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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP-2019-0018]

Response to Public Comments Regarding the Construction of Border Wall within Certain Areas in the Rio Grande Valley, Texas

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

ACTION: Notice.

SUMMARY: On June 27, 2019, U.S. Customs and Border Protection (CBP) published a notice in the *Federal Register* (84 FR 30745), requesting public comments regarding the construction of border wall within the Rio Grande Valley in Starr County, Texas, including within the cities of Roma, Escobares, La Grulla, Rio Grande City, and the census-designated place of Salineño, Texas (the Affected Areas). CBP also requested comments on potential impacts to the environment, historical preservation, culture, quality of life, and commerce, including socioeconomic impacts from the construction of primary border wall in the Affected Areas. This document provides CBP's responses to the comments received as well as CBP's plans for construction in the Affected Areas, as required by section 232(b) of the Consolidated Appropriations Act, 2019.

FOR FURTHER INFORMATION CONTACT: Paul Enriquez, Acquisition, Real Estate, and Environmental Director, Border Wall Program Management Office, U.S. Border Patrol at (949) 643-6365 or visit CBP's website:

<http://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/docs-review>.

SUPPLEMENTARY INFORMATION:

I. Background and Summary

U.S. Customs and Border Protection (CBP) is proposing to construct approximately 12 miles of primary border wall within the U.S. Border Patrol Rio Grande Valley (RGV) Sector in Starr County, Texas, including within “Affected Areas” that include the cities of Roma, Escobares, La Grulla, Rio Grande City, and the census-designated place of Salineño, Texas. The project is funded by Congress through the Consolidated Appropriations Act, 2019, Pub. L. 115–141, 132 Stat. 348 (Feb. 15, 2019) (the 2019 Appropriations Act).

On June 27, 2019, CBP published a notice in the *Federal Register* requesting public comments on its proposal to locate and construct primary border wall in the Affected Areas, as required by section 232(b) of the 2019 Appropriations Act. *See* 84 FR 30745. Comments were requested by August 26, 2019. In that notice, CBP also sought input on potential impacts to the environment, historical preservation, culture, quality of life, and commerce, including socioeconomic impacts, from the construction of primary border wall in the Affected Areas. On August 26, 2019, CBP published a notice in the *Federal Register* extending the comment period until September 25, 2019. *See* 84 FR 44629.

II. Rio Grande Valley Border Wall Construction Plans for Starr County, Texas

In addition to requesting public comments regarding CBP’s proposal to locate and construct border wall in the Affected Areas, as required by 232(b) of the 2019 Appropriations Act, CBP also consulted with local elected officials, as required by section 232(a) of the 2019 Appropriations Act. Specifically CBP consulted with elected officials in Roma, Escobares, La Grulla, Rio Grande City, and Salineño to review the

alignment and design of planned border wall in these areas. Additionally, pursuant to section 102(b)(1)(C) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546 (8 U.S.C. 1103 note), as amended, CBP conducted a separate consultation with stakeholders regarding the potential impacts to the environment, culture, commerce, and quality of life for a range of proposed border wall projects in the Rio Grande Valley, including the proposed construction of border wall in Starr County, Texas.

As part of the Department of Homeland Security's (DHS) commitment to responsible environmental and cultural stewardship, CBP will consider stakeholder feedback and the results of natural, biological and cultural resource surveys. Information collected through CBP's public outreach and its consultation with local officials will be taken into consideration and will inform the review of impacts to the environment, culture, quality of life, and commerce, including socioeconomic impacts.

CBP is currently in the planning phase for border wall construction in Starr County, Texas. The Supporting Documents section of docket #USCBP-2019-0018 (available at <http://www.regulations.gov>) includes maps that depict the proposed location of the border wall in the Affected Areas within Starr County. CBP and the United States Army Corps of Engineers (USACE) have begun outreach and consultation with landowners to obtain Rights-of-Entry for real estate and environmental surveys.

