

Port of Corpus Christi

Regular Meeting

Tuesday, January 10, 2012 9:00 AM

Port of Corpus Christi

Regular Meeting

Tuesday, January 10, 2012 - 9:00 AM

Congressman Solomon P. Ortiz International Center, 402 Harbor Drive, Corpus Christi, Texas 78401

AGENDA

1.	Call meeting to order and receive Conflict of Interest Affidavits.	
2.	Approve the minutes of the December 13, 2011, and the January 3, 2012, Commission meetings.	4
3.	Administer Oath of Office to newly appointed Port Commissioners Al Jones and Charles Zahn and reappointed Port Commissioner Richard Borchard, and receive Conflict of Interest Affidavits from the new Commissioners.	27
4.	Elect officers of the Port Commission	28
5.	Receive comments from the public. ***(each speaker will be limited to three minutes)***	29
6.	Receive a presentation on the Flint Hills Resources small craft pier project at the former site of Naval Station Ingleside.	30
7.	Receive presentation on PCCA's Rail Master Plan.	31
8.	Approve Annual Contribution to the Workers Compensation Fund of the Texas Municipal League - Intergovernmental Risk Pool for 2012.	32
9.	Award a contract for review of PCCA's Total Compensation based on the evaluation of proposals submitted in response to PCCA's Request for Proposals for Total Compensation Review.	33
10.	Approve a Professional Services Purchase Order with HDR Engineering, Inc. to perform services associated with PCCA's asking the Federal Government to Assume the Operation and Maintenance of the La Quinta Channel Extension after it is constructed to -45 feet.	35
11.	Approve a Memorandum of Agreement with the Department of the Army to provide technical expertise and oversight reviews for the Federal Assumption of Operations and Maintenance for the non-Federal deepening of the La Quinta Channel Extension.	37
12.	Award a contract for Management Operator of the Congressman Solomon P. Ortiz International Center ("Ortiz Center") based on evaluation of proposals submitted in response to PCCA's Request for Proposals for future use and operation of the facility.	45
13.	Approve the second reading of a Franchise granting Canyon Supply & Logistics, LLC the right to access Corpus Christi Bay from navigation related improvements on the part of Naval Station Ingleside Canyon is acquiring from PCCA and related rights.	47
14.	Ratify an Agreement Regarding Lease Agreement dated December 16, 2011 with New Elk Coal Company, LLC and Computershare Trust Company of Canada.	61
15.	Approve a First Amendment to a Lease Agreement Dated February 8, 2011 with the New Elk Coal Company, LLC.	113

16. Consent Agenda. The Port Commissioners have been furnished with supporting documentation and staff's recommendation for each of the following items. All Consent Agenda items will be approved, in accordance with the respective staff recommendations, by one vote without being discussed separately unless a Port Commissioner requests otherwise:

    16. A. Approve a Professional Services Purchase Order with RVE Inc. for Design and Project Management for Security Grant 8. 118

    16. B. Approve a Professional Services Purchase Order with RVE Inc. for Design and Project Management for Security Grant 9. 121

17. Receive report from the Executive Director on upcoming community events, PCCA events and the activities of the following PCCA departments during the preceding month: business development, community relations, government affairs, operations, engineering services, accounting, and human resources. 124

18. Receive comments from Commissioners on any of the agenda items for this meeting, the Port's activities during the preceding month, upcoming PCCA events, and suggestions for future agenda items. 146

19. Discuss and take action on a request from Kiewit Offshore Services, Ltd, for PCCA's consent to proposed dredging activities by Kiewit pursuant to USACE Permit No. SWG-2001-02106 which would widen the La Quinta Channel by 30 feet from Kiewit's facility on the La Quinta Channel to the junction of the La Quinta Channel and the Corpus Christi Ship Channel. The Commission will go into executive session pursuant to §551.071 of the Texas Government Code to consult with its attorney regarding the legal effect of this consent prior to taking any action on this item in open session. 147

20. The Commission will go into executive session pursuant to §551.072 of the Texas Government Code to deliberate the purchase of real property in the vicinity of the Inner Harbor. 204

21. The Commission will go into executive session pursuant to §551.071 of the Texas Government Code to consult with its attorney regarding complaints filed against PCCA before the Federal Maritime Commission by CITGO Refining & Chemicals Company L.P. and Valero Refining - Texas, L.P. 205

22. The Commission will go into executive session pursuant to §551.074 of the Texas Government Code to deliberate the terms of employment of PCCA's Executive Director, Deputy Port Director of Engineeringl Finance and Administration, and Deputy Port Director of Operations, Business Development and Communications. 206

23. Adjourn.

DECEMBER 13, 2011

The Port Commissioners of the Port of Corpus Christi Authority met in regular session on Tuesday, December 13, 2011 at 9:00 a.m., at the Congressman Solomon P. Ortiz International Center located at 402 Harbor Drive, Corpus Christi, Texas.

Present:	Mr. Mike Carrell Mr. Richard M. Borchard Ms. Judy Hawley Mr. Robert J. Gonzalez, Sr. Mr. Francis I. Gandy, Jr. Mr. Mike Scott Mr. Robert Kostelnik
Present:	Mr. John P. LaRue Mr. Frank Brogan Mr. Sandy Sanders Mr. Tony Alejandro Mr. Arch Archambo Mr. Greg Brubeck Ms. Patricia Cardenas Ms. Sandra Davis Mr. Dennis DeVries Ms. Audre Debler Ms. Sherry DuBois Mr. Gustavo Espinosa Mr. Paul Kaup Mr. David Krams Mr. Dave Michaelsen Ms. Nelda Olivo Mr. Bert Perez Mr. Dave Throop Mr. Eddie Martinez Ms. Peggy Mettlen Mr. Alex Benavides Mr. Bennie Benavides Ms. Teresa Betzold Mr. Jesse Samu
Others Present:	Mr. Leo J. Welder, Jr.
Others Present:	Mr. Tom Curlee Port Industries of CC Mr. Tom Moore Consultant

Capt. Bobby Grumbles
Aransas/CC Pilots Assn.
Mr. George Clower
Mr. Tim Clower
Mr. Larry Ramming
Mr. Dick Fuqua
Mr. Charles Muchmore
Canyon Port
Mr. Robert Gonzalez
Robstown Area EDC
Mr. Bill Killian
CC Disposal Service
Ms. Rosie Collin
CC Hispanic Chamber
Mr. Ruben Jimenez
Gentry Co.
Capt. John Pasch
US Coast Guard
Ms. JoAnn Ehmann
Ingleside on the Bay
Mr. Ray Allen
Coastal Bend Bays & Estuaries Program
Mr. Roy DeBolt
Mr. Steven Williams
Kiewit
Ms. Josephine Miller
San Patricio EDC
Mr. David Noyola
Mr. Marcos Noyola Jr.
Mr. Daniel Korg
Del Mar
Ms. Kelle Clark
Mr. Al Jones
American Bank
Mr. Chuck Bogk
ILA #26
Ms. Elizabeth Carden
Mr. John Carden
Texas BioGreen Corp.
Ms. Mary Goldston
Mr. Jim Rimbey
ZEP
Ms. Nancy Allen
USO
Mr. Charles Zahn

Mr. Roland Mower
CC Regional EDC
Mr. Foster Edwards
CC Chamber of Commerce
Mr. Lillian Riojas
Valero Refining
Mr. Larry Elizondo
CITGO Refining

I.

Chairman Carrell called the meeting to order and asked that any conflict of interest affidavits be submitted. Mr. Carrell submitted an affidavit for items 16 and 25A. Mr. Gonzalez submitted an affidavit for items 9, 11, and 25C. Mr. Kostelnik submitted an affidavit for items 13, 19, 20 and 21.

II.

On motion made by Mr. Borchard and seconded by Mr. Scott, the minutes of the November 8 and December 7, 2011, Commission meetings were approved, in the form presented to the meeting.

III.

Chairman Carrell recognized deceased Port Commissioner William E. Carl for his accomplishments while serving as a commissioner.

IV.

Chairman Carrell asked for comments from the public. Those commenting were Ms. Susie Saldana of C-CAUSE, Mr. Terry Mills of NAACP, Dr. Nick Adame, Ms. Nancy Galvan and Mr. David Noyola. All spoke in support of item 11 – naming Cargo Dock 8 in honor of the long-time services of Commissioners Eddie Galvan and Robert J. Gonzalez, Sr.

Mr. Tom Curlee, representing Port Industries of Corpus Christi, spoke to item 13 regarding the PPI adjustment to wharfage and dockage charges.

Mr. Hugo Berlanga of Berlanga & Associates, spoke to item 5 – Professional Services Agreement with Berlanga & Associates.

V.

On motion made by Mr. Gandy and seconded by Mr. Gonzalez, the Commission approved a Professional Services Agreement with Berlanga & Associates for consulting and lobbying services in 2012 for a fee of $5,333.33 per month. Ms. Hawley and Mr. Carrell voted against the motion.

VI.

Chairman Carrell gave a report on PCCA's meetings with Panama Canal representatives in Panama.

VII.

The Commission received an update on the sale of part of Naval Station Ingleside to Canyon Supply & Logistics, LLC.

VIII.

On motion made by Mr. Borchard and seconded by Mr. Scott, the Commission approved the termination of the Linc Government Services maintenance contract for Naval Station Ingleside effective December 31, 2011.

IX.

On motion made by Mr. Kostelnik and seconded by Mr. Scott, the Commission approved the following Resolution of Appreciation, with Mr. Gonzalez abstaining:

RESOLUTION OF APPRECIATION

For A Job Well Done
By
Robert J. Gonzalez, Sr.
For
PORT OF CORPUS CHRIST AUTHORITY
OF NUECES COUNTY, TEXAS
December 13, 2011

Robert J. Gonzalez, Sr., served as a Port Commissioner to Port Corpus Christi Authority of Nueces County, Texas from January 1, 2000 to December 31, 2011.

During Robert's twelve years as a member of the Port Commission, he held the office of Vice Chairman during the years of 2001 and 2009 and served as appointed by the Chair on various subcommittees.

During Robert's tenure on the Port Commission, Port Corpus Christi experienced the most phenomenal commercial diversification in its history as it has continued in its well established role as the "economic engine" for the Coastal Bend of South Texas.

Robert's significant personal contributions to, and visions for, the mission of Port Corpus Christi Authority are numerous and include the support for the development and marketing of the La Quinta Trade Gateway Project in San Patricio County; the designation of Port Corpus Christi as a Strategic Military Port and the subsequent deployment of U.S. forces in support of the war on terrorism in the Middle East; the receipt of federal grants for post 9-11 Security Improvements including one for a Vessel Traffic Information System; the start of trade with Cuba; and the redevelopment of former U.S. Naval Station Ingleside, just to name a few.

To honor Robert's selfless dedication and commitment to its mission, the Port Commission of Port Corpus Christi Authority of Nueces County, Texas, enthusiastically approves this resolution of appreciation and orders that the signed original copy of this instrument be delivered to Robert J. Gonzalez, Sr., his wife, Carrie, and their family, with our sincerest best wishes. May calm seas and following winds continue for his future endeavors and services for the betterment of the quality of life in the Coastal Bend.

RESOLVED, that by our adoption of this resolution, we, the Port Commissioners, wish to say thank you to Robert J. Gonzalez, Sr., for a job well done for Port Corpus Christi Authority over the past twelve years; we have enjoyed the opportunity to work with you and we will miss you.

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X.

On motion made by Mr. Gonzalez and seconded by Mr. Kostelnik, the Commission approved following Resolution of Appreciation, with Mr. Gandy abstaining:

RESOLUTION OF APPRECIATION

For A Job Well Done
By
Francis I. Gandy, Jr.
For
PORT OF CORPUS CHRIST AUTHORITY
OF NUECES COUNTY, TEXAS
December 13, 2011

Francis I. Gandy, Jr. served as a Port Commissioner to the Port of Corpus Christ Authority of Nueces County, Texas from January 1, 2009 to December 31, 2011.

During Francis's three years as a member of the Port Commission, he served on various subcommittees appointed by the Chair.

During Francis's tenure on the Port Commission, the Port of Corpus Christi experienced the most phenomenal growth of the port's diversification in its history.

Francis's significant personal contributions to, and visions for, the mission of the Port of Corpus Christi Authority include the support for the Port's Cotton Delivery Point Designation; the development and marketing of the La Quinta Trade Gateway Project in San Patricio County; the master plans for the future development of the port properties on Harbor Island, Former U.S. Naval Station Ingleside and La Quinta; the enhancement of the Port's security department; the receipt of federal grants for Post 9-11 Security Improvements and one for a Vessel Traffic Information System; and the Port Channel Improvement Project, just to name a few.

To honor Francis's selfless dedication and commitment to its mission, the Port Commission of the Port of Corpus Christi Authority of Nueces County, Texas, enthusiastically approves this resolution of appreciation and orders that the signed original copy of this instrument be delivered to Francis I. Gandy, Jr. and his wife, Nancy with our sincerest best wishes, calm seas and following winds for his future endeavors and services for the betterment of the quality of life in the Coastal Bend.

RESOLVED, that by our adoption of this resolution, we, the Port Commissioners, wish to say thank you to Francis I. Gandy, Jr., for a job well done for the Port of Corpus Christi Authority over the past three years; we have enjoyed the opportunity to work with you and we will miss you.

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XI.

On motion made by Mr. Gandy and seconded by Mr. Scott, the Commission approved naming Cargo Dock 8 the *Galvan-Gonzalez Cargo Dock* in honor of the long-time services of Commissioners Eddie Galvan and Robert J. Gonzalez, Sr. to the Port of Corpus Christi Authority. Mr. Gonzalez abstained from voting on the motion.

XII.

On motion made by Mr. Kostelnik and seconded by Mr. Borchard, the Commission adopted A RESOLUTION BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS AUTHORIZING THE REDEMPTION PRIOR TO STATED MATURITY OF THE AUTHORITY'S OUTSANDING REVENUE BONDS, SERIES 200-A (AMT) AND REVENUE BONDS SERIES 2002-B (NON-AMT) WITH AVAILABLE FUNDS OF THE AUTHORITY, AUTHORIZING THE USE OF CERTAIN FUNDS OF THE AUTHORITY TO ACCOMPLISH SUCH PRIOR REDEMPTION, AND APPROVING OTHER MATTERS RELATED THERETO. A copy of this Resolution is attached to the minutes of this meeting as Attachment One.

XIII.

On motion made by Mr. Borchard and seconded by Mr. Gandy, the Commission approved a 5.26% increase in all PCCA wharfage and dockage charges under PCCA Tariff 100-A and Bulk Terminal Tariff 1-A for 2012 (based on a like increase in the Producer Price Index), except for the following wharfage charges on dry bulk commodities: Tariff 100-A, Items 501A and 545; and Bulk Terminal Tariff 1-A, Items 200D and 205. Mr. Scott voted against the motion, and Mr. Kostelnik abstained from voting.

XIV.

On motion made by Mr. Gandy and seconded by Ms. Hawley, the Commission approved a contribution of 11% of payroll (which is the Elected Contribution Rate) to the Texas County and District Retirement System for 2012 Plan Year.

XV.

On motion made by Mr. Borchard and seconded by Ms. Hawley, the Commission approved PCCA's 2012 Annual Budget in the form presented to the meeting.

XVI.

On motion made by Mr. Gonzalez and seconded by Ms. Hawley, the Commission adopted the following Resolution, with Mr. Carrell and Mr. Gandy abstaining from voting on the motion:

RESOLUTION APPROVING
BANKING DEPOSITORY
AND RELATED MATTERS
(December 13, 2011)

WHEREAS, the Port Commission ("Commission") of the Port of Corpus Christi Authority ("PCCA") is required to select a depository for PCCA's funds in the same manner that a municipality selects a municipal depository under Chapter 105, Local Government Code; and

WHEREAS, PCCA's Director of Finance ("Finance Director") is PCCA's "designated officer" for purposes of both Chapter 105, Local Government Code, and Section 60.271(f), Water Code, and he has requested, received and reviewed applications for the performance of depository services; and

WHEREAS, in reviewing the applications, the Finance Director considered the terms and conditions for performance of depository services, including the type and cost of services to be provided to PCCA; and

WHEREAS, the Finance Director has presented the Commission the specifications of each application; and

WHEREAS, the members of the Audit Committee have also reviewed the applications;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION THAT:

Section 1. It is hereby ordered that Wells Fargo, N.A. ("Bank") shall serve as the depository for PCCA's funds for a term of three years beginning February 1, 2012, and thereafter for an additional two-year period beginning on February 1, 2015, if the Commission so elects.

Section 2. The Finance Director is hereby authorized to execute on PCCA's behalf a depository services contract with the Bank consistent with the Bank's application for depository services and this Resolution.

Section 3. The Bank, to qualify as PCCA's depository, must, not later than five days before the commencement of the term of the depository services contract, provide security for PCCA's funds to be deposited in accordance with the terms of the depository services contract.

Section 4. No later than sixty days from the date of this Resolution (December 13, 2011), the Finance Director shall transfer to the Bank all of PCCA's funds covered by the depository services contract under the Finance Director's control.

Section 5. The Finance Director may draw checks on the Bank using the method or methods specified in the depository services contract, all of which are hereby approved by the Commission as the methods by which the Finance Director is authorized to direct payment from the funds of PCCA on deposit with the Bank.

Section 6. The methods of payment of PCCA's obligations set forth in the depository services contract are hereby approved by the Commission as the methods by which PCCA's obligations may be paid with funds of PCCA on deposit with the Bank.

Section 7. All checks, drafts or other orders of withdrawal against PCCA's accounts with the Bank shall be signed by any two of the following members of PCCA's staff:

John P. LaRue, Executive Director

Frank C. Brogan, Deputy Port Director
Of Engineering, Finance and Administration

Dennis J. DeVries, Director of Finance

Audre Debler, Chief Accountant

Section 8. The Finance Director shall continue to be PCCA's "designated officer" for purposes of both Chapter 105, Local Government Code, and Section 60.271(f), Water Code, and he is hereby authorized to execute and deliver to the Bank any and all additional certificates, documents or other papers and to do any and all things he deems necessary to carry out the intent and purposes of this Resolution.

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XVII.

On motion made by Mr. Kostelnik and seconded by Mr. Gandy, the Commission approved a Professional Services Purchase Order, in an amount not to exceed $95,000, with Naismith Engineering to study and survey three alternate rail routes connections to the La Quinta Terminal. Mr. Borchard abstained from voting on this motion.

XVIII.

On motion made by Mr. Gonzalez and seconded by Mr. Scott, the Commission approved, in the form presented to the meeting, the first reading of a Franchise granting Canyon Supply & Logistics, LLC the right to access Corpus Christi Bay from navigation-related improvements on the part of Naval Station Ingleside Canyon is acquiring from PCCA and related rights.

XIX.

On motion made by Mr. Gandy and seconded by Mr. Borchard, the Commission approved, in the form presented to the meeting, the third and final reading of a Franchise granting CITGO Refining & Chemicals Company, L.P., the right to cross the south bulkhead line of the Industrial Canal from CITGO Docks 1 and 2 and related rights. Mr. Kostelnik abstained from voting on this motion.

XX.

On motion made by Mr. Borchard and seconded by Mr. Scott, the Commission approved, in the form presented to the meeting, the third and final reading of a Franchise granting CITGO Refining & Chemicals Company, L.P. the right to cross the south bulkhead line of the Tule Lake Channel from CITGO Docks 3 and 6 and related rights. Mr. Kostelnik abstained from voting on this motion.

XXI.

On motion made by Ms. Hawley and seconded by Mr. Gandy, the Commission approved, in the form presented to the meeting, the second reading of a Franchise granting CITGO Refining & Chemical Company, L.P. the right to cross the south bulkhead line of the Industrial Canal from CITGO Dock 7 and related rights. Mr. Kostelnik abstained from voting on this is motion.

XXII.

On motion made by Ms. Hawley and seconded by Mr. Kostelnik, the Commission adopted the following Resolution:

RESOLUTION AUTHORIZING FUNDING OF THE PORT OF CORPUS CHRISTI PROMOTION AND DEVELOPMENT FUND FOR 2012 AND MATTERS RELATING THERETO

WHEREAS, Port of Corpus Christi Authority of Nueces County, Texas ("PCCA") established the *Port of Corpus Christi Promotion and Development Fund* (the "Development Fund") on December 14, 2004, pursuant to the authority granted in Subchapter H of Chapter 60 of the Texas Water Code ("Subchapter H"); and

WHEREAS, Section 60.202 of the Texas Water Code ("Water Code") provides that PCCA may set aside out of current income from its operations a promotion and development fund of not more than five percent of its gross income from operations in each calendar year; and

WHEREAS, Section 60.203 of the Water Code provides that money in a promotion and development fund shall be spent by the Port Commission or as the Port Commission may direct to pay any expenses connected with (1) any activity or matter incidental to the advertising, development, or promotion of the Port or its ports, waterways, harbors, or terminals; (2) furthering the general welfare of the Port and its facilities; or (3) the betterment of the Port's relations with steamship and rail lines, shippers, consignees of freight, governmental officials, or others interested or sought to be interested in [its] ports, waterways, harbors, or terminals; and

WHEREAS, Section 60.205 of the Water Code provides that Subchapter H authorizes disbursements from the Development Fund for unusual purposes and occasions not covered by other law;

NOW, THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS THAT:

Section 1. For purposes of this Resolution, the term "Business/Community Development Expenses" means (a) the Business/Community Development expenditures included in the Port of Corpus Christi Authority 2012 Annual Budget, and (b) the amounts payable under PCCA's agreements, such as its Port Development Services Agreements, in effect during all or part of 2012 which provide by their terms that PCCA's payment obligations thereunder will be paid with money in the Development Fund (collectively, the "Development Contracts").

Section 2. During the calendar year 2012, an amount of money equal to the Business/Community Development Expenses shall be set aside in the Development Fund; provided, however, that the amount of money allocated to the Development Fund during 2012 shall not exceed five percent of PCCA's gross income from operations for that year.

Section 3. The Port Commission hereby authorizes and directs the Executive Director to use the money in the Development Fund to pay PCCA's obligations under the Development Contracts when due and to pay for other Business/Community Development Expenses at such times and in such amounts as he sees fit.

Section 4. The Director of Finance will be responsible for recording the allocations to and the expenditures from the Development Fund.

Section 5. A copy of this Resolution shall be delivered to the Director of Finance.

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XXIII.

On motion made by Mr. Borchard and seconded by Ms. Hawley, the Commission approved, in the form presented to the meeting, a Professional Services Agreement with each of the following persons or entities for 2012, :

A. Thomas S. Moore
B. W. L. Bates Co., Inc.
C. Mathiesen Maritime Services
D. Simon Hsing
E. Morehead Dotts & Rybak

XXIV.

On motion made by Mr. Gonzalez and seconded by Ms. Hawley, the Commission approved, in accordance with the respective staff recommendations furnished to the Commission at the meeting, a Professional Services Agreement with each of the following persons or entities for 2012, :

A. Robert Borski Associates
B. Randall Erben
C. Cassidy and Associates Inc.

XXV.

A. On motion made by Mr. Gonzalez and seconded by Ms. Hawley, the Commission approved the Development Services Agreement with the Corpus Christi Regional Economic Development in the form presented to the meeting.

B. On motion made by Mr. Borchard and seconded by Mr. Gonzalez, the Commission approved the Development Services Agreement with the San Patricio County Economic Development Corporation in the form presented to the meeting.

C. On motion made by Mr. Borchard and seconded by Mr. Kostelnik, the Commission approved the Development Services Agreement with the Robstown Area Economic Development Corporation in the form presented to the meeting. Mr. Gonzalez abstained from voting on this motion.

D. On motion made by Ms. Hawley and seconded by Mr. Gandy, the Commission approved the Development Services Agreement with the Corpus Christi Chamber of Commerce in the form presented to the meeting.

E. On motion made by Ms. Hawley and seconded by Mr. Kostelnik, the Commission approved the Development Services Agreement with the Corpus Christi Hispanic Chamber of Commerce in the form presented to the meeting after increasing the Contract Amount to $45,000. Mr. Gonzalez abstained from voting on this motion.

F. On motion made by Ms. Hawley and seconded by Mr. Gandy, the Commission approved the Development Services Agreement with the Coastal Bend Bays & Estuaries Program in the form presented to the meeting.

XXVI.

Chairman Carrell appointed Mr. Kostelnik as the PCCA's representative on the board of directors of the Corpus Christi Economic Development Corporation.

XXVII.

On motion made by Mr. Gandy and seconded by Mr. Scott, all items on the consent agenda were unanimously approved, in accordance with the respective staff recommendations furnished to the Commissioners at the meeting, by one vote without being discussed separately. These items were as follows:

A. Approve a contract with CC Disposal Service, the lowest and best bidder based upon bids received on November 1, 2011 for waste disposal.

B. Approve a contract with Gentry Company, the lowest and best bidder based upon bids received on November 15, 2011 for Fire System Pressurization on Avery Point Oil Docks.

C. Approve a Sole Source Contract with G4S Technology, LLC (formerly Adesta, LLC) for Security Grant 8 – TWIC/Biometric Card Readers Work Order 21.

D. Approve a Professional Services Purchase Order with Freese & Nichols for the design of the Permian Yard and Rail Improvements.

E. Approve a Professional Services Purchase Order with CH2MHILL for the final design of the Nueces River Rail Yard.

F. Approve a Professional Services Purchase Order with TEC, Inc. for the design of the Bulk Dock 2 Truck Loading Station.

G. Ratify a Lease Agreement with Texas BioGreen Corporation for 4-acres located adjacent to the ADM elevator lease.

H. Approve a Second Amendment of Lease dated January 13, 2011 with Blattner Energy Inc. for open storage space at the Southside Cargo Terminal and storage space inside The Cargo Dock 15 Transit Shed.

I. Approve an amendment extending PCCA's short-term lease with VSE Corporation for portions of Buildings 134 and 138 and all of Building 146 at the former Naval Station Ingleside Main Base.

J. Approve changes to the loading and unloading rates in Bulk Terminal Tariff 1-A for the traveling gantry crane and the radial ship loader.

K. Approve a Resolution approving a Memorandum of Agreement with the Galveston District of the Corps of Engineers for maintenance dredging of non-federal berthing areas.

L. Approve a Consent to Construction in Easement Area from the Department of the Army Corps of Engineers, Galveston District, for the South Shore Dredge Material Placement Area, Cell C.

XXVIII.

The Executive Director reported on the following during his report: Tree for All; thank you to Mr. Gonzalez and Mr. Gandy for their service on the Commission; and happy holidays to everyone.

XXIX.

Chairman Carrell asked for comments from the Commissioners. All wished outgoing Commissioners Gonzalez and Gandy good luck in their future endeavors and thanked them for their service

At 12:44 p.m., the Chairman announced that the Commission would go into executive session pursuant to §551.071, §551.072 and §551.074 of the Texas Government Code to deliberate agenda items 30, 31 and 32.

At 2:19 p.m., the Commission meeting reconvened in open session.

XXX.

On motion made by Mr. Gandy and seconded by Mr. Gonzalez, the Commission awarded Sandy Sanders, Deputy Director of Operations, Business Development and Communications, a $20,000 bonus for 2011, in accordance with the terms of his employment contract with PCCA.

On motion made by Ms. Hawley and seconded by Mr. Gandy, the Commission awarded Frank Brogan, Deputy Director of Engineering, Finance and Administration, a salary of $210,000 for 2012 and a $20,000 bonus for 2011, in accordance with the terms of his employment contract with PCCA.

On motion made by Mr. Kostelnik and seconded by Ms. Hawley, the Commission awarded John LaRue, Executive Director, a $35,000 bonus for 2011, in accordance with the terms of his employment contract with PCCA.

XXXI.

The following agenda item was for executive session only: Legal advice regarding the complaints filed against PCCA before the Federal Maritime Commission by CITGO Refining & Chemicals Company L.P., and Valero Refining – Texas, L.P.

XXXII.

The following agenda item was for executive session only: Deliberate the terms on which PCCA would lease the La Quinta Trade Gateway Terminal property for a multi-use terminal.

XXXIII.

On motion made by Mr. Borchard and seconded by Ms. Hawley, the Commission rejected Mr. Gandy's proposed amendment to PCCA's Code of Ethics. Mr. Gandy voted against the motion.

XXXIV.

There being no further business, the meeting adjourned at 2:24 p.m.

ATTACHMENT ONE

Draft dated December 2, 2011

A RESOLUTION

BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS AUTHORIZING THE REDEMPTION PRIOR TO STATED MATURITY OF THE AUTHORITY'S OUTSTANDING REVENUE BONDS, SERIES 2002-A (AMT) AND REVENUE BONDS SERIES 2002-B (NON-AMT) WITH AVAILABLE FUNDS OF THE AUTHORITY, AUTHORIZING THE USE OF CERTAIN FUNDS OF THE AUTHORITY TO ACCOMPLISH SUCH PRIOR REDEMPTION, AND APPROVING OTHER MATTERS RELATED THERETO

THE STATE OF TEXAS :
COUNTY OF NUECES :
PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS :

WHEREAS, the Port of Corpus Christi Authority of Nueces County, Texas (the "***Authority***") has currently outstanding its *Revenue Bonds, Series 2002-A (AMT)* (the "***Series 2002-A Bonds***") in the aggregate principal amount of $4,145,000 and its *Revenue Bonds, Series 2002-B (Non-AMT)* (the "***Series 2002-B Bonds***") in the aggregate principal amount of $3,105,000 which Series 2002-A Bonds and Series 2002-B Bonds are secured by a first and prior lien on and pledge of the "Pledge Revenues" of the "Port Facilities", all as provided in the resolution authorizing the issuance of the Series 2002-A Bonds and the Series 2002-B Bonds (the "***Series 2002 Bond Resolution***"); and

WHEREAS, in the Series 2002 Bond Resolution the Authority reserved the right to optionally redeem, on December 1, 2011 or any date thereafter, all or any portion of the Series 2002-A Bonds and Series 2002-B Bonds maturing on and after December 1, 2012 at the redemption price of par plus accrued interest to the redemption date; and

WHEREAS, the Port Commission of the Authority hereby determines that it is in the best interest of the Authority to utilize available funds and redeem prior to stated maturity all of the outstanding Series 2002-A Bonds and Series 2002-B Bonds; and

WHEREAS, *The Bank of New York Mellon Trust Company, N.A.*, is the paying agent for the Series 2002-A Bonds and Series 2002-B Bonds; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Resolution was passed was opened to the public, and public notice of the time, place and purpose of said meeting was given, as required by Chapter 551, Texas Government Code, as amended;

THEREFORE, BE IT RESOLVED BY THE PORT COMMISSION OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS THAT:

SECTION 1. AUTHORIZATION TO USE CERTAIN FUNDS TO REDEEM PRIOR TO STATED MATURITY THE SERIES 2002-A BONDS AND SERIES 2002-B BONDS. The Port Commission hereby authorizes the Executive Director and the Director of Finance of the Authority to use lawfully available funds of the Authority to redeem prior to stated maturity the Series 2002-A Bonds and Series 2002-B Bonds.

SECTION 2. NOTICES OF REDEMPTION OF THE SERIES 2002-A BONDS AND SERIES 2002-B BONDS. There is attached to this Resolution as Exhibit A, and made a part hereof for all purposes, NOTICES OF REDEMPTION for the Series 2002-A Bonds and Series 2002-B Bonds. The Authority hereby exercises its option to redeem prior to maturity the Series 2002-A Bonds and Series 2002-B Bonds described in the NOTICES OF REDEMPTION, and the Series 2002-A Bonds and Series 2002-B Bonds are hereby called for redemption, and shall be redeemed, prior to maturity, on the respective dates, at the respective places, and at the respective prices set forth therein.

As soon as practicable after the adoption of this Resolution, and in all events at least thirty (30) days prior to the date fixed for such redemption, a copy of the respective NOTICE OF REDEMPTION shall be (i) sent to all registered owners of the Series 2002-A Bonds and Series 2002-B Bonds by first class mail postage prepaid, addressed to such registered owners at their respective addresses shown on the registration books of the paying agent/registrar for the Series 2002-A Bonds and Series 2002-B Bonds, and (ii) filed with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access ("EMMA") system (which is the sole successor to the registered securities depositories and national information services that were in existence at the time the Series 2002-A Bonds and the Series 2002-B Bonds were issued).

SECTION 3. INCORPORATION OF RECITALS. The Port Commission hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the Authority hereby incorporates such recitals as a part of this Resolution.

SECTION 4. EFFECTIVE DATE. This Resolution shall become effective immediately after it is approved by the Port Commission.

[The remainder of this page intentionally left blank]

PASSED AND APPROVED BY THE PORT COMMISSIONERS OF THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS AT A MEETING HELD ON THIS 13TH OF DECEMBER, 2011.

_____
Chairman, Port Commission

ATTEST:

_____
Secretary, Port Commission

(PORT SEAL)

APPROVED AS TO FORM:

By: _____
General Counsel

[SIGNATURE PAGE TO DEFEASANCE RESOLUTION]

EXHIBIT A

NOTICE OF REDEMPTION
of
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS
REVENUE BONDS, SERIES 2002-A (AMT)
(Maturing on December 1 in the years 2012 through 2016, inclusive)

NOTICE IS HEREBY GIVEN that the *Port of Corpus Christi Authority of Nueces County, Texas* (the "Authority"), in Nueces County, Texas, has called for redemption at the redemption price equal to par, plus accrued interest, on ***Monday, January 16, 2012*** (the "Redemption Date"), all of the Authority's outstanding *Revenue Bonds, Series 2002-A (AMT)*, dated March 1, 2002, maturing on December 1 in the years 2012 through 2016, inclusive, which are further described as follows (the "Bonds"):

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS REVENUE BONDS, SERIES 2002-A (AMT)				
MATURITY (DECEMBER 1)	**PRINCIPAL AMOUNT MATURING IN YEAR ($)**	**PRINCIPAL AMOUNT REFUNDED ($)**	**STATED INTEREST RATE (%)**	**CUSIP NO. (733911)**
2012	755,000	755,000	4.70	AL5
2013	790,000	790,000	4.85	AM3
2014	825,000	825,000	5.00	AN1
2015	865,000	865,000	5.10	AP6
2016	910,000	910,000	5.20	AQ4

NOTICE IS FURTHER GIVEN that due and proper arrangements have been made for providing The Bank of New York Mellon Trust Company, N.A., the Paying Agent for the Bonds called for redemption, with funds sufficient to pay the redemption price of the Bonds and the interest thereon to the Redemption Date. In the event the Bonds, or any of them are not presented for redemption by the Redemption Date, they shall not thereafter bear interest. If due provision for the payment of the redemption price is made, then the Bonds automatically shall be deemed to have been redeemed prior to their scheduled maturity, and they shall not bear interest after the Redemption Date, and they shall not be regarded as being outstanding except for the right of the owner thereof to receive the redemption price from the Paying Agent.

THIS NOTICE is issued and given pursuant to the redemption provisions in the proceedings authorizing the issuance of the Bonds and in accordance with the recitals and provisions of each of the Bonds.

NOTICE IS FURTHER GIVEN THAT the Bonds will be payable at and should be submitted either in person or by certified or registered mail to the following address:

First Class/Registered/Certified Mail:
Bank of New York Mellon Trust Company, N.A.
Institutional Trust Services
P.O. Box 2320
Dallas, Texas 75221-2320

By Overnight or Courier:	**By Hand:**
Bank of New York Mellon Trust Company, N.A.	Bank of New York Mellon Trust Company, N.A.
Institutional Trust Services	GIS Unit Trust Window
2001 Bryan Street, 9th Floor	4 New York Plaza, 1st Floor
Dallas, Texas 75201	New York, New York 10004

To avoid a backup withholding tax required by Section 3406 of the Internal Revenue Code of 1986, holders must submit a properly completed IRS Form W-9.

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* THE ABOVE REFERENCED CUSIP NUMBERS ARE PROVIDED FOR THE CONVENIENCE OF THE HOLDERS. NEITHER THE PAYING AGENT NOR THE AUTHORITY ARE RESPONSIBLE FOR ANY ERROR OF ANY NATURE RELATING TO THE CUSIP NUMBERS.

NOTICE OF REDEMPTION
of
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS
REVENUE BONDS, SERIES 2002-B (NON-AMT)
(Maturing on December 1 in the years 2012 through 2016, inclusive)

NOTICE IS HEREBY GIVEN that the *Port of Corpus Christi Authority of Nueces County, Texas* (the "Authority"), in Nueces County, Texas, has called for redemption at the redemption price equal to par, plus accrued interest, on ***Monday, January 16, 2012*** (the "Redemption Date"), all of the Authority's outstanding *Revenue Bonds, Series 2002-B (Non-AMT),* dated March 1, 2002, maturing on December 1 in the years 2012 through 2016, inclusive, which are further described as follows (the "Bonds"):

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS REVENUE BONDS, SERIES 2002-B (NON-AMT)				
MATURITY (DECEMBER 1)	**PRINCIPAL AMOUNT MATURING IN YEAR ($)**	**PRINCIPAL AMOUNT REFUNDED ($)**	**STATED INTEREST RATE (%)**	**CUSIP NO. (733911)**
2012	565,000	565,000	4.40	BB6
2013	590,000	590,000	4.55	BC4
2014	620,000	620,000	4.70	BD2
2015	650,000	650,000	4.80	BE0
2016	680,000	680,000	4.90	BF7

NOTICE IS FURTHER GIVEN that due and proper arrangements have been made for providing The Bank of New York Mellon Trust Company, N.A., the Paying Agent for the Bonds called for redemption, with funds sufficient to pay the redemption price of the Bonds and the interest thereon to the Redemption Date. In the event the Bonds, or any of them are not presented for redemption by the Redemption Date, they shall not thereafter bear interest. If due provision for the payment of the redemption price is made, then the Bonds automatically shall be deemed to have been redeemed prior to their scheduled maturity, and they shall not bear interest after the Redemption Date, and they shall not be regarded as being outstanding except for the right of the owner thereof to receive the redemption price from the Paying Agent.

THIS NOTICE is issued and given pursuant to the redemption provisions in the proceedings authorizing the issuance of the Bonds and in accordance with the recitals and provisions of each of the Bonds.

NOTICE IS FURTHER GIVEN THAT the Bonds will be payable at and should be submitted either in person or by certified or registered mail to the following address:

First Class/Registered/Certified Mail:
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Institutional Trust Services
P.O. Box 2320
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By Overnight or Courier:	**By Hand:**
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Dallas, Texas 75201	New York, New York 10004

To avoid a backup withholding tax required by Section 3406 of the Internal Revenue Code of 1986, holders must submit a properly completed IRS Form W-9.

---

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JANUARY 3, 2012

The Port Commissioners of the Port of Corpus Christi Authority met in special session on Tuesday, January 3, 2012, at 2:00 p.m., at the offices of the Port of Corpus Christi Authority, located at 222 Power Street, Corpus Christi, Texas.

Present:	Mr. Mike Carrell Mr. Richard M. Borchard Ms. Judy Hawley Mr. Robert J. Gonzalez, Sr. Mr. Francis I. Gandy, Jr. Mr. Robert Kostelnik Mr. Mike Scott
Present:	Mr. John LaRue Mr. Frank Brogan Mr. Sandy Sanders Ms. Sandra Terrell Davis Mr. Greg Brubeck Chief Arch Archambo Ms. Patricia Cardenas Mr. Dennis DeVries Ms. Sherry DuBois Ms. Audre Debler Ms. Lynn Angerstein Ms. Nelda Olivo Mr. Eddie Martinez
Others Present:	Mr. Leo J. Welder, Jr.
Others Present:	Mr. Larry Ramming Mr. Dick Fuqua Mr. Paul McConnell Mr. Mark Mires Mr. Tim Clower Mr. George Clower Canyon Supply & Logistics Mr. Scott Tredway Mr. David Waller Mr. Bill Hutchins Capt. Tom Lair Mr. Taylor Norton Waller Marine Mr. Roland Mower

Mr. John Plotnick
CC Regional EDC
Ms. Josephine Miller
San Patricio EDC
Mr. Pete Perkins
Mr. Jim Price
Mr. Paul Baen
Mr. Willie Vaden
City of Ingleside
Ms. Jamie Powell
Representative Connie Scott Office
Mr. Mike Smith
CC Caller-Times
Mr. Mike DaSilva
KIII-TV 3 News
Mr. Tom Moore
PCCA Consultant

I.

Chairman Carrell called the meeting to order and asked that any conflict of interest affidavits be submitted. None were submitted.

II.

Chairman Carrell called for public comment. No comments were given.

III.

On motion made by Mr. Gandy and seconded by Mr. Gonzalez, the Commission authorized the reinstatement of the Sales Contract with Canyon Supply & Logistics, LLC, for the sale of approximately 186.546 acres of the former Naval Station Ingleside Main Base, an easement on approximately 84 acres of adjacent submerged land, and the improvements thereon, with any modifications the Commission deems appropriate.

IV.

There being no further business, the meeting adjourned at 2:44 p.m.

AGENDA ITEM NO. 3

No Attachment

AGENDA ITEM NO. 4

No Attachment

AGENDA ITEM NO. 5

No Attachment

AGENDA ITEM NO. 6

No Attachment

AGENDA ITEM NO. 7

No Attachment

PORT CORPUS CHRISTI

John P. LaRue
EXECUTIVE DIRECTOR

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 8***
Annual Contribution to the Workers Compensation Fund of the Texas Municipal League – Intergovernmental Risk Pool for 2012

Dear Commissioners:

The Port participates in the workers' compensation fund of the Texas Municipal League – Intergovernmental Risk Pool (TML – IRP). The Port's participation in TML-IRP will continue until such time as the Port withdraws from the Risk Pool. The Port's annual contribution to the TML-IRP workers' compensation fund for 2011 was $125,817.00.

For 2012, some of the higher rated classifications in the workers' compensation fund have been reduced 8% from last year's rates. Further overall rate reductions are based on the individual loss experience for each job classification and on the overall Risk Pool's experience.

The Port's required annual contribution to the Workers' Compensation Fund of TML-IRP for 2012 is $91,602.96, which is a 37.35% reduction from last year's annual contribution amount. Staff recommends that you approve payment of the 2012 annual contribution.

If you have questions, please contact Sandra Davis.

Sincerely,

John P. LaRue
Executive Director

PORT CORPUS CHRISTI

John P. LaRue
EXECUTIVE DIRECTOR

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 9***
Total Compensation Review

Dear Commissioners:

At the August 9, 2011, meeting, the Port Commission recommended that staff have a comprehensive benefits and compensation survey conducted by a consulting company. On November 7, 2011,a Request for Proposals ("Total Compensation Review)") was posted in the Corpus Christi Caller-Times. The "Review" was also posted on the Port's website.

The Request For Proposals was sent to eleven (11) companies. On December 19, 2011 the Port received five responses for the Total Compensation Review. Enclosed is a list of the companies that responded along with the estimated contact amounts .

The Audit Committee will review the proposals submitted at its meeting on January 9, 2012. Staff along with the Audit Committee will make a recommendation regarding the best proposal or proposals at Port Commission meeting on January 10, 2012.

If you have questions, please contact Sandra Davis.

Sincerely,

John P. LaRue
Executive Director

TOTAL COMPENSATION REVIEW PROPOSALS
DECEMBER 19, 2011

1. Buck Consultants, Houston, Texas
   Estimated Contract Amount: $95,000 to $125,000

2. Hay Group, Inc, Dallas, Texas
   Estimated Contract Amount: $45,000 to $55,000

3. Mercer, Dallas, Texas
   Estimated Contract Amount: $60,000 plus Travel

4. Public Sector Personnel Consultants, Austin, Texas
   Contract Amount: $12,500 to $20,000

5. The Waters Consulting Group, Inc., Dallas, Texas
   Estimated Contract Amount: $24,250.

PORT CORPUS CHRISTI

John P. LaRue
EXECUTIVE DIRECTOR

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 10***
Approve a Professional Services Purchase Order with HDR Engineering Inc. to Perform Services Associated with the PCCA Seeking the Federal Government to Assume the Operation and Maintenance of the Deepening the La Quinta Channel Extension to -45'

Dear Commissioners:

Last month, the U.S. Army Corps of Engineers commenced construction of the La Quinta Ship Channel Extension (Extension), a feature of the 2007 congressionally-authorized Corpus Christi Ship Channel Improvement Project. The Extension is expected to be complete in 2013, at which time the federal government will assume operation and maintenance of the channel to the originally authorized depth of -39 feet.

With the anticipated completion of the Panama Canal Expansion in 2014 and the need for channel depths greater than -39 feet at the La Quinta Multi-Purpose Terminal, the Port is seeking to deepen the Extension from -39 feet to -45 feet in order to match the existing depths of the Corpus Christi and La Quinta Ship Channels. We have an individual Corps permit that allows the Port to dredge the extension to -45 feet at our own cost.

However, before we begin actually dredging the Extension to -45 ft, we need to take care of an important policy issue with the Corps of Engineers. We need to have the Corps determine that the maintenance of a deeper (-45 feet) Extension would be "in the Federal interest." Under their current policy, if the Port moves forward with deepening the Extension from -39 feet to -45 feet before this determination is made, the Corps will "not" pay for maintaining the channel at the increased depth.

The Port has therefore initiated a process to seek approval from the Corps for the Corps to assume the operation and maintenance of the channel extension if the deepening is constructed and funded solely by the Port. Normally this process could take over two years to complete due to all the

required federal reviews. We hope to accelerate this process by contracting out and providing the Corps with some of the studies they normally do in-house.

HDR Engineering Inc., a local engineering and consulting firm that provided Corps permitting services for the original La Quinta Container Terminal Project, has just completed a similar "Assumption of Maintenance" study for the Port of Freeport, Texas. Recognizing HDR's recent work in this area, staff solicited a proposal from HDR to provide similar services for the Port.

HDR will perform a study that includes engineering and economic analyses, environmental documentation, and real estate considerations and impacts. HDR estimates their work will cost approximately $300,000 and take 12 to 15 months to complete. A total of $500,000 was included in the 2012 budget to fund this study and a separate agreement with the Corps (see agenda item entitled "Approve a Memorandum of Agreement with the Department of the Army…").

Staff recommends approval of a professional service purchase order for the HDR study in an amount not to exceed $300,000. This item is included on the agenda of the January 10, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director

John P. LaRue
EXECUTIVE DIRECTOR

PORT CORPUS CHRISTI

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 11***
Approve a Memorandum of Agreement with the Department of the Army to Provide Technical Expertise and Oversight Reviews for the Federal Assumption of Operations and Maintenance for the Non-Federal deepening of the La Quinta Channel Extension

Dear Commissioners:

As the previous commission letter indicates, the U.S. Army Corps of Engineers has begun construction on the La Quinta Ship Channel Extension (Extension) and expects to be complete with this project in 2013. The original design depth as approved by the U.S. Congress in 2007 is -39'. The anticipated re-opening of an expanded Panama Canal in 2014 has changed the future of ship traffic in this channel and that depth will not support the Port's proposed La Quinta Multi-Purpose Terminal. As such, the Port intends to deepen the channel to -45' at its own cost. However, in order to qualify for federal operation and maintenance at this new depth, the Port must seek approval from the Secretary of the Army for design and construction of the new depth. As such, staff engaged HDR Engineering Inc. to provide a feasibility study to provide the required studies to obtain the Army's approval.

Although the Port is funding construction at this greater depth, the Port must still follow the same policies and procedures that the Corps would be required to follow in order to qualify for federal operation and maintenance once construction is complete. The federal review process is lengthy and complicated. Therefore, staff negotiated the attached Memorandum of Agreement with the Department of the Army to provide technical expertise and oversight review during the feasibility study process. Staff estimates that the cost for the Department of the Army to provide these services is $100,000 to $200,000.

Funds are available in the 2012 budget for this project. Staff recommends approval of the attached MOA and for the Department of the Army to provide its services during the feasibility study

process at a cost not-to-exceed $200,000. This item is included on the agenda of the January 10, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,



John P. LaRue
Executive Director

Attachment

MEMORANDUM OF AGREEMENT
BETWEEN
PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS
AND
THE DEPARTMENT OF THE ARMY

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and the Port of Corpus Christi Authority of Nueces County, Texas ("PCCA")] ("the parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the parties for the provision of DA goods and services including furnishing technical expertise and oversight reviews of the design requirements, economic analysis, and environmental considerations in order to meet guidelines for Federal assumption of Operation and Maintenance pursuant to Section 204(f) of the Water Resources Development Act (WRDA) of 1986, as amended in WRDA 1990, for the non-federal deepening of portions of the La Quinta Ship Channel. This MOA is entered into pursuant to Section 204(b) of Public Law 99-662, the Water Resources Development Act of 1986 (33 U.S.C. 2232(b)).

The PCCA and the DA understand that entering into this MOA in no way obligates the DA to approve the non-federal deepening of portions of the La Quinta Ship Channel or the PCCA to implement such improvements.

