of life. We write today in response to the above captioned notice published in the Federal Register on November 16, 2007.

As you know, the TBC provided detailed comments on the September 24, 2007 CBP Notice of Intent to Prepare an EIS published in the Federal Register on the Proposed Action. By reference, we incorporate those comments, especially those involving background, scope and consultation, in this commentary.

Foreword

As we detail below, the DEIS has been rushed in order to meet an artificial deadline. As a result, the product is incomplete and in many essential respects, contrary to the legal requirements of the National Environmental Policy Act (NEPA). We suggest that hasty action on the DEIS is not in the best interest of the United States. For those of us that live, work and raise our families along the Texas-Mexico border, we demand and deserve better security proposals than the proposal embodied in the DEIS.

As you know, President George Bush has enacted HR 2764, the Consolidated Fiscal 2008 Appropriations Act, which requires the Secretary of Homeland Security to “consult with the Secretary of the Interior, the Secretary of Agriculture, states, local governments, Indian tribes, and property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed.”

The law further provides that no funds appropriated to the U.S. Customs and Border Protection for “Border Security Fencing, Infrastructure, and Technology” may be obligated unless this provision has been complied with.

TBC recently proposed a schedule for compliance with Section 564 that will avoid the hasty, counter-productive plan for a 700-mile fence without consultation with state and local officials or consideration of viable alternatives. That proposed schedule was promptly endorsed by fellow elected officials, including House Homeland Security Appropriations Subcommittee Chairman David Price of North Carolina. In order to assure that the consultation is authentic, we have suggested that the Secretary immediately withdraw the DEIS on account of its categorical rejection of all suggested alternatives to the department’s proposed route and construction. To leave the DEIS pending (or worse, to continue its completion) during the consultative process would predetermine the outcome, which should be unacceptable to all parties involved.

DEIS Omits Key Facts and Analysis

The Draft Environmental Impact Statement is a fatally flawed document. Throughout the DEIS and its appendices are repeated references to studies that are “in progress.” In other instances, studies that should have been conducted have simply been overlooked. Until the “in progress” and overlooked studies are completed and available for public comment, the DEIS is incomplete, a flaw that violates the National Environmental Policy Act (NEPA). The Act does not permit the government to sanction an action based on hopes that future studies will justify the government’s actions. The NEPA requires the studies and analysis be completed in advance of the government’s action and that the public’s views on the completed studies be considered in the analysis of the action’s impact.

This failure also renders the government’s analysis of alternatives (or more appropriately, the government’s refusals to analyze alternatives) inappropriate at best, illegal at worst. We sincerely believe that if the appropriate reviews are made and criteria applied to comparing the Department of Homeland Security’s proposal to our alternative approaches, the people of Texas and United States will benefit because our alternative is superior on every possible level of evaluation.

The DEIS Inappropriately Fails to Consider Alternatives

We cannot stress strongly enough that the project proposed by the DHS is wasteful and ineffective and deserves to be scrapped in favor of more effective and smarter alternatives.

The project as proposed is ineffective because there are more gaps than barriers. Building a one-, three- or ten-mile segment of fencing that is bordered by scores of miles of territory with no barriers whatsoever is obviously a hopeless effort to stem any kind of pedestrian traffic. As has been demonstrated in Arizona and California, even where segments extend for many miles, tunnels dug under the fences foil them. More than 40 tunnels connecting towns in Mexico and the United States have been discovered over the last six years. Illegal crossers will travel great distances at great personal peril to foil the barrier. The Proposed Action in the DEIS is destined for failure.

The project as proposed is a waste of government funds. Based on the scant information available about the location of the project, it appears that the vast majority of miles of barriers are to be constructed atop or north of levees built to contain floods of the Rio Grande River. These are the same levees that are in desperate need of repair and it is apparent that the Department of Homeland Security continues to make a conscious decision to ignore the ongoing work of the International Boundary and Water Commission to rebuild the levee system in order to increase the height of the levees and prevent periodic flooding that causes significant economic dislocation for communities along the Rio Grande River. Elected representatives of the Rio Grande Valley have made repeated presentations to DHS officials locally and in Washington to explain this situation. Based on the conclusions in the DEIS that categorically reject alternatives that make use of this valuable asset instead of degrading it, those presentations have fallen on deaf ears.

The project fails to fulfill the government's stated purpose to "help to deter illegal cross border activities by improving enforcement, preventing terrorists and terrorist weapons from entering the United States, reducing the flow of illegal drugs, and enhancing response time, while providing a safer work environment for USBP agents." The DEIS includes no substantial analysis to prove that the Proposed Action fulfills these goals. In fact, by rejecting the TBC's technology-personnel suggested alternatives, the proposal fails to enhance response time and secure a safer work environment.

We repeat: the project proposed by the DHS is wasteful and ineffective and deserves to be scrapped in favor of more effective and smarter alternatives.

The DEIS Inappropriately Fails to Consider Proposed Alternatives

In our prior commentary, we stressed that the action proposed by the scoping notice was inappropriate. More effective, smarter, less environmentally damaging and ultimately less costly alternatives are available. We specifically suggest that the government's goals can be accomplished through a variety of low-technology and high-technology resources including observing physical signs of illegal entry (vehicle tracks and footprints, clothes, etc.), visual observation of the illegal entries, information provided by private landowners or the general public, ground sensors, radar, observation from the air and remote video surveillance systems. We stressed that in order to succeed, this alternative had to be paired with aggressive human enforcement. As we stated in our comments, a technology-only solution will fail unless it is paired with more muscular enforcement from greater numbers of Border Patrol agents on the ground in the Texas Border Patrol sectors.

The DEIS fails the basic requirements of the National Environmental Policy Act to evaluate alternatives by not considering our proposal. DHS claims to have considered our technology-personnel proposal and rejected them based on the agency's belief that they are ineffective in accomplishing the project's goals.

While we do not dispute the government's analysis of the individual components of this comprehensive proposal, it is obvious that the government failed to consider the technology-personnel alternative we proposed. By failing to analyze and consider our proposal – as opposed to its component parts – as we presented it in our comments, the government has failed to fulfill the letter and intent of the NEPA. The government's failure in this instance renders the DEIS technically flawed, structurally incomplete and legally failed.

For this reason alone, we believe the government must withdraw the DEIS and reconsider its rejection of effective alternatives that fulfill the law's basic requirements.

The DEIS Inappropriately Rejects Proposed Levee Alternative

The U.S. Section of the International Boundary and Water Commission announced in July that it had reached agreement with the Hidalgo County Drainage District No. 1, with the assistance of U.S. Representative Henry Cuellar, on rehabilitation and reconstruction of levees in Hidalgo County. Under the agreement, HCDD1 will work on a 12-mile levee segment, while the IBWC moves forward with plans to raise the levee for the next 3.3 miles from the Banker Inlet to the Hidalgo-Reynosa Bridge. Construction is expected to be completed by October 2008.

The IBWC also recently completed a Final Environmental Assessment on improvements to the Donna-Brownsville Levee System, on which the majority of the DHS project is intended to be constructed. No timetable for raising the 65-mile levee system has been released, but it will not be completed prior to the construction of the DHS project.

TBC and others proposed an alternative that utilizes the assets of the levee reconstruction project to provide a more comprehensive, complete barrier in Hidalgo County. This alternative was rejected by the DEIS, apparently in an arbitrary and capricious manner.

This is an alarming analytical failure on the government's part. The Proposed Action will further destabilize the levee system and likely endanger the lives of the CBP officers who must patrol it. In contrast to this obvious fact, the DEIS asserts that the impact of the proposed fence on the hydrology or water flow within the Rio Grande Basin is expected to be "negligible."

Given the risks to CBP officers alone, it is essential to evaluate the justification for this analysis. Yet, no substantiation is included in the DEIS' appendices. The risks are not limited to the officers who protect our border. This failure represents government action that could endanger the lives of hundreds of thousands of residents within the Lower Rio Grande Valley.

One would not learn from the DEIS that we live in a hurricane zone, and it is self-evident that at some point in the future we will experience another catastrophic hurricane. It would be instructive to learn what the effects of the proposal would be in the event of a hurricane the scale of Beulah, which dumped 27 inches of rain in a 36-hour period and contributed to 59 deaths and more than \$1 billion in damage. In contrast, Hurricane Katrina's heaviest rainfall of 15 inches fell in Slidell, Louisiana. Only months ago, the failure of the Tabasco, Mexico levee system in the face of similar torrents resulted in nearly 300 missing or dead and 2 million homes severely damaged or destroyed by floodwaters.

The mere fact that the proposal could destabilize the levees that stand between hundreds of thousands of Rio Grande Valley residents and destruction confers upon the government a moral obligation to produce conclusive evidence that the proposal is safe. It categorically fails this test.

Hurricanes are not the only danger that the proposal portends for human safety. The proposal isolates vast portions of our communities south of barriers and creates untenable dangers to people and property. The proposed project would compromise the ability of emergency personnel to arrive on the scene as quickly and safely in order to provide assistance and mitigate emergencies. We should not tolerate a barrier that prevents the rescue of those in danger, the administration of emergency medical care or make it impossible to extinguish fires and deal with hazardous materials events in a timely manner. The proposal endangers our communities by eviscerating our emergency personnel's ability to prevent or minimize the loss of life and property from the effects of crime, fire, flood and other emergencies.

These flaws are not limited to technical, structural or legal failures. In this instance, the DEIS fails the test of moral obligation by refusing to appropriately analyze the project's potential for endangering lives.

The DEIS Inappropriately Rejects Proposed Brownsville Weir Alternative

Ironically, the government's rejection of the Brownsville Weir alternative as proposed by TBC is based in part on the fact that it would "disturb the movements of the jaguarundi and ocelot along the river." The substance of the rejection of this alternative calls into question the validity of the analysis of the government's Proposed Action. How is it possible that disturbing the movements of jaguarundi renders the TBC alternative invalid but the same condition justifies the government's action? The double standard applied in this instance is too profound to ignore. Again, the government is presenting a DEIS that wears two faces, blessing its own product while condemning alternatives presented by others without any reference to consistency. The flaws in the government's logic have no justification.

Environmental Impact

It again appears that the haste involved in preparing the DEIS hampers its ability to comply with the law. It is based on a mere seven days of actual survey work that has yet to be completed. No biological, cultural, archeological or engineering surveys have yet been conducted on the 14 national wildlife refuge tracts slated for construction.

The habitats impacted by the proposal support 13 federally threatened and endangered species, two recently down listed species, and 57 state protected species. In total, 485 species of birds, 294 species of butterflies, 115 species of reptiles and amphibians, and 83 species of mammals are known to thrive in the Lower Rio Grande Valley and adjacent Gulf of Mexico coastal waters. Presently, 776 plant species are documented on the Lower Rio Grande Valley National Wildlife Refuge, but an estimate of the total number of plant species inhabiting in the project's area of ecological concern is more likely 1,200 species.

These species include two endangered cats: the ocelot and the jaguarundi. They include threatened and endangered bird species: the piping plover, the Arctic peregrine falcon, and the Aplomado falcon. Peripheral, tropical bird species (some of which are found nowhere else in the U.S.) include: the green jay, the ring kingfisher, and the Altamira oriole. Unique reptiles and amphibians in the area include: the reticulate collared lizard, the Mexican burrowing toad, and the speckled racer. The area also includes a major migration route for numerous Neotropical bird species.

Land set aside specifically for natural resource management activities impacted by the proposal are important for threatened and endangered species recovery, habitat preservation, and the emerging ecotourism economy in South Texas. The Lower Rio Grande Valley National Wildlife Refuge maintains the majority of tracts along the levee systems, as well as the Texas Parks and Wildlife Department (through Wildlife Management Areas and state park units), the Texas Chapter of the Nature Conservancy, and the National Audubon Society.

In our prior commentary, we observed that absent more specific information about the precise locations of the proposed barriers, it is not possible to review in detail the impact that the proposed project will have on natural resource management activities. A detailed examination of the specific impacts would be required in order to quantify the impact and to provide appropriate mitigation activities, if possible. This also appears to be part of the multiple "in progress" studies. The DEIS observes "USBP is developing the Biological Assessment in coordination with the USFWS."

Incredibly, however, the DEIS claims that isolating species from the river and the destruction of their habitat will be a blessing for them. Without benefit of completed studies, the DEIS states that "the proposed tactical infrastructure sections would be expected to provide some protection for wildlife and wildlife habitats in the areas north of the proposed project corridor from new, continued, or increased foot traffic impacts by cross border violators. Such protection would result in short- and long-term, minor beneficial impacts on wildlife."

We are again confronted with a DEIS that is incomplete, but one that asserts amid a lack of credible data that endangered and threatened species will actually profit from their physical isolation and destruction of habitat. We can only conclude that the government's absurd claims are the result of a DEIS that is purposefully blind to the real consequences the project will have on wildlife.

In a similar Orwellian fashion, the DEIS concludes that the destruction of unknown quantities of herbaceous vegetation and Mesquite-Acacia woodland that would be removed as a result of the proposal's construction would be a benefit to the local eco-system. Again, these claims

are based on incomplete studies. It is essential that the studies detailing impacts on wildlife, their habitat, the eco-systems' vegetation, playas, tributaries, streams, creeks and wetlands be completed and subjected to public review. To avoid these requirements would only compound the many flaws in the DEIS highlighted above.

Community Impact

We noted in our prior comments that the project effectively yields the territory of the United States, Texas and our counties to Mexico by placing thousands of acres of United States territory on the Mexican side of the border barrier. This is an abomination to the sacrifices our state and nation's heroes made to secure the United States.

The project will divide the community of Penitas, the oldest settlement within the contiguous United States, and the community of Granjeno, founded around 1767. These communities will be divided north and south. In the division, homes of families that have been in residence since Texas was a Spanish colony will be confiscated and destroyed.

In the face of these facts, the DEIS presents another Orwellian analysis. The DEIS asserts that the project will have effects on "community cohesion, property values, and traditional family values (that) would be long-term and beneficial, both nationally and locally." As elected officials representing families who have resided in the region for centuries, we protest as absurd any contention that confiscating property and bulldozing homes in any form is beneficial to community cohesion, property values or traditional family values.

This conclusion does not merely represent a technical failure of analysis. In its haste to justify any action that promotes the project as a benefit to the region, the DEIS demonstrates such a profound bias as to reduce the value of its analysis to that of a meaningless farce.

Archeological Impact

Several segments of the proposal will adversely affect known archaeological sites and historical preservation areas that may contain historic archaeological materials. In our prior comment, we recommended that the actual footprint of the project be studied in detail to provide an accurate listing of archeological and historical resources that may be adversely affected by the proposal's scope. Again, the DEIS fails to satisfy this requirement. The DEIS notes that "an archaeological survey of a 150-foot-wide corridor for each proposed tactical infrastructure section . . . is in progress," that "the completed surveys and final findings will be provided in the Final EIS" and that "Consultations with (Native America) tribes is ongoing; as of November 2007, no resources of traditional, religious, or cultural significance to Native American tribes have been identified within" the corridor.

The DEIS notes impacts on the Roma Historic District, Fort Brown, the Fort Ringgold Historic District, Louisiana-Rio Grande Canal Company Irrigation System Historic District, the Neale House, and Old Brulay Plantation, but proposes no mitigation or rerouting to compensate. The DEIS is incomplete and non-responsive to the concerns TBC has raised on behalf of the communities we represent.

Water Resource Impact

The DEIS notes impacts on at least 14 identified wetlands, and provides an extensive explanation of the Clean Water Act's mitigation requirements under the Section 404 permitting process. The DEIS fails in its attempt to explain how wildlife, irrigation systems, farmers, ranchers and government support agencies will be able to mitigate the proposals restrictions on their ability to provide timely access to the primary water source for agriculture, municipalities and other sectors in the Rio Grande Valley. The design of the project to meet these needs is unknown. The technical flaws of analysis make it impossible for communities to understand how they will be impacted by the project.

Environmental Justice Impact

In our prior comment, TBC noted the need for the DEIS to deal evenhandedly with the issue of environmental justice, as required by the law. The Rio Grande Valley's population is over 85 percent minority and some of our communities are among the poorest in the nation. We are profoundly disappointed that the DEIS finds that the project will have no disproportionate impact on minority or low income populations, justified by the deceptive analysis that "substantially less than half (of the project's miles are) within census bureau tracts that have a higher proportion of minority or low-income residents." While we stipulate that many of the miles involved are in uninhabited areas, we dispute the concept that the location obviates the impacts on the community as a whole. In making this assertion, the DEIS again fails to fulfill its legal and technical requirements.

Conclusion

The TBC is committed to securing the Texas-Mexico border in support of our national security and economic future. We believe the DHS Proposed Action supported by the DEIS will fail to accomplish this goal and that the smarter, more effective, less costly alternatives we have proposed will achieve greater security for our nation. We believe that if the appropriate studies are completed and reviewed without predetermined outcomes that our alternatives will prevail, providing the people of Texas and United States superior security.

We look forward to working with you to correct this flawed DEIS.

Sincerely,

Chad Foster
Chairman of the Texas Border Coalition and
Mayor of the City Eagle Pass, Texas



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Total Pages (including cover): 4

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January 14, 2008

Rio Grande Valley Tactical Infrastructure EIS,
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 Fairfax, Virginia 22031
 Via: RGVcomments@BorderFenceNEPA.com

RE: Review and Comments of Draft Environmental Impact Statement for Construction, Maintenance, and Operation of Tactical Infrastructure – Rio Grande Valley Sector, Texas.

The Nature Conservancy appreciates this opportunity to provide comments on the Environmental Impact Statement (EIS) developed by the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) and U.S. Border Patrol (USBP) to construct a wall along the Texas-Mexico border. In short, we have grave concerns on the effect the border wall will have on ecological processes related to continuity of habitat, vegetation, altered hydrology, and land use in the Lower Rio Grande Valley (LRGV). We are also concerned that the draft EIS fails to adequately address the potential ecological damage that will be caused by the project as well as failing to provide significant alternatives to the proposal to construct a border fence.

We believe the findings for the Anticipated Environmental Impacts and summarized by Alternative in Table ES-1 (page ES-4) inappropriately minimize these impacts. Land Use summarized for Alternative 2 (Route A & B) should read: "Short- and long-term moderate to major adverse impacts will occur." The 21 proposed segments will isolate large areas of land between the Rio Grande and the proposed wall. Although gates are proposed, their locations are not identified and some property owners may not have direct access to their land, businesses and facilities between the wall and the river. This is likely to increase traffic at proposed gate sites and create a need for new secondary roads to access private property, thus creating more habitat loss and fragmentation.

Geology and Soils and Water Resources – summarized for Alternative 2 (Route A & B) on page ES-4 should read: "Short- and long-term moderate to major adverse impacts will occur." The proposed wall will greatly restrict and alter surface runoff and hydrology that will have long-term effects both within the wall footprint and beyond. The EIS does not address how the wall will be constructed to allow water to pass during rainfall events and especially flash floods. Wildlife access to the river for water will be greatly restricted within the entire project area and will directly alter wildlife distribution and movement. Mitigation measures on how these issues will be addressed should be incorporated into the EIS.

Vegetation – Alternative 2 (Route A & B) on page ES-5 should read: "Short- and long-term moderate to major adverse impacts will occur." A total of 508 acres will be impacted by the proposed wall. Of that, 75 % is identified as native and non-native vegetation on federal, state or

private lands which provide habitat to area wildlife. Some of the impacted acreage includes areas that have been revegetated and reforested by conservation agencies. The EIS does not account for acreage that will indirectly be impacted due to fragmentation of existing habitats. Nor does the EIS identify additional acreage that will be needed for lighting, towers, and other Border Patrol activities. With 95 % of the region's native vegetation already lost, the proposed wall will have a long-term major adverse impact on plant and animal species in the region.

Wildlife and Aquatic Resources Alternative 2 (Route A & B) on page ES-5 should read: "Short- and long-term major adverse impacts would be expected." The Valley's wildlife river corridor, which is made up of federal, state, and private properties, provides for a corridor that allows wildlife to reach habitats further north and south of the Rio Grande region. A wall will cut off traditional migratory pathways and disrupt and displace wildlife populations throughout South Texas. The LRGV has lost more than 97 % of its native thornscrub habitat. The protection and reforestation of habitat on a landscape scale is particularly critical for conservation of wide-ranging animals, such as neotropical migratory songbirds, ocelot, and jaguarundi.

The proposed wall will displace wildlife to marginal areas, isolate populations and reduce genetic viability of remaining species. The fence will reduce vegetation connectivity in the region, resulting in major detrimental impacts to wildlife. The EIS does not address how this threat will be avoided and mitigated. The wildlife crossings pictured in Figure E-6 on page E-4 may allow insects or the smallest rodents to pass through but do not appear large enough to provide "Wildlife Migratory Portals" for larger wildlife species. The EIS must address how it will allow larger wildlife access to water and habitat on either side of the fence.

Socioeconomic Resources, Environmental Justice, and Safety Alternative 2 (Route A & B) on page ES-5 should read: "Short- and long-term minor to major adverse impacts and short-term beneficial impacts would be expected." There will be major overall impact to land use and agricultural landowners directly affected by the wall, such as The Nature Conservancy's Lennox Foundation Southmost Preserve near Brownsville. The wall will negatively affect the appraised value of affected properties in a number of ways. There will be an initial "take" of land for the direct footprint of the property and then a subsequent devaluation of any remaining property since it will be isolated between the river and wall. The draft EIS needs to address how alternatives will affect the value of public and private properties along the border, how those impacts can be minimized and how landowners will be compensated for any loss of property value.

The draft EIS needs to address how city, school and county taxes will be assessed when the border wall becomes a liability to neighboring landowners. The Nature Conservancy takes pride in being a member of the LRGV community and, although we are a non-profit organization, we have always paid property taxes for both our Hidalgo and Cameron county preserves to support county, city and school infrastructure.

There will also be major overall impact to agricultural landowners directly affected by the wall. The wall will cut off fields normally row-cropped and will prevent irrigation lines from being

passed through the wall and associated roads to irrigate fields north of the river and the fence. The draft EIS fails to address how these impacts will be mitigated.

On page 3-30, The Nature Conservancy should be listed as a component of the multi-partner effort attempting to connect and protect blocks of habitat. The Nature Conservancy owns the 1,037-acre Lennox Foundation Southmost Preserve (Southmost) in Cameron County between the IBWC levee and Rio Grande, as well as the 349-acre Chihuahua Woods Preserve in Hidalgo County west of Peñitas, both of which will be directly impacted by the proposed border wall. Our Southmost Preserve is one of the few remaining habitats for the endangered sabal palm. Both preserves also provide habitat for federally protected wildlife species, such as the ocelot.

