

City of Devers
P.O. Box 338
Devers, TX 77538

September 1, 2023

Mr. Brian Bader
Galveston District Corps of Engineers
P.O. Box 1229
Galveston, Texas 77552

SENT VIA EMAIL

RE: Holtmar Land, LLC Permit Application No: SWG-2015-00855 in response to Interagency Coordination Notice for Letter of Permission

Dear Mr. Bader,

In response to the Interagency Coordination Notice for Letter of Permission dated August 29, 2023, the City of Devers (the "City") writes in follow-up to its previously-submitted comments provided to the U.S. Army Corps of Engineers ("the Corps") concerning the above-referenced application ("Application"). Based on discussion and correspondence from the Corps, the City understands that the Corps is evaluating the Application and responses provided by Holtmar Land LLC ("Applicant"), along with issuing an interagency coordination notice soliciting comments and information.

The City has previously expressed concern in written comments on June 9, 2021, and most recently on April 12, 2023, regarding the disposal of dredged materials sourced from the Area of Concern associated with the San Jacinto River Waste Pits Superfund Site. Such prior correspondence is attached collectively hereto as **Exhibit A**. This letter serves to renew the City's previous concerns tied to environmental harm from the proposed activities, including findings regarding drainage pathways and linkages at the disposal site to existing Waters of the United States, lack of Corps evaluation for the existence of threatened and endangered species, and identified sampling data deficiencies. Furthermore, the City again raises concerns that the disposal of dredged material implicates environmental justice policy. The City has not received a response from the Corps as to the City's April 12, 2023, letter, but asks that such issues identified therein be addressed in written form.

The City again requests that the Corps require the disposal of the dredged materials in a hazardous waste landfill, rather than in an area adjacent to a rural community. If you have any questions or would like to discuss further, please feel free to reach out to me, Steve Horelica (deversmayor@gmail.com), the City's environmental consultant, Meg Pierce-Walsh (mpierce-walsh@plummer.com), or legal counsel, Nathan Vassar (nvassar@lglawfirm.com).

Sincerely,


Steve Horelica, Mayor

cc: Nathan E. Vassar, *Lloyd Gosselink Rochelle & Townsend, P.C.*

Exhibit A

City of Devers
P.O. Box 338
Devers, TX 77538

June 9, 2021

Mr. Brian Bader
Galveston District Corps of Engineers
P.O Box 1229
Galveston, Texas 77552

RE: Holtmar Land, LLC Permit Application No: SWG-2015-00855

Dear Mr. Bader,

The City of Devers (the "City") writes in follow-up to its previously-submitted comments provided to the U.S. Corps of Engineers ("the Corps") concerning the above-referenced application ("Application"). Based on discussions and correspondence from the Corps, the City understands that the Corps is evaluating the Application, along with the responses provided by Holtmar Land, LLC ("Applicant") to the substantial comments from stakeholders ranging from individuals to municipalities to concerned coalitions of affected parties. At this critical juncture, the City requests that the Corps return the Application to the Applicant as the Letters of Permission permitting option is not suitable for a project of this magnitude and one that has generated appreciable opposition.

I. The Project is more appropriate under an Individual Permit Application

Letters of Permission are only applicable to projects that are considered minor and lack appreciable opposition.¹ As evidenced by the City's March 2021 resolution, and manifold opposition letters submitted by other stakeholders, significant concerns have been raised, generating opposition from affected individuals/entities in both the proposed dredge site as well as the proposed placement area. Simply put, the Letters of Permission "abbreviated processing" (as provided in 33 C.F.R. § 325.2(e)) is inappropriate in this case, where affected individuals and entities like the City have flagged environmental concerns that merit a more searching permitting process that requires applicable evaluations and public input.

The City stands by its previous concerns, but notes that an individual permitting process would be appropriate to address many of the concerns, including avoiding the impacts to vegetation, water quality, runoff, flooding, impacts from the transportation of such materials, and other externalities as more specifically set forth in the City's earlier comments and adopted resolution.

¹ 33 C.F.R. § 325.2(e)(1)(i)

II. Public Meeting Request

At a minimum the City requests the Corps conduct a public hearing to address the comments received and address necessary environmental and public interest evaluations necessary for a project of this magnitude. The Application should not be advanced without such input opportunity, and engagement with those who stand to be most directly affected by the Applicant's proposed activities. Such meetings are contemplated under the individual permitting process outlined in 33 C.F.R. § 325.2(a)(3) and are appropriate in this instance to ensure adequate opportunity for dialogue and discussion on the Application. There is simply no reason to rush the Application forward under the Letters of Permission process when appropriate public input and health/environmental concerns are abundant.