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include, but are not limited to, furnishing technical expertise and oversight reviews of the design requirements, economic analysis, and environmental considerations in order to meet guidelines for Federal assumption of Operation and Maintenance of the non-federal deepening improvements to the La Quinta Ship Channel, and such other related goods or services as may be agreed upon in the future. The PCCA will submit a report to the DA, and request approval of the project with the provision that the DA shall be responsible for the operation and maintenance of the deepened portions of the La Quinta Ship Channel in accordance with Section 204(f) Operations and Maintenance of WRDA 1986, as amended in WRDA 1990. Under this MOA, the DA will meet periodically with the technical team of the PCCA; review in-progress design analysis and assumptions; provide technical comments with references for technical regulations and requirements; and research data required to adhere to Federal policies and regulations. The DA will provide a team of experts in economic and environmental processes that will meet upon request with the PCCA’s team to review data and provide technical advice and oversight. In preparing the report the provisions of ER 1165-2-124, issued pursuant to WRDA 86 shall be followed. In the DA’s performance of work for the PCCA, the provisions of ER 1140-1-211 shall be followed.

Nothing in this MOA shall be construed to require the PCCA to use the DA or to require the DA to provide any goods or services to the PCCA, except as may be set forth in Support Agreements ("SA(s)").

ARTICLE III - COMMUNICATIONS

To provide for consistent and effective communication between the DA and the PCCA, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on SAs.

The PCCA appoints David L. Krams, P.E. as Principal Representative to serve as its central point of contact. His address is 222 Power Street, Corpus Christi, Texas, 78401, and his telephone number is (361) 885-6134.

The DA appoints James Worthington as Principal Representative to serve as its central point of contact. His address is 2000 Fort Point Road, P.O. Box 1229, Galveston, TX 77553, and his telephone number is (409) 766-3094.

ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from the PCCA for DA assistance under this MOA, the DA and the PCCA shall conclude mutually agreed upon written SAs. Those SAs must be on either Engineer Form 4914-R or similar document containing the same information as Department of Defense Form 1144. SAs must include:

-a detailed scope of work statement;
-schedules;
-funding arrangements [funding must be received in advance of obligation; OMB Circular A-34 does not allow for reimbursement];
-the amount of funds required and available to accomplish the scope of work as stated above; and
-the PCCA's fund citation and the date upon which the cited funds expire for obligation purposes;

The following must be addressed in each SA, or in this MOA:

-identification of individual project managers;
-identification of types of contracts to be used (if known);
-types and frequencies of reports;
-identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, rights to data, software and intellectual property, and contract audits;
-procedures for amending or modifying the SA; and
-such other particulars as are necessary to describe clearly the obligations of the parties with respect to the requested goods and services.

An SA may describe multiple goods and services to be provided by the DA pursuant to this agreement. In the event an SA describes multiple goods and services, a separate work order (WO) may be prepared for each item or groups of items identified in the SA and the SA shall clearly state whether or not the SA is also a WO obligating the DA to provide those goods and services or

whether a subsequent WO shall be prepared.

Goods or services shall be provided under this MOA or a WO only after an appropriate SA has been signed by a representative of each party authorized to execute that SA or WO. In the case of conflict between this MOA and a SA, this MOA shall control. In the case of conflict between this MOA or a SA and a WO, this MOA or the SA shall control.

In the event the PCCA and DA cannot agree on a SA, then neither party would have further obligations and this agreement could be terminated in accordance with Article XIII.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

A. Responsibilities of the Department of the Army

1. The DA shall provide the PCCA with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.

2. The DA shall identify authorized DA representatives to sign SAs.

3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The DA shall provide detailed periodic progress, financial, and other reports to the PCCA as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended and on forecast obligations and expenditures.

5. The DA shall inform the PCCA of all contracts entered into under each SA.

B. Responsibilities of the PCCA

1. The PCCA shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of ER 1140-1-211.

2. The PCCA shall pay all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of a SA, the availability of funds necessary to accomplish that SA.

3. The PCCA shall ensure that only authorized PCCA contracting officers sign SAs.

4. The PCCA shall develop draft SAs to include scope of work statements.

5. The PCCA shall obtain for the DA all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each SA.

ARTICLE VI - FUNDING

The PCCA shall pay all costs associated with the DA's provision of goods or services under this MOA. The PCCA shall provide the DA the full amount of funds estimated to cover the above obligations for each SA by either (1) delivering a check payable to "FAO, USAED, Galveston" to the District Commander, or (2) verify to the satisfaction of the DA that the PCCA has deposited the required funds in an account acceptable to the DA. Funds will be deposited with the US Treasury prior to incurrence of any obligation by the DA.

If the DA forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify the PCCA of the amount of additional funds necessary to complete the work under that SA. The PCCA shall either provide the additional funds to the DA, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

Within 90 days of completing the work under a SA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the PCCA any funds advanced in excess of the actual costs as then known, or the PCCA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the PCCA 's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613). The Armed Services Board of Contract Appeals (ASBCA) or its successor is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. The DA shall notify the PCCA of any such litigation and afford the PCCA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the PCCA and the

DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget [or other entity as may be appropriate such as Office of the Secretary of Defense for Interservice MOA's].

ARTICLE X - RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the PCCA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the PCCA have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds.

Notwithstanding the above, this MOA does not confer any liability upon the PCCA for claims payable by the DA under the Federal Torts Claims Act. Provided further that nothing in this MOA is intended or will be construed to create any rights or remedies for any third party and no third party in intended to be a beneficiary of this MOA.

ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the PCCA 's programs before other agencies, departments, and offices shall be the responsibility of the PCCA. The DA may provide, upon request, any assistance necessary to support the PCCA 's justification or explanations of the PCCA 's programs conducted under this MOA. In general, the PCCA is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The PCCA or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA shall not affect any pre-existing or independent relationships or obligations between the PCCA and the DA.

B. Survival

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

ARTICLE XIII - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing written notice to the other party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, the PCCA shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

ARTICLE XIV - EFFECTIVE DATE

This MOA shall become effective when signed by both the PCCA and the DA.

THE U.S. DEPARTMENT OF THE ARMY

BY: _____

Christopher W. Sallese
Colonel, Corps of Engineers
District Engineer

DATE:_____

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

BY:

L. Michael Carrell
Port Commission Chairman,
Port of Corpus Christi Authority of Nueces County, Texas

ATTEST:

_____
Judy Hawley
Port Commission Secretary

DATE:_____

PORT CORPUS CHRISTI

John P. LaRue
EXECUTIVE DIRECTOR

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 12***
Award a Contract for Management Operator of the Congressman Solomon P. Ortiz international Center ("Ortiz Center")

Dear Commissioners:

We are approaching the end of the contract period for the management contract with Ovations Food Services for management and operation of the Ortiz Center. The contract with Ovations was a three-year contract which began on March 1, 2007 and included an option to renew for an additional two year period. The Port chose to exercise the option and the extended contract term expires on February 28, 2012.

Port staff issued two Requests for Proposals (RFP) simultaneously in order to determine the future use and operation of the Ortiz Center. The Port solicited proposals for an experienced and well-capitalized tenant to lease the facility, or for an experienced and qualified management firm to operate the Ortiz Center as a meeting and banquet facility. The RFP clearly stated that only one proposal from all proposals submitted for both options would be selected, determined on the proposal that provided maximum benefit to the Port and its customers.

The Port received four proposals for the management operator option. There were no proposals received for the lease option. Port staff reviewed and ranked the proposals based on the criteria referenced in the RFP and then interviewed all four proposers. The criteria used for evaluating the management operator proposals included the following factors:

1. Experience operating facilities of the nature of the Ortiz Center
2. Management and marketing approach
3. Compensation proposal
4. Responsiveness to RFP
5. Catering service

Staff will be presenting the results of their evaluations and their recommendation to the Audit Committee for their review and consideration on January 9, 2012. A recommendation will then be brought forth by the Audit Committee to the Port Commission for approval on January 10, 2012.

Sincerely,



John P. La Rue
Executive Director

John P. LaRue
EXECUTIVE DIRECTOR

PORT CORPUS CHRISTI

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 13***
Approve the Second Reading of a Franchise Granting Canyon Supply & Logistics, LLC, the Right to Access Corpus Christi Bay from Navigation-Related Improvements on the Part of Naval Station Ingleside Canyon is Buying from PCCA and Related Rights

Dear Commissioners:

Canyon Supply and Logistics, LLC, will be entitled to a Franchise giving it the right to access Corpus Christi Bay from navigation-related improvements on the part of Naval Station Ingleside Canyon is buying from the Port and related rights. The Franchise is to be in the form of the franchise attached to the Canyon Sales Contract as Exhibit B. The Franchise is summarized in the attached Franchise Summary.

The rent payable under Canyon's Franchise will be the greater of the Variable Rent or the Fixed Rent specified in the Franchise. The Variable Rent payable under Canyon's Franchise is the normal half wharfage rent payable under most of PCCA's franchises. The Fixed Rent is $2.00 per month for each linear foot of mooring or berthing space on Canyon's wharfs and piers. The monthly rental rate per linear foot will be adjusted every five years for changes in the CPI.

Staff recommends that the Port Commission approve and pass the second reading of the Canyon Franchise to the third and final reading scheduled for February 14, 2012. This item is included on the agenda of the January 10, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,

John P. LaRue
Executive Director

Attachment

FRANCHISE SUMMARY

Grantee:	Canyon Supply and Logistics, LLC 505 Riverway, Suite 250 Houston, Texas 77056
Premises:	185.465-acres of Land in San Patricio County, Texas as depicted on the attached plat.
Use:	Access to the waters in Nueces or San Patricio County, Texas, including Corpus Christi Bay, the Corpus Christi Ship Channel and the La Quinta Ship Channel from any wharf, quay, pier, bulkhead, or dock, together with any breasting or mooring structures associated therewith, now or hereafter erected on the Premises or the Submerged Lands fronting on the Premises for any business purpose.
Term:	Thirty (30) years
Start Date:	February 14, 2012
Rentals:	For the business access rights defined above, Grantee shall pay to the Authority a monthly rental equal to the greater of the Variable Rent or the Fixed Rent. There is no rental or fee for recreational access rights. "Variable Rent" equals the product of (i) the quantity of the property or commodities shipped by water to, from, or across the Grantee's Marine Facilities per month, multiplied by (ii) fifty percent (50%) of Authority's then current tariff wharfage rate on the same type of property or commodities. "Fixed Rent" equals the product of (i) the Fixed Rental Rate for the current five year period multiplied by (ii) the total number of linear feet of mooring or berthing space on the faces or sides of all of Grantee's wharfs, quays, or piers situated on the Upland Property or Submerged Lands per month. The "Fixed Rental Rate" for the first five (5) year period shall be $2.00 per linear foot per month. The Fixed Rental Rate for subsequent five-year periods shall be adjusted for changes in the CPI.
Remarks:	NONE.

PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS
TO
CANYON SUPPLY & LOGISTICS, LLC

RECITALS:

Whereas, by a special warranty deed dated December 29, 2011 ("Deed"), Port of Corpus Christi Authority of Nueces County, Texas ("Authority"), conveyed to Canyon Supply & Logistics, LLC, a Texas limited liability company whose mailing address is 5005 Riverway, Suite 250, Houston, Texas 77056 ("Grantee"), approximately 186.546 acres of land located in San Patricio County, Texas, and being the same property as Tract G in the survey plat attached hereto as Exhibit A, which is incorporated herein by this reference (the "Upland Property"); and

Whereas, by the Deed the Authority also conveyed to the Grantee an easement (the "Appurtenant Easement") on approximately 84.60 acres of submerged land located in Nueces County, Texas, adjacent to the Upland Property, and being the same property as Tract IV in the survey plat attached hereto as Exhibit B, which is incorporated herein by this reference (the "Submerged Lands"); and

Whereas, the Deed contains a restrictive covenant (the "Restrictive Covenant") running with the Upland Property and the Appurtenant Easement that the Grantee, its successors and assigns, shall not access or permit others to access the waters in Nueces or San Patricio County, Texas, including Corpus Christi Bay, the Corpus Christi Ship Channel and the La Quinta Ship Channel (all of such waters and waterways being collectively referred to herein as the "Waters of Nueces County"), from any wharf, quay, pier, bulkhead, or dock, together with any breasting or mooring structures associated therewith, now or hereafter erected on the Upland Property or the Submerged Lands for any business purpose without first obtaining a franchise from Grantor to do so in substantially the form attached to the Deed; and

Whereas, Grantee has asked the Authority to grant it a franchise that would give Grantee the right of access to the Waters of Nueces County from Grantee's wharfs, quays, piers, bulkheads, or docks, together with any breasting or mooring structures associated therewith, now or hereafter erected on the Upland Property or the Submerged Lands (collectively, the "Grantee's Marine Facilities," whether one or more) for the purposes described herein; and

Whereas, the Restrictive Covenant does not require a franchise in order to access the Waters of Nueces County from the Grantee's Marine Facilities for recreational boating, swimming and sport fishing and related and incidental recreational uses (collectively, "Recreational Uses");

Now, therefore, by action of the Port Commission of the Authority:

SECTION 1
GRANT

Subject to the terms and conditions of this franchise, the Authority hereby grants to Grantee, its successors and permitted assigns, for the term specified in this Section 1, the right of access to the Waters of Nueces County from Grantee's Marine Facilities for purposes including and reasonably related to the following: shipping property or commodities to, from, or across Grantee's Marine Facilities; the Local Business Use (as hereinafter described) of Grantee's Marine Facilities; constructing, operating, maintaining, repairing, replacing, upgrading, and/or removing Grantee's Marine Facilities; and dredging of the Submerged Lands as is necessary or appropriate to facilitate the construction, operation, repair, and maintenance of Grantee's Marine Facilities. The term of this franchise shall begin on the Effective Date described in Section 10 of this franchise and shall end on January 31, 2042.

The term "Local Business Use", as used herein, means any business use or use for a profit other than the shipment of a property or commodity by water in trade or commerce in the usual sense of carriage of goods by water as cargo. Local Business Use shall not be construed to include Recreational Uses. By way of illustration, but not in limitation, Local Business Use, within the meaning of this franchise, shall include the following: operating and providing facilities for the operation of commercial fishing boats; providing berthing space and service facilities for military ships; providing berthing space and service facilities for pleasure or commercial boats, including the operation of a marine service station to supply water, fuel, oil and other items necessary for pleasure or commercial boats or vessels; chartering, leasing, selling or renting pleasure boats or any kind of boats; operating dredges, tug boats or barges; carrying passengers for hire or on charter for pay; handling vessels for, or movement or shipment of commodities, equipment and supplies used by or in connection with, oil, gas and mineral exploration, drilling and production operations in navigable waters or otherwise, including loading, unloading, and storage facilities for commodities, equipment and supplies used by or in connection with said oil, gas and mineral exploration, drilling and production operations in navigable waters or otherwise; the operation of a ship repair or construction yard, or vessels used in connection therewith; dry boat storage or launching facilities; and operation of a marine railway.

SECTION 2
DREDGING

Grantee may conduct and perform all dredging operations in, on and under the Submerged Lands as may be necessary, proper or expedient in connection with the use of the Submerged Lands as a means of navigating from Grantee's Marine Facilities to the Corpus Christi Ship Channel.

SECTION 3
RENTALS

For the rights granted to it hereunder, Grantee shall pay to the Authority a monthly rental equal to the greater of the Variable Rent or the Fixed Rent as those terms are defined in this

Section 3. There is no rental or fee for accessing the Waters of Nueces County from Grantee's Marine Facilities for Recreational Purposes.

For purposes of this franchise, "Variable Rent" means with respect to any calendar month an amount equal to the product of (i) the quantity of the property or commodities shipped by water to, from, or across the Grantee's Marine Facilities during such month, multiplied by (ii) fifty percent (50%) of Authority's then current tariff wharfage rate on the same type of property or commodities.

For purposes of this franchise, "Fixed Rent" means with respect to any calendar month an amount equal to the product of (i) the Fixed Rental Rate (as hereinafter defined and calculated for that month), multiplied by (ii) the total number of linear feet of mooring or berthing space on the faces or sides of all of Grantee's wharfs, quays, or piers situated on the Upland Property or Submerged Lands that month. The sides of piers not more than 2.5 feet wide and used as a means to reach mooring lines shall not be counted. If both sides of a pier are utilized for berthing purposes, then twice its length shall be counted in determining the linear footage of berthing space. Authority's representatives shall have the right to verify the Grantee's linear footage from time to time with reasonable notice to Grantee.

For purposes of this franchise, the "Fixed Rental Rate" shall be $2.00 per linear foot per month for the five-year period beginning on the Effective Date of this franchise (as defined in Section 10 hereof). The Fixed Rental Rate for the next five-year period and each five-year period thereafter (each, a "Five-Year Period") shall equal the product of (i) $2.00 per linear foot per month, multiplied by (ii) the CPI Adjustment Factor (as hereinafter defined) for that period.

"CPI Adjustment Factor" means, for any Five-Year Period, the number obtained by dividing (i) the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84=100) (Not Seasonally Adjusted) published by the United States Department of Labor, Bureau of Labor Statistics (the "Consumer Price Index") for the third calendar month immediately preceding the month in which the Five-Year Period begins, by (ii) the Consumer Price Index for the month in which the Effective Date occurs.

Grantee agrees that the foregoing rentals are fair and reasonable. The rental for each month shall be calculated and paid to Authority at its offices in Corpus Christi, Texas, not later than the fifteenth (15th) day of the following month. Grantee shall keep and maintain a complete and accurate set of books and records of vessels using Grantee's Marine Facilities for general cargo business and the kinds and amounts of cargos loaded upon or discharged from such vessels and shall make monthly reports thereon together with the proper payment therefor to Authority. Such books and records shall be subject to the inspection by the Authority, its agents and attorneys, at any and all reasonable times within twelve (12) months thereafter; otherwise rental calculations shall conclusively deemed to be correct. Grantee shall not be required to maintain such records for more than two (2) years after the calendar year to which they pertain unless then in dispute.

SECTION 4
CONDITIONS

This franchise is granted with reasonable conditions for the protection of the Authority and its property and the property of its tenants, to-wit:

A. **Hazards**. Grantee will at all times, subject to matters beyond its reasonable control, conduct its operations on Grantee's Marine Facilities so as not to create any unusual fire or health hazard and will keep the premises neat and clean.

B. **Plans**. Before commencing any work on Grantee's Marine Facilities, or the Submerged Lands for which a U. S. Department of the Army permit is required and before filing application for any such permit, Grantee will submit plans of such work to be undertaken to the Authority for its approval, and Grantee shall not begin such work until it has obtained the Authority's written approval of such plans, which approval shall not be unreasonably withheld. Authority will review and approve or disapprove any such plans within sixty (60) days after its receipt of the plans. Grantee shall file with the Authority a copy of any permit or license it obtains from any governmental agency in connection with any work described in this Section 4, and any documents placing conditions on or amending them in any way.

To facilitate the Authority's review of the plans, Grantee shall submit two (2) sets of formal plans that clearly define the project. The drawings must be prepared in a standard engineering format (24" x 36" drawings) and show all physical features and improvements in and around the project site and must be signed and sealed by a Professional Engineer registered in the State of Texas. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the project site and any area to be dredged, adjacent docking facilities, property lines, federal channels, bulkhead lines, existing channel depth elevations, etc., must be included with the formal plans submitted. The site plan must clearly show the bottom of cut line and top of slope line of any planned dredging. If any dredging is planned by Grantee that will, in Authority's judgment, based upon customary dredging operations, result in removal of a substantial quantity of earth or material from, or damage to, adjacent real property, Grantee must obtain the written permission of the adjacent property owner to carry out such dredging for the project and submit it to the Authority with the formal plans.

C. **Compliance**. Grantee shall perform all work described in this Section 4 in conformity with applicable building codes and all applicable federal, state and other governmental laws and regulations; and Grantee must comply with any applicable provisions of the code of the National Fire Protection Association.

D. **Slips**. Grantee's slips along Grantee's Marine Facilities shall be maintained by Grantee at a depth sufficient to prevent vessels berthed at the docks there from

striking bottom due to lowering of the water level from passing vessels or seasonal low tides.

E. **Pollution**. Grantee shall take all reasonable precautions to prevent the pollution of the Waters of Nueces County. Grantee shall also comply with all state and federal laws and regulations and municipal ordinances relating to maintaining water quality in the Waters of Nueces County, and will file with the Authority copies of all permits received by Grantee relating to water quality to the extent relating to its activities hereunder.

F. **Rules and Regulations**. This franchise shall be subject to such reasonable rules and regulations as the Authority presently has in effect or may invoke in the future which apply to all individuals or entities holding similar franchises granted by the Authority.

SECTION 5
INDEMNITY

Grantee shall defend, indemnify and hold harmless Authority and its commissioners, officers, directors, managers, employees, and agents (for the purposes of this Section 5, the "Indemnified Parties") from and against, and Grantee shall be responsible for, any and all liabilities (including strict liability), actions, demands, damages, penalties, fines, losses, costs and expenses (including reasonable attorneys' and experts' fees and expenses), suits, and costs of any settlement or judgment, whether arising in equity, at common law, or by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind and character (including claims for personal injury, bodily injury, emotional distress, real and personal property damage and economic loss) (all of which are hereinafter collectively called "Claims"), which may be brought or instituted or asserted after the Effective Date on account of or growing out of or arising from or relating to (i) any failure on the part of the Grantee, its owners, officers, directors, managers, employees, or agents (for the purposes of this Section 5, the "Grantee Parties") to comply with the provisions of this franchise, or to comply with the provisions of any laws, ordinances, rules, regulations, or codes applicable to the Grantee's Marine Facilities after the Effective Date, or (ii) any and all injuries or damages, including death, to persons or properties relating to the condition, use or occupancy of the Grantee's Marine Facilities after the Effective Date, including the alteration, repair or maintenance of any improvements thereon (each an "Indemnified Claim"), EVEN IF THE INDEMNIFIED CLAIM IS CAUSED BY THE JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF THE INDEMNIFIED PARTIES; provided, however, to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence of Grantee Parties and the Indemnified Parties, then Grantee's obligation to the Indemnified Parties shall only extend to the percentage of the total responsibility of the Grantee Parties in contributing to such Indemnified Claim. In Claims against any Indemnified Party by or for an employee of a Grantee Party, the Grantee's indemnification obligation under this Section 5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for

the Grantee Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. Grantee shall have the right to retain counsel of its choosing to defend the Indemnified Parities against any Indemnified Claim and shall have the right to direct the defense. The Indemnified Parties shall fully cooperate with the Grantee and selected counsel. Without relieving Grantee of its obligations under this Section 5, if Grantee does not assume the defense of an Indemnified Claim, the Indemnified Parties, at their election and expense, may defend or participate in the defense of such Claim with attorneys and representatives of their own choosing.

SECTION 6
DEFAULT

This franchise shall be subject to forfeiture at the instance of the Authority by suit in a State District Court located in Nueces County, Texas, if Grantee fails to observe or perform any of the terms and conditions herein stipulated to be done by it, or required of it under any valid law, rule or regulation of the government of the United States of America or the State of Texas, for a period of sixty (60) days after receipt by Grantee of written notice from the Authority advising it fully of the kind, nature and extent of such failure and requesting that it be remedied, unless the Authority shall agree in writing to an extension of the sixty-day period prior to its expiration; provided, however, that if the failure stated in the notice can be corrected, but cannot be corrected within the sixty-day period the Authority will not unreasonably withhold its consent to an extension of time if corrective action is instituted within the sixty-day period and diligently pursued until the failure is corrected. Any notice pursuant to this Section 6 shall be mailed to Grantee by registered or certified mail at the address for notice set forth on the Grantee's acceptance page attached hereto, or at such other address as Grantee may designate to Authority in writing.

SECTION 7
NO EFFECT ON DEED

The rights and privilege of Grantee and the Authority arising out of the Deed are hereby expressly recognized and confirmed and in no wise abridged, lessened or diminished by the granting of this franchise and its acceptance by Grantee or by any surrender, cancellation or forfeiture of the same.

SECTION 8
ASSIGNMENT

Grantee may, with the prior written consent of the Authority, which shall not be unreasonably withheld, assign Grantee's rights and obligations under this franchise to any individual or business entity that leases all of the Grantee's Marine Facilities or otherwise has the right to use all of the Grantee's Marine Facilities, but Grantee shall not be released thereby from any obligations and duties assumed hereunder by such lessee or user without the express written consent of Authority, which may be withheld in its sole discretion. Authority will not consent to such a release unless it is satisfied the lessee or user has the financial capacity to perform the Grantee's obligations and duties under this franchise.

Grantee may, with the prior written consent of the Authority, which shall not be unreasonably withheld, assign its rights and obligations under this franchise to any individual or business entity that purchases or otherwise acquires title to all of the Grantee's Marine Facilities. Any such assignee of this franchise shall file written evidence of such assignment and of assignee's acceptance of the same in the office of the Authority. If Grantee assigns this franchise in accordance with the terms and conditions of this paragraph, Grantee shall be released from any further obligations and duties hereunder insofar as such obligations and duties arise from and after the effective date of such assignment, it being specifically understood that any such assignment shall not have the effect of releasing Grantee from any obligations or duties hereunder which may have accrued at any time prior to the effective date of such assignment.

If Grantee sells, assigns, or transfers title to only a portion of Grantee's Marine Facilities, this franchise shall automatically terminate with respect to the transferred portion of Grantee's Marine Facilities, and the new owner thereof shall not have the right to access the Waters of Nueces County from the transferred portion of Grantee's Marine Facilities until such time as the new owner has received a new franchise from the Authority for such purpose in accordance with the terms of the Deed.

In the event Grantee sells any of the Grantee's Marine Facilities to a buyer, the actions or inactions of the buyer with respect to such facilities, such as a default under its franchise or failure to obtain a franchise for such facilities, shall have no effect on any retained interests or rights of Grantee under this franchise.

A sale of any of Grantee's Marine Facilities to a buyer may, as deemed appropriate by Grantee, include a performance deed of trust ("Performance Deed of Trust"). Failure of the buyer to comply with obligations under such a Performance Deed of Trust may, as deemed appropriate by Grantee, result in a reversion of the purchased facilities back to the Grantee for an amount equal to the lesser of (i) the purchase price paid by the buyer or (ii) the present fair market value of the such facilities, without regard to any increase in value, such as due to improvements by the buyer.

Any assignment of a Grantee's rights and obligations under this franchise in connection with a lease of the Grantee's Marine Facilities may include quality controls, as deemed appropriate by Grantee, which if not met by the lessee may result in various remedies deemed appropriate by Grantee, including, without limitation, a termination of the assignment, such that the Grantee would reacquire its rights under this franchise.

Grantee shall have the right to convey this franchise by mortgage, deed of trust or any other security instrument. If Grantee shall be in default of any of the covenants or conditions of this franchise, the holder of the mortgage, deed of trust or other security instrument may, before forfeiture is invoked by the Authority, make any and all payments and do and perform any and all acts or things which may be necessary to prevent a forfeiture of this franchise and the party making such payments or performing such acts or things shall thereby be subrogated to all rights of the Grantee under this franchise. The Authority agrees that if the holder of any mortgage, deed of trust or other security instrument delivers a copy of such instrument to the Authority, together with the address to which it desires notices to be sent, the Authority will send to the

holder at the address specified copies of all written notices to be served on Grantee under and pursuant to the terms of this franchise. It is understood that the mortgagee, trustee and beneficiary of any security instrument shall in no way be liable to the Authority for any payments or for the performance of any other covenants and conditions of this franchise until such time as it shall acquire by assignment or conveyance from Grantee or by foreclosure or other proceedings provided by law or by the terms of the security instrument all the right, title and interest of Grantee under this franchise; provided, however, that any party who shall acquire said right, title and interest of Grantee, as above provided, shall thereby become liable for all payments and the performance of all other covenants and conditions theretofore and thereafter required to be made by Grantee under the franchise, as fully and to the same extent as if Grantee itself would have been if it still had retained its right, title and interest hereunder.

SECTION 9
GENERAL

All covenants, conditions and agreements of this franchise shall apply to and be binding upon the Authority and Grantee and their respective legal representatives, successors and permitted assigns (when assignment is made in accordance with the provisions hereof). This franchise is made under the applicable laws of the State of Texas and if any term, clause, provision, part or portion of this franchise shall be adjudged invalid or illegal for any reason, the validity of any other part or portion hereof shall not be affected thereby, and the invalid or illegal portion thereof shall be deleted and ignored as if the same had not been written herein. If any of the rights and authorities granted hereunder are in excess of the authority of the Authority, then the rights and authorities shall be limited to such as the Authority is authorized to grant, under the applicable laws. The failure of Grantee or of the Authority to insist upon the strict performance of any of the covenants and conditions of this franchise, or the consent, either express or implied, of either party hereto to any act or omission by the other party in breach or default hereof, shall not be deemed or construed to be a waiver of any such covenants or condition except for that particular instance only and shall not constitute or be construed as a waiver of such covenant or condition or of any further or future breach or default thereof. The expense of publishing this franchise as required by law shall be borne by the Grantee.

SECTION 10
PASSAGE AND ACCEPTANCE

A majority of the Authority's Port Commissioners voted to grant this franchise at meetings of the Port Commission held on December 13, 2011, January 10, 2012, and February 14, 2012, and the final form of this franchise was approved at the last of these meetings. Grantee must file its written acceptance of this franchise with the Authority within thirty (30) days after the date on which this franchise was finally approved by the Authority's Port Commissioners, and such written acceptance shall be duly acknowledged by the person or persons executing the same. The effective date of this franchise ("Effective Date") shall be the date on which Grantee files its written acceptance of it with the Authority in accordance with this Section 10.

IN WITNESS WHEREOF, the Authority has caused this franchise to be signed by the Chairman of the Port Commission and attested by the Secretary of the Port Commission this 14th day of February, 2012.

PORT OF CORPUS CHRISTI AUTHORITY
OF NUECES COUNTY, TEXAS

By: _____
_____,
Port Commission Chairman

ATTEST:

_____
_____,
Port Commission Secretary

STATE OF TEXAS §
§
COUNTY OF NUECES §

This instrument was acknowledged before me on the ____ day of _____, 2012, by_____, Chairman of the Port Commission of Port of Corpus Christi Authority of Nueces County, Texas, and_____, Secretary of the Port Commission of Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Port Authority.

_____
NOTARY PUBLIC, STATE OF TEXAS

ACCEPTANCE OF GRANTEE

Canyon Supply & Logistics, LLC, hereby accepts the above and foregoing franchise covering its wharfs, quays, piers, bulkheads and docks, and any breasting or mooring structures associated therewith, now or hereafter erected on the 186.546 -acre tract of upland property or the 84.60-acre tract of submerged land described therein, which was granted to it by Port of Corpus Christi Authority of Nueces County, Texas, and further agrees that Canyon Supply & Logistics, LLC, its successors and permitted assigns, shall in all things be bound by the terms and conditions of said franchise.

EXECUTED this _____ day of _____, 2012.

Canyon Supply & Logistics, LLC

By: _____

Name: _____

Title: _____

Grantee's Address:

Canyon Supply & Logistics, LLC
5005 Riverway, Suite 250
Houston, Texas 77056
Attn: Richard L. Fuqua

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2012, by_____., _____of Canyon Supply & Logistics, LLC

_____
NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT A
Tract G - 186.546 acres

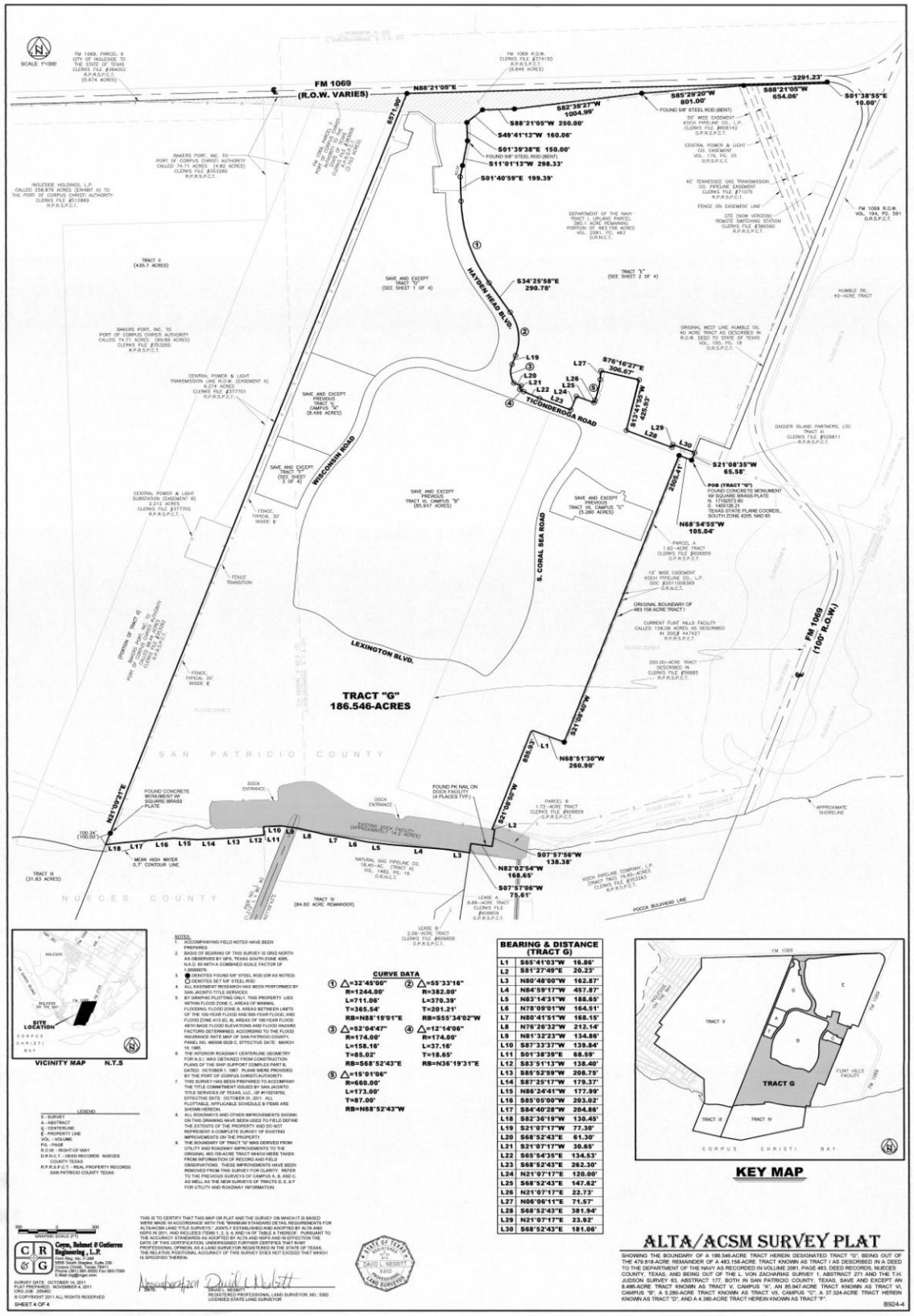
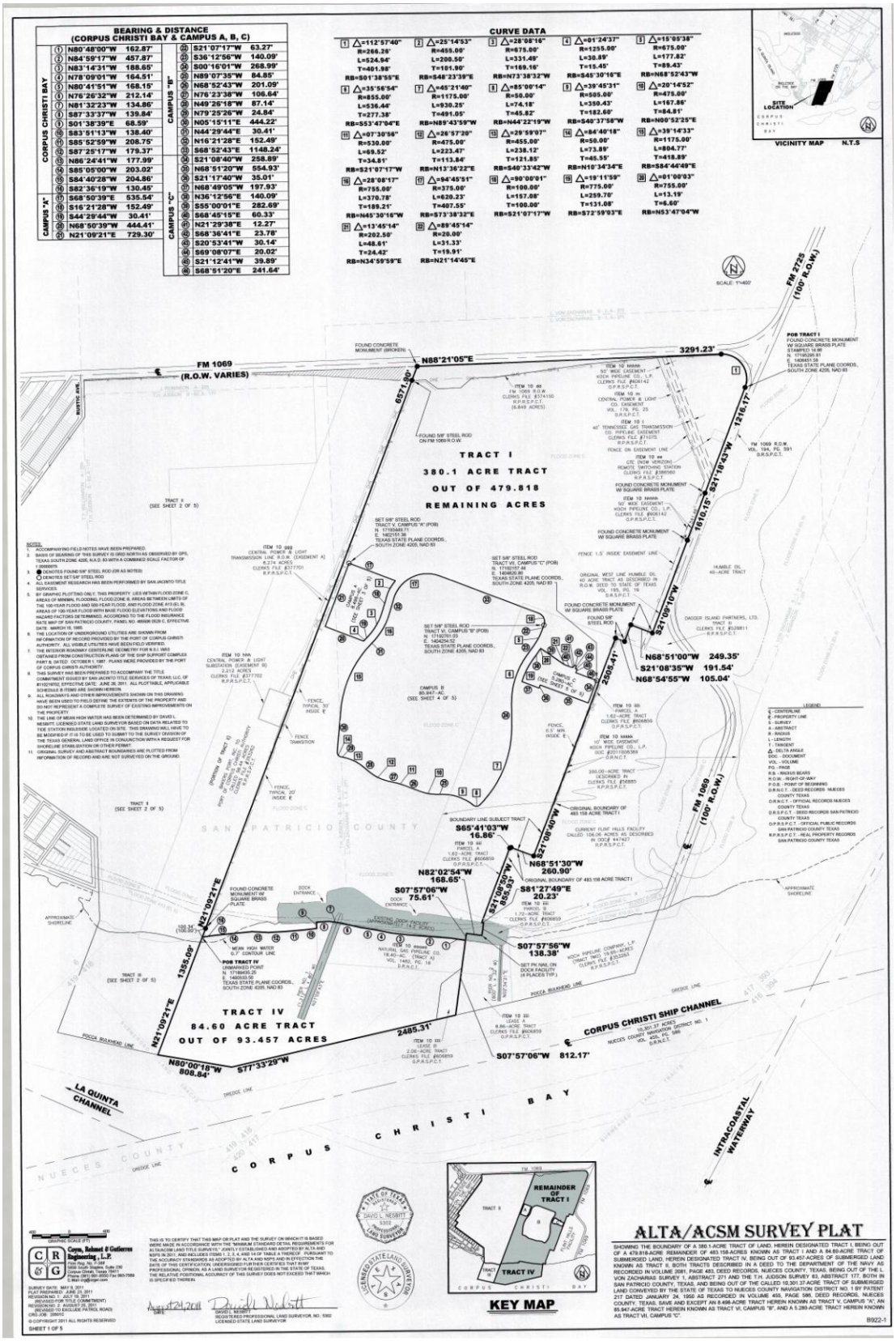


EXHIBIT B
Tract IV - 84.60 acres



John P. LaRue
EXECUTIVE DIRECTOR

PORT CORPUS CHRISTI

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 14***
Ratify an Agreement Regarding Lease Agreement Dated December 16, 2011, with New Elk Coal Company, LLC, and Computershare Trust Company of Canada

Dear Commissioners:

On February 8, 2011, the Port Commission approved a lease for 18 acres at the Port's Bulk Terminal to New Elk Coal Company, LLC, for the development of a coal export pad. Last month, Cline Mining Corporation, the parent company of New Elk Coal Company, notified staff of its plans to raise money for the purposes set out in a Trust Indenture dated December 13, 2011, by and among Cline Mining Company, Computershare Trust Company of Canada (Trustee), and Marret Asset Management Inc. As a condition to issuing bonds, New Elk Coal Company is required to assign and encumber its interest in the 18-acre lease to the Trustee pursuant to a Leasehold Deed of Trust dated December 16, 2011. As a further condition to the issuance of the bonds, the Trustee required that in the event it should foreclose its security interest in the lease or otherwise obtain New Elk's leasehold interest under the lease, the Trustee is entitled to operate the facilities subject to and under the terms and conditions of the lease.

To facilitate the raising of the funds, the attached Agreement Regarding Lease dated December 16, 2011, by New Elk Coal Company, LLC, Computershare Trust Company of Canada, and the Port of Corpus Christi Authority was reviewed by the Port's legal counsel and executed by the Executive Director. Staff recommends ratification of the Agreement Regarding Lease. This item is included on the agenda of the January 10, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,

John P. LaRue
Executive Director

Attachment

THIS INSTRUMENT PREPARED BY AND AFTER RECORDING, RETURN TO:

Davies Ward Phillips & Vineberg LLP
1 First Canadian Place, 44th Floor
Toronto, Ontario M5X 1B1
Attn: William Buchner

[Space above reserved for recorder's use only]

AGREEMENT REGARDING LEASE

THIS AGREEMENT REGARDING LEASE (this "Agreement") is made and entered into this ____ day of December, 2011, by **NEW ELK COAL COMPANY LLC**, a Colorado limited liability company ("Lessee"), **COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company existing under the laws of Canada ("Trustee"), and the **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, pursuant to authorization by its Port Commissioners (the "Authority").

RECITALS:

WHEREAS, the Authority owns the fee estate in certain property located in Nueces County, Texas (the "Real Property" or "Leased Premises"), being more particularly described in the Lease (hereinafter defined) and on **Exhibit "A"** attached hereto; and

WHEREAS, the Authority has leased the Real Property to Lessee pursuant to that certain Lease Agreement dated February 8, 2011, a true, correct and complete copy of which is attached hereto as **Exhibit "B"** (collectively, the "Lease"); and

WHEREAS, Cline Mining Corporation ("Company") wishes to raise money for the purposes set out in that certain Trust Indenture dated as of December 13, 2011 by and among Company, Trustee and Marret Asset Management Inc. (as may be amended, supplemented or otherwise modified from time to time, the "Trust Indenture"), and as a condition to issuing Bonds (as defined in the Trust Indenture) pursuant to the terms and conditions of the Trust Indenture, Lessee must assign and encumber Lessee's interest in the Lease to Trustee pursuant to that certain Leasehold Deed of Trust dated December 16, 2011 executed by Lessee for the benefit of Trustee (the "Deed of Trust") and to be recorded by Trustee against Lessee's leasehold interest under the Lease; and

WHEREAS, as a further condition to the issuance of the Bonds, Trustee has required that in the event it should foreclose its security interest in the Lease or otherwise obtain Lessee's leasehold interest under the Lease, it shall be entitled to operate the facilities located on the Leased Premises, subject to and under the terms and conditions of the Lease.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustee, the Authority, and Lessee do hereby agree as follows:

1. Default Notice. In the event of any default under the Lease by Lessee, the Authority will give Trustee written notice of said default and sixty (60) days in which to cure said default, provided that in the case of default which cannot in the exercise of diligence be cured within said sixty (60) day period, Trustee shall be entitled to commence the curing of such default within such sixty (60) day period, in which event the Authority shall not terminate the Lease so long as Trustee, in the reasonable determination of the Authority, is diligently engaged in curing such default.

2. Termination of Lease. The Authority agrees to give Trustee written notice of any termination of the Lease, which notice shall specify the effective date of termination. If the Lease shall be terminated for any reason whatsoever, and if within sixty (60) days after the effective date of such termination Trustee, by notice shall request the Authority to enter into a new lease of the Real Property pursuant to this Paragraph 2 then the Authority shall enter into a new lease with Trustee (or its assignee provided Authority has given its prior written consent to Trustee's assignment), within sixty (60) days after the giving of such notice by Trustee. Said new lease shall commence, and rent under the new lease shall accrue, as of the date of termination of the Lease. The term of said new lease shall continue for the period which would have constituted the remainder of the term of the Lease had the Lease not been terminated, and shall be upon all of the terms, covenants, conditions and agreements contained therein (including, without limitation, all renewal and extension options) which were in force and effect on the date of termination of the Lease. Said new lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of this Agreement and the date of the granting of such new lease, and shall be free of any and all rights of Lessee under the Lease. The Trustee shall, simultaneously with the delivery of the new lease, pay to the Authority (i) all rent and other sums of money due under the Lease for the periods prior to the date of termination of the Lease; plus (ii) all rent and other sums of money due and unpaid under the new lease for the period from the date of commencement of the term thereof to the date of delivery of the new lease net of any income, less costs and expenses of collection, received by the Authority between the date of termination of the Lease and the date of execution of said new lease from subtenants or other occupants of the Real Property; plus (iii) all costs and expenses, including reasonable attorneys' fees, court costs and litigation expenses, incurred by the Authority in connection with the preparation, execution and delivery of said new lease.

3. Trustee's Rights. In the event of any default under the documents evidencing and securing the Bonds and subsequent foreclosure by Trustee pursuant to the Deed of Trust or acceptance by the Trustee of a deed in lieu of foreclosure or acceptance by Trustee of an unconditional assignment and relinquishment of the Lease by Lessee to Trustee , the Authority will consent to Trustee as the tenant under the terms and conditions of the Lease described herein and Trustee or its designee shall have the right to operate at the Leased Premises in accordance with the terms of the Lease. Until the occurrence of any of such events, Trustee shall not be liable for rent (if any) or any act, omission or obligation of Lessee under and by virtue of or in connection with the Lease, and Lessee shall remain liable for such rent (if any), acts, omissions and obligations. The Authority hereby agrees that the restrictions on assignment in

Section 7.01 of the Lease shall not prohibit any assignment of the Lease pursuant to the terms and conditions of this Agreement.

4. No Modification. Until all obligations owed by the Company and the Lessee under the Trust Indenture or any other Financing Document (as defined in the Trust Indenture), have been discharged in accordance with the terms thereof, no modification, amendment, waiver, release or other change in the terms of the Lease shall be made without the prior written consent of Trustee.

5. Binding Effect. The provisions and conditions of this Agreement shall extend to and be binding upon and inure to the benefit of Trustee, its representatives, successors, and assigns.

6. Lease Estoppel. The Authority hereby represents and warrants to Trustee as follows:

(a) The Lease has not been amended, except as set forth in the recitals above.

(b) The term of the Lease has commenced and will expire February 7, 2016. The Lease may be extended for five successive periods of five (5) years.

(c) The Lease is in full force and effect and is a valid, legal and binding obligation of the Authority enforceable in accordance with its terms.

(d) There are no defaults in performance of any covenant, agreement or condition contained in the Lease, and no events have occurred which, with notice, the passage of time or both, would constitute a default under the Lease.

(e) The Authority confirms that, in accordance with Section 10.01 of the Lease, the lien and security interest granted pursuant to Article 9 of the Lease is subordinated to the Deed of Trust.

7. Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election or demand, and shall be delivered personally, or sent by registered or certified United States mail, postage prepaid, or by nationally recognized overnight delivery service, such as Federal Express, to the other party at the address set forth below, or at such other address within the continental United States of America as may have theretofore been designated in writing. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice, election or demand. For the purposes of this Agreement:

The Address of Lessee is:
c/o Cline Mining Corporation
181 Bay Street, 3rd Floor
Brookfield Place, Clarkson Gordon Heritage Building
Toronto, ON M5J 2T3
Attention: Kenneth Bates

The Address of Authority is:
Port of Corpus Christi Authority Attn.: Executive Director
PO Box 1541
Corpus Christi, Texas 78403

The Address of Trustee is:
100 University Avenue, 9th Floor, North Tower
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust

8. Captions. The captions herein are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Agreement or any particular paragraph or section of this Agreement, or the proper construction of this Agreement.

9. Counterparts. In order to facilitate execution, (a) this Agreement may be executed in as many counterparts as may be convenient or required, (b) all counterparts shall collectively constitute a single instrument, (c) any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages and (d) delivery of an executed counterpart of this Agreement by facsimile shall be binding on the parties so delivering.

11. Governing Law. This Agreement shall be governed by the laws of the State of Texas.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals, by duly authorized representatives on the date and year first written above.

COMPUTERSHARE TRUST COMPANY OF CANADA

By:_____
Name:_____
Title:_____

By:_____
Name:_____
Title:_____

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

By: _____
Name: John P. LaRue
Title: Executive Director

NEW ELK COAL COMPANY LLC

By:_____
Name:_____
Title:_____

STATE OF _____ §
§
COUNTY OF _____ §

On this ___ day of December, 2011, before me, a notary public in and for said county, personally appeared _____, to me personally known, who being by me duly sworn or affirmed did say that he/she is _____ of **COMPUTERSHARE TRUST COMPANY OF CANADA,** a trust company existing under the laws of Canada, that said instrument was signed on behalf of said trust company and said trust company acknowledged the execution of said instrument to be the voluntary act and deed of said trust company by it voluntarily executed.

_____
Printed Name:_____
Notary Public in and for the State of _____
My Commission Expires:_____

STATE OF TEXAS §
§
COUNTY OF COMAL §

On this 16th day of December, 2011, before me, a notary public in and for said county, personally appeared John LaRoe, to me personally known, who being by me duly sworn or affirmed did say that he/she is executive director of the **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS,** that said instrument was signed on behalf of said port authority and said port authority acknowledged the execution of said instrument to be the voluntary act and deed of said port authority by it voluntarily executed.

