
**RESPONSE TO PUBLIC COMMENTS
FOR THE
CONSTRUCTION, OPERATION, AND MAINTENANCE OF
TACTICAL INFRASTRUCTURE
U.S. BORDER PATROL RIO GRANDE VALLEY SECTOR,
TEXAS**

**U.S. Department of Homeland Security
U.S. Customs and Border Protection
U.S. Border Patrol**

AUGUST 2008

**RESPONSE TO PUBLIC COMMENTS
FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF
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U.S. BORDER PATROL RIO GRANDE VALLEY SECTOR, TEXAS**

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1. Response to Public Comments

1.1 Introduction

On April 1, 2008, the Secretary of the U.S. Department of Homeland Security (DHS), pursuant to his authority under Section 102(c) of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, as amended, exercised his authority to waive certain environmental and other laws in order to ensure the expeditious construction of tactical infrastructure along the U.S./Mexico international border. Although the Secretary's waiver means that CBP no longer has any specific legal obligations under the laws that are included in the waiver, the Secretary committed DHS to continue responsible environmental stewardship of valuable natural and cultural resources. CBP strongly supports the Secretary's commitment to responsible environmental stewardship.

U.S. Customs and Border Protection (CBP) is continuing to work in a collaborative manner with local government, state and federal land managers, and the interested public to identify environmentally sensitive resources and develop appropriate best management practices (BMPs) to avoid or minimize adverse impacts resulting from the construction of tactical infrastructure.

Prior to the issuance of the waiver, a Draft Environmental Impact Statement (EIS) was prepared and issued to the public. This Response to Public Comments document has been prepared to provide responses from CBP to the comments received on the Draft EIS. **Table 1-1** presents generic comments and CBP responses, which have been incorporated into the ESP as applicable.

CBP prepared an Environmental Stewardship Plan (ESP) that analyzes the potential environmental impacts associated with construction of tactical infrastructure in the U.S. Border Patrol (USBP) Rio Grande Valley Sector. The infrastructure will consist of approximately 70 miles of primary pedestrian fence, concrete flood protection structures/concrete fence, and patrol and access roads. The ESP also describes measures CBP has identified—in consultation with federal, state and local agencies—to avoid, minimize, or mitigate impacts to the environment. Public and agency comments received during the Draft EIS process were evaluated and incorporated as appropriate into the ESP. The ESP will guide CBP's efforts going forward. The tactical infrastructure described in the ESP for the USBP Rio Grande Valley Sector is covered by the Secretary's April 1, 2008 waiver.

1.2 Draft EIS Public Involvement Process

A Notice of Availability (NOA) for the Draft EIS was published in the *The Monitor*, *The Brownsville Herald*, *The Valley Morning Star*, *La Frontera* and *El Nuevo Herald* on November 16 and 18, and December 5 and 11, 2007, announcing the release of the document for a 45-day public comment period. The NOA announced the availability of the Draft EIS; the date, time, and place for the public open house meetings on the Draft EIS; and publicized a request for comments on the Draft EIS. The release of the Draft EIS initiated a formal 45-day public comment period that ended December 31, 2007. In addition, a NOA was published in the *Federal Register* announcing the availability of the

Draft EIS and the times and locations of the public open houses (see **Figures 1-1** and **1-2**).

Public open houses were held in McAllen, Brownsville, and Rio Grande City, Texas, to provide an overview of the Draft EIS and accept public comments. The open houses were attended by approximately 1,000 people. Newspaper notices, the *www.BorderFenceNEPA.com* Web site, and the public open houses were used to request public input and to disseminate information about draft alternatives and their potential effects (see **Figures 1-1** and **1-2**).

During the 45-day public review and comment period for the Draft EIS, CBP received approximately 920 comment submissions at the public open houses, by fax, by email, through the project specific Website (*www.BorderFenceNEPA.com*), and by regular mail. These were from the public, Federal and state agencies, and local elected officials, stakeholder organizations, and businesses. These included letters from nongovernmental organizations, such as the Environmental Defense Fund, Frontera Audubon Society, Texas Border Coalition, Sierra Club, and World Birding Center.

Of these 920 comment submissions received, 96 letters were from citizens of Granjeno stating their opposition to the Proposed Action. Also included in the 920 letters were 304 form letters received via email from private citizens asserting the position “that any virtual or physical infrastructure are environmentally appropriate, do not impact the local economy and do not violate human rights.”

In addition to the 920 comment submittals, CBP received a petition from No Border Wall containing 4,600 signatures (3,308 on paper and 1,292 electronically). The petition stated that the signatories were opposed to “the construction of a solid wall along more than 700 miles of the U.S./Mexico border.” The No Border Wall petition is in addition to detailed specific comments that CBP also received from this group.

1.3 Methodology for Analyzing Comments

Comments on the Draft EIS that were received covered a wide spectrum of opinions, ideas, suggestions, and concerns, some of which have resulted in additions or modifications to the ESP. While each person’s viewpoint was diligently considered, for the purposes of presenting them in this document and the ESP, comments were determined to be either substantive or nonsubstantive in nature. CBP used a common methodology to identify substantive and nonsubstantive comments, as described below. Substantive comments were defined as those that do one or more of the following:

- Question, with reasonable basis, the accuracy of information in the Draft EIS
- Question, with reasonable basis, the adequacy of the environmental analysis
- Cause changes or revisions to the proposal.

From the 920 comment submissions received on the Draft EIS, approximately 442 individual substantive comments were extracted. These substantive comment letters are presented in **Appendix A** of this report. Comments on the Draft EIS were summarized and grouped by resource area or issue, and are presented along with a response in **Table 1–1**. Substantive comments raise, debate, or question a point of fact

or policy. Many of the substantive comments resulted in changes in the development of the ESP.

Nonsubstantive comments are comments that offer only opinions, provide information not directly related to project issues or the impact analyses, or show general opposition to or support of the Project. Nonsubstantive comments have been considered by the planning team but not formally grouped, nor were individual responses prepared.

Because of the large volume of comments, similar comments were grouped together, where possible, to create comment statements that capture the essence of two or more commenters. Therefore, comment statements may not be exact quotes of any one person or organization. The comments have also been edited for brevity, clarity, and grammar. They have been organized by similar topics under the headings listed in the table of contents. The substantive comments and responses are included in **Table 1-1**.

Agency and public comments on the Draft EIS were considered and incorporated into the analysis of potential environmental impacts in the ESP, as applicable. Due to the issuance of the Secretary's waiver, some comments related to elements of the National Environmental Policy Act (NEPA) process are not applicable to the ESP analysis and have not been directly addressed in comment responses. Comments related to alternatives, scope of alternatives analysis, and purpose and need also fall into this category and are not included in **Table 1-1**. **Appendix B** presents a list commenters who made comments related to alternatives and purpose and need analysis on the Draft EIS. The list of commenters in **Table 1-1** is provided below.

Federal Agencies

- U.S. Environmental Protection Agency
- U.S. International Boundary and Water Commission
- U.S. Department of the Interior

State and Local Agencies

- Hidalgo County Resolution
- Texas Parks and Wildlife Department (TPWD)
- Texas Commission on Environmental Quality (TCEQ)
- Texas Historical Commission (THC)

Federal Elected Officials

- Honorable Solomon P. Ortiz, U.S. House of Representatives

State Elected Officials

- Honorable Eddie Lucio, Jr., Texas State Senate
- Honorable Carlos Cascos, CPA, Cameron County Judge
- Honorable Patricio M. Ahumada, Jr., Mayor, City of Brownsville
- Honorable John David Franz, Mayor, City of Hidalgo
- Honorable J.D. Salinas III, Hidalgo County Judge
- Honorable Eloy Vera, Starr County Judge

Stakeholder Organizations

- Immigration Reform Law Institute (IRLI)
- Sonia Najera, Friends of the Laguna Atascosa Refuge (FOLAR)
- Defenders of Wildlife (DOW)
- Nye Plantation
- Jones, Galligan, Key, & Lozano, LLP (JGK & L)
- The University of Texas at Brownsville and Texas Southmost College (UT & TSC)
- Peter Goodman, Historic Downtown Director, City of Brownsville
- Sabal Palm Grove Sanctuary
- No Border Wall (NBW)
- Texas Border Coalition (TBC)
- The Nature Conservancy (TNC)
- Sierra Club – Lower Rio Grande Valley Chapter (Sierra Club LRGVC)
- Environmental Defense Fund (EDF)
- Frontera Audubon Society (FAS)
- Sierra Club – Lone Star Chapter (Sierra Club TSC)
- Friends of the Wildlife Corridor (FOWC)
- Blackburn Carter
- Lawrence Dunbar

Private Citizens

- Ford Sasser
- Eric Ellman
- Elisa Garza-Leal
- Merriwood Ferguson
- William Hudson
- David Benn
- Eloisa Tamez
- Steve Mondel
- Nancy Devlin
- Xanthe Miller
- Scott Werner

(3) Visiting TSA's Security Regulations Web page at <http://www.tsa.gov> and accessing the link for "Research Center" at the top of the page.

FOR FURTHER INFORMATION CONTACT:

James Orgill, TSA-19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227-4545; e-mail: credentialing@dhs.gov.

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR 3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Pub. L. 107-295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109-347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start date for TWIC initial enrollment at the Ports of Dundalk, MD; Minneapolis, MN; and St. Paul, MN only. Enrollment in these ports begin on November 21, 2007. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Baltimore, including those in the Port of Dundalk, MD; and Captain of the Port Zone Duluth, including those in the Ports of Minneapolis and St. Paul, MN must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at <http://www.tsa.gov/twic>.

Issued in Arlington, Virginia, on November 9, 2007.

Stephen Sadler,

Director, Maritime and Surface Credentialing, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E7-22422 Filed 11-15-07; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Availability and Public Open House Announcement for the Draft Environmental Impact Statement for Construction, Maintenance, and Operation of Tactical Infrastructure, U.S. Border Patrol, Rio Grande Valley Sector, Texas

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of Availability.

SUMMARY: Customs and Border Protection (CBP) announces that a Draft Environmental Impact Statement (EIS) is available for public review and comment. Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), CBP has prepared a Draft EIS to identify and assess the potential impacts associated with the proposed construction, maintenance, and operation of tactical infrastructure, to include pedestrian fence, access roads, and patrol roads along approximately 70 miles of the U.S./Mexico international border within the U.S. Border Patrol (USBP) Rio Grande Valley Sector, Texas (the Proposed Action).

DATES: The Draft EIS will be available for public review and comment on November 16, 2007 and all comments must be received by December 31, 2007.

A public open house will be held on December 11, 2007, at the McAllen Convention Center in McAllen, TX. A second public open house will be held on December 12, 2007, at the Brownsville Events Center in Brownsville, TX. Each public open house will be held from 4:30 p.m. to 8 p.m. Please refer to the **SUPPLEMENTARY INFORMATION** section below for more information.

ADDRESSES: Copies of the Draft EIS can be downloaded by visiting www.BorderFenceNEPA.com, or <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 toll-free 1-877-752-0420. 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; phone: (817) 886-1585; and fax: (757) 282-7697. Hard copies of the Draft EIS can be reviewed at the McAllen Memorial Library (601 N. Main St., McAllen, TX 78501, (956) 688-3300); Speer Memorial Library (801 E. 12th St., Mission, TX 78572, (956) 580-8750); Brownsville Public Library (2600 Central Blvd., Brownsville, TX 78520, (956) 548-1055); Rio Grande City Public Library (591 E. Canales St., Rio Grande City, TX 78582, (956) 487-4389); Weslaco Public Library (525 S. Kansas Ave., Weslaco, TX 78596, (956) 968-4533); Mercedes Memorial Library (434 S. Ohio Ave., Mercedes, TX 78570, (956) 565-2371); Harlingen Public Library (410 76 Dr., Harlingen, TX 78550, (956) 216-5802); and San Benito Public Library (101 W. Rose St., San Benito, TX 78586, (956) 361-3860).

FOR FURTHER INFORMATION CONTACT: Charles McGregor, U.S. Army Corps of Engineers, Engineering and Construction Support Office, 819 Taylor St., Room 3B10, Fort Worth, Texas 76102; phone: (817) 886-1585; and fax: (757) 282-7697.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2007, CBP published a Notice of Intent to Prepare an EIS in the **Federal Register** (72 FR 54276) for the Proposed Action. This EIS is being prepared to comply with NEPA; the Council on Environmental Quality regulations in 40 CFR Parts 1500-1508; and Department of Homeland Security (DHS) Management Directive 5100.1, *Environmental Planning Program*.

The mission of CBP is to prevent terrorists and terrorist weapons from entering the U.S., while also facilitating the flow of legitimate trade and travel. In supporting CBP's mission, USBP is charged with establishing and maintaining effective control of the border of the U.S. The purpose of the Proposed Action is to provide USBP agents with the tools necessary to strengthen their control of the U.S. border between Ports of Entry in the Rio Grande Valley Sector. The Proposed Action also provides a safer work environment and enables USBP agents to enhance response time.

The Proposed Action includes the installation of tactical infrastructure in

Figure 1-1. Notice of Availability of the Draft EIS, 72 FR 64663

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21 sections of fence along the international border with Mexico in the vicinity of Roma, Rio Grande City, McAllen, Progreso, Mercedes, Harlingen, and Brownsville, Texas. Individual fence sections would range from approximately 1 mile to more than 13 miles in length. For much of its length, the proposed tactical infrastructure would follow the existing U.S. Section International Boundary and Water Commission levee. The tactical infrastructure would cross multiple land use types, such as agricultural, rural, suburban, and urban. Impacted parcels are both publicly and privately owned. The Proposed Action would also encroach upon portions of the Lower Rio Grande Valley National Wildlife Refuge and Texas state parks in the Rio Grande Valley.

Two alternatives for the route for the tactical infrastructure are being considered under the Proposed Action—Route A and Route B. Route A is the route initially identified by USBP Rio Grande Valley Sector as meeting its operational requirements. Route B was developed through coordination with Federal and state agencies and incorporates input received through the public scoping period. The Route B alignment continues to meet current operational requirements with less environmental impact.

In addition to Routes A and B described above, an alternative of two layers of fence, known as primary and secondary fence, is analyzed in the EIS. Under this alternative, two layers of fence would be constructed approximately 130 feet apart along the same alignment as Route B and would be most closely aligned with the fence description in the Secure Fence Act of 2006, Public Law 109-367, 120 Stat. 2638, 8 U.S.C. 1701 note, 8 U.S.C. 1103 note. This alternative would also include construction and maintenance of access and patrol roads for USBP agents. The patrol road would be between the primary and secondary fences.

Under the No Action Alternative, proposed tactical infrastructure would not be built and there would be no change in fencing, access roads, or other facilities along the U.S./Mexico international border in the proposed project locations.

Public Open Houses

CBP will hold public open houses to provide information and invite comments on the Proposed Action and the Draft EIS. A public open house will be held on December 11, 2007, at the McAllen Convention Center in McAllen, TX. A second public open house will be

held on December 12, 2007, at the Brownsville Events Center in Brownsville, TX. Each public open house will be held from 4:30 p.m. to 8 p.m. Central Standard Time.

Notifications of these open houses will be published in the *Brownsville Herald*, *Valley Morning Star*, *The Monitor*, *La Frontera*, and *El Nuevo Herald* one week prior to these open houses. USBP agents and Draft EIS preparers will be available during the open houses. Anyone wishing to submit comments may do so orally and/or in writing at the open houses. Comments received at the open houses will be recorded and transcribed into the public record for the meeting. Commentors must include their name and address. Spanish language translation will be provided. Those who plan to attend the public open house and will need special assistance such as sign language interpretation or other reasonable accommodation should notify the U.S. Army Corps of Engineers (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include contact information, as well as information about specific needs. Those unable to attend may submit comments as described under "Request for Comments" below.

Request for Comments

CBP requests public participation in the EIS process. The public may participate by attending public open houses and submitting written comments on the Draft EIS. CBP will consider all comments submitted during the public comment period, and subsequently will prepare the Final EIS. CBP will announce the availability of the Final EIS and once again give interested parties an opportunity to review the document.

When submitting comments, please include name and address, and identify comments as intended for the Rio Grande Valley Sector Draft EIS. To avoid duplication, please use only one of the following methods:

- (a) Attendance and submission of comments at the Public Open House meetings to be held December 11, 2007 at the McAllen Convention Center in McAllen, TX and December 12, 2007 at the Brownsville Events Center in Brownsville, TX.
- (b) Electronically through the Web site at www.BorderFenceNEPA.com.
- (c) By e-mail to: RGVcomments@BorderFenceNEPA.com.
- (d) By mail to: Rio Grande Valley Tactical Infrastructure EIS, c/o e2M, 2751 Prosperity Avenue, Suite 200, Fairfax, Virginia 22031.
- (e) By fax to: (757) 282-7697.

Comments on the Draft EIS should be submitted by December 31, 2007.

Dated: November 8, 2007.

Elaine Killoran,

Acting Assistant Commissioner, Office of Finance, Customs and Border Protection.

[FR Doc. E7-22483 Filed 11-15-07; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5125-N-46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 16, 2007.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565. (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION:

In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD published a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 8, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 07-5649 Filed 11-15-07; 8:45 am]

BILLING CODE 4210-67-M

Figure 1-2. Notice of Availability of the Draft EIS, 72 FR 64664

Table 1-1. Summary of Comments on the Draft EIS and CBP Responses

Comment Category	Comment Category Description	Commenter	Draft Response
General			
Mitigation/BMPs/ Permits	1. Comment makes general statement regarding commitment to mitigation, BMPs, and permits.	USIBWC USEPA Sierra Club LRGVC	1. Although the Secretary's waiver means that CBP no longer has any specific legal obligations under the laws that are included in the waiver, the Secretary committed DHS to continue responsible environmental stewardship of valuable natural and cultural resources. The Biological Resources Plan contained in Appendix E of the ESP, details BMPs and mitigation for the Project.
	2. More consideration and description needed for mitigation and the required permits.	TPWD FOLAR	2. While the Secretary's waiver means that CBP has no obligation to seek permits, CBP has used the threshold and guidelines in the ESP analysis and will implement appropriate BMPs to avoid or minimize impacts whenever possible.
	3. Recommendation that USACE verifies wetland delineations included in the Draft EIS.	TPWD TCEQ	3. Wetland delineations were conducted and appropriate avoidance and mitigation measures have been developed in direct coordination with USACE Galveston District.
	4. Comment makes general statement regarding Migratory Bird Depredation permit.	USEPA USDOI FOWC	4. While the Secretary's waiver means that CBP has no obligation to seek permits, CBP has used the threshold and guidelines in the ESP analysis and will implement appropriate BMPs to avoid or minimize impacts whenever possible.
	5. Comment makes statement regarding FEMA 8-step process. Best and worst-case scenarios should be part of a discussion on the possible mitigation options.	USEPA	5. CBP has developed mitigation measures based on impacts assessed in the ESP. See Appendix E of the ESP for detailed BMPs and mitigation.

Comment Category	Comment Category Description	Commenter	Draft Response
	6. Comment concerned with mitigation options and safety concerns of landowners.	USEPA	6. CBP has consulted with Federal, state and local stakeholders, including landowners, about the placement of border fencing to ensure that border security concerns are considered in light of the realities of those who live in border communities. The location of any border infrastructure was determined based on USBP operational assessments of what is necessary, practical, and effective to deter illegal entry into the United States and other unlawful activity. USBP will continue to work cooperatively with local emergency agencies and law enforcement officials on local safety concerns and risks.
	7. Comment requests that BMPs and mitigation should have been presented in the Draft EIS for public review.	USEPA NBL TNC TBC Scott Werner	7. BMP development is an ongoing process that has continually been refined throughout the planning process. See Appendix E of the ESP for detailed BMPs and mitigation.
	8. Comment requests that BMPS for each resource be included.	TPWD TCEQ	8. Table ES-1 of the ESP presents BMPs for various resources. In addition, detailed descriptions of BMPs and mitigation are included in Appendix E of the ESP.

Comment Category	Comment Category Description	Commenter	Draft Response
	9. Information needed to make border patrol and contractors aware of the permits needed for ROW onto USIBWC land e.g. USIBWC Archeological Resources Protection Act.	USIBWC	9. On April 1, 2008, the Secretary of DHS, pursuant to his authority under Section 102(c) of IIRIRA of 1996, as amended, exercised his authority to waive certain environmental and other laws in order to ensure the expeditious construction of tactical infrastructure along the U.S./Mexico international border. Although the Secretary's waiver means that CBP no longer has any specific legal obligations, CBP has used the standards and guidelines from these laws and regulations as the basis for the environmental analysis. CBP has worked with resource agencies to consider alternative designs and locations that would minimize environmental impacts.
Magnitude of Impacts	The decision for the magnitude of impacts needs to be explained, expanded and clarified. DHS should provide documentation that explains their conclusion of impacts on each resource (i.e., agriculture).	USEPA TPWD DOW FAS Xanthe Miller USEPA USDOI	The ESP includes an analysis of impact regardless of magnitude or significance. Levels of impact disclosed in the ESP for individual resource topics range from none to major, depending on the individual analysis performed by resource specialists with experience in performing these types of studies. Actual impacts on individual businesses or agricultural operations will be dependent upon the specifics of access gate location and related operational issues. In general, businesses could be impacted because of a perception that their interests may become difficult to access using a gate, although access will not be cut off under the Project. Most agricultural operations will be allowed to continue as they currently do. Tactical infrastructure will not cut off access to irrigation or other water facilities.