III. Summary of Comments Received and Responses

1. General

In response to the *Federal Register* notice requesting public comment on the proposed border wall in the Affected Areas, CBP received 2,566 comments, including

887 unique comments and 1,679 form letters. The comments covered a range of topics, such as: impacts to natural resources, including ecosystems, wildlife, water, flooding, and landscape or visual impacts; impacts to cultural, archaeological and historical resources, including Native American tribal lands; impacts to landowners, including property devaluation, business and economic impacts, and gate access to property south of the border wall; concerns about the need and efficacy of the border wall; concerns about the cost of border wall construction; humanitarian concerns; support for border security, including efforts to stop human and narcotics trafficking; concerns about immigration policy; and other concerns. CBP received 72 general comments expressing support or disapproval. Of these comments, nearly 90 percent were in favor of wall construction.

CBP has analyzed these comments and is providing its responses and plans for construction in this document. It is important to note that the number of comments in each category does not reflect the total number of comments received. Many comments received included concerns from multiple categories. Also, while CBP solicited comments only for Starr County, Texas, comments were received for proposed border wall construction projects throughout the Rio Grande Valley. CBP has analyzed all of these comments.

2. Historical/Cultural

Comment: CBP received 43 comments related to the historical and cultural impacts of wall construction. Of these, 42 were against border wall construction and one was neither for nor against such construction. A number of commenters expressed general concerns about the historical and cultural impacts of construction. A general response is provided below followed by an analysis of the specific comments.

Response: CBP agrees that the preservation of historical and cultural resources is important, and CBP is fully engaged in efforts that consider the environment as we work to secure our nation's borders. As such, CBP is conducting or will conduct cultural surveys of the project areas within Starr County. CBP will also coordinate and consult with relevant agencies and evaluate possible resources, including those that relate to historical and cultural sites. Site-specific design elements and best management practices are a standard part of construction contracts awarded for the border wall projects which are intended to minimize impacts to historical and cultural resources.

Comment: Several commenters expressed concerns about the impact to Fort Brown, a historical site in Brownsville and the first U.S. military outpost located along the Rio Grande, dating back to 1846.

Response: CBP consults with stakeholders such as the Texas State Historic Preservation Office, local governments, the Department of the Interior and other interested stakeholders to identify potential impacts to historic resources or sites that may be affected by the construction of the border wall. In addition, to the extent practicable, CBP identifies and implements construction best management practices and mitigation measures to avoid or minimize impacts.

Comment: One commenter was concerned about the Government's requests for right of entry and site assessment to La Lomita, a sanctuary for the Missionary Oblates of Mary Immaculate. The commenter was concerned that border wall construction would divide the site, thus destroying this place which continues to be a sanctuary and safe place for Catholics on both sides of the border.

Response: As provided in the 2019 Appropriations Act, border wall construction will not occur in specifically excluded areas, including the La Lomita Chapel.

Comment: Several commenters were concerned about impacts related to other cultural resources, including sites designated as National Historic Landmarks, listed in the National Register of Historic Places, and recognized as Recorded Texas Historic Landmarks. These sites include Jackson Ranch Church and Cemetery, Eli Jackson Cemetery, the riverbank at Cavazos Ramp/Ranch, and the family campsites that are considered sacred, including Kamp Keralum.

Response: While border wall construction is occurring adjacent to the Eli Jackson Cemetery, construction plans in this location will not directly affect the Eli Jackson Cemetery or the Jackson Ranch Church. Regarding the riverbank at Cavazos Ramp and locations that are considered sacred such as the Kamp Keralum, CBP will, to the extent practicable, develop and implement design considerations and best management practices to avoid or minimize impacts if it is determined that these locations will be affected.

3. Natural Resources

Comment: 361 commenters expressed concerns related to the impacts of border wall construction on wildlife and plant life. Of these, 358 commenters were opposed to construction and three were neither for nor against construction. The commenters who were opposed to construction cited negative impacts on biodiversity, ecosystems, and various plant and wildlife habitats. A general response is provided below followed by an analysis of the specific comments.

Response: CBP agrees that the preservation of our valuable natural resources is important, and CBP is fully engaged in efforts that consider the environment as we work

to secure our nation's borders. As such, CBP is conducting or will conduct biological surveys of the project areas. In addition, CBP coordinates and consults with resource agencies to evaluate possible environmental impacts as a result of border wall construction. To the extent practicable, CBP identifies and implements construction best management practices and mitigation measures to avoid or minimize impacts.