Cheryl Seidel

Printed Name: Cheryl Seidel
Notary Public in and for the State of Texas
My Commission Expires: 08-26-2015

CHERYL SEIDEL
Notary Public,
State of Texas
My Comm. Exp. 08-26-2015

STATE OF _____ §
§
COUNTY OF _____ §

On this ___ day of December, 2011, before me, a notary public in and for said county, personally appeared _____, to me personally known, who being by me duly sworn or affirmed did say that he/she is _____ of **NEW ELK COAL COMPANY LLC**, a Colorado limited liability company, that said instrument was signed on behalf of said limited liability company and said limited liability company acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

_____
Printed Name:_____
Notary Public in and for the State of _____
My Commission Expires:_____

EXHIBIT A

New Elk Coal Company LLC

Metes and Bounds Description
of an
18-Acre Tract of Land

BEING an 18-acre tract of land out of Nueces County Navigation District (N.C.N.D.) No. 1, Survey A-2677, also being that 2,694.93-acre tract (Patent 84) conveyed from State of Texas to N.C.N.D. No. 1 as recorded in Volume 192, Page 579 of Deed Records of Nueces County, Texas. Said 18 acres being more particularly described as follows:

COMMENCING at a brass disc monument stamped “PCCA Ditch (1998)” having state plane coordinates of X = 1316459.92 and Y = 17188367.7;

THENCE, N. 61° 53' 17" E. for a distance of 32.05’ to POINT OF BEGINNING (P.O.B.);

THENCE, north for a distance of 644.8’ to the north corner of said 18-acre tract;

THENCE, S. 72° 54' 51" E. for a distance of 1,479.0’;

THENCE, S. 17° 5' 9" W. for a distance of 510.0’ to the south corner of said 18-acre tract.

THENCE, N. 77° 37' 42" W. to the P.O.B. for a distance of 1,293.93’ containing 18 acres, more or less.

EXHIBIT B

LEASE AGREEMENT

Between

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS
("*Authority*")

And

NEW ELK COAL COMPANY LLC
("*Lessee*")

February 8, 2011

EXHIBIT B

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EXHIBIT B

LEASE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF NUECES §

This **LEASE AGREEMENT** is made this 8th day of February, 2011, by and between **PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS**, pursuant to authorization by its Port Commissioners (hereinafter called "Authority"), and **NEW ELK Coal Company**, a Kansas limited liability corporation, whose principal address is 122 W. First Street, Trinidad, CO 81082 (hereinafter called "Lessee").

ARTICLE 1
LEASE OF PREMISES

Section 1.01. Description of Premises and Term

Authority, in consideration of the rents to be paid and the terms, covenants, and conditions hereinafter set forth, hereby leases to Lessee and Lessee leases from Authority for the entire term, including any extensions, stated in this Section, real property situated in Nueces County, Texas, which is described as follows:

The surface estate of that certain tract of eighteen (18) acres of land, more or less, which tract is particularly described on Exhibit A attached hereto and incorporated herein by reference and all improvements situated thereon (hereinafter called "Leased Premises").

TO HAVE AND TO HOLD the Leased Premises for a term of five (5) years, beginning on the 8th day of February, 2011, and (subject to earlier termination as herein provided) ending at midnight, Central Time, the 7th day of February, 2016.

In addition, Authority hereby grants to Lessee the option to extend the term of this lease agreement for five (5) additional option periods of five (5) years each, beginning on the first day after the expiration of the primary term and each option term hereof; but if, at the date the original term or any extended term expires, Lessee is in default beyond any grace period provided in this lease agreement in performing any of the terms of this lease agreement, the remaining option or options are void. The option to extend renew shall be exercised by Lessee giving to Authority notice in writing of such exercise at least sixty (60) days prior to the expiration of the primary term or any option term of this lease. Notice of an intention to exercise an option under this lease agreement must, to be effective, be sent by certified mail to Authority at the address provided in the Section in this lease agreement entitled Payments and Notices and must be postmarked no later than the latest date provided in this Section for Lessee's exercising

the option. Annual rent shall be determined for each option term pursuant to Section 3.02 and Section 3.03 of this lease agreement.

Section 1.02. Holding Over

If Lessee holds over beyond the primary term or any option term of this lease without the written consent of Authority, Lessee is deemed to be occupying the Leased Premises as a tenant at sufferance. During any holdover period, Lessee will pay two (2) times the monthly rent being charged Lessee in the month prior to the commencement of Lessee's holding over, and Lessee will be subject to all other terms of this lease agreement applicable to a tenant at sufferance.

ARTICLE 2
INSPECTION OF LEASED PREMISES

Lessee has inspected the Leased Premises, including all improvements, fixtures, equipment and personal property situated on the Leased Premises and has conducted any environmental assessment survey it desired and on the date of this lease agreement accepts the Leased Premises As Is, Where Is, and in the condition it existed on that date, as reasonably suited and fit for Lessee's intended uses of the Leased Premises. Lessee acknowledges that Authority has made no express warranties with regard to the premises and to the maximum extent permitted by applicable law, Authority hereby disclaims, and lessee waives the benefit of, any and all implied warranties, including implied warranties of habitability, or fitness or suitability for lessee's purpose.

ARTICLE 3
RENT

Section 3.01. Annual Rent

Subject to adjustments provided for herein, Lessee agrees to pay to Authority at its offices in Corpus Christi, Texas, annual rent for the Leased Premises equal to ten percent (10%) per annum of the Equalization Value of the Leased Premises. For the purpose of fixing annual rent for the primary term of this lease, the Equalization Value of the Leased Premises is fixed at One Hundred Twenty-Five Thousand and NO/100 Dollars ($125,000.00) per acre, and the total sum to be paid Authority by Lessee as rent during the primary term of this lease, subject to any adjustments of rent made pursuant to this lease agreement, is One Million One Hundred Twenty-Five Thousand and NO/100 Dollars ($1,125,000.00), and may be paid in monthly installments of Eighteen Thousand Seven Hundred Fifty and NO/100 Dollars ($18,750.00). "Equalization Value" is that value per acre (or in some instances, per square foot) placed on the Leased Premises by Authority for the purpose of equalizing, to the extent practicable, the rent paid by its tenants leasing property of the Authority of the same general type and in the same general area as the Leased Premises.

EXHIBIT B

The first annual or monthly installment of rent hereunder is due and payable on or before the 8th day of February, 2011. Rent for any fractional year or month at the beginning or end of the lease term will be prorated on a per-day basis. Each annual payment of rent is due and payable on or before the first day of each succeeding year thereafter; each monthly installment of rent is due and payable on or before the first day of each succeeding month thereafter. Annual or monthly payments must be paid at the offices of Authority in Corpus Christi, Nueces County, Texas. If Lessee should fail to pay Authority any sum to be paid by Lessee to Authority hereunder within thirty (30) days after such payment is due, interest on the unpaid amount shall accrue at a rate of fifteen percent (15%) per annum or the maximum rate allowed by law, whichever is lesser, from the date payment was due until the date payment is made. Authority may also impose a late charge of Twenty-Five Dollars ($25.00) or five percent (5%) of the unpaid amount, whichever is greater, to defray Authority's administrative costs incurred as a result of Lessee's failure to timely make such payment, the amount of such costs not being readily ascertainable. Any such late charge shall be in addition to all other rights and remedies available to Authority hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Authority's remedies in any manner. Failure to pay such interest or late charge within thirty (30) days after written demand shall be an event of default hereunder. Following the dishonor of any check presented for payment, Authority shall have the right, at Authority's option, to require all further payments to be made by certified check, money order or wire transfer. For purposes of this Section, any adjustment payment made by Lessee to correct a prior underpayment shall be treated as due on the date such underpayment was due; provided, however, an adjustment payment made by Lessee as the result of an independent audit conducted at Lessee's expense shall not be subject to a late charge as described herein.

Rent must be paid to Authority at its address for notice hereunder or to such other person or at such other address in Nueces County, Texas, as Authority may from time to time designate in writing. Rent must be paid in legal tender of the United States of America without notice, demand, abatement, deduction or offset.

The above rent will be discounted 50% for up to the first ten (10) years of this Lease Agreement or until the improvements on the Leased Premises constructed by the Lessee are paid off up to a maximum discount of $1,125,000.

A. Lessee shall be entitled to reduce (but not below zero) the amount of monthly rent payable on any given date (each, a *"Payment Date"*) during the first ten years of the lease by an amount equal to (i) fifty percent (50%) of Lessee's documented expenditures after February 8, 2011, for Lessee's improvements (as defined in Section 5.01) as of the Payment Date, MINUS (ii) the cumulative amount subtracted from the rent pursuant to this Section 3.03 prior to such Payment Date; provided, however, that Lessee may not reduce the rent payable in any one Lease Year by more than $112,500.00.

B. Before reducing the rent with respect to any expenditure made by Lessee for its improvements, Lessee must provide Authority with documentation of such expenditure.

C. Lessee shall notify Authority in writing on or before each Payment Date of the amount the reduction, if any, Lessee is claiming with respect to the rent payable on such Payment Date. The notice shall include work papers showing how Lessee calculated such reduction.

D. Any dispute between the Parties with respect to (i) the nature of or amounts spent by Lessee for its improvements, or (ii) the amount of the rent reduction to which Lessee is entitled on any particular Payment Date shall be settled by mediation in accordance with Article 16.

E. Except as provided in Section 13.01, if this lease terminates prior to the tenth anniversary of the date of this Lease, Lessee shall not be entitled to any other compensation or credit for Lessee's expenditures for its improvements prior to the termination of the lease.

This is a net lease. Authority shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this lease or the financing, ownership, construction, reconstruction, maintenance, operation, or repair of the Leased Premises or the improvements thereon.

Section 3.02. Adjustment of Rent

The annual rent for each option period of this lease may be adjusted by Authority for changes in the Equalization Value in the following manner:

Ninety (90) days or more before the expiration of each five year period of the primary term or any option period of this lease, Authority has the right, in its sole discretion, to revalue the Leased Premises (excluding an improvements made to the Leased Premises by Lessee) for the purpose of fixing annual rent in each of the next succeeding option periods based on the fair market value of the Leased Premises, or some portion thereof, as determined by an independent appraiser designated by the Authority. If Authority revalues the Leased Premises or some portion thereof, Authority must notify Lessee in writing of the new valuation. If Lessee it not notified of the new valuation prior to ninety (90) days before expiration of the primary term or any option period of this lease, it is conclusively presumed that the Equalization Value for the next ensuing option period of this lease is to be the same as the then current Equalization Value. The annual rent for each option period for which there is a change in the Equalization Value must be equal to ten per cent (10%) of the Equalization Value of the Leased Premises established by Authority, but in no event may it be less than ten per cent (10%) of the fair market value determined by such appraiser.

In the event Lessee does not agree to the increase in Equalization Value, Lessee has the option, to be exercised in writing to Authority within thirty (30) days after the date notice is given to it of the increase in Equalization Value, to either (1) terminate this lease agreement and surrender the Leased Premises effective at Midnight, Central Time, of the last day of the current

primary term or option period of this lease, or (2) agree in writing to binding arbitration to fix the Equalization Value of the Leased Premises for the ensuing option period.

In the event Lessee agrees to binding arbitration, the arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (although the parties do not have to use the services of the American Arbitration Association).

The arbitrator selected by the parties, as a part of his duties as an arbitrator will select an appraiser who is MIA certified, and has greater than ten (10) years experience appraising land such as the Leased Premises.

The appraiser selected by the arbitrator will make an appraisal of the Leased Premises using comparable property and the following criteria for the appraisal process:

Comparables used shall include all recent sales and lease information available on similarly situated properties along the channels of ports located on the Texas Gulf Coast.

The comparables used shall be the average values during the most recent year in which there are comparables sales or leases.

The fair market value of the Leased Premises shall be based on the highest and best use for the Leased Premises, regardless of the use to which the Leased Premises is being put.

The arbitrator will, within sixty (60) days after receipt of the appraisal, determine the Equalization Value for the next ensuing option term of this lease agreement. The arbitrator's decision will be final and is binding on all parties to this lease agreement.

In no event, however, will the process provided for in this Section result in a reduction of the annual rent below the annual rent paid by Lessee during the expiring primary, or any option term of this lease.

Section 3.03. Cost of Living Adjustment

In addition to any adjustment to the annual rent because of an adjustment to the Equalization Value, the annual rent for the primary or any option term of this lease agreement for which rent is to be adjusted will be adjusted to reflect changes, if any, in the cost of living with such adjustment to be made annually beginning with the start of the second year of the primary term of this lease agreement, as follows:

Adjustments in the annual rent are determined by multiplying the amount of the annual rent stated in by a fraction, the numerator of which is the index number of the Consumer Price Index for urban wage earners and clerical workers, U.S. City average – all items (1982-84=100), Bureau of Labor Statistics, United States Department of Labor for the last month of the last year before the adjustment and the denominator of which is the index number of the same Consumer

Price Index for the first month of the first year of the lease term. If the product is greater than the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement, Lessee will pay this greater amount as the annual rent until the time of the next rental adjustment as called for in this Section. If the product is less than the amount of the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement, the annual rent will not be adjusted at that time, and Lessee will pay annual rent until the time of the next rental adjustment as called for in this Section. In no event may any rental adjustment called for in this Section result in an annual rent less than the amount of the annual rent stated in Section 3.01 of this lease agreement, as adjusted pursuant to Section 3.02 of this lease agreement.

If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or to publish statistics concerning the purchasing power of the consumer dollar during the lease term, the remaining rental adjustments called for in this Section will be made by using the most nearly comparable statistics published by a recognized financial authority selected by Authority.

Section 3.04. Utilities and Taxes

In addition to the annual rent described hereinabove, Lessee agrees to pay when due all charges it contracts for (a) water, gas, electricity, and other utilities, (b) garbage service, (c) security or guard services, or (d) railroad services in connection with the Leased Premises. If at Lessee's request or because of Lessee's failure to pay for services to the Leased Premises it contracted for, Authority provides any such services to the Leased Premises or pays the cost for any such services, Lessee will pay to Authority the cost of such services as additional rent upon receiving Authority's invoice therefore, payment to be made pursuant to the terms of said invoice.

Lessee will also pay as additional rent its pro rata share of any utility services provided by Authority.

During the term of this lease, Lessee must pay or cause to be paid when due all taxes, assessments, fees or charges imposed on the Leased Premises by virtue of Lessee's tenancy or upon Lessee's property on, or Lessee's interest in, the Leased Premises.

Lessee may, at its expense, contest any tax, assessment, fee or charge for which it is responsible under this Section. Except as provided in the following paragraph, Lessee need not pay the tax, assessment, fee or charge while the contest is pending. Except as provided in the following paragraph, Lessee may prevent Authority from paying any tax, assessment, fee or charge that Lessee is contesting under this Section, pending resolution of the contest, by depositing with Authority the full amount of the tax, assessment, fee or charge plus the amount of any penalty that might be imposed for failing to make timely payment and one (1) year of interest at the rate imposed by the entity levying the tax, assessment, fee or charge. When the contest is resolved, Lessee must pay the tax, penalty and interest imposed and may use the money deposited with Authority to pay any tax, assessment, fee or charge, plus any penalty or

interest, due under the final resolution and keep any balance of the deposit. If the deposit is insufficient to pay these amounts, Lessee must immediately pay the balance due to the entity imposing the tax, assessment, fee or charge.

Notwithstanding the provisions of the foregoing paragraph, Authority may pay – or require Lessee to pay – any tax, assessment, fee or charge for which Lessee is responsible under this Section, pending resolution of Lessee's contest of the tax, assessment, fee or charge, if payment is demanded by a holder of a mortgage on the premises or if failing to pay will subject all or part of the premises to forfeiture or loss.

Any of said taxes, fees or charges that are payable by Lessee for the tax year in which this lease agreement commences, as well as during the year in which this lease agreement terminates, shall be apportioned so that Lessee shall pay its proportionate share of the taxes, fees or charges for such periods of time. Lessee may pay such taxes, fees or charges in installments as and when such installments become due. Lessee must deliver to Authority evidence of payment of all taxes, fees or charges, which Lessee is obligated to pay hereunder concurrently with making such payment.

ARTICLE 4
USE OF LEASED PREMISES

Section 4.01. Use

The Leased Premises may be used for the following purposes, and for no other purpose, unless written permission for other use is obtained from Authority:

> For receipt by rail or truck of coal and subsequent shipment by vessel at Authority's Bulk Terminal. Lessee will build all improvements needed to receive and ship coal to include a new hard surfaced pad, conveyors from Authority's rail dump station to Lessee's stacker, conveyors from Lessee's coal pile to Authority's ship loader, and dust suppression/sprinkler system equipment.
>
> In addition to the discount on the rental provided in Section 3.01, Lessee will also be provided a 50% discount on ship loader fees for up to ten (10) years or until the improvements on the Leased Premises constructed by the Lessee are paid off up to a maximum discount of 1,000,000 tons per year not to exceed $625,000 per year.

Lessee will not:

A. Use, occupy or permit the use or occupancy of the Leased Premises for any purpose or in any manner, which is directly or indirectly:

Inconsistent with the requirements of Section 4.01 hereof;

Violative of (a) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, permits, certificates or ordinances of any governmental authority in any way applicable to Lessee or the Leased Premises, including zoning, environmental and utility conservation matters; (b) Authority's Tariffs or Rules and Regulations; (c) insurance requirements; or (d) other documents, instruments or agreements (written or oral) relating to the Leased Premises or to which the Leased Premises may be bound or encumbered;

Dangerous to life or property or a public or private nuisance; or

Disruptive to the activities of any other tenant or occupant of property adjacent to the Leased Premises;

B. Bring or permit to remain on the Leased Premises any asbestos, petroleum or petroleum products, explosives or toxic materials except for commercially reasonable amounts of materials used in the ordinary course of Lessee's business, nor commit or permit to remain any waste or damage to the Leased Premises; or

C. Commit, or permit to be committed, any action or circumstance on or about the Leased Premises which, directly or indirectly, would or might justify any insurance carrier in increasing the rate of or canceling the insurance policies maintained by Lessee or Authority on the Leased Premises or improvements thereon, or those of other lessees of Authority's property adjacent to the Leased Premises.

D. The Leased Premises shall not be used for any purpose or business deemed as extra hazardous by the Insurance Services Office.

Section 4.02. Environmental Representations, Restrictions and Environmental Indemnity

Lessee hereby represents and warrants to Authority:

That Lessee's construction, occupancy, operation or use of the Leased Premises will not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Leased Premises, including but not limited to all applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Laws");

That, without limitation of Section 4.01A above, in its use of the Leased Premises Lessee will not violate any Applicable Laws pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42, U.S.C. Section 9601 et seq; the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq; the Hazardous Materials Transportation Act, 49

U.S.C. Section 5101 et seq; the Clean Air Act and Amendments of 1990, 41 U.S.C. Section 7401 et seq; the Clean Water Act of 1977, 33 U.S.C. Section 1251 et seq; the Oil Pollution Act of 1990, 33 U.S.C. Section 2701 et seq; the Toxic Substances Control Act, 15 U.S.C. Section 2606 ; the Texas Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code; the Texas Clean Air Act, Chapter 382, Texas Health and Safety Code; the Oil Spill Prevention Act of 1991, Chapter 40, Texas Natural Resource Code, and Chapter 26, Texas Water Code; and the Texas Water Quality Act, Chapter 26, Texas Water Code; Texas Hazard Communication Act, Chapter 502, Texas Health and Safety Code; Texas Community Right-to-Know Acts, Chapters 505 – 507 Texas Health and Safety Code; Authority's Tariffs, Rules and Regulations and the Port of Corpus Christi Authority's Design and Construction Guidelines set forth in Authority's Real Estate Manual.

That the use which Lessee intends to make of the Leased Premises will not result in the Disposal or other Release of any Hazardous Substance or Solid Waste on or to the Leased Premises--the terms "Hazardous Substance" and "Release" have the meanings specified in CERCLA, and the terms "Solid Waste" and "Disposal" (or "Disposed") have the meanings specified in RCRA--and, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply to such terms used in this lease agreement subsequent to the effective date of such amendment and, further, to the extent the laws of the state of Texas establish a meaning for "Hazardous Substance," "Release," "Solid Waste," or "Disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply to such terms used in this lease agreement, and in either of said instances Lessee must immediately cease activities prohibited by Applicable Laws or Applicable Environmental Laws upon the Leased Premises and notify Authority in writing of same within five (5) days of doing so;

Lessee understands and agrees that the Leased Premises are being leased in an "As Is, Where Is" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee further understands and agrees that the "As-Is, Where Is" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and any adjacent channel or bay water and sediment, and that information received from Authority regarding such matters may not be complete or accurate and should not be accepted as such.

Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Authority takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, **Lessee hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Authority, its Port Commissioners, directors, managers, employees, and agents from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal. If any action or**

proceeding is brought against Authority, its Port Commissioners, directors, managers, employees, and agents based upon any and all such claims, liabilities, losses, damages, costs and expenses, Authority will be represented by its general counsel, or another attorney selected by Authority and approved by Lessee, which approval will not be unreasonably withheld.

Authority accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants described in 29 Code of Federal Regulations. Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. **Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination, and to indemnify, defend and hold harmless Authority, from and against any and all such claims, liabilities, losses, damages, costs and expenses. If any action or proceeding is brought against Authority, its Port Commissioners, directors, managers, employees, and agents based upon any and all such claims, liabilities, losses, damages, costs and expenses, Authority, its Port Commissioners, directors, managers, employees, and agents will be represented by its general counsel, or another attorney selected by Authority and approved by Lessee, which approval will not be unreasonably withheld.**

In claims against Authority, its Port Commissioners, directors, managers, employees, and agents by or for an employee of Lessee, its agents, contractors, owners, invitees, or licensees, the Lessee's indemnification obligation under this Section 4.02 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Lessee, its agents, contractors, owners, invitees, or licensees, under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. If an action for damages is brought by an injured employee of Lessee, a legal beneficiary, or an insurance carrier against Authority, its agents, contractors, owners, invitees, or licensees, to pay damages for the injury or death of such employee under Chapter 417 (Third-Party Liability), Texas Labor Code, that results in a judgment against the Authority, its agents, contractors, owners, invitees, or licensees, or a settlement by Authority, its agents, contractors, owners, invitees, or licensees, Lessee expressly agrees to reimburse and hold harmless Authority, its agents, contractors, owners, invitees, or licensees, for the damages based on such judgment or settlement as provided in this Section 4.02.

Lessee will cooperate with the Authority's Tenant Audit Program (the "Program"). The audit will consist of a scheduled review of Lessee's operations and activities, a review of Lessee's environmental management programs, and a tour of the Leased Premises. Authority staff involved in the Program intend to gain an understanding of Lessee's operations and activities and what measures the Lessee is utilizing to comply with local, state, and federal laws,

rules and regulations, this lease agreement, and Authority's Tariffs, Rules, and Regulations. Through the Program they will seek to achieve cooperative conservation between Authority and Lessee that are actions relating to the use, enhancement and enjoyment of natural resources and protection of the environment. The audit will be conducted at a minimum annually and more frequently if determined by Authority staff to be necessary. A letter from Authority staff setting forth staff's observations will be provided to the Lessee following the audit. If violation of applicable laws, rules, regulations, this lease agreement or the tariff have been observed, then Lessee will be notified of the same in the letter, and required to immediately take action to come into compliance, and to verify it has done so to Authority staff.

Lessee must clean up, remove, remediate and repair any soil or ground water contamination or damage caused by the presence or release of any Hazardous Substance or Solid Waste in, on, under, or about the Leased Premises during occupancy of the Leased Premises in conformance with the requirements of Applicable Laws or Applicable Environmental Laws. Lessee shall immediately give Authority written notice of any suspected breach of this paragraph, upon learning of the presence or any release of any Hazardous Substance or Solid Waste, or upon receiving any notice from governmental agencies pertaining to any Hazardous Substance or Solid Waste which may affect the Leased Premises. The obligations of Lessee hereunder shall survive the expiration or earlier termination, for any reason, of this lease.

All of the foregoing representations and warranties made by Lessee are continuing and must be true and correct for the entire term of this lease, including any extensions hereof, and all of such representations and warranties will survive expiration or termination of this lease agreement.

Section 4.03. Underground Storage Tanks

Lessee may not construct, install, maintain, use or otherwise operate on the Leased Premises any petroleum or chemical underground storage tank.

Section 4.04. Wharfage

The Leased Premises contain frontage on Authority's ship channel, and Lessee is granted access to the Leased Premises from, and right of use of, Authority's ship channel and public docks, without payment of dockage or wharfage charges, for shipping and receiving, by water transportation, materials used for construction of the Leased Premises and materials and commodities used or consumed by Lessee in its business conducted on the Leased Premises. All other commodities or cargo moved from or to water transportation at the Leased Premises will pay all of Authority's tariff charges applicable to the same. Lessee must report in writing monthly to Authority the amount of such commodities handled and pay to Authority at its offices in Corpus Christi monthly the amount due pursuant to this lease agreement and Authority's tariff. Authority shall have the right at reasonable times during business hours to inspect the books and records of Lessee concerning such shipments and payments.

EXHIBIT B

Section 4.05. Permitted Use; Continuous Operation

Lessee will (a) continuously maintain the Leased Premises open for its usual business and available for the purposes permitted hereunder during its usual business hours on days other than Saturday, Sunday or legal holidays and (b) handle at the Leased Premises at least 90,000 tons of coal in export or import commerce during the first year of the lease and at least 180,000 tons per year commencing with the start of the second year of the lease.

The covenants of this Section 4.05 are material to this lease, and should Lessee fail to satisfy such covenants, Authority may employ the remedies set forth in the Article of this lease agreement entitled Default.

Section 4.06. Throughput

Lessee guarantees that it, or its affiliates, shall during the primary term of this lease, and any option or holdover period, move over Authority's Bulk Terminal Dock(s) or pay Authority's then current tariff rates for each such movement, including wharfage and handling, a minimum of 180,000 tons of coal ("Cargo") per year ("Minimum Guaranteed Throughput ") except for the first year of the lease as outlined in Section 4.05. Shipments from year to year shall not be cumulative and excess tonnage for any single lease year shall not carry over into any succeeding lease year for the purpose of calculating the Minimum Guaranteed Throughput. Lessee's guarantees shall be calculated on the basis of 15,000 tons per month for each month during the primary term and any holdover period subsequent to the terms of this lease.

Lessee agrees to pay to the Authority as additional rent for each year this lease is in effect ("Lease Year") an amount equal to the total amount of Authority's then current tariff rates for each movement applied to the Minimum Guaranteed Throughput, including wharfage and handling, multiplied by the number of tons by which the Minimum Guaranteed Throughput for such year exceeds the actual number of tons of Cargo actually moved over Authority's Dock (s) designated in this Section 4.06 during such Lease Year. The current tariff rates for any Lease Year are the Authority's rates per ton for Cargo of the type or types to me moved that are in effect on the first day of such Lease Year. The additional rent payable pursuant to this Section 4.06 is referred to herein as "Throughput Rent."

An "affiliate," as herein used, is a corporation, the controlling interest of which is owned by the same persons or corporations owning controlling interest in the holder of this lease.

Lessee shall keep and maintain a complete and accurate set of books and records showing all Cargo shipped over Authority's Dock(s) designated in this Section 4.06 in order that Authority may ascertain therefrom any amounts due to Authority from Lessee as Throughput Rent. Such books and records shall be subject to inspection by Authority, its agents and attorneys at any reasonable time. Promptly after the end of each Lease Year a computation shall be made as to the amount of Throughput Rent payable by Lessee to Authority for such Lease Year, or part thereof, and Lessee shall pay to Authority the Throughput Rent due for such Lease

Year, if any, on or before the sixtieth day after the end of such Lease Year ("Due Date"). If Lessee has been unable to determine with certainty the amount of Throughput Rent payable with respect to any Lease Year prior to the Due Date for such payment, then Lessee shall pay to the Authority on or before such Due Date an amount equal to Lessee's good faith estimate of what the Throughput Rent for such Lease Year will be. If the actual Throughput Rent for any Lease Year is different from the estimated Throughput Rent paid for such Lease Year, Lessee will notify the Authority of such discrepancy as soon as it is known and either Lessee will pay any deficiency to the Authority, or the Authority will refund any overpayment to Lessee, within thirty days after the date on which Lessee notifies the Authority of such discrepancy.

During any holdover period, Throughput Rent will be reported and paid monthly by Lessee on or before the 10th day of the month following each holdover month.

The covenants of this Section 4.06 are material to this lease, and should Lessee fail to satisfy such covenants, Authority may terminate this lease agreement.

Section 4.07. Adjustment of Minimum Throughput

The Minimum Throughput for each option period of this lease may be adjusted by Authority in the following manner:

Ninety (90) days or more before the expiration of each five year period of the primary term or any option period of this lease, Authority has the right, in its sole discretion, to adjust the Minimum Throughput for the purpose of fixing the Minimum Throughput in each of the next succeeding option periods. If Authority revalues the Minimum Throughput, Authority must notify Lessee in writing of the new valuation. If Lessee it not notified of the new Minimum Throughput valuation prior to ninety (90) days before expiration of the primary term or any option period of this lease, it is conclusively presumed that the Minimum Throughput value for the next ensuing option period of this lease is to be the same as the then current Minimum Throughput value.

In the event Lessee does not agree to the increase in Minimum Throughput value, Lessee has the option, to be exercised in writing to Authority within thirty (30) days after the date notice is given to it of the increase in Minimum Throughput value, to either (1) terminate this lease agreement and surrender the Leased Premises effective at Midnight, Central Time, of the last day of the current primary term or option period of this lease, or (2) agree in writing to binding arbitration to fix the Minimum Throughput for the ensuing option period. In no event, however, will the process provided for in this Section result in a reduction of the Minimum Throughput below the Minimum Throughput during the expiring primary, or any option term of this lease.

EXHIBIT B

ARTICLE 5
IMPROVEMENTS OR ALTERATIONS AND MAINTENANCE

Section 5.01. Permanent Improvements

All improvements made, placed, or constructed on the Leased Premises by Lessee after the date of this lease agreement will be at the sole cost and expense of Lessee. Lessee must construct and install Lessee's improvements in a good and workmanlike manner. New or additional improvements may not be constructed nearer than 8.5 feet to the centerline of any existing or proposed railroad track on or adjacent to the Leased Premises.

While constructing improvements, maintaining, or carrying on its activities, on the Leased Premises, Lessee must comply with the *Antiquities Code of Texas* (*Texas Natural Resources Code*, Chapter 191) and applicable rules promulgated thereunder by the Antiquities Committee, or its successor. Lessee shall undertake its activities on the Leased Premises in a manner consistent with public policy relating to the location and preservation of archeological sites and other cultural resources in, on, or under public lands. Lessee shall use the highest degree of care and all reasonable safeguards to prevent the taking, alteration, damage, destruction, salvage, or excavation of cultural resources and/or landmarks on the Leased Premises. Upon discovery of an archeological site, Lessee shall immediately give written notice of such discovery to Authority and to the Texas Antiquities Committee, as set out in the Committee's rules. Lessee, its contractors and employees, shall have no right, title, or interest in or to any archaeological articles, objects, or artifacts, or other cultural resources located or discovered on the Leased Premises.

Section 5.02. Maintenance and Return of Leased Premises

Lessee will, throughout the lease term and any extensions of it, at its own expense and risk, maintain the Leased Premises and all improvements on them in good order and condition, including but not limited to making all repairs and replacements necessary to keep the premises and improvements in that condition. All maintenance, repairs, and replacements required by this Section must be performed promptly when required and so as not to cause depreciation in the value of the Leased Premises.

If Lessee fails to perform its obligation to repair, replace, or maintain, as set forth above, within a reasonable time after notice from Authority of the need for repair, replacement, or maintenance, Authority may enter the Leased Premises and make the repairs or replacements, or perform the maintenance, or have the repairs or replacements made or maintenance performed, at its own expense. Upon Authority's notice to Lessee of the performance and cost of any maintenance, repairs, or replacements under this Section, Lessee must immediately reimburse Authority for the costs incurred by Authority pursuant to this Section, together with interest on the sum at the highest legal rate from the date of the notice until the date paid by Lessee to Authority.

At the expiration of the lease term or any renewals or extensions thereof, Lessee will surrender the premises in good order and repair except for reasonable wear and tear since the last necessary repair, replacement, restoration or renewal made by Lessee pursuant to its obligations under this lease agreement.

Section 5.03. Approval of Alterations and Improvements

Lessee must submit to Authority plans for any proposed buildings, drainage or improvements of any kind on the Leased Premises, or any alterations or additions to existing buildings or improvements, and they must be approved in writing by, the Director of Engineering Services of Authority prior to the commencement of work on the same. To facilitate the

Authority's review, two (2) sets of formal plans that clearly define the project must be submitted to Authority for its prior approval. The drawings must be prepared on a standard engineering format (24" x 36" drawings) and show all physical features and improvements in and around the project site and must be signed and sealed by a Professional Engineer registered in the State of Texas. In addition, a detailed site plan (minimum 1" = 50' scale) depicting the location and physical layout of the project site, and including, but not limited to, any area to be dredged, adjacent docking facilities, property lines, federal channels, bulkhead lines, and existing channel depth elevations must be included with the plans submitted. The site plan must clearly show the bottom of cut line and top of slope line of any planned dredging. If any dredging is planned by Lessee, its agents, servants, contractors or employees that will, in Authority's judgment, based upon customary dredging operations, result in removal of a substantial quantity of earth or material from, or damage to, adjacent real property, Lessee must obtain the written permission of the adjacent property owner to carry out the work described for the project and submit it to the Authority with the formal plans.

Slips at any dock located on the Leased Premises must be maintained by Lessee at a sufficient depth to prevent vessels berthed at the dock from striking bottom due to lowering of the water level from passing vessels or seasonal low tides.

Copies of all permits for work in navigable waters issued to Lessee by the Department of Army or any other federal, state or other governmental agency shall be filed with Authority.

No approval by Authority of Lessee's designs, site plans, plans, specifications or other matters may ever be construed as representing or implying that Lessee's designs, site plans, plans, specifications or other matters will, if followed, result in a properly-designed building or other improvements constructed on the Leased Premises. Such approvals shall in no event be construed as a representation or guaranty by the Authority that any improvements will be built in a workmanlike manner, nor shall such approvals relieve Lessee of its obligation to construct the building in a workmanlike manner. **Lessee will defend, indemnify, and hold harmless Authority from and against any lawsuits, actions, causes of action or claims arising out of Authority's approval of any of Lessee's designs, site plans, plans, specifications or other matters relating to the Leased Premises.**

Section 5.04. No Liens

Unless otherwise agreed, Lessee may not grant, place or suffer, or permit to be granted, placed or suffered, against all or any part of the Leased Premises or Lessee's leasehold estate created hereby, any lien, security interest, pledge, conditional sale contract, claim, charge or encumbrance (whether constitutional, contractual or otherwise) and if any of the aforesaid should occur or be asserted, Lessee will, promptly upon demand by Authority and at Lessee's expense, cause same to be released.

Section 5.05. Laborers and Materials

Lessee will pay for all labor and services performed for, materials used by, or furnished to, any contractor employed by Lessee with respect to the Leased Premises and defend, indemnify and hold Authority and the Leased Premises harmless and free from any liens, claims, encumbrances or judgments created or suffered by Lessee's failure to pay for labor or materials provided to the Leased Premises. If Lessee elects to post a payment or performance bond or is required to post an improvement bond with a public agency in connection with such labor, services or materials, Lessee agrees to include Authority as an additional obligee thereunder.

Section 5.06. Storm Sewers/Railroad Spur Tracks

Lessee agrees to construct or to pay for the construction of (a) storm sewers required by Authority to drain the Leased Premises or (b) railroad spur tracks requested by Lessee, and approved by Authority, to serve the Leased Premises. If requested by Authority or the railroad, Lessee will enter into a joint maintenance agreement with the railroad and bear Lessee's pro rata share of the cost of maintaining any railroad spur on the Leased Premises.

Section 5.07. Building Code

All improvements placed on the Leased Premises by Lessee must comply with all applicable codes unless they are modified by Port of Corpus Christi Authority Design and Construction Guidelines.

Section 5.08. Permits

Lessee must obtain and maintain in effect at all times during the term of this lease agreement all permits, licenses and consents required or necessary for the construction, installation, maintenance, use and operation of Lessee's improvements and Lessee's use and occupancy of, and operations at, the Leased Premises. Lessee will provide Authority's Department of Engineering Services with copy of its permits, licenses and consents as the same are obtained.

EXHIBIT B

Section 5.09. Ownership or Removal of Alterations, Modifications or Improvements by Lessee

At the expiration or earlier termination of this lease, all alterations, modifications or improvements upon the Leased Premises made by Lessee, including all buildings, rail spurs and tracks, paneling, decorations, partitions, heating, ventilating and air-conditioning machinery and equipment, lighting fixtures, plumbing equipment, sprinkler system, and the like, shall, absent any agreement between Authority and Lessee to the contrary at the time of installation, or unless Authority otherwise elects, which election shall be made by giving a notice in writing (a) not less than fifteen (15) days prior to the expiration of this lease, or (b) not more than fifteen (15) days following any termination of this lease other than by expiration, become the property of Authority and shall remain upon and be surrendered with the Leased Premises as a part thereof at the end of the lease term. In the event Authority notifies Lessee to remove any or all of the alterations, additions or improvements made by Lessee, Lessee must do so and must repair any damage caused by such removal, all within forty-five (45) days after the date of expiration or termination of this lease agreement. Trade fixtures, furnishings and equipment, except for those referred to above, which are installed by Lessee, at its expense, may be removed by Lessee provided Lessee removes the same and repairs any damage caused by such removal within thirty (30) days after the date of expiration or termination of this lease. Any trade fixtures not removed by Lessee when this lease terminates are considered abandoned by Lessee and will automatically become Authority's property. If any trade fixture installed by Lessee is abandoned when the lease terminates, Lessee must pay Authority any reasonable expense actually incurred by Authority to remove the fixture from the premises, less the fair market value of the fixture once removed, if Authority uses the trade fixture.

Section 5.10. Signs

Lessee may not place any signs at or on the Leased Premises nor paint any signs on any building on the Leased Premises unless first approved in writing by the Director of Engineering Services of Authority. Lessee must remove all its signs when this lease terminates and repair any damage resulting from erecting or removing the signs.

Section 5.11. Floodplain

Lessee acknowledges that Lessee has been advised by Authority that the Leased Premises is in the FEMA floodplain and that construction of improvements must conform to the laws and regulations applicable to construction of improvements in a floodplain.

Section 5.12. Side Yard Limits

No permanent improvements may be constructed within five (5) feet of the Leased Premises' boundary lines without the prior written approval of the Authority.

EXHIBIT B

ARTICLE 6
USE BY AUTHORITY

Authority reserves the right to use any streets or roadways on the Leased Premises. Authority further reserves the right to use as much of the Leased Premises as is necessary to lay mains for gas, water or sewers on the Leased Premises, to place poles and necessary wires and attachments for electricity or for telephone and fiber optic lines over and across any part of the Leased Premises, and to lay, or grant easements or rights of way for the laying of, pipelines for oil, petroleum, petroleum products, fiber optics and any other products over, under and upon the Leased Premises; provided, however, that the same shall not interfere with Lessee's buildings, improvements or Lessee's use of the Leased Premises. Authority has the right to use third parties for the performance of the rights reserved to Authority in this Article, and Authority has the right to grant easements or rights of way reserved to Authority in this Article to other parties.

ARTICLE 7
SUBLETTING OR TRANSFER

Section 7.01. Sublease or Transfer

Lessee may not assign this lease agreement in whole or in part nor any interest therein nor sublet the Leased Premises nor any part thereof nor grant any license, concession or other right of occupancy of any portion of the Leased Premises, nor permit the transfer of this lease by operation of law or otherwise without the prior written consent of Authority. Consent of Authority to one or more assignments or subletting does not operate as a waiver of Authority's rights concerning any subsequent assignments or subletting. If this lease agreement is assigned, or if any of the Leased Premises, or any part thereof, is sublet or occupied by anyone other than the Lessee, then Authority may, after default by the Lessee, collect rent from the assignee, subtenant or occupant and apply the net amount collected, less any costs of collection, attorneys' fees or other costs incurred by Authority, to the rent provided for in this lease agreement. No assignment, subletting, occupancy or collection waives the obligations of Lessee under this lease agreement upon acceptance of same by Authority. Lessor may assign or transfer any of its interests under this lease agreement. Furthermore, Lessee shall not, without Authority's express written consent, cause or permit an interest, direct or indirect, in itself to be sold, assigned, transferred, exchanged, or otherwise disposed of (each a "Disposition") such that, after the Disposition, the Lessee shall cease to be controlled by substantially the same individuals and/or entities who Control it as of the effective date of the Lease; provided, however, that this restriction shall not be operative if, on the date of the Disposition, the net worth of Transferee (who is defined in Section 7.02) is more than Ten Million Dollars. As used in this paragraph "Control" means the power to elect a majority of the directors or other members of the governing body of Lessee, or in any other manner to control or determine the management of the Lessee.

EXHIBIT B

Section 7.02. Conditions

The following conditions automatically apply to each sublease, assignment or transfer by Lessee or any sublessee without the necessity of same being stated in or referred to in Authority's written consent:

A. Lessee must execute, have acknowledged and deliver to Authority and cause the sublessee, assignee or other transferee ("Transferee") of any portion of Lessee's interest in this lease agreement, the leasehold estate created hereby or the Leased Premises to execute, have acknowledged and deliver to Authority, an instrument in form and substance acceptable to Authority in which:

The Transferee adopts this lease agreement and assumes and agrees to perform, jointly and severally with Lessee, all of the obligations of Lessee hereunder, as to the interest transferred to it;

The Transferee grants Authority an express first and prior contract lien and security interest in its improvements located upon and property brought into the transferred premises to secure its obligations to Authority hereunder;

Lessee subordinates to Authority's statutory lien, contract lien and security interest any liens, security interests or other rights, which Lessee may claim with respect to any property of the Transferee;

Lessee and any guarantor of this lease agreement agrees with Authority that, if the rent or other consideration due by the Transferee exceeds the rent for the transferred space, then Lessee shall (and any guarantor guarantees that Lessee shall) pay Authority as additional rent hereunder all such excess rent and other consideration immediately upon Lessee's receipt thereof;

The Transferee agrees to use and occupy the transferred space solely for the purposes permitted under Article 4 and otherwise in strict accordance with this lease agreement; and

Lessee and any guarantor acknowledge and agree in writing that, notwithstanding the transfer, Lessee and any guarantor remain directly and primarily liable for the performance of all the obligations of Lessee hereunder (including, without limitation, the obligation to pay all rent), and Authority shall be permitted to enforce this lease agreement against Lessee, any guarantor or the Transferee, or all of them, without prior demand upon or proceeding in any way against any other persons.

B. Lessee must deliver to Authority a counterpart of all instruments relative to the sublease, assignment or other transfer executed by all parties to such transaction (except Authority); and

C. Lessee shall pay or cause to be paid to Authority, at the time of the execution and delivery of the documents, the sum of $500.00 to cover Authority's administrative and legal costs for each amendment, assignment, sublease, and any estoppel certificate requested from Authority by Lessee or any sublessee.

ARTICLE 8
DEFAULT

Section 8.01. Rights and Remedies of Authority

If for ten (10) calendar days after service by mail or otherwise to Lessee by Authority of written notice of a breach or default by Lessee under any provision of this lease agreement, the Lessee does not or shall neglect or fail to comply with or remedy such breach or default, or if the said breach or default complained of shall be of such a nature that the same cannot be completely remedied or cured within such ten (10) day period, then such breach or default shall not be an enforceable breach or default against Lessee if Lessee shall have commenced curing such breach or default within such ten (10) day period, and shall with reasonable diligence and in good faith, proceed to remedy the default complained of; or if any proceedings concerning Lessee or the Leased Premises be had in bankruptcy, reorganization, arrangement or receivership, or if any assignment shall be attempted to be made of this lease agreement for the benefit of creditors; or if Lessee abandons or vacates a substantial portion of the Leased Premises for fourteen (14) consecutive days; then in any of said cases or in any similar case which, in the sole judgment of Authority, evidences a serious financial insecurity of Lessee, Authority shall have the rights and remedies that may be provided at law or in equity and the following options:

A. Without terminating this lease agreement, Authority may terminate Lessee's right of possession of the Leased Premises under this lease agreement by giving Lessee three (3) calendar days notice of termination of Lessee's right of possession and Lessee's right of possession shall thereupon cease and come to an end and Authority may reenter and take possession of the Leased Premises; provided, however, Authority shall not be required to give such notice prior to the filing of an action of forcible detainer or at common law upon default by Lessee in the payment of rent. Upon entering and taking possession of the Leased Premises, Authority may:

1. Relet for the account of, or as agent for, Lessee the Leased Premises or any part thereof, to a tenant acceptable to Authority, without terminating this lease agreement or working a forfeiture of the rent to be paid, and after receiving the rent therefrom apply the same, first to the payment of all expense the Authority may be put to in recovering possession of the Leased Premises and in reletting same, including but not limited to the costs of renovating, altering and repairing for a new tenant and attorneys' and brokers' fees, and then to the payment of the rent and additional rent payable under this lease agreement and to the fulfillment of Lessee's covenants hereunder. Lessee shall be entitled to any balance remaining after subtracting such costs and debts. Authority may at any time after reletting terminate this lease agreement for the breach or default on account of which it reentered and relet; or

2. Accelerate the future rent and additional rent due under this lease agreement and seek recovery of such rent and additional rent and any other damages provided for in this lease agreement, at law or in equity. Authority is entitled to recover future rent and additional rent from Lessee based upon the present value of the rent and additional rent discounted to present value at the rate of 3% per annum for the remainder of the term of the lease reduced by the fair market rental value of the Leased Premises during that period.

B. Terminate this lease agreement.

C. Lessee pledges with Authority all of its rents and profits from the Leased Premises in addition to the other security for the performance of the lease; and in connection with such pledging of the rents, the Lessee covenants and agrees with Authority that if Authority, upon default of Lessee, elects to file a suit to enforce this lease agreement and protect Authority's rights thereunder, Authority may apply to any court having jurisdiction, for the appointment of a Receiver of all and singular the demised premises, the improvements and buildings located thereon, and the personal property located therein, and thereupon it is expressly covenanted and agreed that the court shall without notice forthwith appoint a Receiver with the usual powers and duties of receivers in like cases, and such appointment shall be made by such court as a matter of strict right to Authority, and without reference to the adequacy or inadequacy of a remedy at law, the value of the property that is subject to Landlord's lien, or to the solvency or insolvency of Lessee; and without reference to the commission of waste.

Section 8.02. No Waiver

Any assent, expressed or implied, by the Authority or Lessee to any breach of any agreement, covenant or obligation herein contained shall operate as such only in the specific instance and shall not be construed as an assent or a waiver to any such agreement, covenant or obligation generally or of any subsequent breach thereof. The remedies provided herein or at law or equity shall not be mutually exclusive.

Section 8.03. Consequential Damages

Authority shall in no event be charged with default in the performance of any of its obligations hereunder, unless and until Authority shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice by Lessee to Authority, properly specifying wherein Authority has failed to perform any such obligation.

Notwithstanding anything in this lease agreement to the contrary, Authority shall in no event be charged with or liable for any consequential damages suffered by Lessee as a result of Authority's breach of this lease agreement or failure to perform any of its obligations under this lease agreement.

EXHIBIT B

ARTICLE 9
LIEN AND SECURITY INTEREST

In consideration for the mutual benefits arising under this lease agreement, and as security for Lessee's performance of all its obligations under this lease agreement, Lessee hereby grants to Authority a lien and security interest in and on all property of Lessee now or hereafter placed in or upon the Leased Premises, and such property shall be and remain subject to such lien and security interest of Authority for payment of all rent and other sums agreed to be paid by Lessee herein. The provisions of this Section shall constitute a security agreement under the Texas Uniform Commercial Code so that Authority has and may enforce a security interest on all property of Lessee now or hereafter placed in or on the Leased Premises, including but not limited to all fixtures, machinery, equipment, furnishings and other articles of personal property now or hereafter placed in or upon the Leased Premises by Lessee. An event of default under this lease agreement shall be default under the security agreement. Authority may at its election at any time file a copy of this lease agreement as a financing statement. Authority, as secured party, is entitled to all of the rights and remedies afforded to a secured party under the Texas Uniform Commercial Code, which rights and remedies shall be in addition to and cumulative to the Authority's liens and rights provided by law or by the other terms and provisions of this lease. Promptly upon request, and without further consideration, Lessee agrees to execute as debtor such additional financing statement or statements as Authority may now or hereafter reasonably request in order that Authority's security interests may be protected pursuant to the Texas Uniform Commercial Code, which financing statement Authority may at its election file in the appropriate records.

ARTICLE 10
SUBORDINATION

Section 10.01. Subordination of Landlord's Lien

It is contemplated that Lessee may be required to borrow funds for construction of improvements on the Leased Premises from time to time during the term of this lease agreement, and it may be desirable or convenient for Lessee to borrow additional funds for additional improvements, alterations, repairs or for other purposes to benefit the Leased Premises. Accordingly, it is agreed that Lessee shall at all times during the term of this lease, without the consent of Authority (but provided written notice and a copy of the security instruments are delivered to Authority), have the right to mortgage or convey by deed of trust or any other security instrument the leasehold rights of Lessee created by this lease agreement, together with all of Lessee's rights, titles, and interest in the buildings and improvements then or thereafter to be placed on the Leased Premises; provided, however, that any such mortgage, deed of trust, security conveyance or encumbrance will at all times be subject to and shall recognize the superior right, title and interest of Authority to the Leased Premises and to Authority's rights hereunder to require Lessee's payment of all rent due hereunder and Lessee's full and faithful performance of all covenants and conditions of this lease agreement due Authority.