Comment Category	Comment Category Description	Commenter	Draft Response
Maintenance of LRGV NWR	1. Comment is regarding operations on the south side of the fence in relation to the LRGVNWR. Concern for fire response, invasive brush and grass control and wetland management.	USDOJ DOW	1. Similar to the current locked USIBWC controlled access gates along certain areas of levee, the access gates will be designed to provide controlled access to parties with legitimate business on the south side of the fence, including property owners, government officials, emergency crews, business owners, and recreational users. Potential economic impacts are discussed in Chapter 10 of the ESP.
	2. Comment is concerned about whether there are plans to maintain certain habitat areas around the fence with prescribed burns.	DOW	2. CBP and USBP do not manage habitat. Although access may become inconvenient, the planned tactical infrastructure will not prevent land managers from carrying out their management programs.
	3. Comment is concerned about how the fence right-of-way will be maintained with respect to vegetation.	USDOJ	3. The maintained area is assumed to be permanently impacted. Therefore, any habitat removed in this permanent impact corridor will generally not be allowed to revegetate. This area is quantified in the ESP. Grasses would be mowed for maintenance purposes, and herbicides may be needed in some instances, such as for vegetation control at the fenceline where mowers cannot access.
	4. Comment makes statement that the Project conflicts with and fails to consider existing management documents, MOUs, recovery plans, efforts to reforest areas, and mandates of other agencies to maintain and protect areas.	DOW Sierra Club LSC FOWC Scott Werner	4. Additional analysis of compatibility with land use plans and management plans has been included in Chapters 4 and 13 of the ESP.

Comment Category	Comment Category Description	Commenter	Draft Response
	<p>5. Comment disputes compatibility determination between CBP and USFWS for construction of tactical infrastructure in relation to the LRGVNR.</p>	<p>DOW</p>	<p>5. CBP's environmental contractor requested Special Use Permits to gain access to the refuge properties for surveys. As part of issuing special use permits, the Refuge had to make compatible use determinations for the various pre-project survey activities. The Refuge submitted their proposed compatible use determinations to the regional office in Albuquerque for approval, then published the notice in the local paper for two weeks, then issued the special use permits for natural and cultural resources surveys in mid-December. CBP's contractor then conducted the surveys and presented the data in the ESP.</p>
<p>Fence Construction</p>	<p>1. Comment requests clarification for statement "if engineered to not impede the natural flow of surface water" includes flood flows, and if it is intended to reference specific areas where fences will cross arroyos or if it means water flows across any surface.</p>	<p>USDOI</p>	<p>1. The standard bollard fence design will allow the passage of water, although this is not anticipated to be an issue where the fence is placed at the north levee toe since flood water naturally flows northward away from the levees. Where the fence must be placed in the floodplain, such as Sections O-1 through O-3, CBP has coordinated closely with USIBWC on a fence design that is movable. This fence will be removed in sections when flooding is imminent and there will be no impact on flooding. In areas where the fence alignment must cross canals, the standard design will be to add a culvert in the canal with a path over the culvert that will serve as a platform for the fence. This design is carried out in coordination with each local canal operator or owner.</p>
	<p>2. Comment asks to indicate the type of fence that will be used, or whether multiple types will be used and their locations. Different fence designs could have different potential impacts.</p>	<p>USEPA TPWD Nye Plantation</p>	<p>2. See Appendix B of the ESP for fence designs and types. Also, Appendix E, Biological Resource Plan, contains specific details about fence design throughout and mitigations required based on actual fence design planned.</p>

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment requests that the depth to which the fence would be built below ground should be specified.	USEPA TPWD EDF	3. Depth below ground of fencing is not publicly available information because such information is considered law enforcement sensitive.
	4. Comment requests that the associated potential impacts on the soil and soil disturbance should be described in detail associated with fence construction.	USEPA TPWD EDF	4. See Chapter 5 of the ESP for a discussion of impacts related to geological and soils resources.
	5. Comment requests information indicating the magnitude of the construction staging areas and the proximity to each segment.	USEPA	5. See Appendix F of the ESP for detailed maps showing construction staging areas. Construction staging areas are mostly located on private property and the use of the staging areas has been negotiated on a case-by-case basis with the respective property owners.
	6. Comment expresses concern with impacts on vegetation and animal populations of operational roads running next to the fence.	TPWD Sierra Club LRGVC	6. Although some such impacts will be unavoidable, a majority of the planned fence sections will be constructed in a pre-existing disturbed corridor. Impacts are disclosed in the ESP. The Biological Resource Plan, including mitigations, is included as an appendix to the ESP in Appendix E.
Addition of Further Specific Information or Analysis in the ESP/ Adequacy of Analysis	1. Comment identifies further general subject matter they feel should be addressed in the EIS. Commenter provides corrections to text or specific information in the Draft EIS (e.g., change spelling of road name, incorrect grammar, etc.). General statement that additional information should be provided or additional analysis conducted.	USEPA USIBWC USDOI TNC Nye Plantation FAS TPWD TCEQ	1. The ESPs incorporates corrections and information to address these types of comments, where appropriate.

Comment Category	Comment Category Description	Commenter	Draft Response
	2. Comment makes statement that additional surveys should be conducted to adequately represent species impacted.	TPWD NBW TBC Sierra Club TSC	2. The revised surveys have been completed and data incorporated into the ESP. This data has been used for fence design and BMP development, and development of mitigation strategies.
	3. Comment requests clarification that biological and cultural surveying has not occurred in the areas that ROW has not been granted. How will this information be made available to the public?	TPWD NBW TBC Sierra Club TSC	3. At the time the Draft EIS was published, surveys for cultural and natural resources had not been completed because right of entry had not been granted by some property owners. Survey updates have taken place for each new property to which CBP was granted access. In some cases, temporary access was awarded through court order. All updated survey information is included in the publicly available ESP and its appendix documents such as the Biological Resource Plan and Biological Survey Report.
	4. Comment states that the extent of survey area needs to be clarified and asks whether the areas outside the project footprint were surveyed.	FOLAR	4. All updated survey information is included in the publicly available ESP and its appendix documents such as the Biological Survey Report and Biological Resource Plan.
	5. Comment requests information on whether the locations of mature vegetation groups were mapped. Comment requests disclosure about how many trees/acres of mature vegetation are impacted.	USDOI	5. CBP re-evaluated this statement and impact level for the ESP by also relating gaps between the fence sections with the now-complete vegetation map to determine the types of vegetation (e.g., Honey Mesquite Woodland, Buffelgrass Herbaceous Vegetation) or land use (e.g., agricultural land) that are being impacted by increased levels of foot traffic. The Project no longer considers alternative fence alignment routes. The Project is planned to proceed along the corridor as presented in ESP Appendix F.

Comment Category	Comment Category Description	Commenter	Draft Response
	6. Comment requests clarification of what is meant by 'protocol' surveys were not conducted	USDOJ	6. Protocol surveys (i.e. surveys conducted according to species-specific survey methods established for some species by the USFWS) were not conducted because protocol surveys for the species anticipated to be present in the corridor (e.g. ocelot and jaguarundi) have not been developed by USFWS.
	7. Comment requests DHS to provide more quantitative information throughout Section 4, including supporting information like technical studies, methods, and analysis.	FOLAR USEPA	7. The ESP presents a summary of anticipated impacts and is based upon many sources of qualitative information and quantitative data. Supporting documents and data is contained within the administrative record for the Project.
	8. Comment expresses concern over perceived limited biological, cultural, archeological, and engineering surveys due to the limited time over which they were conducted, the season (not breeding season) and the fact the 14 National Wildlife Refuge areas were not surveyed due to no rights-of-entry.	USEPA THC NBW TBC Sierra Club LRGVC EDF DOW Sierra Club LSC Merriwood Ferguson Scott Werner	8. At the time the Draft EIS was published, surveys for cultural and natural resources had not been completed because right-of-entry had not been granted by some property owners. Survey updates have taken place for each new property to which CBP was granted access. In some cases, temporary access was awarded through court order. All updated survey information is included in the publicly available ESP and its appendix documents such as the Biological Resource Plan and Biological Survey Report.
	9. Define 'intuitive controlled investigations'.	NBW EDF	9. Due to the short time frame for acquiring field information, CBP's environmental contractor assigned senior ecologists and biologists familiar with the NEPA process needs, vegetation and wildlife habitat classification and mapping protocols, and field sampling methods to intuitively examine the landscape and planned project

Comment Category	Comment Category Description	Commenter	Draft Response
			<p>corridor for the 70-mile length.</p> <p>Further, senior natural resource staff from CBP's environmental contractor were teamed with USFWS-approved and experienced South Texas botanists to insure accurate identification of plant species and competent surveys for rare plants and potential habitat. The surveys were controlled, in that rights-of-entry were approved for a 150-ft corridor width, and survey crews were required to be accompanied by USBP agents who served as guides, shared knowledge of wildlife sightings and other pertinent information, contacted landowners if necessary, and to ensure surveyor safety while in the field. Investigations included plant and wildlife species lists by planned fence section, an assessment of habitat for rare plant and wildlife species, landscape photography points, observation points recording dominant species/location/cover/environmental conditions/photo-documentation, determination of potential wetlands for future research, and general note-taking of natural resource and other NEPA reporting needs. All field survey data were entered into an MS Access database and linked to a project GIS for future additions and current analyses.</p>
	<p>10. Comment makes general statement regarding the purchase of land and the procedure USBP and USACE would use to determine whether USACE would purchase land.</p>	<p>USEPA TPWD</p>	<p>10. The USACE, on behalf of CBP, would negotiate rights to lands where tactical infrastructure would be built. On a case by-case basis, the USACE might purchase the land between the fence and the Rio Grande on behalf of USBP, if operationally necessary. CBP and USACE are working with landowners to ensure that access rights to land and irrigation infrastructure will not be lost.</p>

Comment Category	Comment Category Description	Commenter	Draft Response
Selection of Contractor/Bias	Comment expresses concern that the contractor selected to write the ESP is not a local company or is biased for or against the project.	Honorable John Franz NBW	The selected contractor, engineering-environmental Management Inc. (e ² M) was awarded the contract through a competitive bid process in accordance with government procurement guidelines. e ² M is a nationwide provider of environmental and engineering services, employing a wide range of environmental subject matter experts. During the document development process, e ² M coordinated with local USFWS personnel and worked with local subject matter experts, as recommended by local USFWS personnel. e ² M was contracted to prepare an independent study of the Project and has no interest in the outcome of the analyses or decisions to be made regarding the Project.
Information on Gates/Access	1. Comment makes a general statement regarding the location or use of access gates.	USEPA NBW TBC TNC Sierra Club LRGVC EDF Nye Plantation LGK & L	1. The USBP Rio Grande Valley Sector is coordinating with local property owners regarding access gate placement. Access gate locations and specific operation plans are being developed through coordination with the affected landowners.
	2. Comment inquires whether USBP will coordinate with TCEQ for gate access to Rio Grande to allow for water quality testing.	TCEQ	2. TCEQ would be permitted access to the Rio Grande. CBP is coordinating with TCEQ regarding the Project.

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment is concerned with residences on the "south" side of fence or access to the south side of fence.	TNC	3. Very few residences will be on the south side of the infrastructure. They will be provided with access points. Security operations for the properties between the Rio Grande and the fence will be the same as it is today. No land is being "ceded" to Mexico. The U.S./Mexico international border will remain the same. Land use may become more restricted or access may be inconvenienced. Furthermore, access will not be denied for property owners, government officials, business owners, recreational users, or other legitimate purposes.
	4. Comment states that secondary roads will need to be constructed to cope with the increased traffic around gate sites. More habitat loss will be incurred because of this.	TNC	4. CBP does not anticipate increased vehicle traffic around gate sites and no secondary roads are planned.
	5. Comment requests to know if access gates will be ADA compliant	William Hudson	5. CBP is working with landowners and local agencies to identify gate locations and design. To the extent they are required, reasonable accommodations will be made to ensure that affected landowners can utilize the gates.
Public Involvement Process			
Honest Consideration of Public Comments	1. Comment expresses concern that scoping comments were not fully addressed in the Draft EIS.	USEPA TBC Sierra Club LRGVC EDF Sierra Club LSC NBW	1. Every scoping comment and every comment on the Draft EIS sent to CBP and USBP has been evaluated and incorporated into the Project and reflected in the scope of issues addressed in the ESP, as appropriate.

Comment Category	Comment Category Description	Commenter	Draft Response
	<p>2. Comment expresses concern over a perceived lack of communication and openness of information between the federal officials involved in this project and the public.</p>	<p>NBW TBC</p>	<p>2. DHS and CBP recognize the potential impact that fencing may have on landowners and communities along the border, and are committed to an open dialogue with potential stakeholders. Consultation and the assessment of potential effects on local communities are part of the DHS and CBP planning process that enables them to make informed decisions in deploying tactical infrastructure in the most effective and prudent way. As such, CBP has interacted with and obtained feedback from local officials, landowners and community members about border infrastructure project plans.</p> <p>Since May 2007, CBP has continued to hold extensive discussions with state and local stakeholders, including landowners, about the placement of fencing. As part of these outreach efforts, CBP has contacted almost 600 different landowners and held over two hundred meetings along the southwest border, including town hall meetings, meetings with public groups, meetings with state and local officials, and public open houses focused on the environment.</p> <p>These extensive consultations have allowed CBP to continue to identify areas where it can make accommodations to stakeholders and still meet operational needs. Examples include numerous fence alignment changes to limit the impact on residences, historical sites, educational institutions, and bird watching areas in the Rio Grande Valley. CBP is also pursuing viable alternatives, including the combination of our security infrastructure with local levee improvement efforts in Hidalgo County, Texas.</p>

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment expresses concern over open houses being conducted in English in predominantly Spanish-speaking community.	Eloy Vera	3. CBP recognized that a substantial portion of interested parties would be Spanish-speaking. Spanish notices were published. Additionally, Spanish translation was offered at the open houses and Spanish printed materials were available explaining the meeting and project.
Timeline	Comment expresses concern over the timeline for the Project.	Honorable Carlos Cascos NBW TBC Sierra Club LRGVC Sierra Club LSC	CBP is responding to a Congressional mandate to complete fence in priority areas by the end of 2008 where it would be most practical and effective in deterring and preventing illegal entry into the United States (Public Law [P.L.] 104-208, as amended, 8 United States Code [U.S.C.] § 1103 note).
Coordination	1. Comment makes general comment about lack of coordination and presenting coordination efforts in the Draft EIS	Sierra Club LRGVC Sierra Club LSC	1. Open house meeting locations were determined by the USBP Rio Grande Valley Sector based on a estimate of how to make meeting locations and times convenient to all potentially interested parties. Meeting times and locations were also intended to maximize participation. Meeting locations were selected in October 2007 based on the availability of adequate facilities to accommodate potentially large numbers of interested people. Open house-style meetings are considered today's standard for providing information regarding a federal project and for accepting comments. Open house-style meetings are an efficient means of conveying information to the public while also gathering input back from the public.

Comment Category	Comment Category Description	Commenter	Draft Response
	2. Comment requests that TPWD be involved with mitigation efforts.	TPWD	2. CBP has coordinated with TPWD, including ensuring the representatives were present during route selection visits. CBP has also coordinated with TPWD regarding migratory bird mitigation planning efforts. CBP will continue to closely coordinate with state and federal resource agencies throughout the project effort.
	3. Comment requests inclusion of conservation measures / comprehensive plans in BA, and suggests further discussion with USFWS.	USEPA	3. CBP and USBP have worked closely with the USFWS throughout the project planning process. Although formal Biological Assessments are no longer a requirement for the Project, a Biological Resource Plan detailing mitigation and BMPs have been developed that will guide the construction process.
	4. Comment states that the extent of coordination with USEPA is unclear.	USEPA	4. CBP has conducted all coordination that is necessary under NEPA planning efforts, including initial scoping, filing the Draft EIS that prompted EPA's publishing the Notice of Availability, and careful consideration of EPA comments on the Draft EIS.
	5. Comment states that IBWC and Commission on Environmental Cooperation (CEC), created under the terms of North American Agreement on Environmental Cooperation (NAACE), should be invited to be cooperating agencies.	FOWC	5. CBP has coordinated closely with USIBWC as a cooperating agency throughout the project planning effort. CBP has not coordinated with CEC.

Comment Category	Comment Category Description	Commenter	Draft Response
	6. Comment states that the Draft EIS fails to consider 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 <i>Defenders of Wildlife v. Meissner</i> (2000). Nor does it incorporate the United States Fish and Wildlife Services' (USFWS) 2003 Biological Opinion (BO) produced in conjunction with that agreement.	FAS FOWC	6. CBP incorporated the Operation Rio Grande EIS by reference. The cited settlement agreement is not incorporated because CBP does not feel it is germane to the analysis in the ESP. In addition lighting is currently not a component of the tactical infrastructure planned for the USBP Rio Grande Valley Sector.
Alternatives Analysis			
Site Selection	1. Comment expresses concern over the perceived dangerous "no-mans-land" south of the fence.	USEPA Eddie Lucio Jr. TBC Nye Plantation	1. CBP and USBP disagree that land south of the fence (between the fence and the Rio Grande) will become a dangerous "no-mans-land." The area would be patrolled and laws enforced to the same extent as it was before tactical infrastructure is installed.
	2. Comment requests to know if patrols would continue south of tactical infrastructure.	Eric Ellman	2. Security operations for the properties between the Rio Grande and the fence will be the same as it is today. No land is being "ceded" to Mexico. The U.S./Mexico international border will remain the same and land use may become more restricted or access would be inconvenienced.

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment requests to know if zoning laws and variances will be obtained for the Project	USEPA	3. On April 1, 2008, the Secretary of DHS, pursuant to his authority under Section 102(c) of IIRIRA of 1996, as amended, exercised his authority to waive certain environmental and other laws in order to ensure the expeditious construction of tactical infrastructure along the U.S./Mexico international border. Although the Secretary's waiver means that CBP no longer has any specific legal obligations for alternatives analysis under NEPA, the Secretary committed DHS to continue responsible environmental stewardship of our valuable natural and cultural resources. CBP has worked with resource agencies to consider alternative designs and locations that would minimize environmental impacts.
	4. Comment is concerned that there is no consideration for rehabilitation and construction of deficient levees (Hidalgo County Resolution).	Honorable Carlos Cascos Hidalgo County Resolution TBC	4. Hidalgo County and DHS have reached agreements to incorporate border security as a levee reconstruction program that will satisfy USBP operations needs.
	5. Comment asks whether future additional tactical infrastructure needs will be evaluated under NEPA.	TCEQ	5. Future tactical infrastructure needs will be subject to NEPA analysis if they are not covered by the Secretary of Homeland Security's April 1, 2008 waiver.
Waiver	Opposition to the Secretary of Homeland Security using his power under the Real ID Act to waive environmental laws.	Sierra Club LSC	Comment noted.
Earth and Water Resources			
Parks	1. Statement indicating a Surface Use Agreement with TPWD before DHS enter TPWD properties.	TPWD	1. CBP will continue to coordinate with state and local agencies for this project.

Comment Category	Comment Category Description	Commenter	Draft Response
Water Supply Issues	1. Comment is concerned with the supply of water from the Rio Grande for agricultural purposes.	Ford Sasser William Hudson	1. The Project would have no impact on the supply of water from the Rio Grande for agriculture or municipal purposes. Agricultural and municipal operations are being taken into consideration and access to water facilities will be provided through the use of special access gates within the fence sections.
	2. Comment states CBP will need to coordinate with TCEQ's watermaster and irrigation districts to ensure supply will not be interrupted from the Rio Grande.	TCEQ	2. All changes to water supply system infrastructure would be coordinated with the TCEQ and irrigation districts to ensure that water supply districts continue to provide water to their customers.
Impacts on Water Resources	1. Comment is concerned with loading of pollutants that would create overall adverse impacts from fence construction, operation, maintenance, and mowing activities on biota, vegetation, water quality, and small animal movement and activity.	USEPA TCEQ NBW	1. BMPs for water resources will include a SWPPP. The SWPP would contain a visual monitoring program, a chemical monitoring program, and sediment monitoring program. Therefore, there would be no effects on water or any TMDL that has been or is being developed associated with point source or non-point source runoff from the project area. Following final stabilization of the site, operation and maintenance of the tactical infrastructure will be expected to cause no to negligible effects associated with point source or nonpoint source runoff. The maintained area is assumed to be permanently impacted. Therefore, any habitat removed in this permanent impact corridor will not be allowed to revegetate. This area is quantified in the ESP. Air quality impacts due to maintenance are also quantified.

Comment Category	Comment Category Description	Commenter	Draft Response
	2. Comment makes statement that water quality reports from EPA, the TCEQ, or original investigations should be included in the analysis.	USEPA	2. The level of data sought by EPA on this subject has offered no benefit to assessing the impacts of the Project on the environment, particularly where the majority of the planned infrastructure will have no further impact on these already impaired water bodies. DHS considers the information sought to be background material not useful to decisionmakers.
	3. Comment requests map of all surface water and jurisdictional water resources be mapped.	TCEQ	3. Some of the surface water resources are displayed in Appendix F of the ESP. Approximately 2.77 acres of waters of the U.S. will be permanently impacted.
Flooding issues	1. Comment is concerned that the fence could increase the likelihood of flooding in areas near the Rio Grande.	Patricio Ahumada NBW Blackburn Carter Lawrence Dunbar FAS FOWC Nancy Devlin	1. The tactical infrastructure would not increase flooding potential. For the majority of the route, the tactical infrastructure would be on the north toe of the existing USIBWC levee system. The levee system is designed precisely to block rising floodwaters associated with the Rio Grande. The positioning of the fence would have no impact on the potential for flooding. Similarly, floodwaters in the form of runoff toward the Rio Grande would not be hindered by the tactical infrastructure any more than the levees hinder the same runoff. The fencing would avoid waterways such as drainage canals and creeks that convey floodwaters to the Rio Grande. In areas where there is no levee, such as in Sections O-1 through O-3, CBP and USBP has negotiated removable fencing with USIBWC, which will be removed in sections prior to flood events such as those associated with hurricanes.

