

CESWG-PE-RE  
Application for Letter of Permission SWG-2013-00686

**MEMORANDUM FOR RECORD**

**SUBJECT:** Department of the Army Memorandum Documenting Letter of Permission for the Above-Numbered Permit Application

**Applicant:**

Texas Parks and Wildlife Department  
P.O. Box 356  
Sabine Pass, Texas 77655-0356

**Project Location (Waterway, Section, Township, Range, City, County, State):**  
The project is located in Fence Lake, at 19355 State Highway 87, in Sea Rim State Park, in Sabine Pass, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Clam Lake, Texas.

**LATITUDE & LONGITUDE (NAD 83):**  
**Latitude:** 29.698595° North;**Longitude:** 94.031116° West

**Waters of the US:**  
\*see Jurisdictional Determination forms dated: 9 December 2013

**Authority:** The U.S. Army Corps of Engineers, Galveston District (Corps) will evaluate the proposed activity under Section 10 of the Rivers and Harbors Act of 1899.

**Project Description (Describe activities in waters of the U.S. considered for authorization):** The applicant proposes to construct a 10-foot by 14-foot observation platform in a small cove of Fence Lake, approximately 5 to 8 feet above the mean high water level.

**Categorical Exclusion:** In accordance with 33 CFR 325, Appendix B, Section 6.a.(5), this activity is exempt from National Environmental Policy Act documentation. This project has been determined to be in compliance with applicable Federal laws.

**Internal Coordination with Corps Offices:** Yes No  
Date: 4 December 2013  
Project will affect a federal project:  Yes No  
Project will require a federal Consent to Easement:  Yes No

**Substantive Issues Raised:**  
Electronic mail received 4 December 2013 from Real Estate Division stating that there are no Corps Real Estate tracts or placement areas within the project boundary.

No responses were received from any other office.

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**Coordination with Agencies:** In the evaluation of this permit application, it was determined that the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition; therefore, in accordance with 33 C.F.R. 325.2(e)(1), a Public Notice was not required. An Interagency Coordination Notice was mailed and electronically mailed on 10 December 2013.

**Commenting Agencies:**

US Fish and Wildlife Service (FWS) Yes No  
No response was received from the FWS.

US Environmental Protection Agency (EPA) Yes No  
No response was received from the EPA.

National Marine Fisheries Service (NMFS) Yes No  
No response was received from the NMFS.

State Agency Yes No

The Texas Parks and Wildlife Department (TPWD)  
No response was received from TPWD.

The Texas Commission on Environmental Quality (TCEQ)  
No response was received from TCEQ.

State Historic Preservation Office (SHPO) Yes No  
No response was received from the SHPO.

**Other Commenting Parties:** We received a letter dated 13 December 2013 from the Parker Law Firm stating that the proposed wildlife observation platform may be a hazard to people who use the platform. The letter stated that Fence Lake is a popular duck hunting area and that people on the platform may be in danger of wayward high velocity projectiles during duck season.

In a subsequent electronic mail received 16 December 2013 Mr. Parker stated that he had spoken with a representative from the Texas Parks and Wildlife Department and determined that the location of the platform would not place wildlife observes in harms way and stated that this issue is no longer a concern.

**Coordination with Tribes Needed:** Yes No Date: 10 December 2013

**Substantive Issues Raised:** The interagency coordination notice initiated coordination with local Indian tribes, specifically the Alabama-Coushatta Tribe of Texas. No response was received from any federally recognized Native American Tribes or affiliated groups.

**Applicant's Response to Comments:** The applicant discussed the response from Mr. Parker directly with Mr. Parker. After that conversation Mr. Parker removed his objection. No other responses were received that required a response.

**Corps Consideration of Substantive Comments:** The one response letter was addressed prior to the close of the comment period. No other responses were received.

**Compensatory Mitigation Determination:** The applicant has avoided and minimized impacts to the maximum extent practicable.

- (1) Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level?  yes  no  
*Explanation:* There is no loss of waters of the United States associated with this project. Therefore no compensatory mitigation is required.

- (2) Is the impact in the service area of an approved mitigation bank?  
 yes  no  
i. Does the mitigation bank have appropriate number and resource type of credits available?  yes  no

- (3) Is the impact in the service area of an approved in-lieu fee program?  
 yes  no  
i. Does the in-lieu fee program have appropriate number and resource type of credits available?  yes  no

- (4) Check the selected compensatory mitigation option(s):  
 mitigation bank credits  
 in-lieu fee program credits  
 permittee-responsible mitigation under a watershed approach  
 permittee-responsible mitigation, on-site and in-kind  
 permittee-responsible mitigation, off-site and out-of-kind

- (5) If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project):

**Special Conditions Required:**  yes  no

- 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) When structures or work authorized by this permit are determined by the District Engineer to have become abandoned, obstructive to navigation or cease to be used for the purpose for which they were permitted, such structures or other work must be removed, the area cleared of all obstructions, and written notice given to the Chief of Compliance, Galveston/Corpus Christi Office District Regulatory Branch, within 30 days of completion.