Subject to the conditions stated in this Article, Authority subordinates its landlord's lien on the improvements and other property Lessee places on the Leased Premises to the rights of the holder of any such mortgage, deed of trust or other security instrument.

Section 10.02. Holder of Security

In the event at any time during the term of this lease agreement Lessee or anyone holding under Lessee shall be in default of any of the covenants or any of the conditions of this lease agreement, then and in such event the holder of the mortgage, deed of trust or other security instrument may, before forfeiture is invoked by Authority, make any and all payments and do and perform any and all acts or things which may be necessary or required to prevent a forfeiture of this lease agreement; and the party making such payments or performing such acts or things shall thereby and thereupon be subrogated to all the rights of Lessee under this lease agreement. Authority agrees that, if requested in writing by the holder of any mortgage, deed of trust or other security instrument, it will send to the said holder at the address specified in the written request copies of all written notices of demand which Authority may serve upon Lessee, or anyone holding under Lessee, under and pursuant to the terms of this lease agreement.

It is understood, however, that the mortgagee, trustee, beneficiary of said deed of trust or other holder of security above-mentioned shall in no way be liable to Authority for the payment of any rent or for the performance of any other covenants and conditions under this lease agreement until such time as it shall acquire by conveyance from Lessee or by foreclosure or other proceedings provided by law or by the terms of mortgage, deed or trust, or security instrument, all the right, title and interest of Lessee under this lease agreement; provided, however, that any party who shall acquire said right, title and interest of Lessee as above provided shall thereupon and thereby become liable for the full performance and all payments theretofore and thereafter required to be made by Lessee under the covenants and conditions of this lease agreement, as fully and completely and to the same extent as Lessee itself would have been if it still had retained its right, title and interest under this lease agreement.

ARTICLE 11
INDEMNITY/WAIVER

Section 11.01. Indemnity and Waiver

A. As used in this Section 11.01, each of the following terms shall have the meanings set forth in this Section 11.01A:

1. "Beneficiary" means the intended recipient of the benefits of another party's Indemnity, Waiver or obligation to Defend.

2. "Claims" means all claims, damages (including actual, consequential, and punitive), losses, fines, penalties, liens, causes of action, suits, judgments, settlements, and expenses [including court costs, attorney's fees (including attorney's fees in defending

and/or settling a Claim and attorney's fees to collect on this Indemnity), costs of investigation, and expert witnesses] of any nature, kind or description by, through, or of any person or entity.

3. "Defend" means to oppose on behalf of another party a Claim in litigation, arbitration, mediation or other alternative dispute resolution proceeding and to pay all costs associated with the preparation or prosecution of such Defense.

4. "Indemnify" means to protect and hold harmless a party from and against a potential Claim and/or to compensate a party for a Claim actually incurred.

5. "Indemnified Persons" means the Authority, its Port Commissioners, directors, managers, employees and agents.

6. "Lessee Parties" means the Lessee, its agents, contractors, employees, owners, invitees, or licensees.

7. "Waive" means to knowingly and voluntarily relinquish a right and/or to release another party from liability.

B. Subject to the terms of this Section 11.01, Lessee shall Defend and Indemnify the Indemnified Persons from and against all Claims resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the following matters (these Claims being referred to herein as the "Indemnified Claims"):

1. the conduct of Lessee's business on the Leased Premises;

2. Lessee's breach of this lease agreement;

3. any property loss or damage occurring in, on, or about the Leased Premises or relating to the condition, use or occupancy of the Leased Premises;

4. any bodily or personal injury, sickness, disease, and/or death (including the bodily or personal injury and/or death of any employee of an Indemnified Person or a Lessee Party) occurring in, on, or about the Leased Premises or relating to the condition, use of occupancy of the Leased Premises; or

5. any act, omission, willful misconduct, strict liability, breach of warranty, express or implied, or violation of any laws, ordinances, rules, regulations, or codes, now or hereafter existing, of or by any Lessee Party, including the sole, joint, concurrent, or comparative negligence of any Lessee Party in connection with or pertaining to this lease agreement.

C. The Indemnities, Waivers and obligation to Defend in this Section 11.01 shall be enforced to the fullest extent permitted by applicable law for the benefit of the applicable Beneficiary thereof, regardless of any extraordinary shifting of risks, and even if the applicable Claim is caused by the joint, concurrent, or comparative negligence of such Beneficiary, and regardless or whether liability without fault or strict liability is imposed upon or alleged against such Beneficiary; provided, however, that an Indemnity will not be enforced to the extent that a court of competent jurisdiction holds in a final judgment that the applicable Claim against a Beneficiary was caused by the willful misconduct or sole negligence of such Beneficiary.

D. Notwithstanding anything to the contrary contained in this Section 11.01, to the extent an Indemnified Claim arises out of the joint, concurrent, or comparative negligence, causation, responsibility or fault of the Indemnified Persons and the Lessee Parties, then the Lessee's obligation to the Indemnified Persons shall only extend to the percentage of the total responsibility of the Lessee Parties in contributing to such Indemnified Claim.

E. In claims against any Indemnified Person by or for an employee of a Lessee Party, the Lessee's indemnification obligation under this Section 11.01 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Lessee Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. If an action for damages is brought by an injured employee of Lessee, a legal beneficiary, or an insurance carrier against an Indemnified Person liable to pay damages for the injury or death of such employee under Chapter 417 (Third-Party Liability), Texas Labor Code, that results in a judgment against the Indemnified Person or a settlement by the Indemnified Person, Lessee expressly agrees to reimburse and hold harmless the Indemnified Person for the damages based on such judgment or settlement as provided in this Section 11.01.

F. Except as otherwise expressly limited in this Section 11.01, it is the intent of the parties to this lease agreement that all indemnity obligations and liabilities contracted for in this lease agreement be without monetary limit and without regard to the cause or causes thereof (including pre-existing conditions on Authority's Property or as the result of an indemnification agreement with a third party), and will not be limited by damages paid under the Workers' Compensation Act. The indemnity contained in this Section 11.01 applies, without limitation, to any violation of any law, rules or regulations referred to in Section 4.02 in effect during the term of this lease agreement, and any and all matters arising out of any act, omission, event or circumstance existing or occurring during the term of this lease agreement, regardless of whether the act, omission, event or circumstance constituted a violation of any law, rules or regulations referred to in Section 4.02 at the time of its existence or occurrence.

G. If any action or proceeding is brought against an Indemnified Person by reason of any Indemnified Claim described in this Section 11.01, the Indemnified Person

will be represented by its general counsel, or another attorney selected by the Indemnified Person and approved by Lessee, which approval will not be unreasonably withheld.

H. If Lessee should fail or refuse, after written notice to Lessee that an Indemnified Person intends to make a settlement of an Indemnified Claim, to participate in the settlement of such Indemnified Claim, then the Indemnified Person may settle with the claimant without prejudice to the Indemnified Person's indemnity rights set forth herein, and a settlement after such notice to Lessee will constitute a settlement of the proportionate fault, including but not limited to negligence, of both Lessee and the Indemnified Person, which settlement may later be apportioned between Indemnified Person and Lessee.

I. Lessee agrees to support its obligations to Indemnify and Defend the Indemnified Persons by the purchase of insurance, including contractually assumed liability coverage.

J. To the fullest extent provided by this Section 11.01, Lessee hereby Waives all Claims against the Indemnified Persons resulting from, arising out of, or alleged to have arisen out of or resulted from, in whole or in part, any of the Indemnified Claims.

ARTICLE 12
INSURANCE

Section 12.01. Insurance

Without limiting the indemnity obligations or liabilities of Lessee, or its insurers, provided herein, Lessee agrees at all times this lease agreement is in effect to carry and maintain at its sole expense policies of insurance ("the Policies") of the types and in the minimum amounts as follows:

A. "All Risks" of Direct Physical Loss, including Flood, on buildings, improvements and betterments situated on the Leased Premises in an amount sufficient to cover 100% of the Insurable Value of the said buildings, improvements and betterments; and in builder's risk completed value form during substantial construction of improvements (including malicious mischief and vandalism); in amounts sufficient to provide coverage for 100% of the Insurable Value of such improvements. Lessee is responsible for insurance for its personal property on the Leased Premises. "Insurable Value" means replacement cost value.

B. For all its employees engaged in performing work, workers' compensation required by the Texas Workers' Compensation Code, and employer's liability insurance with limits of at least $500,000.00 each employee accident and disease, or such similar insurance which is in accordance with state and federal law applicable to said employees.

C. Commercial General Liability (CGL) coverage with policy limits of at least $1,000,000.00 per occurrence and $2,000,000 general aggregate at the Leased Premises.

D. Business Auto Liability coverage for all owned and non-owned vehicles, with a policy limit of $1,000,000 (Combined Single Limit.)

E. Umbrella liability coverage limits of not less than $5,000,000.00 over and above the underlying primary coverage limits stated in subparagraph B, C and D in this Section.

F. Pollution Legal Liability including cleanup and defense costs for premises and operations including pollution of any body of water with limits of not less than $5,000,000.00 per occurrence.

The minimum insurance protection amounts set forth in the Policies shall be increased from time to time upon request by Authority to an amount, which is commercially reasonable at the time.

Authority shall be furnished, to the attention of Authority's Risk Manager, prior to Lessee taking possession or occupancy of the Leased Premises, as proof of the insurance required of Lessee a certificate or certificates of insurance (and the endorsements required in this paragraph shall be attached to the certificate or certificates of the insurance) describing the Policies, which certificates must be acceptable, in their form and content, to PCCA. Each of the Policies will be endorsed to (a) (except for Workers' Compensation and employer's liability insurance) name Authority, its Port Commissioners, officers, officials, employees and agents as an additional insured (b) provide that it will not be suspended, voided, canceled or reduced in coverage or limits without thirty (30) days' prior written notice to Authority, Attention: Risk Manager, and (c) provide that notwithstanding any language in any policy of insurance held by Authority ("Authority Insurance") to the effect that the Authority Insurance is primary, the policy or policies held by Lessee are primary coverage and the Authority Insurance is non-contributory so that Authority Insurance will not share with the Policies.

In addition the Policies shall be endorsed to provide as follows (or an ISO form endorsement containing the equivalent wording may be used): "Underwriters or the company or companies issuing this policy agree that, if the named insured is required, by written contract, to name any other person, firm or organization as an additional insured on this policy for claims arising out of acts, or the failure to act, by the named insured, then such other person, firm or organization shall automatically be deemed to be an additional insured under this policy without any further action, but only to the extent required under said written contract." Lessee shall deliver to Authority certificates of renewal at least thirty (30) days prior to the expiration date of each of the Policies and copies of new policies at least thirty (30) days prior to terminating any of the Policies. The deductible or self-insured retention for each of the Policies must be stated in the certificate of insurance provided to Authority if either exceeds $50,000.00; and, in such event, Authority may decline to approve this lease agreement without any liability to Lessee. The company writing each of the Policies must possess a current rating with A.M. Best Company of at least A: VI. If Lessee neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Authority may procure such insurance at Lessee's

expense, and Authority is entitled to reimbursement from Lessee for all amounts spent to procure and maintain the insurance, with interest on such expense at a rate of 10% annually from the date Lessee receives Authority's notice of payment until reimbursement.

Section 12.02. Waiver of Subrogation

Lessee waives every claim which arises or may arise in its favor against Authority during the term of this lease or any renewal or extension thereof for any and all claims against it, or for loss of, or damage to, any of its property located within or upon, or constituting a part of, the Leased Premises, covered by applicable insurance policies, to the extent that such claim, loss or damage is covered or recoverable under said insurance policies. Said waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this lease agreement with respect to any loss of or damage to property of the parties hereto. Lessee agrees to immediately give to each insurance company which has issued to it policies of insurance applicable to provisions of this lease agreement written notice of the terms of the waiver set forth in this Section, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver; and Lessee will provide to Authority a copy of said endorsement or endorsements or evidence that such endorsement is not necessary to prevent the invalidation of the insurance coverage by reason of such waiver.

ARTICLE 13
PROPERTY LOSS

Section 13.01. Obligation to Restore

If all or any part of the improvements located on (or constituting a part of) the Leased Premises are destroyed or damaged by any casualty during any term of this lease agreement, Lessee will promptly commence and thereafter prosecute diligently to completion the restoration of the same to the condition in which the destroyed or damaged portion existed prior to the casualty. Lessee will perform such restoration with at least as good workmanship and quality as the improvements being restored and in compliance with the provisions of Article 5 hereof. Notwithstanding the foregoing provisions of this paragraph to the contrary, if all of such improvements are wholly destroyed by any casualty or are so damaged or destroyed that, in Authority's good faith judgment reasonably exercised, it would be uneconomic to cause the same to be restored (and Authority shall give written notice of such determination to Lessee within ninety (90) days after the date casualty occurred), then Lessee shall not be obligated to restore such improvements and this lease agreement shall terminate as of the date of the casualty, and Authority shall be entitled to receive and retain the insurance proceeds for the loss.

If a property loss affecting the Leased Premises occurs, all insurance proceeds arising from policies maintained by Lessee for the damages arising from such casualty shall be distributed and paid directly to Authority, and Authority shall distribute such insurance proceeds to Lessee to the extent necessary to reimburse Lessee for costs incurred by Lessee in restoring

the damaged Leased Premises in satisfaction of this Section 12.01, and any balance of such proceeds remaining after such restoration is complete shall be paid to Lessee within sixty (60) days after the restoration is complete and approved by Authority.

Section 13.02. Damage Near End of Term

If the Leased Premises are damaged to the extent of fifty per cent (50%) or destroyed in whole or in part during the last twenty-four (24) months of the lease term, Lessee shall have the right to terminate this lease agreement and not rebuild the improvements on the Leased Premises, in which event Authority shall be entitled to receive and retain the insurance proceeds from the loss or Lessee will rebuild as provided herein.

If the Port of Corpus Christi or its ship channel are damaged or destroyed in whole or in part to the extent that it is not economically or physically feasible to re-open the same, in Authority's sole judgment, then Authority shall have the option to terminate this lease agreement.

The party electing to terminate this lease agreement shall give notice to the other party of such election within ninety (90) days after the occurrence of such event. If such notice is given, the rights and obligations of the parties shall cease as of the date of such notice, and rent shall be adjusted as of the date of such notice of termination.

Section 13.03. Notice of Damage

Lessee shall immediately notify Authority of any destruction of or damage to the Leased Premises.

ARTICLE 14
CONDEMNATION

Section 14.01. Total Taking

If a total taking of the Leased Premises by condemnation occurs, then this lease agreement shall terminate as of the date the condemning authority takes lawful possession of the Leased Premises, and Authority is entitled to receive and retain the award for the taking of the Leased Premises.

Section 14.02. Partial Taking

If a partial taking of the Leased Premises by condemnation occurs, (a) this lease agreement will continue in effect as to the portion of the Leased Premises not taken, and (b) Lessee must promptly commence and thereafter prosecute diligently to completion the restoration of the remainder of Lessee's improvements located on (or constituting a part of) the Leased Premises to an economically viable unit with at least as good workmanship and quality as

existed prior to the taking. In the event of a partial taking of the Leased Premises, Authority is entitled to receive and retain the award for the portion of the Leased Premises taken. In addition, upon a partial taking, the annual rent payable during the remainder of the term of this lease agreement (after the condemning authority takes lawful possession of the portion taken) shall be reduced proportionally, giving due regard to the relative value of the portion of the Leased Premises taken as compared to the remainder thereof.

Section 14.03. Voluntary Conveyance

Nothing in this article prohibits Authority from voluntarily conveying all or part of the premises to a public utility, agency, or authority under threat of a taking under the power of eminent domain. Any such voluntary conveyance will be treated as a taking within the meaning of this Article.

Section 14.04. N

Texas, any controversy or claim arising out of or related to this lease agreement before a mediator to be agreed upon by Authority and Lessee. Authority and Lessee must agree upon a mediator within fifteen (15) days after a written request for mediation by either party, or either party may request any State District Judge sitting in Nueces County, Texas, to appoint a mediator and such appointment will be final. The mediator will schedule a mediation meeting at a time and place determined by the mediator. Authority and Lessee will each pay one-half of the costs of mediation to the mediator.

ARTICLE 17
GENERAL PROVISIONS

Section 17.01. Compliance

Lessee must comply with all federal, state and local laws, rules or regulations, including Authority's Tariff 100-A, applicable to Lessee's tenancy or operations on the Leased Premises. Lessee must comply with the requirements of Item 669 of Authority's Tariff 100-A to the extent the same apply to Lessee, its agents, servants and employees.

Section 17.02. Inspection

Lessee will permit Authority and Authority's agents, representatives or employees to enter on the Leased Premises for the purpose of inspection to determine whether Lessee is in compliance with the terms of this lease agreement, for purposes of maintaining, repairing or altering the premises, or for the purposes of showing the Leased Premises to prospective lessees, purchasers, mortgagees or beneficiaries under deeds of trust.

In an emergency, Authority, its agents, servants and employees, may use any means to open any gate or door into or on the Leased Premises without any liability for doing so. Entry into the Leased Premises by Authority for any purpose permitted herein shall not constitute a trespass nor an eviction (constructive or otherwise), nor entitle Lessee to any abatement or reduction of rent, nor constitute grounds for any claim by Lessee (and Lessee hereby waives any such claim) for damages for any injury to or interference with Lessee's business, for loss of occupancy or quiet enjoyment or for consequential damages.

Section 17.03. No Partnership

The relationship between Authority and Lessee at all times shall remain solely that of landlord and tenant and not be deemed a partnership or joint venture. This lease agreement is for the sole benefit of Authority and Lessee and no other person, entity or third party unless the benefit to a person, entity or third party is expressly stated in this lease agreement.

Section 17.04. Payments and Notices

All payments, notices, demands or requests from Lessee to Authority shall be given to Authority, Attention: Executive Director, P.O. Box 1541, Corpus Christi, Texas 78403, or at such other address as Authority shall request in writing. All payments, notices, demands or requests from Authority to Lessee shall be given to Lessee, New Elk Coal Company LLC, at 122 W. First Street, Trinidad, CO 81082, or at such other address as Lessee shall request in writing. Any notice required or permitted under this lease agreement must be in writing. Any notice required by this lease agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage paid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received.

Section 17.05. Estoppel Certificate

On request, Lessee will execute an estoppel certificate that states the commencement date and termination date of the lease, describes any rights to extend the term of the lease, lists defaults by Authority and provides any other information reasonably requested.

Section 17.06. Abatement

Lessee's covenant to pay rent and additional rent and Authority's covenants are independent. Except as otherwise provided, Lessee is not entitled to abatement of rent or additional rent for any reason.

Section 17.07. Abandoned Property

Authority may retain, destroy or dispose of any property left on the Leased Premises at the expiration or termination of this lease.

ARTICLE 18
MISCELLANEOUS

Section 18.01. Parties Bound

This agreement binds and inures to the benefit of the parties and their respective legal representatives, heirs, distributees, successors and assigns where assignment is permitted by this lease agreement.

Section 18.02. Applicable Law

This agreement must be construed and its performance enforced under Texas law. Venue of any action arising out of this lease agreement will be in Nueces County, Texas.

Section 18.03. Severability

If any part of this lease agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

Section 18.04. Time of Essence

Time is of the essence with respect to each date or time specified in this lease agreement by which an event is to occur.

Section 18.05. Rights and Remedies Cumulative

The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. All the rights and remedies may be exercised and enforced concurrently or whenever occasion for the exercise arises.

Section 18.06. Attorneys' Fees

In the event Authority or Lessee breach or default upon any of the terms of this lease agreement and the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the reasonable attorneys' fees incurred by the prevailing party.

Section 18.07. Captions

All captions in this lease agreement are for reference and convenience only and shall not modify or affect the provisions of this lease agreement in any manner.

Section 18.08. Public Disclosure

Authority is a governmental authority subject to the requirements of the Texas Open Meetings Act and the Texas Public Information Act (Texas Government Code, chapters 551 and 552), and as such Authority is required to disclose to the public (upon request) this lease agreement and certain other information and documents relating to the consummation of the transactions contemplated hereby. In this regard, Lessee agrees that the disclosure of this lease agreement or any other information or materials related to the consummation of the transactions contemplated hereby to the public by Authority as required by the Texas Open Meetings Act,

Texas Public Information Act or any other law will not expose Authority (or any party acting by, through or under Authority) to any claim, liability or action by Lessee.

Section 18.09. Brokers

Lessee hereby warrants and represents unto Authority that it has not incurred or authorized any brokerage commission, finder's fees or similar payments in connection with this lease agreement, and agrees to defend, indemnify and hold harmless Authority from and against any claim for brokerage commission, finder's fees or similar payment arising by virtue of authorization by, through or under Lessee in connection with this lease agreement.

Section 18.10. Authority

The person executing this lease agreement on behalf of the Lessee personally warrants and represents unto Authority that (a) (if applicable) Lessee is a duly organized and existing legal entity, in good standing in the state of Texas, (b) Lessee has full right and authority to execute, deliver and perform this lease agreement, (c) the person executing this lease agreement on behalf of Lessee was authorized to do so, and (d) upon request of Authority, such person will deliver to Authority satisfactory evidence of his or her authority to execute this lease agreement on behalf of Lessee.

Section 18.11. Recording

Neither this lease agreement (including any exhibit hereto) nor any memorandum shall be recorded without the prior written consent of Authority.

Section 18.12. Interpretation

Both Authority and Lessee and their respective legal counsel have reviewed and have participated in the preparation of this lease agreement. Accordingly, no presumption will apply in favor of either Authority or Lessee in the interpretation of this lease agreement or in the resolution of the ambiguity of any provision hereof.

Section 18.13. *Force Majeure*

In the event either party hereto shall be delayed or hindered in or prevented from the performance required hereunder by reason of *force majeure*, which includes strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts (hereinafter *"force majeure"*), such party shall be excused for the period of time equivalent to the delay caused by such *force majeure*.

Notwithstanding the foregoing, any extension of time for *force majeure* shall be conditioned upon the party seeking an extension of time and delivering written notice of such *force majeure* to the other party within five (5) calendar days of the event causing the *force majeure*, and the maximum period of time which a party may delay any act or performance of work due to *force majeure* shall be sixty (60) days.

Section 18.14. Contractual Relationship

Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against Authority or Lessee.

Section 18.15. Entire Agreement

This lease agreement, including any exhibits, constitutes the parties' final and mutual agreement. There are no written or oral representations or understandings that are not fully expressed in this lease agreement. No change, waiver or discharge is valid unless in a writing that is signed by the party against whom it is sought to be enforced.

IN TESTIMONY WHEREOF, this lease agreement is executed in duplicate originals, either of which shall be deemed to be an original, at Corpus Christi, Texas, on the date first above mentioned.

LEGAL FORM APPROVED
WELDER LESHIN, LLP

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

By: _____
John P. LaRue
Executive Director

"Authority"

NEW ELK COAL COMPANY LLC

By: _____
Name: KENNETH BATES
Title: Manager

"Lessee"

EXHIBIT B

STATE OF TEXAS §
§
COUNTY OF NUECES §

This instrument was acknowledged before me on the 8th day of February, 2011, by JOHN P. LARUE, Executive Director of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of said Authority.

Sherry L. DuBois
NOTARY PUBLIC, STATE OF TEXAS

SHERRY L. DUBOIS
Notary Public
STATE OF TEXAS
My Comm. Exp. 06-25-2011

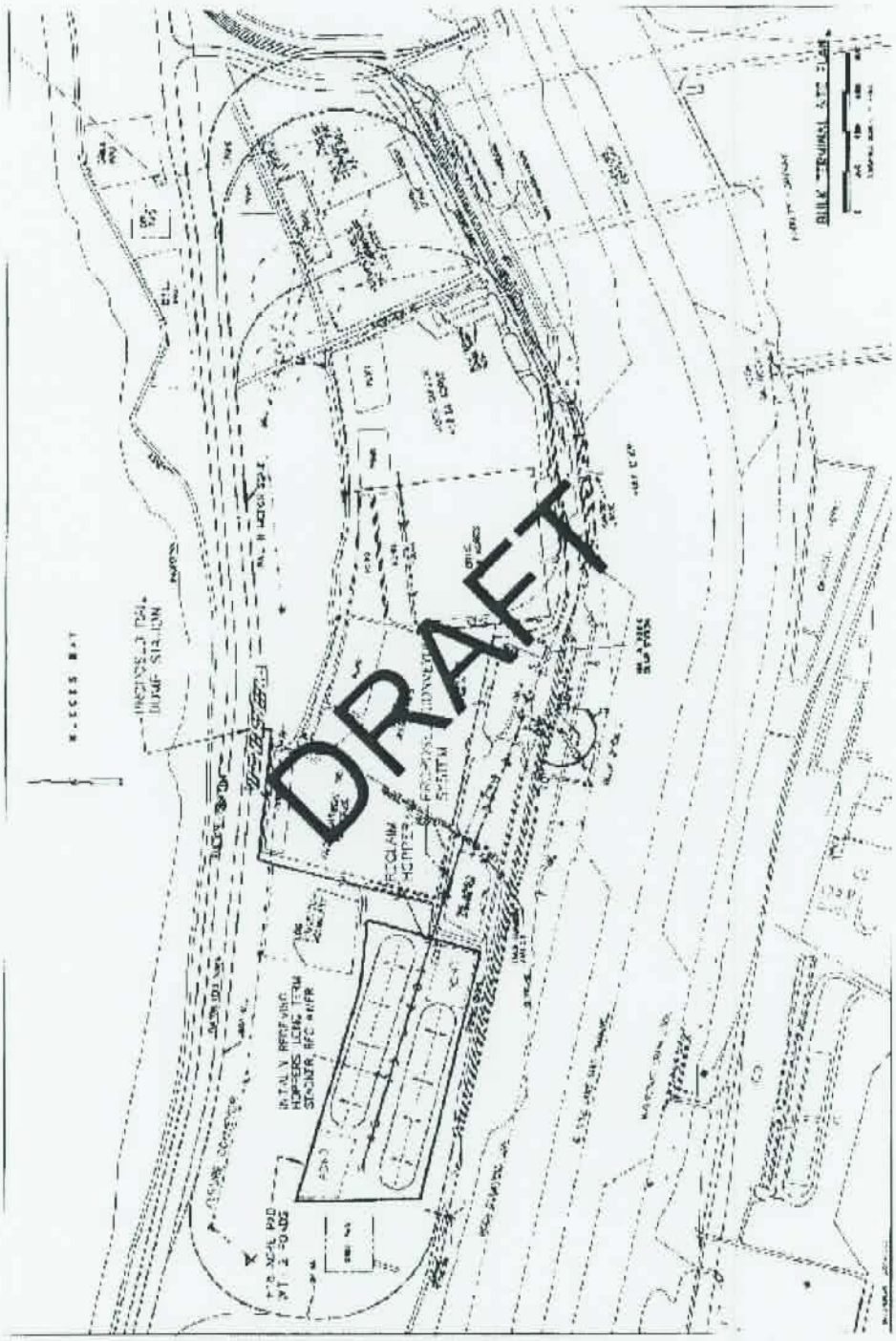
PROVINCE OF ONTARIO
~~STATE OF~~ _____ §
CANADA §
~~COUNTY OF~~ _____ §

This instrument was acknowledged before me on the 24th day of February, 2011, by Kenneth Bates, a Manager of New Elk Coal Company LLC, a Kansas limited liability corporation, on behalf of said corporation.

NOTARY PUBLIC, ~~STATE OF~~ Province of Ontario

Lease Agreement Over One Year
148.14
227606
Lease Agreement Over One Year 08-03-2010

EXHIBIT B



PORT CORPUS CHRISTI

John P. LaRue
EXECUTIVE DIRECTOR

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 15***
Approve a First Amendment to a Lease Agreement
Dated February 8, 2011, with New Elk Coal Company, LLC

Dear Commissioners:

On February 8, 2011, the Port Commission approved a lease of approximately 18 acres of land at the Port's Bulk Terminal to New Elk Coal Company for the development of a coal export pad. At the time the lease was executed, the exact location of the 18 acres had not been finalized. Staff drafted the attached First Amendment of Lease to identify the exact location of the 18-acre pad.

Staff recommends approval of the First Amendment of Lease as drafted. This item is included on the agenda of the January 10, 2012 commission meeting for your consideration and action. Should you have any questions, please call me.

Sincerely,

John P. LaRue
Executive Director

Attachment

FIRST AMENDMENT OF LEASE

STATE OF TEXAS §
§
COUNTY OF NUECES §

This First Amendment of Lease ("Amendment") is made and entered into as of the 10th day of January, 2012 ("Amendment Date"), between Port of Corpus Christi Authority of Nueces County, Texas, a navigation district operating under Article XVI, Section 59 of the Texas Constitution ("Authority"), and New Elk Coal Company, LLC**,** a Limited Liability Corporation ("Lessee"). The Authority and Lessee are sometimes collectively referred to herein as the "Parties".

Recitals

WHEREAS, Authority and Lessee entered into a Lease Agreement dated February 8, 2011 ("Lease"), under which the Authority leased to the Lessee approximately 18 acres of land, more or less, located in Nueces County, Texas; and

WHEREAS, the initial term of the Lease was for a period of five (5) years, beginning February 8, 2011 and ending February 7, 2016; and

WHEREAS, Lessee has asked the Authority to amend the Lease to show the exact location of the Leased Premises at Authority's Bulk Terminal; and

WHEREAS, the Authority is willing to amend the Lease as requested by Lessee on the terms and conditions set forth in this Amendment;

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is acknowledged by both Parties, and in further consideration of the mutual covenants and obligations contained herein, the Parties hereby agree as follows:

1. Effective as of the Amendment Date, Exhibit A of the Lease is deleted and replaced with Exhibit A-1 attached hereto.

2. This Amendment shall be binding on the successors and assigns of the Parties.

3. Except as specifically amended hereby, all terms and conditions of the Lease shall remain in full force and effect. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Lease, the terms and conditions of this Amendment shall control.

[The next page is the signature page]

Executed in duplicate originals effective as of the Amendment Date.

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

By:_____
John P. LaRue
Executive Director

NEW ELK COAL COMPANY, LLC

By:_____

Name:_____

Title:_____

STATE OF TEXAS §
§
COUNTY OF NUECES §

This instrument was acknowledged before me on the 10th day of January 2012 by John P. LaRue, as Executive Director of the Port of Corpus Christi Authority of Nueces County, Texas, on behalf of the Port.

_____
NOTARY PUBLIC, STATE OF TEXAS

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____ 2012, by _____, as _____ of New Elk Coal Company, LLC on behalf of said company.

_____
NOTARY PUBLIC, STATE OF _____

EXHIBIT A-1

New Elk Coal Company LLC

Metes and Bounds Description
of an
18-Acre Tract of Land

BEING an 18-acre tract of land out of Nueces County Navigation District (N.C.N.D.) No. 1, Survey A-2677, also being that 2,694.93-acre tract (Patent 84) conveyed from State of Texas to N.C.N.D. No. 1 as recorded in Volume 192, Page 579 of Deed Records of Nueces County, Texas. Said 18 acres being more particularly described as follows:

COMMENCING at a brass disc monument stamped "PCCA Ditch (1998)" having state plane coordinates of X = 1316459.92 and Y = 17188367.7;

THENCE, N. 61° 53' 17" E. for a distance of 32.05' to POINT OF BEGINNING (P.O.B.);

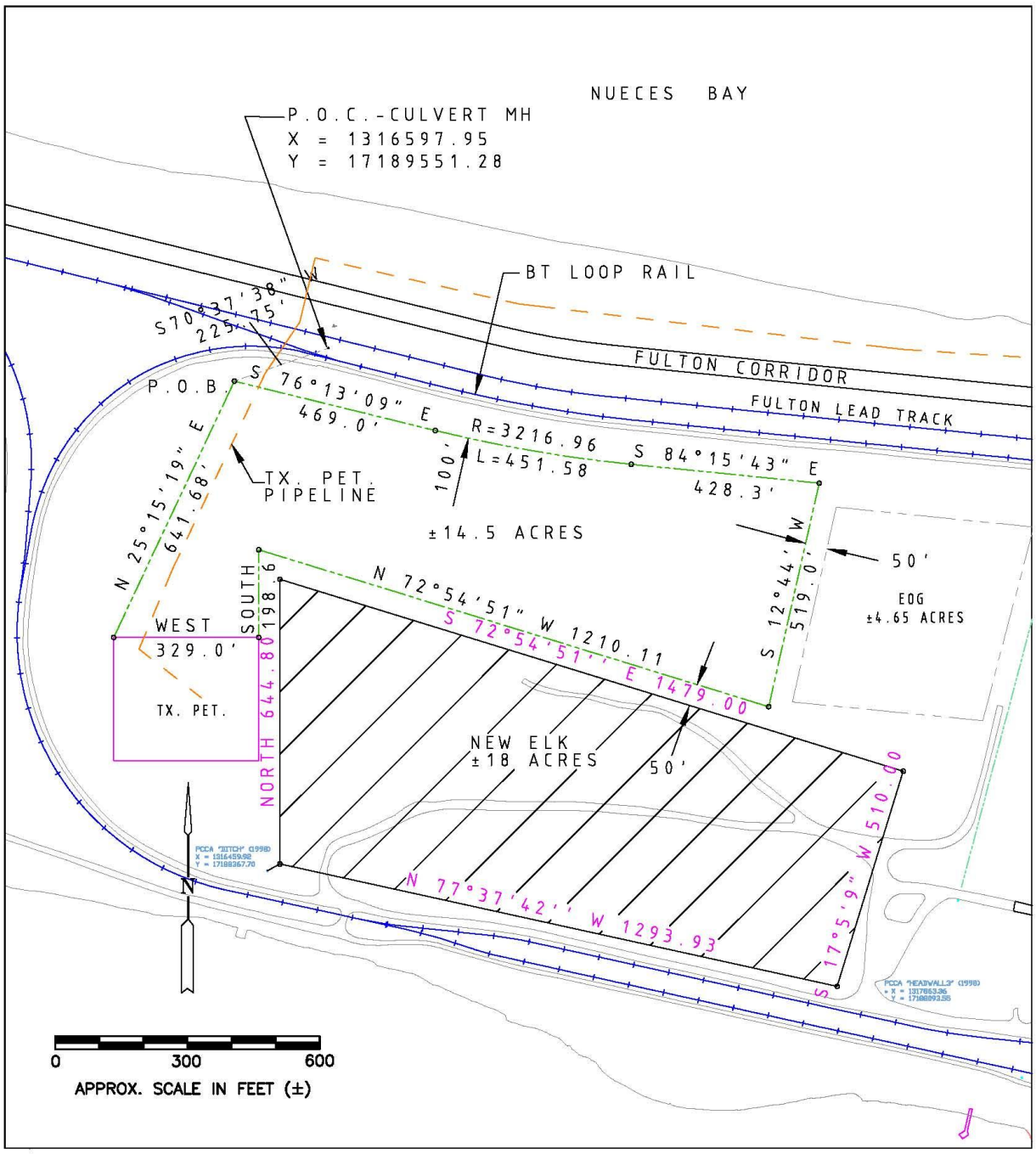
THENCE, north for a distance of 644.8' to the north corner of said 18-acre tract;

THENCE, S. 72° 54' 51" E. for a distance of 1,479.0';

THENCE, S. 17° 5' 9" W. for a distance of 510.0' to the south corner of said 18-acre tract.

THENCE, N. 77° 37' 42" W. to the P.O.B. for a distance of 1,293.93' containing 18 acres, more or less.

EXHIBIT A-1


NUECES BAY
P.O.C.-CULVERT MH
X = 1316597.95
Y = 17189551.28
BT LOOP RAIL
FULTON CORRIDOR
FULTON LEAD TRACK
S70°37'38"W
225.75'
P.O.B.
S 76°13'09" E
469.0'
R=3216.96
L=451.58
S 84°15'43" E
428.3'
100'
TX. PET. PIPELINE
N 25°15'19" E
641.68'
±14.5 ACRES
S 12°44'W
519.0'
50'
EOG
±4.65 ACRES
WEST
329.0'
SOUTH
198.6'
N 72°54'51" W 1210.11
S 72°54'51" E 1479.00
TX. PET.
NORTH 644.80'
NEW ELK
±18 ACRES
50'
N 77°37'42" W 1293.93
S 17°5'9" W 510.00
N
0
300
600
APPROX. SCALE IN FEET (±)

John P. LaRue
EXECUTIVE DIRECTOR

PORT CORPUS CHRISTI

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 16-A***
Approve a Professional Services Purchase Order with RVE Inc. for Design and Project Management for Security Grant 8

Dear Commissioners:

In 2008, the U.S. Department of Homeland Security awarded $6,845,728 in federal funding to the Port under the eighth round of security grants. The original grant monies were designated for the following security improvements:

1. Patrol Boat	$ 309,000
2. Security Equipment Upkeep	$ 328,158
3. IDF-4 Relocation	$ 110,970
4. TWIC/Biometric Card Readers	$ 95,589
5. North Bank Open Storage Fencing and Lighting	$1,667,760
6. Access Control at Texaco Road	$ 380,495
7. Double Joint Yard Fencing and Lighting	$ 756,849
8. North Cargo Storage Lighting and Cameras	$1,217,074
9. Fiber Loop from BMD to Viola	$1,979,833

Including the PCCA's 25% matching funds ($2,215,269), the total amount for this grant as originally approved was $9,060,997.

Subsequent to receiving the grant, staff reviewed the list of projects and determined that an additional patrol boat and fencing and lighting at the Double-Joint Yard were unnecessary and the relocation of the IDF-4 had already been accomplished by other funding means. Staff sought and received approval from Homeland Security to reallocate the funds designated for these three projects (along with unused funding from the fiber loop project) to a new project—lighting for the Nueces River Rail Yard.

The Port has retained RVE Inc. for the past nine years as the design engineer and project manager for all of the Port's federally funded security projects. This arrangement has provided good value to the Port. Therefore, staff recommends that we continue with the services of RVE Inc. for design and project management services for the fiber loop project (Project 9) and lighting for the Nueces River Rail Yard (new Project 10). Based on an estimated number of hours and costs, the following cost estimate is within the amount awarded by the grant for the remaining work on Project 9 and new work on Project 10 (see attached Grant 8 Fee Proposal Spreadsheet).

Basic Design Engineering	$105,962
Project Management	39,742
Construction Inspection	39,742
Other Consultants/Costs	13,244
Total Estimated Cost	$198,690

Staff recommends approval of a professional services purchase order with RVE Inc. in an amount not to exceed $210,000 for the estimated costs for the fiber loop and Nueces River Rail Yard lighting projects and any additional costs that may be incurred for these two projects. This item is included on the consent agenda for the January 10, 2012 commission meeting. If you have any questions regarding the above costs, please call me.

Sincerely,

John P. LaRue
Executive Director

Attachment

	Project 1 - Patrol Boat	Project 3 - IDF 4 Relocation	REVISED Project 9 - Fiber Loop	Less Previous Project 9 Award in April 2011	Project 7 - Double Joint Yard	NEW Project 10 - Nueces River Rail Yard Lighting	TOTALS
Grant Budget							
Basic Services (8%)	$ -	$ -	$ 216,100	$ (178,288)	$ -	$ 68,150	$ 105,962
Project Management (3%)	$ -	$ -	$ 81,040	$ (66,858)	$ -	$ 25,560	$ 39,742
Project Inspection (3%)	$ -	$ -	$ 81,040	$ (66,858)	$ -	$ 25,560	$ 39,742
Miscellaneous Consultants/Other Costs (1%)	$ -	$ -	$ 27,010	$ (22,286)	$ -	$ 8,520	$ 13,244
Grant Engineering Budget	**$ -**	**$ -**	**$ 405,190**	**$ (334,290)**	**$ -**	**$ 127,790**	**$ 198,690**
Grant Construction Budget	**Reallocated to Project 9**	**Reallocated to Project 9**	**$ 2,701,351**	**$ (2,228,601)**	**Reallocated to New Project 10**	**$ 851,950**	**$ 1,324,700**
Grant Engineering Fee %	0%	0%	15%		0%	15%	15%
Total Budget	**$ -**	**$ -**	**$ 3,106,541**		**$ -**	**$ 979,740**	**$ 1,523,390**
Grant Amount (75%)	$ -	$ -	$ 2,329,906		$ -	$ 734,805	$ 1,142,543
PCCA Match (25%)	$ -	$ -	$ 776,635		$ -	$ 244,935	$ 380,848
Engineering Fee Proposal							
Basic Services	N/A	$ -	$ 216,100	$ (178,288)	$ -	$ 68,150	$ 105,962
Project Management	N/A	$ -	$ 81,040	$ (66,858)	$ -	$ 25,560	$ 39,742
Project Inspection	N/A	$ -	$ 81,040	$ (66,858)	$ -	$ 25,560	$ 39,742
Miscellaneous Consultants/Other Costs	N/A	$ -	$ 27,010	$ (22,286)	$ -	$ 8,520	$ 13,244
Proposed Engineering Fee	**$ -**	**$ -**	**$ 405,190**	**$ (334,290)**	**$ -**	**$ 127,790**	**$ 198,690**
Proposed Engineering Fee %	0%	0%	15%		0%	15%	15%

John P. LaRue
EXECUTIVE DIRECTOR

PORT CORPUS CHRISTI

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 16-B***
Approve a Professional Services Purchase Order with RVE Inc. for Design and Project Management for Security Grant 9

Dear Commissioners:

In 2009, the U.S. Department of Homeland Security approved funds in the amount of $6,643,563 under the ninth round of federal security grants for the following security improvements:

1. Boat Dock	$ 404,413
2. Emergency Power	$ 366,563
3. Security Equipment Upkeep	$ 439,159
4. Avenue F Motorized Gates	$ 193,583
5. North/South Sigmor Gates	$ 503,020
6. Permian Storage Yard Fencing, Lighting and Cameras	$1,360,534
7. North Shoreline Cameras	$2,172,835
8. NSI Access Control Phase B	$1,203,356

Including the PCCA's 25% matching funds ($2,214,521), the total amount for this grant is $8,858,084.

Over the past nine years, the Port has retained the local engineering firm of RVE Inc. to provide design and project management services for all of the Port's security projects. Normally, the Port retains outside engineering firms for design work and performs the project management duties in-house. However, since costs for Port personnel are not reimbursable under these federal grants, we have used RVE to provide the project management services as well. This arrangement has provided good value to the Port. RVE works well with the various Port departments, the U.S. Coast Guard, and local industry.

Staff has finalized the scope of work for Projects 1, 4, and 5 and recommends that we continue working with RVE Inc. on these projects. Based on an estimated number of hours and costs, the following cost estimates are within the amount awarded by the grant (see attached Grant 8 Fee Proposal Spreadsheet):

Basic Design Engineering	$102,140
Project Management	38,300
Construction Inspection	38,300
Other Consultants/Costs	12,760
Total Estimated Cost	$191,500

Staff recommends approval of a professional services purchase order with RVE Inc. in an amount not to exceed $200,000 for the estimated project costs listed above and any additional costs that may be incurred for these projects. This item is included on the consent agenda for the January 10, 2012 commission meeting. If you have any questions, please call me at 885-6189.

Sincerely,

John P. LaRue
Executive Director

Attachment

	Project 1 - Boat Launch, Dock and Lift	Project 4 - Ave F Motorized Gates	Project 5 - North/South Sigmor Gates	TOTALS
Grant Budget				
Basic Services (8%)	$ 37,520	$ 17,960	$ 46,660	$ 102,140
Project Management (3%)	$ 14,070	$ 6,730	$ 17,500	$ 38,300
Project Inspection (3%)	$ 14,070	$ 6,730	$ 17,500	$ 38,300
Miscellaneous Consultants/Other Costs (1%)	$ 4,690	$ 2,240	$ 5,830	$ 12,760
Grant Engineering Budget	**$ 70,350**	**$ 33,660**	**$ 87,490**	**$ 191,500**
Grant Construction Budget	**$ 469,000**	**$ 224,450**	**$ 583,203**	**$ 1,276,653**
Grant Engineering Fee %	15%	15%	15%	15%
Total Budget	**$ 539,350**	**$ 258,110**	**$ 670,693**	**$ 1,468,153**
Grant Amount (75%)	$ 404,513	$ 193,583	$ 503,020	$ 1,101,115
PCCA Match (25%)	$ 134,837	$ 64,528	$ 167,673	$ 367,038
Engineering Fee Proposal				
Basic Services	$ 37,520	$ 17,960	$ 46,660	$ 102,140
Project Management	$ 14,070	$ 6,730	$ 17,500	$ 38,300
Project Inspection	$ 14,070	$ 6,730	$ 17,500	$ 38,300
Miscellaneous Consultants/Other Costs	$ 4,690	$ 2,240	$ 5,830	$ 12,760
Proposed Engineering Fee	**$ 70,350**	**$ 33,660**	**$ 87,490**	**$ 191,500**
Proposed Engineering Fee %	15%	15%	15%	15%

EXECUTIVE DIRECTOR'S REPORT

For the month of January 2012

BUSINESS DEVELOPMENT

- Worked on Tariff 1-A as well as 100-A updating them according with the PPI allowed increases as well as communicating same to the public/clients.
- Second large oil rig was successfully shipped to the Middle East. The third one will be handled in first week of January. And five more will be handled/shipped starting second quarter 2012.
- Met with Consulate officials in Houston in preparation for marketing/business activities to take place in 2012. That is, PCC will be meeting with prospect exporters/importers in conjunction with the chambers of commerce from Italy, Germany and Turkey.
- Received confirmation on a new European wind entity/developer to utilized CC as a discharging port for their cargoes. Over dimensional wind blades are expected i.e. larger than the ones now handled.
- Proppent cargo shipments were not as strong as in November and this allowed us to reduce the crowded space in the warehouses.
- Met with shipping lines handling wind components and confirmed larger volumes arriving to CC from early 2012.
- Frac sand operations/transloading continue arriving at an increased pace via rail.
- Met with Freight Forwarders / Logistics providers / Wind developers in Houston and Chicago pursuing additional business for 2012.
- Met with important Inland Port from Central Mexico who's seeking to start a rail-logistics transport of goods-cargo to/from PCC.

COMMUNICATIONS

Events Attended/Coordinated:

- Mastermind Group Meetings
- Regional Public Information Officers/Media Partners Meeting
- Port Wellness Luncheon
- PICC Annual Media Reception
- CCVB Board meeting
- Hispanic Chamber Christmas Open House
- American Diabetes Association Board meeting
- Volunteer Council Board Meeting
- Lighting of the Bridge
- Annual Agent/Stevedore Christmas Thank You Reception

Projects Worked:

- Budget 2012 preparations
- Up-Coming Newsletters
- A Tree For All, December 1st
- Adopted School Winter Holiday Visit with Santa, December 7th & 8th
- A World for Children Winter Holiday Sponsorship
- Food Bank Can Drive Kick Off Event
- Toys For Tots Kick Off Event
- Adopt An Angel (State School Event)
- Needs for Global Ports Conference
- Annual Agents/Stevedore's Christmas Reception

Multi-media Projects:

- Social Media
  - Continuing research for the launch of the Port Corpus Christi Social Media Campaign
  - Design of preliminary layout for Facebook "welcome" page and "wall" page
- Photography
  - A Tree For All
  - Agents/Stevedores Reception
  - Evans Elementary Christmas w/Pocca and Santa
  - Menger Elementary Christmas w/Pocca and Santa
  - Ingleside Primary Christmas w/Pocca and Santa
  - Delivery of gifts to "A World for Children"
  - State Assisted Living Facility Christmas
- Public Relations
  - Compilation and distribution of photographs for participants of "A Tree For All"
  - Sharing of photos w/Evans Elementary
  - Sharing of photos w/"A World for Children"
  - Compilation of stories and photos for Our Port community newsletter

- Press Releases
  - Ongoing update of distribution list database
  - Distributed Press Releases for:
- A Tree for All
- Schools Christmas Celebration
- State Assisted Living Facility Christmas Celebration
- Employee support of A World For Children
- Marketing
  - Research and compilation of "meta" keywords and descriptions for SEO (Search Engine Optimization) of http://portofcorpuschristi.com
  - Social Media
  - Implementation of an encyclopedia style entry for Port Corpus Christi on Wikipedia.com
  - Updating of "general port presentation"
  - Compilation of stories and photos for Our Port Community newsletter

December Media Coverage:

12.01.2011	Break Bulk	Port Corpus Christi Gives Trees to 200
12.05.2011	The Republic	New $2.2M Look for Corpus Christi's Harbor Bridge
12.03.2011	Caller Times	Official Harbor Bridge Lighting Sunday
12.05.2011	Valley Morning Star	New Look for Corpus Christ's Harbor Bridge
12.05.2011	i69TexasAlliance.com	Celebration Marks I-69 Signs Now Up in Corpus Christi & Robstown
12.2011	Am Journal of Trans.	Coming to a port near you: a wind farm
12.06.2011	Caller Times	Port of CC Ex Dir discusses industry issues at Gulf Summit in Houston
12.07.2011	Caller Times	Photo, Mike Carrell shakes hands with Karl Rove
12.12.2011	Reuters	TexStar opens Eagle Ford pipeline season
12.13.2011	Caller Times	Port of CC budget features raises, tariff increase
12.13.2011	Caller Times	Ingleside City Council approves hefty tax incentives for redeveloper of former Navy base
12.14.2011	Caller Times	Canyon ready to complete down payment for former NSI
12.14.2011	Caller Times	Berlanga kept on as Port of CC lobbyist
12.16.2011	XE – Currency & Forex News	CC sees crude exports 80,000 bpd by 2015
12.20.2011	Reuters	Magellan, Copano to build Eagle Ford Condensate Line
12.21.2011	Caller Times	Eagle Ford Shale's developing resources bring terminal pipeline

Marketing Update:

We are working to set the media plan for 2012. Our focus will remain on diversifying cargo in bulk and breakbulk as well as promoting our outstanding services such as vessel-to-rail discharge and heavy lift capabilities. We will be targeting some new online resources such as America Economia and continuing our relationships with Central America Data and BNAmericas.com. We are also working with International Transport Journal, which publishes in three languages to reach its target audience. We feel this coming year will have strong placements and reach a wide audience.

