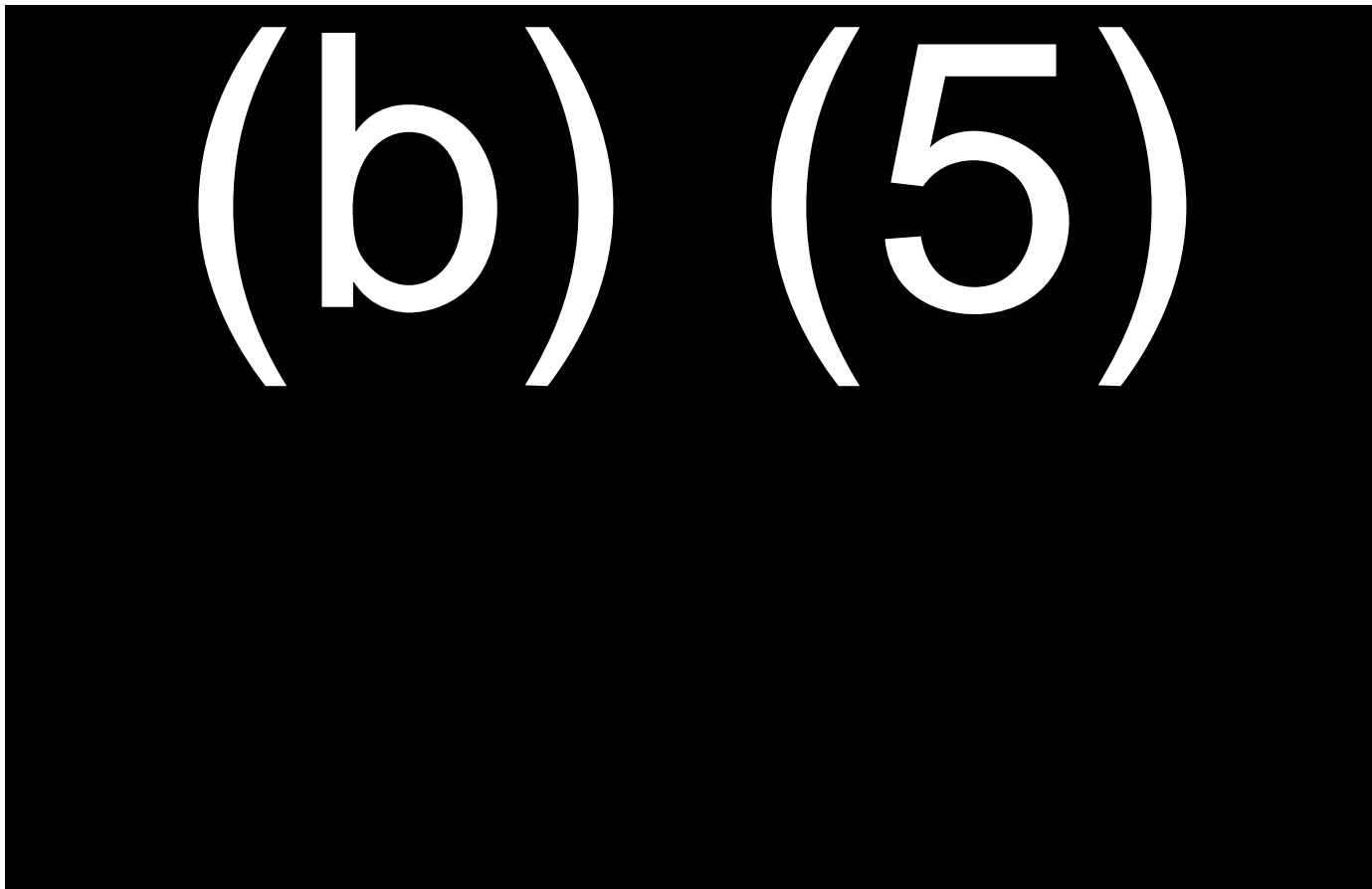




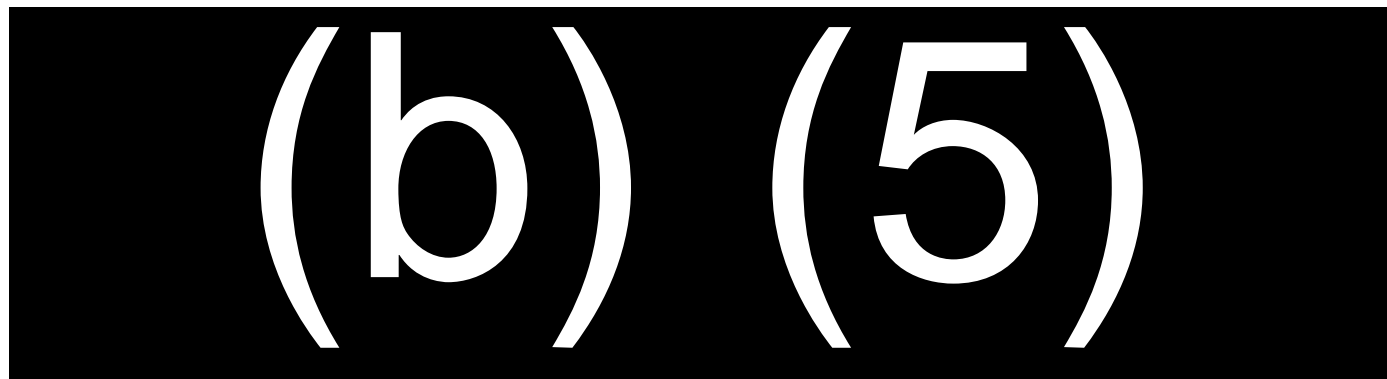
Public Affairs Guidance

Border Wall – San Diego Waiver

Background



Public Affairs Objective



(b) (5)

Key Messages:


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¹ Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007).

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Questions and Answers

Q1: Will CBP follow the National Environmental Protection Act (NEPA) process for the projects covered by this waiver?

A1: While the waiver eliminates CBP's obligation to comply with NEPA for these projects, CBP remains committed to environmental stewardship. CBP will continue to assess potential impacts, coordinate with relevant stakeholders, and to the extent possible, offset or mitigate potential impacts.

Q2: Given the waiver of environmental laws, will DHS implement any environmental planning/evaluation of possible impacts and mitigation for those impacts?

A2: Yes. DHS is committed to responsible environmental stewardship. In the spirit of NEPA, and as was the case with past projects covered by a waiver, DHS will continue to evaluate the potential impacts of border infrastructure that is planned for the project area. Among other actions, DHS will conduct new environmental surveys of the project area as well as utilize existing data, coordinate and consult with local, state and federal stakeholders, and analyze potential impacts.

Q3: Will DHS and CBP consider environmental impacts as a result of prototype construction?

A3: DHS has concluded that the currently planned prototype project will not result in significant environmental impacts. As a result, for this particular project, DHS is not planning for mitigation. DHS' commitment to responsible environmental stewardship will be carried forward with the construction of additional border infrastructure.

Even though the waiver eliminates CBP's requirements under NEPA, CBP remains committed to responsible environmental stewardship and will continue to perform all important surveys for biological and natural resources, wetlands, culturally significant sites, and environmentally sensitive areas. In addition, CBP will continue to coordinate and consult with federal, state, and local stakeholders to identify and measure the potential for any impacts to resources present and develop appropriate mitigation strategies.