Comment Category	Comment Category Description	Commenter	Draft Response
	2. Comment concerned with impacts on hydrology from construction, operation, and maintenance of tactical infrastructure in the project impact corridor.	TCEQ TBC Lawrence Dunbar FAS Nancy Devlin	2. Chapter 6 was revised to indicate that no impacts on the general hydrology of the drainage basin will occur as a result of the Project. Following final stabilization of the site, operation and maintenance of the tactical infrastructure will be expected to cause no to negligible effects associated with point source or nonpoint source runoff.
	3. Comment asks to provide assurances that Sections O-4 through O-21 will not impact operation of the levee.	TCEQ Blackburn Carter	3. As coordinating agencies, CBP, USACE and USIBWC are working to ensure that design and placement of the tactical infrastructure and levee improvements do not impact flood control processes and do not violate treaty obligations between the United States and Mexico.

Comment Category	Comment Category Description	Commenter	Draft Response
	<p>4. Comment requests hydrologic studies to assess impacts on flooding.</p>	<p>Blackburn Carter Lawrence Dunbar FAS Nancy Devlin</p>	<p>4. Analyses in the ESP are based on FEMA flood insurance rate maps and engineering flood studies. These documents are not included in the ESP in order to limit the reproduction of paper and extraneous background material. However, these materials are included in the administrative record for the Project.</p> <p>Hydrology studies were completed and showed no increases in flood risk from the implementation of the Project in Sections O-1 through O-3. Despite that analysis, CBP and USBP have negotiated with USIBWC for removable fencing to be installed in O-1 through O-3 to mitigate any flooding potential. For Sections O-4 through O-10, the Project incorporates a flood control structure as suggested by Hidalgo County officials and Hidalgo County Drainage District No. 1. The Hidalgo County proposal will provide increased flood protection while meeting the purpose and need for the Project. For Sections O-11 through O-21, most of the tactical infrastructure will be installed on the north, or non-river (dry) side of the existing levee. As cited in the ESP water resources chapter, existing studies indicate that storm water flows away from the Rio Grande. Therefore, any storm water will also flow away from the tactical infrastructure and have no impact on flooding. With regard to Rio Grande flooding in these areas, there is no impact because rising river water will be held back by levees. If rising water overtops the levees, it will then encounter the planned tactical infrastructure before continuing toward low lying areas. In such a case, the tactical infrastructure is not expected to create impacts on this aspect of flooding.</p>

Comment Category	Comment Category Description	Commenter	Draft Response
	5. Comment states a need to include maps of the 100- and 500-year floodplain.	Blackburn Carter Lawrence Dunbar	5. Analyses in the ESP are based on FEMA flood insurance rate maps and engineering flood studies. These documents are not included in the ESP in order to limit the reproduction of paper and extraneous background material. However, these materials are included in the administrative record for the Project.
	6. Comment is concerned with Sections O-1 through O-3 not being located outside of the floodplain.	Blackburn Carter Lawrence Dunbar USIBWC TCEQ	6. Because there are no levees in Sections O-1 through O-3, the floodplain extends inland too far for a route outside the floodplain to be operationally practicable for the USBP. CBP and USBP have negotiated with USIBWC for removable fencing to be installed in Sections O-1 through O-3 to mitigate any flooding potential.
	7. Comment states USIBWC flood obligations should not be compromised and construction of the fence should take into consideration operations and maintenance.	Blackburn Carter Lawrence Dunbar	7. CBP has continually consulted with USIBWC throughout project planning efforts. CBP and USIBWC have developed flood mitigation strategies that are being incorporated into fence design. In addition the USIBWC has reviewed the fence alignment and designs.

Comment Category	Comment Category Description	Commenter	Draft Response
	8. Comment expresses concern that fence will have major impacts on hydrology from surface runoff and flash floods and that flooding will be exacerbated. Potential impacts should be described.	TNC Blackburn Carter Lawrence Dunbar	8. Hydrology studies were completed and showed no increases in flood risk from the implementation of the Project in Sections O-1 through O-3. Despite that analysis, CBP and USBP have negotiated with USBWC for removable fencing to be installed in Sections O-1 through O-3 to mitigate any flooding potential. For Sections O-4 through O-10, the Project incorporates a flood control structure as suggested by Hidalgo County officials and Hidalgo County Drainage District No. 1. The Hidalgo County proposal will provide increased flood protection while meeting the purpose and need for the Project. For Sections O-11 through O-21, most of the tactical infrastructure will be installed on the north, or non-river (dry) side of the existing levee. As cited in the ESP water resources chapter, existing studies indicate that storm water flows away from the Rio Grande. Therefore, any storm water will also flow away from the tactical infrastructure and have no impact on flooding. With regard to Rio Grande flooding in these areas, there is no impact because rising river water will be held back by levees. If rising water overtops the levees, it will then encounter the planned tactical infrastructure before continuing toward low lying areas. In such a case, the tactical infrastructure is not expected to create impacts on this aspect of flooding.
	9. Comment requests inclusion of Rio Grande flow rate, water usage by sector and seasonal variations and any other relevant, specific information to describe the hydrology and groundwater.	USEPA	9. This information is not included in the ESP because it is not germane to the analysis of impacts of the fence. Also, including data from other USBP sectors is not within the scope of the study area.

Comment Category	Comment Category Description	Commenter	Draft Response
	10. Comment requests that the location of the levee system, the delineation of the floodplain and the floodway be included in the analysis so the public can have the necessary information in order to independently confirm the potential impacts as stated in the document	Lawrence Dunbar	10. Many issues related to floodplains have been changed since publishing the Draft EIS. In Hidalgo County, the Project will proceed as a levee improvement program designed to protect Hidalgo County against future flooding of the Rio Grande (Sections O-4 through O-10). In Sections O-1 through O-3, CBP consulted with USIBWC to minimize any impact of fence in the floodplain through the use of a movable fence design. In Sections O-11 through O-21, the fence will mostly be constructed on the north toe of the levee where no impacts to flood flows would occur.
	11. Comment states that according to the IBWCs 'Hydraulic Model of Rio Grande and Floodways within Lower Rio Grande Flood Control Project.' There are portions of the border fence associated with Section O-4 through O-21 that are within the floodplain/floodway of the Rio Grande River, contrary to the statements saying otherwise in this document. FEMA regulations prohibit constructing any obstructions within the floodway of a river or water source that would cause any increase in the computed 100-year water level associated with the floodway analysis. Comment asks that at the minimum the EIS provide a figure showing the floodplain/floodway of the Rio Grande River and the border fence.	Lawrence Dunbar	11. FEMA FIRMS were used to determine the locations of floodplains/floodways. Sections 0-4 to O-21 would not be within the floodplains. Some areas of the 100-year floodplain occur within the impact corridor of sections O-7, O-10, O-11, O-15, O-17. With the exceptions of Section O-1 and O-3, the tactical infrastructure would be 'north' of the levee and therefore outside of the floodplain. Because there are no levees in Sections O-1 through O-3, the floodplains extends inland too far for a route alternative outside the floodplain to be operationally practical for the USBP. Floodplain impacts are being minimized in Sections O-1 through O-3 through the use of a movable fence design in coordination with USIBWC.

Comment Category	Comment Category Description	Commenter	Draft Response
	12. Comment states that the ESP fails to include any minimization and/or restoration plan as required by EO 11988.	Lawrence Dunbar	12. Floodplain impacts are being minimized in Sections O-1 through O-3 through the use of a movable fence design in coordination with USIBWC. For Sections O-4 through O-10, the Project incorporates a flood control structure as suggested by Hidalgo County officials and Hidalgo County Drainage District No.1. The Hidalgo County proposal will provide increased flood protection. For Sections O-11 through O-21, most of the tactical infrastructure would be installed on the north, or non-river(dry) side of the existing levee. Existing studies indicate that storm water flows away from the Rio Grande. Therefore, any storm water would flow away from the tactical infrastructure and have no impacts on flooding. With regards to Rio Grande flooding in these areas, there is no impact because rising water would be held back by levees. If rising water overtops the levees, it would then encounter the tactical infrastructure before continuing towards low-lying areas. In such a case, the tactical infrastructure is not expected to create impacts on this aspect of flooding.

Comment Category	Comment Category Description	Commenter	Draft Response
	13. Comment concerned with flooding from grading and contouring activities associated with the Project.	USEPA	13. Grading and contouring will be expected to alter the topography and remove vegetation from approximately 105 acres within the floodplain of the Rio Grande, which could in turn increase erosion potential and increase runoff during heavy precipitation events. Revegetating the area with native vegetation following construction along with other BMPs to abate runoff and wind erosion could reduce the impacts of erosion and runoff. Additionally, the small increase in impervious surface within the floodplain will result in negligible increases in the quantity and velocity of storm water flows to the Rio Grande. BMPs would be developed manage storm water both during and after construction. Therefore, impacts will be expected to be negligible.

Comment Category	Comment Category Description	Commenter	Draft Response
Hurricanes	Comment makes general statement regarding hurricanes and tropical storms and the impact that they could cause on the area if the fence is built.	NBW TBC FAS FOWC Nancy Devlin	<p>The tactical infrastructure will not increase flooding potential if a hurricane or tropical storm occurred. For the majority of the route, the tactical infrastructure would be on the north toe of the existing USIBWC levee system. The levee system is designed precisely to block rising floodwaters associated with the Rio Grande. The tactical infrastructure would have no impact on the potential for flooding. Similarly, floodwaters in the form of runoff toward the Rio Grande would not be hindered by the fence any more than the levees hinder the same runoff. The fencing would avoid waterways such as drainage canals and creeks that convey floodwaters to the Rio Grande.</p> <p>CBP coordinated with USIBWC on the development of movable fence designed to mitigate potential impacts to the floodplain for Sections O-1 through O-3. During a flood event, sections of the fence in Sections O-1 through O-3 would be moved in order to allow easier passage of flood waters.</p>
Wetlands	<ol style="list-style-type: none"> 1. Comment requests details on wetland mitigation and BMPs 2. Comment states that the National Wetlands Inventory includes 7.3 acres of jurisdictional wetlands, this acreage is 20 years old and is not accurate. 3. Comment asks whether jurisdictional determination will be completed and what portion of jurisdictional wetlands will be directly impacted. 	<ol style="list-style-type: none"> USDOI TCEQ TPWD TPWD TCEQ TPWD 	<ol style="list-style-type: none"> 1. See Appendix E of the ESP for detailed BMPs and mitigation. 2. Based upon the formal Jurisdictional Determination, it is expected that approximately 2.77 acres of jurisdictional wetlands will be impacted by the Project (see ESP Chapter 6). 3. Based upon the formal Jurisdictional Determination, it is expected that approximately 2.77 acres of jurisdictional wetlands will be impacted by the Project (see ESP Chapter 6).

Comment Category	Comment Category Description	Commenter	Draft Response
	4. Comment requests information about mitigation for jurisdictional waters:	TCEQ TPWD	4. See Appendix E of the ESP for detailed BMPs and mitigation. In addition, CBP has continued to coordinate with the Army corps of engineers on wetlands impacts and options and strategies for mitigations.
	5. Comment states that it should be made clear in the EIS that wetland surveying was undertaken but not completed and requests additional information concerning NWI data be updated.	USEPA TPWD NBW DOW Sierra Club TSC	5. Wetland surveys have since been completed and data has been incorporated into analysis in the ESP.
Soil Disturbance	1. Comment asks about effects on soil and soil organisms.	USEPA	1. See Chapter 5 for potential impacts to soil organisms under the Project.
	2. Comment requests to know details of revegetation efforts with native species following disturbance of soils.	TPWD	2. See the Biological Resources Plan for a detailed list of BMPs and mitigation.
Funneling Effects	Comment expresses concern over how wildlife and wildlife habitat, historical resources, private wildlife sanctuaries and national wildlife refuges would be adversely affected by funneling effect of fence segments.	USEPA USDOI TPWP THC NBW Sierra Club LRGVC DOW FAS Merriwood Ferguson	Construction and operation of tactical infrastructure will increase border security in the UBSP Rio Grande Valley Sector and may result in a change to illegal traffic patterns. However, changes to illegal alien traffic patterns result from a variety of factors in addition to USBP operations; and therefore, are considered unpredictable and beyond the scope of this ESP.

Comment Category	Comment Category Description	Commenter	Draft Response
Patrol and Access Roads	Comment makes general statement about patrol and access roads not being discussed in enough detail or being included in impacted acreage totals.	Sierra Club TSC Xanthe Miller USEPA USDOJ EDF FAS	The ESP analyzes the full project corridor. Should complete vegetation removal occur as a result of construction and long-term patrol/maintenance there will be loss of approximately 380 acres in the 60-foot wide corridor and 985 acres in the 150-foot wide corridor.
Wildlife and Habitat			
Impacts on Ocelot	1. General statement regarding the potential impacts on ocelots and their habitat.	USDOJ TNC NBW Coalition FOLAR DOW FAS FOWC Merriwood Ferguson	1. CBP and USBP are working closely with USFWS regarding potential impacts to threatened or endangered species. Impacts and mitigation measures to wildlife and wildlife habitats are included in the BRP (see Appendix E of the ESP). In this regard, CBP, USBP, and USACE are working closely with the USFWS on fence design and BMPs that would minimize or mitigate impacts to sensitive species.

Comment Category	Comment Category Description	Commenter	Draft Response
	2. Comment is concerned with potential for increase in ocelot mortality from new access and patrol roads	Sierra Club LRGVC Xanthe Miller USDOI EDF	2. BMPs will be implemented such that construction speed limits will not exceed 35 mph on major unpaved roads (graded with ditches on both sides) and 25 mph on all other unpaved roads. Night time travel speeds will not exceed 25 mph, and may be less based on visibility and other safety considerations. Construction at night will be minimized. Other minimization measures will be applied, which could include biological monitoring. It is difficult to ascertain mortality of wildlife species due to the planned project particularly as it relates to post-construction crossings to water, etc. The impact levels will be re-examined for the ESP. Close coordination with USFWS will minimize negative impacts to wildlife.
Impacts on Jaguarundi	1. General statement regarding the potential impacts on jaguarundi and its habitat.	USEPA USDOI TNC NBW TBC FOLAR DOW FAS FOWC Ford Sasser Merriwood Ferguson	1. CBP and USBP are working closely with USFWS regarding potential impacts to threatened or endangered species. Impacts and mitigation measures to wildlife and wildlife habitats are included in the BRP (see Appendix E). In this regard, CBP, USBP, and USACE are working closely with the USFWS on fence design and BMPs that would minimize or mitigate impacts to sensitive species where possible.

Comment Category	Comment Category Description	Commenter	Draft Response
	2. Comment disagrees with claim that the only sighting of a jaguarundi was a road kill specimen, noting the Texas Natural Diversity Database indicates five documented occurrences of Jaguarundi near the impact corridor.	TPWD	2. The environmental consultants received a database of species occurrence records from NatureServe that have been thoroughly reviewed and the results presented in the ESP. The NatureServe database includes the records of the Texas Parks and Wildlife Department's Natural Diversity Database.
Impacts on Wildlife/Habitat	1. General statement regarding wildlife and/or their habitats; or identifies a concern with a park or recreational area.	USEPA USDOI Patricio Ahumada TBC FOLAR DOW FAS Sierra Club LSC FOWC Xanthe Miller NBW TNC Sierra Club TSC Merriwood Ferguson	1. CBP and USBP are working closely with USFWS to select fence designs and locations that would minimize potential impacts to wildlife and their habitat where possible. Page 4-5 of the BRP indicates that all grasslands, shrublands, woodlands, open water, and other wetlands within the Picachos Corridor are potentially ocelot and jaguarundi habitat. However, the most appropriate habitat expected to be affected includes thorn scrub shrubland and woodland habitat, predominantly honey mesquite and retama; disturbed floodplain shrubland, woodland, and forest habitat, predominantly honey mesquite and sugarberry; and to a lesser extent sabal palm. Page 4-2 of the BRP indicates that the Project is located fully within Picachos Corridor, a wildlife corridor that is being developed with Mexico under a binational Memorandum of Understanding. The location of specific vegetation types within the project corridor for each fence section are presented in the Action Area Maps in Appendix A of the BRP and listed in Table 1-4 of Appendix B of the BRP. Ecological systems present in each section, including Tamaulipan Calcareous Thornscrub [Barretal and Upland Thornscrub], Tamaulipan Mesquite Upland Scrub [Chihuahuan Thorn Forest, Upper Valley Flood

Comment Category	Comment Category Description	Commenter	Draft Response
			Forest, and Mid- Valley Riparian Woodland], and Tamaulipan Mixed Deciduous Thornscrub [Chihuahuan Thorn Forest and Upland Thornscrub] is also presented in Table 7-1 of the ESP.
	2. Adverse impacts would be expected from cutting off access to water for animals.	TPWD NBW TNC EDF FAS FOWC	2. There are animal passages integrated into the fence design. Additionally, since the infrastructure will not be continuous along the entire length of the Rio Grande, animals will have many areas where access to water is unhindered.
	3. Comment states habitat loss could affect more state and Federal listed species than presented in the Draft EIS.	TPWD FAS	3. The environmental consultants received a database of species occurrence records from NatureServe that were thoroughly reviewed and the results presented in the ESP. The NatureServe database includes the records of the Texas Parks and Wildlife Department's Natural Diversity Database.
	4. Comment makes statement as to whether potential habitat for species not known to occur in project corridor were accounted for in surveys.	USEPA FAS	4. Known rare species occurrence records and other distribution information were acquired from NatureServe and its contributing agencies to use as guidance during field surveys. USFWS approved botanists surveyed for rare plants, known sites, and potential habitat during field survey sessions. Following each survey, the USFWS approved botanists provided location information of, and descriptions for, potential rare plant habitat and made a subjective qualitative analysis of habitat quality for rare species.

Comment Category	Comment Category Description	Commenter	Draft Response
	5. Comment states that the Texas Natural Diversity Database (TXNDD) needs to be consulted in order to properly document potential species that occur in the Project Corridor.	TPWD	5. Comment noted. The environmental consultants received a database of species occurrence records from NatureServe that has been thoroughly reviewed and the results presented in the ESP. The NatureServe database includes the records of the Texas Parks and Wildlife Department's Natural Diversity Database. The potential impact to state-listed species is addressed based on the results of the database review.
	6. Comment states details and pictures of wildlife migratory portals need to be included.	TPWD NBW Steve Mondel	6. Final fence design, including migratory wildlife portals, has been evaluated for species in south Texas in close coordination with USFWS. Wildlife portals are still being developed and pictures are unavailable at this time.
	7. More than 125 acres of wildlife habitats are likely to be impacted if all impacts to all wildlife habitats including secondary and indirect impacts are assessed.	DOI	7. Comment noted. Should complete vegetation removal occur as a result of construction and long-term patrol/maintenance there will be loss of approximately 380 acres in the 60-foot wide corridor and 985 acres in the 150-foot wide corridor.
	8. Heating umbrella caused by fence having impacts on the surrounding wildlife and soil.	USEPA	8. It is not anticipated that the fence will heat up enough to kill wildlife or create its own temperature "umbrella." It will have less of an impact than a typical road surface.
	9. Comment requests that a list of migratory species be included	NBW	9. See the Biological Survey Report (Appendix D of the ESP)

Comment Category	Comment Category Description	Commenter	Draft Response
	10. Migratory portals need to be developed to accommodate Jaguarundi and ocelot and other species specific to South Texas.	TPWD Nancy Devlin	10. While protection of habitat will occur on the state side of the fence, CBP concurs the loss of habitat and ability for cats to move freely from one side of the border to another will be reduced. These impacts are judged to be short- and long-term, moderately adverse impacts on the ocelot and the jaguarundi. Wildlife portals capable for an ocelot or jaguarundi to pass through them will be part of the design of the fence. The distribution of the portals has not yet been determined.
	11. Comment disagrees with beneficial impacts on wildlife, vegetation, communities, and habitat north of the tactical infrastructure.	USEPA TPWD TBC Sierra Club LRGVC FOLAR DOW FAS FOWC	11. The fencing is expected to provide protection for wildlife, vegetation, communities, and wildlife habitats in the areas north of the tactical infrastructure from foot traffic impacts by cross-border violators.

Comment Category	Comment Category Description	Commenter	Draft Response
	12. Comment expresses general concern for migratory birds and other migratory species, such as large mammalian species.	USEPA USIBWC USDOJ NBW Sierra Club LRGVC Nancy Devlin Scott Werner	12. The migratory portals and general design of the infrastructure will allow for small mammals, amphibians, and reptiles to pass through the fence to forage or mate. In areas of known crossings by larger mammals, such as the ocelot and jaguarundi, portals will be large enough to accommodate their size. Although there is the potential to impact migratory birds during the actual construction, it is not anticipated that migratory birds will be affected by the presence of the fence given their mobility. The open area created along the impact corridor could serve to discourage movement across it for more brush- or woodland-specific species. See Appendix E of the ESP for BMPs related to migratory birds.