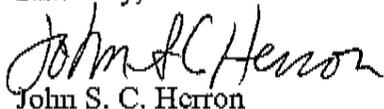
Map 17 misidentifies Southmost Ranch as being owned by the Lower Rio Grande Valley National Wildlife Refuge when in fact it is Southmost Preserve owned by The Nature Conservancy.

On page 2-9 line 5-6 states that USBP is "working closely with landowners and others potentially affected by proposed infrastructure." This statement needs to be clarified as to what "working closely" actually means. Our organization has heard very little from local USBP officials concerning the proposed wall, in spite of repeated requests for a meeting.

In summary, The Nature Conservancy shares the public concerns about border security, illegal immigration, and contraband smuggling, but the installation of the 21 "primary fence" segments in the Lower Rio Grande Valley as proposed by CBP and Rio Grande Valley Sector of Border Patrol will begin the unraveling of a unique wildlife corridor found nowhere else in North America. Our organization is opposed to the proposed alternative of a border wall as outlined in the EIS for the Lower Rio Grande Valley. We oppose the wall both as a conservation organization that has worked in creating the wildlife corridor and as a private landowner of over 1,350 acres of native habitat in the Lower Rio Grande Valley that will be directly impacted by the proposed border wall. We recommend that the EIS be expanded to consider or combinations of alternatives be considered that will provide for increased border security while also protecting the critical remaining native habitat in the Lower Rio Grande Valley.

Thank you for allowing The Nature Conservancy to comment on the draft EIS. We will provide further comments as the EIS is updated and revised.

Sincerely,



John S. C. Herron

Director of Texas Conservation Programs

200 East 11th Street
Weslaco, TX 78596
December 30, 2007

Rio Grande Valley Tactical Infrastructure EIS
c/o E2M
2751 Prosperity Avenue, Suite 200
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Comments on RGV Tactical Infrastructure DEIS

Thank you for this opportunity to comment on the Draft EIS for Construction, Maintenance and Operation of Tactical Infrastructure Rio Grande Valley (Texas) Sector. I have lived in the Rio Grande Valley since 1979, have been active in several conservation and environmental organizations, and have been especially active in on-going efforts to preserve and protect wildlife habitat along the final 250 miles of the Rio Grande. Nowhere else in North America is there such a concentration of rare, threatened and endangered species. The four county area lists over 1100 plant species and 700 vertebrate species (including 513 bird species), 20 of which are federally listed. There are as many butterfly species found in this small area as are found in the entire United States east of the Mississippi. Unfortunately, habitat loss has been extreme, which is why the U.S. Congress in 1979 authorized the creation of the Lower Rio Grande Valley National Wildlife Refuge, an on-going effort to create and preserve a contiguous corridor of brush and forest along the north bank of the Rio Grande from Falcon Dam in the west to Boca Chica, the Rio Grande's end at the Gulf of Mexico. This is why the proposed "tactical infrastructure" will have such a damaging environmental impact. And this is why, pursuant to the recently passed Omnibus Appropriations Bill, Section 564, DHS should instead concentrate on using "virtual fence" technology in the Rio Grande Valley. As it stands now, the DEIS is such a flawed document as to be insupportable. A few of the reasons I will touch upon.

1. This whole environmental impact analysis is much too rushed. Comment periods are too short, the endangered species consultation too brief, there has been inadequate time and detail for agencies to respond, hence the public has little more than public relations drivel and unsupported assertions and guesstimates to respond to
2. Where are the reports of other agency consultations on possible impacts? Where are the letters from U.S. Fish & Wildlife Service and Texas Parks & Wildlife on possible impacts to fish and wildlife, and impacts to the parks and refuges? Where are comments from FEMA, especially important as most of the proposed project lies within the 100 year flood plain? Where are reports from IBWC regarding possible effects on the river levee system, on possible alterations to flood flows affecting both the U.S. and Mexican sides of the river? Where are the hydrology reports showing how the fencing will or will not affect rainfall and flood runoff, and the integrity of the levees themselves? To lamely say this information will appear in the final EIS is **not** acceptable, for by then the pre-ordained Finding of No Significant Impact will have been made, and comments made after that superfluous.

3. Viable alternatives to the proposed action are given no meaningful analysis and dismissed out of hand. For that matter even the proposed alternative is not put to objective scrutiny. Where is the data showing that 70 miles of fencing will reduce terrorist crossings (of which there have been none), or reduce illegal immigrant crossings (with Operation Rio Grande in effect – more agents plus more technology – apprehensions are down more than in the San Diego sector where there are fences) or reduce drug interdictions? Where's the evidence? Where's the data?
4. How were DHS contractors able to walk “the entire length of the proposed project corridor for each tactical infrastructure section, and examined in more detail areas containing unique species compositions of habitat that might be conducive to sensitive species” when they didn't have permission to be on any of the refuge tracts at that time? Were they trespassing or lying?
5. How many homeowners will have their land and homes condemned and confiscated? And how can this impact be considered “minor or moderate?” Again there is no information. There is, however, wishful thinking dressed up as assertion: “The cumulative impacts of USBP activities to reduce the flow of illegal drugs, terrorists, and terrorist weapons into the United States and the concomitant effects upon the Nation's health and economy, drug-related crimes, community cohesion, property values, and traditional family values would be long-term and beneficial, both nationally and locally. Residents of the border towns would benefit from increased security, a reduction in illegal drug-smuggling activities and the number of violent crimes, less damage to and loss of personal property, and less financial burden for entitlement programs.” (5.11.17) Where is the evidence and data for any of this?
6. Completely absent is any analysis of impacts from likely increased illegal crossing in between fence segments, due to a funneling effect.
7. Likely impacts of the fence segments on national wildlife refuge tracts will be enormous, due to many tracts being cut off from the river, or being severed in half. North-south migratory movement will be blocked and refuge tracts fragmented. Access and proximity to the Rio Grande was the reason these tracts were incorporated into the National Wildlife Refuge System in the first place, and this was Congress' intent. An impermeable fence's impacts on wildlife is vastly greater than the mere number of acres the fence itself occupies. This recognition is entirely lacking in the DEIS, hence there is no meaningful analysis.
8. There is no detailed description of the road-building that will accompany the construction and maintenance of the fence segments. Hence there is no analysis of potential impacts. One missing example: The largest single source of mortality to the endangered ocelot in the Rio Grande Valley is collision with motor vehicles. Will more BP roads along the fences mean more ocelot mortality?
9. There is no analysis of the possible impacts of 70 miles of floodlight lighting on wildlife. This is an enormous amount of nighttime lighting, with very likely damaging impacts on nocturnal species and is much greater than the lighting done pursuant to Operation Rio Grande. The DEIS keeps us in the dark on this important issue, other than this lame generalization (5.8.14): “The permanent lighting could have minor, adverse cumulative impacts on migration, dispersal, and foraging activities of nocturnal species.”
10. “Best management practices” are repeatedly mentioned but never explained. Mitigation measures for unavoidable impacts are never even mentioned. How is the

public to evaluate their adequacy if the crucial information is entirely missing? Again to simply say this will appear in the Final Report is simply not acceptable, for the FONSI determination will have already been made and, probably, the bulldozers already fired up. 10. Even on national wildlife refuge land DHS appears ready and willing to ignore their own consultant's recommendations that "Any groundbreaking construction activities should be performed before migratory birds return to the area (approx. 1 March) or after all young have fledged (approx. 31 July) to avoid incidental take." To circumvent this sensible recommendation by obtaining a bird depredation permit is a brutal and cynical misuse of a permit system designed to allow the taking of birds which are damaging crops, wildlife, or structures.

11. How will there be access to the river side of the fences, for farmers, property owners, for public recreation, for public access to cemeteries and historical sites, access for local law enforcement, firemen and emergency personnel?

12. Contrary to the bland assertions in the DEIS, a disproportionate share of the negative environmental impacts associated with the proposed fences will fall on low income and/or minority residents. Only in the one fence segment adjacent to Sharyland Plantation will this not be the case.

13. The proposed fence(s) are widely viewed in Mexico as a hostile act, and damaging to the close coordination and cooperation built up between American and Mexican cities on the Rio Grande, including law enforcement. The DEIS says not a word on these possible impacts and unintended consequences.

14. The DEIS does not acknowledge the broad and pervasive opposition to the fence(s) either because meaningful and honest public consultations were not done, or because they intend to ram these fences down our throats regardless of what the public and local elected officials think and regardless of the enormous environmental costs.



Jim Chapman,
Chair, LRGV Sierra Club Group
Treasurer, Frontera Audubon Society
Vice President, LLMF

**ENVIRONMENTAL DEFENSE**

finding the ways that work

Date: December 31, 2007
Re: Rio Grande Valley Tactical Infrastructure EIS
From: Karen Chapman, Water and Wildlife Analyst
Environmental Defense Fund

Environmental Defense Fund is a public interest conservation organization founded in 1967 to combat the most serious environmental problems. With over 300 staff and 300,000 members nationwide, Environmental Defense Fund uses solid scientific and economic information to forge partnerships with business, government and other conservation organizations in the pursuit of clean air and water, healthy food and flourishing ecosystems.

Environmental Defense Fund has a history of work in the Lower Rio Grande Valley of Texas. Environmental Defense staff members contributing to these comments have held and/or currently hold positions related to scientific research, policy research, natural resource management and habitat restoration which collectively amounts to over 30 years of direct experience working in the LRGV on issues relative to the LRGV environment. Our current focus of work in the region involves endangered species habitat restoration on private lands and scientific studies to determine the status of the endangered ocelot, whose last stronghold in the United States is restricted to the Lower Rio Grande Valley.

The following are Environmental Defense Fund's comments on the Draft EIS "For Construction, Maintenance, and Operation of Tactical Infrastructure Rio Grande Valley Sector, Texas." Hereafter Environmental Defense Fund will be referred to as EDF, and the Rio Grande Valley Tactical Infrastructure EIS as the RGV EIS or simply EIS.

Notwithstanding the fact that the RGV EIS is itself an extremely superficial, rushed, and inadequate document overall, our comments will address what we find to be the greatest specific weaknesses in the EIS, which are: 1) inadequate discussion of alternatives; 2) superficial nature of the biological surveys; 3) very little to no discussion of arguably the greatest impacts of the fence to wildlife – fragmentation and lack of river access.

Our initial comments submitted during the scoping process are still relevant in some cases, as the EIS does not adequately address some of these concerns. Where appropriate we will insert those comments again for clarification.

Inadequate discussion of alternatives: EDF believes that alternatives are available which could as effectively secure the RGV border without introducing such environmentally and economically costly measures such as the proposed tactical infrastructure. Our initial comments were as follows: "All reasonable alternatives – such as stationing additional personnel on the ground – must be thoroughly considered in the EIS and weighed

alongside the proposed infrastructure alternative. An extensive review of the impacts of such permanent and long-lasting measures as roadways and fencing is warranted and necessary before any such project moves forward." The draft EIS does not thoroughly consider these alternatives as stand alone options and does not consider them at all in combination.

Section 2.3 presents the other alternatives considered and eliminated from further consideration. Two of these alternatives – additional USBP agents and technology – in lieu of tactical infrastructure, require further consideration as viable alternatives, especially in combination, but are presented as stand-alone options and eliminated. A third alternative – native thorny scrub hedge – also deserves further consideration as a longer term solution that might be implemented in combination with alternatives 2.3.1 and 2.3.2. The lack of serious consideration of these alternatives – either as stand alone alternatives or in some combination - is a serious flaw in this EIS.

The EIS presents the No Action Alternative in a very negative light, ignoring the obvious benefits of this alternative to wildlife and the RGV environment. For example, Table ES-1 lists "long-term minor to major adverse impacts..." associated with Alternative 1 regarding vegetation, wildlife and aquatic resources, land use, geology and soils, water resources, special status species, cultural resources, and socioeconomic resources. There are numerous benefits of the No Action Alternative to all these resources, including no further fragmentation of riparian habitat, wildlife can continue to access the river as a water source, no need to displace families, homes and businesses, no disruption of personal property and access to privately owned infrastructure, no expenditure of public funds on construction and maintenance of the fence, avoidance of numerous public safety concerns a fence brings, possibility of continuing to build the riparian corridor as endangered species habitat, and numerous other benefits, none of which are presented or discussed in any section of the EIS. Essentially, the No Action Alternative is barely considered. As the document itself acknowledges, NEPA requires that the No Action Alternative be considered as the baseline against which all other actions are compared. Given that the benefits of the No Action Alternative are not considered at all, any comparisons are also seriously flawed.

Preparers assume that trash left behind by people crossing the river from Mexico is of greater impact to wildlife than the fence itself will be – evident in the EIS' analysis of the stated benefits of the fence. This is a grossly flawed assumption. If animals cannot find water in times of drought, they will perish. Trash can also cause mortality to individual animals, but lack of water or lack of access to water affects entire populations of species in a given area.

Superficial nature of biological surveys: the EIS states that researchers conducted field surveys on October 1 through October 7, 2007. It also states that "intuitive controlled investigations" were conducted, but this term is not defined and it is not clear what the term actually means. It is not possible to conduct a thorough assessment of the impacts

on natural resources in over 500 acres and 70 miles of habitat in that time frame, even given the other sources of information accessed and included in the analysis. It also appears as if the researchers were not always in the specific path of the proposed fence but on the periphery of the habitat where construction is planned, or viewing the habitat from some distance – either real or virtual. Review of aerial photography can provide additional information but as all researchers know, ground-truthing is an essential component of such analysis in corroborating the physical presence of certain species, especially given the biotic diversity of the RGV, where a particular species of plant or shrub may grow in one hectare and not another because of slight differences in elevation, humidity, soils, etc. Therefore, the EIS cannot be considered a serious and complete assessment of impacts to the biological resources directly in the path of the fence, or to those which will be impacted on the periphery of the fence, or to those that will be impacted by increased traffic and vehicles in areas where funneling will occur.

No discussion of habitat fragmentation or lack of river access: Particularly for areas where wildlife will not be able to access the river (Los Negros Creek, Los Velas West, Los Velos, part of Los Ebanos, Texas Parks and Wildlife Tract, Relampago, Las Palomas Wildlife Management Area, Villa Nueva, Phillips Banco, Brownsville LRGV, part of Jeronimo Banco, and part of Southmost Ranch), the EIS does not discuss what will occur to wildlife outside the fence that no longer has access to the Rio Grande. Nor does the EIS give any meaningful discussion to the fact that the fence will render impossible any biological connection of habitat that lies north of the fence with habitat lying south of the fence. There is existing habitat north of the planned fence pathway on private land and along irrigation ditches, arroyos, and drainages that may be essential for some species in moving between habitat patches or to habitat patches south of the proposed fence. These will no longer be accessible, and essentially any areas between the planned fence segments will also be off limits given the potential for increased foot and vehicular traffic in those areas. Construction of fencing along the Rio Grande riparian zone will certainly impact the ability of plants and animals to connect across the landscape and compromise the investment made so far by the federal government and many private organizations in preserving and restoring the landscape.

The planned pathway of the fence cannot be the only footprint under consideration in terms of wildlife impacts, because the ancillary impacts will also create a “virtual fence” for wildlife. Future attempts to create and expand on existing areas of habitat north of the proposed fence’s real and virtual path will be that much more problematic if these linkages useful for increasing biological diversity are no longer viable. As stated in our initial comments, EDF has a great deal of interest and work invested in projects on private lands that are targeted toward recovery of the endangered ocelot. Studies have shown that the ocelot’s case is particularly severe. Large scale habitat fragmentation has led to decreased genetic viability within the existing populations in South Texas and further destruction of any habitat that may serve suitable for ocelot repopulation in the future will reduce the options available to conservation biologists working to recover this exceedingly endangered wild cat.

Certainly the RGV is growing, and urbanization, business expansion, and many other planned highway projects will also destroy habitat. However, there is no other public or private project planned or underway that has the same degree of potential for impacts to existing riparian habitat, given the planned pathway of the fence that follows the bends of the Rio Grande. No other project so completely isolates habitat patches north and south, so completely renders riparian habitat inaccessible or so thoroughly eliminates the potential for future north-south habitat corridors. In contrast to the proposed fence, mitigation and compensation for destruction of wildlife habitat as a result of other public agency actions is much more likely to occur and linkages from habitat north to south can still be established in most cases.

Finally, the EIS states that as many as 90 gates will be installed to allow private access to equipment, public access to recreational areas, and ingress-egress for other purposes. There is no indication in the EIS as to how gate access will be managed and who will be responsible for the safety of individuals at gate access points. Our initial comments on this topic were: "It is very likely that the presence of a fence and anticipated delays that would occur from waiting for clearance to pass through the area would result in a dramatic decrease in visitation to the sanctuary and to the Southmost Preserve. Both the sanctuary and the preserve protect the final remaining stands of native old-growth Sabal Palm jungle in the country, and provide a unique opportunity to educate residents of the entire region, especially children, about their natural heritage through hands-on learning and quality environmental education programs that help to meet academic science standards set by the state of Texas." Page 4-54 lines 6-13 of the EIS state "Indirect impacts on socioeconomics from recreation and ecotourism would be tied directly to the user's perception that Route A has altered their access to valued visual or recreational resources. However Route A would help to deter cross border violators, which would make the area safer for recreational users, ecotourists, and USBP agents in the immediate area... The net impacts on recreation and ecotourism are expected to be minor." EDF disagrees. This is not an adequate explanation or discussion of how these impacts will be managed or how visitor access will physically and safely occur. There is no information upon which to conclude that the fence will not have a direct and major impact on the number of visitors able to access a recreational area such as the Sabal Palm Audubon Sanctuary, or on the willingness of the public school system to allow children to access the area, and consequently on the educational experience of the children and on visitation to the sanctuary overall.

In summary, EDF finds the RGV EIS to be inadequate for discussing and comparing alternatives, in its attempts at gathering biological information and in how it presents impacts to the RGV environment and economy.

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Rio Grande Valley Tactile Infrastructure EIS
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December 25, 2007

Re: RGV Sector EIS

To Whom It May Concern:

The following comments are being submitted on behalf of Frontera Audubon Society (FAS), a non-profit corporation located in Weslaco, Hidalgo County, Texas. These remarks are in response to U.S. Customs and Border Protection's (CBP) published Draft *Environmental Impact Statement for Construction, Maintenance, and Operation of Tactile Infrastructure Rio Grande Valley Sector, Texas* (DEIS).

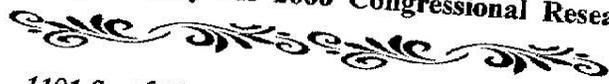
As described in the DEIS the purpose of the proposed action (PA) is to "increase border security...through the construction, operation, and maintenance of tactile infrastructure in the form of fences, roads, and supporting technological and tactical assets" (page 1-4: lines 2-5). At this time, "fencing" includes 21 discontinuous segments ranging in length from one to over 13 miles in length along the shared U.S. and Mexican border. Said infrastructure will ostensibly "deter illegal cross-border activities...by improving enforcement, preventing terrorists and terrorist weapons from entering the United State, reducing the flow of illegal drugs, and enhancing response time, while providing a safer work environment for United States Border Patrol (USBP) agents" (page 1-4: lines 13-17).

Frontera Audubon appreciates CBP's efforts to secure our international borders and made this point clear in earlier comments presented in response to the published Notice of Intent for this PA. However, we also continue to believe that the PA is an ineffectual and inappropriate means through which to accomplish that need. In fact, we believe that the PA may expose communities along the Rio Grande Valley to greater risks. In our opinion the PA will weaken international cultural and economic ties, cause unnecessary and irrevocable damage to our already diminished and compromised environmental systems, and place human lives in jeopardy through the installation of barriers which will exacerbate the dangers of flooding and wildfire control and containment.

Accordingly, we do not believe, nor has the DEIS demonstrated, that the stated benefits of the proposed undertaking to the residents of the Rio Grande Valley, the State of Texas, or the citizenry of the United States or Mexico, out weigh the costs. In our opinion, which is based in part upon the information provided, the PA is not warranted or otherwise justified in its current form. Given the alternative options presented in the DEIS as 'acceptable' our preferred option is Alternative 1: No Action Alternative.

With all due respect, Frontera Audubon hereby presents the following comments:

- 1) In general it is our opinion that the DEIS:
 - a) Omits, or fails to clearly acknowledge, the full scope of the PA.
 - b) Is dismissive of certain alternatives and has misstated or omitted a full discussion of the facts and findings of previous studies (specifically the 2006 Congressional Research Services' report entitled



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Border Security: Barriers Along the U.S. International Border).

c) Overestimated the purported "beneficial impacts" and minimized the "adverse impacts" of the various alternatives and potential cumulative impacts. This is especially true when one considers the fact that few if any of the National Wildlife Refuge (NWR) property surveys were completed prior to the publication of the DEIS.

d) Vastly understated the significance and diversity of the ecological settings within the project area.

e) Not considered the impacts on or assessed the values of the ecological services that these setting / habitats provide to the region.

f) Ignored (other than Federally or State listed endangered and threatened species) those species currently in decline or at risk within the project area.

g) Failed to consider or incorporate existing resource management reports which address items 'd' through 'f'. This includes a *Framework for Ecosystems Risk Assessment* (Environmental Protection Agency (EPA), 1992) the *Texas Comprehensive Wildlife Conservation Strategy 2005 - 2010* (CWC) (Texas Parks and Wildlife Department (TPWD), 2005); or *The United States Watch List of Birds of Conservation Concern* (2007 Watchlist), a joint project of the American Bird Conservancy and National Audubon.

2) In our opinion the DEIS omits or fails to clearly acknowledge the full scope of the PA. For example, the DEIS does not identifying the locations or extent of new access roads which are noted (page ES-2: line 19; Appendix I *Draft Biological Survey Report* page 4: lines 2-4) but not discussed further. Access roads would presumably affect additional acreage beyond the 508 permanently impacted acres as estimated for Alternative 2. Lighting, is also discussed in various sections of the DEIS (page 5-3: lines 25-42; page E-7 & 8: lines 18-42 & 1-14 respectively) but is not addressed in Section 3 *Affected Environment* nor is any basis given for its exclusion.