Q4: What is the waiver?

A4: The Secretary of Homeland Security's waiver authority is set out in Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). The waiver authority allows the Secretary to waive all legal requirements the Secretary deems necessary to construct barriers and roads to deter illegal entry into the United States.

Q5: What gives the Secretary authority to issue a waiver?

A5: The Secretary's waiver authority is derived from Section 102(c) of IIRIRA, an authority granted to the Secretary by Congress. The waiver authority allows the Secretary to waive all legal requirements the Secretary deems necessary to construct barriers and roads to deter illegal entry into the United States.

Q6: What does the waiver gain DHS?

A6: The Secretary's waiver authority allows DHS to expeditiously construct barriers and roads to deter illegal entry into the United States by minimizing the risk of administrative delays and delays or stoppages as a result of litigation. Prior waivers have in fact facilitated the expeditious construction of existing border barriers and roads.

Q7: What area does the waiver cover?

A7: The waiver signed by the Secretary on July 26, 2017, covers a project area that spans approximately 15 miles of the border within the United States Border Patrol's San Diego Area of Responsibility. Specifically, the waiver covers a geographic area that starts at the Pacific Ocean and extends eastward to approximately (b) (7)(E) east of Border Monument (b) (7)(E)

The 15 miles covered in the SDC waiver is intended to cover the 14 miles of primary fence replacement, secondary fence replacement (the fencing that parallels the primary fence to be replaced), and the construction of prototype which is located at the east end of the secondary fence to be replaced.

Q8: What laws are being waived?

A8: In order to ensure the expeditious construction of the projects in the San Diego area, the Secretary determined it was necessary to waive 37 environmental, natural resource, and land management laws.

Q9: Does the waiver address the laws or processes concerning that acquisition of private property?

A9: No. The waiver does not impact the process required for the acquisition of private property.