Comment Category	Comment Category Description	Commenter	Draft Response
	13. Comment concerned with movement of Sabal Palm seeds by coyotes. Artificial germination isn't as effective. The coyote method will be affected by the tactical infrastructure.	David Benn	13. Coyotes can distribute sabal palm seeds over short- to long-term distances following ingestion, as can other species of wildlife that forage on fruit (e.g. raccoons, skunks, and various species of birds). Smaller mammals may have smaller home ranges relative to dispersal distances. Because the border fence design will not preclude coyotes and smaller mammals from south-to-north travel or birds which will overfly the fence, sabal palm fruits would continue to be dispersed to appropriate habitat north of the fence through the mammal/wildlife mechanism. In addition, in coordination with USFWS, wildlife migratory portal (i.e., holes in the fence through which wildlife could pass) have been incorporated in the fence design; and the placement of these openings has been prioritized by USFWS to include those areas considered most likely to serve as movement corridors.
Impacts on Wildlife Corridor	1. Comment gives general statement regarding impacts on the wildlife corridor.	USDOI Sierra Club LRGVC FOLAR Blackburn Carter FAS Sierra Club LSC Nancy Devlin	1. Impacts on the wildlife corridor would be mitigated through the implementation of BMPs and mitigation measures that would allow animal movement across the tactical infrastructure. Mitigation measures could include purchasing additional land to become part of the wildlife corridor system.
	2. Comment concerned with species fragmentation and a reduction in genetic diversity of species populations because of limited wildlife movement.	USEPA USDOI NBW	2. To continue efforts to have a genetically viable population of large mammals such as the ocelot, wildlife migratory portals, which are designed to allow for the passage of these mammals will be

Comment Category	Comment Category Description	Commenter	Draft Response
		TNC Sierra Club LRGVC Blackburn Carter DOW Merriwood Ferguson Nancy Devlin	<p>designed into the fence. These portals were developed to meet the specifications and requirements of the USFWS. The migratory portals and general design of the tactical infrastructure will allow for small mammals, amphibians and reptiles to pass through the fence to forage or mate. In areas of known crossings by larger mammals, such as the ocelot and jaguarundi, portals will be large enough to accommodate their size.</p> <p>Reduction in habitat connectivity resulting from implementation of the Project will likely impact wildlife movement, access to traditional water sources, and potential for gene flow. Smaller, less-mobile species might be more heavily impacted than larger species. However, smaller species will also be able to fit through the bollard-style fence planned for much of the fence sections. Although larger species might not be able to pass through the fence without a portal, such species tend to be more mobile, have larger home ranges, and will be able to move between fence sections. The open area created along the project corridor could serve to discourage movement across it for more brush- or woodland-specific species. However, the distance such species will have to traverse will be small relative to highways, towns, and other types of less suitable habitat, and it is anticipated that they could make the passage.</p> <p>The number of successful dispersals required to maintain genetic diversity is small, any restriction of wildlife movement is not anticipated to noticeably impact genetic diversity of most wildlife species.</p>

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment makes statement requesting linkages of land to connect habitat to the north and south of tactical infrastructure.	EDF	3. Impacts on the wildlife corridor would be mitigated through the implementation of BMPs and mitigation measures that would allow animal movement across the tactical infrastructure. Mitigation measures could include purchasing additional land to become part of the wildlife corridor system.
Biological Survey Report	Comment concerned with adequacy of Biological Survey Report	USEPA FAS FOWC Scott Werner	The Biological Survey Report, Appendix D of the ESP, has since been updated. Additional survey data has been included.
Cultural Resources			
Impacts on Cultural Resources Including Historic Properties	1. Comment is concerned with potential impacts on historic properties or cultural resources	Eddie Lucio Jr. TBC	1. Measures to avoid adverse effects are being incorporated to the extent practicable. Extensive cultural surveys have been conducted and CBP is continuing coordination with the Texas SHPO (Texas Historical Commission) and other parties.
	2. Comment concerned with impacts on multiple historic areas which include: Rancho de Carricitos, Camp Belknap, and the 1846 US Army camp.	USDOI	2. Rancho de Carricitos is located north of US 281; Camp Belknap lies along the coast east of Brownsville and is likely the 1846 Army camp referred to in the comment. Neither of these are impacted by the project.

Comment Category	Comment Category Description	Commenter	Draft Response
Impacts on the University of Texas at Brownsville	Comment is concerned with potential impacts on the University of Texas at Brownsville and access of students to various facilities, effects on the quality of life for students.	Edie Lucio Jr. UT & TSC	<p>Impacts would be primarily visual along the north side of the existing golf course at the southern portion of the campus. Historic Fort Brown buildings are well integrated into the campus and occur at a distance from the infrastructure with intervening development. UTB and CBP held joint discussions that resulted in a formal agreement entered into on August 5, 2008, to pursue a joint project to secure the border in the area of the campus.</p> <p>This agreement is intended to result in a project that will use fencing and technology to meet the Border Patrol's operational requirements by the 12/31/08 deadline while also recognizing UTB's unique status as an institution of higher education.</p>
Inadequate Assessment of Impacts on Cultural Resources	1. Comment makes a general statement that additional analysis is needed.	THC	1. CBP has conducted extensive analyses regarding effects of the project on cultural resources. Surveys were developed with input from the Texas Historical Commission (THC). The THC has provided input on the environmental analyses, cultural resources survey and survey documents including archaeological survey, deep testing for archaeological sites, and historic-period resources including architecture, and draft mitigation plans.
	2. Comment asked to ensure that the Texas Historical Commission gets to review all surveys.	THC	2. The Texas Historical Commission has been provided draft copies of all survey documents for review and comment. Summary findings of cultural resources surveys are included in the ESP (see Chapter 8 of the ESP). The THC will be provided copies of final documents.

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment makes statement that backhoe trenching is required in any area with potential for deeply buried cultural deposits regardless of land ownership.	THC	3. An archaeological backhoe testing program was carried out to identify areas with the potential for deeply buried archaeological sites. The plan for the program was developed in consultation with the Texas Historical Commission.
	4. Comment is concerned with location of Project in relation to NRHP Toluca Ranch.	THC	4. The infrastructure will be more than .38 mile south of the main house of the Rancho Toluca Historic District (Section O-10) and outside the boundaries of the historic district. The project would be constructed as a flood levee wall on the south side of the levee, away from the historic ranch and structures. The house and other structures are surrounded by trees and are well protected visually from the levee. Accordingly the project is expected to be outside the boundaries and viewshed of Rancho Toluca historic district.
	5. Comment is concerned with the accurate number of NHRP eligible sites in the Project Corridor.	THC	5. The ESP has been updated with the latest archaeological survey results.
	6. Comment is concerned with recordation as the only mitigation measure for historic buildings.	THC	6. CBP is considering a full range of measures to avoid, minimize, or mitigate adverse effects. These include project modifications such as levee flood wall, relocation of project in limited locations, and special design and construction approaches to minimize physical and visual effects on historic properties. As mitigation measures, CBP also has developed mitigation treatments to protect and interpret historic properties to the benefit of the public in addition to recordation.

Comment Category	Comment Category Description	Commenter	Draft Response
Socioeconomic, Environmental Justice, and Safety			
Quality of Life	Comment concerned with communities being divided, loss of access to the Rio Grande, visual impacts of seeing the fence, etc.	THC NBW William Hudson	The tactical infrastructure will not prohibit residents from accessing the Rio Grande for recreational purposes and will not directly impact the flow of legitimate trade and travel. Chapter 9.3 acknowledges that the tactical infrastructure would have an adverse impact on the character and quality of visual resources.
Recreation	Comment makes general comment about access or interference with recreational activities.	Eric Ellman	Eco-tourism was addressed in Chapter 9 of the ESP.
Devaluation of Real Estate Values	1. Comment concerned with the impact on real estate values as a result of the Project.	USEPA TNC Nye Plantation LGK & L	1. Chapter 10 of the ESP discusses projected adverse and beneficial socioeconomic impacts. In addition to paying no less than fair market value for the portion of property sought, landowners are being compensated for "total damages", which includes devaluation of the "remainder" land and/or structure values resulting from the Project. The government will provide for access to property on the river-side of the fence, though it may be through a gate and the access point crossing over the International Boundary and Water Commission (IBWC) levee may be farther from the access point currently used. These factors will be taken into account when valuating damages. CBP is working to acquiring the minimum amount of land necessary to construct and provide for future operation and maintenance of the fence.

Comment Category	Comment Category Description	Commenter	Draft Response
	<p>2. Comment is concerned with impacts on the development project of a 'riverwalk' in Brownsville.</p>	<p>Peter Goodman</p>	<p>2. Floating fence is now being proposed for the area of the proposed riverfront development after CBP consulted with local stakeholders. Floating fence can be adjusted and moved to accommodate the proposed development.</p> <p>Extensive negotiations resulted in an offer made to acquire land behind the IBWC levee, erect a movable fence, and revert ownership back to the city once they met requirements stipulated in the contract regarding construction of a retaining wall into the embankment that runs along the river. When presented with this offer, the city counsel opted not to vote on the matter, thus CBP will at least proceed with the erection of movable fence in this area.</p>

Comment Category	Comment Category Description	Commenter	Draft Response
Adverse Impacts on Tourism Industry/ Economy	Comment concerned with the impact on tourism, eco-tourism, and local economy.	USEPA Eddie Lucio Jr. NBW TBC EDF World Birding Center UTB & TSC FAS Sierra Club LSC FOWC Elisa Garza-Leal	Eco-tourism impacts are discussed within the Socioeconomic Resources in Chapter 10 of the ESP. Legal visitors from Mexico are an important contributor to the local U.S. economy; however, it has been determined that illegal immigrants do not substantially contribute to the local economy. The tactical infrastructure would not directly impact the flow of legitimate trade and travel. The ESP acknowledges ecotourism is a \$150 million industry annually and that some impacts could be felt. Residents of the Rio Grande Valley might be indirectly affected, or inconvenienced, due to reduced access to the Rio Grande for recreation. The Project is unlikely to have long-term, significant adverse impacts on local retail and tourism. It has been reported that shoppers from Mexico make up 35% of retail business in the Rio Grande Valley. However, Rio Grande Valley business leaders and Mexican Consul Luis López-Moreno have said that the fence will have little effect on this commerce. The direct effect of reducing illegal cross-border violators will have minimal effect on local commerce since illegal immigrants represent a minor contribution to the retail economy.

Comment Category	Comment Category Description	Commenter	Draft Response
Impacts on World Birding Center	Comment makes general statement about impacts on world birding center.	NBW World Birding Center Sierra Club TSC John David Franz USDOI	It is not anticipated that ecotourists will be prevented from accessing any public lands. The tactical infrastructure is not designed to deter visitors to the area, rather, to deter illegal activities and assist the USBP with their mission. Regarding Sabal Palms sanctuary, access will be through gates for any lawful activity. No infrastructure is proposed near Bentsen Rio Grande State Park, Santa Ana NWR, or NABA International Butterfly Park. Regarding the World Birding Center, effects in the Starr County component will be from potential visual impacts or temporary construction disturbance. In Hidalgo County, World Bird Center areas may be impacted through visual impacts and temporary construction impacts. The ESP acknowledges the ecotourism is a \$150 million industry annually and that some impacts could be felt.
Adverse Impacts on Agriculture/Local Economy	Comment concerned with overall impacts on agriculture and local businesses.	Nye Plantation LGK & L Ford Sasser William Hudson	Actual impacts on individual businesses or agricultural operations will be dependent upon the specifics of the access gate location and related operational issues. In general, businesses could be impacted because of a perception that their interests may become difficult to access, even though access will not be cut off under the Project. Most agricultural operations will be allowed to continue as they currently do. Tactical infrastructure will not cut off access to irrigation or other water facilities, as stated in the ESP.
Concerned with Cost	Comment states CBP needs to address how city, school and county taxes will be assessed when the border wall becomes a liability to neighboring landowners.	TNC	Comment noted. Land values along with city, school and county taxes are impacted by a large number of variables. CBP does not believe that the construction of tactical infrastructure would have a significant impact on the local tax base.

Comment Category	Comment Category Description	Commenter	Draft Response
Land Acquisition Process	Comment concerned with the process in which DHS will acquire land and those affected.	NBW Sierra Club LRGVC Eloisa Tamez	The USACE, on behalf of CBP, is negotiating rights to lands where tactical infrastructure will be built. On a case by-case basis, the USACE will purchase the land between the fence and the Rio Grande on behalf of USBP, if operationally necessary.
Relationship with Mexico/Transboundary Impacts	1. Comment gives general statement regarding impact the Project could have on the relationship with Mexico or the reputation of the United States.	USEPA Sierra Club LRGVC World Birding Center	1. Relations with Mexico were identified as a potential socioeconomic impact.
	2. Comment makes statement regarding no mention of Executive Orders that affect U.S. actions on foreign governments.	USEPA	2. Relations with Mexico were identified as a potential socioeconomic impact. USIBWC is a coordinating agency and their responsibility regarding applicable treaty obligations between the U.S. and Mexico is identified in the ESP. The Project will not adversely impact flood control in Mexico.
	3. Comment makes statement regarding transboundary impacts.	Sierra Club LRGVC Blackburn Carter	3. Relations with Mexico were identified as a potential socioeconomic impact. However, CBP believes that transboundary impacts are not within the scope of the analysis of the Project because actual impacts will be localized. The ESP references the USIBWC as a coordinating agency and their responsibility regarding applicable treaty obligations between the U.S. and Mexico.

Comment Category	Comment Category Description	Commenter	Draft Response
	4. Comment is concerned with efforts by The Lower Rio Grande/Rio Bravo Binational Ecosystem Group to establish an international wildlife corridor extending from the United States along the border and the natural protected areas in Mexico.	USDOJ Blackburn Carter Sierra Club LSC	4. Relations with Mexico were identified as a potential socioeconomic impact. USIBWC is a coordinating agency and their responsibility regarding applicable treaty obligations between the U.S. and Mexico is identified in the ESP. The fence design includes wildlife portals to reduce the impacts on animal movements. Additional analysis of compatibility with land use plans has been included in Chapter 4.
Concerns with Environmental Justice	1. Comment gives general statement regarding environmental justice issues (e.g., minority or low-income populations).	USEPA Patricio Ahumada NBW Sierra Club LRGVC Elisa Garza-Leal	1. Chapter 10 of the ESP acknowledges that the tactical infrastructure might be a long-term, adverse cumulative impact on minority and low income populations.
	2. Comment makes statement that environmental justice in Starr County was overlooked.	Elisa Garza-Leal	2. The ESP acknowledges that Starr County and the census tracts near the Project contain a high proportion of minority and low income residents, see Chapter 10 of the ESP for Environmental Justice impacts.

Comment Category	Comment Category Description	Commenter	Draft Response
Health and Safety			
Emergency Response	Comment concerned the tactical infrastructure will prevent emergency personnel from responding to an emergency, e.g. crime, fire, flood and other emergencies.	USDO USEPA NBW TBC Sierra Club LRGVC FOWC Scott Werner DOW EDF	CBP agrees that there could be adverse impacts on safety of firefighters under certain circumstances as discussed in the comment. Fence would be north of the USIBWC levee and therefore outside of the floodplain during flood events. The USIBWC is a coordinating agency on the preparation of the EIS and CBP is working with the USIBWC to ensure that its operations would not be adversely impacted by construction of the fence. Access to the levee and levee road by USIBWC personnel would not be impeded by the fence. Adverse impacts are discussed in Section 4 of the EIS.
Related Projects and Potential Effects			
General Comments on Cumulative Impacts.	1. Comment gives general statement regarding the scope or magnitude of cumulative impacts analysis on various resources.	USEPA USDO Blackburn Carter DOW Merriwood Ferguson Scott Werner	1. CBP has considered the past, present, and reasonably foreseeable projects that could have cumulative impacts when combined with the impacts of the Project within the scope of the project corridor.
	2. Comment states more cumulative impact discussion related to species fragmentation, impenetrable barriers, and wildlife habitat needs to be added.	USDO TPWD Blackburn Carter Scott Werner	2. Comment noted, see Chapter 13 of the ESP.
	3. Comment disagrees with cumulative impacts on Federal and state listed species.	TPWD Scott Werner	3. The Lower Rio Grande Valley National Wildlife Refuge and Santa Anna National Wildlife Refuge Comprehensive Management Plan has been addressed in Chapter 4.4 of the ESP.

Comment Category	Comment Category Description	Commenter	Draft Response
	4. Comment concerned with effects of Project on Federal Refuge Purchase Program or mitigation efforts to purchase lands to offset impacts	USEPA NBW Blackburn Carter Merriwood Ferguson Nancy Devlin	4. The Lower Rio Grande Valley National Wildlife Refuge and Santa Anna National Wildlife Refuge Comprehensive Management Plan has been addressed in Chapter 4 of the ESP. Related Project and Potential Effects discusses impacts on the Federal Refuge Purchase Program in Chapter 13.7.
	5. Comment is questions why there is no Biological Opinion or Biological Assessment was included with the Draft EIS.	USEPA USDOJ Blackburn Carter	5. At the time the Draft EIS was issued, the Biological Assessment was still under development, although largely complete. On April 1, 2008, the Secretary of DHS, pursuant to his authority under Section 102(c) of IIRIRA of 1996, as amended, exercised his authority to waive certain environmental and other laws in order to ensure the expeditious construction of tactical infrastructure along the U.S./Mexico international border. Although the Secretary's waiver means that CBP no longer has any specific legal obligations for alternatives analysis under NEPA, the Secretary committed DHS to continue responsible environmental stewardship of our valuable natural and cultural resources. CBP has worked with resource agencies to consider alternative designs and locations that would minimize environmental impacts. Therefore a Biological Opinion will no longer be issued by USFWS.
	6. Comment states EIS should include U.S. International Boundary and Water Commission Lower Rio Grande Flood Control Project. Formal BO and ESA consultation from USFWS for reference.	USDOJ	6. CBP is coordinating with IBWC on all actions considered under the ESP. Various aspects of the LRGFCP have been incorporated by reference into the ESP

Comment Category	Comment Category Description	Commenter	Draft Response
	7. Comment states broader programmatic document describing all the border tactical infrastructure along the Mexico-America border should be developed.	Sierra Club	7. CBP decided not to develop a programmatic environmental document due to project time constraints set by Congress.
	8. Comment states cumulative effects should analyze additional checkpoints, all weather access roads and vehicle barriers.	Merriwood Ferguson	8. Other tactical infrastructure such as additional checkpoints, all-weather access roads and vehicle barriers are have been implemented in other areas. However, other tactical infrastructure was not considered in the USBP RGV Sector because they did not meet the USBP operational needs and was therefore not review in the ESP.
	9. Comment requests future developments be shown on figures.	USEPA	9. Appendix F of the ESP, Detailed Maps of Fence Sections, has been updated to show known projects when possible.
Other Resource Areas			
USIBWC Levee	1. Comment states Draft EIS does not mention the current planned USIBWC levee improvements in cumulative impacts.	USIBWC	1. These projects were added to Chapter 13 of the ESP, Related Projects and Potential Effects.
	2. Comment requests coordination between Border Patrol and USIBWC and construction crews needed with regard to levee construction safety.	USIBWC	2. CBP has initiated discussions with USIBWC on coordination on the project and will continue to do so.
	3. Comment states more specific information needed about the exact location of the ROW.	USIBWC	3. Text in ESP revised to state that fence would be constructed "landside" and "top of levee" (floating fence) in certain locations. See Figure 1-6 in the ESP that shows a representative schematic for Sections O-4 through O-10.
	4. Comment states alignment needs to take into account current design of the USIBWC levee segment crossing the Hidalgo Pumphouse and intake channel.	USIBWC	4. The new USIBWC levee has been incorporated into the Project design for tactical infrastructure.

Comment Category	Comment Category Description	Commenter	Draft Response
	5. Comment states figure is needed to depict the location of the levee (toe and crest), fence and the location of the Rio Grande relative to fence and the road.	USIBWC	5. See Figure 1-6 of the ESP.
	6. Comment asks for Impact of 60-foot corridor for the Project levee route of fence on Nye Plantation home and buildings.	USIBWC	6. Land along the Nye Plantation is within the IBWC levee easement footprint. It is not 60 feet wide along the entire length; it varies in width from approximately 35 feet to 60 feet in an effort to avoid historic structures located in relatively close proximity to the levee.
	7. Comment asks where would 'behind' the levee system be located.	USIBWC	7. 'Behind' the levee refers to the north of the levee (not the river side of the levee).
	8. Comment makes statement that not all of the IBWC levee is owned by the USIBWC and that coordination with private stakeholders will need to be undertaken.	Nye Plantation	8. Comment noted. CBP has coordinated closely with USIBWC on a fence design and location. CBP will continue to coordinate with local landowners and USIBWC.
Visual Resources	Comment disagrees with stated impacts on visual resources.	THC William Hudson USEPA USDOJ	The visual impact analysis in the ESP follows standard guidelines for such analyses. As stated in the ESP, this is a highly subjective resource area because viewer response is gauged by individuals in various locations, with various backgrounds, and various feelings about the Project. See Chapter 9 of the ESP for visual resources impacts.
Air Quality	1. Comment makes general comment about air quality impacts.	Patricio Ahumada	1. Air quality impacts are expected to be short term as a result of construction activities.
	2. Comment requests graphical interpretation of particulate matter from the Project	USEPA	2. The details sought are beyond the scope of impact analysis normally performed for temporary construction emissions where, as here, the 10 percent of regional inventory is not surpassed.