Furthermore the DEIS, while citing the *Final Environmental Assessment, Portable Lights within the Naco Corridor* (Immigration and Naturalization Service (INS, 2001), fails to incorporate the joint agreement finalized by the United States District Court for the District of Columbia in *Defenders of Wildlife v. Meissner* (2000). Nor does it incorporate the United States Fish and Wildlife Services' (USFWS) 2003 Biological Opinion (BO) produced in conjunction with that agreement. These documents detail detrimental impacts and "reasonable and prudent measures" for the protection ocelots and jaguarundis. Habitat loss and fragmentation, genetic isolation, roadways, noise from portable light generators and the illumination of brushy corridors are among the threats to these animals. The proposed PA along with its projected 450 high intensity lights, patrol roads and access roads are therefore a great concern to us and we look forward to a more detailed accounting of the true scope of the PA and its impacts than what is currently presented in the DEIS.

3) Page ES-2: lines 22-25 "The proposed locations of tactical infrastructure are based on a USBP Rio Grande Valley assessment of local operational requirements where tactical infrastructure would assist USBP agents in reducing illegal cross-border activities."

Response: The criteria employed to select the positioning and length of the individual segments would be useful in allowing the public an opportunity to evaluate the limited number of alternatives presented in the DEIS. This is not to dismiss the value of the professional judgment of experienced USBP agents in contributing to an "assessment of local operational requirements." However, it does not adequately explain why more segments of the fence cannot avoid State lands, National Wildlife Refuge properties, and privately managed properties containing wildlife habitat(s) and privately owned residences and businesses. In our opinion the impacts to land use, water resources, vegetation, wildlife and aquatic resources, special status species, and cultural resources would be significantly lessened if the PA was located along pre-existing public right-of-ways / corridors such as roadways. Such pre-existing public corridors should at least be considered as an alternative route.

4) Page ES-4: Land Use - Alternative 2 Routes A and B concludes, "Short-and long-term minor adverse and long-term beneficial impacts would occur".

Response: FAS does not recognize beneficial impacts to land use under the current preferred alternative for the PA. Fencing will in all likelihood hinder managers' ability to conduct their activities in an efficient and productive fashion. Fencing may also be detrimental to said activities and actually endanger managers' and other personnel in case of wild fires or flooding by trapping or otherwise impeding or preventing their ability to exit the property

in an expeditious fashion. It will also concentrate illegal cross-border activities and United States Border Patrol (USBP) agent activities resulting in greater environmental damage than is currently sustained.

FAS believes that the conclusion above should be changed to "short to long-term moderate to major adverse impacts would be expected" in this section and wherever else "Land Use" impacts for Alternative 2: Routes A and B are noted in the DEIS.

5) Page ES-4: Water Resources - Alternative 2 Routes A and B concludes that "short- and long-term negligible to minor adverse impacts would be expected".

Response: The Rio Grande is the primary water resource for many forms of wildlife and FAS is of the opinion that the PA will isolate this and other scarce water resources resulting in "short to long-term moderate to major adverse impacts to wildlife." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Water Resources," are noted in the DEIS.

6) Page ES-5: Vegetation - Alternative 2 Routes A and B concludes, "short-and long-term negligible to major beneficial and adverse impacts would be expected."

Response: Fragmentation and loss of habitat are the most frequently cited conservation issues in the Rio Grande Valley by USFWS (Tamaulipan Brushland of the Lower Rio Grande Valley of South Texas: Description, Human Impacts, and Management Options, 1988; BO 2003) and TPWD (CWC, 2005) and other environmental groups. The PA would only exacerbate those issues. Efforts by USFWS, TPWD, and various other private and public entities to reforest tracts with native plants species represents one of the most important conservation initiatives in the region. Their efforts over the course of the last 27 years have received national and international praise and USFWS considers this work to be a top management priority for the combined South Texas Refuge Complex (includes Laguna Atascosa, Lower Rio Grande and Santa Ana National Wildlife Refuges).

FAS fails to see any beneficial impacts to vegetation because of the PA, and is of the opinion that the accompanying fragmentation and clearing of habitat is counter-productive to efforts to restore native habitats, and will only result in "short to long-term moderate to major adverse impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Vegetation," are noted in the DEIS.

7) Page ES-5: Wildlife and Aquatic Resources - Alternative 2 Routes A and B concludes, "short-and long-term negligible to moderate adverse and major beneficial impacts would be expected."

Response: FAS fails to see any beneficial impacts to wildlife and aquatic resources because of the PA. Furthermore, the fence along with lights, generators, patrol roads and access roads will only heightened the risk of wildlife fatalities; damage, destroy, degraded or otherwise compromise existing and potential wildlife corridors, wetlands, and nesting and breeding habitats. Therefore, the fragmentation and clearing of habitat will result in "short to long-term moderate to major adverse impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Wildlife and Aquatic Resources," are noted in the DEIS.

8) Page ES-5: Special Status Species - Alternative 2 Routes A and B concludes, concludes that "short-and long-term minor to moderate adverse and long-term negligible to minor beneficial impacts would be expected."

Response: FAS fails to see any beneficial impacts to special status species (listed as endangered or threatened by USFWS). The FAS recognizes that only those species listed by USFWS are afforded Federal protection. However, a substantial number of additional species of concern are noted in the *Texas Comprehensive Wildlife Conservation Strategy 2005 - 2010* (CWC) (TPWD, 2005) and *The United States Watch List of Birds of Conservation Concern* (2007 Watchlist). These species should also be referenced in the DEIS and it is the FAS's opinion that CBP should consult with the local USFWS field offices, TPWD wildlife resource managers and any other applicable private parties and institutions with relevant information regarding the management of federally listed special status species or state and/or privately listed species of concern.

In our opinion special status species, and other species of concern will suffer "short to long-term moderate to

major adverse impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Special Status Species," are noted in the DEIS.

9) Page ES-6: Socioeconomic Resources, Environmental Justice, and Safety - Alternative 2 Routes A and B concludes, conclude that "short-and long-term minor to moderate adverse and short-term beneficial impacts would be expected."

Response: No one is going to come to the Valley to see a fence. Therefore, any beneficial impacts will be negligible and only because of opportunities for local businesses related to the construction, and subsequent maintenance of the PA. Losses in retail trade and ecotourism will likely offset any short-term beneficial impacts.

According to the Federal Reserve, more than a fourth of the retail trade for Brownsville, El Paso, Laredo, and McAllen originates from Mexican shoppers crossing legally into the U.S. Historically retail merchants have suffered losses when relations between the two countries are strained. Ecotourists, come to the Valley for birding, butterfly watching, canoeing, and wildlife viewing and contribute an estimated \$120 to 125 million dollars to the local economy. The loss of habitat and limitations or restrictions on access to Wildlife Management Areas, National Wildlife Refuges, and privately owned wildlife sanctuaries will have a negative impact on this source of revenue as well. In our opinion socioeconomic resources, environmental justice, and safety issues, will suffer "short to long-term moderate to major adverse impacts and negligible short-term beneficial impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to " Socioeconomic Resources, Environmental Justice, and Safety," are noted in the DEIS.

10) Page 1-5, lines 23-34 should also include the Coastal Zone Management Act of 1972; the National Wildlife Refuge Administration Act of 1966; the National Wildlife Refuge System Improvement Act of 1997.

11) Page 1-6, Table 1-1 "Major Permits, Approvals, and Interagency Coordination" should include international agencies created as a result of International Treaties including the International Boundary and Water Commission (IBWC) and the Commission for Environmental Cooperation (CEC) created under the terms of the North American Agreement on Environmental Cooperation (NAAEC). The NAAEC compliments the environmental provisions of the North American Free Trade Agreement (NAFTA). Given that both agencies have a vested and legally binding interests in border issues FAS feels they should be invited to become a cooperating agencies with regard to NEPA and the PA.

12) Page 1-8, line 16 should be modified to read "Steps 1, 3 and 4 have been undertaken *but not completed* as part of the Draft EIS because wetlands have yet to be identified, the referenced floodplain maps are dated and detailed hydrological studies have yet to be completed". In fact, virtually no hydrological data is presented. Until detailed, professional, and independent hydrological studies can be established for proposed undertaking FAS can only conclude that, "short - and long-term moderate to major adverse impacts would be expected".

13) Page 2-7, line 4 - The fence must be "engineered to not impede the flow of water". However, the standard designs presented in Appendix E, pages E-2 through 5, appear to be identical to those portrayed for the more arid environments of Arizona. Fencing in those environments was ultimately designed to account for flash flooding. Flash flooding and major flood events are well documented for the Rio Grande Valley and FAS hopes that similar considerations in fence engineering are incorporated for this region.

14) Page 2-11 through 2-12 "Alternatives Considered But Eliminated From Further Detailed Analysis" appear to have not undergone any detailed analysis at all. Alternatives including "Additional USBP Agents in Lieu of Tactile Infrastructure", Technology in Lieu of... " and Native Thorny Brush in Lieu of..." are simply dismissed with little or no quantitative data to backup this decision.

Further, the assertion that "Operation Gatekeeper" (page 2-11, lines 26 - 33) required a 150% increase in USBP manpower is taken out of context. In fact the reason a 150% increase in manpower was required was because the "primary fence" (a single panel fence similar to what is proposed for this undertaking) "did not have a discernible impact on the influx of unauthorized aliens coming across the border in San Diego". "As a result of this, Operation Gatekeeper was officially announced in the San Diego sector on October 1, 1994. The chief

elements of the operation were large increases in the overall manpower of the sector, and the deployment of USBP personnel directly along the border to deter illegal entry" (CRS 2006, page 7).

Although successful, it proved to be "fiscally and environmentally costly" (CRS 2006, page 8). "It soon became apparent to immigration officials and lawmakers that the USBP needed, among other things, a "rigid" enforcement system that could integrate infrastructure (i.e., a multi-tiered fence and roads), manpower, and new technologies to further control the border region" (CRS 2006, page 8). The apparent misinterpretation of the data, as presented in this DEIS, is disconcerting and certainly begs the question of why, given what we know from prior experience, is CBP proposing a single layer, "primary fence" for the Rio Grande Valley Sector?

Given the alternative to a "primary fence" (i.e. a double or triple layer fence) FAS urges a reconsideration and technical evaluation of the combined use of additional USBP Agents, Technology and Native Thorny Brush in Lieu of Tactile infrastructure as Alternative to use in lieu of or as supplements to fencing. Such strategies may be effective and cost efficient along existing public corridors such as U.S. Highway 281, the "Military Highway", or other similar venues.

15) Page 3-10, lines 24 - 27 state that recreational/special use lands "includes barren land, or land with sparse vegetation".

Response: The above statement is misleading and incorrect. Special use properties also consist of riparian forests, wetlands, brushlands, and other diverse and vegetated properties and should be so stated.

16) Page 3-11, lines 21-27 should be expanded upon to include a detailed listing of the various national wildlife refuge tracts, TPWD wildlife management areas, and those tracts owned by various municipalities or private non-governmental organizations. The latter would include the North American Butterfly Associations International Butterfly Park, Anzalduas County Park, Quinta Mazatlan, the Valley Nature Center, Frontera Audubon Society, Sabal Palm Audubon Center and Sanctuary and many other preserves and historic sites and corridors.

17) Pages 3-25 - 29 and Appendix I: Draft Biological Survey Report (page 9) provide only scant information on the overall climatic regimes and their influence on the mixture of ecosystems. For example, there is no discussion of the frequency of major storm events (including tropical storms and hurricanes) in the region and the extreme variability in the timing and amount of precipitation and the chance of flooding because of these events. Debris accumulations along the fence - even a semi permeable fence - will exacerbate the damage and dangers of flood events and potentially affect the integrity of existing flood control levees thereby endangering communities on both sides of the international border. CBP should address the lack of quantifiable hydrological data and pre-engineered fence designs (which are not tailored to the Valley's unique environments) as soon as possible and before the construction of any fencing.

18) Page 3-30, lines 4-6 state that" the LRGV NWR, established February 2, 1979, is a component of a multipartner effort attempting to protect blocks of rare and unique habitat, known locally as a wildlife corridor.

Response: FAS would include as a partner in this endeavor the Mexican government and the Binational Lower Rio Bravo / Rio Grande Ecosystem Team the goal of which is to establish a corridor between the Laguna Atascosa NWR and privately owned ranchlands to similar properties in Mexico.

19) Page 3-25, lines 16 - 41; page 3-26, lines 1-11; 4-28, lines 25-38 all describe jaguarundi and ocelot habitat and ecology and possible impacts as the result of the PA.

Response: FAS suggest a more detailed description of jaguarundi habitat to include the fact that they are known to use "53.0% mature forests and 47% pasture-grassland..." and " open areas for hunting and sometimes resting, but if threatened with a potential danger, they sought cover in brush areas" (USFWS - BO, 2003). In addition FAS does not agree with the DEIS conclusion on page 4-28, lines 30-32 that "the short-and long-term loss of potential habitat for these species is anticipated to result in short-and long-term, moderately adverse impacts on ocelots and jaguarundi. It should read long-term major adverse impacts.

20) Pages 3-38, lines 31-38 and page 4-32, lines 17-38; and page 4-33, lines 1-33 all describe avian habitat and ecology and possible impacts as the result of the PA.

Response: Pages 3-38, lines 31-38 should include an expanded discussion of the significance of the migratory corridors that converge within the region. Such a discussion should include an accounting of the number of endangered, threatened, and listed avian species of concern, which utilize those corridors. In addition, the conclusion that a Migratory Bird Depredation Permit will be obtained from USFWS (page 4-33, lines 1-3) is premature and presumptuous. Best Management Practices (BMP), (page 4-32, lines 17 - 38) would not incorporate the scheduling of construction during or immediately before the nesting season. A BMP would instead exercise the option to first consult with USFWS and TPWD wildlife resource managers. The goal being to develop mutually acceptable terms for when and where to commence construction of individual fence segments so as to avoid nesting habitats of all species if possible or, alternatively, for at least those species listed as threatened, endangered, or otherwise listed as species of concern.

21) Page 4-23, lines 2-6 states that the "removal of large mature native trees of Texas ebony, sabal palm, eastern cottonwood, sugarberry, and honey mesquite would result in long-term, moderate to major adverse impacts, because they are virtually irreplaceable". Same page, lines 26-30 state that the "loss of approximately 125 acres of disturbed floodplain shrubland, woodland, and forest habitat, predominately of honey mesquite, and sugarberry and to a lesser extent sabal palm would result in short-and long-term, moderate to major adverse impacts..."

Response: Impacts should be modified to state "long-term major adverse impacts for both lines 4-5 and lines 28-29.

22) Appendix I Draft Biological Survey Report, section 5.1 Vegetative Classification should include an expanded discussion of the two systems utilized to characterize the study area's biotic communities. Both systems of classification are valid however; it would be useful to be able to correlate the systems and to include a broader discussion of the species typical of those settings. In addition, USFWS has prioritized the habitats they wish to obtain in fulfillment of their mandate to complete the LRGVNR. It would be easier to evaluate the impacts of various fence segments by coordinating the two classificatory schemes and, the various species found therein, along with the USFWS priorities properties list.

Sincerely,



Wayne Bartholomew
Executive Director
Frontera Audubon



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January 4, 2008

Re: RGV Sector DEIS comments

To Whom It May Concern:

Enclosed are two sets of comments, one from Frontera Audubon Society and the second from Friends of the Wildlife Corridor, regarding the above referenced DEIS. I submitted these comments to you via e-mail on the evening of December 31, 2006 and I'm simply following up by submitting hard copies for your files. Hopefully this does not confuse or complicate things at your end.

We appreciate the opportunity to submit comments and look forward to your response. If you have any questions please feel free to contact me at any time.

Sincerely,

Wayne Bartholomew
Executive Director
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December 21, 2007

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These comments are being submitted on behalf of the Lone Star Chapter of the Sierra Club and its 24,000 members, particularly those living near the Texas-Mexico border. Many individual members are submitting their own comments. The comments are being submitted in response to the Draft Environmental Impact Statement (EIS) for Construction, Maintenance and Operation of Tactical Infrastructure Rio Grande Valley (Texas) Sector (Border Fence), published in November of 2007, as well as the notice of availability of the Draft EIS published by the U.S. Environmental Protection Agency in the Federal Register November 16th, 2007.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to comment on the Draft EIS, as well as the opportunity presented for public comments both through the 45-day comment period as well as the three public meetings held earlier this month in the Lower Rio Grande Valley.

Nevertheless, Sierra Club believes that the Draft EIS does not: 1) sufficiently address the impacts of the proposed alternatives to be able to make detailed comments; 2) did not incorporate or address ideas and comments made by local officials and members of the public; and 3) should have awaited consultations with the U.S. Fish and Wildlife over the impacts on federal public lands before being released to the public for comments.

In addition, Sierra Club was disappointed that pre-draft EIS public scoping meetings were not held before releasing the Draft EIS. As we argued in our scoping comments, the Department of Homeland Security should prepare a programmatic EIS over the entire proposed border tactical infrastructure rather than undertake a piecemeal approach where some regions receive EAs, some receive an EIS, and some receive virtually no analysis. In previous comments, we have also voiced our opinion that the Homeland Security Director should not consider evoking powers granted under the REAL ID Act to waive environmental and other laws in order to proceed with construction of physical infrastructure. To do so in South Texas, for example, would contradict the present process and the public input that the Department is receiving on this issue.

While we appreciate the fact that the Department of Homeland Security has prepared this draft EIS and is following the NEPA process thus far in that regard – though in our

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view in a "fast-tracked" manner – we believe that recent statutory changes make it imperative that Homeland Security scrap the referenced document and begin anew. Recent changes enacted by the U.S. Congress cause the entire EIS process to be called into question, as new requirements have been added onto the process of implementing the original legislation requiring that a border fence be constructed in certain areas along the U.S.–Mexico border.

We believe that given this new, more flexible direction from the U.S. Congress, the public is ill-served by following the course begun with the issuance of the notice of availability of the Draft EIS. *Instead, the Department of Homeland Security should voluntarily withdraw the Draft EIS and begin a new consultation process with the public and local officials to design a more realistic deterrent strategy that takes into account the local wishes and impacts of "physical" fences on the environment and local economy.* We are not suggesting that some of the information in the Draft EIS be discarded, but that the information should be used in a more inclusive, open approach that matches the spirit of the new legislation.

Specifically, earlier this month, the U.S. Congress passed an Omnibus Appropriations Bill. Section 564 of the Homeland Security section makes the following changes to the original legislation:

- * Homeland Security will not be required to install fencing, barriers, roads, lighting, cameras, or sensors in any particular location along the border without a determination that the use or placement of the resources is the most appropriate means to achieve and maintain operational control over the border.
- * The location of the fence will be determined by the Homeland Security Secretary based upon a determination of where it would be "most practical and effective in deterring smugglers and aliens attempting to gain illegal entry."
- * Two layers of fencing are not longer required.
- * Before building the fence, the Department of Homeland Security must now consult with "the Secretary of the Interior, the Secretary of Agriculture, States, local governments, Indian tribes, and property owners...to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such fencing is to be constructed."
- * States, local governments, and other people affected by the fence will not lose any right of legal action due to the new legislation.

Given this changed circumstance, the most important outcome would be for the Department of Homeland Security to "retire" the November 2007 Draft EIS and begin working on alternatives in consultation with the relevant parties. Any proposed alternatives to the fences should not impact the environment and local economy and should be conducted in a way that respects international human rights.

Specific Comments on Draft EIS and Border Wall Proposal

The Lone Star Chapter of the Sierra Club is officially neutral on immigration policy. Nonetheless, we do have an official position on the three alternative routes of approximately 70 miles of border fence being proposed: we think it is a bad idea and will have unintended consequences which will be harmful to the environment, wildlife, water management, endangered and threatened species, habitat and future plans for land and water conservation. We also believe the border fence will have negative economic consequences on areas trying to promote eco-tourism like the Rio Grande Valley.

More specifically, in resolution approved by the Lone Star Chapter Executive Committee in August 2007, the Lone Star Chapter of the Sierra Club concludes:

"Therefore, be it resolved that the Lone Star Chapter of the Sierra Club opposes the construction of a fence or wall along the international boundary between the United States and Mexico within the state of Texas.

Further, the Lone Star Chapter of the Sierra Club urges the U. S. Department of Homeland Security to explore alternative means to provide border security other than fencing of the type described in the Secure Fence Act. In such endeavor the Lone Star Chapter of the Sierra Club believes that it is imperative that the Department of Homeland Security refrain from invoking the Real ID Act and that the Department instead uphold and obey all of the laws of the United States of America."

Since the passage of the resolution, the Lone Star Chapter of the Sierra Club has assessed the draft EIS for the Lower Rio Grande Valley and reconfirmed that the three routes discussed in Alternatives 2 and 3 would still cause considerable environmental damage and are simply not compatible with existing and future land use plans and wildlife conservation efforts.

EIS/EA process

First of all, the Lone Star Chapter of the Sierra Club recognizes the need for a full-scale and complete Environmental Impact Analysis on all proposed segments, rather than the current mis-match of proposed EIS and EAs coupled with procedures in other areas that have begun construction without these important public and legal processes. We would urge instead that all proposed locations go through a programmatic EIS.

Currently the border wall is planned as a series of separate independent processes, with apparently no large overarching programmatic EIS. While it makes sense to look in detail at each location, we believe that there should be a broader programmatic EIS.

We are particularly concerned with the broad powers given to the Secretary of Homeland Security, since under the Real ID Act the Secretary of Homeland Security has the unilateral authority to "waive all legal requirements such Secretary, in such Secretary's sole discretion, determines necessary to ensure expeditious construction of the barriers and roads" needed to comply with the Secure Fence Act. In California and Arizona this unprecedented power was used to "waive in their entirety" federal laws such as the Endangered Species Act, the Migratory Bird Treaty Act, and the Clean Water Act. While we appreciate that in Texas, this has not yet been implemented, we have grave concerns that if the public scoping process and EIS does lead to a conclusion that the proposed border fence is not compatible with other federal laws and goals, those laws

will simply be waived. A more programmatic approach could help the Department of Homeland Security assess the entire border proposal, rather than piece by piece.