Jobs Working:

- Port 2012 Media Planning
- MyPort December Newsletter
- FTZ Brochure Updates
- Safety Poster
- Christmas e-Card
- Tree for All Banner and Invite

Ad Placements - December 2011

- **Publication/Media Editorial/ Ad**
  - *American Journal of Trans.* NITL Conference Port of the Lone Star State
  - *Wind Systems Magazine* Buyer's Guide Big Components? No problem.
  - *Wind Today* 4th Quarter Big Components? No problem.
  - Central America Data Rotating Banner Desde aqui

GOVERNMENT AFFAIRS

During December 2011, Government Affairs promoted and protected port and regional interests at the local, state and federal levels of government.

LOCAL

- Attended PICC monthly committee meeting**.**

STATE

- Coordinated meeting for the I-69 Summit held at the Ortiz Center, meeting was hosted by Port, over 75 transportation stakeholders/leaders were in attendance.
- Monitoring interim charges/hearings that might impact the port.

FEDERAL

- USDOT TIGER 3 grants were announced in December. Unfortunately, our rail project for $21 million was not selected, no Texas ports were selected for funding; only two transit projects were awarded grant funds in Texas.
- Congress reached a deal on the FY 2012 appropriations that will fully fund the government through the end of FY2012; included in the Corps of Engineers budget is $5.8 million for operations and maintenance of our Corpus Christi Ship Channel.
- Working with congressional offices and consultants to monitor issues affecting the port.

BBC

MEMORANDUM

To: Nelda Olivo

From: Hugo Berlanga

Re: December Activity Report

Date: January 3, 2012

Below, please find an update on issues of interest to the Port. Also, please find a brief summary of those activities conducted by Berlanga Business Consultants on behalf of the Port:

In election news, Republican John Raney won the runoff election for House District 14. Raney won the election with 58 percent of the vote and will serve the remaining term of retiring Representative Fred Brown.

Former State Representative Delwin Jones (R-Lubbock) filed to run for House District 83. Jones held the seat until last year when he was defeated. Also seeking their former seat is Tommy Merritt. Merritt will run for House District 7 and face incumbent Rep. David Simpson.

House Speaker Joe Straus (R-San Antonio) will face a challenger in the republican primary. Straus will face small business owner Matt Beebe.

Rep. Geanie Morrison (R-Victoria) announced she will not seek re-election. Morrison was paired with Rep. Todd Hunter in the new redistricting map.

In the race for U.S. Senate, Retired Lieutenant General Ricardo Sanchez announced he will not file for the 2012 Democratic Party nomination. With Sanchez exiting the race, former State Representative Paul Sadler announced his candidacy for the seat. The seat is vacant due to the retirement of Senator Kay Bailey Hutchison.

Another incumbent facing a challenger is Rep. Ryan Guillen (D-Duval). Guillen will face Webb county commissioner Jerry Garza.

Speaker Straus announced the appointments of Rep. Harold Dutton (D-Houston) and Rep. Walter Price (R-Amarillo) to the Sunset Advisory Commission. Dutton and Price replace Reps. Linda Harper-Brown (R-Irving) and Larry Taylor (R-Friendswood).

Speaker Straus also appointed Paul Hobby to the Texas Ethics Commission. Hobby, a familiar name in Texas politics is the son of former Lieutenant Governor Bill Hobby. Hobby is chairman

of the Houston Branch of the Federal Reserve Bank in Dallas and a trustee for Baylor College of Medicine.

The comptroller reports that November sales tax collections are up 12.2 percent. The comptroller's office predicts limited job growth in the next biennium. The comptroller also released an economic update, estimating the state to collect $1.6 billion more than was budgeted for 2012-2013.

The Texas Workforce Commission reports Texas added 20,800 jobs in November. The unemployment rate in Texas dropped to 8.1 percent, down .3 percent from the previous month.

In the ever confusing and changing matter of redistricting, the U.S. Supreme Court stayed all drawn maps, meaning there are currently no new legislative or congressional districts in Texas. None of the drawn maps have been declared illegal and none have been declared legal. The court will hear the preclearance case in mid-January. In the meantime, Republicans and Democrats have agreed on a unified April 3rd primary date. If this date holds, runoff elections would be held on June 5th. The agreed upon date still needs approval by the federal judicial panel in San Antonio.

- Attended Corpus Christi Chamber of Commerce Luncheon with guest speaker, Karl Rove on December 8, 2011.
- Attended Christmas Luncheon hosted by Al Jones on December 15, 2011.
- BBC will continue to work with Port staff to coordinate all legislative lobbying efforts;
- BBC will continue communication with the members and staff of Senate IGR, Senate Natural Resources, Senate State Affairs, the Lt. Governor's office and House Transportation & Speaker's Office;
- BBC will continue to send notices regarding meetings and articles of interest to the Port via fax and/or e-mail.

BORSKI ASSOCIATES, LLC

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MEMO
To: Port of Corpus Christi
From: Borski Associates
Date: January 3, 2012
Re: Monthly Report

TIGER Grants

The US Department of Transportation announced awards for the TIGER grant program on December 15th. Of the 848 project applications received, USDOT selected 46 projects that will receive a total of $511 million.

Most of the funding (48 percent) was awarded to road and bridge projects. Approximately, $60 million (12 percent) will assist port projects and 10 percent of the funding will go to freight rail projects. Three projects appear similar to POCCA, including:

- the Port of New Orleans, which received $16.7 million to complete a $27 million project that will build a new 12-acre freight rail intermodal terminal and a 4-acre storage yard that is used for ultra-heavy project cargoes;
- the Port of Long Beach, which received $17 million to complete a $64 million project to improve the lead tracks to two rail yards and relieve a chokepoint where a large portion of the cargo transits enters or exits the port property. It also adds a third mainline track on port property, extends rail staging areas for faster loading and unloading of long trains, and improves rail utilities; and
- the Port of Jacksonville, which received $10 million to complete a $45 million project to build an Intermodal Container Transfer Facility (ICTF) that will be used by CSX railroad. The ICTF will include a five-track rail yard, two wide-span electric cranes, and a paved area for stacking containers.

We have recommended scheduling a meeting or conference call with USDOT to review the application, identify its strengths and weaknesses, and discuss potential improvements for a new application. The TIGER program received $500 million from Congress in the FY12 fiscal year and we anticipate the application process to begin as early as spring. We will coordinate with POCCA staff and USDOT to arrange this meeting.

FY12 Budget and Appropriations

Despite last minute maneuverings, House and Senate leaders agreed to pass an end of the year "megabus" appropriations bill, composed of 9 separate appropriations bills that Congress had been previously unable to finalize. In general, the bill – and its predecessor "minibus" in November – represented a rare bipartisan effort to complete the work of governing despite the polarized atmosphere on Capitol Hill. The House passed the bill by a vote of 296-121, while the Senate passed it 67-32.

Army Corps funding for construction was cut slightly but received nearly $1.7 billion. Operations and Maintenance activities received a modest increase to $2.4 billion, including $5.8 million for the Corpus Christi Ship Channel.

CASSIDY & ASSOCIATES

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Firm Client: Port of Corpus Christi Authority, Texas

Primary Client Team: Barry Rhoads, Steven McKnight, James Lofton, and Andrew Forbes

Services Period: December 1-31, 2011

Summary of Services on behalf of Port of Corpus Christi Authority, Texas:

- Substantive consulting on federal government issues on behalf of PCCA
  - Researched Department of Interior reorganization and responsibility for offshore oil monitoring and regulation
  - Made initial contacts with Department of Interior officials re potential use of campus section of former Naval Station Ingleside and conferred with Port about the status of the sale of property to Canyon Group
  - Reported on Transportation Investment Generating Economic Recovery [TIGER 3] award selection
  - Worked on issues related to Army Corps of Engineers position on eligibility for future funding of Corpus Christi Ship Channel project elements
  - Edited Port's draft letter to Corps of Engineers re same

- Legislative Liaison and Monitoring
  - Conferred with Port and Senate staff about rescission of unused portion of Corps of Engineers FY11 appropriation for La Quinta Channel expansion
  - Drafted information about current Corps of Engineers issues for Congressional staff
  - Discussed POWER Act with Port and reported Port's position to Congressional representative

- Client Contact and Team Coordination
  - Coordinated matters related to contract renewal
  - Engaged in regular telephone and e-mail contact on PCCA matters with Executive Director John LaRue , Government Relations Manager Nelda Olivo, and Manager of Channel Development David Krams
  - Reviewed news media coverage on new economic development at Port and other PCCA activities, discussed same with PCCA representatives

OPERATIONS

POLICE DEPT

In order to comply with the federally mandated annual audit of the Port Facility Security Plan (33CFR105.415), the Port has entered into a Professional Services Agreement with "TSA LLC, President Jeff Brown. Mr. Brown will tentatively complete the audit during the week of January 23rd, 2012. The cost for this service will be $6,100.00."

HARBORMASTER OFFICE

Ship Arrivals

December 2011			December 2010		
Tankers	**Freighters**	**YTD ships**	**Tankers**	**Freighters**	**2010 YTD**
78	**36**	**1390**	**98**	**41**	**1410**

Barge Arrivals

December 2011			December 2010		
Tank barges	**Freight barges**	**YTD Barges**	**Tank barges**	**Freight barges**	**2010 YTD**
279	**30**	**3729**	**328**	**16**	**4359**

Shifting

December 2011		December 2010	
Tankers - 6	**Freighters - 2**	**Tankers - 17**	**Freighters - 9**
Tank barges - 902	**Freight Barges - 39**	**Tank barges - 948**	**Freight Barges - 31**

	December 2011	December 2010
Average daily ship arrivals	**3.68**	**4.48**
Average daily Barge arrivals	**9.97**	**11.10**

Channel disruptions

December 2011

There were 121.42 hours of channel disruption. 47.0 hours due to fog, 74.42 hours high winds for one vessel inbound for Helix. A total of 8 inbound and 8 outbound were delayed during these disruptions.

December 2010

In December 2010 there was 40.4 hours channel disruption. There were 16.88 hours of one way traffic for offshore rig movements, 19.5 hours due to fog and 4 hours beam restriction ADM and Citgo 1. A total of 11 inbound and 5 out bounds were delayed during these disruptions.

BULK TERMINAL

- Projects currently working:
  - Bulk Terminal rail improvements
  - Gantry upgrade
  - Working with Wood Chip and Bio Mass exporters
  - Working with customers on test shipments of coal

- Current Activity:
  - Railcars:
    Loaded rail cars: 252 cars – 24,434.64 Short Ton pet coke

  - Bulk Dock #1:
    5,516.72 Short Tons Rutile unloaded
    54774.24 Short Tons Barite unloaded

  - Bulk Dock #2:
    263,659.03 Short Tons Pet Coke loaded

  - Pads
    129,820.08 Short Tons pet coke

SAFETY & TRAINING

Safety Committee:

- Discussed the recent Port vehicle accidents. Discussed ideas for preventing backing incidents. One employee attended a Driver's Safety class in accordance with Port policy.
- The Committee has selected a Port Safety Poster/Logo. The final design will be provided to the Director of Operations and Executive Director for approval.

Safety:

- AED/CPR training is scheduled for the Ortiz Center employees for January 24th.
- Currently reviewing quotes for new AEDs. A recommendation will be given to the Director of Operations in January.
- Annual inspections for all fixed fire extinguishers have been completed. Inspections continue on mobile assets.
- Received safety audit results from the independent consultant hired by the Director of Operations. Currently working on items recommended in the audit.

Insurance:

- Completed updating the Statement of Values (SOV) for port property assets. Upon review by the Director of Operations the SOV will be sent to the brokers so that an initial quote can be obtained for the upcoming property insurance renewal. The insurance is due to be renewed April 1st. Staff will provide the Commission their recommendations at the February or March Commission meeting.
- Worked on various insurance issues throughout the month.

EMS:

- Conducted the seventh Internal Auditor's study session on 21 December in accordance with our Corrective Action Plan.
- Arranged for an external training to come in next year for a 3 day internal auditor training. This is in accordance with our EMS procedure. Training will is scheduled for the end of February.
- Training for the new Lead Auditor will continues.

Port Damage Claims:

- Awaiting payment on CD 9 damage in the amount of $1,283.22.

MAINTENANCE

- Had 2 Supervisors attend Supervising in the Millennium
- Had 2 personnel attend Remedial Defensive Driving class
- Assisted TXDOT and the City with the lighting of the Harbor Bridge project.
- Procured a blood pressure monitor for the Wellness Program and installed it in the Admin Bldg.
- Conducted major repairs to the sanitary sewer lift station under CD9/10.
- Reviewed the Statement of Values for insurance company.
- Reprogrammed the refrigerator to cycle during the evening hours vice early morning.
- Opened the new Guard Shack at Viola and worked out minor problems.
- Repaired the water heater in the Ortiz Center.
- More leakage in Ortiz water heater required complete replacement.
- Ordered an infra red camera to monitor electrical overheating and general heat loss in buildings etc.
- Repaired damaged over head door at bldg 27 warehouse.
- Completed quarterly vehicle emission testing.
- All Fire Extinguishers have been checked, repaired and replaced as necessary.
- Started work on renovation of 2 offices in Admin bldg for Tom Moore and Alex Benavides.
- Provided assistance to Engineering Department contractor in pipe removal.

FOREIGN TRADE ZONE

- FTZ Manager attended the Gulf Coast Subzones Forum in Houston on Thursday, December 8. Customs attended and provided updates on various procedures and regulations.

- A meeting with local Customs and zone Operators was held on Friday, December 9, 2011. Customs presented information on the Automated Commercial Environment (ACE) system. The ACE system is the United States' commercial trade processing system. Customs also updated Operators on zone operation procedures and advised them of recent cargo processing issues. Zone operators were also updated on the status proposed changes to FTZ and Customs regulations.

- FTZ Manager continues training and preparing Operators for the new online program for the reporting annual FTZ activity on FTZ Information system. This will be an on-going process as needed throughout the report preparation period.

- FTZ Manager is working on a minor boundary modification of the general purpose zone for company interested in FTZ status. We continue to provide information to several companies interested in FTZ and work with an existing client scheduled to bring additional cargo into FTZ.

ENGINEERING SERVICES

As of December 31, 2011, the Port of Corpus Christi Authority Department of Engineering Services had completed 34 projects and has 65 projects in progress. These projects consist of 46 Capital, 28 Maintenance, and 25 Professional Service projects. During December, $1,076,000 was invoiced for on-going projects. To date this year approximately $33,498,000 has been invoiced for work performed, most notably the unbudgeted La Quinta Channel cost share contribution. Below is a table detailing the budget amount of the "to date" cost, for the capital, maintenance and professional services projects and a forecast for yearend expenditures. The final year end numbers will be reported next month, when all invoicing has been submitted.

Engineering Services December 2011 Report				
Project Type	**No. of Projects**	**2011 Budget Amount**	**Expended To Date**	**End of Year Forecast**
Capital	87	$23,787,210	$28,422,000	$29,342,000
Maintenance	35	$2,580,000	$3,248,000	$3,463,000
Professional Services	36	$800,000	$1,822,000	$1,894,000
Total	**158**	**$27,167,210**	**$32,492,000**	**$34,681,000**

The status of the following listed projects currently in progress is provided for your information:

CAPITAL PROJECTS

Security Grant Improvements

Grant Seven: Guard station and inspection canopy have been erected at the Northside Gate Project on Ave F.

Grant Eight: The design work is underway on the lighting for the north bank and north side storage yards. This project is out for bid. Bids open January 24, 2012.

Grant Nine: With commission approval, design work will begin on two of the eight Port projects. Refer to commission letter for details.

Grant Ten: Funding has been released for three of the four projects.

Grant Eleven: The investment justifications have been submitted to the local AMSC for consideration.

Gangway Ramp and Hoist Foundations at Oil Docks 4, 7, and 11 (08-001A)

Initial project will be at Oil Dock 11. Design will include hoist foundation(s) and support for a new gangway. Govind Development continue to work developing design drawings and specifications with users input. Staff has combined this project with project (11-028A), Avery Point Oil Dock Platform Extensions & Evacuation Catwalk. Tentatively planning to bid in January.

Bulkhead West of Oil Dock 10 (06-036B)

Orion Construction has completed sheet piles for west wall section and is proceeding to drive sheet piles for south wall.

Fulton Corridor – Phase II (09-026A)

The majority of the south half of road is complete up to the first course of hot-mix. Traffic has been switched over to the south side. The 16" waterline is now in service. The drainage structures and paving on the north half of the road is now proceeding again. Expect completion in February 2012.

Removal of Pipelines along Navigation Boulevard (09-026B)

No bids were received on the pipeline removal project./ Project will re-bid later when those companies are not so busy.

Fire Pressurization on Oil Docks (08-046A)

Letter of Award has been issued. Notice to proceed should be issued first part of January 2012.

Permian Site Yard & Rail Improvements (09-041A)

Design is proceeding to have a project on the street for bids in February.

Nueces River Rail Yard (09-037A)

The COE permit has been issued. CH2M Hill is working on various options for unit train track location adjacent to the Viola yard. A Tiger Grant application was not selected. Staff is working with the design consultant to re-scope the project to meet the current budget construction.

La Quinta Multi-purpose Dock & Infrastructure Projects (07-036A & 07-037A)

Preliminary engineering phase complete. Project on hold.

Oil Dock 9 Allision Repairs (10-029A)

Notice of Substantial Completion has been issued and CCC Group is presently working on completing the punch list items which pertain to underwater crack injection repairs.

Tule Lake Lift Bridge Foundation Removal (07-046C)

One very high bid was opened on October 28, 2010. This project on hold.

Replace Cable Drums and Lengthening the Gantry Crane Boom at Bulk Dock 1 (09-033B)

Structural steel installation is in progress. The new cable drums were delivered in December. The two week shutdown.

New Oil Dock 9 Dock Houses (11-032A)

Contractor has made the new dock house occupant ready with a few small items remaining to be completed. Existing dock house has been demolished.

Bulk Dock 1- Fender Replacement (11-019A)

The design work with Goldston Engineering, a CH2M Hill Company is under final review and will bid in January.

Bulk Terminal Expansion Master Plan (11-047A)

The design team has been meeting with the customers and consultants to develop recommended rail, conveyor, pad and material handling system improvements at the Bulk Terminal.

Provide Dock Space for Gangway at Oil Dock 1 (11-013A)

Design work is underway and will include barge fender panel replacement design.

Truck Loading Station at Bulk Dock 2 (12-001A)

The TCEQ granted an air permit amendment at Bulk Dock 2 to allow the construction of a new conveyor and truck loading station. This will improve the efficiency of unloading coal from rail cars at the rail dump station and loading the material into trucks. A design team meeting will be held later in January.

Purchase of Vehicles (12-009A)

Staff is presently developing a bid package by the end of January to replace; 3 Maintenance vehicles, 2 Bulk Terminal vehicles, 1 Port Police vehicle and 1 Executive Director vehicle.

MAINTENANCE PROJECTS

Upgrades to Administration and Annex Building Elevator Systems (11-030A)

LNV, Inc. is currently finalizing design drawings and specifications for bidding, planning to bid in January.

Oil Dock 6 Fender Upgrades & Breasting Structure Replacement (11-027B)

Design underway. Project anticipated to be bid and awarded in February/March 2012.

Replace Stairs on Gantry Crane (11-035A)

The design is approximately 85% complete.

Seal Concrete Containment Area at Oil Dock 1 & Oil Dock 2 (11-034A)

Cardinal Construction has completed the sealing of on-land containment areas at Oil Docks 1 and 2 and on-dock containment at Oil Dock 2. Coordinating dock closure with Users to perform on-dock work at Oil Dock 1 the last remaining item in contract.

Savage Lane Railroad Drainage Improvements (11-031A)

Contract awarded to RAM-BRO Contracting, Notice of Substantial Completion was issued on December 2, 2011. Final acceptance has been issued. No further report will be made.

ENVIRONMENTAL/PROFESSIONAL PROJECTS

Monitoring of Remediation of Harbor Island Exxon Terminal (09-002B)

In accordance with the Site Remediation Agreement between PCCA and Exxon, soils on site have been cleaned up to 1% Total Petroleum Hydrocarbons. The site has been restored and the remediation report for PCCA activities has been submitted to the Railroad Commission of Texas. No response has been received yet from RRC on their review of the report.

ExxonMobil previously completed its soil remediation activities at the site. RRC has requested the installation of monitoring wells at the site. The monitoring wells locations were submitted to RRC for approval in April 2011. Exxon Mobil has installed five monitor wells at the site in September 2011. A report documenting all of ExxonMobil's soil remediation activities and well installations onsite is being prepared and will be submitted to RRC in January 2012. If groundwater sampling indicates no issues in groundwater then site closure to industrial standards will also be requested by ExxonMobil. A deed recordation of the industrial cleanup for the property will need to be filed by PCCA at that time.

In order to have a residential closure for the property, PCCA has been advised by RRC that a cap of the site is required.

PCCA Environmental Management System (11-025A)

PCCA has an ISO 14001 certified Environmental Management System since July 2007 for our Bulk Terminal and Maintenance Facility. On June 28, 2010, the program was audited and recertified and includes the expanded fence line – the north and south side Public Cargo Docks and the associated laydown areas.

Final significant aspects, objectives and targets, and Environmental Management Programs for 2011 were approved by the Steering Committee. Training and implementation programs will begin to occur. A Port Customers Stakeholder Meeting was held on February 10, 2011 and input from our customers on the EMS program was received.

Internal audits began in March 2011 and the external audit occurred May 25-26, 2011. Several non-conformances were identified during the external audit and need to be corrected prior to the next surveillance audit in 2012. The certificate has been reissued with minor address changes.

On August 24, 25, and 26th, Port of Corpus Christi hosted the first Gulf Ports Environmental Summit. The summit was meant to begin corroboration and communication on important environmental issues between Gulf Port of America Association members. The event was a success with lots of discussion among port members and action items to present to the membership in November 2011.

Martin Middle School Science and Spanish Club has partnered with PCCA and ADM and adopted the portion of Joe Fulton Corridor that is heavily littered due to trucks lining up for the grain elevator. They cleaned a ½ mile stretch on September 24 (100 bags of trash) and will return on October 8 to complete the cleanup.

Harbor Bridge Height Study (10-019A)

The report has been completed and forwarded to TxDOT.

Underwater Inspections of Various Waterfront Facilities (10-020A)

Underwater inspections complete at Oil Docks 1, 6, & 12; Cargo Dock 1, Water Taxi Landing, and Viola Barge Dock. Oil Docks 8 & 10 inspections will be performed as dock closure schedules allow in early 2012.

DREDGING

Corps of Engineers (COE) Dredging for FY 2012

COE is planning a contract to be awarded in April 2012 for maintenance dredging the Corpus Christi Ship Channel in select reaches from the Inner Basin to the Viola Basin. Work will include options for various PCCA dock slip facilities in the Inner Harbor and along Rincon Canal A.

Channel Improvement Project (98-012A, 04-027A, 09-048B/C)

In November 2007, Congress passed WRDA of 2007 authorizing the Port's Channel Improvement Project.

The project include in following improvements:

1. Widening the CCSC to 530' from Port Aransas to the Harbor Bridge.
2. Adding 200'-wide barge shelves on both sides of the ship channel across Corpus Christi Bay.
3. Extending La Quinta Channel by 7400' at a depth of -39' MLT.
4. Deepening all reaches of CCSC (excluding La Quinta) from -45' MLT to -52' MLT.
5. Constructing Ecosystem Restoration projects near Port Aransas and Ingleside on the Bay.

Project received congressional appropriation in FY2009 for the construction phase of the project, officially ending the Pre-Construction Engineering and Design phase. A Project Partnership Agreement (PPA) was executed in October 2009 for the La Quinta Channel Extension & Ecosystem Restoration. Construction of Contract No. 1 completed in 2010 to construct DMPA 14. Fifty-eight million in federal funds appropriated in May 2011 allowing the COE to bid and award two (2) contracts by September 2011; one to extend the La Quinta Ship Channel and the other to construct the Ecosystem Restoration project. Work on extending the La Quinta Channel is expected to take until the Summer of 2013 and the Ecosystem Restoration by April 2012.

Deepening and widening of the CCSC and the addition of barge shelves still undergoing re-evaluation and is projected to be complete in the summer of 2012. Draft re-evaluation confirmed project still in Federal interest. Study undergoing various required reviews.

UPCOMING BID OPENINGS

Security Grant 8 – North Bank Open Storage Area and North Cargo Storage Area Security Improvements *(08-052J/08-052F)*	January 24, 2012
Hoist Foundations & Gangway Support at Oil Dock 11 *(08-001A)*	February 3, 2012
Replacement of Fendering at Bulk Materials Dock No 1 *(11-019A)*	February 3, 2012
Purchase of Vehicles *(12-009A)*	February 3, 2012

Port of Corpus Christi Authority
Organizational Chart
December 31, 2011

DEPARTMENTS	Exempt	Non-Exempt	Temporary	Total
Executive Director	4	1	0	**5**
Human Resources	2	3	0	**5**
Deputy Port Director of Eng & F/A	1	1	0	**2**
Engineering Services	10	2	0	**12**
Finance & Admin.	1	1	0	**2**
Accounting	2	6	0	**8**
Information Tech	6	0	0	**6**
Deputy Port Director of BD & Ops	1	1	0	**2**
Business Development	2	0	0	**2**
Communications	2	0	1	**3**
Operations	4	1	0	**5**
Maintenance	5	40	2	**47**
Harbormaster's Office	1	8	0	**9**
Bulk Handling Facility	2	14	0	**16**
Security/Police Dept.	4	42	0	**46**
TOTAL	47	120	3	170

E - EXEMPT
NE - NON-EXEMPT
H - HOURLY
T - TEMPORARIES

AGENDA ITEM NO. 18

No Attachment

John P. LaRue
EXECUTIVE DIRECTOR

PORT CORPUS CHRISTI

January 10, 2012

The Honorable Mike Carrell
The Honorable Richard M. Borchard
The Honorable Judy Hawley
The Honorable Robert Kostelnik
The Honorable Mike Scott
The Honorable Al Jones
The Honorable Charlie Zahn
Port Commissioners
Port of Corpus Christi Authority

Subject: ***AGENDA ITEM NO. 19***
Kiewit Offshore Services Proposed Dredging of La Quinta Channel

Dear Commissioners:

Kiewit Offshore Services, Ltd, has asked permission from the Port to widen a portion (approximately 2.5 miles) of the La Quinta Channel in anticipation of a major new fabrication project. This project will require the existing channel be widened from 400 to 430 feet in order to allow a major drilling rig component room to access their dock. The existing Corpus Christi Ship Channel is 500 feet wide from Port Aransas to Ingleside, but the channel narrows at Ingleside Point. While the federally-authorized La Quinta Channel is only 300 feet wide, Kiewit previously sought and obtained permission from the Port in 2003 to widen the channel from 300 to 400 feet for an earlier project.

Kiewit has requested the Port's approval and has agreed to indemnify the Port for its proposed and past dredging projects. This item is included on the January 10, 2012 agenda for your consideration and action. If you have any questions, please call me.

Sincerely,

John P. LaRue
Executive Director

Attachment

DREDGING CONSENT AGREEMENT

This Dredging Consent Agreement ("Agreement") is made and entered into this 10th day of January, 2012, by and between Kiewit Offshore Services, Ltd. ("KOS") and the Port of Corpus Christi Authority of Nueces County, Texas ("PCCA"), a political subdivision of the State of Texas. PCCA and KOS are collectively referred to herein the "Parties" or individually as a "Party".

WHEREAS, KOS conducted dredging activities in the La Quinta Ship Channel in 2003 under the authority of United States Army Corps of Engineers ("USACE") Permit No. 22302, a copy of which is attached hereto as Exhibit A, as amended by USACE Permit No. 22302(01), a copy of which is attached hereto as Exhibit B, which authorized KOS, among other things, to widen the La Quinta Channel from 300 feet to 400 feet between Kiewit's facility on the La Quinta Channel and the junction of the La Quinta Channel and the Corpus Christi Ship Channel; and

WHEREAS, KOS has received USACE Permit No. SWG-2001-02106, a copy of which is attached hereto as Exhibit C, which authorizes KOS, among other things, to undertake further dredging activities to widen the La Quinta Ship Channel from 400 feet to 430 feet between Kiewit's facility on the La Quinta Channel and the junction of the La Quinta Channel and the Corpus Christi Ship Channel; and

WHEREAS, the dredging activities undertaken by KOS under USACE Permit No. 22302, as amended by USACE Permit No. 22302(01), to widen the La Quinta Channel were on submerged land owned by PCCA and the proposed dredging activities to be undertaken to further widen the La Quinta Channel under USACE Permit No. SWG-2001-02106 will be on submerged land owned by PCCA; and

WHEREAS, KOS will benefit from the dredging activities to widen the La Quinta Channel, which will enable KOS to expand the services it offers to its clients at its facility on the La Quinta Channel; and

WHEREAS, KOS wishes to induce PCCA to grant its approval for the dredging activities to widen the La Quinta Channel as authorized by USACE Permit No. SWG-2001-02106; and

WHEREAS, PCCA is willing to grant its consent for the dredging activities to widen the La Quinta Channel as authorized by USACE Permit No. SWG-2001-02106 upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the benefits that KOS would thereby receive and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Parties, and in further consideration of the mutual covenants and obligations contained herein, the Parties agree as follows:

1. Subject to the terms and conditions stated in this Agreement, PCCA hereby consents to, but only to, the proposed dredging activities to be undertaken by KOS pursuant to

USACE Permit No. SWG-2001-02106 on and through PCCA's submerged lands located in Nueces and San Patricio Counties, Texas, for the purpose of widening by 30 feet that portion of the La Quinta Channel lying between KOS's facility on the La Quinta Channel and the junction of the La Quinta Channel and the Corpus Christi Ship Channel (the "Project"). In the event the dredging activities contemplated by this Agreement have not commenced on or before December 31, 2013, PCCA's consent under this Agreement shall expire at midnight Central Time on December 31, 2013.

2. All dredging by KOS on PCCA's submerged land shall be done in a good and workmanlike manner and in compliance with USACE Permit No. SWG-2001-02106 and all laws, statutes, rules and regulations of federal, state and local government applicable to the Project. KOS shall furnish PCCA before and after dredge soundings for all dredging operations in the La Quinta Channel authorized by USACE Permit No. SWG-2001-02106. KOS shall be responsible for coordination of its dredging activities such that its activities do not interfere with vessels transiting the La Quinta Channel. PCCA's consent to the Project is subject to any and all easements heretofore granted by PCCA to other parties whether or not of record in Nueces or San Patricio Counties.

3. PCCA's consent to the Project does not authorize KOS to utilize Dredge Material Placement Area No. 13 or any other PCCA dredge material placement area. Any use of the Dredge Material Placement Area No. 13 for the Project shall be subject to a separate agreement between PCCA and KOS.

4. To the maximum extent permitted by law, **KOS shall defend, indemnify and hold harmless PCCA, and its commissioners, officers, directors, managers, employees, and agents (individually, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against, and, to the extent of the negligence of KOS or its subcontractors, will reimburse the Indemnified Parties for, any and all losses, liabilities, expenses, claims, damages, costs, reasonable attorneys' fees and demands which arise from claims brought against the Indemnified Parties by a third party and which result from the dredging activities undertaken by KOS pursuant to USACE Permits No. 22302, as amended by USACE Permit No. 22302(01), or the dredging activities to be undertaken by KOS pursuant to USACE Permit No. SWG-2001-02106.**

5. KOS agrees that it is directly and primarily liable to the Indemnified Parties and that its obligations hereunder are independent of the obligations of any third party or any other indemnitor owing to PCCA.

6. Without affecting KOS's obligation to indemnify and hold harmless the Indemnified Parties, KOS hereby agrees that any Indemnified Party may elect, in its absolute discretion and at its own expense, to retain legal counsel of its choice in connection with any of the matters described in Section 4 above.

7. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect. If any of the covenants or provisions of this Agreement shall be deemed to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties

contemplate that the Court making such determination shall reduce such extent, duration, scope or other provision, and shall enforce them in their reduced form for all purposes contemplated by this Agreement.

8. This Agreement shall be binding upon the successors and assigns of KOS and shall inure to the benefit of PCCA and its successors and assigns.

9. This Agreement will be governed by and construed under the laws of the State of Texas law without regard to conflicts-of-laws principles that would require the application of any other law. Venue for any action arising under this Agreement will be in Nueces County, Texas.

10. The person executing this Agreement on behalf of KOS personally warrants and represents unto PCCA that (a) KOS is a duly organized and existing legal entity, in good standing in the state of Texas, (b) KOS has full right and authority to execute, deliver and perform this Agreement, (c) the person executing this Agreement on behalf of KOS was authorized to do so, and (d) upon request of PCCA, such person will deliver to PCCA satisfactory evidence of his or her authority to execute this Agreement on behalf of KOS.

11. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against PCCA or KOS.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

KIEWIT OFFSHORE SERVICES, LTD.

By: _____
Name: Fuat Sezer
Title: President

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

By: _____
Name: John P. LaRue
Title: Executive Director

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

REPLY TO ATTENTION OF:

August 31, 2001

Evaluation Section

SUBJECT: Permit Application – 22302

Kiewit Offshore Services Ltd.
P. O. Box K
Ingleside, Texas, 78362

Gentlemen:

The above numbered permit has been approved and a signed copy is enclosed for your retention.

Also enclosed is ENG Form 4336 and a copy of "Notice to Permittee" which provides important information for permit administration. You should notify the District Engineer, in writing, upon completion of the authorized work.

Sincerely,

Janet Thomas Botello

Janet Thomas Botello
Leader, South Evaluation Section

Enclosures

Copies Furnished:

Commander (obn), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130-3396 w/encl

Director, National Ocean Service, Coast & Geo. Sur., Mapping & Charting Branch, Source Data Unit, Attn: N/CG2211, Station 7317, SSMC3, 1315 East-West Highway, Silver Spring, Maryland 20910-3233

DEPARTMENT OF THE ARMY PERMIT

Permittee Kiewit Offshore Services, Ltd.

Permit No. 22302

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To dredge 50.9 acres (28.5 acres of deep water habitat; 13.9 acres of shallow water habitat; 0.7 acres of seagrasses; and 0.1 acres of emergent wetlands), fill 7.7 acres of unvegetated shallow water habitat and 1.9 acres of isolated wetlands, place fill for a 3,500-linear-foot bulkhead, construct 340 linear feet of riprap revetment, construct a trestle for loading and off loading equipment, and perform mitigation, in accordance with the attached plans, in 10 sheets.

Project Location: The project is located at the junction of the La Quinta Channel and Jewel Fulton Canal in Ingleside, San Patricio County, Texas.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2006. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. All construction of mitigation, including planting, must be complete within 12 months after start of construction within jurisdictional areas. Monitoring and maintenance will proceed according to the mitigation plan.

3. If mitigation is determined to be unsuccessful by the Corps of Engineers (Corps), Regulatory Branch, Compliance Section, at the end of the monitoring period, the permittee will be required to take necessary corrective measures, as approved by the Corps, to ensure success.

4. Prior to the performance of hydraulic dredging, the permittee will obtain a Section 401 water quality certification from the Texas Natural Conservation Commission for the effluent or return water. The permittee will submit a copy of the Section 401 certification to the Corps, Regulatory Branch, Compliance Section, prior to performing hydraulic dredging.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

EXHIBIT A

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Fuat Sezer — Aug. 31, 2001

(PERMITTEE) — *(DATE)*

Kiewit Offshore Services, Ltd.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Janet Thomas Botello — 11 AUG 2001

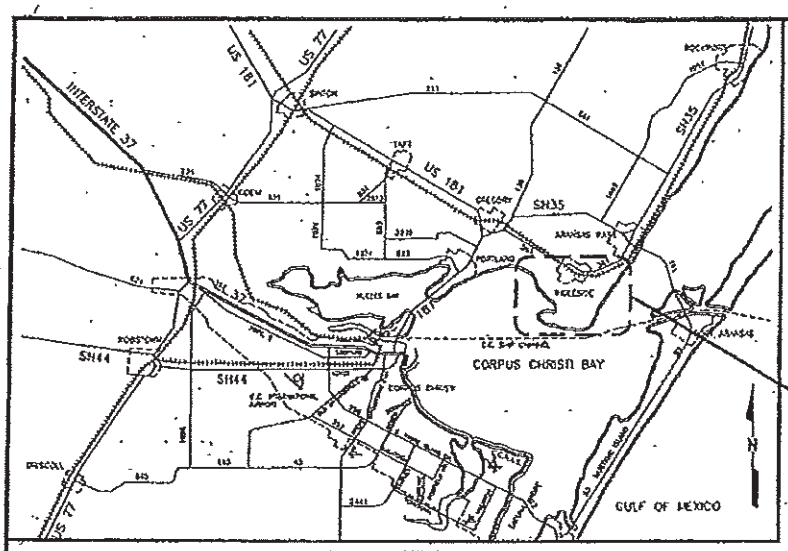
(DISTRICT ENGINEER) — *(DATE)*

JANET THOMAS BOTELLO, UNIT LEADER
SOUTH EVALUATION UNIT
FOR COLONEL LEONARD D. WATERWORTH

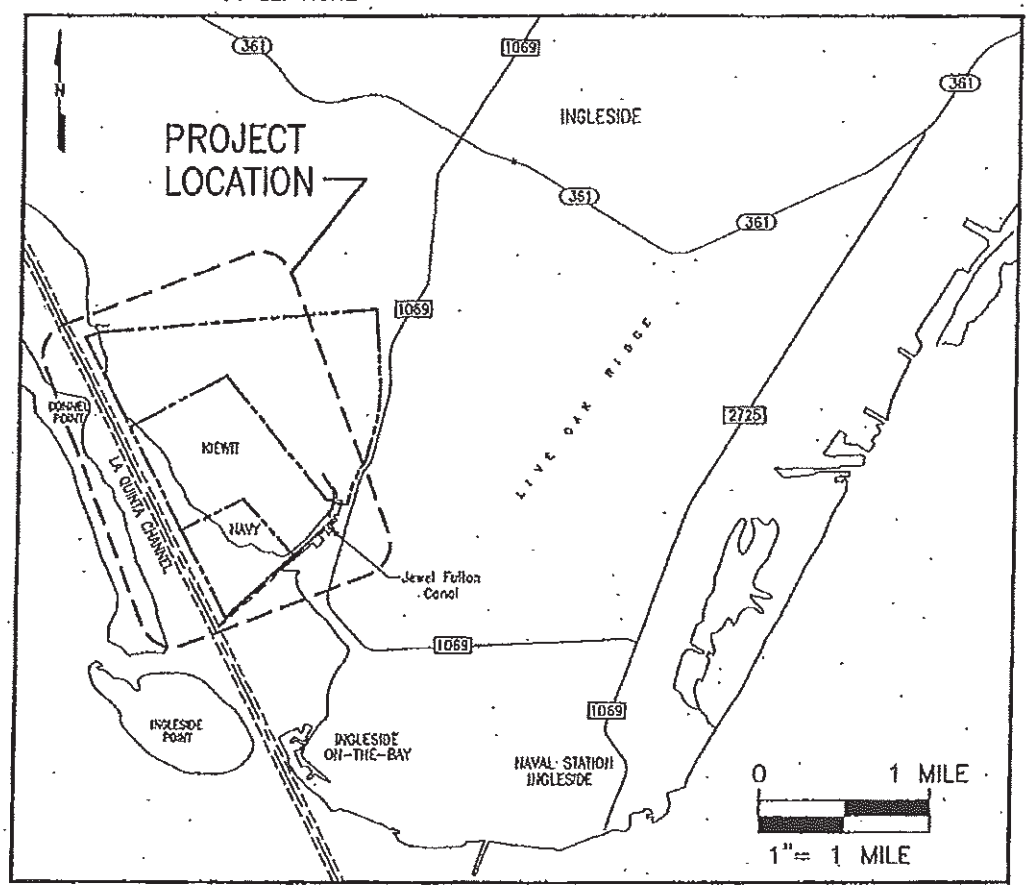
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) — *(DATE)*

PERMITTED PLAN
Permit No.: 22302
Applicant: KIEWIT OFFSHORE SERVICES, LTD.



VICINITY
SCALE: NONE



LOCATION

ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES	SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 2-20-01 REV. DATE: 04-04-01	SMA Job No: 200.10006 SHEET 1 of 10

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EXHIBIT A

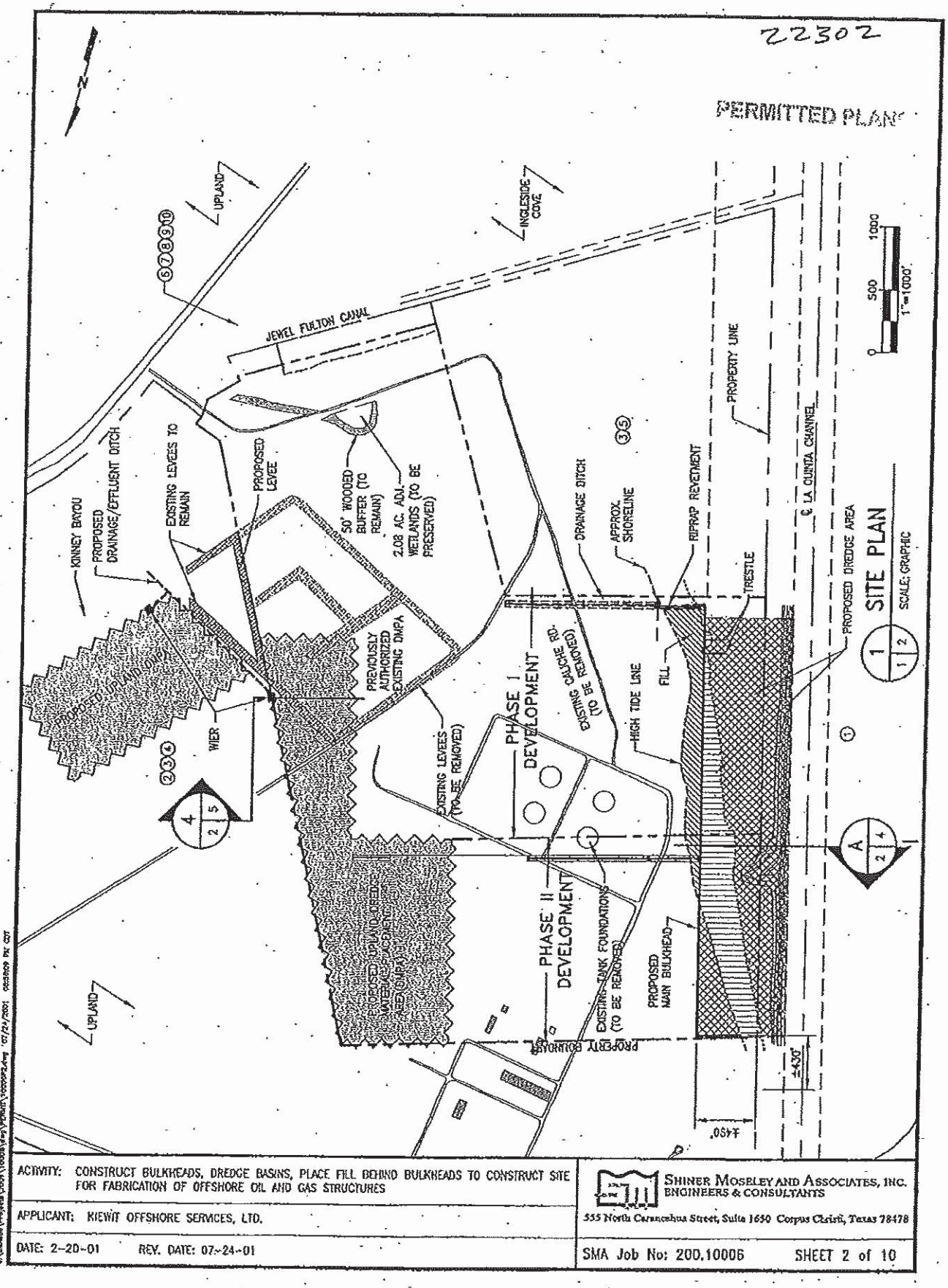

22302
PERMITTED PLAN
N
SITE PLAN
SCALE: GRAPHIC
1"=1000'
0
500
1000
UPLAND
INGLESIDE COVE
JEWEL FULTON CANAL
KINNEY BAYOU
PROPOSED DRAINAGE/EFFLUENT DITCH
EXISTING LEVEES TO REMAIN
PROPOSED LEVEE
50' WOODED BUFFER (TO REMAIN)
2.08 AC. ADJ. WETLANDS (TO BE PRESERVED)
DRAINAGE DITCH
APPROX. SHORELINE
RIPRAP REVETMENT
PROPERTY LINE
LA QUINTA CHANNEL
TRESTLE
PROPOSED DREDGE AREA
PROPOSED UPLAND DMPA
WIER
PREVIOUSLY AUTHORIZED EXISTING DMPA
EXISTING LEVEES (TO BE REMOVED)
PHASE I DEVELOPMENT
EXISTING CALICHE RD. (TO BE REMOVED)
HIGH TIDE LINE
FILL
PROPOSED UPLAND DMPA
PHASE II DEVELOPMENT
EXISTING SUNK FOUNDATIONS (TO BE REMOVED)
PROPOSED MAIN BULKHEAD
PROPERTY BOUNDARY
±430'
±450'
ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.
DATE: 2-20-01 REV. DATE: 07-24-01
SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS
555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
SMA Job No: 200.10006 SHEET 2 of 10