The City appreciates the opportunity for continued engagement on the Application, and is willing to participate in a meeting at the earliest noticed opportunity.

Respectfully,


Steve Horelica, Mayor

cc: Col. Timothy R. Vail, Galveston District Commander
The Honorable Brian Babin
The Honorable Ernest Bailes



PLUMMER

Wednesday, April 12, 2023

U.S. Army Corps of Engineers

Galveston District

Brian J. Bader, Regulatory Project Manager (brian.j.bader@usace.army.mil)

Col. Timothy Vail, Galveston District Engineer and Commanding Officer (Timothy.R.Vail@usace.army.mil)

Texas Commission on Environmental Quality

Remediation Division

Monica Harris, P.G., Assistant Deputy Director (monica.harris@tceq.texas.gov)

Water Quality Assessment Section

Peter Schaefer, Team Leader (peter.schaefer@tceq.texas.gov)

Texas Department of Parks and Wildlife

David Forrester, Wildlife District 7 Leader (david.forrester@tpwd.texas.gov)

Environmental Protection Agency

Region 6

Charles Maguire (maquire.charles@epa.gov)

Donn Walters (walters.donn@epa.gov)

Barbara Nann (nann.barbara@epa.gov)

[Transmitted via e-mail (no hardcopy to be provided)]

Re: Opposition to USACE Letter of Permission Permit Application No. SWG-2015-00855

Agency Staff:

The purpose of this letter is to present supplemental information regarding the City of Devers' (City's) opposition to the pending Letter of Permission Permit Application No. SWG-2015-00855 (the Application) by Holtmar Land, LLC (Holtmar or Applicant) before the United States Army Corps of Engineers (USACE). Since the Application was originally submitted seeking disposal of dredged material in a location approximately three miles from the City, the City has obtained and reviewed information pertaining to the planned dredging activities and proposed disposal site. The City previously expressed concern on June 9, 2021 regarding the disposal of dredged materials sourced from the Area of Concern (AOC) associated with the San Jacinto River Waste Pits Superfund Site. Such prior correspondence is attached hereto as **Exhibit A**. This letter, however, further underscores those previous concerns tied to environmental harm from the proposed activities, along with others, including findings regarding drainage pathways and linkages at the disposal site to existing Waters of the United States (WOTUS), lack of USACE evaluation for the existence of threatened and endangered species, and identified sampling data deficiencies. Furthermore, the disposal of dredged material near the City raises concerns regarding environmental justice policy. These Application deficiencies necessitate USACE action to deny Holtmar's Application.

I. Limited Evidence for an Upland Confined Disposal Facility

The proposed disposal site does not meet the USACE's own requirements for approved upland disposal sites. In a letter from the Texas Commission on Environmental Quality (TCEQ) to the City dated July 16, 2021, the TCEQ asserted that the dredged material was required to be disposed in a "hazardous waste landfill or an upland confined disposal area." An email response from the USACE to Plummer Associates, Inc. (Plummer) on March 18, 2022 stated that while the "USACE does not have a statutory or regulatory definition of an upland confined disposal area. However, [USACE] define an upland confined disposal area as an area proposed for placement of material, that does not contain wetlands, AND is capable of retaining and containing dredged material in such a manner as it will continuously remain physically separated and unable to flow into any and all other waters." (emphasis in original). Such July 16, 2021 and March 18, 2022 correspondence are attached collectively hereto as **Exhibit B**. Based on a review of plans for the disposal area and the potential for pollutants to migrate offsite, as outlined further below, the disposal location does not meet the USACE's own criteria to be considered an upland disposal area, and should therefore be ineligible to receive the removed materials as contemplated in the Application.

Furthermore, the USACE review does not adequately analyze existing connections between the project site and nearby surface waters, nor has the USACE required design limitations to prevent leakage from the disposal site to jurisdictional waters. On behalf of the City, Plummer submitted a Freedom of Information Act (FOIA) request to the USACE on April 26, 2022 for information pertaining to the proposed project. The responsive information provided included very limited details on the design of the proposed disposal unit (including any containment details), which is concerning due to the potential for the migration of contaminated sediment to nearby surface waters. As part of the FOIA response, Plummer also received a report entitled, *Wetland Delineation Report*,¹ which summarizes a wetland delineation conducted via three north-south transects across the subject property (38.86 acres). While this document addresses whether there are potentially jurisdictional or non-jurisdictional waters within the transects on the subject property, it does not address the potential physical connection of such property to surface waters and the likelihood of displacing potentially contaminated sediment – two critical components for evaluating whether the disposal site is an "upland confined disposal area."