Moreover, we also note that any EIS must also take into consideration other federal and state activities occurring in the same geographic location which could impact the proposed action, and have the potential for cumulative harmful impacts on wildlife, public health and the environment. More specifically, the International Boundary and Water Commission, an arm of the State Department, has just recently completed a draft programmatic EIS on its flood control projects along the Texas-Mexico border and requested public comments on various alternative scenarios. The Lone Star Chapter of the Sierra Club did submit public comments on this proposal. While the final alternative has yet to be selected, there is little doubt that some additional flood control work will be implemented by IBWC on the border, including restoration and enhancement of the levee system, including in areas that are also included in the proposed border fence. In fact, recently, the IBWC received additional funds for levee control through the Omnibus Appropriations Act, meaning the EIS should be addressing this use.

One suggestion would be to collaborate with the IBWC on their plans for the flood control projects so that: 1. The Border Patrol could investigate to what extent the levees themselves might offer an alternative to fences in certain locations; and 2. Agencies could ascertain whether the fences or other physical barriers being considered might compromise the goal and objectives of flood control, particularly if those flood control projects are combined with other management strategies like water quality, conservation and habitat enhancement. Thus, rather than building fences literally right on the border, with potential impacts to habitat, erosion of banks, and water management issues, utilizing the levees themselves while still allowing vegetation between the river and levee system could improve border protection and promote habitat restoration along the river banks. The Border Patrol could also investigate the use of man-made or natural fences outside the immediate flood plain itself inland as an alternative to a fence right on the border.

Screening Criteria for Alternatives

In Section 2.1 – Screening Criteria for Alternatives – the document states under criteria for USBP Operational Requirements that “border fencing must support USBP mission needs to hinder or delay individuals crossing the border illegally.” We believe it should say that “personnel, technology and infrastructure must support USBP mission needs to hinder, delay or capture individuals crossing the border illegally.” Otherwise the very criteria presume that the alternative must include pedestrian fencing.

Alternative Analysis

The Sierra Club was struck by how the analysis of the proposed alternatives was not thorough. For example, under the “no action alternative” it simply stated that while they had to list it by law, it could not be preferred alternative because it would mean no physical infrastructure would be built. However, the analysis fails to consider how changing the way that current personnel and technology is used might be able to meet the agency’s needs.

In Section 2.3. the Draft EIS briefly discusses “alternatives considered but eliminated.”

These include additional USBP agents in lieu of tactical infrastructure. We believe that many of the statements made, such as "The use of physical barriers has been demonstrated to slow cross-border violators and provide USBP agents with additional time to make apprehensions", while referenced, are not sufficiently documented. For example, did the additional time actually lead to more apprehensions? For how long? Without a better explanation of the actual on-the-ground experience of previous projects involving physical barriers, it is impossible to know whether they have been effective in the overall strategy. Thus, we do not believe that the alternative of using more manpower was adequately addressed.

Similarly, when discussing technology as a potential alternative, the document simply states "physical barriers represent the most effective means to control illegal entry into the United States," yet there is no document cited and no proof to back up what appears to us to be an editorial comment not a statement of fact. Similar fallacies are repeated when discussing the option of a native thorny bush. The Draft EIS simply states it would not be effective without any real evidence or comparison with a man-made physical barrier.

While Sierra Club remains officially neutral on the issue of immigration, we agree that neither the fence within the Rio Grande, nor the Brownsville Weir and Reservoir Project is likely a good option, but the idea of raising levees or utilizing the levee system itself might be. Unfortunately it is again summarily dismissed. In fact, the Draft EIS discussing the option of building a fence on top of a concrete-butressed levee – which clearly would impact the work of the IBWC – but does not discuss a non-fence option of utilization of new and improved levees. Again, there is insufficient analysis of these options while other options suggested by the public are not even considered. Thus, the Sierra Club makes the argument that the Draft EIS is incomplete because it only addresses in detail the "no action" and the single and double fence options. Thus, throwing out the draft EIS, consulting with local authorities as per the Omnibus Appropriations Act and the public on other options and beginning anew would be the best outcome of the process.

In addition to these process and programmatic concerns, the Lone Star Chapter of the Sierra Club believes that the proposed fences in all three Texas areas could potentially negatively impact: 1. Riparian woodland and wetland habitat; 2. Threatened, endangered and rare animal and vegetative species; 3. Migratory birds, bats and butterflies, including some threatened and endangered species; 4. Plans to create wildlife corridors; 5. Management plans and natural habitat areas; 6. River flows (as a result of local soil erosion and cut off of local arroyos); 7. Livestock management (due to the loss of foraging and watering areas along the Rio Grande); 8. Enjoyment and study of archaeological, cultural and historic sites; 9. Eco-tourism opportunities in the Rio Grande; and 10. The economies of certain areas (due to the loss of eco-tourism and even legal migration).

While the draft EIS addressed these issues to a certain extent, in many cases, the issues were "punted," stating that special permits would be sought to conduct surveys of US Fish and Wildlife lands that would be impacted by the proposed fences. Some of these issues are discussed further below.

1. Riparian Woodlands, Unique Habitat, and Wildlife Habitat Corridor

In the upper and middle Rio Grande, riparian vegetation that has been undisturbed can include willows, cottonwood, and mesquite, and historically also included desert ash, willows, Berlandier ash, netleaf, hackberry, and little walnut. While most of these native trees and vegetation no longer grace the banks and riparian areas along the Rio Grande, there has been considerable effort to protect certain areas, such as wildlife refuge areas, as well as a more recent attempt to remove salt cedar, including in the areas downstream of the Río Conchos in Presidio County. These efforts could be impeded by the construction of border fences right on the banks of the Río Grande.

In the Lower Rio Grande Valley, the convergence of subtropic, temperate, coastal, and desert influences all occurring in the southernmost tip of Texas has led state, local and federal governments to attempt to preserve these unique and sensitive habitats. While relatively small plots of native brush remain – mainly confined to narrow strips along the Rio Grande – larger tracts have been preserved through wildlife refuge areas and state parks. Other unique features include the interplay between preserved areas and the riparian areas, including inland and coastal wetlands and Resaca features unique to the area. Some of the unique areas include the Lower Rio Grande Valley National Wildlife Refuge, which is still being developed and land still being acquired, the Santa Ana National Wildlife Refuge, the Las Palomas Wildlife Management Area – which has been instrumental for the habitat of white winged doves – the Sabal Palm Grove Sanctuary, which contains the largest and best-preserved remnant of Texas sabal palm forest, and Bentsen-Rio Grande Valley State Park.

Thus, some 88,000 acres of habitat-protected land along the river are the fruit of decades of painstaking cooperation between the Fish and Wildlife Service and nonprofit conservation groups. The partnership poured \$70 million into saving this stretch of habitat along the Rio Grande. Clearing it now to build a fence, then cutting it off from public use would inflict a double blow to the local community.

Similarly, a binational planning effort, the Caminos del Rio Heritage project, is now underway to conserve the unique natural and cultural heritage along the Rio Grande, from the Laredo/Columbia area to the Gulf of Mexico. This "heritage corridor" preservation effort includes two national parks, 196 properties listed on the NRHP, four state parks, and the Lower Rio Grande Valley NWR.

In addition, there has been an effort by working with the IBWC to preserve the carrizo species, both the native and introduced reeds, along the Rio Grande along the border, which in parts helps maintain bank stability while providing habitat. The Border Patrol actions should not contemplate removing these important species.

All of these efforts aimed at preserving important and unique habitats could be endangered by the building of fences.

In addition, there are numerous wetland features in the area that serve important habitat and hydrological functions. Yet the draft EIS fails to detail the potential impacts upon these important features. Thus, the Draft EIS relies on National Wetland Inventory information which is not even complete in the study area. Thus, the draft EIS does not adequately assess the impacts of the proposed routes (A & B) on wetlands, instead

stating it would be done through the Rights of Entry and Special Use Permits with US Fish and Wildlife.

In Chapter 4, "Environmental Consequences," the very real impact of grading roads and constructing fences on hydrological features, riparian habitat and wetlands is discussed although without sufficient detail. It is clear, however, that any of the fence options would result in permanent loss of key habitat and surface water features in both the short and long-term. As such, other alternatives must be considered.

Wildlife

The riparian habitat that is highlighted in the above comments is, of course, home to hundreds of species of mammals, amphibians, reptiles, insects and aquatic species. The Lone Star Chapter of the Sierra Club believes that the proposed fences – and their alternatives -- must be analyzed for their impact on these species common to the different areas. In particular, impacts on the breeding and migration habits of key species must be identified. We are particularly concerned with the use of bright lights and fencing and its impacts on nocturnal species such as bats. This is, of course, of even greater concern for those species that are threatened or endangered.

Yet the Draft EIS relies on a quick October 2007 survey to determine the presence of wildlife in the proposed fence route which is clearly inadequate. Much greater analysis would be required.

In addition, when discussing the environmental consequences in Chapter 4 on wildlife, there is no discussion of how lighting would impact the many nocturnal species – such as bats and owls– which inhabit the area.

Endangered Species

While there are numerous threatened and endangered species in the area impacted by the proposed fences, of particular concern are the jaguarundi and ocelot, species which are unique to this area of the world. Chapter 4 – environmental consequences – freely acknowledges that Route A potentially would lead to the removal of 150 acres of habitat associated with the Jaguarundi, while Route B would have a slightly lower impact. The U.S. Fish and Wildlife Service has biologists dedicated to attempting to make these species viable, and any immigration control activities must include discussions with these scientists to assure that these species are not impacted. It appears that the discussed routes could not overcome their adverse impacts on these species' habitats.

Plan for Levees

Sierra Club has worked with federal authorities to develop a more holistic approach to flood control management. Thus, the International Boundary and Water Commission follows vegetation maintenance requirements of 1993 and 2003 Biological Opinions, including: mowing limited to the June-August period; maintain 33-foot wildlife corridor on land side of 75-foot maintenance strip, mow 15-foot strip between wildlife corridor and levee from river mile 62.5 to river mile 28; mowing grass to ground surface except where vegetation must be greater than 3 feet above ground surface as stipulated by the Biological Opinion for protection of threatened or endangered habitat (river mile 62.6 to

river mile 50.6 and river mile 58.7 to river mile 54.0).¹

These unique agreements are intended to allow both the needs of habitat, endangered species and flood control to coexist and lessen the impacts. The proposed border fences upset these existing understandings and agreements.

Any EIS or EA must take into consideration these on-going activities, as well as the already mentioned plans of the IBWC to upgrade its flood control activities, as well as its attempts to manage the waters of the Rio Grande, pursuant to the 1944 treaty with Mexico.

Water Flow

The Sierra Club is concerned that physical barriers on the banks of the Rio Grande could increase local soil erosion, prevent solid banks with stable vegetation, and cut off natural arroyos that feed the river during local rain events. While the Draft EIS acknowledges the potential since sections of the proposed fence would cut across canals and arroyos, statements are made that the fences will be designed to allow water to flow freely. Yet any observation of fences near rivers makes it clear they quickly become favored spots for deposition of sediment and vegetation, blocking water flow, and often induce erosional activity.

Eco-tourism

The Texas Legislature has in recent years supported World Birding Sites in the Rio Grande Valley because Texas state legislators recognize the economic impact that retirees, birders and travelers have on the local economy. The Lower Rio Grande Valley is one of the most popular and productive birding destination in the United States, providing incomes of some \$150 million per year in the McAllen area alone, according to local estimates. Any physical or even symbolic impact on birding will impact this local economic benefit.

The most significant planning effort facing the Rio Grande Valley has been the creation of the World Birding Center (WBC). State, federal and local communities are trying to promote habitat conservation and birding tourism along the state's southern border. Long range plans include opening over 10,000 acres for viewing. In Hidalgo, plans are underway to rehabilitate the Old Hidalgo Pumphouse, an existing historical museum, as part of this new project. Adjacent to the museum property, more than 600 acres of USFWS land is being replanted with native Huisache, Texas Ebony, and Anacua, and will be an important birding tract when opened as part of the WBC.

In addition to birding, winter Texans and others flock to the state parks, wildlife areas and visit Sabal Palm, Anzalduas Park and other habitats to enjoy nature. Thus, there are hike and bike trails in many areas that could be impacted by proposed fences.

There are also important cultural and archeological sites that are visited by both scholars and lay historians that could be impacted by the presence of physical walls and roads.

¹ Information for this section was obtained from the US IBWC, **Draft Programmatic Environmental Impact Statement: Improvements to the USIBWC Rio Grande Flood Control Projects along the Texas-Mexico Border**, July 2007.

These prehistoric and historic sites must also be considered when analyzing the impacts of any border fence or road.

Yet the Draft EIS simply argues that any loss in revenues from locals or tourists who choose not to come to the area would in essence be made up by those who would now feel safer and come to the area. There is absolutely no evidence presented to bolster this claim. Clearly, further study of how fences or physical barriers impact access and enjoyment of natural areas is needed.

Summary

The Lone Star Chapter of the Sierra Club appreciates the opportunity to comment on the proposed plans by the Bureau of Customs and Border Protection to build border fences and roads. While we recognize that Congress has passed an act requiring further border protection efforts, we believe there is flexibility to go slowly with the process, seek public input and adequately consider alternatives to the proposal that will be sensitive to and protective of wildlife and the environment and serve the broader public interest. Indeed, the recent action by Texas Senators Kay Bailey Hutchison and John Cornyn to put more flexibility and public input into the process through the Omnibus Appropriations Act require the Homeland Security to reconsider its present course to build 70 miles of border fence which will have major impacts on the local economy, habitat, wildlife and hydrological features of the area. In short, we argue the Draft EIS should be scrapped and all alternatives – including no physical barriers – be examined.

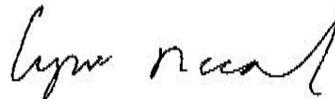
We are supportive of the idea of examining the potential to coordinate the upgrading of the levee system, flood control and habitat restoration with border protection, potentially in place of the need to construct physical walls. As mentioned above, in the examination of ways to improve flood control, the IBWC is also considering expanding their activities to focus on other goals like habitat restoration and water flow augmentation. Border protection should be part of this discussion, but should not supplant it. We would support a wider programmatic EIS for the entire border wall, rather than individual piece by piece EIS and EAs, so that these wider issues could be considered.

We believe that while the draft EIS was incomplete and did not adequately survey or assess wetland and hydrological features, habitat or local economic issues, the draft did provide evidence that the proposed fences have the potential to severely impact endangered and threatened species, upset water management plans, impact aquatic and terrestrial habitats, and harm the ability to preserve these unique ecosystems for future generations. We urge you to delay further consideration of border fences until other alternatives are fully considered, more coordination with local officials and other agencies is sought, more public input is sought and received, and coordination activities with other agencies and their goals are implemented. We believe recent congressional action demands that you take a more thoughtful approach that is compatible with human rights, local economic development and environmental protection and restoration.

Sincerely,



Ken Kramer, Ph. D., Director
Lone Star Chapter, Sierra Club



Cyrus Reed, Ph.D
Policy Consultant

cc:

The Honorable John Cornyn
The Honorable Kay Bailey Hutchison
The Honorable Henry Cuellar
The Honorable Rubén Hinojosa
The Honorable Solomon Ortiz
The Honorable Ciro Rodriguez
The Honorable Silvestre Reyes
The Honorable Eddie Lucio, Jr.
The Honorable "Chuy" Hinojosa
The Honorable Carlos Uresti
The Honorable Judith Zaffarini
The Honorable Eliot Shapleigh
The Honorable Kino Flores
The Honorable Rene Oliveira
The Honorable Eddie Lucio, III
The Honorable Mando Martinez
The Honorable Aaron Peña
The Honorable Veronica Gonzalez
The Honorable Pete Gallego
The Honorable Ryan Guillen
The Honorable Richard Raymond
The Honorable Tracy King



Friends
of the
Wildlife Corridor

Rio Grande Valley Tactile Infrastructure EIS
C/O e2M
2751 Prosperity Avenue
Ste. 200
Fairfax, Virginia 22031

December 27, 2007

Re: RGV Sector EIS

To Whom It May Concern:

The following comments are being submitted on behalf of Friends of the Wildlife Corridor (FWC), a non-profit corporation located in Alamo, Hildalgo County, Texas. These comments were prepared in conjunction with comments prepared by Frontera Audubon Society; a non-profit corporation located in Weslaco, Hildalgo County, Texas and in many ways reflects the same if not identical issues. These remarks are in response to U.S. Customs and Border Protection's (CBP) published Draft *Environmental Impact Statement for Construction, Maintenance, and Operation of Tactile Infrastructure Rio Grande Valley Sector, Texas* (DEIS). The CBP is preparing its Environmental Impact Study as part of its obligations under the National Environmental Policy Act (NEPA). NEPA serves as an umbrella through which CBP will meet its statutory requirements relative to all applicable Federal laws and Executive Orders as it plans for the implementation of the foregoing proposed action (PA). Public reviews and comments are incorporated into the NEPA process by law and we appreciate the opportunity to participate.

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The purpose of the PA is to "increase border security...through the construction, operation, and maintenance of tactile infrastructure in the form of fences, roads, and supporting technological and tactical assets". CBP proposes to accomplish this objective in part by constructing twenty-one discontinuous segments of fencing totaling approximately 70 miles along our international border with Mexico. While we can appreciate CBP's obligations to carryout its mission and congressional mandates, it is our opinion that the PA conflicts with our own mission and the mission of the Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR).

The FWC ardently supports the mission and goals of the LRGVNWR and indeed the entire South Texas Refuge Complex (consisting of the Laguna Atascosa, Lower Rio Grande Valley, and Santa Ana National Wildlife Refuges). It is our hope that through the comment process these conflicts can at least be addressed. We trust that CBP will commit to working together with the FWC and the United States Fish and Wildlife Service (USFWS) to resolve mission conflicts and reach an agreement wherein these differences can be reconciled in part, if not in their entirety. Of the alternatives offered in the DEIS our preferred option, is Alternative 1 the "No Action Alternative." However, we encourage the CBP to explore other Alternatives in the hope that this might provide additional options to collaborate on common ground.

**Friends of the
Wildlife Corridor**
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One of the goals of the LRGVNWR is the preservation and restoration of a unique and intricate blend of eleven distinct ecological communities. These communities extend some 275 miles along the Rio Grande from Falcon Dam in Starr County, Texas to the Gulf of Mexico. Biologists have formally defined this region as the Matamoran District of the Tamaulipan Biotic Province. It is found only in the Lower



Friends of the Wildlife Corridor

Rio Grande Valley of south Texas and northeastern Mexico and it represents one of the most diverse and most threatened biological systems in the United States (Tamaulipan Brushland of the Lower Rio Grande Valley of South Texas: Description, Human Impacts, and Management Options, USFWS, 1988).

The exceptional diversity present in this region is the result of a landscape largely devoid of any significant natural barriers, which allows for the merging of temperate, coastal, tropical and desert climatic influences, and their associated floral and faunal elements. Historically species from these various systems mingled freely along natural travel corridors. The Rio Grande represents the primary east-west wildlife pathway while north-south movements were along the Bordas, Scarp and various riparian systems feeding into the Rio Grande, including the Rio Alamo and San Juan Rivers emanating from the mountainous regions of northern Mexico. As species traversed these corridors into the Valley, they were gathered into a complex mosaic of habitats. Contributing to this complexity was the Rio Grande's circuitous channel that cut, abandon, and then re-cut through the landscape. Annual flood cycles nurtured these communities, which were further influenced by periodic tropical storms and hurricanes, interspersed with periods of extreme drought.

Flood controls along the Rio Grande have largely eliminated the yearly cycle of floods while modern highways, and agricultural and urban development have severed the wildlife travel routes to and from the four cardinal points. In addition, these same activities removed 95% of the native vegetation. Consequently, a USFWS report in 1988 identified the entire biological community as being in need of immediate protection because of habitat loss and fragmentation. In 1979, the United States Congress established and authorized the LRGVNR to acquire up to 132,500 acres of land to accomplish this goal.

Over the course of the last 27 years USFWS, Texas Parks and Wildlife (TPWD), the Texas Nature Conservancy (TNC), private landowners and other interest groups have worked in concert to provide that protection. Together they have invested a considerable amount of effort and an estimated 80 to 90 million dollars in acquiring parcels representative of various ecological communities. Today 90,000 acres are currently under the care and management of the LRGVNR. However, the tracts are not contiguous. If the biodiversity and uniqueness of this ecological system is to be preserved these disparate tracts need to be interconnected. They are crucial elements in the overall mission of the LRGVNR and the South Texas Refuge Complex. In our opinion the PA, as proposed, including the fence, patrol and access roads and

Mission Statement: Friends of the Wildlife Corridor supports environmental education and resource management programs for Santa Ana and Lower Rio Grande Valley National Wildlife refuges. It also provides financial assistance for other wildlife oriented public use programs in the National Wildlife Refuge System



Friends of the Wildlife Corridor

estimated 450 lights and other supporting infrastructures, is in direct conflict with the our goals or USFWS goals of acquiring, maintaining and restoring habitats and connecting those habitats via wildlife corridors.

FWC's comments are directed primarily to CBP's preferred route - Alternative 2, Route B as follows:

1) Page ES-4: Land Use - Alternative 2 Routes A and B concludes, "Short-and long-term minor adverse and long-term beneficial impacts would occur".

Response: FWC does not recognize beneficial impacts to land use under the current version of the PA. Fencing will in all likelihood hinder managers' ability to conduct their activities in an efficient and productive fashion and. Fencing may also be detrimental to said activities and actually endanger managers' and other personnel in case of wild fires or flooding by trapping or otherwise impeding or preventing their ability to exit the property in an expeditious fashion. We believe that the conclusion should be changed to read "short to long-term moderate to major adverse impacts would be expected" in this section and wherever else "Land Use" impacts for Alternative 2: Routes A and B are noted in the DEIS.

2) Page ES-4: Water Resources - Alternative 2 Routes A and B concludes that "short-and long-term negligible to minor adverse impacts would be expected".

Response: The Rio Grande is the primary water resource for many forms of wildlife and FWC is of the opinion that the PA will isolate this and other scarce water resources resulting in "short to long-term moderate to major adverse impacts to wildlife." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Water Resources," are noted in the DEIS.

3) Page ES-5: Vegetation - Alternative 2 Routes A and B concludes, "short-and long-term negligible to major beneficial and adverse impacts would be expected."