Comment: A number of commenters were concerned about the impact of border wall construction on native endangered and threatened species, including the destruction of their habitats and their ability to travel across the border. The commenters highlighted numerous endangered or threatened species that could be affected by border wall construction including, Ocelots, Jaguarondi, Golden Crown Heron, Red Crowned Green Parrot, Mexican Whip-poor-wills, indigo snake, alligator gar, various nonmarine mollusks, terrestrial snails, flattened pinecone, sabal palm, Zapata bladderpod, and whiskerbush cactus. One commenter, a wildlife biologist, focused on the riparian habitats along the river in Cameron, Hidalgo and Starr counties, upon which various endangered and threatened species depend. Commenters also pointed out that American Ocelots need to be able to cross the border and mate with Mexican Ocelots in order to keep their small populations viable. Several commenters were concerned about the impact that waiving the Endangered Species Act would have on flora and fauna. Additionally, commenters specifically asked that construction not occur in national parks and refuges, including Big Bend National Park, the Lower Rio Grande Valley National Wildlife Refuge, and Santa Ana National Wildlife Refuge.

Response: As part of its environmental stewardship, CBP provides environmental awareness training to the construction contractors and performs biological monitoring

during the construction process. Regarding comments related to the movement of wildlife across the border, CBP is actively engaging with the U.S. Fish and Wildlife Service to identify wildlife migration corridors and to develop design elements in the planned border wall that support both wildlife migration and border security. These design elements could include animal gates that can be open during migration season, strategically placed gaps in the wall, and other wildlife access points that could be the same or similar to previous design elements used by CBP for border wall construction in 2008. As required by the 2019 Appropriations Act, CBP will not construct border wall within the Santa Ana National Wildlife Refuge. Currently, there are no plans to construct border wall within Big Bend National Park.

Comment: Several commenters were concerned about the impact of border wall construction on bird populations, including loss of habitat, effects of the border wall on migratory paths and on local birding centers. Commenters also cited potential impacts for bird watchers visiting the area. One commenter expressed concern about the effect of waiving the Migratory Bird Treaty Act.

Response: CBP develops comprehensive construction best management practices for each project that include migratory bird surveys during the migratory bird season. If nesting birds are identified during the construction project, biologists working on behalf of CBP implement protective measures. In addition, CBP conducts biological surveys to identify potential impacts to the habitats of threatened and endangered species and develops avoidance and mitigation measures to minimize impacts.

Comment: 41 commenters were concerned about the impact of the border wall on the landscape. All of these commenters were opposed to border wall construction. The

commenters stated that the border wall would negatively affect the beauty of the landscape and that the wall would be an eyesore.

Response: To the extent practicable and without compromising U.S. Border Patrol's operational requirements, CBP works with communities and landowners to minimize visual impacts of the border wall.

Comment: 204 commenters expressed concerns related to flooding. Of these, 203 commenters were opposed to border wall construction and one expressed no opinion. Commenters cited concerns relating to the increased risk of flooding from building in the Rio Grande floodplain. Some commenters stated that the existing border wall has resulted in flooding, streams clogged with debris, and drainage backups, and stated that similar issues are likely with the construction of additional border wall. One commenter suggested that the gates be opened during times of flood risk to reduce impacts. Other commenters stated that they already experience flooding in their communities and that construction could exacerbate the frequency of flooding.

Response: CBP conducts a hydraulic analysis of each location proposed for border wall construction. Additionally, CBP coordinates with the International Boundary and Water Commission to ensure the proposed locations meet the standards outlined in the Treaty to Resolve Pending Boundary and Maintain the Rio Grande and Colorado River as the International Boundary, U.S.-Mex. (1970). This treaty prohibits any works in the United States that will cause deflection or obstruction of the normal flow of the Rio Grande River or its flood flows.

Comment: One commenter cited concerns about the impact of the wall on the flood control system, drinking water, and irrigation systems.