EXHIBIT A

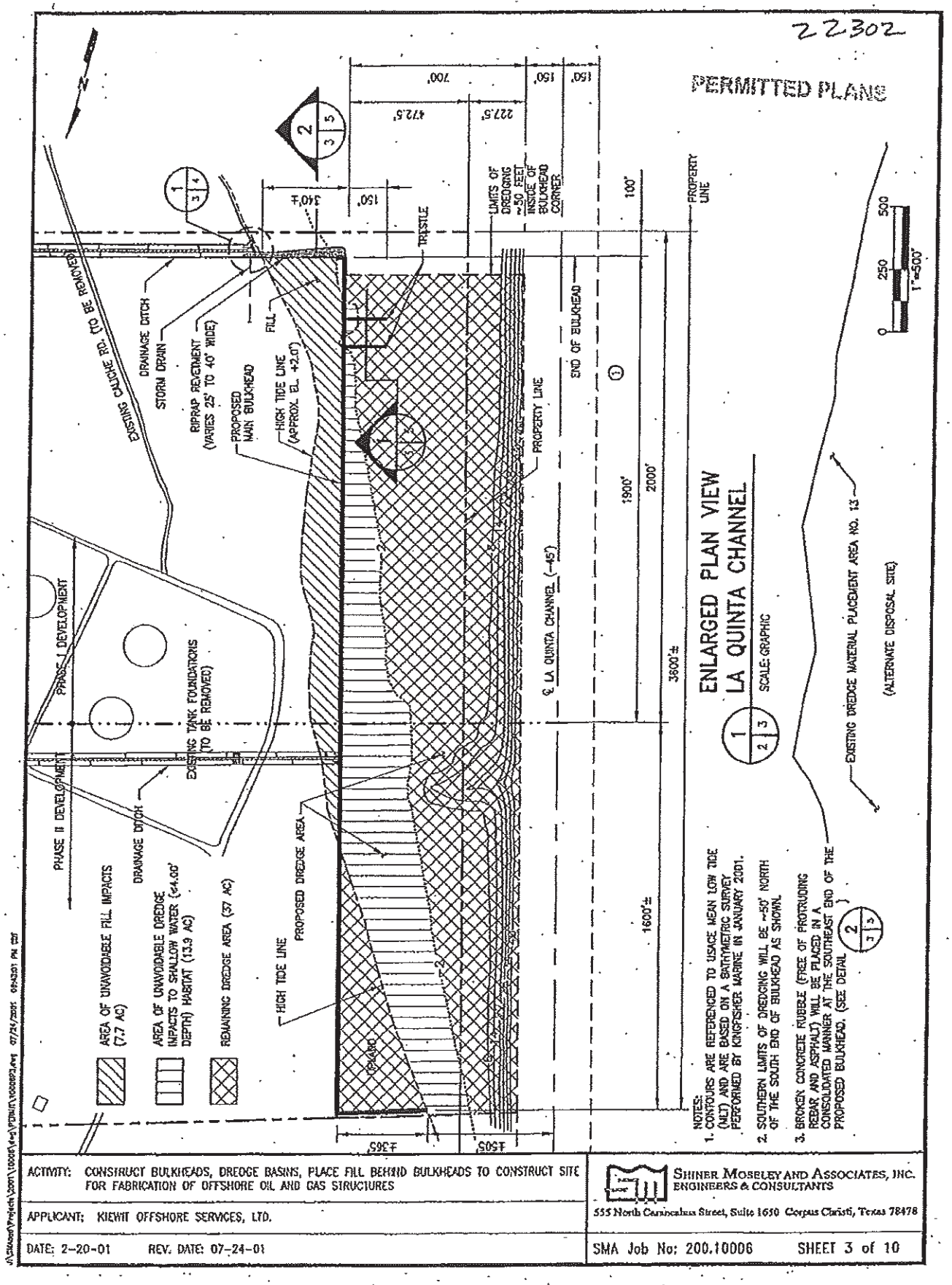
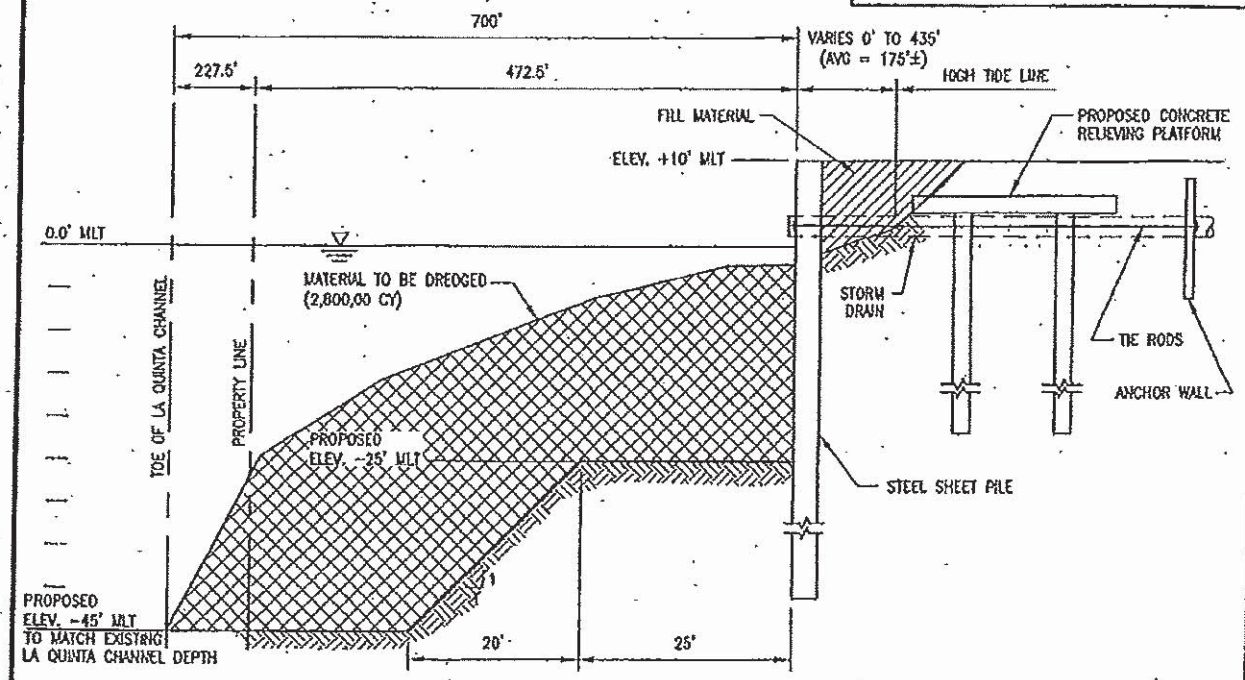

22302
PERMITTED PLANS
ENLARGED PLAN VIEW
LA QUINTA CHANNEL
SCALE: GRAPHIC
NOTES:
1. CONTOURS ARE REFERENCED TO USACE MEAN LOW TIDE (MLT) AND ARE BASED ON A BATHYMETRIC SURVEY PERFORMED BY KINGFISHER MARINE IN JANUARY 2001.
2. SOUTHERN LIMITS OF DREDGING WILL BE ~50' NORTH OF THE SOUTH END OF BULKHEAD AS SHOWN.
3. BROKEN CONCRETE RUBBLE (FREE OF PROTRUDING REBAR AND ASPHALT) WILL BE PLACED IN A CONSOLIDATED MANNER AT THE SOUTHEAST END OF THE PROPOSED BULKHEAD. (SEE DETAIL 2/3/5)
EXISTING DREDGE MATERIAL PLACEMENT AREA NO. 13
(ALTERNATE DISPOSAL SITE)
PROPERTY LINE
END OF BULKHEAD
℄ LA QUINTA CHANNEL (~45°)
TRESTLE
LIMITS OF DREDGING ~50 FEET INSIDE OF BULKHEAD CORNER
EXISTING CULVERT RD. TO BE REMOVED
DRAINAGE DITCH
STORM DRAIN
RIPRAP REVETMENT (VARIES 25' TO 40' WIDE)
PROPOSED MAIN BULKHEAD
HIGH TIDE LINE (APPROX. EL. +2.0')
FILL
PHASE I DEVELOPMENT
PHASE II DEVELOPMENT
EXISTING TANK FOUNDATIONS TO BE REMOVED
DRAINAGE DITCH
HIGH TIDE LINE
PROPOSED DREDGE AREA
AREA OF UNAVOIDABLE FILL IMPACTS (7.7 AC)
AREA OF UNAVOIDABLE DREDGE IMPACTS TO SHALLOW WATER (<4.0' DEPTH) HABITAT (13.9 AC)
REMAINING DREDGE AREA (37 AC)
700'
150'
150'
472.5'
227.5'
340'±
100'
1900'
2000'
3600'±
1600'±
1365'
1505'
500
250
0
1"=500'
ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.
DATE: 2-20-01 REV. DATE: 07-24-01
SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS
555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
SMA Job No: 200.10006 SHEET 3 of 10

EXHIBIT A

PERMITTED PLANS

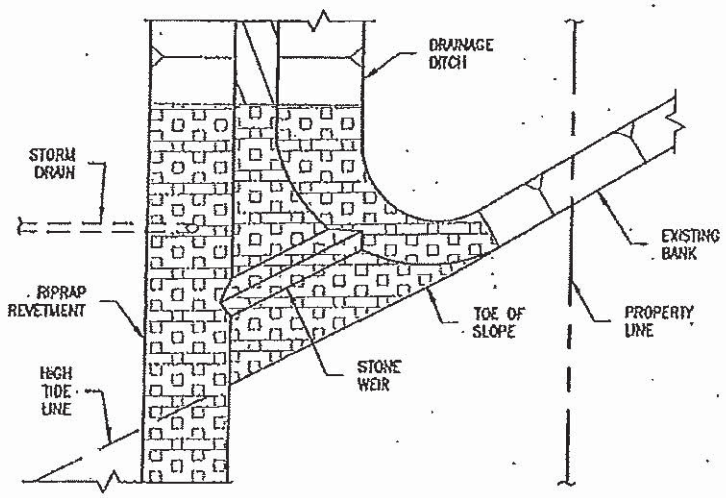
Permit No.: 22302

Applicant: KIEWIT OFFSHORE SERVICES, LTD.



A / 2 | 4 — LA QUINTA SECTION/ WEST STORM DRAIN

SCALE: N.T.S.



1 / 2 | 4 — EAST DRAINAGE DITCH OUTFALL

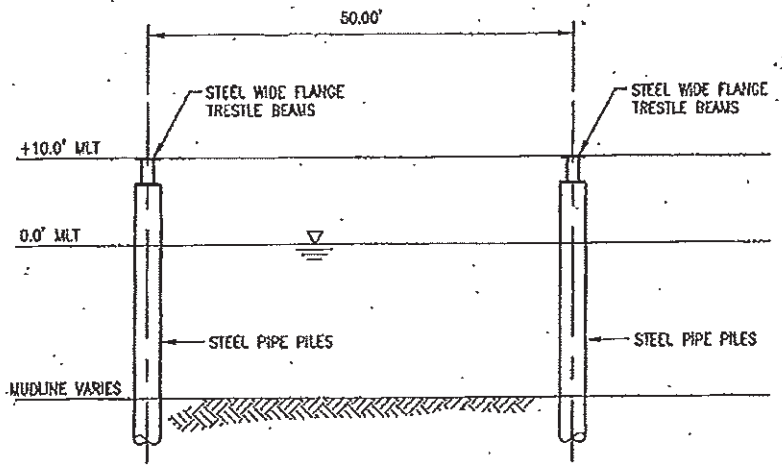
SCALE: 1"=40'

ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES	SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 2-20-01 REV. DATE: 07-24-01	SMA Job No: 200.10006 SHEET 4 of 10

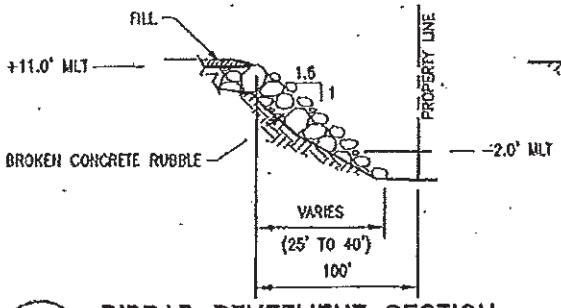
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22302

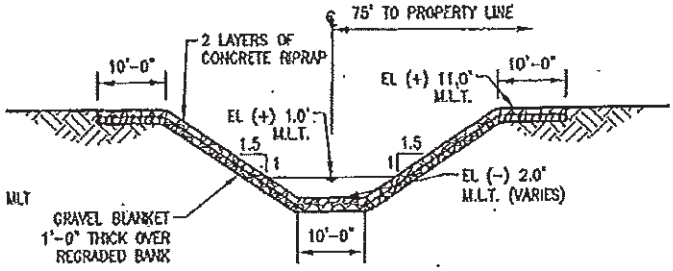
PERMITTED PLANS



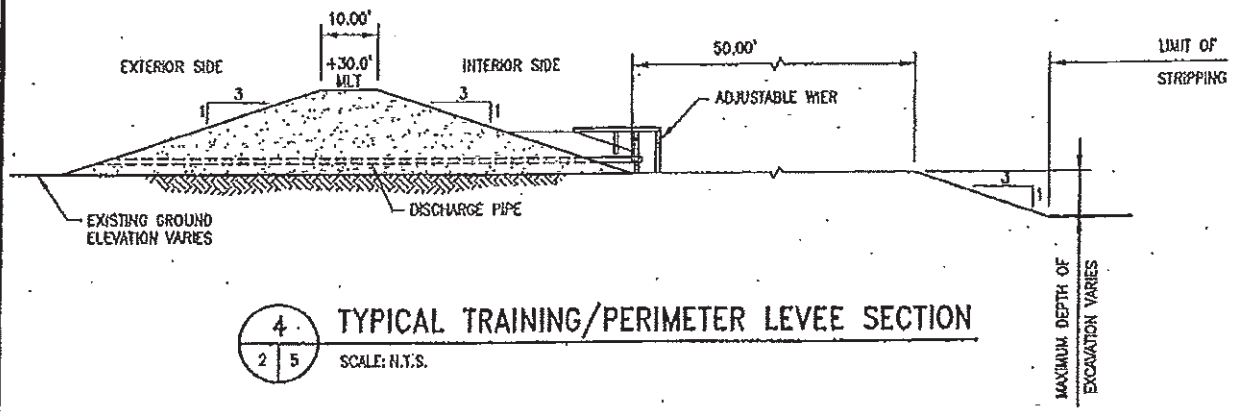
1 / 3 5 TRESTLE SECTION
SCALE: N.T.S.



2 / 3 5 RIPRAP REVETMENT SECTION
SCALE: N.T.S.



3 / 3 5 EROSION PROTECTION THROUGH DRAINAGE DITCH
SCALE: N.T.S.



4 / 2 5 TYPICAL TRAINING/PERIMETER LEVEE SECTION
SCALE: N.T.S.

ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES

APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.

DATE: 04-04-01 REV. DATE: 07-24-01

SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS
555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478

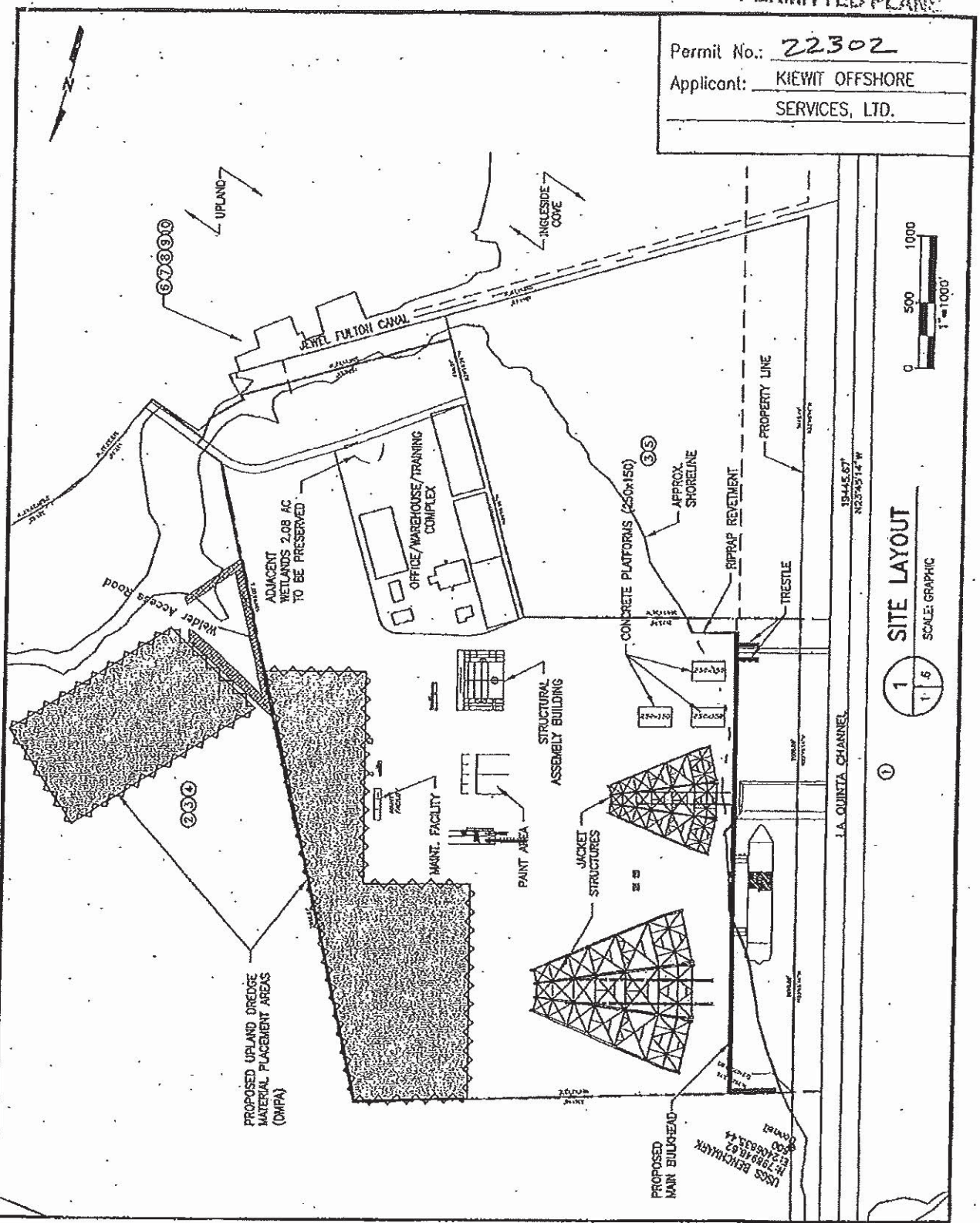
SMA Job No: 200.10006 SHEET 5 of 10

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PERMITTED PLANS

Permit No.: 22302

Applicant: KIEWIT OFFSHORE SERVICES, LTD.



ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES

APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.

DATE: 2-20-01 REV. DATE: 07-24-01

SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS
555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478

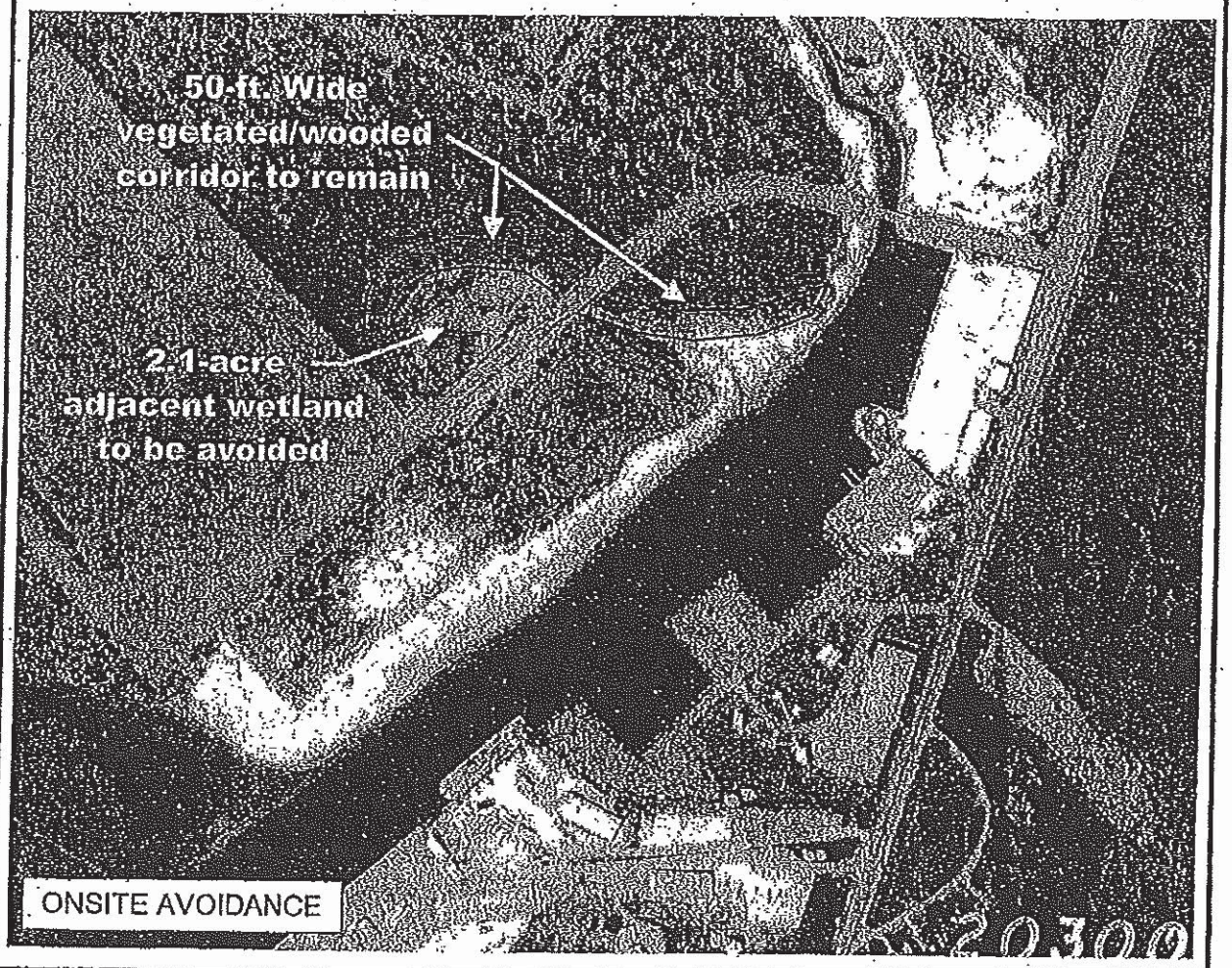
SMA Job No: 200.10006 SHEET 6 of 10

EXHIBIT A

PERMITTED PLANS
22302

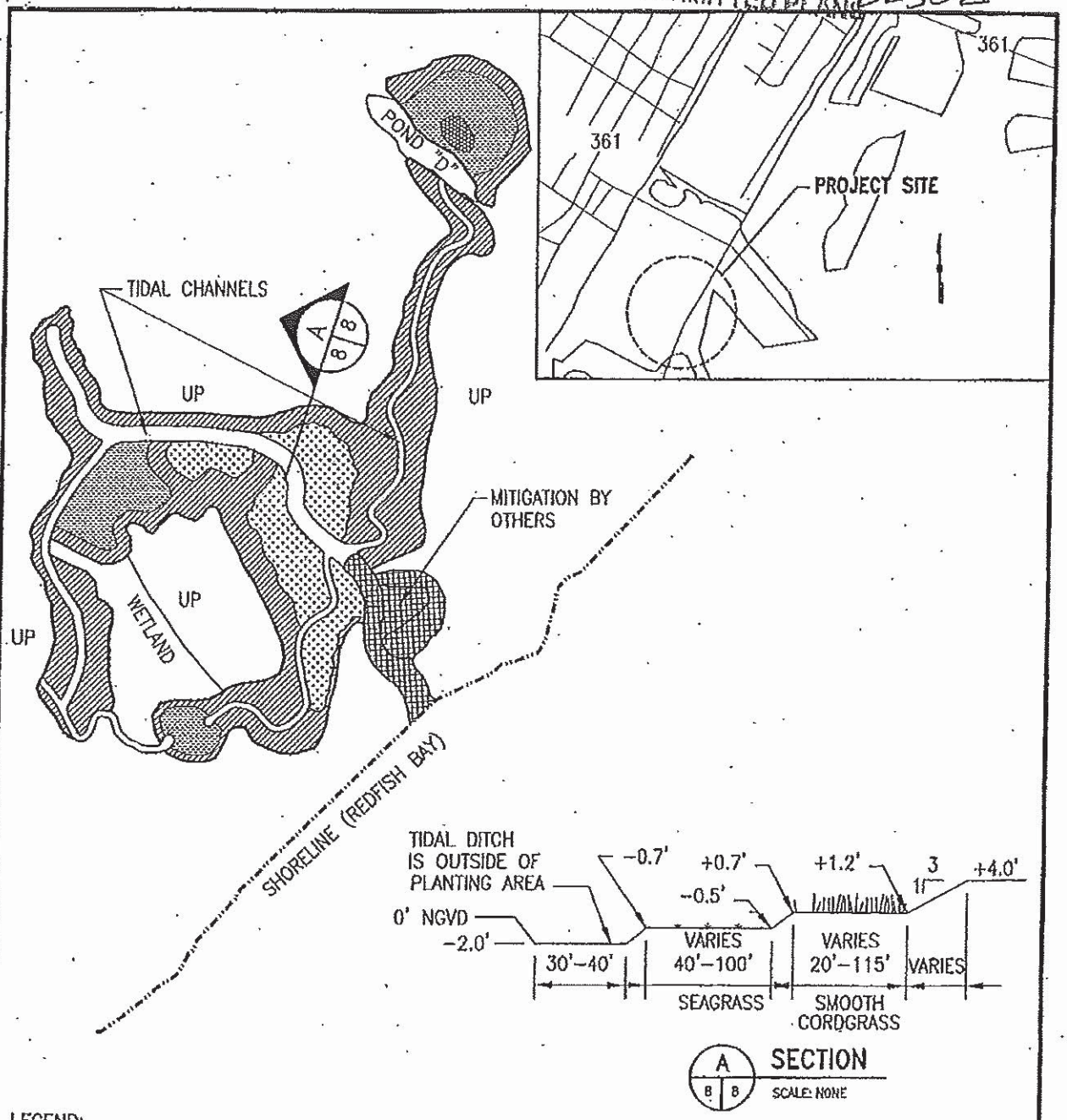
NOTES:

1. A 2.1-acre fresh to brackish marsh will be avoided on the site.
2. A 50-foot to 75-foot wide vegetated and wooded buffer will remain adjacent to the 2.1-acre wetland area. The buffer will extend to the Jewel Fulton Canal as shown, which should provide an avenue for wildlife movement, roosting and nesting areas for avian species, and habitat conservation.
3. Initial development plans call for no construction to occur within 300 feet of the buffer. Future plans include a possible office complex and parking lot behind the wetlands, but no heavy industrial activities will be conducted within 700 feet of the designated buffer.
4. Additionally, in order to avoid further ground disturbance from land clearing activities to shell middens located in and around the brackish marsh, the PERMITTEE has agreed to leave an additional 50-foot to 60-foot area around the previously proposed buffer.
5. As a result of consultation with USACE's staff archeologist, it was agreed that the exposed features could be reburied with 6 to 8 inches of topsoil and allowed to revegetate naturally.
6. In addition, the USACE concurred that it would be acceptable for the subject area to be capped with a layer of crushed limestone if the need for additional parking should arise in the future, provided no subsurface disturbance occurs. However, if it is determined that this course of action is necessary, the PERMITTEE will coordinate with the USACE and THC for appropriate guidance prior to any work being done.



ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES	SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 2-20-01 REV. DATE: 05-18-01	SMA Job No: 200.10006 SHEET 7 of 10

PERMITTED PLAN 22302



A
B B SECTION
SCALE: NONE

LEGEND:

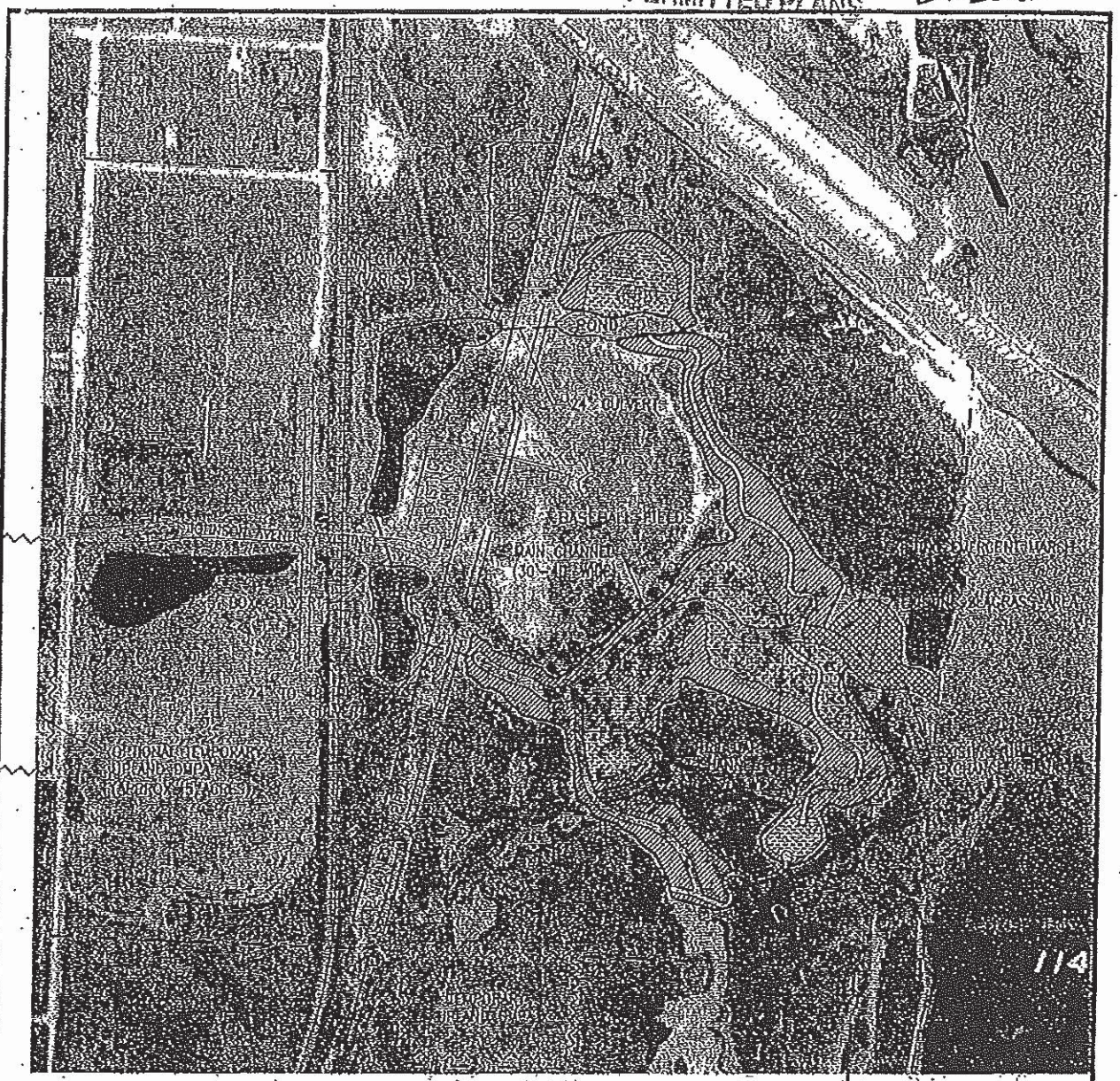
- PROPOSED EMERGENT MARSH AREAS (± 6.7 AC.)
- PROPOSED OPEN WATER (± 1.8 AC.)
- PROPOSED SEAGRASS AREAS (± 2.1 AC.)
- PROPOSED ISLAND (± 0.1 AC.)
- TIDAL CHANNELS AS NOTED (± 2.0 AC.)

ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES	SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 2-20-01 REV. DATE: 06-18-01	SMA Job No: 200.10006 SHEET 8 of 10

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EXHIBIT A

PERMITTED PLANS 22302



LEGEND:

- EXISTING PREVIOUSLY AUTHORIZED MITIGATION AREA
- PROPOSED SEAGRASS AREAS (±2.1 AC.)
- PROPOSED EMERGENT MARSH AREAS (±6.7 AC.)
- PROPOSED ISLAND (±0.1 AC.)
- OPEN WATER (±1.8 AC.)
- TIDAL CHANNELS AS NOTED (±2.0 AC.)

OFFSITE MITIGATION PLAN VIEW
ARANSAS NATURE PARK

1 / 1 | 9

SCALE: 1" = 400'

400 200 0 400

ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES

APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.

DATE: 2-20-01 REV. DATE: 06-18-01

SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS
555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478

SMA Job No: 200.10006 SHEET 9 of 10

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PERMITTED PLANS 22302

PERMIT NOTES:

1. An existing channel, previously created by Aker Gulf Marine as part of an authorized mitigation effort (USCE Permit #21175), will be extended through the Aransas Pass Nature Park for the purpose of increasing tidal exchange to previously disturbed landward wetland areas as well as to those wetlands created as a result of the proposed mitigation efforts.
2. The main water exchange ditches will be approximately 1000 ft to 1500 ft in length and 30 ft to 40 ft wide, and will be excavated to a depth of approximately -2.0 ft NGVD to ensure tidal exchange throughout the mitigation area.
3. The main tidal exchange ditches throughout the site will be constructed with side slopes not to exceed 3:1.
4. A series of smaller, narrower tributary channels (approximately 10 ft to 20 ft wide) will be excavated and contoured off of the main ditch as necessary to achieve the desired outcome. These will be at a depth adequate to provide tidal influence.
5. Approximately 1.8 acres of open water habitat will be created as shown on revised Sheet 9 of 10 of the permit drawings. These areas will be excavated to an elevation of approximately -1.0 ft NGVD for utilization by shorebirds and wading birds.
6. Shallow shelves, averaging ~20 feet in width, will be excavated around the perimeter of the ponds adjacent to the railroad tracks resulting in approximately 2 acres of additional habitat. Shelves will be cut to elevation suitable to support growth of smooth cordgrass. Depth of cut to be based on elevations within adjacent natural stands in the area.
7. Excavation within planting areas will be to elevations similar to adjacent existing, nearshore seagrass beds (100 ft east of shoreline) and smooth cordgrass stands (adjacent).
   (a) Smooth cordgrass planting elevation approximately +0.7 ft to +1.2 ft NGVD
   (b) Seagrass planting elevation approximately -0.7 ft to - 0.5 ft NGVD
8. The features and elevations may be modified, as directed by field biologists overseeing the initial excavation efforts, to fit site-specific landscape conditions; e.g. to avoid areas of caliche sub-soil or to utilize additional upland knolls whenever possible. Regardless of these field modifications, the habitat acreage requirements as specified in the permit will be fulfilled.
9. All excavation within the areas to be planted will be completed at least 90 days prior to transplanting.
10. Approximately 6.7 acres of smooth cordgrass (*Spartina alterniflora*) will be planted in areas designated on revised Sheet 9 of 10 of the permit drawings. Each planting unit will be placed on 10-ft centers. A planting unit will consist of a fully sodded, multiple culm plug (approximately 6 in. diameter).
11. Similarly, approximately 2.1 acres of shoalgrass (*Halodule wrightii*) will be planted in areas designated on revised Sheet 9 of 10 of the permit drawings. A planting unit will consist of live seagrass material contained in a 3-inch diameter plug.
12. All planting will be conducted between April 1, 2002 and December 31, 2002.
13. No more than one 6-inch plug of source material per one square yard will be obtained from the designated borrow areas. Incidental damage to borrow areas shall be strictly avoided.
14. Complete photographic coverage of the Spartina alterniflora planting area will be submitted by PERMITTEE to the USACE within 30 days after transplanting activities.
15. PERMITTEE will notify the USACE in writing within 21 days after completion of the planting efforts.
16. PERMITTEE will conduct a transplant survival survey of the planted areas within 60 days following the initial planting effort. If at least 50% survival of transplant material is not achieved, PERMITTEE will conduct a second planting effort within the next 30 days. A written report detailing survival results will be submitted to the USACE within 30 days after the survey.
17. For *Spartina alterniflora* and *Halodule wrightii*, if at least 70% canopy coverage is not achieved within 2 years following planting, an additional planting effort will be made by PERMITTEE, and those areas not vegetated will be replanted to the original specifications.
18. For *Spartina alterniflora*, a 2-year monitoring study will be conducted following planting. The percentage of vegetative cover will be monitored within the planted area. Subsequent progress reports will be submitted by PERMITTEE to the USACE at six-month, one-year, and two-year intervals following planting.
19. For *Halodule wrightii*, a 3-year monitoring study will be conducted following planting. The percentage of vegetative cover will be monitored within the planted area. The monitoring study will note water depths and any unusual sedimentation variations. Subsequent progress reports containing the referenced information will be submitted by PERMITTEE to the USACE at six-month, one-year, two-year, and three-year intervals following planting.
20. Hydrology and vegetation shall be maintained for two consecutive growing seasons after the 70% success criteria have been achieved, for a total period not to exceed five (5) years. Monitoring will be completed at least yearly until two years past meeting the minimum success criteria, with reports provided to the resource and regulatory agencies.
21. Approximately 4.5 acres of existing ponds (Ponds B, C, D and E) at the site will be "significantly" enhanced either by replacing existing culverts or excavating channels between ponds to maintain and enhance water quality and improve circulation as follows:
   (a) One or two 24-inch to 48-inch pipe culvert(s) will be installed between Pond B and the main tidal exchange channel that extends up to the western boundary of the proposed mitigation area.
   (b) A 2 ft x 5 ft box culvert will be installed between Ponds B and C.
   (c) A 24-inch culvert will be installed between Ponds C and D.
   (d) The existing culvert will be cleaned out and a separate water exchange channel (approximately15 ft to 30 ft wide) will be constructed between Ponds C and E to further enhance circulation. The depth of the channel will be to an elevation suitable to provide adequate water exchange on a continuous basis.
22. Materials resulting from the excavation of the mitigation area will be properly contained and disposed of within one or a combination of placement areas located entirely on adjacent uplands as depicted on Sheet 9 of 10.
23. The mitigation site will be preserved in perpetuity for wetland conservation purposes (Resolution #97-293 by the City of Aransas Pass) and no alterations will occur to the site without the approval of the U.S. Army Corps of Engineers, in consultation with the natural resource agencies.

ACTIVITY: CONSTRUCT BULKHEADS, DREDGE BASINS, PLACE FILL BEHIND BULKHEADS TO CONSTRUCT SITE FOR FABRICATION OF OFFSHORE OIL AND GAS STRUCTURES	SHINER MOSBLEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 2-20-01 REV. DATE: 06-18-01	SMA Job No: 200.10006 SHEET 10 of 10

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NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Kiewit Offshore Services Ltd.	File Number: 22302	Date:8/30/2001
Attached is:		See Section below
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/ or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact: John F. Machol, Project Manager CESWG-PE-RE, P.O. Box 1229 Galveston, Texas 77553-1229 Telephone: 409-766-3944; FAX: 409-766-3931	If you only have questions regarding the appeal process you may also contact: James E. Gilmore, Appeal Review Officer CESWD-ETO-R, 1100 Commerce Street Dallas, Texas 75242-0216 Telephone: 214-767-2457; FAX: 214-767-9021 Email: James.E.Gilmore@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or authorized agent.	Date:	Telephone number:

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
Corpus Christi Regulatory Field Office
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318

REPLY TO
ATTENTION OF:

August 26, 2002

Regulatory Branch

SUBJECT: Permit Application 22302(01)

Kiewit Offshore Services, Ltd.
P.O. Box K
Ingleside, Texas 78362

Gentlemen

Please refer to your application for the above numbered permit amendment. A fee in the amount of $100.00 must be paid before the amendment can be approved. Your check should be made payable to the U.S. Army Engineer District, Galveston, and mailed to the District Engineer at the address shown above. Upon receipt of the fee, the processing of your application will be finalized.

Sincerely,

Lloyd Mullins
Unit Leader
Corpus Christi Field Office

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
Corpus Christi Regulatory Field Office
5151 Flynn Parkway, Suite 306
Corpus Christi, Texas 78411-4318

REPLY TO
ATTENTION OF:

26 August 2002

Regulatory Branch

SUBJECT: Permit No. 22302(01)

Kiewit Offshore Services, Ltd.
P.O. Box K
Ingleside, Texas 78362

Gentlemen:

Your April 16, 2002, request to amend permit 22302 to widen a section of La Quinta Channel and to deepen a portion of your basin in Corpus Christi Bay is approved pursuant to Section 10 of the Rivers and Harbors Act of 1899. Permit 22302 was issued on August 31, 2001, and authorized the dredging of 50.9 acres, the filling of wetlands, construction of a bulkhead and placement of riprap, construction of a trestle and the performance of mitigation. The permit site is located within the La Quinta Channel, in Corpus Christi Bay, and adjacent to the Kiewit facility, north of the intersection of La Quinta Channel and the Jewel Fulton Canal in Ingleside, Nueces and San Patrictio Counties, Texas.

The new work is to be performed in accordance with the enclosed plans in 7 sheets and the original permit conditions, which remain in full force and effect. This authorization for the new work expires on December 31, 2007. Please note the Notification of Administrative Appeal Options regarding this authorization as enclosed. This authorization is based on a preliminary jurisdictional determination. In addition to the original permit conditions, the following special conditions are added to your authorization:

5. The permittee shall notify the Corps of Engineers Galveston District's Southern Area Office, at least 10 days prior to any dredging so that Corps representatives can observe and monitor the dredging if necessary.

6. The permittee shall perform channel surveys immediately after completion of dredging and repeat the same surveys one year later to determine any impacts of sloughing material on the Federal channel. Should there be any such material accumulated in the Federal channel, it shall be the responsibility of the permittee to dredge this material at the permittee's expense. However, the permittee will not be responsible for dredging of material deposited in the Federal channel that is directly attributable to a hurricane, tropical storm, or other Act of God.

7. The permittee is responsible for and will hold harmless, protect and defend the Government from any damages or actions arising from any dredging completed by the permittee including damages to natural resources and the environment.

8. The permittee shall coordinate the use of Dredged Material Placement Area (PA 13) with the Corps of Engineers Galveston District's Southern Area Office at least 10 days prior to conducting any work in or affecting the disposal area to assure that the work will not conflict with U.S. Government dredging or disposal area management activities.

9. The permittee shall contact the Corps of Engineers Galveston District's Southern Area Office prior to any repair and/or new work to levees and spillways at PA 13. All such work must follow the Corps of Engineers specifications.

10. The permittee understands that the proposed dredging is associated with a Federal navigation project and that the Government may suspend or terminate this authorization at any time at the convenience of the Government.

11. The permittee shall follow the water quality monitoring procedures as outlined in the project plans.

Please notify the District Engineer, in writing, upon completion of the authorized work. A pre-addressed postcard has been enclosed for your convenience.

FOR THE DISTRICT ENGINEER:

for ⇒ Lloyd Mullins
Unit Leader,
Corpus Christi Field Office

Enclosures

Copies Furnished: (See page 3)

Copies Furnished:

Eighth Coast Guard District, New Orleans, LA

NOAA/NOS, Coast & Geodetic Survey, Silver Spring, MD

U.S. Fish and Wildlife Service, Corpus Christi, TX

Texas General Land Office, Austin, TX

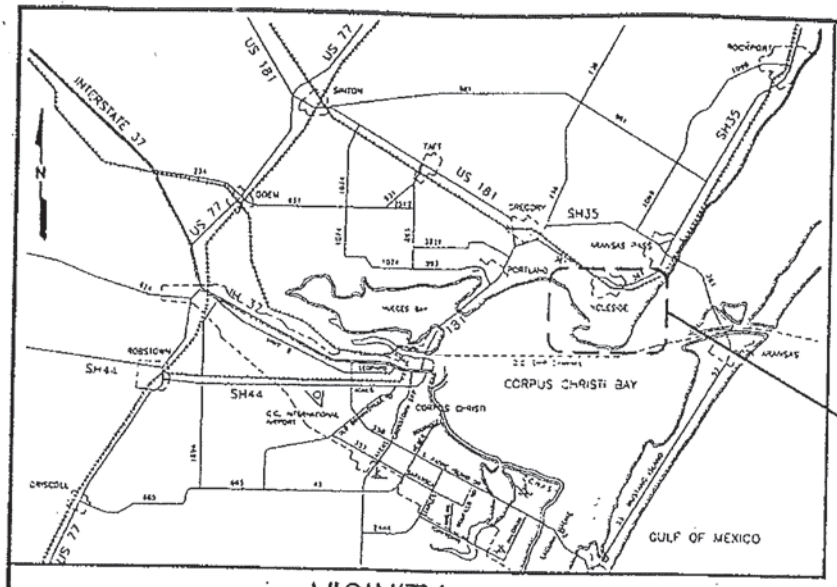
Texas General Land Office, Corpus Christi, TX

Southern Area Office, Corpus Christi, TX

Shiner Moseley and Associates, Inc., 555 N. Carancahua, Suite 1650, Corpus Christi, Texas 78478-0010

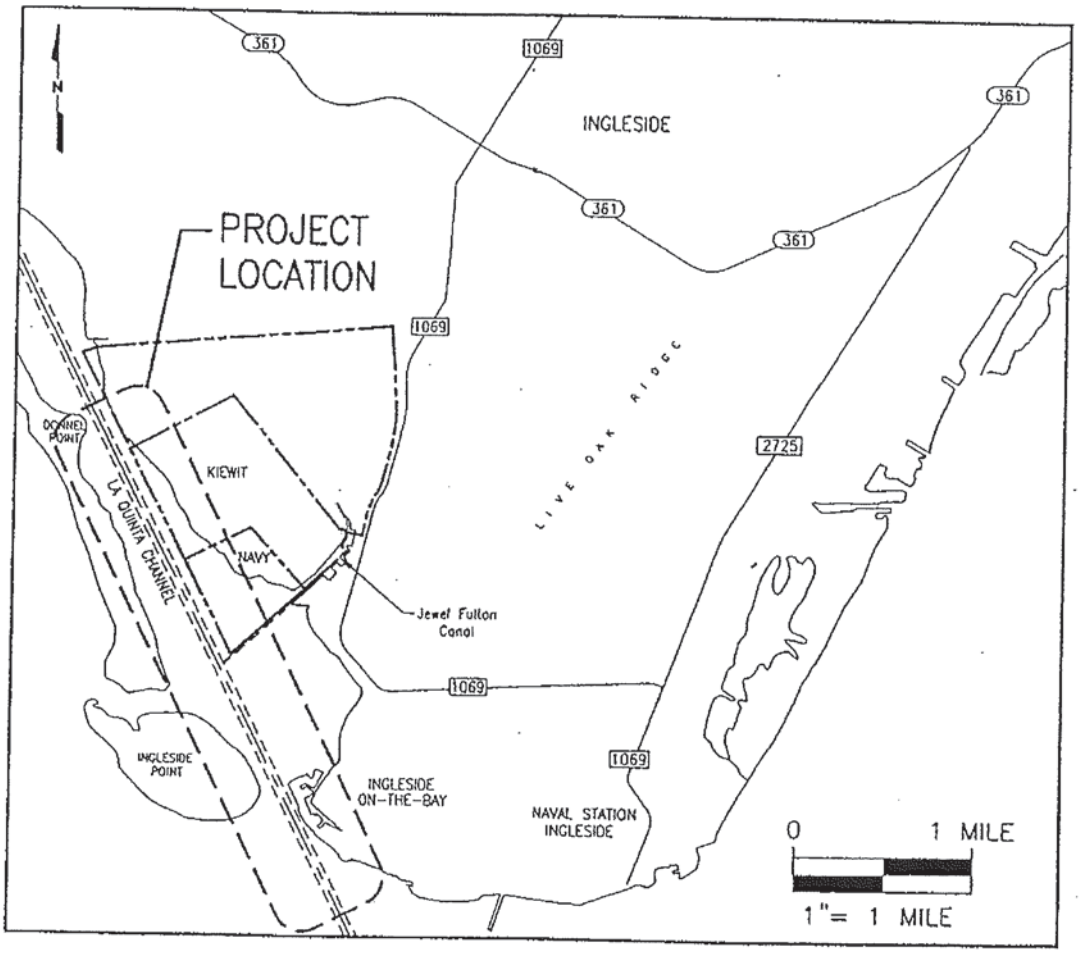
22302(01)

Location Map
Channel Dredging
Kiewit Offshore Services, Ltd.
Corpus Christi Bay
Nueces County, Texas
Page 1 of 7
26 August 2002



VICINITY
SCALE: NONE

PERMITTED PLANS



LOCATION

ACTIVITY: TEMPORARY WIDENING OF LA QUINTA CHANNEL	SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 04/08/02	SMA Job No: 200.20073

22302(01)

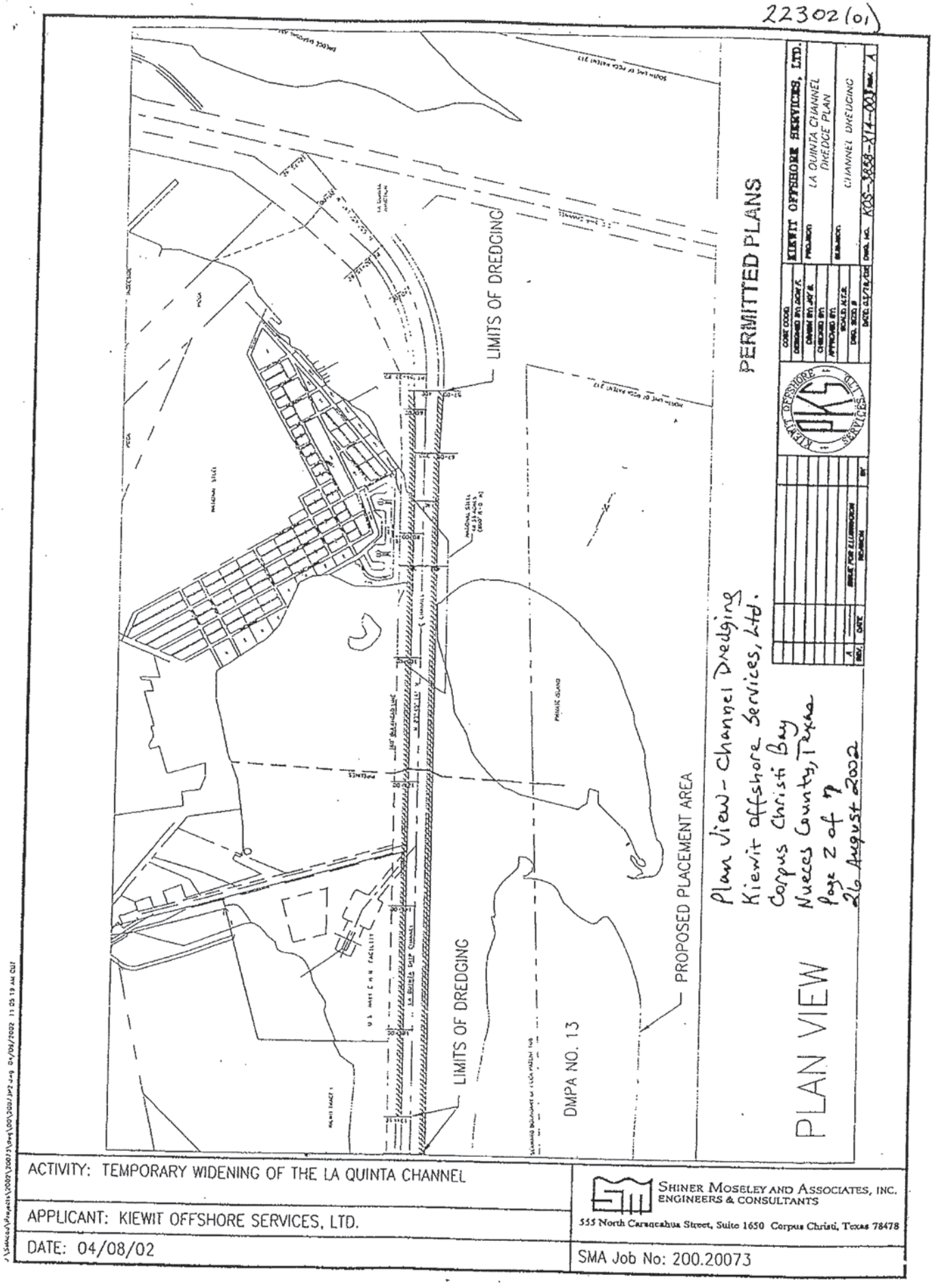
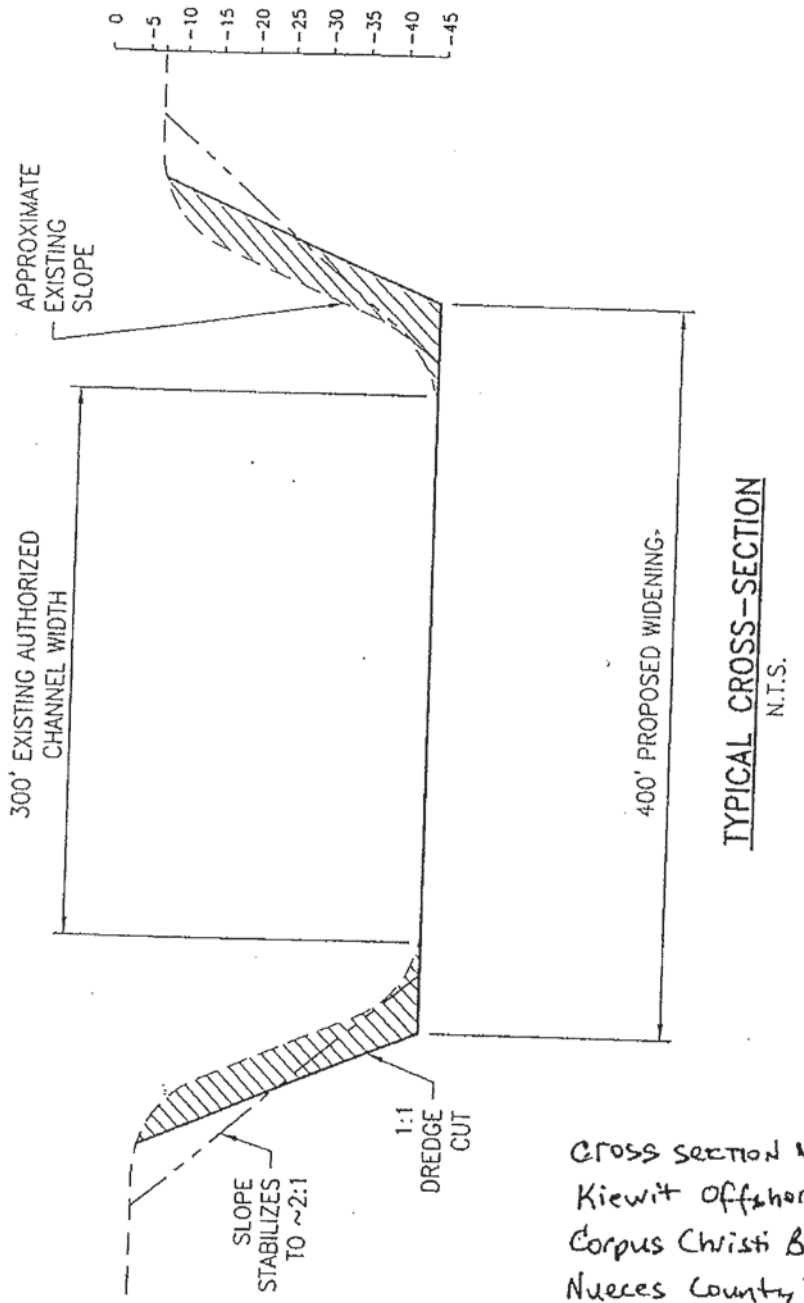


EXHIBIT B

22302 (01)



TYPICAL CROSS-SECTION
N.T.S.