Response: Fragmentation and loss of habitat are the most frequently cited conservation issues in the Rio Grande Valley by USFWS (1988; Biological Opinion (BO) 2003), TPWD's *Texas Comprehensive Wildlife Conservation Strategy 2005 - 2010* (CWC, 2005) and other environmental groups. The PA would only exacerbate those issues. Efforts by USFWS, TPWD, and various other private and public entities to reforest tracts with native plants species represents one of the most important

Mission Statement: Friends of the Wildlife Corridor supports environmental education and resource management programs for Santa Ana and Lower Rio Grande Valley National Wildlife refuges. It also provides financial assistance for other wildlife oriented public use programs in the National Wildlife Refuge System



Friends of the Wildlife Corridor

Response cont: conservation initiatives in the region. Their efforts over the course of the last 27 years have received national and international praise and USFWS considers this work to be a top management priority for the combined South Texas Refuge Complex (includes Laguna Atascosa, Lower Rio Grande and Santa Ana National Wildlife Refuges).

FWC, fails to see any beneficial impacts to vegetation because of the PA, is of the opinion that the accompanying fragmentation and clearing of habitat is counter-productive to efforts to restore native habitats, and will only result in "short to long-term moderate to major adverse impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Vegetation," are noted in the DEIS.

4) Page ES-5: Wildlife and Aquatic Resources - Alternative 2 Routes A and B concludes, "short-and long-term negligible to moderate adverse and major beneficial impacts would be expected."

Response: The FWC fails to see any beneficial impacts to wildlife and aquatic resources because of the PA. Furthermore, the fence along with lights, generators, patrol roads and access roads will only heightened the risk of wildlife fatalities; damage, destroy, degraded or otherwise compromise existing and potential wildlife corridors, wetlands, and nesting and breeding habitats. Therefore, the fragmentation and clearing of habitat will result in "short to long-term moderate to major adverse impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Wildlife and Aquatic Resources," are noted in the DEIS.

5) Page ES-5: Special Status Species - Alternative 2 Routes A and B concludes, that "short-and long-term minor to moderate adverse and long-term negligible to minor beneficial impacts would be expected."

Response: FWC fails to see any beneficial impacts to special status species (listed as endangered or threatened by USFWS). The FWC recognize that only those species listed by USFWS are afforded Federal protection. TPWD (CWC, 2005) and *The United States Watch List of Birds of Conservation Concern* (2007, Watchlist) however, note a substantial number of additional species of concern. These species should be referenced in the DEIS and it is the FWC's opinion that CBP should consult with the local USFWS field offices, TPWD wildlife resource managers and any other applicable private parties and institutions with relevant information regarding the.

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Response cont: management of federally listed special status species or state and/or privately listed species of concern.

In our opinion special status species, and other species of concern will suffer "short to long-term moderate to major adverse impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Special Status Species," are noted in the DEIS.

6) Page ES-6: Socioeconomic Resources, Environmental Justice, and Safety Alternative 2 Routes A and B concludes, that "short-and long-term minor to moderate adverse and short-term beneficial impacts would be expected."

Response: Ecotourists, come to the Valley for birding, butterfly watching, canoeing, and wildlife viewing and contribute an estimated \$120 to 125 million dollars to the local economy. The PA will result in the loss of habitat, and limit or restrict access to Wildlife Management Areas, National Wildlife Refuges, and privately owned wildlife sanctuaries. Furthermore, FWC supports its environmental education and resource management programs in part by running canoeing trips along the river. Wildlife viewing from the river is one of the best ways to observe certain species and provides a unique experience for visitors to the Valley as well as to members of our community. In our opinion socioeconomic resources, environmental justice, and safety issues, will suffer "short to long-term moderate to major adverse impacts and negligible short-term beneficial impacts." This change is recommended wherever else Alternative 2: Routes A and B, impacts to "Socioeconomic Resources, Environmental Justice, and Safety," are noted in the DEIS.

7) Page 1-5, lines 23-34 should also include the Coastal Zone Management Act of 1972; the National Wildlife Refuge Administration Act of 1966; the National Wildlife Refuge System Improvement Act of 1997.

8) Page 1-6, Table 1-1 "Major Permits, Approvals, and Interagency Coordination" should include international agencies created because of International Treaties including the International Boundary and Water Commission (IBWC) and the Commission for Environmental Cooperation (CEC) created under the terms of the North American Agreement on Environmental Cooperation (NAAEC). The NAAEC compliments the environmental provisions of the North American Free Trade Agreement (NAFTA). Given that both agencies have a vested and legally binding

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Response cont: interests in border issues FWC feels they should be invited to become a cooperating agencies with regard to NEPA and the PA.

9) Page 1-7, lines 35 - 41 and page 1-8, lines 3-10 notes that the PA and the DEIS is complimentary to the EIS for Operation Rio Grande (DHS 2004) and incorporated by reference.

Response: FWC also expects the Defenders of Wildlife v. Meissner settlement agreement (2000) and the subsequent USFWS Biological Opinion (2003) produced along with the Operation Rio Grande EIS are also incorporated by reference and that the agreements therein still stand as appropriate.

10) Page 2-11 through 2-12 "Alternatives Considered But Eliminated From Further Detailed Analysis" appear to have not undergone any detailed analysis at all. Alternatives including "Additional USBP Agents in Lieu of Tactile Infrastructure", Technology in Lieu of..." and Native Thorny Brush in Lieu of..." are simply dismissed with little or no quantitative data to backup this decision.

FWCS urge CBP to reconsider and evaluate the combined use of additional USBP Agents, Technology, and Native Thorny Brush in Lieu of Tactile infrastructure as a reasonable Alternative to use in lieu of or as supplements to fencing. Such strategies may be effective and cost efficient along existing public corridors such as U.S. Highway 281, the "Military Highway", or other similar venues.

11) Pages 3-25 - 29 and Appendix I: Draft Biological Survey Report (page 9) provide only scant information on the overall climatic regimes and their influence on the mixture of ecosystems. For example, there is no discussion of the frequency of major storm events (including tropical storms and hurricanes) in the region and the extreme variability in the timing and amount of precipitation and the chance of flooding because of these events. Debris accumulations along the fence - even a semi permeable fence - will exacerbate the damage and dangers of flood events and potentially affect the integrity of existing flood control levees thereby endangering communities on both sides of the international border. CBP should address the lack of quantifiable hydrological data and pre-engineered fence designs (which are not tailored to the Valley's unique environments) as soon as possible and before the construction of any fencing.

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12) Page 3-30, lines 4-6 state that " the LRGVNR, established February 2, 1979, is a component of a multipartner effort attempting to protect blocks of rare and unique habitat, known locally as a wildlife corridor.

Response: FAS would include as a partner in this endeavor the Mexican government and the Binational Lower Rio Bravo / Rio Grande Ecosystem Team the goal of which is to establish a corridor between the Laguna Atascosa NWR and privately owned ranchlands to similar properties in Mexico.

13) Page 3-25, lines 16 - 41; page 3-26, lines 1-11; 4-28, lines 25-38 all describe jaguarundi and ocelot habitat and ecology and possible impacts as the result of the PA.

Response: FAS suggest a more detailed description of jaguarundi habitat to include the fact that they are known to use "53.0% mature forests and 47% pasture-grassland..." and " open areas for hunting and sometimes resting, but if threatened with a potential danger, they sought cover in brush areas" (USFWS - BO, 2003). In addition FAS does not agree with the DEIS conclusion on page 4-28, lines 30-32 that "the short-and long-term loss of potential habitat for these species is anticipated to result in short-and long-term, moderately adverse impacts on ocelots and jaguarundi. It should read long-term major adverse impacts.

14) Pages 3-38, lines 31-38 and page 4-32, lines 17-38; and page 4-33, lines 1-33 all describe habitat and ecology and possible impacts as the result of the PA.

Response: Pages 3-38, lines 31-38 should include an expended discussion of the significance of the migratory corridors that converge within the region. Such a discussion should include an accounting of the number of endangered, threatened, and listed avian species of concern, which utilize those corridors. In addition, the conclusion that a Migratory Bird Depredation Permit will be obtained from USFWS (page 4-33, lines 1-3) is premature and presumptuous. Best Management Practices (BMP), (page 4-32, lines 17 - 38) would not incorporate the scheduling of construction during or immediately before the nesting season. A BMP would instead exercise the option to first consult with USFWS and TPWD wildlife resource managers. The goal being to develop mutually acceptable terms for when and where to commence construction of individual fence segments so as to avoid nesting habitats of all species if possible or, alternatively, for at least those species listed as threatened, endangered, or otherwise listed as species of concern.

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15) Page 4-23, lines 2-6 states that the "removal of large mature native trees of Texas ebony, sabal palm, eastern cottonwood, sugarberry, and honey mesquite would result in long-term, moderate to major adverse impacts, because they are virtually irreplaceable". Same page, lines 26-30 state that the "loss of approximately 125 acres of disturbed floodplain shrubland, woodland, and forest habitat, predominately of honey mesquite, and sugarberry and to a lesser extent sabal palm would result in short-and long-term, moderate to major adverse impacts..."

Response: Impacts should be modified to state "long-term major adverse impacts for both lines 4-5 and lines 28-29.

16) Appendix I Draft Biological Survey Report, section 5.1 Vegetative Classification should include and expanded discussion of the two systems utilized to characterize the study area's biotic communities. Both systems of classification are valid however; it would be useful to be able to correlate the systems and to include a broader discussion of the species typical of those settings. In addition, USFWS has prioritized the habitats they wish to obtain in fulfillment of their mandate to complete the LRGVNR. It would be easier to evaluate the impacts of various fence segments by coordinating the two classificatory schemes and, the various species found therein, along with the USFWS priorities properties list.

Sincerely,

Wayne Bartholomew
Friends of the Wildlife Corridor

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December 28, 2007

Via E-Mail: RGVcomments@BorderFenceNEPA.com

Rio Grande Valley Tactical Infrastructure EIS
c/o e²M
2751 Prosperity Avenue, Ste. 200
Fairfax, Virginia 22031

Re: Comments on the Draft Environmental Impact Statement for Construction, Maintenance, and Operation of Tactical Infrastructure, Rio Grande Valley Sector, Texas

Dear Sir/Madam:

These comments are submitted on behalf of the City of Brownsville and the City of McAllen in response to the Draft "Environmental Impact Statement For Construction, Maintenance, and Operation of Tactical Infrastructure, Rio Grande Valley Sector, Texas", prepared by the U.S. Department of Homeland Security, the U.S. Customs and Border Protection and U.S. Border Patrol, dated November, 2007 (hereinafter "DEIS").

As is explained in greater detail in the body of these comments, the Cities of Brownsville and McAllen believe that the DEIS is legally deficient. The Cities urge in these comments that the DEIS violates the National Environmental Policy Act ("NEPA"). In the sections that follow, certain legal deficiencies will be explored in detail. First, the analysis of cumulative impacts will be discussed followed by transboundary impacts. Then, the analysis of hydrologic impacts of the border wall is discussed. Next, the analysis of alternatives is criticized. And finally, the Endangered Species Act issues are discussed.

I. Cumulative Impacts

It is a well-known requirement of NEPA that cumulative impacts must be analyzed. Cumulative impacts are defined at 40 CFR § 1508.7 and have been the subject of numerous court decisions. The case of *Fritiofson v. Alexander*, 72 F.2d 1225 (5th Cir. 1985) identified the standard for cumulative impact analysis in Texas. The *Fritiofson* case held the following:

Our extensive review of the administrative record reveals that the Corps did not generate a study or report specifically addressing cumulative impacts. Given the CEQ regulations, it seems to us that a meaningful cumulative-effects study must identify: (1) the area in which effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions -- past, proposed, and reasonably foreseeable -- that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate. See *Cabinet Mountains Wilderness/ Scothman's Peak Grizzly Bears v. Peterson*, 222 U.S. App. D.C. 228, 685

F.2d 678, 683-84 (D.C. Cir. 1982). n15 There is no study in the record . . . that approximates this kind of analysis. . .”

Fritiofson 72 F.2d at 1245.

There are several cumulative impacts of concern with the border fence. Perhaps no issue, however, is as compelling as the impact of the fence on wildlife and aquatic resources. Since 1980, the United States Fish and Wildlife Service (“USFWS”) has been attempting to halt the long-term destruction of natural brushland habitat along the Rio Grande Corridor extending from the Gulf of Mexico upriver to Falcon Reservoir. That is the ecological area of concern for purposes of the cumulative impacts analysis, yet that area has not been fully identified or evaluated in the document.

Many of the direct impacts of the proposed border fence will occur within lands that have been purchased and set aside for the specific purpose of preserving the last remaining natural brush habitat. At no place in the cumulative impact analysis is the status of the federal refuge purchase program discussed. At no point in the cumulative impacts analysis is the impact of the fence on this ongoing federal acquisition project evaluated. For example, how does the fence relate to the management and success of the 113 individual tracts totaling 88,044 acres purchased to date by the USFWS? It is our understanding that purchase of an additional 130,000 acres has been authorized. What are the impacts from the fence on these additional properties?

The protected lands of the refuge have significant biological diversity that is not mentioned in Section 5.7 of the cumulative impact analysis. There are over 500 species of birds, about 300 species of butterflies, over 100 species of reptiles and amphibians, and about 80 species of mammals known to occur in the lower Rio Grande valley and adjacent Gulf of Mexico coastal waters. Presently, almost 800 plant species have been documented on the refuge lands. This tremendous biodiversity is a major ecological and economic resource to the Rio Grande Valley. The question is – what will happen to this biological diversity and to the attempts to preserve this biodiversity if the fence is built? It is reasonable for Valley residents to expect an answer to that question – one that is scientifically derived and defensible. Instead, we are told that “minor to moderate impacts” on wildlife and species are expected with no explanation of how such a determination was made. Simply stated, this analysis is not based on science, yet science was promised by NEPA.

The deficiency of the cumulative impacts analysis continues into Section 5.8 that addresses “special status species”, meaning those with special status under either federal or state law. Such species includes endangered and threatened species and migratory birds. Section 5.8 exhibits the same absence of scientific evaluation of impact. For example, it is identified that approximately 150 acres of jaguarundi and ocelot habitat would be lost, and such loss is called a moderate to major adverse impact. But that does not identify the real issue – will the future of the species be threatened by the cumulative impacts of this action plus other past, present and reasonably foreseeable future impacts. The DEIS does not contain a draft Biological Assessment or Draft Biological Opinion so the reader has no information upon which to evaluate the extent

of the harm to these two species and to others. However, it is worth noting that the definition of cumulative impacts under NEPA is different – more expansive than – the definition of cumulative impacts under the ESA. There are also major deficiencies with respect to migratory birds, and for most of these birds there will not be a later BA or BO. With respect to migratory birds, we are only told there could be substantial adverse impacts without any indication which of the bird species would be negatively affected, among other things.

The habitat impacted by the proposed border fence is among the most unique and important in the United States. The cumulative impact analysis should clearly point this out and clearly put the role of the border fence into perspective relative to these efforts to save this last remaining brushland and riparian habitat along the Rio Grande corridor. The DEIS fails to address these issues in a meaningful way.

II. Transboundary impacts

The transboundary NEPA impacts (e.g. those occurring on the Mexican side of the river) must be considered and were not. These should be identified and considered, with the affected ecosystem being the native brush and riverine riparian habitat that is of concern along the Rio Grande. Cases have found that NEPA's coverage applies to the impacts of covered actions that occur beyond the United States's borders. *Swinomish Tribal Cmty. v. Federal Energy Regulatory Comm'n*, 627 F.2d 499 (D.C. Cir. 1980) (impacts in Canada); *Wilderness Soc'y v. Morton*, 463 F.2d 1261 (D.C. Cir. 1972).

In this regard, the CEQ has issued a Memorandum that provides CEQ's views on how agencies should consider transboundary impacts. Council on Environmental Quality, *Memorandum to Heads of Agencies on the Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Effects* (July 1, 1997). It states:

... based on legal and policy considerations, CEQ has determined that agencies must include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States....

NEPA requires agencies to include analysis of reasonably foreseeable transboundary effects of proposed actions in their analysis of proposed actions in the United States. Such effects are best identified during the scoping stage, and should be analyzed to the best of the agency's ability using reasonably available information. Such analysis should be included in the EA or EIS prepared for the proposed action. . .

Agencies should be particularly alert to actions that may affect migratory species, air quality, watersheds, and other components of the natural ecosystem that cross borders, as well as to interrelated social and economic effects.

This language clearly applies to this fence, and it reasonably would be analyzed as a direct, indirect and cumulative impact, adding the cumulative habitat loss in Mexico as a key issue in the overall ecological health of the Rio Grande corridor.

The Lower Rio Grande/Rio Bravo Binational Ecosystem Group has been working for several years to establish an international wildlife corridor extending from Falcon Dam to Laguna Madre north and south of the border to establish wildlife corridor linkages between the refuges in the United States along the border and the natural protected areas in Mexico. An Memorandum of Understanding (“MOU”) with agencies from the States of Tamaulipas and Nuevo Leon, Mexico along with Texas Parks and Wildlife and certain NGOs has been negotiated and is awaiting final signature. The long-term viability and realization of the promise of this corridor is threatened by this proposed border fence. At the least, this transnational impact issue should be fully and fairly discussed and disclosed.

III. Deficient Hydrologic Impact Analysis

Another area of deficiency concerns the analysis of hydrologic impacts of the construction of the border wall. In this regard, Lawrence G. Dunbar, a Registered Professional Engineer in the State of Texas, was contracted to undertake a review of the hydrologic analysis in the DEIS. He has found significant deficiencies in the DEIS analysis. His report is attached as Exhibit 1.

One of the most important of Mr. Dunbar’s findings is that detailed hydrologic information is missing from the DEIS. It is paramount that a determination be made of the potential impacts of the proposed fence on flooding in Texas and Mexico. The DEIS contains no map of the 100 year flood plain or 100 year floodway of the Rio Grande. No flood elevations are specified. It is impossible to identify whether the border wall is being constructed within the floodplain or the floodway or both. If it is being constructed within the floodway, then the issue of the impact of such action is of paramount concern because the fence can direct flood flows, even if water can flow through the fence.

A detailed hydrologic analysis of the Rio Grande flood plain and floodway in both the United States and Mexico should be presented in the DEIS, along with a map showing the location of the proposed wall vis-a-vis the flood plain and the floodway. If the wall is within the floodway, then the effect of the alteration of riverine flow in the United States and Mexico must be presented. There are highly urbanized areas adjacent to, upstream and downstream of the places where the border fence is proposed to be constructed. If the floodway is constricted, additional flood water will appear elsewhere. It is important to know if the areas subject to the 100 and 500 year floods will be increased as a result of the placement of the wall. Without such a hydrologic analysis, answers cannot be given with any degree of scientific or engineering confidence.

In many places, the DEIS identifies that certain types of studies or information either was not developed or was not available. Such a response is simply unacceptable in an environmental impact statement. The purpose of this document is to prepare such an analysis, not to explain that such analyses had not been prepared due to time or budgetary constraints.

Executive Order 11988 was adopted in 1977 and states the following:

Section 2.

In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)

(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain--for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The analysis of impacts does not contain the information required in Section 2(a)(1) and the analysis of alternatives does not contain the information required by Section 2(a)(2). On page 4-18, the conclusory statement is made that "USBP has determined that Sections O-1 to O-3 cannot be practicably located outside of the floodplain". There is no explanation and no back-up information to support such a conclusion. Conclusory statements without documentation do not suffice for NEPA compliance. These deficiencies must be addressed.

Additionally, there are several treaties with Mexico involving the boundary between our two countries as well as the Rio Grande. There is no discussion in the DEIS about transboundary hydrologic impacts and/or boundary issues arising from potential displacement of flood waters. There is no discussion about any permitting requirements of the International Boundary and Water Commission. A statement is made that the IBWC will ensure that design and placement of the proposed tactical infrastructure does not impact flood control processes and does not violate treaty obligations between the United States and Mexico at p. 1-10.

On July 27, 2000, the IBWC issued a United States Section Directive regarding the review, approval and inspection of construction activities within the limits of the United States Section, International Boundary and Water Commission ("USIBWC") floodways maintained and operated by the USIBWC. This "Criteria For Construction Activities Within the Limits of USIBWC Floodways" contains specific criteria for construction of fences within the floodway that does not appear to be met by the fence proposed to be constructed under either alternative evaluated in the DEIS.

Additionally, there is a requirement for coordination with Mexico under the 1970 Boundary Treaty, 23 UST 371. Under these provisions, the Mexican Section of the IBWC is required to join with the U.S. Section to approve any activities within the design floodplain of the Rio Grande to assure that their construction will not cause deflection or obstruction of the normal or flood flows of those international boundary rivers. Additionally, the IBWC under provisions of the 1944 Water Treaty between the U.S. and Mexico must be assured that the construction will not interfere with the operation of IBWC flood control projects. Among other things, this would include the maintenance of the integrity of the levee system for any fence construction atop the existing levees.

Mr. Dunbar in his Expert Report sets out a number of concerns about the disclosure of impacts in the DEIS and compliance with IBWC requirements. These issues are not trivial, but instead are key elements of a border relationship such as currently exists in the Rio Grande Valley. As a matter of policy, we should not flood our neighbors across the border as well as those of us living within the United States. As a matter of international treaty obligation, we are required to take no such action without prior approval of Mexico if not the prior approval of local governments affected by such action. Unless and until such approval is secured from Mexico, this project should not move forward.

IV. Analysis of Alternatives

NEPA requires federal agencies to consider alternatives to their proposed actions as well as their environmental impacts. The alternatives requirement implements NEPA's environmental policies. It requires federal agencies to consider whether they can carry out their proposed action in a less environmentally damaging manner and whether alternatives exist that make the action unnecessary. Indeed, the Council on Environmental Quality ("CEQ") has described the alternatives requirement as the "heart" of the environmental impact statement. 40 C.F.R. §

1502.14. Courts have referred to the alternatives requirement as the “linchpin” of the impact statement. *Monroe County Conservation Council, Inc. v. Volpe*, 472 F.2d 693 (2d Cir. 1972). See also *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068 (1st Cir. 1980) (NEPA’s “primary” procedural mechanism is impact statement discussing alternatives).

NEPA contains two provisions requiring a discussion of alternatives. The provision requiring the preparation of impact statements requires a discussion of “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). Another provision requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E),

CEQ regulations state that agencies are to “rigorously explore and objectively evaluate all reasonable alternatives,” and to explain why any alternatives were eliminated. 40 C.F.R. § 1502.14(a). The regulations also state that agencies are to consider “reasonable alternatives not within the jurisdiction of the lead agency,” 40 C.F.R. § 1502.14(c), and the no-action alternative. 40 C.F.R. § 1502.14(d). This directive is elaborated in CEQ’s definition of the scope of an impact statement. The definition requires federal agencies to discuss the no-action alternative, other “reasonable courses of action,” and mitigation measures not in the proposed action. 40 C.F.R. § 1508.25(b).