Response: In certain areas, CBP is constructing or will construct border wall on a levee. The border wall will be comprised of concrete wall and bollard infrastructure with the primary purpose of meeting U.S. Border Patrol's operational requirements. The ratio of concrete to bollard fence fluctuates depending on the particular segment and location of the wall. The border wall may also provide flood control because it will take the place of what would have been an earthen levee. CBP has not identified any impacts to drinking water and works closely with the irrigation districts to minimize or eliminate impacts to irrigation systems.

Comment: Several commenters were concerned about the waiver of various federal laws, including the National Environmental Policy Act, the Endangered Species Act, and the Clean Water Act.

Response: On various occasions, the Secretary of Homeland Security (Secretary) has used his statutory authority pursuant to section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (8 U.S.C. 1103 note), as amended, to waive certain laws for the construction of border wall. The Secretary has not made a final decision relating to the waiver of laws for the construction of proposed border wall in the Affected Areas. However, even when a waiver applies, CBP is committed to responsible environmental stewardship. As such, CBP is conducting or will conduct cultural and biological surveys of the project areas within Starr County. CBP has and will continue to coordinate and consult with resource agencies and evaluate possible environmental impacts from the projects. Site-specific design elements and best management practices are a standard part of construction

contracts awarded for the border wall projects. In addition, to the extent practicable, CBP identifies and implements mitigation measures to avoid or minimize impacts.

4. Impacts to Landowners/Stakeholders

332 commenters were concerned that the proposed border wall would decrease property values, divide properties, and negatively affect local businesses. 60 commenters were concerned about reliable access through gates in the proposed border wall.

Comment: Most commenters who expressed concerns about gate access are concerned that the border gates will malfunction and emergency vehicles will be unable to provide timely services, possibly resulting in preventable deaths. Some commenters stated that they have already experienced situations in which a gate became inoperable and vehicles had to reroute to a different gate.

Response: CBP works closely with potentially affected landowners and stakeholders during the planning, design, and construction processes. Part of this coordination includes incorporating feedback from landowners to ensure gate and wall designs meet their needs. CBP will also coordinate with emergency responders and local law enforcement to ensure continued access during emergencies. CBP has improved gate functionality and is committed to addressing inoperable gate issues quickly. CBP also enters into agreements with landowners and stakeholders to ensure gates remain open on a case-by-case basis to meet specific community needs.

Comment: Commenters expressed concerns relating to the loss of property value and the risk of physical damage to their property resulting from the construction of the border wall. Multiple commenters were worried that if the border wall is constructed through their property or north of their property, they will be unable to sell their property at

market value or rent it out at a reasonable rate. One commenter stated that he lives on a fixed income and will be unable to save enough to purchase new property elsewhere.

Another commenter stated that insurance companies may not be able to provide coverage for his property if it is located south of the border wall. Another commenter suggested the government should pay affected landowners the market value of their property.

Response: When the Government determines private property is required for border wall construction, the Government must determine fair market value for that property based on appraisals. The Government then prepares an offer to sell and presents it to each affected landowner. In many instances, landowners may choose to negotiate a counter offer based on other factors. New border wall construction cannot proceed until the Government has negotiated an offer to sell with each landowner or has obtained legal possession of property required for the project. It is always CBP's preference to acquire land needed for border wall construction through a negotiated sale. Landowners will continue to have access south of the wall and U.S. Border Patrol will continue to patrol that area.

Comment: Some commenters expressed concern that a border wall built through their community would isolate a large number of residents, inhibit access to community facilities, hinder socializing and social functions, and damage the community atmosphere. These commenters believe that the construction of the border wall has the potential to destroy their entire community and way of life. A few commenters expressed concerns that homes located south of the wall would be used as hiding spaces for refugees and immigrants.

Response: CBP is working closely with landowners to gather feedback on potential adjustments, including gates that will meet the needs of the community, as well as U.S. Border Patrol's operational requirements.

Comment: Some commenters expressed concern that the border wall will negatively affect local businesses and the local economy. One commenter was concerned that farming and oil and gas production revenue could be affected. Other commenters were concerned that eco-tourism would be negatively affected.