3) The permittee must install and maintain, at their own expense, any safety lights and signals prescribed by the United States Coast Guard (USCG) through regulations or otherwise on the authorized facilities. In addition, no bright lights that may be erected on the permitted structure shall be directed toward a navigable waterway in a manner that could hinder nighttime users of this waterway. The USCG may be reached at the following address: Commander (dpb), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or by telephone at 504-589-6198.

Rationale: In accordance with 33 CFR 325.4 Conditioning of permits, the district engineer will add special conditions to Department of Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirements. The above special conditions are required for fulfillment of the public interest requirements specified according to 33 CFR 320.4(o)(3) Navigation and 33 CFR 320.4(g) Consideration of property ownership.

**Findings:** We believe that the impacts associated with the proposed wildlife observation platform are minor and will not have an adverse impact on the surrounding areas of Fence Lake or on fish and wildlife resources.

#### **Compliance with Other Federal Laws:**

a) Endangered Species Act:

Species: *Balaenoptera musculus* (blue whale), *Balaenoptera physalus* (finback whale), *Megaptera novaeangliae* (humpback whale), *Balaenoptera borealis* (sei whale), *Physeter macrocephalus* (sperm whale), *Chelonia mydas* (green sea turtle), *Eretmochelys imbricate* (hawksbill sea turtle), *Lepidochelys kempii* (Kemp's ridley sea turtle), *Dermochelys coriacea* (leatherback sea turtle), *Caretta caretta* (loggerhead sea turtle), *Charadrius melodus* (Piping plover), *Trichechus manatus* (West Indian Manatee).

Effects determination: While the above listed species are known to occur within Jefferson County they are not known to exist within the project area. This proposed observation station is proposed to be constructed an inland lake. No sightings of any of these species are listed within the Elemental Occurrence Records for

Jefferson County or within the project boundary. It is determined that this project will have **No Effect** on these species.

Date of Service(s) concurrence: N/A

Basis for "no effect" determination: See above effects determination

Additional information (optional):

b) Magnuson-Stevens Act (Essential Fish Habitat [EFH]):

The proposed project is located in EFH. No EFH recommendations were received from NMFS.

c) Section 106 of the National Historic Preservation Act:

Known site present:  yes  no

Survey required/conducted:  yes  no

Effects determination:

Rationale: The Corps staff archaeologist reviewed the project site for cultural resources and found that there are no previously recorded historic properties known to exist within the proposed permit area. In addition, the proposed work and/or structures are of such limited nature and scope that little likelihood exists for the proposed project to impinge upon a historic property, even if present within the affected area.

Date consultation complete (if necessary):

Additional information (optional):

d) Section 401 Water Quality Certification:

Individual certification required:  yes  no

Issued  Waived  Denied

e) Coastal Zone Management Act:

Individual certification required:  yes  no

Certifying Agency: Texas General Land Office (GLO).

Issued  Waived  Denied

Additional information (optional):

The applicant has stated that the proposed activity complies with Texas' approved Coastal Management Program (CMP) and will be conducted in a manner consistent with such program. The GLO submitted a letter, dated 2 January 2014, stating that it has been determined that there are no significant unresolved consistency issues with respect to the project, therefore the project is consistent with the CMP goals and policies.

f) Wild and Scenic Rivers Act:

Project located on designated or "study" river:  yes  no

Managing Agency:

Date written determination provided that the project will not adversely affect the Wild and Scenic River designation or study status:

Additional information (optional):

- g) Section 176(c) of the Clean Air Act General Conformity Rule Review:  
The proposed project has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined the activities proposed under this permit will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR PART 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons, a conformity determination is not required for this Letter of Permission.

**Relevant Presidential Executive Orders:** <http://www.archives.gov/federal-register/executive-orders/disposition.html>

- a) EO 13175, Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians. The interagency coordination notice initiated coordination with local Indian tribes, specifically the Alabama-Coushatta Tribe of Texas. Regardless of the fact that the tribe did not respond to our notice this proposed project has a condition that requires the permittee to immediately notify the Corps if any previously unknown historic or archaeological remains are discovered in the process of executing the permitted activity.
- b) EO 11988, Floodplain Management. The activity will not result in any change to the base elevation within the floodplain.
- c) EO 12898, Environmental Justice. The activity will not result in a negative impact to any community, and therefore is not expected to cause any adverse impacts to minority or low-income communities.
- d) EO 13112, Invasive Species. The activity should not result in the introduction of invasive species.
- e) EO 13212 and 13302, Energy Supply and Availability. The project is not a significant energy action as defined in the EO.

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**Determination:**

The proposed activity would result in no more than minimal individual and cumulative adverse environmental effects and would not be contrary to the public interest. This project complies with all applicable general conditions.

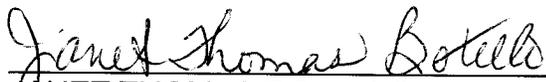
**FOR THE COMMANDER:**

**PREPARED BY:**

  
\_\_\_\_\_  
BRIAN J. BADER  
Regulatory Project Manager

Date: 15 January 2014

**REVIEWED/APPROVED BY:**

  
\_\_\_\_\_  
JANET THOMAS BOTELLO  
Leader, North Evaluation Unit  
Regulatory Branch, Galveston District

Date: 16 January 2014