Cross section VIEW-channel
Kiewit Offshore Services, Ltd.
Corpus Christi Bay
Nueces County, Texas
Page 3 of 7
26 August 2002

NOTE:

1. INTENT IS TO DREDGE ON A 1H : 1V SLOPE, HOWEVER BASED ON THE RESULTS OF RECENT HYDROGRAPHIC SURVEYS IT IS ANTICIPATED THAT THE SLOPE WILL STABILIZE SLIGHTLY STEEPER THAN 2H : 1V.

2. DATUM IS USACE MEAN LOW TIDE (MLT).

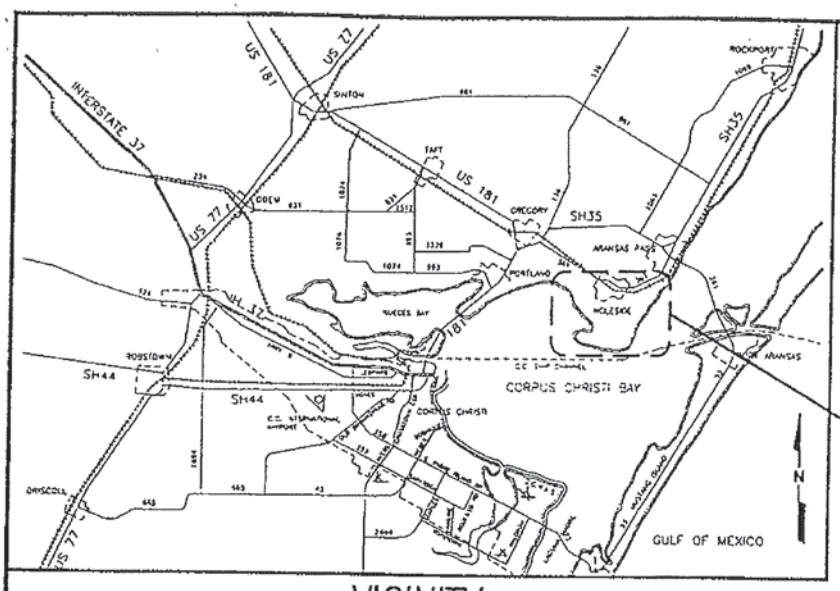
PERMITTED PLANS

ACTIVITY: TEMPORARY WIDENING OF THE LA QUINTA CHANNEL	SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 04/08/02	SMA Job No: 200.20073

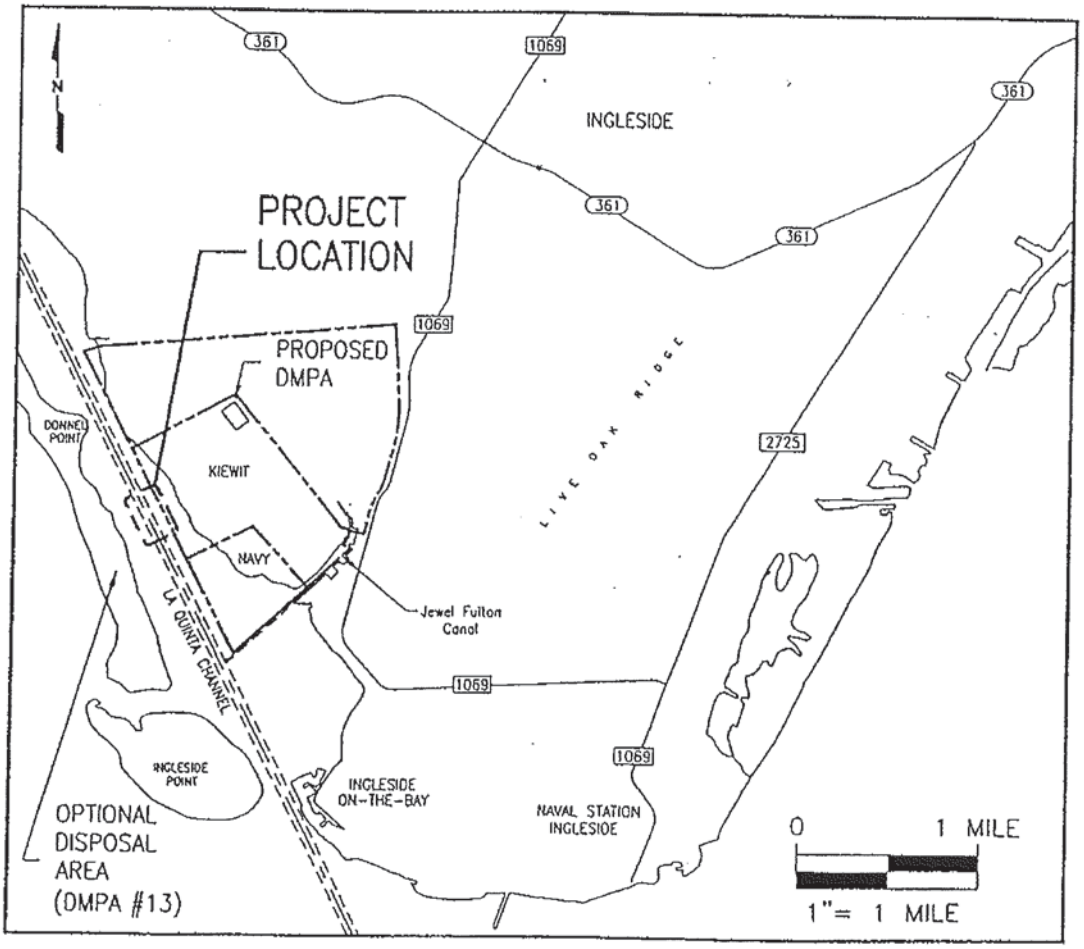
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22302(01)

Location Map
Dredging - deep hole basin
Kiewit Offshore Services, Ltd
Corpus Christi Bay
Nueces County, Texas
Page 4 of 7.
26 August 2002



VICINITY
SCALE: NONE



LOCATION

PERMITTED PLANS

ACTIVITY: DEEPENING A 385 FT. X 850 FT. BASIN TO -85 FT. MLT	SHINER MOSELEY AND ASSOCIATES, INC. ENGINEERS & CONSULTANTS
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD.	555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478
DATE: 4-25-02	SMA Job No: 200.20073

22302 (01)

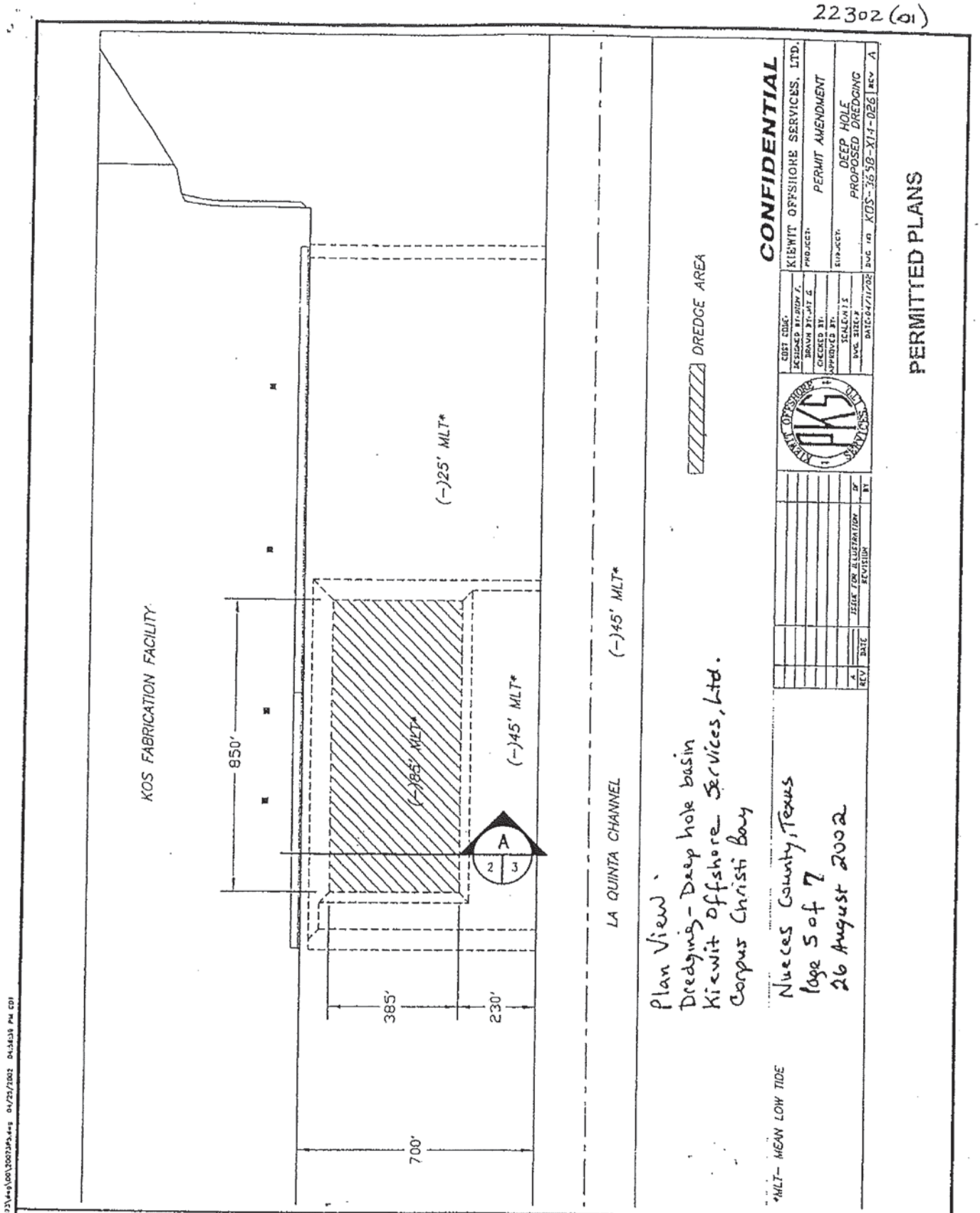


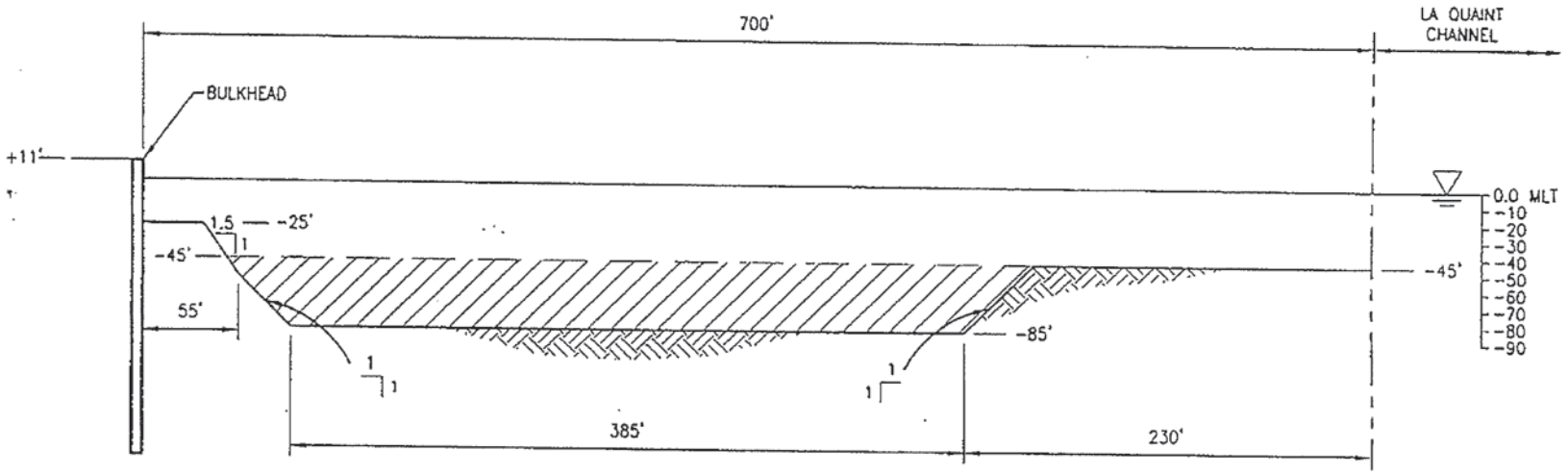
EXHIBIT B

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ACTIVITY: DEEPENING A 385 FT. X 850 FT. BASIN TO -85 FT. MLT

APPLICANT: KIWI OFFSHORE SERVICES, LTD.

DATE: 4-25-02



A
2 | 3
SECTION
SCALE: 1"=100'

Cross section view -
Dredging - Deep Hole Basin
Kiewit Offshore Services, Ltd.
Corpus Christi Bay
Nueces County, Texas
Page 6 of 7

NOTE:

1. DEPTH OF SHELF IMMEDIATELY ADJACENT TO BULKHEAD PREVIOUSLY AUTHORIZED TO -25 FEET, WITH REMAINDER OF DREDGED AREA AT -45 FEET MLT.
2. PROPOSED DEEPENING WILL BEGIN ~55 FEET BAYWARD OF BULKHEAD AS SHOWN.

26 August 2002

PROPOSED DREDGED AREA (~500,000 CU. YD.)

PERMITTED PLANS

22302(01)

SHINER MOSELEY AND ASSOCIATES, INC.
ENGINEERS & CONSULTANTS
555 North Carancahua Street, Suite 1650 Corpus Christi, Texas 78478

SMA Job No: 200.20073

EXHIBIT B
176

22302(01)

WATER QUALITY MONITORING PLAN

1. The permittee shall monitor the water quality of the deep-hole basin for three years after it has been dredged.

2. The readings shall be taken early in the morning, at or just prior to sunrise, during the months of June through September.

3. Dissolved oxygen (DO) readings in milligrams per liter shall be taken twice a month. One reading shall be taken at the bottom of La Quinta Channel outside of and adjacent to the basin. Readings shall be taken at a minimum of three locations separated by 100 feet along the longitudinal axis of the basin. All readings shall be taken 1 foot above the bottom.

4. An annual report summarizing the monitoring results shall be sent to the USACE by November 30 of each year.

5. Upon receipt of the reports, the USACE shall determine if mitigative measures are required.

6. Upon submittal of the final report, the USACE will determine if the continuation of the monitoring program is necessary.

Water Quality Monitoring Plan -
Deep hole basin
Kiewit Offshore Services, Ltd.
Corpus Christi Bay
Nueces County, Texas
Page 7 of 7
26 August 2002

PERMITTED PLANS

EXHIBIT B

Robert J. Huston, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Kathleen Hartnett White, *Commissioner*
Jeffrey A. Saitas, *Executive Director*

JUL 15 2002

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

July 10, 2002

Mr. Fuat Sezer, P.E.
Kiewit Offshore Services, Ltd.
P.O. Box K
Ingleside, Texas 78362

Re: USACE Permit Application No. 22302(01)

Dear Mr. Sezer:

This letter is in response to your request for the Texas Natural Resource Conservation Commission's (TNRCC) authorization to use the United States Army Corps of Engineers (Corps) Nationwide Permit 16 for Discharge of Return Water from Contained Upland Disposal Areas associated with USACE Permit No. 22302(01). Kiewit Offshore Services, Ltd. is proposing to widen the bottom width of a section of La Quinta Channel and to deepen a portion of the basin adjacent to their facility located in Corpus Christi Bay. The site is north of the intersection of the La Quinta Channel and the Jewel Fulton Canal in Ingleside, Nueces and San Patricio Counties, Texas. Kiewit Offshore Services, Ltd. has agreed to the 300 mg/l total suspended solid (TSS) limit on decant return water from their upland disposal site for this project.

The TNRCC issued a conditional certification for the Nationwide Permit 16 on April 4, 2002, which required effluent from an upland contained disposal area to not exceed a TSS concentration of 300 mg/l.

You are authorized by the TNRCC to use Nationwide Permit 16 provided that the 300 mg/l TSS condition is added to your authorization. A copy of this letter is being forwarded to the Corps.

If you have any questions, please contact Ms. Sidne Tiemann of the Water Quality Division (MC150) at (512) 239-4606, or by e-mail at *stiemann@tnrcc.state.tx.us*.

Sincerely,

FOR

Jeffrey A. Saitas, P.E., Executive Director
Texas Natural Resource Conservation Commission

MF/SGT/emh

cc: Ms. Marie C. Pattillo, U.S. Army Corps of Engineers, Galveston District, CESWG-PE-RB, 5151 Flynn Parkway, Suite 306, Corpus Christi, Texas 78411-4318
Ms. Lynnda Kahn, Shiner Moseley and Associates, Inc., 555 N. Carancahua, Suite 1650, Corpus Christi, Texas 78478-0010

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Kiewit Offshore Services, Ltd.	File Number: 22302(01)	Date:26 Aug 2002
Attached is:		See Section below
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/ or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: Marie C. Pattillo, Project Manager U.S. Army Corps of Engineers, CESWG-PE-RB Corpus Christi Regulatory Field Office 5151 Flynn Parkway, Suite 306 Corpus Christi, Texas 78411-4318 Telephone 361-814-5847; FAX 361-814-5912	If you only have questions regarding the appeal process you may also contact: James E. Gilmore, Appeal Review Officer CESWD-ETO-R, 1100 Commerce Street Dallas, Texas 75242-0216 Telephone: 214-767-2457; FAX 214-767-9021 Email: James.E.Gimore@swd02.usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or authorized agent.	Date:	Telephone number:

FORM 322-CMS (4/99)

FIELD DISBURSEMENT ACCOUNT

DETACH I BEFOF RELEAS

CO-JOB NO.	JNL-LINE NO.	VENDOR NO. AND NAME	DATE	CHECK NO.
253-3658	17-1	969.6 U.S.ARMY ENGINEER DISTRICT -	08-26-02	717979

717979

COST CD/EQP NO.	EXP CD.	AMOUNT	DESCRIPTION
0320.40	90	100	17-1:PERMIT APPLICATION 22302(01)

FOR HOME OFFICE USE ONLY

AMOUNT	ACCOUNT	DEPARTMENT	TAX CODE	STATE

EXHIBIT B

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
5151 FLYNN PARKWAY #306
CORPUS CHRISTI, TX 78411-4318

August 12, 2011

REPLY TO
ATTENTION OF:

Corpus Christi Regulatory Field Office

SUBJECT: Permit Application – SWG-2001-02106

Dion Fudge
Kiewit Offshore Services, Ltd.
2440 Kiewit Road
Ingleside, TX 78362-5100

Dear Mr. Fudge:

Two copies of a permit for work in waters of the United States, resulting from your above numbered application, are enclosed for your signature.

Before you accept the permit, please note all terms and conditions and any minor plan modifications that may have been necessary. Also, please note the Notification of Administrative Appeal Options regarding this permit.

Both copies should be signed in the space provided and the date the permit is signed should be inserted. A fee in the amount of $100.00 must be paid before the permit can be approved. Your check should be made payable to the U.S. Army Engineer District, Galveston and mailed to the District Engineer at the address shown above.

Within ten days, both copies of the accepted permit should be returned to this office for approval, after which one copy of the permit will be promptly sent to you for retention. This permit is not valid until signed in the issuing office.

Sincerely,

Lloyd Mullins, Supervisor
Corpus Christi Regulatory Field Office

Enclosures

To assist us in improving our service to you, please complete the survey found at:
http://per2.nwp.usace.army.mil/survey.html

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
5151 FLYNN PARKWAY #306
CORPUS CHRISTI, TX 78411-4318

August 12, 2011

REPLY TO
ATTENTION OF:

Corpus Christi Regulatory Field Office

SUBJECT: Permit Application – SWG-2001-02106

Dion Fudge
Kiewit Offshore Services, Ltd.
2440 Kiewit Road
Ingleside, TX 78362-5100

Dear Mr. Fudge:

The above numbered permit has been approved and a signed copy is enclosed for your retention.

Also enclosed are ENG Form 4336 and a copy of "Notice to Permittee" which provides important information for permit administration. Please notify the District Engineer, in writing, upon completion of the authorized work. A pre-addressed postcard has been enclosed for your convenience.

Sincerely,

Lloyd Mullins, Supervisor
Corpus Christi Regulatory Field Office

Enclosures

To assist us in improving our service to you, please complete the survey found at:
http://per2.nwp.usace.army.mil/survey.html

DEPARTMENT OF THE ARMY PERMIT

Permittee Kiewit Offshore Services

Permit No. SWG-2001-02106

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: This authorization is an amendment to Department of the Army Permit No. SWG-2001-02106 (formerly known as 22302). The permittee is authorized to change the shape to an irregular "double-offset-rectangular" configuration (see sheet 3 of 11 for dimensions). The change in configuration would result in an increase in the size of the deep loading hole by one half acre. No change in the depth of the deep hole is authorized. The total volume of dredged material is approximately 550,000 cubic yards of material. The material will be disposed in the existing permitted dredge material placement areas; Dredge Material Placement Area No. 13, Berry Island, or the upland placement area on Kiewit's existing property.

Additionally, the permittee is authorized to widen the La Quinta Channel. The permittee is authorized to dredge approximately 9.8 acres of bay bottom to widen the channel by 30 feet, from the existing 400 feet to 430 feet between the Kiewit facility and the junction with the Corpus Christi Ship Channel for a total distance of approximately 2.7 miles (see Sheet 5, Project Plan View). No changes to channel depth are authorized (See Sheet 11, Typical Cross Section View). The permittee will hydraulically dredge and/or mechanically excavate approximately 550,000 cubic yards of sandy clay material and place it in either of three authorized upland placement areas; Dredge Material Placement Area No. 13, Berry Island, or the placement area on Kiewit's existing facility. The footprint of the dredged area will be 30 additional feet in width on the northeast edge of the La Quinta Channel between stations 175+00 and 90+00 (Kiewit facility to just south of Berry Island) and then and additional 30 feet wide on the southeast edge of La Quinta Channel from Stations 90+00 to 30+00 (south of Berry Island to the intersection with Corpus Christi Ship Channel). The permittee has stated that they will coordinate with the pilots and the Port of Corpus Christi (Port) to ensure that impacts to safe and timely navigation do not occur during construction. Additionally, two pile supported aids to navigation will be relocated as a result of this project (see permit sheets 8 and 9). The project will be conducted in accordance with the attached plans, in 11 sheets and "Attachment A" in 4 sheets. All provisions and conditions of previous authorizations remain in full force and affect unless superseded by this authorization.

Project Location: The La Quinta Channel in Corpus Christi Bay from a point adjacent to the Kiewit facility to the point where the La Quinta Channel intersects with the Corpus Christi Ship Channel, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas.

Permit Conditions:
General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. The mitigation details and success criteria, as indicated in the mitigation plan included as "Attachment A" must be achieved for the mitigation requirement to be considered complete.

3. The permittee must begin construction of all mitigation sites within 60 days of initiating work within jurisdictional areas. The permittee must contour the mitigation areas in accordance with the project plans and notify the U.S. Army Corps of Engineers' Corpus Christi Regulatory Field Office prior to demobilizing the excavation equipment so that the District can verify that the requisite elevations have been achieved.

4. Following the one-year anniversary date of mitigation site construction, the site must have at least 30% aerial coverage of the targeted vegetation (*S. alterniflora*). If this is not achieved after the first year, the permittee shall, within 30 days of the anniversary of commencing mitigation work, plant the un-vegetated areas with target vegetation. If planting becomes necessary, the area shall be planted with targeted vegetation according to standard planting procedures.

5. If the mitigation area has not reached 50% aerial coverage by the two-year anniversary of mitigation site construction, a second planting effort in the un-vegetated areas shall be done according to standard planting procedures. If, after two planting attempts and the three-year anniversary, the area has not achieved the targeted aerial coverage of 70 %, the permittee shall develop an alternate compensatory mitigation plan and submit it to the Corpus Christi Regulatory Field Office for approval.

6. The mitigation area will be considered to have met minimum success criteria if it meets 70% aerial coverage of the targeted vegetation described in the mitigation plan by the three-year anniversary date of mitigation site construction and that coverage is maintained for two consecutive years.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Dion Fudge — 8/12/2011

DION FUDGE
FOR KIEWIT OFFSHORE SERVICES

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

8-12-11

(DISTRICT ENGINEER)
LLOYD MULLINS
CORPUS CHRISTI REGULATORY FIELD OFFICE
FOR COLONEL CHRISTOPHER W. SALLESE

(DATE)

EXHIBIT C

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

_____ _____

(TRANSFEREE – Typed/Printed Name) *(DATE)*

_____ _____

(TRANSFEREE - Signature) (*Mailing Address)*

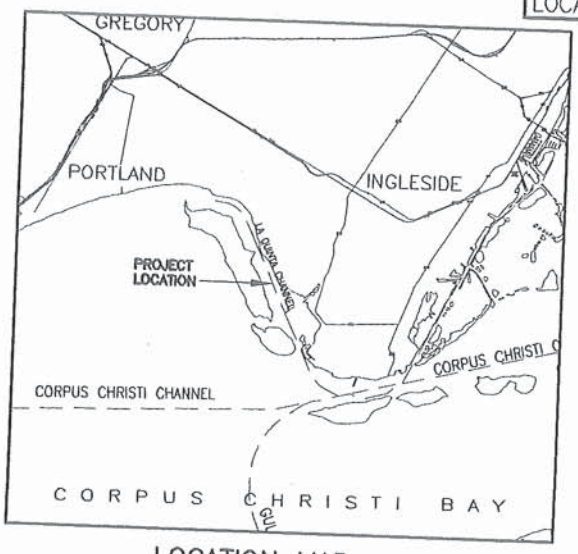
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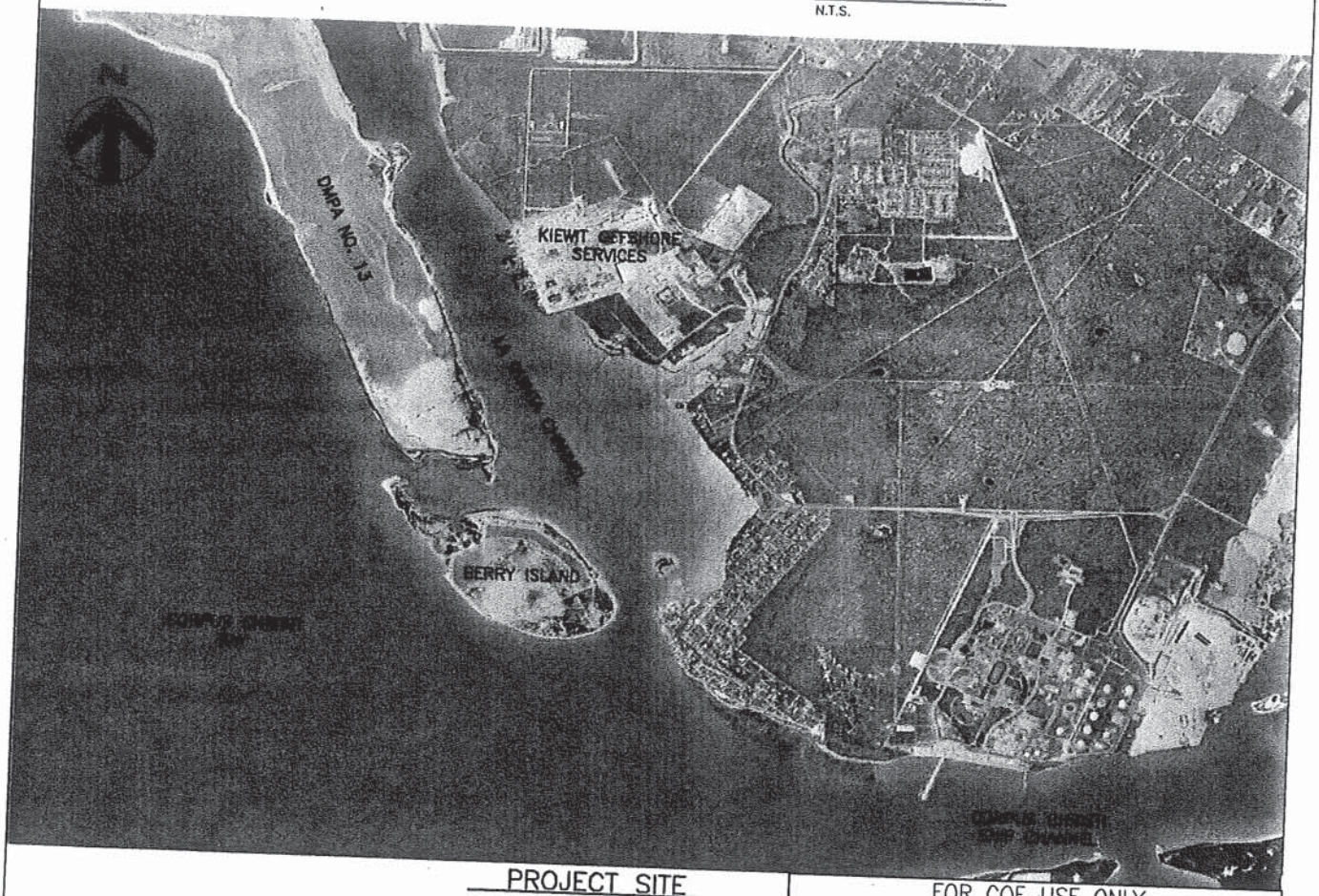
VICINITY MAP
N.T.S.

PERMITTED PLANS

LOCATION MAP



LOCATION MAP
N.T.S.



PROJECT SITE
N.T.S.

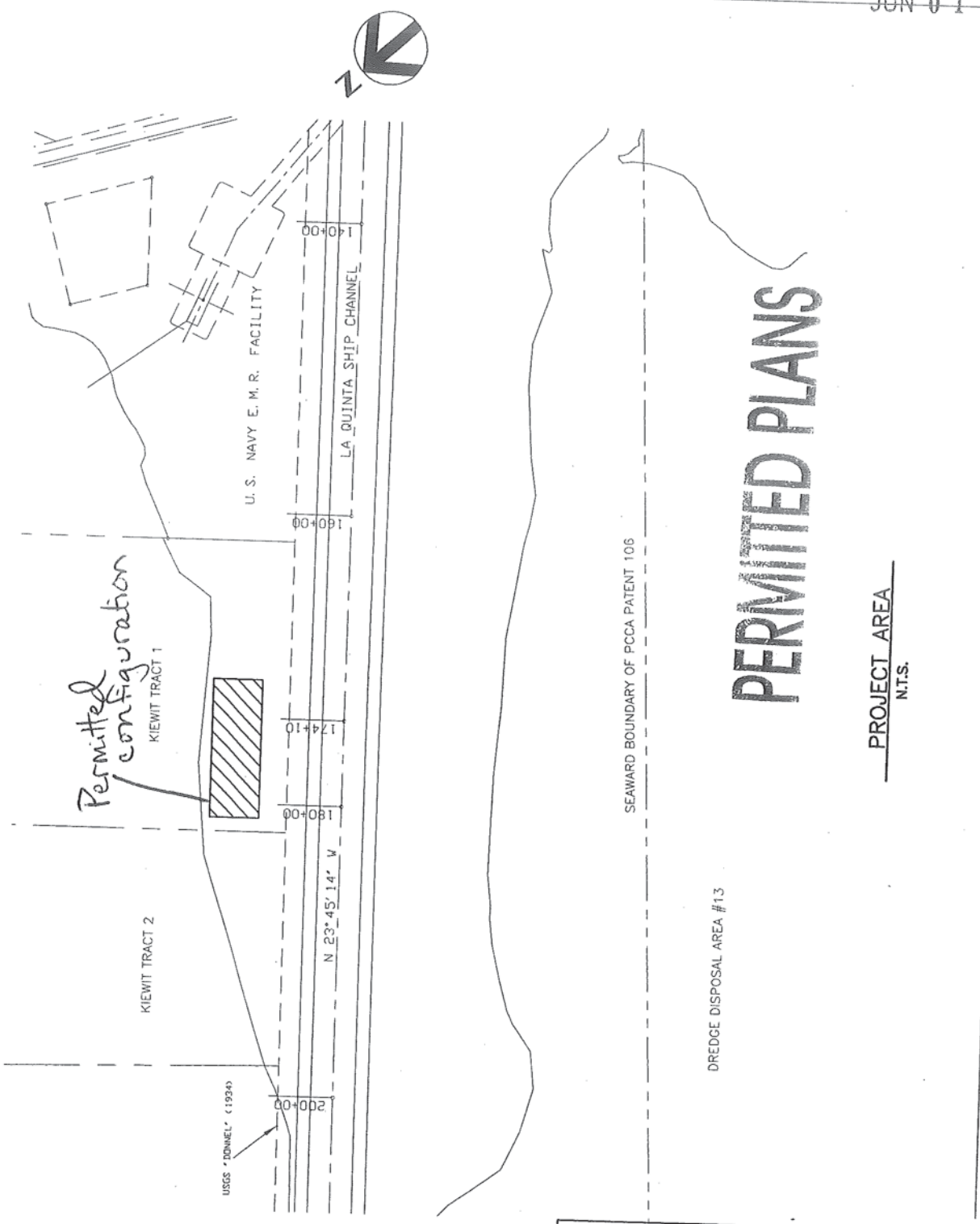
FOR COE USE ONLY
Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR
HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING SWG-2001-02106
APPLICANT: KIEWIT OFFSHORE SERVICES DATUM: N/A
DATE: 3/2010 REV. DATE: 01/11/2011
HDR JOB NO: 136751 Sheet 1 of 11

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FOR COE USE ONLY
Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR Engineering, Inc.
TEXAS FIRM REGISTRATION NUMBER 754

ACTIVITY: KIEWITT DEEP HOLE SWG-2001-02106

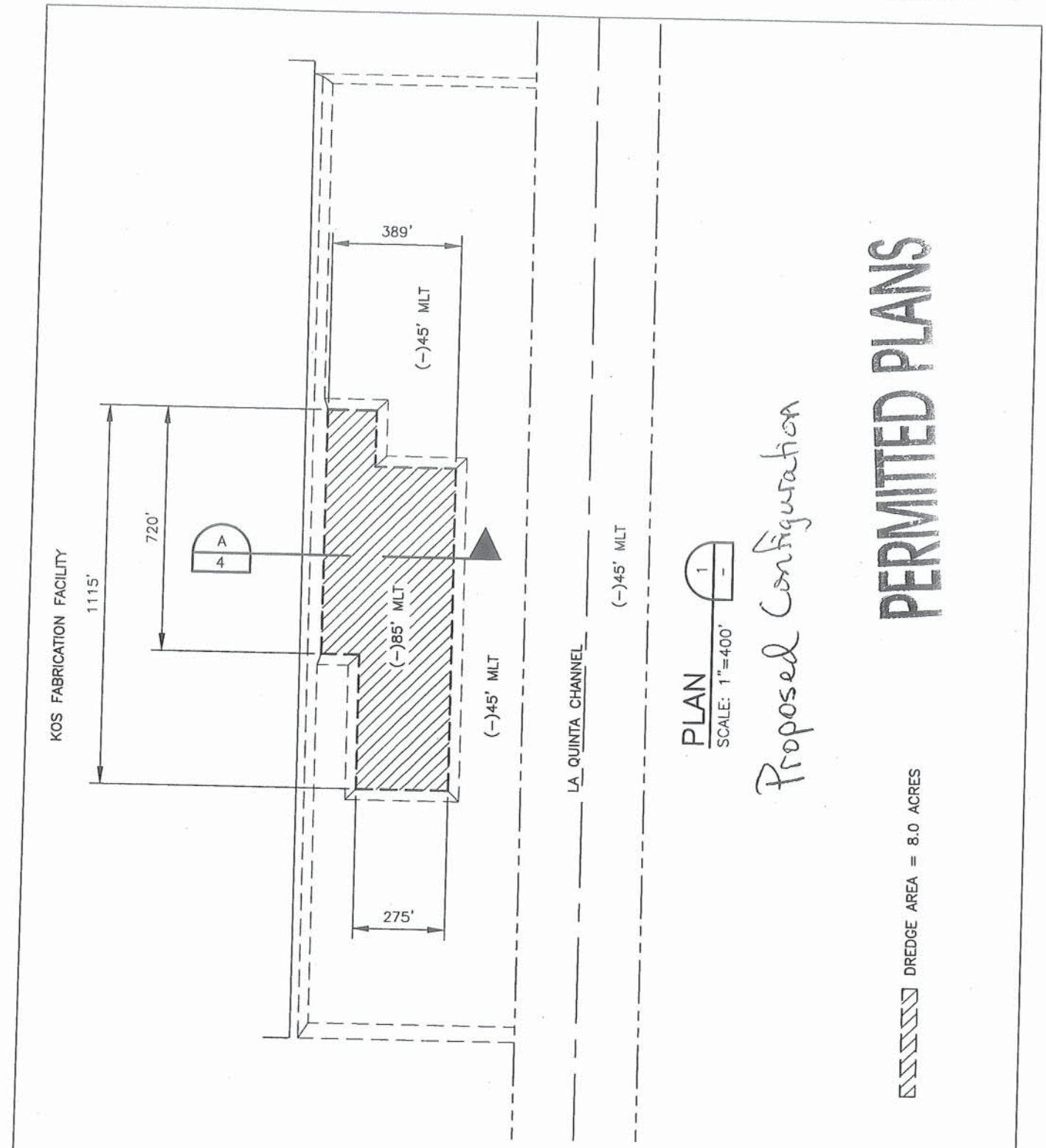
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD. DATUM: N/A

DATE: 4/2011 REV. DATE: 5/23/2011

HDR JOB NO: 161039 Sheet 2 of 11

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JUN 0 1 2011



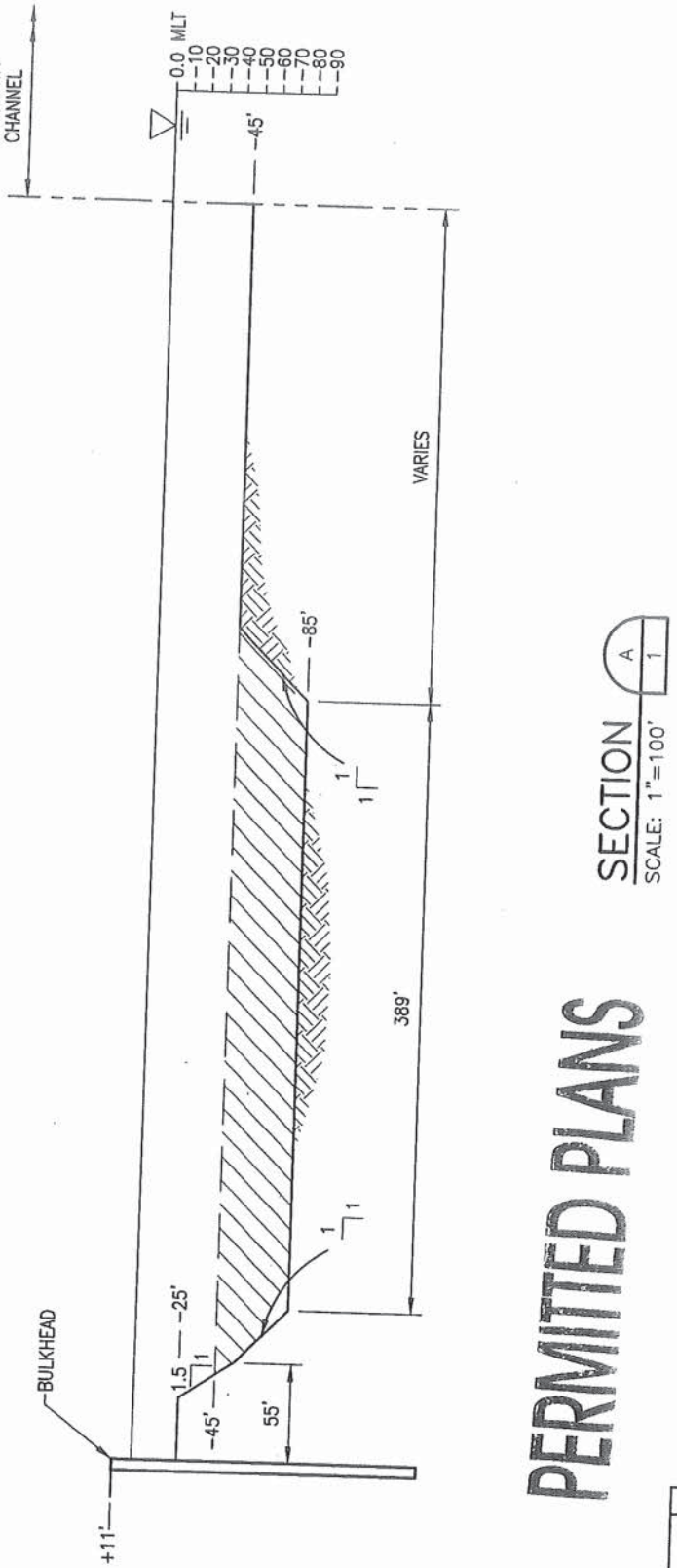
FOR COE USE ONLY
Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR
HDR Engineering, Inc.
TEXAS FIRM REGISTRATION NUMBER 734

ACTIVITY: KIEWITT DEEP HOLE SWG-2001-02106
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD. DATUM: MLT
DATE: 4/2011 REV. DATE: 5/27/11
HDR JOB NO: 161039 Sheet 3 of 11

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JUN 0 1 2011



SECTION (A-1)
SCALE: 1"=100'

NOTE:
1. DEPTH OF SHELF IMMEDIATELY ADJACENT TO BULKHEAD PREVIOUSLY AUTHORIZED TO -25 FEET.
2. PROPOSED DEEPENING WILL BEGIN ~55 FEET BAYWARD OF BULKHEAD AS SHOWN.

PROPOSED DREDGE VOLUME (~550,000 CU. YD.)