Comment Category	Comment Category Description	Commenter	Draft Response
Lighting	1. Comment states lighting can impact the movement of migratory birds because of disorientation at night. Impact on migratory birds needs to be analyzed more thoroughly.	USDOJ	1. Lighting is currently not a component of the tactical infrastructure planned for the USBP Rio Grande Valley Sector.
	2. Impacts of lighting need to be discussed in more detail.	USEPA NBW FAS Sierra Club TSC Merriwood Ferguson	2. Lighting is currently not a component of the tactical infrastructure planned for the USBP Rio Grande Valley Sector.
Noise	Comment makes general comment about noise impacts.	Patricio Ahumada TCEQ USEPA FAS	Noise impacts are expected to be short term as a result of construction activities.
Hazardous Materials and Waste	1. Comment makes general comment about impacts on hazardous materials and waste and whether or not hazardous wastes or materials will be encountered.	USEPA	1. Short-term negligible adverse impacts associated with hazardous materials and waste would be expected. It is anticipated that the quantity of products containing hazardous materials used will be minimal and their use short in duration. See Chapter 12 of the ESP for detailed analysis. The Project will not impact hazardous waste sites, nor contribute to them. DHS considers the information sought to be background material not useful to decisionmakers.
	2. Comment states DHS should discuss the specific compounds which are likely to be used (e.g., fuel, oils, pesticides and herbicides) and their duration of use.	USEPA	2. Chapter 12 of the ESP discusses potential compounds that could be used. See Appendix E of the ESP for specific BMPs and mitigation related to hazardous materials and waste.

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment requests that locations of above ground storage tanks (ASTs) and other waste locations.	USEPA	3. Tactical infrastructure routes have been specifically designed to avoid disturbance to potential hazardous waste or hazardous materials areas. Prior to acquisition of any real property for the Project, CBP will have completed other studies (as separate documentation). These surveys are ongoing and will specifically identify any potential recognized environmental condition encountered in the planned path of the tactical infrastructure.
Utilities and Infrastructure	Comment makes general comment about impacts on utilities and related infrastructure.	Patricio Ahumada	CBP would avoid existing utilities and related infrastructure to the extent possible. Drainage and irrigation structures would either be improved or avoided. If existing pipelines or other utilities need to be moved, CBP would coordinate with the owner of such utilities and related infrastructure.
Land Use	1. Comment makes general comment about impacts on land use.	FAS Scott Werner Sierra Club LSC USEPA DOW TNC TCEQ USDOJ TPWD	1. Impacts to land use are unavoidable and range from minor to major, depending on the degree of land use change or restriction to land uses caused by tactical infrastructure.
	2. Comment makes statement that project does not take into account needs of TCEQ personnel and contractors to access Rio Grande for water rights enforcement, treaty compliance and SWQM.	TCEQ	2. The USBP Rio Grande Valley Sector is coordinating with local property owners regarding gate placement. CBP will also consult with the TCEQ for appropriate access to the Rio Grande.

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment requests correction that "Recreation/Special Use" land classification should include various USFWS lands, WMAs, and TPWD wildlife management areas.	FAS	3. These aspects have been included in the "Recreation/Special Use" land classification included in the ESP, see Chapter 4.
	4. Comment is concerned with impacts on agricultural land, prevention of irrigation lines passing through the fence, and over dependence on food from overseas.	TNC TCEQ	4. The placement of gates will be determined on a case-by-case basis. CBP and USACE are working with landowners to ensure that access rights to land and irrigation infrastructure will not be lost.
Vegetation	1. Comment makes general statement about impacts on vegetation.	USDOJ Patricio Ahumada USEPA TPWD USDOJ TNC FAS	1. The Project route was developed in consultation with the USFWS to reduce adverse impacts. To support the analysis in the ESP, a Biological Resources Plan was prepared which includes mitigation and BMPs measures for vegetation. This Biological Resources Plan is included in Appendix E of the ESP. See also the Biological Survey Report in Appendix D of the ESP for additional information on vegetation.
	2. Comment concerned with impacts on Walker's manioc, Zapata bladderpod, and Texas Ayenia	USDOJ	2. Additional information concerning Walker's manioc, Zapata bladderpod, and Texas Ayenia descriptions was added to the Biological Survey Report: The Biological Survey Report was compared with data received from NatureServe in the form of species occurrence records and maps to ensure that the locations in the U.S. are additional to that database. Zapata bladderpod occurring in the Los Negroes Creek NWR tract were observed during December field surveys, associated with steep slopes and arroyo plant communities and sandstone bedrock outcrops.

Comment Category	Comment Category Description	Commenter	Draft Response
	3. Comment requests that the number of plant species in project corridor is accurately depicted.	TPWD	3. The Biological Resources presentation in the ESP has been changed following completion of field inventories, as follows: Plant species recorded within the project impact corridor for Sections O-1 through O-21 and their wetland indicator status (NRCS 2007) when appropriate are included in Appendix D: Biological Survey Report. A total of 301 plant taxa were recorded project-wide. Of these, 189 species occurred in one fence section (O-1) and 87, or 46% of the 189 species occurred only in Section O-1 habitats. Five species (huisache, switchgrass, buffelgrass, retama, and honey mesquite) were common to abundant and occurred in the 21 fence sections. Section O-1 was the most diverse and was the only section in which the Taumalipan Calcareous Thornscrub ecological system occurred (this species rich vegetation type contributed to the high species occurrence)."
	4. Comment requests that details on the extent of funding for adversely impacted natural resources needs to be provided.	TPWD	4. See the BRP in Appendix E to the ESP for detailed mitigation and BMPs.
	5. Comment concerned that tactical infrastructure will result in clearing of land that was revegetated by TPWD.	TPWD	5. The approximately 1985 revegetation work to provide valuable wildlife habitat, conducted by Texas Parks and Wildlife Department at the Anacua Unit of Las Palomas Wildlife Management Area, has been incorporated into the ESP.

Comment Category	Comment Category Description	Commenter	Draft Response
	6. Comment states Tamarisk, chinaberry and bufflegrass are noxious invasive and should be discussed. There removal and restoration to native vegetation could be considered beneficial effects of project.	USDOJ	6. A section has been prepared in Appendix D - Biological Survey Report to identify noxious and invasive non-native plants and their management. There are 14 species from this list that occur in the project impact corridor that will be removed during construction; buffelgrass and Guineagrass comprise nearly half the vegetation present within the 60-foot wide corridor and over one-third of the 150-foot wide corridor. Athel tamarisk and Chinaberry stands provide less than 1 percent of the vegetation present within project corridors. See Appendix E of the ESP for BMPs.
	7. Comment concerned with exotic invasive species due to ground disturbance and what measures will be taken to mitigate against invasive and non-native species.	DOW	7. See Appendix E of the ESP for detailed BMPs related to invasive plant species.

APPENDIX A
SUBSTANTIVE COMMENT LETTERS

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

DEC 21 2007

Mr. Robert F. Janson
Acting Executive Director
Asset Management
U.S. Customs and Border Protection
Department of Homeland Security
c/o e2M
2751 Prosperity Avenue
Suite 200
Fairfax, VA 22031

Dear Mr. Janson:

The Environmental Protection Agency (EPA) Region 6 has reviewed the Draft Environmental Impact Statement (DEIS) for the Construction, Maintenance, and Operation of Tactical Infrastructure, Rio Grande Valley Sector, Texas, prepared by the U.S. Department of Homeland Security, U.S. Customs and Border Protection. The DEIS contains insufficient information for an adequate review. Of particular concern to EPA is the potential for long-term adverse environmental and ecological habitat impacts in the study area. Specific comments are enclosed.

EPA's performed its review pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations in 40 CFR Parts 1500-1508 and Section 309 of the Clean Air Act. The proposed action described in the DEIS includes the construction, maintenance, and operation of tactical infrastructure to include pedestrian fencing, patrol roads, and access roads along approximately 70 miles of the U.S./Mexico international border within the Rio Grande Valley Sector, Texas, from Roma to Brownsville. The proposed action would be implemented in 21 discrete sections ranging from approximately 1 mile to more than 13 miles in length.

Based on review of the DEIS, EPA rates the proposed project and the document as EC-2, Environmental Concerns—Insufficient Information. EPA requests that the DEIS be augmented based on the comments and the fact that the DEIS states that the U.S. Army Corps of Engineers, the International Boundary and Water Commission and the U.S. Fish and Wildlife Service intend for this EIS to fulfill their requirements for compliance with NEPA. If EPA can assist with our comments, please let us know.

EPA appreciates the opportunity to review this DEIS. Please send 5 copies of the Final EIS to the address above when it is filed with EPA's Washington, D.C. office. For your convenience, I also enclose a copy of the "Summary of Rating Definitions," which provides further information on EPA's rating system.

If you have any questions or would like to request assistance, please feel free to contact Cathy Gilmore as primary point of contact for this project. She can be reached at 214-665-6766 or by email at gilmore.cathy@epa.gov.

Sincerely yours,



John Blevins, Director
Compliance Assurance and
Enforcement Division

Enclosures: Summary of EPA Rating Definitions
Comments and Analyses

Cc: Mr. Charles McGregor
U.S. Army Corps of Engineers
Fort Worth District

U.S. Environmental Protection Agency

National Environmental Policy Act (NEPA)

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Environmental Impact Statement (EIS) Rating System Criteria

EPA has developed a set of criteria for rating draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft.

- [Rating the Environmental Impact of the Action](#)
- [Rating the Adequacy of the Environmental Impact Statement \(EIS\)](#)

RATING THE ENVIRONMENTAL IMPACT OF THE ACTION

- **LO (Lack of Objections)** The review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action.
- **EC (Environmental Concerns)** The review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact.
- **EO (Environmental Objections)** The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). The basis for environmental Objections can include situations:
 1. *Where an action might violate or be inconsistent with achievement or maintenance of a national environmental standard;*
 2. *Where the Federal agency violates its own substantive environmental requirements that relate to EPA's areas of jurisdiction or expertise;*
 3. *Where there is a violation of an EPA policy declaration;*
 4. *Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modification or other feasible alternatives;*
or
 5. *Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.*
- **EU (Environmentally Unsatisfactory)** The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an environmentally unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above and one or more of the following conditions:
 1. *The potential violation of or inconsistency with a national environmental standard is substantive and/or will occur on a long-term basis;*
 2. *There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special*

attention; or

3. *The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.*

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RATING THE ADEQUACY OF THE ENVIRONMENTAL IMPACT STATEMENT (EIS)

- **1 (Adequate)** The draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.
- **2 (Insufficient Information)** The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the final EIS.
- **3 (Inadequate)** The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives, that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

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URL: <http://www.epa.gov/compliance/nepa/comments/ratings.html>

**Comments on the Draft Environmental Impact Statement (DEIS)
for Construction, Maintenance, and Operation of Tactical Infrastructure
Rio Grande Valley Sector, Texas**

General Comments

Purpose and Need. There is no text, studies, etc. that provide support for the Purpose and Need. There should be a section describing the amount of drug traffic that occurs along this sector, the number of illegal crossings, the number of Border Patrol responses, decreases in land values over time along the border, crime statistics, maps showing common interdiction locations, or the like. There are none in this document

Recommendation: DHS should include information to support the stated Purpose and Need which should include the following types of information listed above. How would the fence in the specific locations identified in the DEIS deter crossings and provide Border Patrol with the tools they need to carry out their mission?

Section 2 Proposed Action and Alternatives

It does not appear that the alternatives are equally analyzed. Particularly, Alternative 3 is not listed in Section 3. There is also text that implies that the No Action Alternative is not a viable alternative, but only a CEQ regulatory requirement.

p. 2-1, lines 13-16 *"The USBP Rio Grande Valley Sector is working to develop the right combination of personnel, technology, and infrastructure to meet its objective to gain effective control of the border in the Rio Grande Valley Sector."*

There are other alternatives that DHS should be considered. Even though Alternative 2.3.1 and 2.3.2 were eliminated, an alternative that combines aspects of these separate alternatives was not investigated. In addition, an alternative that uses strategic partnerships with cities, towns and other agencies with combination of fences, and technology should be investigated.

Recommendation: Investigate further alternatives in detail which should include the following:

Alt A: Combination of technology and increased number of USBP agents.

Alt B: Strategic partnerships for border enforcement. This alternative should include construction of fencing in areas where one or more landowners consent, plus technology, plus the development of memoranda of understanding (MOUs) or other multi-jurisdictional instruments to use local law enforcement resources. For example, a city may enter into an agreement with the Border Patrol (USBP) to provide a specified number of city law enforcement personnel dedicated to patrolling the border area within their jurisdiction. These types of agreements would alleviate the necessity for requiring a 150% increase in USBP agents and constructing fencing in areas that are sensitive environmentally (or for other reasons).

Alt C: A combination of the items listed in Alt A and B plus enforcing immigration laws designed at decreasing the job opportunities in the US. This may not prevent illegal drug operations, but may decrease the number of illegal border crossings for the purpose of obtaining employment in the US.

Section 3. Affected Environment

The No Action alternative and Alternative 3 are not specifically mentioned in this section. In many subsections, the extent of analysis for Route B is to indicate that it is the same as Route A. It is unclear why the No Action Alternative and Alternative 3 do not have the same level of description.

In several sections (e.g., p 3-21 line 8-26), there are many repetitive statements that describe the affected environment, but are not easily conceptualized by the reader.

Recommendation: DHS should provide maps showing the Proposed Alternative Sections and the described resource. For example, the text describes some of the surface water features, but a map displaying the waterbodies and the Routes would help readers visualize proximity from the Sections to the resource.

There is no mention of Total Maximum Daily Loads (TMDLs) or how the fence would impact water quality. The Rio Grande is an impaired waterbody requiring a TMDL. Also there are no maps of hazardous waste sites, etc

There is also no mention of US-Mexico treaties and whether they will be impacted. There is no mention of any Executive Orders regarding the effect of U.S. actions on foreign governments.

Section 4. Environmental Consequences

The majority of this section uses relative terms like minor, major, perceptible, short-term, and long-term. There are qualitative descriptions of these terms, but there is no quantitative description or attempt to quantify these impacts. Additionally, the use of these terms is not supported by analysis or technical studies. Some potential impacts could be major, but not perceptible, unless detailed studies are conducted. For example, birds that do not optimally use edge habitat may experience a population decline if the fence is constructed. This could be a major impact, but not generally perceptible, unless ornithologists were actively monitoring.

Recommendation: DHS should provide more quantitative information throughout Section 4, including supporting information like technical studies, methods, and analysis.

Best professional judgment is appropriate as long as there are technical studies or other factual information to support the judgment.

There is no mention of the heating effects of the fence, either the fence heating to extreme temperatures and killing small animal species, or causing a heat "umbrella" and differentially heating soil or vegetation.

There is no text describing the effects of the fence on soil and soil organisms if the fence is a solid sheet below ground.

There is no real analysis on the potential effects on tourism. There is no quantitative analysis of the contribution of tourism and associated services to the economy and the relative impact if many of the recreational opportunities are restricted.

Section 4.8. There is no discussion of the fence's potential impact on migratory species or impact to their home range, in particular, large mammalian species (e.g., deer or carnivores) or avian rookeries.

Section 5. Cumulative Impacts

There is no discussion of the U. S. Fish and Wildlife Service (FWS) initiative to purchase land to connect units of the Lower Rio Grande Valley National Wildlife Refuge (LRGVNWR) (p. 3-30 line 4-10) or the potential impacts of the fence to this large scale effort to increase connectivity and reduce habitat fragmentation. Although private reserves such as Sabal Palms and The Nature Conservancy (TNC) reserves are listed on the maps in Appendix F, there is no text that describes how the fence would impact these locations or the future plans of these organizations (e.g., TNC portfolio sites). There is also no text discussing DHS Phase II (approximately 300 miles of fence in addition to the 225 miles listed on p. 5-1, line 31).

"Cumulative" impacts in the sense of performing an assessment of the entire length of the project as a whole from California to Texas and the potential impacts project-wide are not considered.

Scoping and Appendix B. For the most part, the DEIS does not specifically address many of the comments that the public raised in the scoping process (Table 4-1). Out of 106 comments listed in Table 4-1, 20 are addressed, 22 are somewhat addressed (i.e., may be generally addressed or only part of the scoping comment is addressed), and 60 are not addressed. Four comments concern the website or submitting comments. EPA is concerned that if approximately 56% of the comments during the scoping period were left unanswered, then comments submitted during the DEIS comment period may also remain unanswered in the Final EIS.

Recommendation: DHS should prepare a Response to Comments Document to indicate the resolution of each comment. (i.e., what page it appears in the DEIS, why it was not further considered, etc.)

Appendix E. The DEIS does not indicate the type of fence that will be used or whether multiple types will be used and their locations. Based upon the design of each of the fence types, potential impacts to wildlife could be very different. For example, Figure

E-4 shows a fence with openings for small animals (Note that there is no scale by which to judge the size of the opening); however, Figure E-7 would have a much more significant impact on wildlife. In addition, the use of portable or permanent lights is not addressed in the EIS. If they are assessed elsewhere, a short description and incorporation by reference would be helpful.

Appendix I. Biological Survey. Although the survey goes into detail on some of the vegetative characteristics of the proposed project, it does not describe any systematic or quantitative field investigations (particularly with reference to animals). It is unclear what methods were used to determine percentages of vegetative cover, height of vegetation, or habitat quality (e.g., listed as "good" or "medium"), etc. The biological survey relies on "animal species sighted" as surveyors performed "intuitive controlled investigations." As one might predict, the vast majority of species sighted are those that are common and seen during daylight hours (Table 5-3) with the exception of the Mexican Burrowing Toad, Texas Horned Lizard, and Yellow-billed Cuckoo. Although "sampling," "regular intervals" and the like are mentioned, there is no text describing a sampling plan, experimental design or scientific methods used. Since this appears to be the case, it is difficult to see how Table 5-3 provides a general indication of species richness. There is no invertebrate sampling.

Recommendation: DHS should conduct a scientifically rigorous, systematic sampling of the project corridor to correct the deficiencies listed above.

Environmental Justice.

Related to the location of the fence and property of individuals, the maps created by DHS show that the fence could run straight through houses and backyards. Many families have lived at these locations for decades, some even centuries, and have strong emotional ties to the family land and homes. The fence could also cut farmers off from prime farmland close to the water. These impacts would be mitigated by fair compensation for the purchase or relocation assistance to any displaced family.

It would be helpful to encourage and make provisions for community input to monitor progress and identify potential community concerns by forming something such as a Community Advisory Board.

Also, DHS should consider alternative locations for fence placement that will result in the least impacts and cause less disruption on homes, landowners, and the livelihood of residents.

Specific Comments

The comments listed below are representative of the concerns EPA has in the information presented in the DEIS. The comments are not exhaustive and do not list every instance in which similar language or text occurs.

p. 1-4, lines 24-27. *"The proposed locations of tactical infrastructure and based on a USBP Rio Grande Valley Sector assessment of operational requirements where such infrastructure would assist USBP agents in reducing illegal cross-border activities."*

There should be a section included here that describes what the assessment included, criteria for fence section placement and other information, analysis, and methods that would give a reader an idea of how placement of the sections was determined.

Recommendation: DHS should provide a detailed explanation of how the locations of each section were determined, including any criteria and methods.

p. 1-7, lines 35-36 *"As part of the EIS process, USBP coordinated with the USEPA..."*

The extent of coordination with USEPA is unclear. According to Appendix D a letter was sent to US EPA on October 18, 2007, after the scoping period ended (October 15, 2007, p. 4 Scoping Report) inviting USEPA to be a cooperating agency. There is no additional information provided.

p. 1-8, lines 16-20 *"...Step 5 relates to mitigation and is undergoing development."*

Step 7, issue findings and a public explanation, is not specifically mentioned here. DHS should provide information on what possible mitigation options would be and to what extent they would implement them. Best-case and worst-case scenarios should be part of this analysis.

Recommendation: DHS should provide best- and worst-case scenarios and explain what mitigation would occur in each instance.

p. 1-9, lines 2-7 *"...also have decisionmaking authority for components of the Proposed Action and intend for this EIS to fulfill their requirements for compliance with NEPA..."*

It is unclear what specific information is included in the DEIS for these agencies to base a decision. For example, there is no Biological Assessment on which USFWS can base its decision. Only NWI was used to assess potential wetlands impacts on certain sections. No wetland information is provided in other sections. It is difficult to determine whether the estimates of potential impacts to these resources as listed in the DEIS are accurate. They seem to be incredibly inaccurate if the information that will appear in the Final EIS is grossly different from what is contained in the DEIS. For example an estimate of 20 acres of wetlands impacted compared to 7 acres described in the DEIS. In addition, there

is no documentation that coordination with these agencies has occurred (e.g., letters, draft permit applications, etc.)

Recommendation: DHS should provide an accurate determination of potential impacts, include documentation and provide agencies and the public adequate opportunity to comment.

Section 2.1, Screening Criteria for Alternatives

On line 12, "screening criteria" were used to develop the proposed action and evaluate alternatives. However, no specific criteria are listed in Section 2.1. For example, what is the length of time illegal border crossers must be delayed for a Border Patrol Agent to arrive? In nearly all of the topics listed in this section USBP is working with a specific agency to identify mitigation measures, but no documentation is provided as to what those mitigation measures might entail and the extent of the mitigation required.