In the Draft EIS on the proposed border wall, the agencies charged with preparing this EIS have eliminated all but three alternatives. DEIS at Section 2.3. There are two alternative types of border fence (Alternative 2, routes A and B, and Alternative 3), and the no action alternative (Alternative 1). DEIS at Section 2.2. No other alternative is evaluated in detail. This failure to provide a comparative analysis of alternative ways of achieving the project purpose is a violation of NEPA. Essentially, the decision was made to build a fence before the DEIS was prepared. It is nothing more than an after-the-fact justification rather than an honest and objective view of alternatives.

The discussion of alternatives eliminates most alternatives from further study because they do not represent a physical barrier. DEIS at Section 2.3. No attempt was made to put together combinations of technology and personnel to provide a more practical and operational alternative. No attempt was made to fashion an alternative that addressed the findings of the Congressional Research Services (“CRS”) Report for Congress “Border Security: Barriers Along the U.S. International Border” (updated June 5, 2007). The CRS report identified that the existing border fences had no overall effect on the level of attempted illegal border crossings because migrants simply moved their crossing points to unfenced locations. If the DEIS had not summarily dismissed all the non-fence alternatives, it is possible that the problems of effectiveness, fence design and location, diplomatic ramifications, environmental consequences, and unintended consequences (as detailed in the CRS Report) could have been better addressed by another alternative. For example, some of the alternatives suggested during scoping might have reduced or eliminated the need to construct and maintain all or parts of the fence, while still providing operational control over a greater length of the border. No discussion at all was given

to a program to establish a worker program in the United States to diminish the number of illegal crossings. Essentially, the agencies have established screening criteria for alternatives that eliminate all alternatives but a fence of some design, along portions of the border area. Such an approach violates the alternative analysis requirement that is the 'heart' of NEPA.

The Real ID Act allows Sec. Chertoff to waive NEPA and any other law in order to construct the fence. If it is the intention of the Secretary to waive NEPA, it would seem reasonable to waive it now rather than force a prolonged disagreement over alternatives and other impacts, only to see the argument ended by the issuance of waiver as was done in Yuma, San Diego and San Pedro.

V. Endangered Species Act

There is inadequate information in the DEIS to effectively evaluate the harm that may in fact occur to endangered species if the fence is constructed. According to documentation included within the DEIS, the biological assessment and biological opinion of impacts will be appended to the FEIS. This violates the full disclosure requirements under NEPA. The public has a right to see these analyses as part of the EIS review process.

Major concerns exist regarding potential jeopardy to any number of federally listed fauna and flora. There are also issues related to past biological opinions and the relationship of those past actions to the currently proposed action. This is a form of cumulative impact that was not considered or evaluated in the environmental effects section of the DEIS. This analysis should be undertaken for each endangered species potentially impacted by the proposed border fence.

VI. Conclusion

As currently written, the DEIS is legally deficient. The important issue is whether Sec. Chertoff will waive the applicable laws and regulations to clear the way for fence construction or attempt to comply with NEPA, the ESA, Corps wetland regulations and permit requirements and IBWC requirements. In this regard, several representations are made in the document. Consider the following statements made in Section 1.6 of the DEIS:

Applications for work involving the discharge of fill material into waters of the United States and work in, or affecting, a navigable water of the United States will be submitted to the USACE-Galveston District Regulatory Program Branch for review and a decision on issuance of a permit will be reached.

...

USFWS will assist in completing the Section 7 consultation process, identifying the nature and extent of potential effects, and developing measures that would avoid or reduce potential effects on any species of concern. The USFWS will prepare the Biological Assessment and will issue the Biological Opinion (BO) of the potential for jeopardy to species of concern.

...

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In order to proceed with geotechnical studies, and natural and cultural resources surveys prior to fence and road construction on LRGVNWR lands, the USFWS would need to issue special use permits for the proposed studies and surveys to commence.

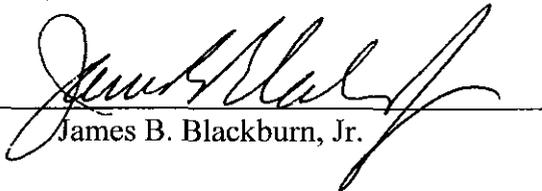
...
[IBWC] will also ensure that design and placement of the proposed tactical infrastructure does not impact flood control process and does not violate treaty obligations between the United States and Mexico.

These promises were made in the DEIS. Representation is made that full compliance with the environmental laws of the U.S. will in fact occur. No mention is made of any special (e.g. shortened) review under the auspices of national security. If a waiver is to be invoked, it should be done sooner rather than later.

Thank you for considering these comments.

Sincerely,

BLACKBURN CARTER, P.C.

by 
James B. Blackburn, Jr.

Enclosure:

Exhibit 1: Report of Lawrence G. Dunbar, P.E.

c: City of Brownsville
c/o Jim Goza, City Attorney
1001 East Elizabeth
Brownsville, Texas 78520

City of McAllen
c/o Kevin Pagan, City Attorney
1300 Houston Ave.
McAllen, Texas 78501

EXHIBIT 1

Lawrence G. Dunbar, P.E.
Water Resources & Environmental Engineer / Consultant
6342 Dew Bridge Dr.
Sugar Land, TX 77479
281-980-2225

December 26, 2007

Mr. James Blackburn
BLACKBURN-CARTER
4709 Austin St.
Houston, TX 77022

Re: Comments on DEIS for Border Fence along Rio Grande River

Dear Mr. Blackburn:

This letter contains my comments on the above referenced matter.

Background

I have been a Registered Professional Engineer in the State of Texas since 1983. I have an undergraduate degree in civil engineering from University of Notre Dame and an M.S. in environmental engineering from the Illinois Institute of Technology. I also have received a J.D. degree in law from the University of Houston. A complete copy of my resume is attached as Exhibit A.

I am an expert in hydrologic and hydraulic analyses, including the use of computer models such as HEC-1, HEC-2 and HEC-RAS. My initial job out of college was with the U.S. Army Corps of Engineers Chicago District where I was involved in hydraulic and hydrologic analyses using computer models in the evaluation and calculation of floodplains for the National Flood Insurance Program. My master's thesis involved developing an unsteady flow model (computer model) for the Illinois River. After working with the Corps, I worked with a Chicago consulting firm before coming to Austin, Texas to join the hydraulics and hydrologic division of the engineering firm Espey, Huston and Associates. Later, I became head of the Espey, Huston water resources group in Houston and then went to work for myself.

I have been previously retained and designated as an expert witness involving various types of hydraulic and hydrologic analyses both in state administrative proceedings, as well as in state and federal court litigation.

I wrote the Drainage Criteria Manual for the Drainage District in Fort Bend County, Texas and am now consulting with the Fort Bend County Drainage District on issues associated with updating the FEMA 100-year flood plain on the Brazos River using the HEC-RAS Model. I am aware of Corps of Engineers rules and regulations associated

with the federal permits at issue in this case, including requirements for environmental impact analysis under the Clear Water Act and National Environmental Policy Act.

During December 2007, I was retained by BlackburnCarter to evaluate the Draft EIS (DEIS) dated November 7, 2007 for the Border Fence being proposed by the Dept. of Homeland Security and the U.S. Border Patrol. In particular, I was asked to review the hydrologic and hydraulic analyses and/or floodplain information contained in the DEIS to determine if it is consistent with and in compliance with NEPA.

Comments

The following are my comments regarding the above-referenced DEIS:

1. FAILURE TO FULLY DISCLOSE IMPACTS ON FLOODPLAINS/FLOODWAYS

The DEIS recognizes and acknowledges the importance of public involvement in the NEPA process in promoting "... open communication between the public and the government..." (DEIS p. 1-6). As part of this process, there is a NEPA requirement of full disclosure. Under NEPA, the DEIS is to fully disclose all potential environmental impacts that might result from the proposed project, including impacts on the floodplains/floodways of the Rio Grande River. The DEIS then becomes the full-disclosure document that "... serves as a public notice regarding the impacts on floodplains ..." associated with the proposed project (DEIS p. 1-7).

The DEIS presents conclusions regarding the potential impacts on the floodplain and/or floodway of the Rio Grande River due to the proposed fence along Sections O-1 thru O-3 (DEIS p. 4-16). However, this DEIS does not disclose where the floodplain or floodway of the Rio Grande River is located in relation to the proposed project along these three sections in order to communicate this information to the public and allow the public to independently determine/verify the potential impacts on the floodplain and/or floodway of the Rio Grande River that may result from the construction of the proposed Border Fence.

It is also stated within the DEIS that the proposed fence (Sections O-4 thru O-21) will NOT be located within the floodplain and/or floodway of the Rio Grande River (DEIS p. 3-24). As such, the DEIS states that there will be "... no impacts for Sections O-4 thru O-21 since construction would be behind the levee system, outside the Rio Grande floodplain..." (DEIS p. 4-16). However, the DEIS does not identify where the levee system is located in relation to the proposed fence.

Without the delineation or location of the floodplain, floodway or even the levee system being included in the DEIS, the public is not provided with the necessary information in order to independently confirm if the potential impacts as stated in the DEIS are true. This failure to fully disclose the location or delineation of the floodplain, floodway or levee system of the Rio Grande River within this DEIS is a fundamental flaw for purposes of NEPA compliance.

I reviewed the floodplain/floodway for the Rio Grande River as determined by the IBWC in its June 2003 Report (“Hydraulic Model of Rio Grande and Floodways within Lower Rio Grande Flood Control Project”). According to this document, there are portions of the proposed Border Fence associated with Sections O-4 thru O-21 that ARE within the floodplain/floodway of the Rio Grande River, contrary to the statements saying otherwise contained in the DEIS.

For example, portions of the proposed fencing along Section O-20 will be located within the floodway as determined by the IBWC in the vicinity of the City of Brownsville Lincoln Park. Likewise, portions of the fencing along Section O-10 will be located within the IBWC floodway in the vicinity of the Progresso International Bridge/FM 1015. Also, portions of the fencing along Section O-6 will be located within the IBWC floodway in the vicinity of Texas Spur 241/US Spur 281.

Locating the proposed fencing within the floodway of the Rio Grande River could significantly impact flood flows and flood levels along those portions of the river on both the US and Mexico sides of the river. FEMA regulations prohibit constructing any obstructions within the floodway of a river or watercourse that would cause ANY increase in the computed 100-year water level associated with the floodway analysis. The proposed fencing as shown in Appendix E of the DEIS would create an obstruction to flow if it were placed within the floodway of the Rio Grande River.

At a minimum, the DEIS should provide an exhibit/figure showing the floodplain and floodway of the Rio Grande River and of any other pertinent watercourses, with the proposed Border Fence project also depicted, in order to demonstrate and disclose the relationship between the location of the fence and the floodplains and floodways.

2. FAILURE TO ESTABLISH IF THERE WILL BE IMPACTS ON FLOODPLAINS

The DEIS also states that “... due to the uncertainty of the methodology, it cannot be determined if portions of the proposed project corridor associated with Sections O-1 and O-2 occur in the 100-year floodplain ...” (DEIS p. 3-23/24). Given this statement, it is clear that the project sponsor does not know what or where is the floodplain of the Rio Grande River in this portion of the project corridor. As such, no one can reach any conclusions or make any decisions regarding the potential impacts on the floodplains of the Rio Grande River, contrary to the requirements of NEPA.

At a minimum, the sponsor of this DEIS is required to determine what and where the floodplain is as it relates to the proposed project. If such a floodplain has not been determined, then a floodplain analysis needs to be conducted. Computer models are available that can be used to conduct such an analysis, such as the Corps of Engineers HEC-RAS one-dimensional backwater model. In fact, the IBWC has conducted such an analysis for the Lower Rio Grande River in June 2003 using this computer model.

3. FAILURE TO DETERMINE NO PRACTICABLE ALTERNATIVE TO BUILDING IN THE FLOODPLAIN AS REQUIRED UNDER E. O. 11988

Since the DEIS does not disclose, identify or locate the floodplain and/or floodway of the Rio Grande River, nor establish for sure if there will be construction in the floodplain/floodway of the Rio Grande River, the sponsor of this project cannot determine if there is a practicable alternative to constructing it in the floodplain, as required by E. O. 11988.

The sponsor of the subject Border Fence project acknowledges that it must comply with various laws, rules and regulations, including Executive Order 11988 involving construction in floodplains. The DEIS notes that "... Executive Order 11988 directs Federal agencies to avoid floodplains unless the agency determines there is no practicable alternative..." (DEIS p. 1-7). The DEIS somehow concludes that Sections O-1 thru O-3 of the proposed project cannot be located outside of the floodplain, and thus no practicable alternative, since the floodplain extends into and through local communities and roads strategic to the operations of the U. S. Border Patrol (DEIS p. 4-18).

This conclusion, however, cannot be reached given the lack of information regarding the floodplain of the Rio Grande River, as noted above. Once the floodplain is determined, delineated and disclosed, then practicable alternatives can be evaluated and discussed, in compliance with E. O. 11988.

4. FAILURE TO INCLUDE MINIMIZATION AND RESTORATION PLANS FOR CONSTRUCTION IN THE FLOODPLAIN AS REQUIRED UNDER E. O. 11988

The DEIS indicates that when the only practicable alternative is to locate a project within the floodplain, Executive Order 11988 requires a specific process be followed, including the requirement to minimize impacts and preserve/restore beneficial values of the floodplain (DEIS p. 1-8). However, the DEIS fails to include any minimization and/or restoration plan as required by E. O. 11988. Instead, the DEIS includes a statement that such a mitigation plan is "... currently undergoing development..." (DEIS p. 1-8).

This lack of information regarding the minimization of floodplain impacts and restoration of beneficial values of the floodplain is contrary to the full disclosure requirement of NEPA. As such, the public is unable to be informed of such information in order to independently review and evaluate any such plan. At a minimum, the DEIS needs to include such information in order to allow the public the opportunity to evaluate and comment on its effectiveness.

5. FAILURE TO FULLY DISCLOSE A PROPOSED DESIGN FOR REVIEW, COMMENT AND EVALUATION

The DEIS notes that the design criteria of the IBWC specifies that at a minimum, the fencing must follow certain requirements, including that the design be "... engineered to not impede the natural flow of surface water..." (DEIS p. 2-7). Furthermore, the DEIS

states that the U.S. section of the IBWC will ensure that the design does not impact flood control processes and does not violate the treaty obligations between the United States and Mexico (DEIS p. 1-10).

However, the DEIS fails to disclose which of the fencing options shown in Appendix E of the DEIS will be selected. In addition, the DEIS fails to disclose if and how the proposed fence will impede the natural flow of surface water or impact flood control processes. This is not full disclosure as required under NEPA. As such, the public is unable to provide an independent review and evaluation of the proposed project design and whether such a design will impede the natural flow of surface water or impact flood control processes.

At a minimum, the DEIS should identify which option(s) of fence design is being proposed and then conduct an evaluation and analysis of the natural surface water drainage patterns in the vicinity of the proposed fence to determine what impacts, if any, would likely occur as a result of the location and design of the proposed fence.

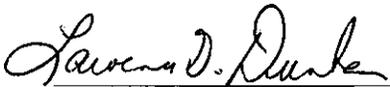
6. FAILURE TO FULLY DISCLOSE LOCATION OF BORDER FENCE IN RELATION TO LEVEE SYSTEM

The DEIS states that under both Routes A and B of Alternative 2, the proposed fencing "... would follow the IBWC levee system associated with the Rio Grande along Sections O-4 thru O-21..." (DEIS p. 2-7). The DEIS also mentions that these sections of the project "... would be constructed and operated behind the levee system..." (DEIS p. 4-16).

However, the DEIS does not disclose exactly where "behind" the IBWC levee system will the proposed fencing be located. This is important because according to Section X of the IBWC Handbook H315 dated July 27, 2000 entitled "Criteria for Construction Activities Within the Limits of the USIBWC Floodways", specific criteria for constructing a fence within the IBWC floodway prohibits any fencing to be placed on the levee slopes or roadway parallel to the levee and requires that there shall be a minimum of 15 feet between the fencing and the toe of the levee. There is also a concern about the structural integrity of the levee if the fence will be located on top of or on the side slope of the levee.

This completes my comments to date regarding the above-referenced DEIS. If you have any questions regarding the above comments, please feel free to contact me.

Sincerely,


Lawrence G. Dunbar, P.E.

Enclosure



Exhibit A

LAWRENCE G. DUNBAR

Sugar Land, Texas 77479

Home: 281/980-2225

Office: 713/782-4646

RESUME

EDUCATION

- J.D. University of Houston Law Center
December, 1989
- M.S. Illinois Institute of Technology
1981 - Environmental Engineering
- B.S. University of Notre Dame
1975 - Civil Engineering

EXPERIENCE (LEGAL)

- 1997 to present Partner
DUNBAR, HARDER & BENSON, L.L.P.
Houston, Texas
- 1994 to 1997 Partner
DUNBAR, PRICE & HARDER
Houston, Texas
- 1990 to 1993 Associate
MORRIS, TINSLEY & SNOWDEN
(after merger in 1992 became Morris, Lendais, Hollrah & Brown)
Houston, Texas
- 1989 to 1990 Associate
EVANS, KOSUT, REED & WITHERSPOON
Houston, Texas

EXPERIENCE (ENGINEERING)

- 1988 to present Private Consultant
WATER RESOURCES/ENVIRONMENTAL ENGINEER
-

1986 to 1988	<u>Water Resource Group</u>
1983 to 1984	ESPEY, HUSTON & ASSOCIATES, INC. Austin/Houston, Texas
1984 to 1985	<u>Engineering Department</u> - (Staff Engineer) INDIANA BOARD OF HEALTH, LAND POLLUTION CONTROL DIVISION
	<u>Dam Inspection and Lake Permitting Section</u> , (Section Head) INDIANA DEPARTMENT OF NATURAL RESOURCES, DIVISION OF WATER
1982	<u>Water Resources Group</u> KEIFER ENGINEER, INC. Chicago, Illinois
1975 to 1981	<u>Hydrology and Hydraulics Branch</u> (Chief, Flood Section) U.S. ARMY CORPS OF ENGINEERS Chicago District

FIELDS OF EXPERIENCE

Legal

Areas of practice include:

- Environmental
- Drainage
- Corporate
- Real Estate
- Tort Litigation (including DTPA)
- Water

Technical

Fields of Experience

- Flood control/drainage
- Stormwater management
- Floodplain management
- Reservoir regulation
- Stream hydrology/hydraulics
- Flood forecasting
- Coastal engineering
- In-stream water quality
- Water supply/distribution
- Wastewater collection
- Hazardous/solid waste management
- Land Development
- Dam/levee design and inspection

Job Assignments

- Planning studies
- Design plans/specifications
- Computer modeling
- Operating/maintenance activities
- Project management
- Supervision of employees
- Permitting activities
- Establishment of design criteria
- Review/interpretation of legislation
- Construction inspection and management
- Marketing of engineering services
- Contract administration and services

Regulatory Agencies Involved

Federal

- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- Federal Emergency Management Agency

State

- Illinois (IDWR, IEPA, ISWS)
- Indiana (IDNR, IBOH)
- Wisconsin (WDNR)
- Texas (TWDB, TCEQ, TPWD)
- Louisiana (LDOTD)

Local

- Numerous cities, counties, utility districts, water districts, levee districts, river authorities, and planning commissions.

Legal Proceedings

- Technical expert for Corps of Engineers during U.S. Supreme Court hearings on Lake Michigan Diversion lawsuit between Illinois and Wisconsin
- Expert witness in federal district court lawsuit concerning flood damages in Odem, Texas
- Expert witness in state district court hearings on establishing lake levels in Indiana
- Expert witness in a Texas Water Commission hearing

concerning water rights dispute and water withdrawal permit

- Expert witness in a Texas state agency hearing concerning a sand and gravel permit involving flooding issues
- Expert witness in a landfill application hearing near Dallas, Texas regarding floodplain issues
- Expert witness in Plaintiff's attorney in drainage case involving subdivision near Dallas, Texas
- Expert witness for Fort Bend County in a case involving localized drainage issues
- Expert witness for Harris County in a contested case hearing involving a proposed landfill in Houston, Texas regarding *floodplain and drainage issues*
- Consultant to plaintiff's attorney in flood case along Greens Bayou involving floodplain issues
- Consultant to defendant's attorney in flood case along Clear Creek involving floodplain issues
- Consultant to plaintiff's attorney in flood case along Spring Creek in Woodlands, Texas
- Consultant to Fort Bend County in case involving county landfill
- Expert witness for defendant's attorney in flood case along Buffalo Bayou
- Expert witness for opponent to Harris County Boot Camp near Katy, Texas regarding floodplain and drainage issues
- Expert witness for Brazoria County in contested case hearing in Juliff, Texas involving landfill application and drainage/flooding issues

PROFESSIONAL ACTIVITIES

Professional Societies and Associations

American Bar Association (Section on Natural Resources, Energy and Environmental Law)

Texas Bar Association (Section on Environmental and Natural Resources Law)

American Society of Civil Engineers (Water Laws Committee)

Technical Publications

"The Effects of Increased Lake Michigan Diversion at Chicago on Downstream Flooding," M.S. Thesis, Illinois Institute of Technology, November 1980

"Hydrologic and Hydraulic Analyses for a Major Urban Flood Control Study," Proceeding of the international Symposium on Urban Hydrology, Hydraulics and Sediment Control, Lexington, Kentucky, July 1982 (with C. Shadie)

"Hydrologic Methodology for Evaluating Urban Development," presented at the national Water Conference, University of Delaware, July 1989 (with Leo Beard)

"Proper Use of Effective Flow Boundaries," presented at the National Water Conference, University of Delaware, July 1989 (with D. Patterson)

Rio Grande Valley Sector EIS

From: Ford Sasser [f.sasser@riobk.com]
To: Rio Grande Valley Sector EIS
Cc:
Subject: Border Fence in the McAllen Area
Attachments:

Sent: Mon 11/19/2007 4:00 PM

Dear Sir,

I understand that there will be a meeting on December 11th at the McAllen Convention Center to discuss the environmental impact that the "Wall" will have on our area. I will be out of town that day but would like to submit this letter to you for consideration. I am a local banker. I ma concerned about what a "Wall" or fence could do to some of my customers that depend on the river for their business. I have farmers that irrigate from the river and I am concerned about how they will get to their irrigation pumps if they do not have access to the river. I have a customer that has a restaurant on the river and a pontoon boat that I finance that he takes dinner guests on rides up and down the river. I am concerned about how his customers will be able to get to his restaurant or how he will be able to get to his boat. I have another customer that has about 80 acres of native brush on the river. His land peninsulas South and since the plan is not to have a "Wall" that snakes along the river, I am concerned that not only will he not be able to get to his property any longer but the wild life will not be able to migrate across his land and get water from the river. Last spring, he and I saw a jaguarondi cat on his property. That is a very rare animal and one that we would certainly hate to see cut off from water.