The nexus and proximity between the project site and nearby surface waters is supported by technical analysis, further evidencing the potential environmental harm from disposal at the Application's preferred site. The City evaluated the proposed project site using ArcGIS to determine flow direction and flow accumulation based on LiDAR data (see **Exhibit C**). The intent of this exercise was to determine flow patterns not visible from the scale of available topographic maps or aerial imagery. Because the proposed disposal area is densely populated with trees, a limited visual review of aerials provides limited information regarding drainage pathways and their hydrological connections. Existing drainage features and physical confinement potentials were used in the City's ArcGIS analysis. The City's analysis revealed multiple drainage pathways through the site that feed into Batiste Creek. The presence of such drainage pathways identified through the GIS evaluation both reveal the potential for contaminated soil migration to jurisdictional waters and further reveal that the disposal site is not an upland confined area based both on the very limited design parameters for the disposal unit and site drainage characteristics.

Specifically, the site drainage characteristics pose potential harm to an unnamed tributary of Batiste Creek and Batiste Creek during wet weather events. The unnamed tributary of Batiste Creek is 0.3 miles

¹ Hollaway Environmental and Communications, August 2020. *Wetland Delineation Report*. Prepared for: Holtmar Land, LLC.

from the proposed disposal site while Batiste Creek, a perennial stream, is approximately 0.64 miles from the proposed disposal site. The relatively flat topography of the proposed disposal site, its distance of 0.27 miles to a floodplain, and limited distance to Batiste Creek and its tributary, are concerning for the ability of pollutants to migrate. Accordingly, there is the potential for pollutants from the proposed disposal site to enter Batiste Creek, a WOTUS, which would require additional regulatory approvals beyond a Letter of Permission as such risks poses environmental and human health concerns.

Additionally, the current proposed sediment disposal site location does not consider the impact of recurring or unique weather events on the disposal site area that could exacerbate runoff scenarios to the waters described above. Liberty County, the location of the proposed site, has some of the highest precipitation frequencies and amounts in Texas. Based on the December 27, 2007 publication of *Ecoregions of Texas*,² the proposed disposal site is located within the Western Gulf Coastal Plain which receives the top 7% of precipitation statewide. Additionally, based on mean annual precipitation from 1971 to 2000 as measured from one weather station in each county, Liberty County ranks second for annual precipitation.³ Recent extreme weather events such as Hurricane Harvey and Tropical Storm Imelda have directly impacted Liberty County and it is reasonable to assume similar events will continue to impact Liberty County in the future, with the possibility of erosive and sediment load transport effects from the proposed disposal site. Neither the USACE nor the Applicant include any plans to manage excess water from the planned disposal site, nor do they acknowledge the site's location within 0.3 miles of a FEMA Zone A flood district along Batiste Creek. Tropical Storm Imelda and Hurricane Harvey were considered to result in as much as 1,000-year floods; a flood of that scale would have significant impacts to the proposed disposal site given its proximity to a 100-year floodplain. The proposed sediment disposal site location does not appear to consider the impact of these types of weather events to the location or structure, and the reasonable assumption that similar weather events will continue to impact Liberty County. Based on the information reviewed and analysis conducted, the disposed sediment is neither adequately contained (because no sufficient design information has been provided), nor is the underlying disposal site located in an area that would prevent the potential migration of pollutants to a WOTUS.

II. Impacts to Threatened and Endangered Species Not Adequately Considered

An adequate review of threatened and endangered species was not conducted by the USACE or by the Applicant for the proposed disposal site. Plummer conducted a desktop review of state threatened and endangered species⁴ known to occur in Liberty County and have highlighted several federally and state threatened and endangered species that could be impacted by the proposed project. The potentially impacted species are included in **Exhibit D**. Among those species known to be present in the area include the Houston toad, Louisiana pine snake, swallow-tailed kite, and Rafinesque's big-eared bat.