Recommendation: DHS should provide best- and worst-case scenarios and explain what mitigation would occur in each instance listed for USBP Operational Requirements, threatened and endangered species, Wetlands/Floodplains, Cultural/Historical Resources and Suitable Landscape. Technical studies on which the assessments are based and mitigation developed should also be included as appendices.

p. 2-2, lines 19-23 *"The No Action Alternative would not meet USBP mission or operational needs...inclusion of the No Action Alternative is prescribed by the CEQ regulations implementing NEPA and will be carried forward for analysis in the EIS..."*

This statement, as well as others, may indicate that the No Action Alternative is not considered a legitimate and viable alternative, but only included because it is mandated. This may violate the spirit of NEPA and implies a decision has already been made.

Recommendation: Evaluate the No Action Alternative as a legitimate alternative to fence construction. Current educational initiatives, successful prosecutions or convictions, surveillance, and other enforcement activities should be included.

p. 2-6, line 5 *"Built 15 to 18 feet high and extend below ground."*

No information in Section 2 or subsequent sections is provided on the depth to which the fence would be built, nor are methods of construction.

Recommendation: The depth to which the fence would be built should be specified and the associated potential impacts on the soil and soil disturbance should be described in detail. Potential construction methods should be described in detail.

p. 2-7, line 3 *“Designed to reduce or minimize impacts on small animal movements”*

No information is provided in Sections 3 and 4 that evaluate this statement. No fence design (either single or multiple) has been selected. Impacts on biota (and perhaps other issues) would be different for each design (Appendix E). The color and materials used could also have an effect on biota. Large animals are not specifically mentioned, nor are “small” animals defined. Since the fence is likely made of metal and will be 15-18 feet high, it has the capacity to get very hot. It is unclear whether small animals, specifically amphibians, reptiles, and mammals would use the openings. Figures E-5 and E-6 do not have an identified scale and therefore, one cannot figure out the size of the opening.

Recommendation: DHS should select specific fence designs for each segment and specifically assess the potential impacts of those designs on biota, both large and small, and not just protected species. There is a large body of scientific literature that addresses small animal movements, home ranges, and behavior. Technical studies should be initiated to determine the potential effect of a fence on biota.

p. 2-7, lines 11-13 *“Route B was developed through coordination with Federal and state agencies and incorporates input received through the public scoping process.”*

It is unclear what public scoping input was used in the development of Route B. In Sections 3 and 4 there are places where avoidance of highly diverse areas is cited. However, there is not explanation as to why Route B is significantly longer than Route A. For example, the eastern portion of Route B in Section O-2 is significantly longer (approximately 5000 ft) than Route A. No explanation is provided as to the reason behind this difference.

Recommendation: Provide detailed descriptions for the differences in Routes A and B and the source of the information.

p. 2-9, lines 1-2 *Rio Grande Valley Sector activities routinely adapt to operational requirements and would continue to do so under this alternative.”*

It is unclear what is meant by this statement and how it would impact the alternatives.

Recommendation: Provide a description of what is meant by “routinely adapt to operational requirements” and provide an example of what it might include. If this adaptation has the potential to affect any of the resources described in Sections 3 and 4, then detailed explanations should be provided in the appropriate sections. Since we do not know what the operational requirements are, it is difficult to provide a specific comment on what resources might be affected.

p. 2-9, lines 6-7 *“For both Route Alternatives, gates would be constructed to allow USBP personnel and landowners access to land, the Rio Grande, and other water resources, and infrastructure.”*

A Table in the appendix outlines how many gates per segment, but there is no description of the locations of these gates or how the locations will be chosen, what the priority access is (e.g., will the gate be located for USBP priority, water access priority, or landowner priority). Additionally, what will happen if the gate is left open for an extended amount of time? Would a passing USBP agent close the gate, even though a farmer may be working the land and moving equipment? According to a recent news item, there are 268 landowners and only 90 gates; therefore, less than half of the landowners may have a gate.

Recommendation: Display the potential locations of the gates on maps similar to those in Appendix F. Indicate the location priority—Border Patrol, water access, landowner access, recreation access, etc. The process by which the specific locations of the gates will be determined should be described in enough detail so that stakeholders can determine whether they have gate access and a process of appeal if they do not have gate access. The potential impacts to stakeholders and landowners who do not have a gate on their property should be described in detail in Section 4.

p. 2-9, lines 13-15 *“On a case-by-case basis, USACE might purchase the land between the fence and the Rio Grande on behalf of USBP, if operationally necessary.”*

It is unclear when and under what circumstances this would occur.

Recommendation: The EIS should clarify the procedure USBP and USACE would use to determine whether USACE would purchase land.

p. 2-11, lines 18-19 *Additional USBP agents in lieu of tactical infrastructure... “was determined not to meet the screening criteria of USBP operational requirements.”*

What are the “screening criteria” that led to this alternative being eliminated?

Recommendation: The EIS should provide a description of the specific screening criteria used and the criterion this alternative did not meet in order to be eliminated.

p. 2-11, lines 21-25 *“...but the use of additional agents alone, in lieu of the proposed tactical infrastructure, would not provide a practical solution...”*

See the general comment above regarding lack of supporting evidence for the law enforcement component in the Purpose and Need statement.

p. 2-11, lines 23-25 *"The use of physical barriers has been demonstrated to slow cross-border violators and provide USBP agents with additional time to make apprehensions."*

No information is provided as to the deterrence time or USBP response time.

Recommendation: Estimate the amount of time each wall section is anticipated to slow a cross-border violator. Estimate the USBP response times to intercept cross border violators both with and without a fence (i.e., the no action alternative).

p. 2-11, lines 37-38 *"Increased patrols would aid in interdiction activities, but not to the extent anticipated by the Proposed Action."*

No information is provided as to the levels DHS anticipates from the Proposed Action.

Recommendation: The EIS should specifically describe the anticipated extent DHS expects from the Proposed Action and compare it to the other alternatives, including those that were eliminated from further consideration.

p. 3-10, line 10ff, Route A and p. 3-11, line 28, Route B

This section describes the different types of land uses within the Rio Grande Valley, but does not specifically address the amount of each land use that occurs in Route A and Route B.

Recommendation: The EIS should provide the amount of each land use type per alternative as a description of the Affected Environment.

p. 3-11, lines 7-8, 12-14 *"The major land use is agriculture (63 percent)."
"Tourism...centers around Bentsen-Rio Grande Valley State Park...and other recreational facilities. Major urban areas are McAllen, Pharr, and Edinburg."*

It is unclear why agricultural land uses are proscribed a percentage of county land use, but other uses (e.g., recreational, urban, etc.) are not.

Recommendation: The EIS should provide percentages of other land uses per county as a description of the Affected Environment.

p. 3-19, line 33-36 *"Substantial quantities of surface water are diverted from the Rio Grande to meet municipal, industrial, and agricultural demands in Texas and Mexico, with a significant portion used in the Rio Grande Valley for farming and urban applications."*

Words like "substantial" and "significant" are relative and do not describe the hydrology of the area.

Recommendation: The EIS should provide Rio Grande flow rates, water usage by sector (i.e., urban, agriculture, industrial, etc.) and seasonal variations and any other relevant, specific information to describe the Hydrology and Groundwater.

p. 3-22, line, 9-11 *"No NWI coverage is currently available for Sections O-1, O-2, O-3, O-5, O-6, O-7, and O-8."*

What data were used instead of NWI for these areas? It is not acceptable to leave this information out when other data sources are available (e.g. aerial photos, NLCD) are available.

Recommendation: The EIS should provide information on wetlands in the Sections mentioned above using a data source other than NWI.

p. 3-22, line 15 *"Identification and delineation of waters of the United States... within the proposed project corridor is an ongoing process. Wetland delineations will be finalized once rights of entry (ROE) and LRGV NWR special use permits have been obtained. The unavoidable impacts on jurisdictional waters and wetlands will be reviewed as part of the USACE Section 404 permit process..."*

Since this is likely to be a controversial project, it would seem prudent to have delayed the publishing of the DEIS until draft permits or similar analysis and descriptions could be included, thereby giving the public and agencies the opportunity to comment. Not including these in the DEIS gives the appearance of "piece meal" NEPA and avoiding the holistic spirit of NEPA—to assess the total project.

p. 3-23, lines 21-30 *"The use of irrigation and application of fertilizers, pesticides, and herbicides has resulted in contamination of agricultural drainage ditches and resacas in the Rio Grande Valley...."*

In describing the affected environment, one would assume that water quality reports from EPA, the Texas Commission on Environmental Quality (TCEQ) or original investigations should be included to support these statements. There is no information as to the types of compounds and their levels in each waterbody and whether the levels found exceed any state or Federal water quality standard.

Recommendation: DHS should use EPA, TCEQ, and original sampling studies to describe the water quality and the contamination of these water bodies in detail. Information should include the compound, the amount sampled, and whether the amount sampled exceeds a state or Federal water quality standard or criterion.

p. 3-25, lines 12-14 *“More detailed information on the vegetation resources documented during field surveys conducted in 2007, including methodologies and classification schemes, is presented in the Draft Biological Survey Report.”*

The Draft Biological Survey report and its problems are discussed in the general comments section above.

p. 3-29, lines 26-30 *“The Rio Grande brushland is considered an ecological transition zone between Mexico and the United States. This key community supports many rare, threatened, and endangered species and is a stopover for migrating neotropical birds (TPWD 2007a)....Most of the 70 miles of the proposed project corridor has been heavily disturbed by agriculture and grazing; however, some high-quality habitat was identified during an October 2007 survey (see Appendix I).”*

Appendix I does describe habitat quality, but only qualitatively in relative terms (e.g., “good,” “medium”). No relative abundances of species are recorded. Rare vs. common or using Natural Heritage Ranks (Global and State) are not provided nor weighted per species. What do the terms “most,” “some,” and “heavily disturbed” mean? The text here and in other places in this subsection is qualitative and vague. If a field survey occurred, why wasn't it conducted in a more scientifically rigorous and methodical fashion?

Recommendation: DHS should conduct a scientific field study to accurately quantify the resources in this section. Relative and vague terms as described above do not sufficiently describe the Affected Wildlife and Aquatic Resources.

p. 3-35, lines 1-4, 8-10 *“... While the historic ranges of the remaining species included this region of South Texas, available data indicate no known records of these species within or proximal to the proposed project corridor.”*

There is no indication that DHS determined whether potential habitat for these species exists within or proximal to the project corridor. If habitat does exist, then these species (Ashy dogweed, Johnston's Frankenia, Piping Plover, etc.) cannot be dismissed from further investigation. A species might not have a record of occurrence, but evidence of potential habitat may indicate an area of expansion for the species or an area where additional individuals can be raised or transplanted.

Recommendation: DHS should provide information on whether potential habitat exists within or near the proposed corridor for the status species listed on p. 3-34 and 3-35.

p. 3-35, lines 28-29 *“Jaguarundi prefer dense thornscrub habitats with greater than 95 percent canopy cover.”*

The text says that this type of habitat is what the jaguarundi prefers, but does not say whether this type of habitat was found within the proposed alternatives.

Recommendation: DHS should determine whether appropriate habitat for the jaguarundi exists in the project corridor.

p. 3-59, lines 37-40 *“Tourism related businesses have experienced an expansion in the past 5 years with growth in the arts and entertainment, and recreation industries at 9 percent...”*

The text indicates a growth trend and information on employment, but does indicate how many visitors the area receives because of recreational opportunities, nor does it describe the amount of revenue brought into the local economy from these tourists.

Recommendation: DHS should supplement the current text with information about the number of visitors to the area and the type of recreation they engage in. DHS should also include information on the amount of revenue generated from these activities.

p. 3-75, lines 13-14 *“There are no known waste storage or disposal sites within the proposed project corridor...”*

There is no information included whether there are sites nearby (e. g. 0.5 to 1 mile away). US EPA Region 6 has used a GIS Screening Tool to assist in its review. The maps generated from this indicate that there may be hazardous waste sites within 1 mile of the project corridor. EPA Region 6 has included these maps.

Recommendation: Area near (within 1 mile) the proposed corridor could contain hazardous waste sites. This type of information should be considered for each segment.

p. 4-4, lines 6-8 *“The pedestrian fence and patrol road would require mowing approximately two times per year to maintain vegetation height and allow enhanced visibility and security.”*

How would mowing and other maintenance activities (e.g., herbicide applications) affect biota, vegetation, water issues, and small animal movement and activity?

p. 4-6, lines 23-25 *“...the impacts would be temporary, and would fall off rapidly with distance from the proposed construction sites.”*

Recommendation: DHS should include a graphical representation in order to aid stakeholders in visualizing the impacts of particulate matter.

p. 4-9 line 11-12 *“...construction staging areas...”*

There is no information indicating the magnitude of the construction staging areas or their approximate proximity to each segment.

Recommendation: DHS should provide information on the location, activities, magnitude of the construction staging areas.

p. 4-10, lines 19-22 *"In some locations, land values and land uses (including potential development) are currently adversely affected by illegal border crossings. Under the No Action alternative, land uses and values as described in Section 3.4 may continue to be adversely affected and degradation could increase."*

This statement (and others like it) is without support in the DEIS. Section 3.4 defines land use and planning and describes the different land use types. It also describes the percentage of each use type (e.g., land use in Hidalgo County is agriculture which is 63% of the land use). There is no analysis or information (numerical or narrative) describing the declines in this area and relating them to the number of illegal border crossings or similar statistics. There is no analysis in Section 4 as to the estimated magnitude of property value decline or the projected property value decline or beneficial impacts (increases in property values) due to fence construction.

Recommendation: For each alternative, DHS should describe the potential impacts to land use and land value, whether positive or negative.

p. 4-10, lines 26-28 *"The severity of the impact would vary depending on the need for rezoning to accommodate the fence sections and patrol roads. USBP might be required to obtain a permit or zoning variance based on local restrictions and ordinances."*

Zoning ordinances and the like are public information and should be included. DHS should have provided more detailed information on likely scenarios in terms of locations where permits or variances would be necessary and what would occur if a variance was not granted.

Recommendation: DHS should contact localities regarding zoning ordinances and the process of obtaining permits and variances and that information should be presented in the DEIS. In addition, DHS should provide maps and/or text indicating the locations of relevant segments. DHS should also provide a description of what would occur if a variance or permit were denied.

p. 4-12, lines 19-21 *"Landowners whose properties would be affected could receive a gate within the fence that would allow them access to other portions of their property to reduce potential inconvenience."*

The text does not say that every landowner will get a gate and it does not describe specifics about the gates, including placement or prioritizing access. Gate placement could have impacts on farmers, landowners, recreationists, biota, etc. and is not specifically considered.

Recommendation: DHS should explain the criteria for gate placement and access and should assess the potential impacts on farmers, biota, etc.

p. 4-12, lines 24-31 *“Long-term minor adverse impacts on recreation would be expected after construction because access to recreational areas along the proposed tactical infrastructure sections could be limited or restricted to potential users. Long-term indirect beneficial impacts on recreational areas could occur as a result of decreased cross border violators coming into these recreational areas. . In addition, by reducing the amount of illegal traffic within and adjacent to the project area, disturbance to lands on the U.S. side of the proposed fence would be reduced.”*

How does DHS arrive at minor adverse impacts and long-term beneficial impacts? There is no methodology other than a qualitative definition on p. 4-1, line 23. The reason that people come to these areas (hunting, bird watching, hiking, etc.) may not exist or may be substantially different after the fence is constructed. Safety concerns due to funneling of people would not seem to be short term or minor. There is no data provided as to the current levels of illegal cross border activity (i.e., the “no action alternative”); therefore, DHS cannot determine the potential impacts. See above comment. There is no supporting evidence described in the DEIS that supports this statement for either the beneficial impact on species or the number of crossings, incidents, etc. negatively impacting recreational opportunities.

Recommendation: DHS should document the current illegal border activity and address what types of potential impacts could occur due to funneling of people. DHS should obtain current recreation visitation statistics to the area in order to assess what declines in visitation may occur (either real or perceived). DHS should conduct scientific biological field studies to determine what changes in biota may occur and relate these data to potential declines or increases in recreation.

p. 4-12, lines 32-37 *“Land use between the 21 proposed fence sections could be adversely impacted by the deterrent impacts the fence sections would have by funneling of illegal cross border activities into those areas. Since the location of the proposed tactical infrastructure sections are based on USBP operational requirements including the ability to make apprehensions, adverse impacts would be expected to be minor.”*

The DHS cannot have it both ways. In a previous section, land values and land use is currently being negatively impacted without the fence and that the fence would improve conditions. In this section, DHS is now stating the opposite, that the private property near or adjacent will be negatively affected by funneling more crossers there instead of having them spread out across a wider area.

Recommendation: See previous comment

p. 4-13, lines 29-35 “...Grading, contouring, and trenching associated with the installation of the proposed tactical infrastructure ...would alter the existing topography.”

How would this affect flooding? If grading, etc. changed the slope then flood water could potentially flow into Mexico or other areas that may or may not currently be subject to flooding.

Recommendation: DHS should provide a description, including maps that show potential water flow, anticipated changes in topography (e., best and worst case scenarios) for fence segments and any potential impacts to humans and the environment.

p. 4-13, lines 8-11 “Short-term minor direct adverse impacts on soils would be expected. Soil disturbance or compaction due to grading ...associated with the installation of the proposed tactical...sections...”

There is no information as to how deep the soil disturbance would go or how much soil would be displaced and where it would be taken.

Recommendation: DHS should provide information on the potential impacts to soil, including the depth that would be disturbed, the amount of soil displaced, and the location that displaced soil would be taken. If soil is to be removed, potential impacts of the additional soil should be assessed.

p. 4-13, lines 16-18 “Soil disturbance on steep slopes has the potential to result in excessive erosion due to instability of the disturbed soils and high runoff energy and velocity.”

What would be the potential impact of soil erosion on flooding, Rio Grande hydrology, etc. from the sediments deposited in the Rio Grande?

p. 14-16, lines 11-13 “Revegetating the area with native vegetation following construction along with other BMPs to abate runoff and wind erosion could reduce the impacts of erosion and runoff.”

This statement points out that in the majority of cases where best management practices (BMPs) or other “mitigation” is mentioned that there is no indication that DHS “will” do it, but only that the use of a BMP could mitigate impacts (if used).

Recommendation: DHS should commit to a range of mitigation. For example, DHS could provide best- and worst-case scenarios and indicate mitigation that would occur in each.

p. 4-21, lines 4-5 “...*(depending on the location) beneficial impacts would be anticipated due to protection of remaining vegetation north of the proposed project corridor.*”

Is trampling of vegetation in these areas currently a problem? Section 3 does not contain any information indicating the numbers of people that currently traverse the area (whether illegal border crossers or recreational visitors).

Recommendation: In order to show that the project corridor would have a beneficial impact on vegetation or other resources, DHS should establish that this is currently a problem and that the construction of the fence would reduce the number of people trampling vegetation or impacting other resources.

p. 4-24, lines 15-17 “*Potential threats in these areas include habitat conversion, noise, and potential siltation of aquatic habitats.*”

No assessment is made of the potential impacts of a fence to changes to animal movements, access to water resources, or maintenance of genetic diversity.

Recommendation: DHS should discuss the potential impacts of the alternatives on animal movement, access to water resources, and maintenance of genetic diversity.

p. 4-25, lines 3-6 “*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.*”

There is no supporting evidence provided that cross border violator foot traffic is currently a problem or is becoming a problem. Additionally, there is no text providing support that the fence would have a minor (what is minor) beneficial impact. Similar text occurs throughout Section 4 (e.g., p.4-28, lines 20-24).

Recommendation: DHS should provide information regarding the current situation (amount of foot traffic, patterns of traffic, etc.) in Section 3 and then discuss the potential impacts, both adverse and beneficial, of each alternative in Section 4.

p. 4-27, lines 18-24 “*The USFWS has provided critical feedback on the location and design of fence sections to avoid, minimize, or mitigate potential impacts on listed species or designated critical habitat. USBP is developing the Biological Assessment in coordination with the USFWS. Potential impacts of fence construction, maintenance, and operation will be analyzed in both the Biological Assessment and Biological Opinion to accompany the Final EIS.*”

Explain what is meant by “developing the Biological Assessment in coordination with USFWS.” Is USFWS helping to prepare the Biological Assessment or is it some other level of involvement? If USFWS is writing the Biological Assessment and preparing the Biological Opinion, there may be a conflict of interest. Detailed biological information on both status and non-status species would seem to be essential in selecting the appropriate alternative or in generating additional alternatives and for DHS to receive meaningful comments from the public and other agencies. Non-status species (e.g., deer, reptiles, small mammals, etc.) are not specifically mentioned in earlier subsections.

Recommendation: Detailed biological information on status (state or federally-listed species) and non-status species should be included in the DEIS and evaluated by DHS. Inclusion of this information should be used to generate additional project alternatives.

p. 4-30, lines 18-25 *“Habitat loss or conversion for state-listed species in Sections O-1, O-2, O-8, and O-10 (i.e., Mexican tree frog, Mexican burrowing toad, Texas horned lizard, white-lipped lizard) would affect a small area and would be of little consequence to statewide viability of these species. BMPs to avoid and minimize impact...are anticipated to reduce potential impacts to minor or lower intensity. Increased... traffic would be anticipated to have a correlated increased potential for mortality of these species through roadkill.”*

It is unclear what supporting documentation (technical studies, current data, or scientific literature) DHS used to come to this conclusion. The text seems to suggest that some sort of quantitative methods (i.e., viability, correlation) were used, but the text does not indicate methods or specific reasoning for these conclusions. There is a large body of scientific literature regarding animal movements across roads and the effects of roads on many different species.