Thank you for considering my comments. I know the "Wall" is a politically popular project in other areas of the country. Unfortunately, it is not a very practical or workable project and is being pushed by people that do not understand the impact, both economic and environmentally, to our local area.

Ford Sasser

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From: Eric [eellman@rgv.rr.com]
To: Rio Grande Valley Sector EIS
Cc:
Subject: Contact: border wall
Attachments:

Sent: Tue 12/11/2007 7:42 PM

[View As Web Page](#)

First Name: Eric

Middle Initial:

Last Name: Ellman

Address1: 1305 Orange Street

Address2:

Address3:

City: McAllen

State: Texas

ZIP: 78501

Email: eellman@rgv.rr.com

Subject: border wall

Comments: While agreeing that immigration needs to be orderly and controlled, I am extremely concerned about what I consider the government's rush to address the problem with 70 miles of physical fence.

Most of the proposed fence goes through Wildlife Refuge land whose environmental function goes beyond being a simple refuge for plants and animals. Wildlife Refuges are created for public enjoyment and education of the importance of nature. Public access is therefore critical. Not only so that people can enjoy those parcels of land for what they are worth, but so that they can appreciate the need for protecting similar parcels and programs which support the acquisition and protection of such land elsewhere in Texas, the Nation and the World.

Had the Federal Government considered the impact of fences on security for residents who continue to make sue of that land?

Will patrols continue south of the fence? and in sufficient numbers that we are not effectively consigning land between the fence and the border to Mexico and illegal operations?

And have less disruptive, currently available alternatives been thoroughly explored?

Every big city mayor know that the best way to drive away illegal activity is by introducing legal activity. does the EIS evaluate individual sites along hte river where investment in nature and recreation-based activities might deter illegal activity as effectively as a wall?

In particular, does the EIS address the impact of a wall on a potential whitewater kayak training center proposed at the base of Anzalduas Dam?

Does the EIS address the impact of a wall on a potential "Ecotourism Technology Training Center" for which International Relief and Development has recently contracted with Los Caminos del Rio to assess the feasibility for at the USFW "Cottam Tract"?

Both of the forgoing are examples of alternative approaches to deterring criminal activity along the border by attracting legal activity, and thus redirecting smuggling elsewhere and allowing the Border Patrol to focus its efforts.

Additionally, the infrastructure required for kayakers and canoers, bird watchers and bikers to access the river by day would allow the Border Patrol to better access the river by night.

Until the

IP: 64.88.208.162

HOST: 64.88.208.162

Rio Grande Valley Sector EIS

From: [Elisa Garza-Leal \[poems99@yahoo.com\]](mailto:Elisa.Garza-Leal@poems99@yahoo.com) **Sent:** Thu 12/27/2007 4:59 PM
To: [Rio Grande Valley Sector EIS](#)
Cc:
Subject: Re: Rio Grande Valley Tactical Infrastructure EIS
Attachments:

To Whom It May Concern:

My comments focus on the Rio Grande Valley Sector EIS, particularly on the inadequacy, incompleteness, and overall bias of the draft EIS. I understand the importance of securing our borders, and I support tightened security measures such as passport requirements and virtual "fence" monitoring. However, I do not support building walls along our border, for many reasons that I have already outlined and will elaborate on below.

As I stated in my e-mail during the previous comment period, my family owns land that may be impacted by future wall expansions. As a frequent visitor to Los Escobares, a community 4 miles from the proposed Roma wall section, and to Mission, both communities where a number of my relatives reside, I am aware of the environmental, habitat, tourism, economic, aesthetic, and noise level impact a wall will have on the communities of South Texas. In addition, I am intimately familiar with the living conditions of my relatives and other members of these communities.

My first point is on the inadequacy of the draft EIS's assessment on the minority and economic status of the U.S. population that will be affected by border walls. Starr County is one of the poorest in our nation, inhabited overwhelmingly by persons of mixed Spanish, Mexican, and Native American descent. This is true of all of Texas's rural border populations. The draft EIS ignores the fact that all Texas communities where the wall has been proposed are united in opposition to the wall, and to the adverse affects it will have on the people who reside in close proximity to the proposed wall locations. All of the proposed locations will affect poor and minority populations adversely, primarily economically due to reduced tourism to wildlife preserves and to migratory bird locations in rural areas and to shopping destinations in urban areas. In particular, the Roma section of the wall will undermine the historical preservation efforts of that community, and the new World Birding Center, both of which attract much needed tourism dollars. There are serious environmental justice issues that the draft EIS does not address.

The families that will lose their homes and farm land will have few resources to find replacements. Economic recovery is difficult when your yearly family income is less than \$12,000, even with government assistance, which is not mentioned in the draft EIS. In addition, families will be displaced from land that has been in their possession for hundreds of years, as much of the land the government wishes to appropriate was granted to settlers by the Spanish Crown in the 1700's. This heritage cannot be recovered once a wall is built on top of it; when the current adult generation dies, no one will remember their family histories that are tied to land they no longer own.

In addition, the draft EIS presents an incomplete assessment of the environmental impact of the border wall on the habitats of endangered plant and animal species, on the use of migratory bird habitats, the loss of national and state preserve lands, and the destruction of family farm land. In particular, the draft EIS does not adequately address the measures that would be needed to ensure migratory bird nesting sites are not disrupted during the proposed construction period. The draft proposes to begin construction in Spring of 2008, during the nesting period for many migratory birds. This construction will kill many fledgling birds and their parents. Those that do survive will find their habitats nearly destroyed when they return the following winter, leading to additional devastating population losses. This is a violation of the Migratory Bird Treaty Act that is not addressed by the draft EIS.

The economic impact of habitat loss for other animal species results from previous government efforts to ensure the survival of ocelots and jacarundi with wildlife preserves. The wall and its support roads will bisect and cross over habitat for these and other species, affecting their access to water, to genetically diverse mates, and to darkness when night lights are operating. These impacts have not been adequately investigated, and when these animal species decline to extinction, all previous government efforts to preserve them will have been wasted.

My final point addresses the bias of the draft EIS in favor of the proposed wall that neglects other alternatives. The draft EIS does not analyze alternatives and ignores the suggestions offered by the Texas Border Coalition on behalf of the affected communities. Each border community should be able to assess alternative security measures, based on their experiences and knowledge of the particular border security issues in their location. The elected community officials who makeup the Texas Border Coalition have the security interests of their communities, as well as the United States, in the forefront of their minds, as they encounter border issues every day. They have determined that the border wall will be counterproductive to border security goals, in addition to bringing unnecessary environmental and economic consequences.

The government cannot dictate a border wall that its own citizens oppose. You must consider the alternative border security measures, change the draft EIS, and reconsider the construction start date. In the interest of national security, for this generation, and for those yet to come.

Sincerely,

Elisa Garza-Leal, decendant of Marcello Moreno, Spanish Crown Land Grantee
9843 Sagedowne Lane
Houston, TX 77089

Rio Grande Valley Sector EIS <RGVcomments@BorderFenceNEPA.com> wrote:

Thank you for your comments on the scope of the Environmental Impact Statement (EIS) for Construction, Maintenance, and Operation of Tactical Infrastructure, Rio Grande Valley Sector, Texas. U.S. Customs and Border Protection (CBP) published a Notice of Availability (NOA) for the Draft EIS in the Federal Register (72 FR 21, pp. 64663-64), *The Monitor*, *The Brownsville Herald*, *The Valley Morning Star*, *El Nuevo Herald*, *La Frontera* on November 16, 2007.

The Draft EIS is available and can be downloaded at *www.BorderFenceNEPA.com*, *https://ecso.swf.usace.army.mil/Pages/Publicreview.cfm*, or requested by emailing *information@BorderFenceNEPA.com*. To request a hard copy of the Draft EIS, you may call (877) 752-0420. Alternatively, written requests for information may be submitted to Charles McGregor, U.S. Army Corps of Engineers, Engineering and Construction Support Office, 819 Taylor St., Room 3B10, Fort Worth, Texas 76102; fax: (757) 257-7697. The Draft EIS is also available for public viewing at local libraries which are listed on the project Web site.

CBP invites public comment on the Draft EIS. A public open house will be held on December 11, 2007 at the McAllen Convention Center, 700 Convention Center Blvd., McAllen, Texas 78501 (956-681-3800). A second public open house will be held on December 12, 2007 at the Brownsville Events Center, 1 Events Center Blvd., Brownsville, Texas 78521 (956-554-0700). Each public open house will be held from 4:30 p.m. to 8:00 p.m.

Sincerely,
U.S. Customs and Border Protection

Never miss a thing. [Make Yahoo your homepage.](#)

December 31, 2007

Customs and Border Protection
C/O SBI Tactical Infrastructure Program Office
Via E-mail: RGVcomments@BorderFenceNEPA.com

Re: Draft EIS
Rio Grande Valley Sector Construction, Maintenance, and Operation of Tactical Infrastructure

Ladies and Gentlemen:

Pursuant to your request to comment on the Draft Environmental Impact Statement prepared for the above referenced project I offer the following comments:

The Department of Homeland Security (DHS) and Customs and Border Protection (CBP) have violated the National Environmental Policy Act for failing to enjoin other Federal and State agencies that are stakeholders early in the process. This should have taken place as soon as DHS and CBP started planning to build a fence and should be addressed in the DEIS. You didn't even send out letters to State, Federal, County or City agencies that should or could make comments on the DEIS. The Texas Governor's office, the Texas Coastal Coordination Council, which oversees the Texas Coastal Management Plan in compliance with the Federal Coastal Management Plan, The Texas Audubon Society, the Sabal Palm Grove Sanctuary, the National Oceanic and Atmospheric Administration, among a few others stakeholders I may have missed.

The 2001 SPEIS, which is incorporated by reference in this DEIS offers no assurances whatsoever that law enforcement activities along this stretch of the border have not in the past or will not in the future have "no significant impact" on the environment of the Rio Grande Valley Sector. This DEIS fails to address this issue in detail and must.

The DEIS comments that historical and biological surveys which started at the end of October are not complete. Some of these surveys lasted one to two days or five days. This does not afford those of us wanting to comment on any detailed analysis the opportunity to make comments. The DHS and CBP have already contracted to begin surveys as evidenced by the cleaning, grading and staking along the levee system without having completed the DEIS. If the agency of record intends to complete this DEIS soon after the comment period ends, it must prepare a Supplemental EIS to fulfill the requirements of NEPA.

The proposed fencing which includes at least 70 miles of metal walls 16' high which will be supplemented by "virtual" barriers of sensors, mobile towers packed with sophisticated cameras, stadium style lighting, radars and sensors and other technology will cause environmental devastation and only shift, not stem, immigration patterns. The proposed fencing will shift immigration into more remote areas where our area private

wildlife sanctuaries, national wildlife refuges and other open spaces such as Boca Chica beach, private lands and our historical corridor along the Military Highway will be negatively impacted. The DEIS fails to address the adverse impacts this will have on lands outside the fenced areas.

A cost/benefit analysis should be done to determine if the proposed fence would be so costly as to outweigh its benefits which from a local perspective has no benefits.

Public Access

The impact from construction and operation of the proposed fence would have an adverse impact on the freedoms of all Americans to access their property, enjoy our public parks, sanctuaries, wildlife refuges and any and all other properties that would be affected by a border fence in the Rio Grande Valley sector. This goes against the freedoms and guarantees for all Americans provided by the U.S. Constitution.

Cultural/Historical Resources

The impact from construction and operation of the proposed fence would have an adverse impact on the cultural and historical resources in the Rio Grande Valley sector. The fence would cut off access to cultural & historical resources that have been enjoyed by people for centuries, uninhibited by fences and protected by the United States Constitution.

Land Use

The DEIS fails to address the cumulative impact from construction and operation of the proposed fence and the adverse impact on the cultural, historical & environmental resources in the Rio Grande Valley sector and their future growth, i.e. additional land acquisition for wildlife purposes. The DEIS fails to address the cumulative impacts that the physical infrastructure you will build to prevent unlawful entry by aliens into the United States such as additional checkpoints, all weather access roads, and vehicle barriers would cause. While the DEIS mentions that the proposed fencing will shift immigration into more remote areas where our area private wildlife sanctuaries, national wildlife refuges, private lands and other open spaces are located, it fails to consider the impacts to these areas, including the operations of DHS and CBP.

Threatened and Endangered Species

The impact from construction and operation of the proposed fence would have an adverse impact on the wildlife & environmental resources in the Rio Grande Valley sector. There would be habitat fragmentation from permanent Border Patrol infrastructure, and a wall is not the answer. Historically, walls have created what many

call the “balloon effect.” If you build a wall in one area migrants will go around that newly enforced area. We have seen the damage that is a direct effect of immigration policy in the United States on the Organ Pipe Cactus National Monument, in

Southwestern Arizona. It is so dire that the National Park Service has changed its focus from protecting the area to documenting the destruction of its ecosystem. The same goes for Buenos Aires National Wildlife Refuge in Arizona.

These fences will isolate border wildlife and will affect genetic diversity. The strong lights and radar will interfere with nocturnal species, and the construction and traffic along the walls will affect a wider strip of border land than just the fences themselves. The fencing will accelerate the decline of endangered species like the ocelot and jaguarundi.

In addition to the above comments I support the comments prepared and submitted by the No Border Wall group.

Yours truly,

Merriwood Ferguson

Merriwood Ferguson
95 Poinciana Street
Brownsville, Texas 78521

PUBLIC COMMENTS

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NAME: WILLIAM HUDSON
ADDRESS: 1805 EAST RUBEN TORRES
BROWNSVILLE, TEXAS 78526

My name is William Hudson. I'm a resident of Brownsville. I reside at 2300 Coffee Port Road. My mailing address is 1805 East Ruben Torres, Brownsville, 78526. I have been asked to read my -- or make my comments regarding the Environmental Impact Study dated November 7 as published by the Tactical Infrastructure Group and it's consultants in Fairfax in Washington, D.C.

I've got a preamble, so to speak. I'm opposed, in general to the idea of building fences with our neighbors, not only to our south, but also to the north. In these trying times, we are losing friendships across the globe. And I think it would be wise to be nurturing our relationships with our neighbors, perhaps building bridges, rather than putting up walls. Now that's just generally speaking -- sentimental.

Now to the specific comments regarding the Environmental Impact Study. Number 1, it's,

1 generally, an interesting read. I have a few
2 criticism, however. As to visual impact, well, I'm
3 hopeful that the fence program will be abandoned. I
4 think that human -- more human resources, more Border
5 Patrol Agents, possibly lighting and radar, and that
6 sort of thing. I am a property owner on the river.
7 I'm very pleased to say that my property is not
8 subject to this fence. I had made it known that this
9 family land that's farmed would be devastated by a
10 fence because of lack of access to the river. We
11 irrigate that farmland.

12 As mentioned in the draft E.I.S., fences
13 can be put -- or gates can be put into the fence to
14 accommodate the -- it's needs for irrigation and
15 access to the river. But I would say that if you're
16 going to put fences or gates at every property owner's
17 tract, maybe you're defeating the purpose. I would
18 question as to whether these gates are going to be
19 A.D.A. compliant. So I think we need more Border
20 Patrol Agents to enforce border security, as opposed
21 to, I don't know, hundreds of millions -- billions of
22 dollars of -- of -- of the fence.

23 As a casual observer, in looking over the
24 maps in the draft study, I see a minimum of maybe two
25 hundred feet linear distance from the proposed fence

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1 location to the middle of the river -- minimum of two
2 hundred linear feet and the maximum exceeding two
3 miles. In some places it's hard to tell, but well
4 over eleven thousand linear feet. It appears to be,
5 on average, it's maybe about three thousand feet
6 between the middle of the river and the proposed fence
7 location. Now just as to the seventy miles of the
8 proposed fence here, that would translate into about
9 twenty-five thousand acres of land effectively ceded
10 over to Mexico. Which I'm sure those who don't like
11 the Treaty of Hidalgo would be happy to get that
12 twenty-five thousand acres, but I don't think it makes
13 a lot of sense. In terms of the value of that land,
14 and I've got no clue, but I know that in -- this is
15 all waterfront property. In Brownsville, Resaca lots
16 sell for over three dollars a square foot. Obviously,
17 a lot of this is farmland, so it would be much less
18 than that. But let's say it was a dollar a square
19 foot, that would be in excess of one billion dollars.
20 I guess 1.1 is the way I calculated it, assuming a
21 dollar a square foot for that twenty-five thousand
22 acres, more or less.

23 In Table ES-1, the report acknowledges
24 long term minor to major adverse impacts regarding
25 land use, water resources, wildlife and aquatic

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1 resources, and socioeconomic resources, but goes a
2 little further in the corresponding text of the
3 report. As to aesthetics and visual resources, "No
4 new impacts would occur.", is incorrect. I object and
5 encourage the authors and publishers of this to
6 reconsider this. The image on page 3-52, at a one
7 hundred foot distance, shows what the fence will look
8 like close to the river. Would you put such a fence,
9 with it's visual impact, on the south rim of the
10 Colorado River if our international border were --
11 that's the Grand Canyon -- if our international border
12 were the Colorado River. I don't think you would, or
13 I don't think any responsible party would. And as a
14 property owner with view shed on the Rio Grande, it
15 really will have a significant impact, so this
16 language needs to be reconsidered, in my opinion.

17 Section 2.3.5, The Brownsville Weir and
18 Reservoir Project in Lieu of Tactical Infrastructure.
19 The report incorrectly dismisses this alternative. It
20 says that the water level can be managed. It says
21 that it will be, you know, unmanaged or unmanageable,
22 and it can be managed in coordination with the Water
23 Master. The water level could be kept at a constant
24 level. The report says that it would represent a one
25 hundred yard obstacle at it's widest point. That's

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1 incorrect. It would be over five hundred yards at
2 it's widest point. So there are some technical
3 incorrect components to this study. And I understand
4 this is a draft, so I'm hoping that this will be
5 corrected.

6 The summary dismissal of this important
7 project, and it's important to Brownsville for a
8 number of reasons. Besides creating a real physical
9 barrier of some substance, water supply, which is
10 simply dismissed, and we're at the very end of the Rio
11 Grande. We do rely on the Rio Grande for our water
12 supply. We are -- everybody else is sucking that
13 water out. So water supply is important -- storm
14 water retention, flood control. There are a number of
15 collateral benefits that the Brownsville Weir and
16 Reservoir Project would provide that are not present
17 with the fence. If anything, I think the fence has
18 many negative components. So please revise this
19 section.

20 Section 2.3.6, the report dismisses levee
21 reconstruction because of concerns over levee
22 ownership. My position is that the concerns over
23 ownership are probably the same as your ownership on
24 -- for the fence itself. I know that Cameron County
25 Commission has recommended looking into this

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1 alternative to the tactical infrastructure, and I
2 would encourage that the contractors for this
3 Environmental Impact Study do go back and look at
4 this. Again, you've got collateral benefits of flood
5 control, general welfare and probably enhancement for
6 Border Patrol. In my opinion, as I think it is, of
7 FEMA, that the -- it is important to ask the guys who
8 are going to be using it to protect our border what
9 makes the most sense. And certainly, the Border
10 Patrol should be consulted on these items.

11 Section 3.11, the report is incorrect.
12 The image on page 3-52, one hundred foot distance,
13 shows what the fence will look like when close to the
14 river, and I repeat my simile -- my earlier words: If
15 the international border were the Colorado River,
16 would you put that fence in front of the Grande
17 Canyon? And I just -- I think it needs to be
18 revised. To say that there is not impact is just
19 wrong.

20 4.4 -- Section 4.4, Land Use. Again, the
21 report dismisses the core agricultural use of the
22 water from the Rio Grande River. Without access to
23 the river for irrigation, tens of thousands of acres
24 will lose all value and economic viability unless it
25 was development, about which the report states, would

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1 not be available for future development. So those are
2 two potentially economically socioeconomic aspects for
3 use of this area would be gone. The report references
4 to the fact that gates can be constructed, so are they
5 going to be A.D.A. accessible for irrigation access?

6 Table 4.11, rural images on pages 4-44
7 and 4-47, primarily a horizontal line that might
8 blend. And from a distance, yes, the view of the
9 fence would probably blend in. Again, I just go back
10 to you need to get up closer. One hundred feet away,
11 it's not going to visually blend. It's going to
12 obstruct a lovely view.

13 I'm going to close the same way I opened.
14 I found the report interesting and very informative.
15 It was nice to finally get somewhat legible maps. I
16 did get a copy of the draft study. And I request that
17 my letter be kept -- put into the record. And I do
18 appreciate the fact that the government is soliciting
19 -- has created a process for public input. And I hope
20 that the contractors that are drafting, that are
21 actually doing this report, will go back and look at
22 these, in particular these sections that I raised.
23 Thank you.

24 Okay, Bill -- William Hudson, back on the
25 record. I failed to mention something because I felt

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1 that it was not germane to the Environmental Impact
2 Draft, but it possibly is under socioeconomic as
3 regarding the Weir -- the Brownsville Weir and
4 Reservoir Project as an alternative to the tactical
5 infrastructure. I take people from all over the world
6 across the Mighty Rio Grande. We go over to Matamoros
7 to have lunch and dinner. It's one of the great
8 benefits of being in Brownsville. If they cross over
9 the Mighty Rio Grande and they see a ditch, again
10 because we don't have -- we're the hind teat, for lack
11 of a better description on the Rio Grande's water.
12 After it goes by Brownsville, it goes out to the Gulf
13 of Mexico. There's not very much water now. I can
14 see a fabulous lake, a water shed, a view shed,
15 something inspiring would cause -- would generate or
16 be a magnet for development with enhanced quality of
17 life for Brownsville. In my opinion, it's the single
18 most infrastructure need for Brownsville. And believe
19 me, we've got lots of infrastructural needs, but the
20 Weir is something that is really, really needed and
21 would dramatically change the spiritual impact of this
22 community and Matamoros for the better, in my opinion.
23 That's all.