Response: It is part of CBP's mission to safeguard America's borders, while also enhancing the nation's global economic competitiveness by enabling legitimate trade and travel. CBP continues to work with affected stakeholders and communities to ensure their needs are met, such as ensuring continued access south of the wall, among other important considerations and concerns.

Comment: One commenter was particularly concerned about the impacts to the property of a particular private individual. The two main areas of concern were the likelihood of total loss or damage to the property and business and the potential for total loss of access.

Response: CBP will work with all landowners to minimize impacts to their property and businesses and to ensure continued access through gates. It is CBP's preference to avoid damage or loss to structures such as private residences and businesses wherever possible.

Comment: A few commenters were concerned about continued access to cell phone services, as well as underground utilities such as internet, cable, and electric.

Response: CBP coordinates all border infrastructure projects with local utility providers and municipalities to ensure utility and water lines are not affected by border wall construction.

5. Tribal Consultation

Comment: Multiple commenters were concerned about the negative impact that border wall construction would have on Native Americans and their tribal lands. These included the Carrizo/Comecrudo Nation of Texas, the Lipan Apache of south Texas, the Kickapoo Tribe in the Eagle Pass area and the Ysleta del Sur Pueblo in the El Paso area of west Texas.

Response: CBP regularly consults with federally recognized tribal governments to mitigate impacts to natural and cultural resources. For example, in June 2019, CBP solicited input from the Kickapoo Traditional Tribe of Texas. CBP received a response from the Kickapoo Traditional Tribe of Texas on July 22, 2019 that indicated that the Tribe does not own land located in the project areas and that the project would not affect any of the Tribe's cultural, historical, or sacred sites that they were aware of. CBP did not consult with the Carrizo/Comecrudo Nation of Texas, the Lipan Apache of south Texas, or the federally recognized tribe of Ysleta Del Sur Pueblo of Texas. Additional dialogue with Federal, tribal, state and local agencies, and non-governmental organizations will occur as needed.

6. Effectiveness/Need for Wall

Comment: CBP received 252 comments that question the need for the border wall and the ability of the border wall to effectively secure the border. All of these comments are against the construction of the border wall. Many of these comments do not elaborate on why the border wall is unnecessary or ineffective. A few commenters stated that they already feel safe and do not require further protection.

Response: Physical walls, and other tactical infrastructure including roads, lighting, and surveillance technology, have long been a critical component of CBP's multilayered, risk-based approach to securing our nation's southern border. Border wall continues to enhance U.S. Border Patrol's operational capabilities by providing significant obstacles that deter illegal cross-border activity.

Comment: Many commenters who dispute the effectiveness of the wall suggest alternative methods to securing the border. The most commonly suggested alternative is the development of a virtual wall and the improvement of border surveillance and technology, such as lighting and cameras.

Response: CBP's overall border security strategy includes physical walls and other tactical infrastructure including roads, lighting, and surveillance technology. These additional elements have long been a critical component of CBP's multilayered, risk-based approach to securing our nation's southern border. Border wall continues to enhance U.S. Border Patrol's operational capabilities by providing significant obstacles that deter illegal cross-border activity.

7. Humanitarian

Comment: 33 commenters cited humanitarian concerns related to the border wall and all of these commenters were opposed to border wall construction. The reasons cited were abuse of refugees, particularly children, family separation, challenges for asylum seekers and refugees escaping violence, and the violation of human rights.

Response: The border wall is intended to slow or stop those who are seeking to evade law enforcement, not prevent individuals who present themselves to law enforcement

officials for the purpose of seeking asylum or other protections. The border wall helps secure the southern border.

8. Immigration Reform

Comment: 99 commenters cited the need for immigration reform either in addition to or as an alternative to construction of a border wall. All but one of these commenters were against construction. Some commenters included suggestions for discouraging illegal entry into the United States, such as returning those who illegally enter the United States to their country of origin and denying benefits to those who illegally enter the United States. Others noted that comprehensive immigration reform would be more effective than a border wall. Still others commented that constructing a border wall would not solve the root causes of illegal entry.