Recommendation: If DHS performed quantitative assessments to come to these conclusions, the text should reflect those investigations. If DHS did not do these types of studies, then the text should be revised to indicate what they did do or they should perform the necessary analysis to support the statements in the text. DHS should review the scientific literature regarding roads and their effects on species and incorporate those findings in the EIS.

p. 4-31, lines 25-30 *“Short- and long-term adverse impacts on state-listed species due to habitat conversion and roadkill mortality resulting from implementation of Alternative 3 would be major... Short- and long-term beneficial impacts due to protection provided by the fence along Route B would range from minor to moderate, depending upon location.”*

See similar comments above regarding the use of the terms “minor,” “major” and “moderate.” There is no methodology described or analysis that explains how DHS arrived at these conclusions. It is unclear why a statement regarding Route B is in the section regarding Alternative 3.

Recommendation: See similar recommendations above.

p. 4-32, lines 21-22, p. 4-33, lines 1-8 *"The following is a list of BMPs recommended for reduction or avoidance of impacts on migratory birds...Because not all of the above BMPs can be fully implemented due to time constraints of fence construction, a Migratory Bird Depredation Permit will be obtained from USFWS. Assuming the implementation of the above BMPs to the fullest extent feasible, impacts of Route A on migratory birds is anticipated to be short- and long-term, minor, and adverse due to construction disturbance and associated loss of habitat, and long-term, minor, and beneficial due to reduction of foot traffic through migratory bird habitat north of the proposed project corridor."*

This portion of the DEIS lists BMPs, but does not indicate that DHS will perform them. In addition, the mention of "time constraints" as a limitation to BMP use needs to be explained. Additionally, a draft of the permit should be included (see comment above regarding USFWS Biological Assessment/Biological Opinion process) or, at a minimum, a description should be included as to the impacts to migratory birds that you anticipate in best-case and worst-case situations.

Recommendation: DHS should list the migratory species that could be impacted. DHS should explain why "time constraints" are a limitation (instead of stopping construction until migration is over). DHS should discuss best-case and worst-case scenarios regarding potential impacts to migratory birds and what DHS will do in each case. This provides for a range of mitigation options.

p. 4-45, Figure 4-11-2. This figure seems to indicate that there is a residence or farm shed adjacent to the proposed fence. In several subsections, the DEIS mentions that cross border violators would be funneled through non-fenced sections. However, the consequences of this approach to residents and landowners are not discussed. For example, if drug traffickers are trying to cross at the location in this figure, and funneled toward the residence and they see the Border Patrol vehicle. What is to prevent drug traffickers from hiding the drugs on the private property or harassing the residents (either short- or long-term)?

Recommendation: DHS should discuss the potential safety risks to home- and landowners that may be adjacent to the proposed fence. Potential mitigation options for safety concerns of landowners should be discussed.

p. 4-54, lines 6-13 *"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. ...Route A would help deter cross border violators, which would make the area safer for...ecotourists and USBP agents in the area."*

This seems to indicate that impacts are only the perception of potential users and that there are not real impacts that may occur to biota and vegetation. Since no information is

provided in Section 3 as to the current deterrence efforts of USBP (e.g., number of people apprehended, etc), it would be difficult to determine the impact. DHS indicates that the area would be safer; however the opposite could also occur. The area south of the fence could become a "no-man's land" where drug traffickers or others lie in wait for eco-tourists or others.

Recommendation: DHS should provide information regarding current deterrence efforts and compare that to potential impacts, both adverse and beneficial.

p. 4-54, lines 38-43 "The proposal provides gates at key locations that are intended to provide landowners with access to their property, but there could be some extra distance in reaching a given field. Installation of a pedestrian fence with gates could have minor adverse impacts on landowner's access, the movement of machinery and equipment, planting and harvesting, potential problems of access of agricultural service firms, and a resulting increase in costs."

It is unclear how DHS determined that the impacts to farmers would be "minor." There is no information that an economist estimated the additional fuel costs, time, etc. and what the impact would be to a farmer's financial situation. In addition, 90 gates are planned, but there may be many more landowners. A recent news article suggests that there may be over 250 landowners. There is no information in Section 3 as to the process for determining gate location and priority access.

Recommendation: DHS should provide documentation that explains their conclusion of "minor" impacts to farmers. The criteria for gate placement, etc. should be discussed and its potential impact to farmers (e.g., increased fuel costs, etc. and what impact that would have on farmers ability to remain viable).

p. 4-55, lines 10-22 "Minor to moderate adverse indirect impacts would be expected from the imminent dislocation of some families due to property acquisition... 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... These impacts would be mitigated to some extent by fair compensation... and relocation assistance to any displaced family. Renters... are less likely than property owners to have the resources to resettle in a comparable location."

This would seem to be a direct impact rather than an indirect impact. It is not clear what relocation assistance would include and whether these renters and landowners would receive assistance in determining fair compensation for property. Given the socioeconomics of the area, this would seem to be an environmental justice issue.

Recommendation: DHS should discuss what resources would be available to landowners and renters in assisting them to resettle or obtain fair compensation. The environmental justice consequences of these impacts should be discussed.

p. 4-55, lines 23-28 *"Some adverse disproportionate impacts on minority or low-income populations would be expected. Direct beneficial impacts on safety and the protection of children are expected from the projected deterrence of cross border violators, smugglers, terrorists, and terrorist weapons from entering the United States, and therefore provide for safer communities."*

What are the expected impacts to minority or low-income populations? DHS should describe them. See similar comments and recommendations above.

p. 4-59, lines 16-23 *"Short-term negligible adverse impacts would be expected [from hazardous materials]. Products containing hazardous materials (such as fuels, oils ...pesticides, and herbicides) would be procured and used during construction. It is anticipated that the quantity of products containing hazardous materials used would be minimal and their use would be of short duration. Herbicides would be used along the fence to control herbaceous vegetation."*

The potential impact on vegetation and animals is dependent upon the toxicity of the material and the exposure pathway of the organism. To simply say that there will be small quantities used for a short time period is not an adequate assessment. There is also no description of the potential long-term impacts of the continual herbicide application (for maintenance purposes, it is assumed).

Recommendation: DHS should discuss what compounds are likely to be used and their duration of use (e.g., during construction only or for long-term maintenance). In addition, DHS should provide specific information on the risk to biota, especially if use is long-term and occurs at regular intervals.

p. 4-59, lines 24-25 *"Accidental spills could occur during construction. A spill could potentially result in adverse impacts on wildlife, soils, water, and vegetation. However, only small amounts of hazardous materials are expected."*

See comment above. Additional analysis as to what potential materials would be used (e.g., examples of chemicals, name brands, etc) or the class of material (i.e., hydrocarbon, organochlorine) and the chemical class's potential impact on these resources should be provided

Recommendation: See above comment.

p. 4-59, line 34 *"ASTs have been within the proposed project corridor."*

Recommendation: It would be helpful to show the location of above ground storage tanks (ASTs) and other hazardous waste locations on a map to indicate proximity to the proposed project.

p. 5-1, line 26 “...currently 62 miles of landing mat fence at various locations...; 14 miles of ...fence in San Diego...”

Recommendation: DHS should provide a map showing the locations of the fence that are already constructed and locations where fencing is going to be constructed for the entire southern border. All past, present, and future fencing locations should be displayed.

p. 5-2, line 13 “*Private Residential Developments*” p 5-2 line 24 “*Present Actions*”, p. 5-3 line 13 “*Reasonably Foreseeable Future Actions*”

Recommendation: DHS should display these developments on a map so that the public and agencies can visualize their proximity to the proposed project.

p. 5-3, line 17 *SBI*net

It's not clear whether *SBI*net is an activity completely initiated in the future, or if it is going to be used in concert with the fence. It would seem that aspects of *SBI*net could be incorporated into additional alternatives.

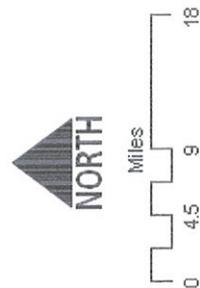
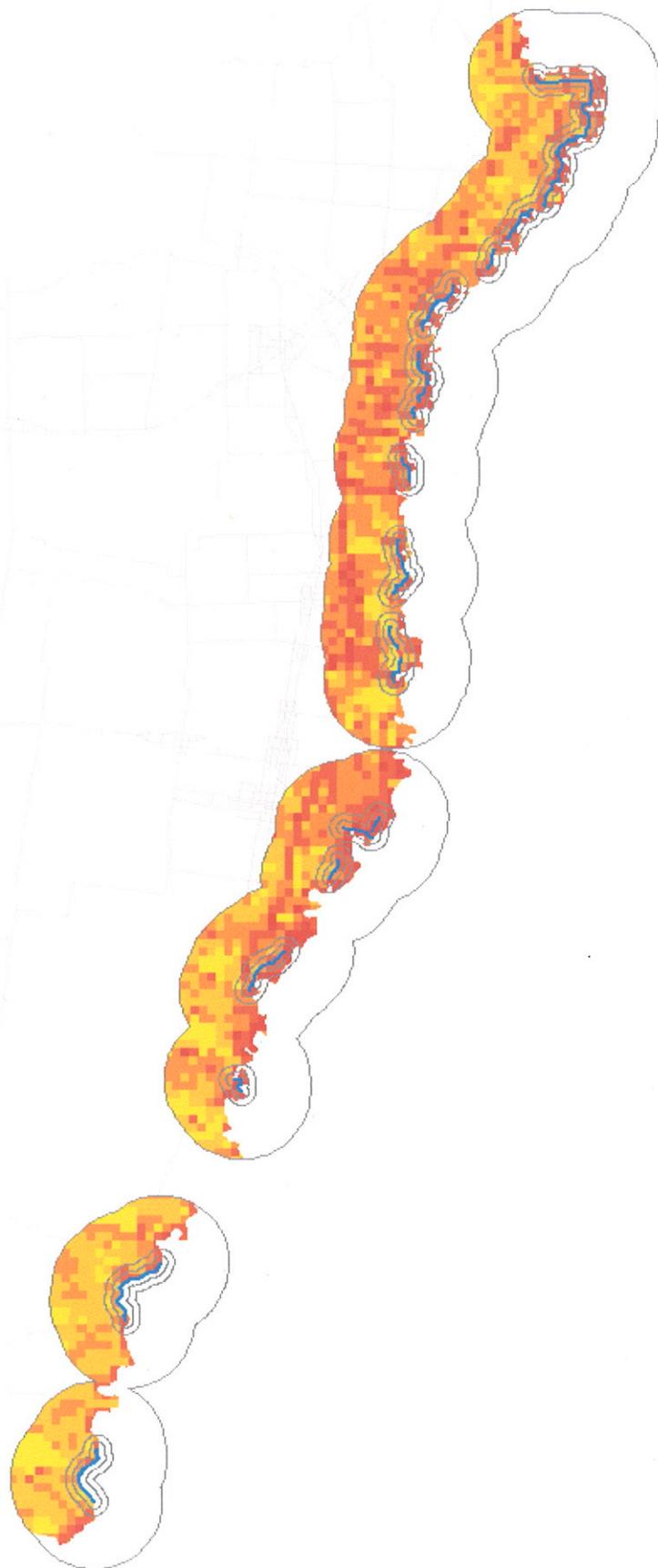
p. 5-3, lines 31-33 “...areas that might be suitable for lighting can be identified for the purpose of the cumulative effects analysis...Approximately 450 lights...”

It is unclear whether DHS assessed the impacts of these 450 potential lights in terms of air, noise, wildlife, etc.

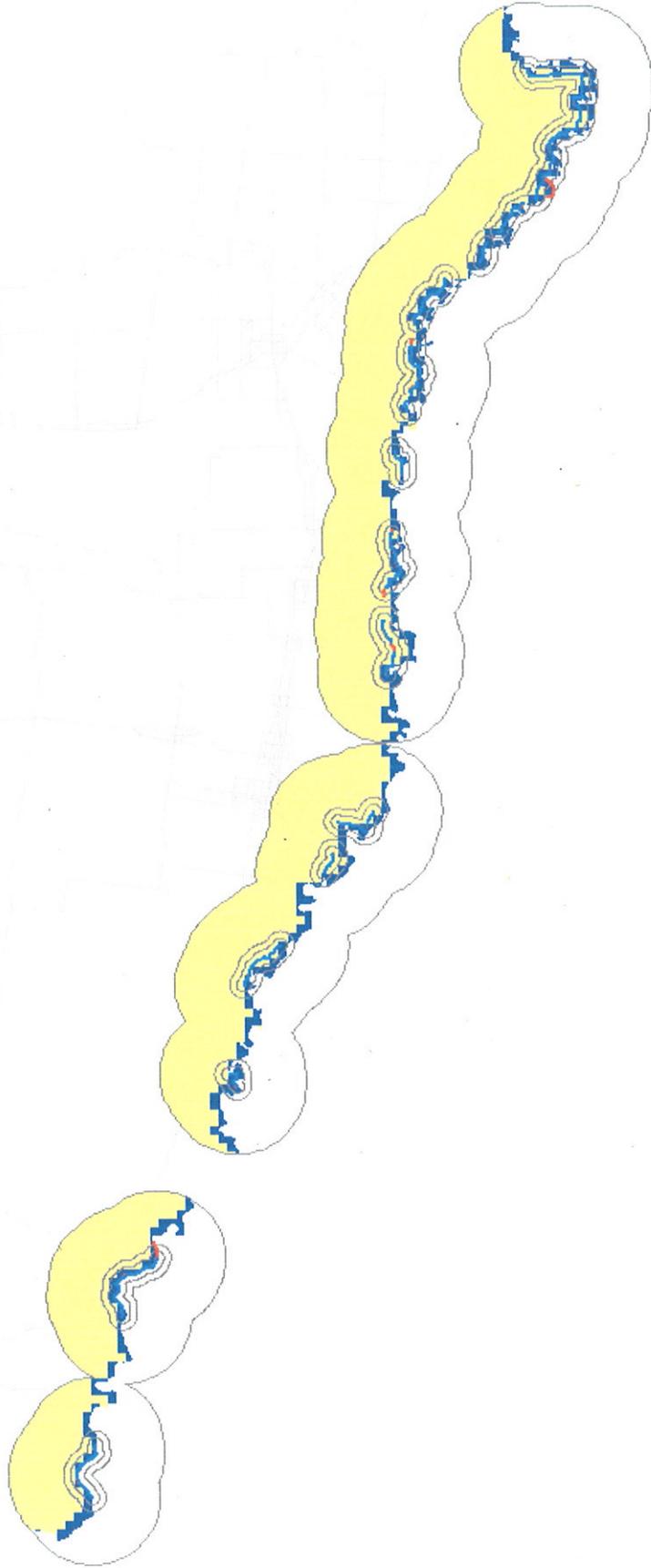
Appendix F. Map 3 of 17.

It's unclear why there is such a distinct difference between Routes A and B. Route A extends across the Los Velos West Unit and then stops, but Route B parallels Route A and then continues for an additional mile, approximately.

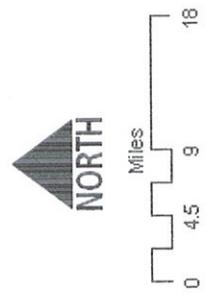
GISST Cumulative Summation Score for Routes A & B Buffered. TEAP data are not included



GISST TPWD Ecologically Significant Stream Segment Score for Routes A & B Buffered

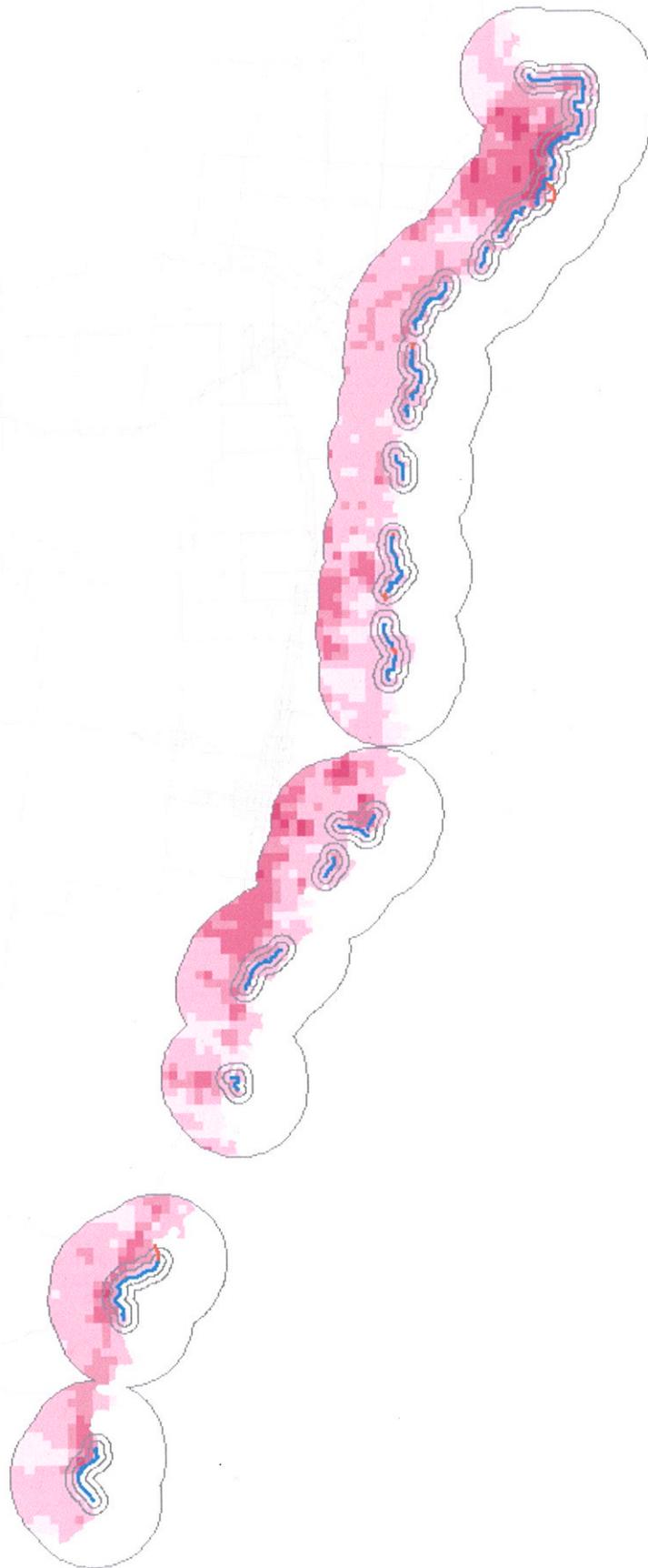


— Route_A&B
— Route_B
 Buffer (0.5, 1, & 5 miles)
 1 (absent)
 5 (present)



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GISST Population Density Score for Routes A & B Buffered



Population Density Score (persons per sq. mi)

1 (0 persons)

2 (1-200 persons)

3 (201-1000 persons)

4 (1001-5000 persons)

5 (>5000 persons)

Route_A&B

Route_B

Buffer (0.5, 1, & 5 miles)

NORTH

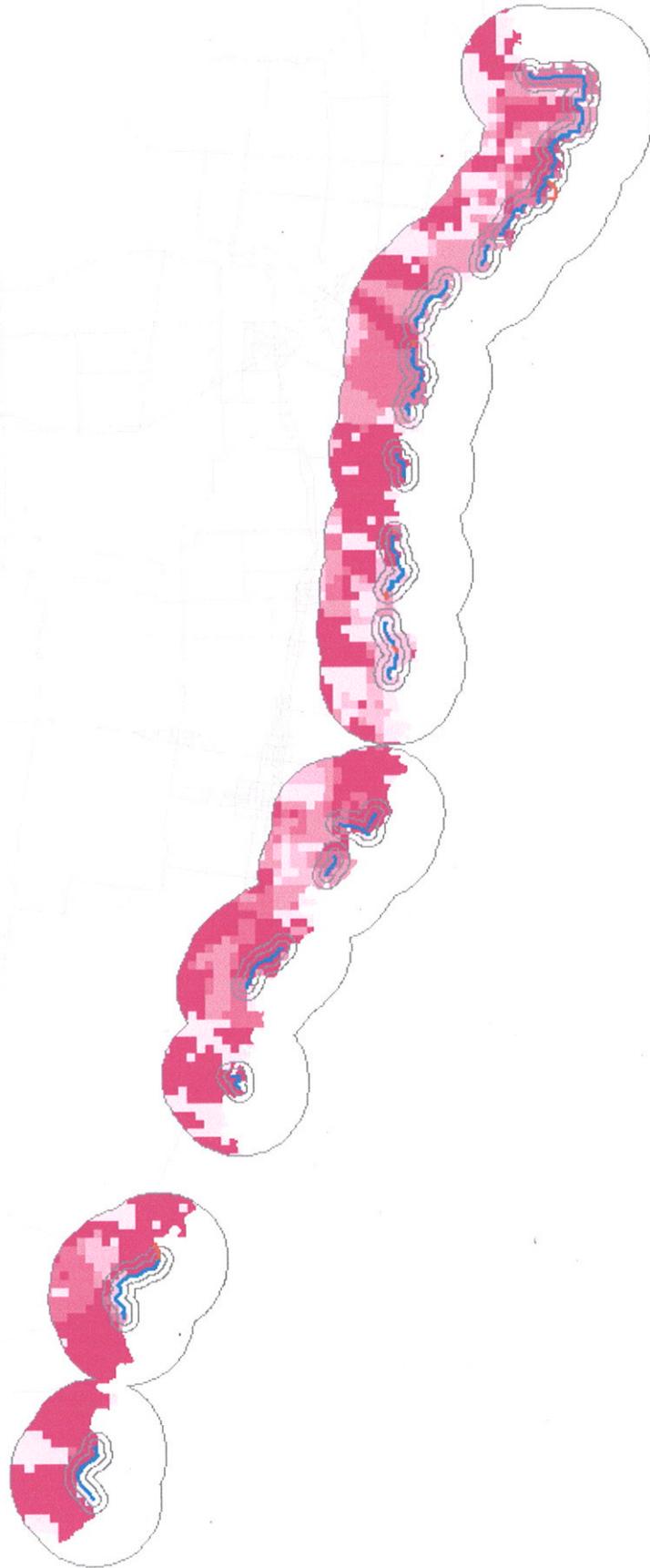
Miles

0 4.5 9 18



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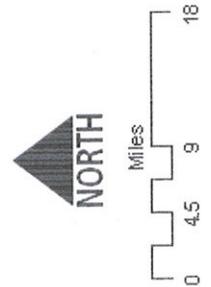
GISST Environmental Justice: Economics Score for Routes A & B Buffered