24 * * *

25 (EXHIBIT ATTACHED)

DEARMIN COURT REPORTING

WILLIAM P.C. HUDSON
Suite B-20, Paseo Plaza Center
1805 East Ruben Torres Blvd
Brownsville, Texas 78526

Tel. 956-504-6550
Fax 956-504-6555

December 12, 2007

Mr. Robert F. Janson
Acting Executive Director
Asset Management US Customs
US Dept. of Homeland Security
Washington D.C. 20229

Rio Grande Valley Tactical Infrastructure EIS
C/o e2M, 2751 Prosperity Ave, Ste. 200
Fairfax, Virginia 22031

Dear Border Fence Management,

Re: Rio Grande Valley Sector EIS

Thank you for providing public input on the Environmental Impact Statement and for sending the draft EIS for Construction, Maintenance, and Operation of Tactical Infrastructure dated November 2007. I am pleased to see that the plans for the fence DO NOT include my family land holdings in Porcion 99 (Starr County). I remain **hopeful that the fence program will be abandoned as I continue to feel strongly that more human resources (BP agents) are the key to protecting our border with Mexico, rather than ceding to our southern neighbor, the massive land (and water) resources that the fence would accomplish.**

As a casual observer, the maps indicate an approximate minimum of 200 and maximum 12,000 linear feet between the Rio Grande River and the proposed fence. My guess is that the average distance is about 3,000 linear feet (between river and fence, which, when multiplied by the 70 miles of fence subject to this study, would amount to cordoning off approximately 25,000 acres of waterfront. If the value of this land were estimated at \$1.00 per square foot for such waterfront (Resaca lots in Brownsville are over \$3.00/square foot), then **the value of land fenced off would be over \$1 billion.**

I have the following preliminary comments on the draft EIS as to your planned Border Fence:

Table ES-1: The report acknowledges Long-term minor to major adverse impacts re Land Use, Water Resources, Wildlife and Aquatic Resources, and Socioeconomic Resources, but goes little further in the corresponding text of the report. **As to Aesthetics and Visual Resources, 'No new impacts would occur' is incorrect.** The image on page 3-52 (100' distance) shows what the fence will look like when close to the river. **Would you put such a fence – with its visual impact on the South Rim of the Grand Canyon if the border was the Colorado River? I**

think not – because a fence will disrupt the lovely and aesthetically pleasing view shed. Please revise your statement.

2.3.5: Brownsville Weir and Reservoir Project (“Weir”) in Lieu of Tactical Infrastructure: The report **dismisses this (the Weir) alternative incorrectly**. The water level can be managed in collaboration with the Watermaster in order to preserve a constant level. “..would represent a 100 yard obstacle at its widest point...” is incorrect. The summary dismissal of this important infrastructure because it “...might flood...and...disturb...” flora and fauna is **paternalistically shallow and ignores the added benefits of the Weir** from additional water supply, storm water retention, flood control, none of which inure from a fence. Significant studies and discussion with environmental groups have been undertaken over the past decades, which have resulted in consent to get the Weir constructed. Shame on the authors. Please revisit and revise this section.

2.3.6: The report dismisses levee reconstruction because of “concerns over levee ownership”, which should be the same concerns as the fence. Construction of the fence has the same issues regarding ownership as reconstruction of levees, without the multiple benefit of flood protection. Please revisit and revise this section.

3.11 The report is incorrect. The image on page 3-52 (100’ distance) shows what the fence will look like when close to the river. I repeat my words of page 1: **Would you put such a fence – with its visual impact on the South Rim of the Grand Canyon if the border was the Colorado River?** Please revise this section.

4.4 Land Use: Again, the report dismisses the core agricultural use of the water from the Rio Grande River. **Without access to the River for irrigation, tens of thousands of acres will lose all value** and economic viability, unless it was development, about which the report states “...would not be available for future development.” Dead end! The report references the fact that gates can be constructed for farm-access. If you are putting gates on each tract, why bother with constructing a fence? **Will the fence & gates be ADA accessible?** Please revisit and revise the report.

Table 4.11-1 – “Rural”, images on pp. 4-44 to 4-47: “...primarily horizontal line that might blend...”: The view shed of the River is lovely from the bank. I repeat my Grand Canyon question. Please revise the report to include views from the north bank of the Rio Grande – looking at the river, and revise the report, to honestly show what the visual impact will be.

I found the balance of the report interesting and informative. It was nice to (finally) get somewhat legible maps. I will try to attend the meeting in Brownsville and I hereby request that this letter be included in the record. Thank you.

Sincerely,



William P.C. Hudson

1 NAME: DAVID BENN
 2 ADDRESS: 32 EAST COWAN TERRACE
 3 BROWNSVILLE, TEXAS 78521
 4

5 Among my chief concerns are the
 6 environmental issues. I've read the Environmental
 7 Impact Statement. I thought first -- I thought you
 8 did the Impact Statements before you made the plans.
 9 But apparently, in this case, you make the plans then
 10 you do the Environmental Impact Statement. I thought
 11 that it was superficial. I thought that the list, for
 12 instance, of animals and birds that occurred in the
 13 area was, essentially, a joke. I mean, "We saw these
 14 birds as we were doing --" whatever it is they did. I
 15 didn't see it mentioned in there that this area, in
 16 fact, in two of the counties to which they want to
 17 build a fence -- because there's two counties, Hidalgo
 18 and Cameron County, coupled with Willacy County and
 19 all the way out in Starr County, if they were a State,
 20 if those four counties made up a state, it would have
 21 the third largest bird list of any state in the United
 22 States -- Texas, California and these four counties.
 23 The list is something like three hundred and
 24 twenty-eight species long. And that's being excluded.

25 One of the things I noticed was that they

1 didn't discuss -- well, they mentioned that the
2 largest stand of Sable Palms are being, essentially,
3 behind the wall. And while that may not appear to be
4 a particular problem, it's, basically, going to turn
5 the natural dispersion of Sable Palms because one of
6 the most effective means of dispersing Sable Palms is
7 when coyotes eat, the stomach acids in the stomach, in
8 the coyote's stomach, score the seeds and then the
9 coyotes excrete the seeds and with their little blob
10 of fertilizer, they germinate. Experiments have shown
11 that artificial germination of Sable Palms by the
12 nature conservancy which does a native plant nursery
13 was -- their germination rate was very low. And so
14 they started salvaging Sable Palm seeds from coyotes
15 skat, and the germination rate went up to over
16 ninety-five percent. So, consequently, I mean, it
17 would seem pretty obvious that coyotes are a major
18 means of distributing, naturally, Sable Palms. And if
19 the wall is built, the ability of coyotes to disburse
20 and disburse Sable Palm seeds is going to be
21 restricted, and that's the last -- largest last Sable
22 Palm grove in the United States. So apparently, the
23 recruiting of Sable Palms will be limited. And that's
24 just one example.

25 There's tons of reasons why,

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1 environmentally, it's not a sound idea. Culturally,
2 it's a very poor idea. I also -- I think that
3 economically it's a poor idea. And I note that while
4 people up north seem to feel that they need a wall to
5 make them feel safer, I haven't heard a single one of
6 them volunteer to make a contribution to make up for
7 the economic impact that it's going to have down here.
8 No one's talking about sending any money down here to
9 make up for that, that I've heard.

10 I also think that, you know, if somebody
11 -- you know, if the people of Indiana feel like they
12 need a wall to be safe at night, I think they should
13 have a wall and I think they should put it around the
14 State of Indiana. Leave my state and my house and my
15 city out of it. And I'm a native of Brownsville. I
16 was born in Brownsville.

17 I find it highly offensive that we treat
18 our neighbors that way. I think that, in fact, the
19 issue of immigration is a false issue. It's been
20 created by -- I'm going to sound like a conspirator --
21 a conspiracy -- but I feel like parts of our
22 government have created it kind of along the ways of
23 somebody who set's a house on fire so they can be a
24 hero rescuing the occupants. And I also think that
25 it's not about national security in terms of

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1 terrorism. I think it's about racism. I think that
2 if it was about terrorism, that there's be -- we'd be
3 hearing the same talk about a wall on the Canadian
4 Border. I think that our government recognizes that
5 they terrorists that they've told us about, anyway,
6 have all come into the country legally, if they
7 weren't, in fact, born here, like Timothy McVey, for
8 instance. They haven't told us, that I know of, of a
9 single terrorist crossing over the Mexican border.
10 But, of course, since we now have a government in -- a
11 secret government, I don't know that they're just not
12 keeping it from us. I think it's bad idea.

13 I think that it is not the America that I
14 grew up in and it makes me really sad. And that's,
15 essentially, what I have to say.

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DEARMIN COURT REPORTING

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 2 ADDRESS: 32 EAST COWAN TERRACE
 3 BROWNSVILLE, TEXAS 78521
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1 NAME: Dr. Eloisa G. Tamez

2 ADDRESS: P.O. Box 1737, San Benito, Texas, 78586

3 I am Dr. Eloisa Tamez. And I have property in El
4 Calabos, which is property that lies about 14 miles east of
5 Brownsville off the Military Highway. And the actual
6 address there is 23352 East Military Highway. That
7 property happens to be part of the land grants of San Pedro
8 de Carrecitos and it's been in the family since 1790.

9 Okay. Now, it just so happens that that property is
10 already divided by a deteriorating levee. This levee has
11 become deteriorated because the border patrol has made it a
12 highway instead- -- and so it no longer protects the
13 citizens from major floods or storms or what have you, in my
14 estimation, because it's not intended to be a highway. It's
15 supposed to be a protective barrier to beat the flood riv-
16 -- the flood in Rio Grande all the way from the vicinities,
17 the neighborhoods.

18 Okay. So I've had several visits and telephone calls
19 from border patrol and Corps. of Engineers in which they
20 come and they -- and they have told me -- and Mr. Rodriguez
21 tells me that that's not true. But that I -- I was told
22 that once they -- that they will build the levee, that the
23 law has been passed -- I mean, that they will build the wall
24 and they will -- they will build it north of the levee,
25 which means that it would eat up some of my property.

1 I asked them how much -- how much property they're
2 gonna need. They -- they don't know. They couldn't tell
3 me. But I've heard several figures, you know, just here and
4 there that it might be 70 feet, it might be 100 feet. I
5 don't know. To this day I have not gotten a straight
6 answer.

7 What's gonna happen is that where as I may not have
8 much land, I stand to lose a lot because I don't have that
9 much. But it is what remains in the -- from what used to be
10 the land. So it's very, very important for me to -- to keep
11 that land.

12 So one of the other things that -- that the border
13 patrol told me, and it was Rick Cavazos who came and talked
14 to me. First talked to me on the phone. I said, "How am I
15 supposed to access the rear of my property?" In other
16 words, that land south of the levee, which is -- you know,
17 my land is where they have -- How am I supposed to access
18 it? So what Rick Cavazos said was that they were planning
19 to build a -- a point about three miles down west of my
20 property whereby people could then go through that gate to
21 access the rear of the property.

22 It is -- I have given it the name of "checkpoint."
23 Because essentially that's what it is. I am sure they're
24 not gonna let us through there unless we show some
25 identification. And, therefore, I'm totally -- I totally

1 object to that kind of -- of militarization of -- of -- of
2 our neighborhoods, of our country, of our lands.

3 And now Mr. Rodriguez tells me that it's -- that I have
4 been misinformed or maybe I didn't hear right. I heard it
5 very well. And it's been told to me more than once by
6 Mr. Rick Cavazos.

7 So therefore I object to the fence, I object to them
8 coming into my land to -- to -- to assess it because in the
9 form -- in the paper they give you to sign, they indicate
10 there that they need access for twelve months. I don't
11 understand. If they're coming to do soil testing and survey
12 of the land, I would think that they don't need twelve
13 months to do it.

14 So I told the Corps of Engineers person that contacted
15 my that I objected to the length of time that they needed to
16 be in my land. That was one of my first objections, and
17 then I had others but that was the main one.

18 And I do not like the way that we're being humiliated
19 by being given a mandate. I think that everything is
20 accelerating real fast. We have not been given an
21 opportunity to -- to dialogue about this and to determin- --
22 to be part of the decision-making in terms of what a better
23 alternative would be other than this wall and to devastate
24 our -- our environment in the way they're doing it.

25 Now, they're very concerned about the wildlife, they're

1 very concerned about ecology -- all kinds of ecology. But
2 what about the human life? Who's thinking about that? I
3 want to know.

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1 NAME: STEVE MONDEL

2 ADDRESS: 1196 WEST MAIN ST.

3 RIO GRANDE CITY, TEXAS 78582

4 It's Steve Mondel, 1196 West Main Street
5 here in Rio Grande City. And the comments that I
6 wanted to share is concerning the public comment
7 period, and, specifically, the Environmental Impact
8 Statement. I don't feel that it has directly
9 addressed some of the impacts that are going to be on
10 some of our wildlife, specifically, the jaguarundi and
11 the ocelots that are found here in South Texas, and
12 more towards the Brownsville area, not here
13 necessarily in the Rio Grande City area.

14 But concerning the border fence, it has
15 not been addressed. And I have read the proposals.
16 It is not in that for the construction of the fence,
17 how these animals would be able to traverse through
18 the fence and the impact that is going to be done upon
19 it.

20 I've read over the proposals. There is
21 nothing in there that says how they're going to be
22 able to get through the fence, to get back and forth.
23 There is nothing in there that has addressed that yet.
24 They said, "yes, there's more information yet to
25 come." Well, I disagree with that. You know, if

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1 they say that the Environmental Impact Study is
2 completed, this is in its final form, it's wrong
3 because it does not address specifically a lot of our
4 wildlife and how they are going to be able to traverse
5 back and forth across that fence. And that's my
6 comment.

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DEARMIN COURT REPORTING

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A-392

December 26, 2007

Rio Grande Valley PF-225 EIS
c/o e2M, 2751
Prosperity Avenue, Suite 200
Fairfax, Virginia 22031

Dear Sir or Madam,

This is in response to the Request for Public Comments of the Environmental Impact Statement (EIS) No. 20070492, Draft EIS, DHS, 00, Rio Grande Valley Sector Project, Construction, Maintenance, and Operation of Tactical Infrastructure, U.S./Mexico International Border in Southernmost Portions of Starr, Hidalgo and Cameron Counties, Texas.

I believe that the construction, maintenance, and operation of tactical infrastructure along the United States (U.S.)/Mexico international border in southernmost portions of Starr, Hidalgo and Cameron Counties, Texas is a bad idea.

For almost 30 years, the United States Fish and Wildlife Service, the Texas Parks and Wildlife Department, several non-governmental environmental organizations, many private landowners practicing conservation on their lands, and tens of thousands of concerned citizens have worked to create a wildlife corridor along the lower Rio Grande River. This Wildlife Corridor Project is an on-going project to purchase, from willing sellers, a string of connected lands along the river and of some habitats around cities for restoration and protection. These areas and their corresponding wetlands are vitally important for maintaining the last vestiges of native forest and scrubland - 95% of which have been lost to development over the years, and which provide habitat for critically endangered and threatened animals and plants. Over \$100 million has been spent and over 65% of the 135,000 acres has been secured for wildlife habitat.

The proposed wall will devastate the wildlife in the area. When considering the wall's effect on wildlife habitat and endangered species, the Draft EIS does not address crucial issues:

The Draft EIS concludes, "the conversion of 508 acres to support tactical infrastructure is a minimal cumulative impact compared to other development" (Section 5.11). This narrow focus reflects an ignorance of connectivity conservation principles. Scientists recognize that one of the biggest threats to the survival of many plant and animal species is the destruction or fragmentation of their natural habitats. The conservation of landscape connections, where animals, plants, and ecological processes can move freely from one habitat to another, is therefore, an essential part of any environmental protection plan. The construction of a wall will wreak havoc on the biodiversity of the entire ecosystem.

The border wall will bisect many national wildlife refuge tracts and many others will have their northern border walled off. The walls will prevent wildlife dispersal to and from the river and block north-south travel corridors. This fragmentation undermines the integrity of the wildlife corridor, a series of land tracts meant to allow wildlife travel along the river.

The Draft EIS does not address the recognition that the border wall will deny wildlife access to the river that, in many places, is the only fresh water source.

The Draft EIS claims that 150-175 acres of habitat suitable for the federally endangered Ocelot and Jaguarundi will be destroyed. It does not address the fact that the wall will separate populations of these endangered cats. The Ocelot, in particular, often swims the river to find a mate. A wall could make this impossible.

Individuals may be prevented from dispersing from their natal ranges. The isolated pockets of these species created will encourage inbreeding and discourage genetic diversity. These small pockets created as a result of a wall will also facilitate the spread of infectious diseases. Such circumstances will result in hastened extirpation and/or extinction of these cats as well as other, less well-known, species.

Extensive nighttime flood lighting will be associated with the wall segments, but there is no thorough analysis of the possible impacts of this on wildlife, particularly nocturnal species.

There is no analysis of the possible impacts to wildlife of the roads associated with the walls. Any additional roads would exacerbate the fragmentation the wildlife must suffer.

The proposed "wildlife migratory portals," tiny vertical slots only a couple of inches wide, are meant to placate people who do not understand wildlife management. Sophisticated, empirically based wildlife management for this richly diverse area must never be based on "one size fits all" mitigation.

We know that habitat destruction and fragmentation are the primary threats to biodiversity. Fragmentation not only reduces the total amount of habitat available, but also simultaneously isolates the habitat that remains, preventing movement of organisms and processes in previously connected landscapes. Without natural levels of connectivity, native biodiversity is in jeopardy. Many studies have documented species loss in isolated habitats. The preservation of natural levels of connectivity lends strength to efforts to protect species and habitats.

Over 400 species of birds--from hawks to hummingbirds, shorebirds to waterfowl, and many colorful songbirds either live year around, or migrate through this area. This area has, by far, the highest concentration of bird species in the United States.

The Draft EIS ignores the Migratory Bird Treaty Act. It states that construction of the border wall is planned for the spring of 2008 and due to continue until the end of the year. However, it also contains a recommendation that "any groundbreaking construction activities should be performed before migratory birds have returned (approximately March 1) or after all young have fledged (approximately July 31) to avoid incidental take" (Section 4.9.3.2). This recommendation should be followed and no construction should occur during this time to avoid killing nesting birds.

The Draft EIS does not address the issue of long-term habitat loss for migratory bird species. During the spring and fall migrations, millions of birds funnel through the Rio Grande Valley. Birds that migrate over hundreds or thousands of miles are extremely venerable to loss of habitat in their stopover points along the way. They require intact habitat to rest and refuel, and without it they may perish. This wildlife corridor is a ribbon of habitat that is critical for many migrating and nesting birds.

The wall's affect on flood risk does not appear to have been considered. The words "hurricane" or "tropical storm" do not appear even once in the Draft EIS, despite the fact that the Rio Grande Valley has experienced hurricanes on at least seven times in the last hundred years. Further, the steel mesh used for the wall is treated in the Draft EIS as permeable to water. In a flooding event, however, even a standard chain link fence becomes clogged with debris and blocks the flow of water. The photographs included show a mesh that is far tighter than standard chain link, which will certainly become clogged with debris during any flooding event and exacerbate the affects of even minor floods.

The Draft EIS found that the border wall's impact on water flow in the Rio Grande Basin is expected to be "negligible," but it does not cite any hydrological studies to back up this claim. Nor does it take into account the

Nancy J. Devlin, Page 3

existing problems of the flood-control levee system along the river. With no studies to model whether a border wall would channel floodwaters, the Department of Homeland Security is recklessly endangering lives and property in the event of a hurricane or any flooding event.

Alternatives to the wall were not seriously considered in the Draft EIS even though, by law, the Draft EIS must consider alternatives to a physical wall. However, the document rejects a number of alternatives to building the border wall, including increasing the number of U.S. Border Patrol agents or using "virtual fencing," without any indication that they were seriously considered or evaluated. The Department of Homeland Security's own statistics reveal that border crossings by illegal aliens have dramatically declined because of Border Patrol operations and the National Guard's participation in surveillance. In fiscal year 2007 these led to a decrease in apprehensions of 34% in the Rio Grande Valley, dropping apprehensions to their lowest level in 15 years. Rather than a profoundly destructive wall, why wouldn't increasing the number of Border Patrol agents be a sufficient deterrent in many areas critical for wildlife?

The Draft EIS wrongly assumes that border walls are effective. They are not. The non-partisan Congressional Research Service in its 2007 report entitled, "Border Security: Barriers Along the U.S. International Border," found that the border walls in San Diego "did not have a discernible impact on the influx of unauthorized aliens coming across the border." The report concluded that, "if border fencing is constructed over a significant portion of the land border, the incidences of fence breaches and underground tunnels would increase." Indeed, fiscal year 2007 apprehensions increased by 7% in San Diego, where triple-layer fencing exists.

I am strongly against a construction, maintenance, and operation of tactical infrastructure along the wildlife corridor along the U.S./Mexico international border in southernmost portions of Starr, Hidalgo and Cameron Counties, Texas. Please do not construct this physical wall when there are many cost-effective choices available. Thank you.

Sincerely yours,



Nancy J. Devlin

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Corpus Christi, Texas 78418-6342

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LIST OF NEPA AND ALTERNATIVES ANALYSIS COMMENTERS

During the scoping and Draft EIS review processes, several commenters expressed concerns or issues related to the NEPA process, alternatives analysis, and the purpose and need for the project. Although issuance of the April 1, 2008 waiver eliminated CBPs obligation to directly address these comments, they were considered in the continuing development of the project, and in some cases resulted in refined project approaches. CBP would like to acknowledge the commenters listed below for their efforts and contributions to the project.

Defenders of Wildlife
Environmental Defense Fund
Eric Ellman
Friends of the Laguna Atascosa Refuge
Frontera Audubon Society
Historic Downtown Director, City of Brownsville
Honorable Carlos Cascos
No Border Wall
Nye Plantation
Honorable Patricio Ahumada
Sabal Palm Audubon Center
Senator Eddie Lucio Jr.
Sierra Club – Lower Rio Grande Valley Chapter
Sierra Club – Lone Star Chapter
University of Texas Brownsville and Texas Southmost College
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