Response: Part of CBP's mission is to safeguard America's borders, which contributes to the Administration's overarching immigration strategy. In an effort to safeguard American's borders, CBP utilizes a comprehensive approach to border security that leverages local, state, and federal law enforcement partners and the use of technology, infrastructure, and enforcement personnel to secure the southern border. The border wall is one element of border security that provides significant obstacles that deter illegal cross-border activity. Comments regarding immigration reform are outside the scope of this notice.

9. Cost

Comment: CBP received 272 comments that expressed concern about the cost of the border wall construction and all opposed such construction. Most of the comments stated that the construction of the border wall is a waste of taxpayer money. Many commenters

believe that the construction of the border wall is too expensive and that the maintenance costs will be too high. Some commenters suggested that funds for the construction of the wall should be used instead for some of the following initiatives: immigration reform, veteran compensation, infrastructure repair, border screening process, environmental resilience, education, and healthcare. At least one commenter stated that there are cheaper alternatives available to secure the border.

Response: In the 2019 Appropriations Act, Congress has made funding available for border wall construction in the Affected Areas.

10. Border Security

CBP received 101 comments that address the need for secure borders and 20 comments that address crime or drug trafficking.

Comment: Many of the commenters that addressed the need for secure borders stated that the border wall will prevent unwanted trespassing and property damage. Others suggested that the border wall functions as a necessary separator between countries.

Other commenters stated that the current border wall is and will continue to be ineffective in securing the country and that the proposed border wall will be equally ineffective in increasing security. One commenter suggested that the presence of a border wall will encourage legal entry.

Response: Physical walls, and other tactical infrastructure including roads, lighting, and surveillance technology, have long been a critical component of CBP's multilayered, risk-based approach to securing our nation's southern border. Border wall continues to enhance U.S. Border Patrol's operational capabilities and provides a significant obstacle that deters illegal cross-border activity.

Comment: Some commenters expressed concerns about crime or drug trafficking and stated that the border wall will prevent illegal smuggling of people and drugs. Other commenters believe that the construction of the border wall will prevent crime in communities along the border. However, some commenters stated that additional wall construction is unnecessary because most smuggling occurs at legal points of entry.

Response: Physical walls, and other tactical infrastructure including roads, lighting, and surveillance technology, have long been a critical component of CBP's multilayered, risk-based approach to securing our nation's southern border. Border wall continues to enhance U.S. Border Patrol's operational capabilities by providing significant obstacles that deter illegal cross-border activity.

11. Other Comments

99 comments addressed issues that were not covered by the previous categories. Of these, 89 comments were opposed to border wall construction.

Comment: Multiple commenters stated that they were opposed to the border wall due to its racist or xenophobic symbolism. Others drew parallels to historical examples of why the wall should not be built, such as the Berlin Wall.

Response: CBP strives to serve the American public with vigilance, integrity and professionalism. Physical walls, and other tactical infrastructure including roads, lighting, and surveillance technology, have long been a critical component of CBP's multilayered, risk-based approach to securing our nation's southern border. Border wall continues to enhance U.S. Border Patrol's operational capabilities by providing significant obstacles that deter illegal cross-border activity.

Comment: Multiple commenters discussed the political aspects of border wall construction. These commenters expressed frustration with the current Administration and Congress. Some felt that because Congress did not approve construction, the border wall should not be built. Several voiced frustrations with the process, and felt that the request for comments would not have an impact, since the wall would be built anyway.

Response: Congress has made funding available for border wall construction.

Comment: One commenter was concerned that the wall would make it more difficult for U.S. citizens to travel to Mexico for medical and dental care.

Response: Part of CBP's mission is to safeguard America's borders while enhancing the nation's global economic competitiveness by enabling legitimate trade and travel. Border wall construction will not affect the ability of U.S. citizens to lawfully travel to and from Mexico.

Dated: April 27, 2020.

Loren Flossman,
Director,
Infrastructure Program,
Program Management Office Directorate,
U.S. Border Patrol,
U.S. Customs and Border Protection.

[FR Doc. 2020-09236 Filed: 4/29/2020 8:45 am; Publication Date: 4/30/2020]