Q10: Does the waiver address procurement laws?

A10: No. The July, 2017 waiver does not include any statutes, regulations, or other legal requirements that govern federal procurement.

Q11: Why does DHS need to issue a waiver for these projects in San Diego?

A11: The President's January 25, 2017, Executive Order entitled, "Border Security and Immigration Enforcement Improvements," makes clear that achieving operational control of the border is a priority for this Administration. To achieve operational control of the border DHS must, consistent with existing law, build the physical infrastructure necessary to secure the southern border of the United States. These projects are critical early steps in what will be a sustained effort to construct that physical infrastructure. Utilizing the authority provided by Congress in Section 102 of IIRIRA, the Secretary's waiver minimizes the risk of delay and, in turn, puts DHS in a better position to continue to progress towards a secure southern border.

Q12: How many times has the Secretary issued a waiver of environmental laws?

A12: Then Secretary of Homeland Security Michael Chertoff issued five previous waivers between 2005 and 2008.

Q13: Does this waiver repeal all prior waivers?

A13: No. The Secretary's July 26, 2017 does not repeal any of the five previous waivers.

Q14: What environmental impacts does DHS anticipate as a result of these border barrier projects?

A14: DHS is committed to responsible environmental stewardship with respect to these projects and will continue to assess potential impacts, coordinate with relevant stakeholders, and to the extent possible, offset or mitigate potential impacts.

Even though the waiver eliminates CBP's requirements under NEPA, CBP remains committed to responsible environmental stewardship and will continue to perform all important surveys for biological and natural resources, wetlands, culturally significant sites, and environmentally sensitive areas. In addition, CBP will continue to coordinate and consult with federal, state, and local stakeholders to identify and measure the potential for any impacts to resources present and develop appropriate mitigation strategies.

Q15: What projects does the waiver cover and when will construction of prototypes will begin?

The waiver is intended to cover three projects (14 miles of primary fence replacement, secondary fence replacement, and prototype). The current start of the prototype construction based on protest resolution is December 2017. Even with a delayed start for prototype of December 2017, the necessary biological surveys for the area are required to be completed in March through June and therefore we would not be able to meet the current schedule. In addition, while the protest affects the prototype project schedule it does not impact the schedule for the primary fence replacement. Current construction start for the primary fence replacement is Spring 2018. In addition, geotechnical studies for the primary fence are scheduled for the first week in August in order to meet the design and contract award schedule. Traditional NEPA planning including necessary biological protocol surveys which are required to be completed between March and as late as June would not be able to be completed and still meet the geotechnical and construction schedule. Finally, the waiver eliminates the possibility of delays associated with NEPA litigation, or other environmental challenges.

ADDITIONAL INFORMATION - ENVIRONMENTAL LAWS WAIVED

The July 26, 2017 waiver waived the following laws:

- The National Environmental Policy Act (NEPA)
- The Endangered Species Act (ESA)
- The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act)
- The National Historic Preservation Act (NHPA)
- The Migratory Bird Treaty Act (MBTA)
- The Migratory Bird Conservation Act
- The Clean Air Act (CAA)
- The Archeological Resources Protection Act (ARPA)
- The Paleontological Resources Preservation Act
- The Federal Cave Resources Protection Act of 1988
- The National Trails System Act
- The Safe Drinking Water Act (SDWA)

- The Noise Control Act
- The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA)
- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- The Archaeological and Historic Preservation
- The Antiquities Act
- The Historic Sites, Buildings, and Antiquities Act
- The Wild and Scenic Rivers Act
- The Farmland Protection Policy Act
- The Coastal Zone Management Act (CZMA)
- The Wilderness Act
- The Federal Land Policy & Management Act (FLPMA)
- The National Wildlife Refuge System Administration Act
- The National Wildlife Refuge System Improvement Act of 1997
- The National Fish and Wildlife Act of 1956
- The Fish and Wildlife Coordination Act
- The Wild Horse and Burro Act
- An Act of Oct. 30, 2000, Pub. L. 106-398, § 1, 114 Stat. 1654 (enacting into law § 2848 of Part II of Subtitle D of Title XXVIII of Division B of H.R. 5408 (114 Stat. 1654A-426), as introduced on Oct. 6, 2000)
- The Administrative Procedure Act (APA)
- The Otay Mountain Wilderness Act of 1999
- Sections 102(29) and 103 of Title I of the California Desert Protection Act
- Rivers and Harbors Act of 1899
- The Eagle Protection Act
- The Native American Graves Protection and Repatriation Act (NAGPRA)
- The American Indian Religious Freedom Act
- The Religious Freedom Restoration Act