Environmental Justice: Economics Score

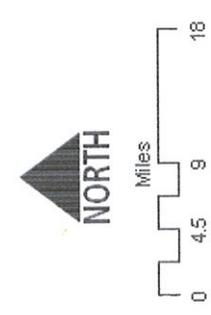
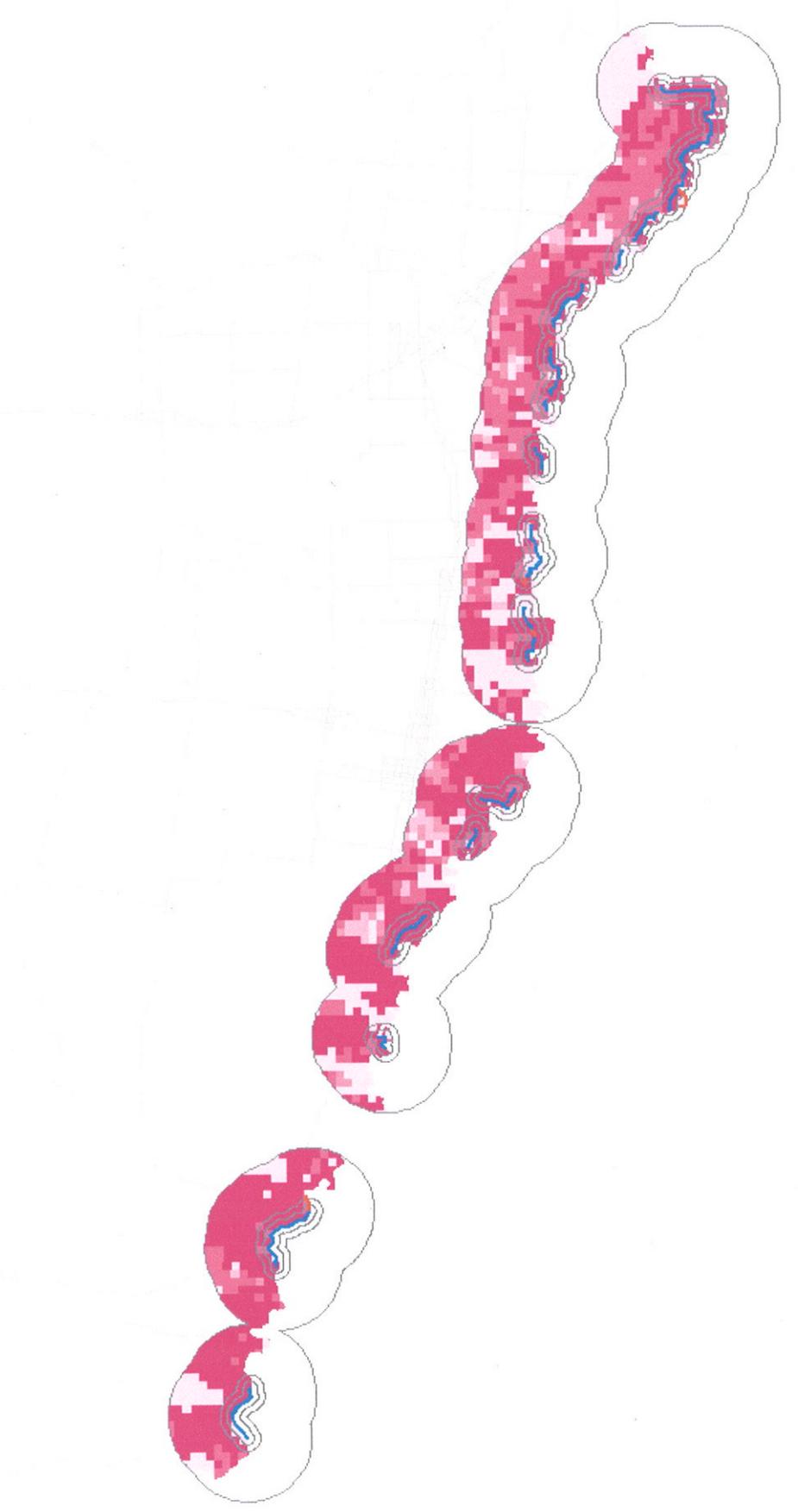
-  Route_A&B
-  Route_B
-  Buffer (0.5, 1, & 5 miles)

-  1 (\leq state avg)
-  2 (state avg-1.33x state avg)
-  3 (1.34x state avg-1.66x state avg)
-  4 (1.67x state avg-2x state avg)
-  5 ($>$ 2x state avg)



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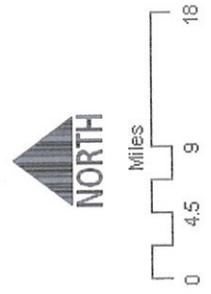
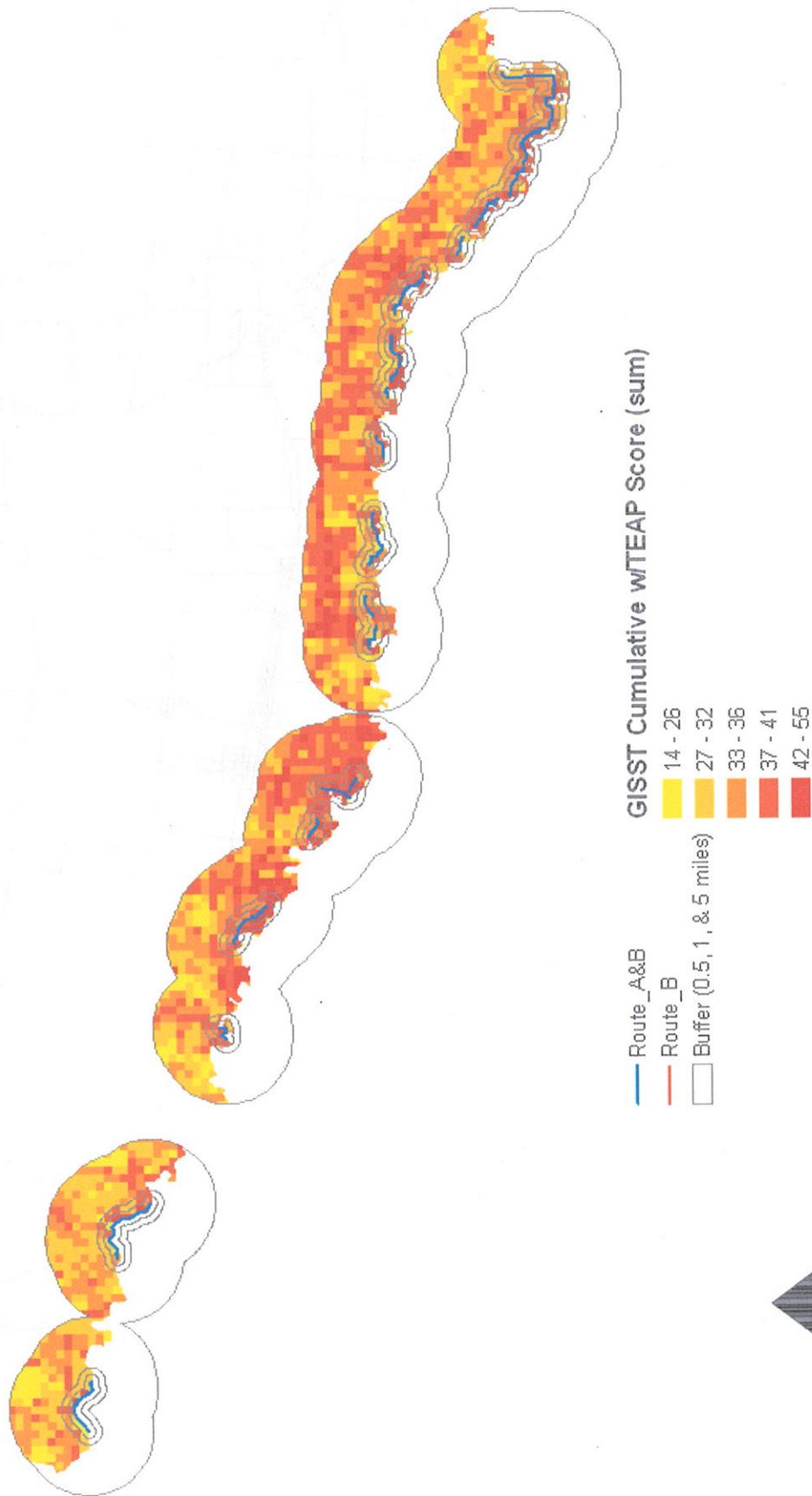
GISST Environmental Justice: Minority Score for Routes A & B Buffered



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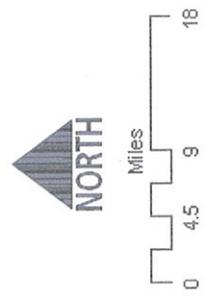
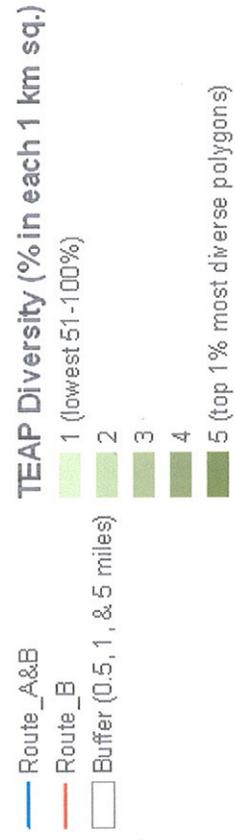
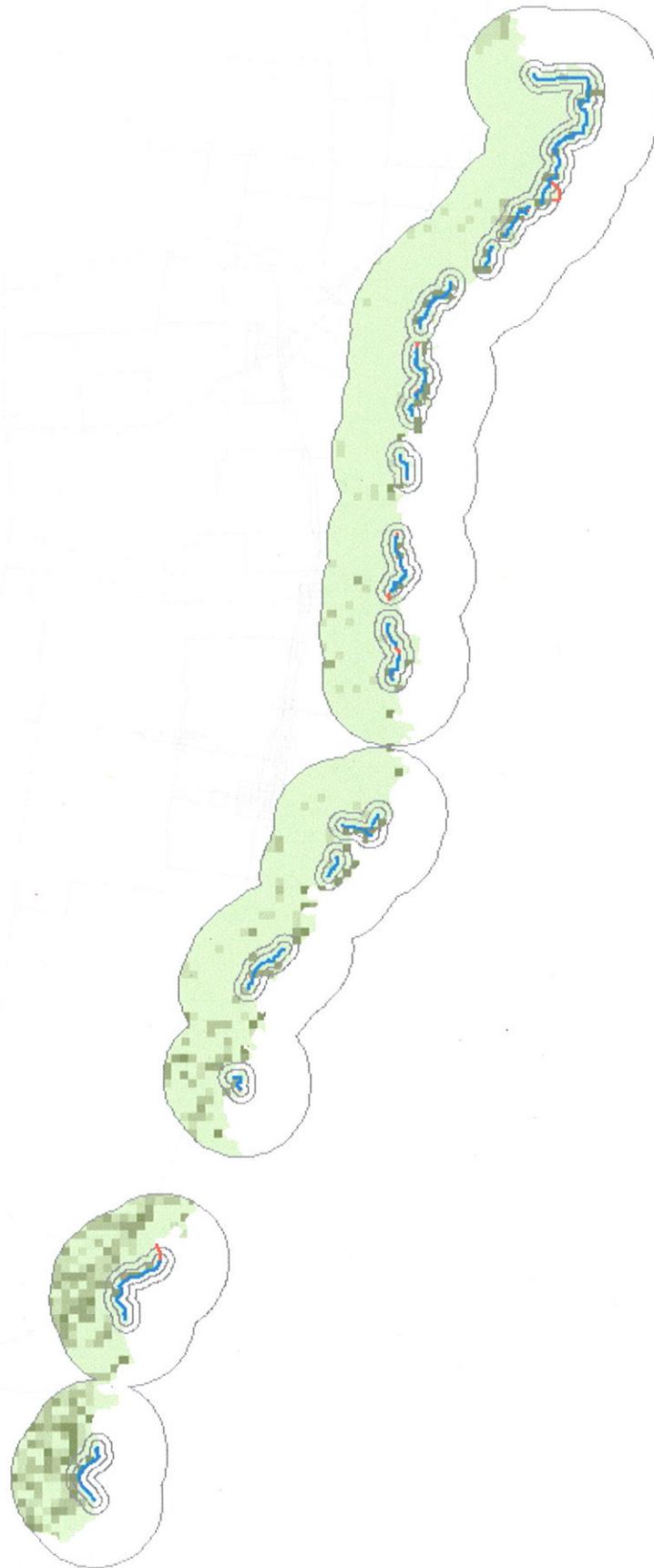


GISST Cumulative Summation Score for Routes A & B Buffered. TEAP data are included

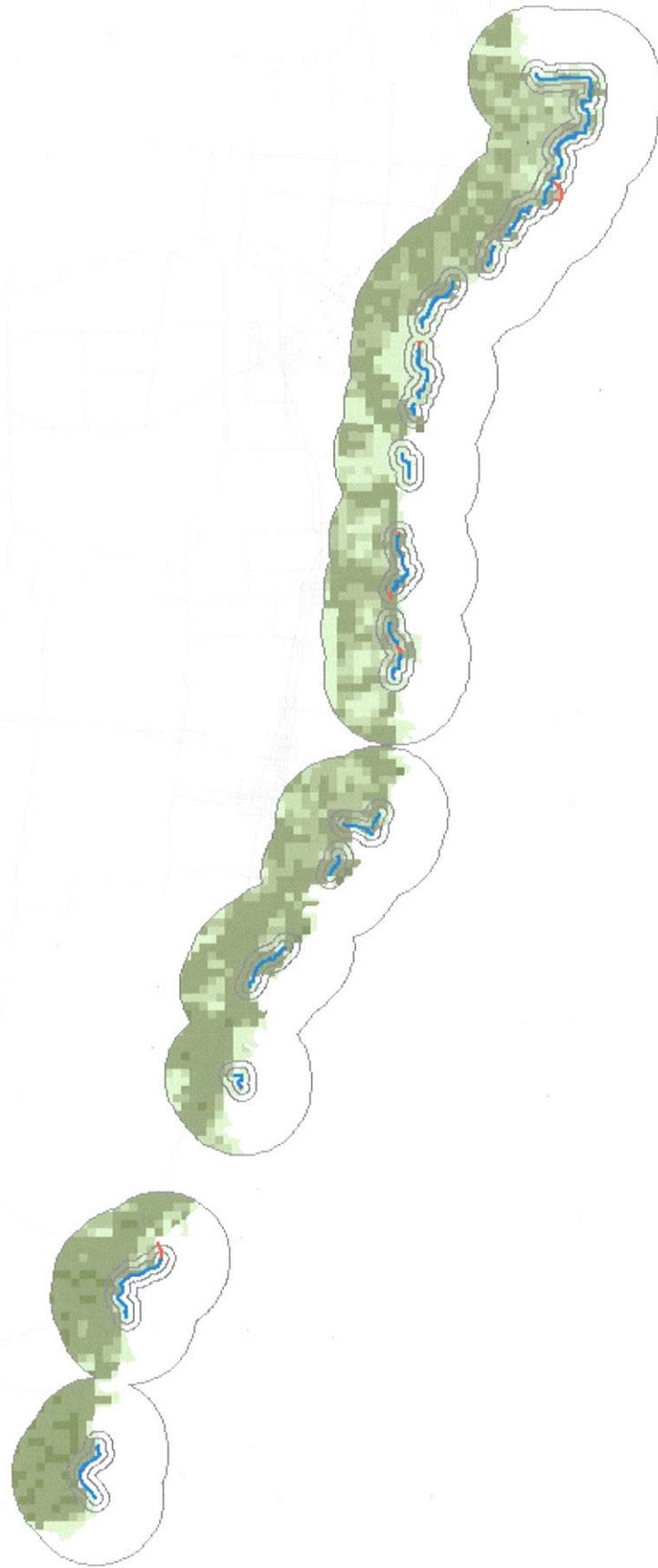


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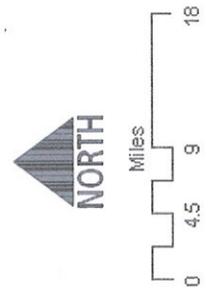
GISST TEAP Diversity Score for Routes A & B Buffered.



GISST TEAP Composite/Ecological Importance Score for Routes A & B Buffered.

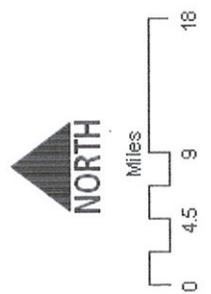
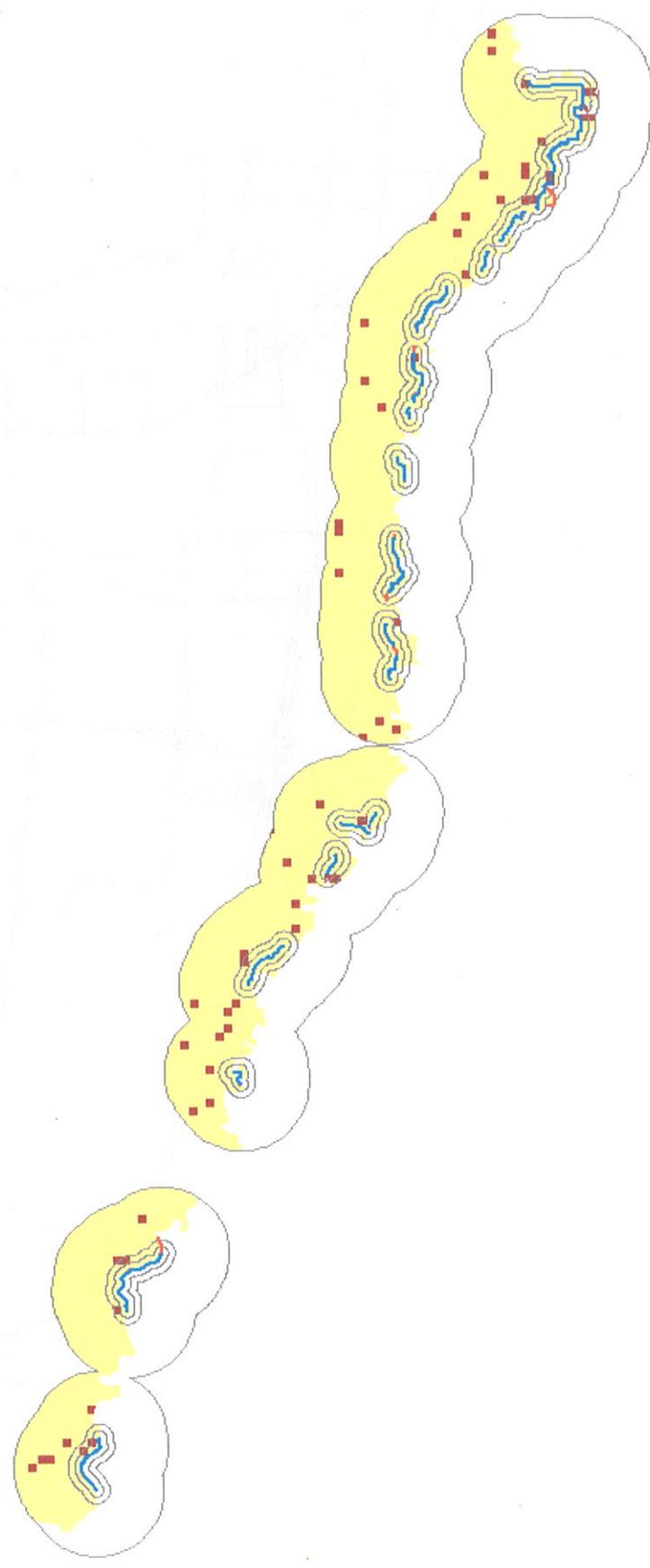


- Route_A&B
 - Route_B
 - Buffer (0.5, 1, & 5 miles)
- TEAP Composite (%)**
- 1 (lowest ecol. importance, lowest 51-100% of scores)
 - 2 (26-50%)
 - 3 (11-25%)
 - 4 (2-10%)
 - 5 (highest ecol. importance, highest 1% of scores)



TEAP Composite is a summation of TEAP Diversity, Rarity, and Sustainability Layers

GISST Texas Listed Species Score for Routes A & B Buffered



Route_A&B
Route_B
Buffer (0.5, 1, & 5 miles)

Texas Listed Species
1 (absent)
5 (present)



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US EPA
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