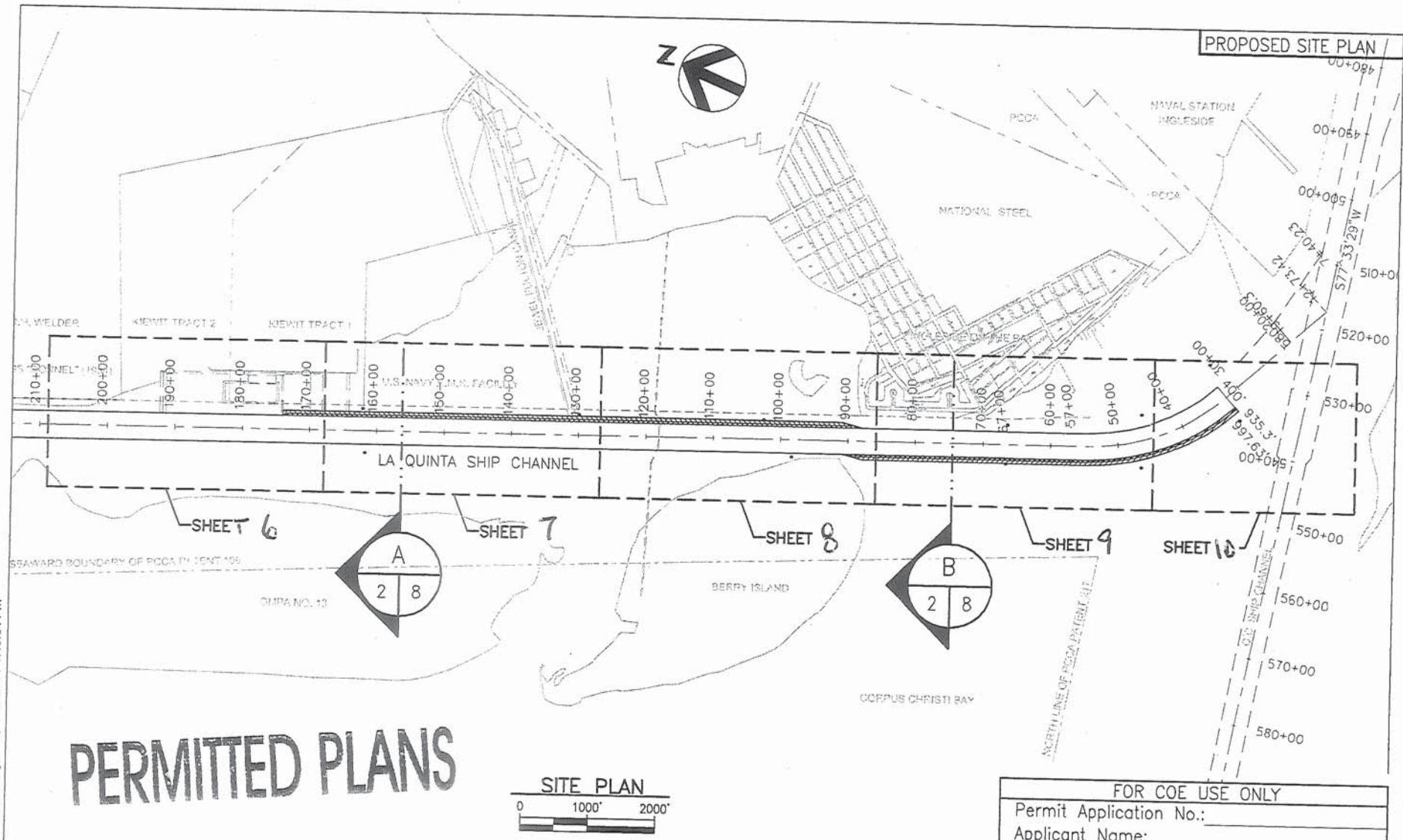
PERMITTED PLANS

FOR COE USE ONLY
Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR Engineering, Inc.
TEXAS FIRM REGISTRATION NUMBER 754

ACTIVITY: KIEWIT DEEP HOLE PERMIT AMENDMENT SWG-2001-02106
APPLICANT: KIEWIT OFFSHORE SERVICES, LTD. DATUM: MLT
DATE: 4/2011 REV. DATE: 5/27/11
HDR JOB NO: 161039 Sheet 4 of 11

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PERMITTED PLANS

SITE PLAN
0 1000' 2000'

FOR COE USE ONLY
Permit Application No.:
Applicant Name:
Sheet ____ of ____

HDR
HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATE: 3/2010

DATUM: N/A

REV. DATE: 01/11/2011

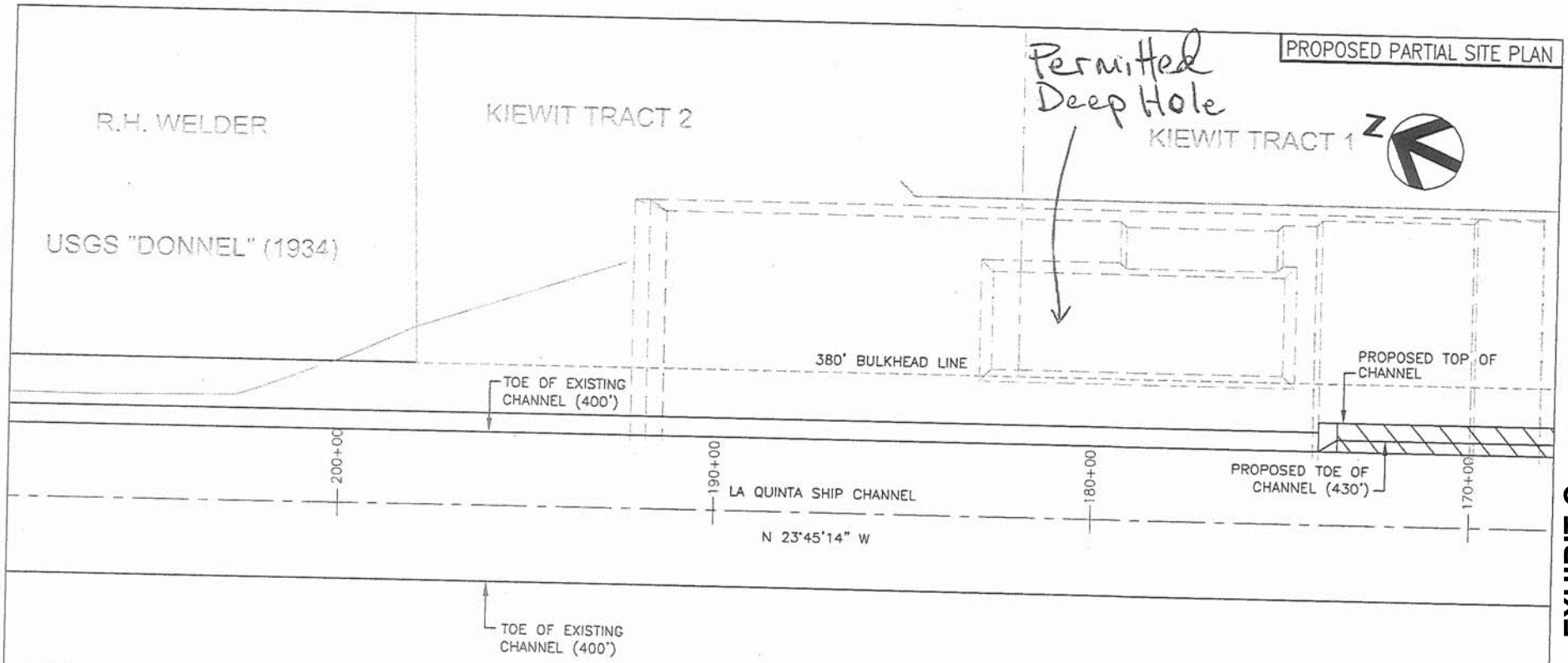
HDR JOB NO: 136751

Sheet 5 of 11

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EXHIBIT C
192

JAN 13 2011



NOTES:

1. APPLICANT PROPOSES TO WIDEN THE LA QUINTA SHIP CHANNEL FROM 400' TO 430'.
2. A COMBINATION OF HYDRAULIC DREDGING AND MECHANICAL EXCAVATION MAY BE UTILIZED DURING CONSTRUCTION.
3. DREDGED MATERIAL WILL BE DISPOSED OF IN AN AUTHORIZED UPLAND CONFINED DISPOSAL AREA. (DMPA NO.13, BERRY ISLAND, OR ON KIEWIT PROPERTY)
4. PROPOSED DREDGING WILL RESULT IN IMPACTS TO APPROX. 711 SF OF SEAGRASS.
5. THIS DRAWING IS FOR PERMITTING PURPOSES ONLY.

PARTIAL PLAN
0 200' 400'

LEGEND:
PROPOSED CHANNEL WIDENING

PERMITTED PLANS

FOR COE USE ONLY
Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR
HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATE: 3/2010

DATUM: N/A

REV. DATE: 01/11/2011

HDR JOB NO: 136751

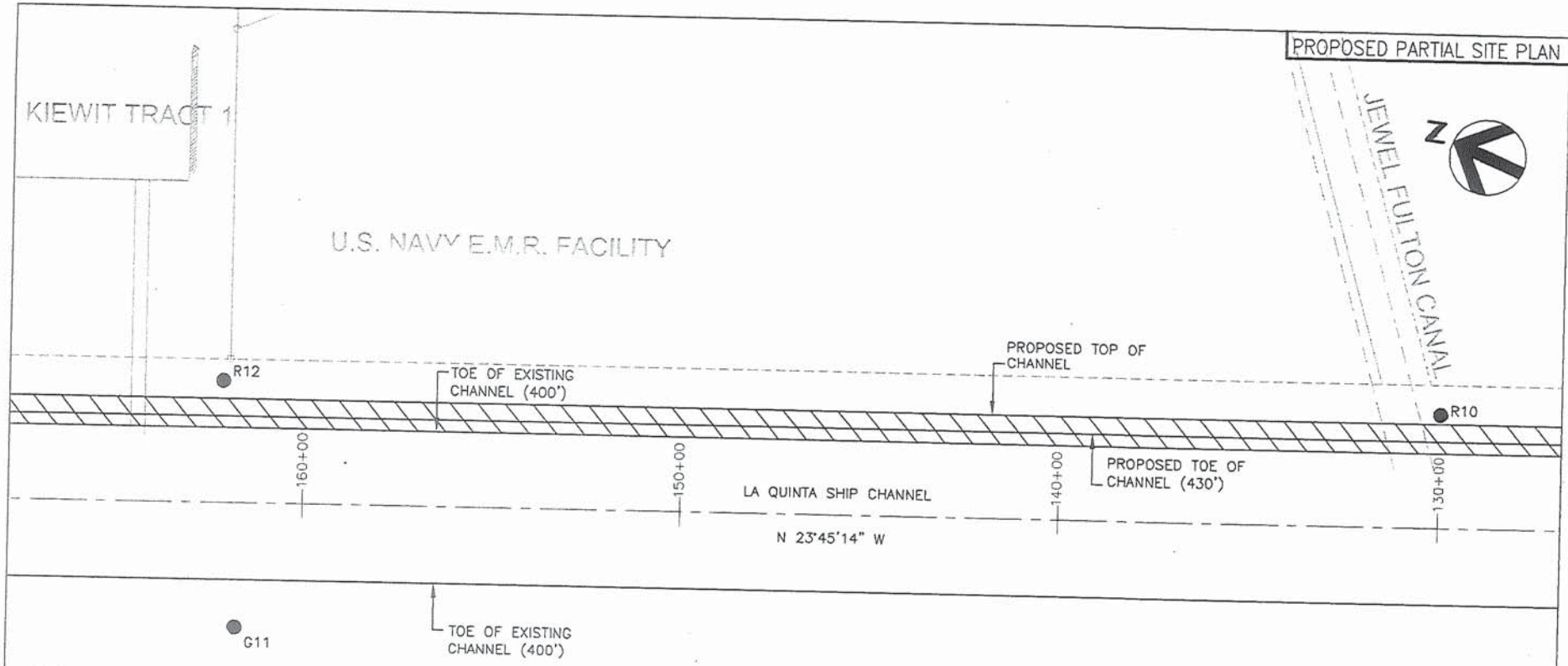
Sheet 6 of 11

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EXHIBIT C
193

JAN 13 2011

PROPOSED PARTIAL SITE PLAN



NOTES:

1. APPLICANT PROPOSES TO WIDEN THE LA QUINTA SHIP CHANNEL FROM 400' TO 430'.
2. A COMBINATION OF HYDRAULIC DREDGING AND MECHANICAL EXCAVATION MAY BE UTILIZED DURING CONSTRUCTION.
3. DREDGED MATERIAL WILL BE DISPOSED OF IN AN AUTHORIZED UPLAND CONFINED DISPOSAL AREA. (DMPA NO.13, BERRY ISLAND, OR ON KIEWIT PROPERTY)
4. PROPOSED DREDGING WILL RESULT IN IMPACTS TO APPROX. 711 SF OF SEAGRASS.
5. THIS DRAWING IS FOR PERMITTING PURPOSES ONLY.

PARTIAL PLAN
0 200' 400'

LEGEND:
- G1 FIXED AID TO NAVIGATION
- PROPOSED CHANNEL WIDENING

PERMITTED PLANS

FOR COE USE ONLY
Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATUM: N/A

DATE: 3/2010

REV. DATE: 01/11/2011

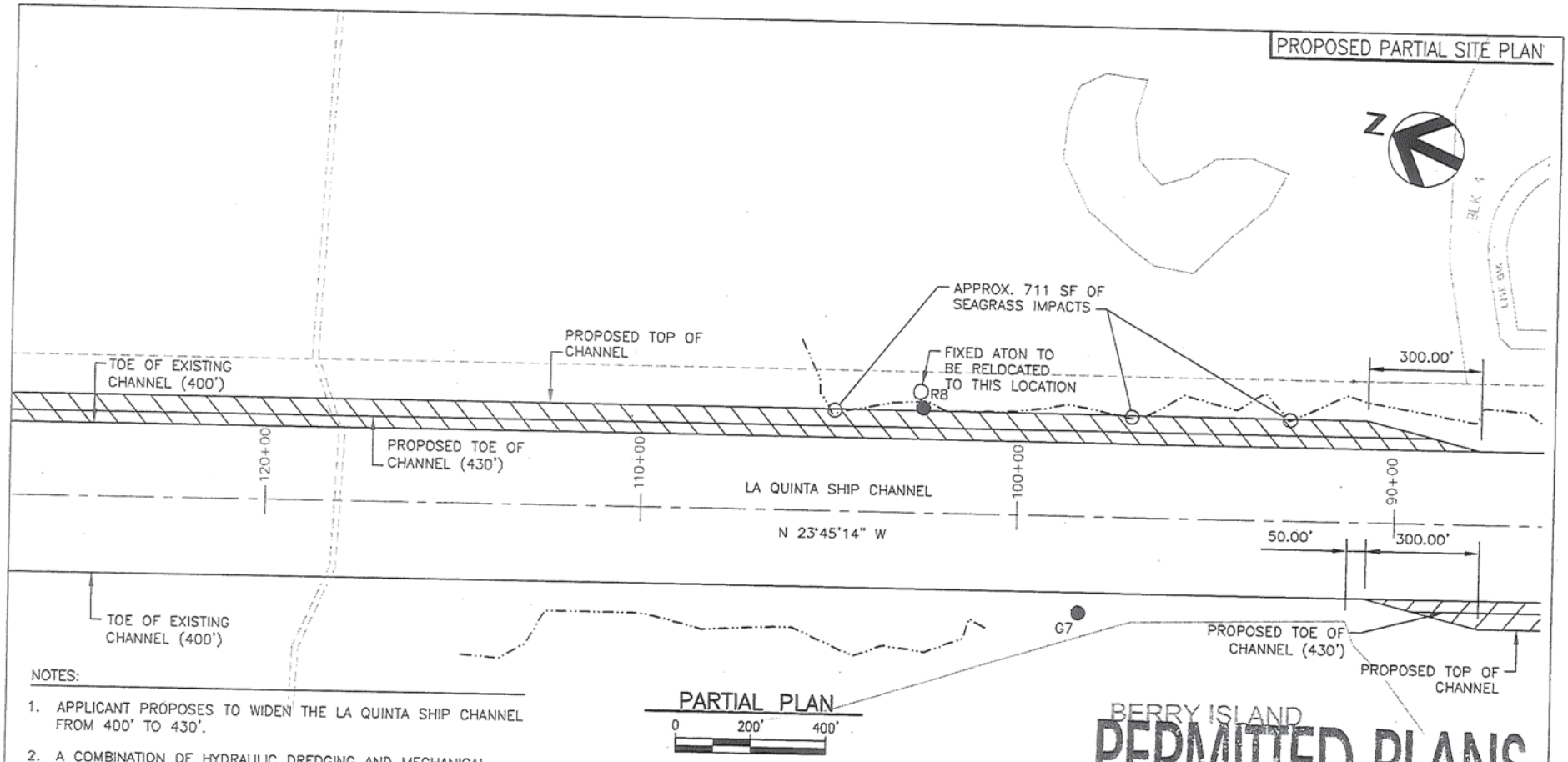
HDR JOB NO: 136751

Sheet 7 of 11

EXHIBIT C
194

JAN 19 2011

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NOTES:

1. APPLICANT PROPOSES TO WIDEN THE LA QUINTA SHIP CHANNEL FROM 400' TO 430'.
2. A COMBINATION OF HYDRAULIC DREDGING AND MECHANICAL EXCAVATION MAY BE UTILIZED DURING CONSTRUCTION.
3. DREDGED MATERIAL WILL BE DISPOSED OF IN AN AUTHORIZED UPLAND CONFINED DISPOSAL AREA. (DMPA NO.13, BERRY ISLAND, OR ON KIEWIT PROPERTY)
4. PROPOSED DREDGING WILL RESULT IN IMPACTS TO APPROX. 711 SF OF SEAGRASS.
5. THIS DRAWING IS FOR PERMITTING PURPOSES ONLY.

LEGEND:

- G1 FIXED AID TO NAVIGATION
- PROPOSED CHANNEL WIDENING
- DELINEATED SEAGRASS BOUNDARY

BERRY ISLAND

PERMITTED PLANS

FOR COE USE ONLY

Permit Application No.:

Applicant Name:

Sheet ___ of ___

HDR

HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATE: 3/2010

DATUM: N/A

REV. DATE: 01/11/2011

HDR JOB NO: 136751

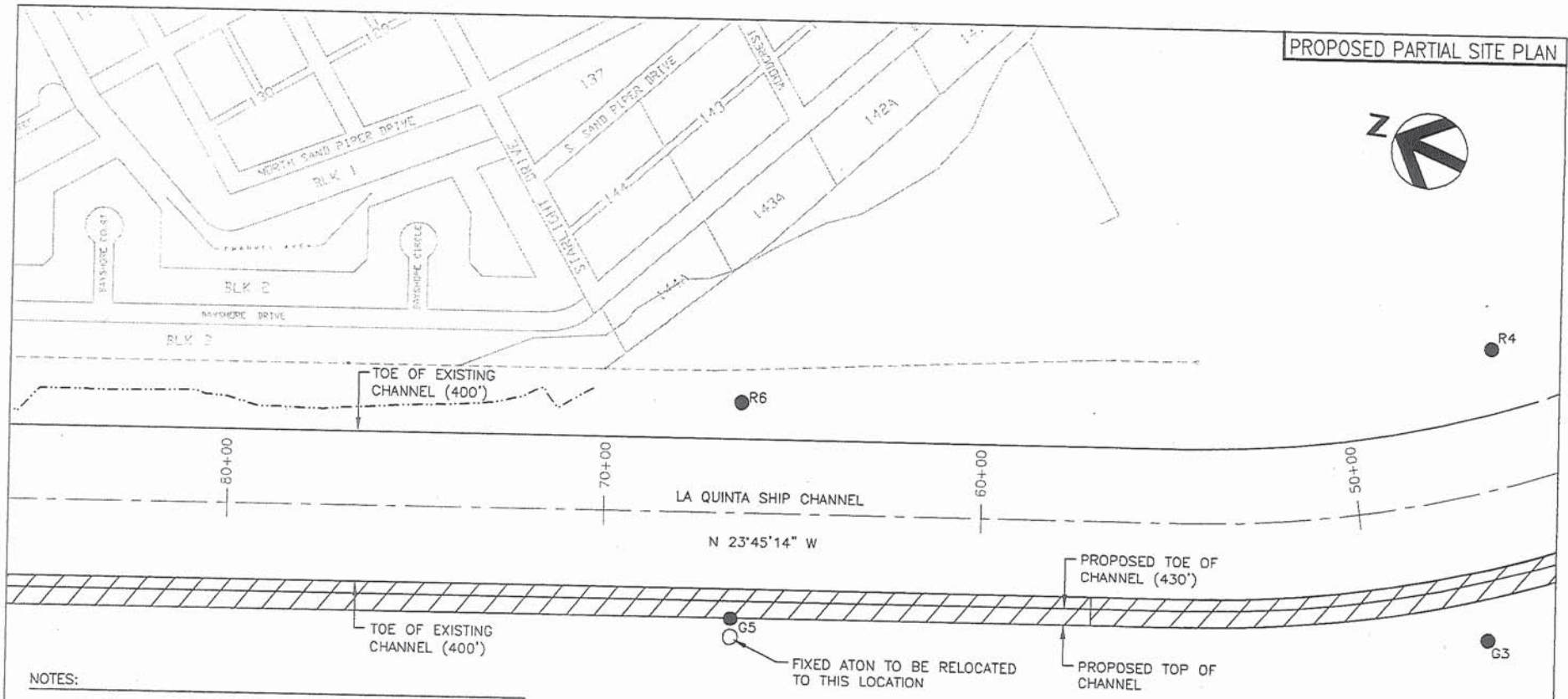
Sheet 8 of 11

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EXHIBIT C
195

JAN 13 2011

PROPOSED PARTIAL SITE PLAN



NOTES:

1. APPLICANT PROPOSES TO WIDEN THE LA QUINTA SHIP CHANNEL FROM 400' TO 430'.
2. A COMBINATION OF HYDRAULIC DREDGING AND MECHANICAL EXCAVATION MAY BE UTILIZED DURING CONSTRUCTION.
3. DREDGED MATERIAL WILL BE DISPOSED OF IN AN AUTHORIZED UPLAND CONFINED DISPOSAL AREA. (DMPA NO.13, BERRY ISLAND, OR ON KIEWIT PROPERTY)
4. PROPOSED DREDGING WILL RESULT IN IMPACTS TO APPROX. 711 SF OF SEAGRASS.
5. THIS DRAWING IS FOR PERMITTING PURPOSES ONLY.

PARTIAL PLAN

0 200' 400'

LEGEND:

- G1 FIXED AID TO NAVIGATION
- PROPOSED CHANNEL WIDENING
- DELINEATED SEAGRASS BOUNDARY

PERMITTED PLANS

CORPUS CHRISTI BAY

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Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATUM: N/A

DATE: 3/2010

REV. DATE: 01/11/2011

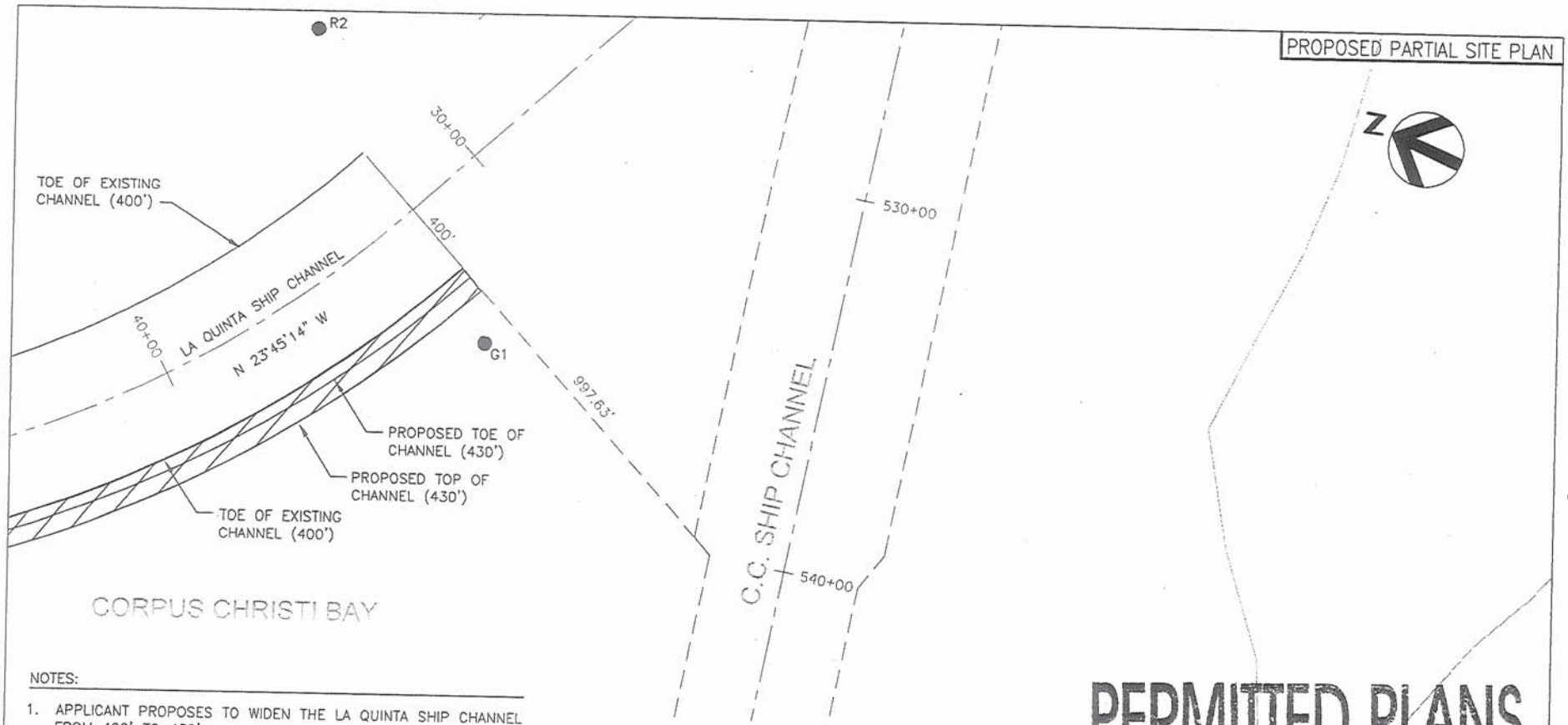
HDR JOB NO: 136751

Sheet 9 of 11

EXHIBIT C
196

JAN 13 2011

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PROPOSED PARTIAL SITE PLAN

PERMITTED PLANS

PARTIAL PLAN

0 200' 400'

NOTES:

1. APPLICANT PROPOSES TO WIDEN THE LA QUINTA SHIP CHANNEL FROM 400' TO 430'.
2. A COMBINATION OF HYDRAULIC DREDGING AND MECHANICAL EXCAVATION MAY BE UTILIZED DURING CONSTRUCTION.
3. DREDGED MATERIAL WILL BE DISPOSED OF IN AN AUTHORIZED UPLAND CONFINED DISPOSAL AREA. (DMPA NO.13, BERRY ISLAND, OR ON KIEWIT PROPERTY)
4. PROPOSED DREDGING WILL RESULT IN IMPACTS TO APPROX. 711 SF OF SEAGRASS.
5. THIS DRAWING IS FOR PERMITTING PURPOSES ONLY.

LEGEND:

G1 FIXED AID TO NAVIGATION

PROPOSED CHANNEL WIDENING

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Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATE: 3/2010

DATUM: N/A

REV. DATE: 01/11/2011

HDR JOB NO: 136751

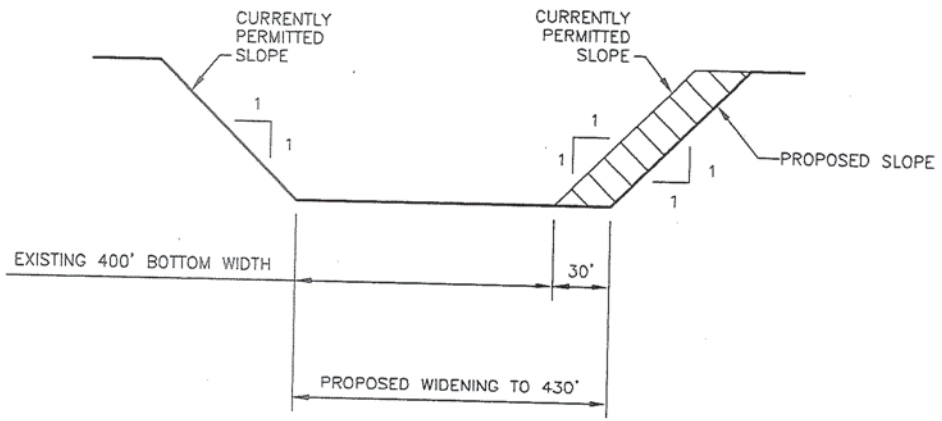
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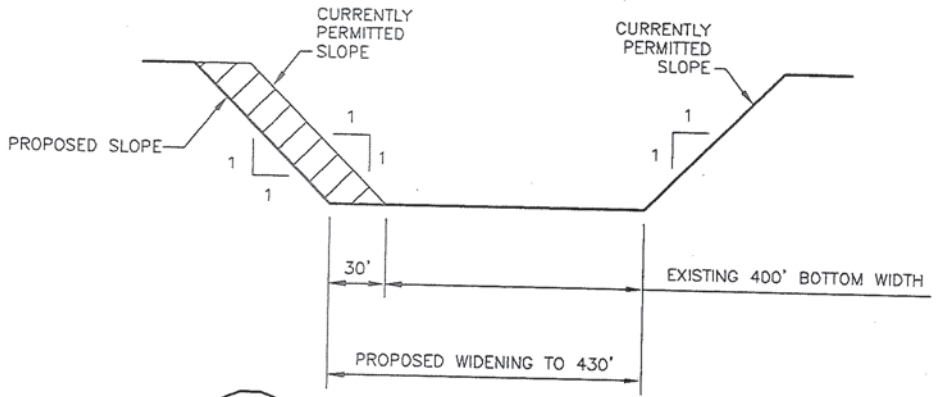
EXHIBIT C
197

JAN 13 2011

PROPOSED TYPICAL CROSS SECTION



A
2 | 8
TYPICAL CHANNEL CROSS SECTION
N.T.S.



B
2 | 8
TYPICAL CHANNEL CROSS SECTION
N.T.S.

PERMITTED PLANS

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Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR Engineering, Inc.

ACTIVITY: LA QUINTA CHANNEL WIDENING

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATUM: N/A

DATE: 3/2010

REV. DATE: 01/11/2011

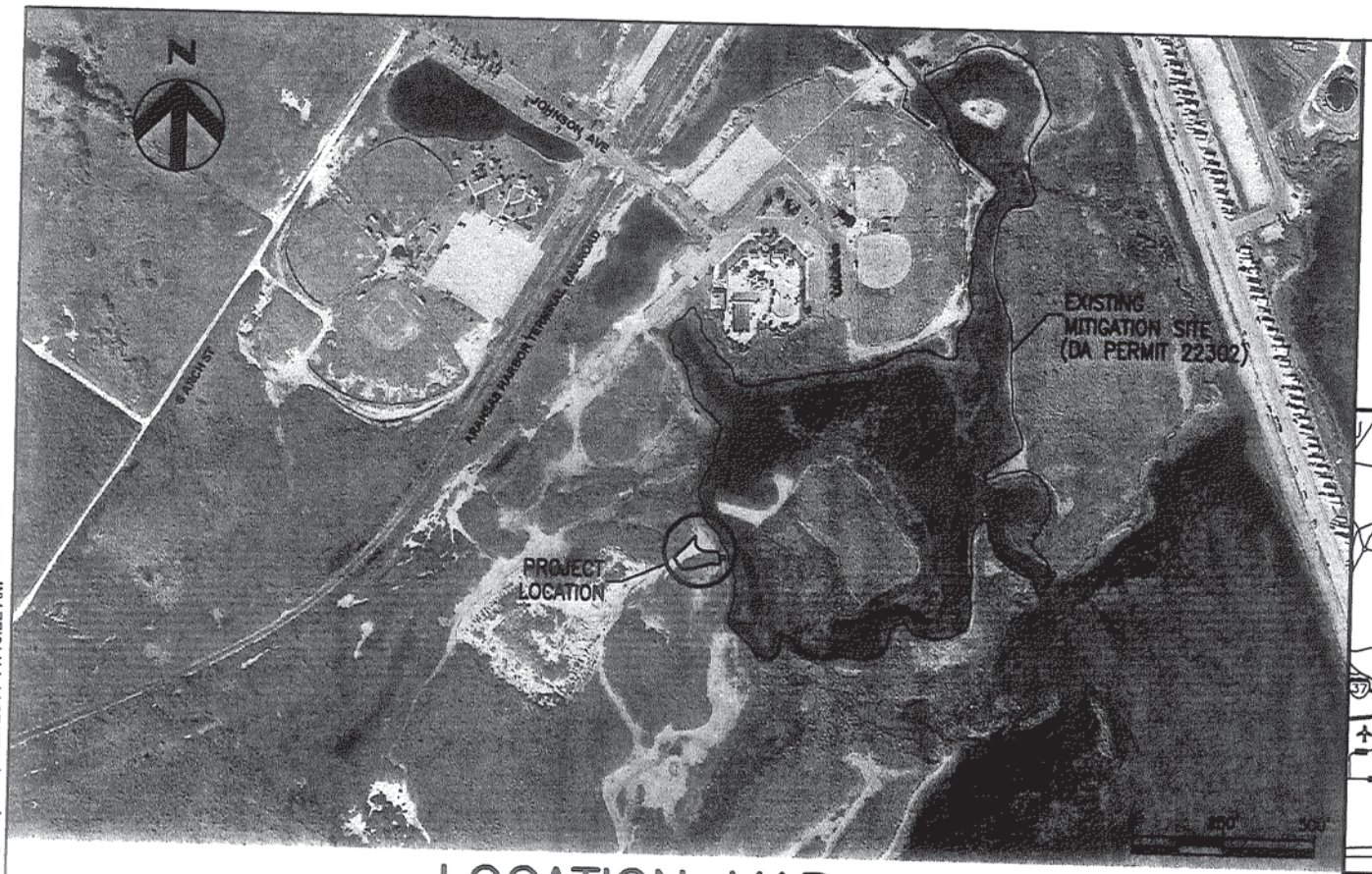
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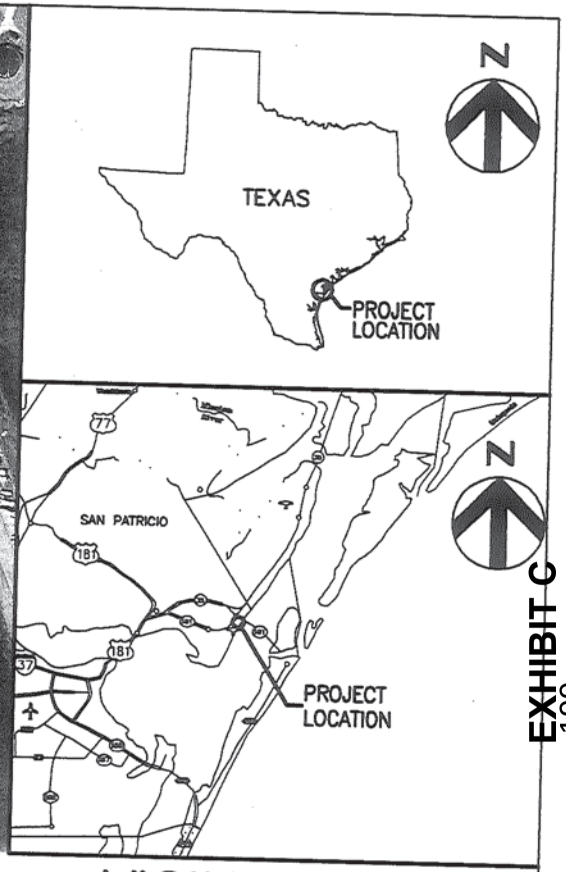
EXHIBIT C
198

JAN 13 2011



LOCATION MAP

SCALE: 1"=500'



VICINITY MAP

SCALE: NOT TO SCALE

Attachment A

SWG-2001-02106

PERMITTED PLANS

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Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR

HDR Engineering, Inc.
TEXAS FIRM REGISTRATION NUMBER 754

ACTIVITY: MITIGATION PLAN FOR SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

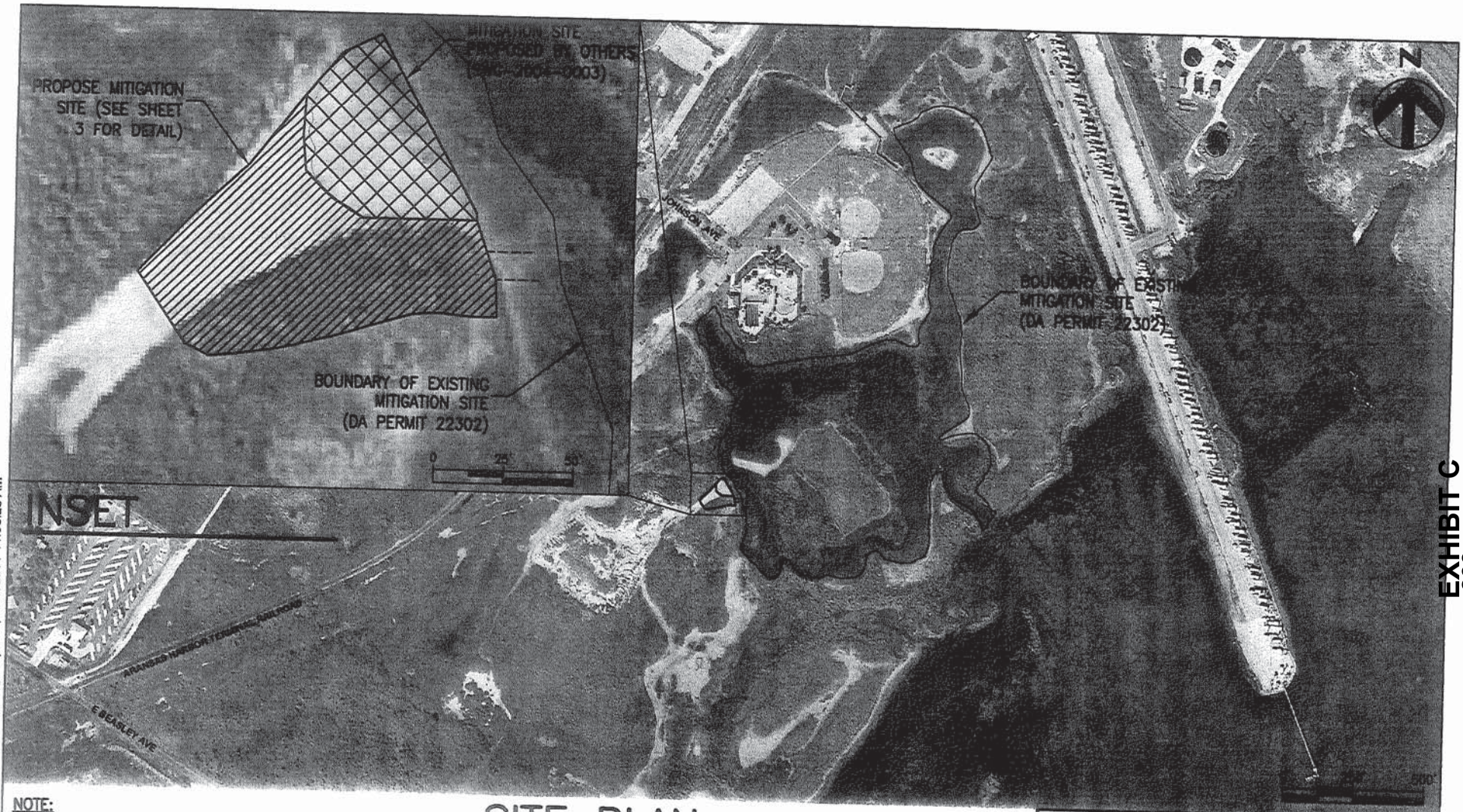
DATE: 04/27/11 **DATUM:** N/A

HDR JOB NO: 136751 **REV. DATE:** 00/00

SHEET 01 **OF** 04

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EXHIBIT C
199



NOTE:
1. THIS DRAWING IS FOR REGULATORY PURPOSES ONLY AND IS NOT TO BE USED FOR BIDDING OR CONSTRUCTION.

SITE PLAN

SCALE: 1"=500'

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Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR
HDR Engineering, Inc.

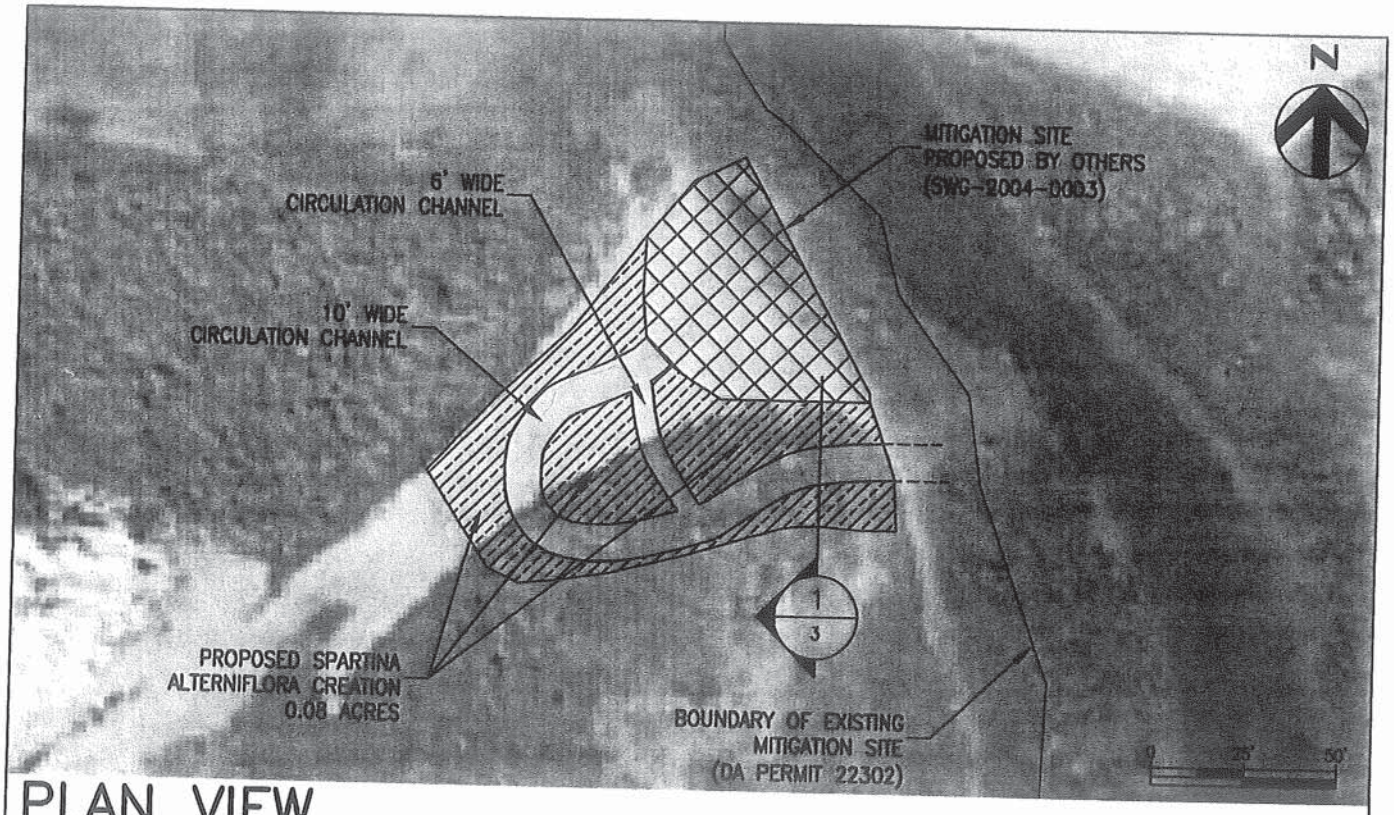
ACTIVITY: MITIGATION PLAN FOR SWG-2001-02106 Attachment A SWG-2001-02106
APPLICANT: KIEWIT OFFSHORE SERVICES
DATE: 04/27/11
HDR JOB NO: 136751

PERMITTED PLANS

DATUM: N/A
REV. DATE: 00/00
SHEET 02 OF 04

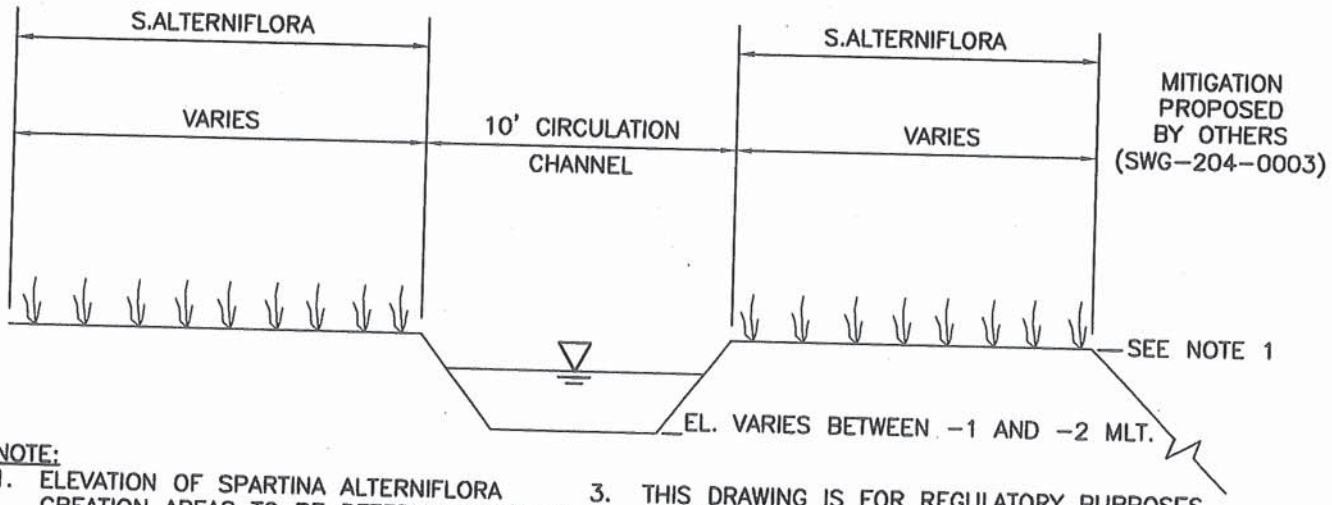
EXHIBIT C
200

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PLAN VIEW

SCALE: 1"=40'



NOTE:

1. ELEVATION OF SPARTINA ALTERNIFLORA CREATION AREAS TO BE DETERMINED BASED ON PRE-CONSTRUCTION REFERENCE MARSH ELEVATION SURVEY.
2. MITIGATION AREA TO BE LOWERED VIA MECHANICAL EXCAVATION, WITH MATERIAL PLACED IN UPLANDS.
3. THIS DRAWING IS FOR REGULATORY PURPOSES ONLY AND IS NOT TO BE USED FOR BIDDING OR CONSTRUCTION.

PERMITTED PLANS Attachment A

SECTION VIEW

SCALE: N.T.S.

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Sheet ___ of ___

HDR
HDR Engineering, Inc.

ACTIVITY: MITIGATION PLAN FOR SWG-2001-02106

SWG-2001-02106

APPLICANT: KIEWIT OFFSHORE SERVICES

DATUM: MLT

DATE: 04/27/11

REV. DATE: 00/00

HDR JOB NO: 136751

SHEET 03 **OF** 04

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NOTES PAGE

PROPOSED IMPACTS:

- EXCAVATION OF 950 S.F. (0.02 ACRES) OF SEAGRASS

PROPOSED COMPENSATORY MITIGATION:

- CREATION OF 3,485 S.F. (0.08 ACRES) OF S. ALTERNIFLORA
- RATIO OF CREATED WETLANDS TO IMPACTED WETLANDS IS 4 TO 1.

PROPOSED COMPENSATORY MITIGATION:

- MONITORING OF MITIGATION SITE TO OCCUR ANNUALLY AT 1, 2, 3, 4, 5 YEARS POST-CONSTRUCTION
- MONITORING REPORTS TO BE SUBMITTED TO USACE FOLLOWING EACH MONITORING EFFORT.
- MONITORING REPORTS WILL INCLUDE PHOTOGRAPHIC COVERAGE OF THE SITE, PERCENT COVER ESTIMATES AND OTHER OBSERVATIONS RELATED TO SITE SUCCESS.
- TO BE CONSIDERED SUCCESSFUL, S. ALTERNIFLORA AREAS WILL BE AT 30% COVER AFTER YEAR 1, 50% COVER AFTER YEAR 2, AND 70% COVER AFTER YEAR 3.
- IF THE SITE ARRIVES AT THE ULTIMATE TARGET PERCENT COVER (70%) PRIOR TO YEAR 3, MONITORING MAY CEASE WITH USACE APPROVAL.

PERMITTED PLANS

Attachment A

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Permit Application No.:
Applicant Name:
Sheet ___ of ___

HDR

HDR Engineering, Inc.
TEXAS FIRM REGISTRATION NUMBER 754

ACTIVITY: MITIGATION PLAN FOR SWG-2001-02106	SWG-2001-02106
APPLICANT: KIEWIT OFFSHORE SERVICES	**DATUM:** N/A
DATE: 04/27/11	**REV. DATE:** 00/00
HDR JOB NO: 136751	**SHEET** 04 **OF** 04

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EXHIBIT C

FIELD DISBURSEMENT ACCOUNT

Kiewit Offshore Services Ltd
COMPANY NAME

CHECK NO. 907377
27-1/1040

PAYING FOR Invoice No. 907377

253 - 14972 — DATE 08-12-11

CO-JOB

TO THE ORDER OF US ARMY CORPS OF ENGINEERS — $100.00

PAY One Hundred Dollars and No/100 ********** DOLLARS

PAYABLE THROUGH
FIRST NATIONAL BANK
OMAHA, NE 68102

Robert A. Shockney
AUTHORIZED SIGNATURE
Robert A. Shockney

⑈907377⑈ ⑆104000016⑆ 09 10182 9⑈

FORM 322-CMS (4/99)

FIELD DISBURSEMENT ACCOUNT

DETACH HERE BEFORE RELEASING

CO-JOB NO.	JNL-LINE NO.	VENDOR NO. AND NAME	DATE	CHECK NO.
253 - 14972		104543 US ARMY CORPS OF ENGINEERS	08-12-11	907377

COST CD/EQP NO.	EXP CD.	AMOUNT	DESCRIPTION
8012.05	50	100	PERMIT

Recd USACE
AUG 12 2011 at

FOR HOME OFFICE USE ONLY			
AMOUNT	ACCOUNT	DEPARTMENT	TAX CODE	STATE

EXHIBIT C

AGENDA ITEM NO. 20

No Attachment

AGENDA ITEM NO. 21

No Attachment

AGENDA ITEM NO. 22

No Attachment