Potential impacts to these species were not adequately addressed by the Applicant and agencies involved in the review of the Application. In order to protect species that may be present in the area of the proposed disposal site, a thorough review and habitat evaluation should have been conducted to understand potential of harm to such species in light of the proposed contaminant disposal. Additionally, regardless of the specific species present, relocating sediment from the AOC associated with the San

² Dynamac Corporation, U.S. Geological Survey, and TCEQ. *Ecoregions of Texas*, December 2007. Prepared for TCEQ. Accessed online from http://ecologicalregions.info/htm/pubs/TXeco_Jan08_v8_Cmprsd.pdf.

³ Carson, David, 2023. *Map of Texas Counties By Mean Annual Precipitation*. Accessed online from <https://www.texascounties.net/statistics/precipitation.htm>.

⁴ Texas Parks and Wildlife, April 2019. *Rare, Threatened, and Endangered Species of Texas by County*. Accessed online from <https://tpwd.texas.gov/gis/rtest/>.

Jacinto Waste Pits Superfund Site to the proposed disposal location presents concerns for wildlife interacting with contaminated sediment. As detailed below, these concerns are not currently quantifiable due to the inadequate sampling data from the source location. Based on potential contact between wildlife and these sediments, the current proposed disposal design and site have not been sufficiently examined for potential harm to state-identified threatened and endangered species.

III. Sample Results are Outdated and do not Adequately Characterize the Sediment

Inadequate source sampling represents an additional reason to deny the Application's request. Based on the information provided from the FOIA request, the Applicant conducted a limited, one-time sampling event in 2016, which included dioxin results only. The limited scope of the sampling and age of sampling results poses concerns for the representativeness of the data. While dioxins are relevant to the San Jacinto River Waste Pits, where disposed paper mill wastes that are known to be contaminated with dioxins and furans, the monitored parameter list does not fully cover the needed parameters to determine the appropriate disposal options. A 2009 sampling memo⁵ issued by the USACE identifies sampling procedures for "activities involving dredging or disposal of dredged materials do not impact Site investigation and cleanup." In short, the sampling protocols for dioxins were not intended to be the only sampling parameter and were not intended to take the place of applicable Resource Conservation and Recovery Act (RCRA) regulations and Texas Risk Reduction Program (TRRP) rules or guidance (30 TAC 350 and TCEQ TRRP guidance documents).⁶ It is the responsibility of the applicant to properly characterize its waste according to 30 TAC 335 Subchapter R. The reviewed laboratory report does not include toxicity characteristic leaching procedure (TCLP) results for common analytes (e.g., metals) to determine human health or ecological risk and whether the dredge material could be considered hazardous waste under RCRA.

In addition, other parameters typically analyzed in dredged material were not collected/analyzed, such as parameters with protective concentration limits in TRRP (30 TAC 350), as well as metals with limits identified in 2021 USACE dredged material evaluation guidance⁷ and U.S. Environmental Protection Agency (USEPA) regulation (40 CFR 261). Similarly, parameters based on historical activities in the area to be dredged should also be considered in the sampling and analysis activities. These parameters can identify risks associated with the material and determine appropriate disposal options. Based on the lack of sufficient analytical data, insufficient data are available to determine the appropriate disposal of the dredged material and potential impacts to the environment and human health. Such analyses should be considered critical for determining the impact of disposing sediments to a potentially sensitive and relatively undisturbed environment.

In addition to the amount of sampling, the laboratory report is seven years old. The sampling and analysis of the sediments occurred prior to Hurricane Harvey in 2017,⁸ when the temporary cap at the San Jacinto Waste Pits was damaged, resulting in significant amounts of dioxins being released (and potentially additional pollutants) beyond the site's original footprint. Shortly thereafter, in 2019 Tropical Storm

⁵ U.S. Army Corps of Engineers. October 21, 2009. Memo issued to TCEQ, USEPA Region 6, and USACE Galveston District. Permit Evaluation Requirement Process. Outlines permit evaluation requirements process for dredging sediment related to the San Jacinto Waste Pits AOC.

⁶ TRRP guidance documents can be accessed online from <https://www.tceq.texas.gov/remediation/trrp/guidance.html>.

⁷ USACE. July 2021. Dredged Material Evaluation and Disposal Procedures. Accessed online from <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/5397>.

⁸ Collier, Kiah, September 29, 2018. USEPA: *Hurricane Harvey Compromised cap on toxic waste site*. <https://www.texastribune.org/2017/09/29/epa-hurricane-harvey-compromised-caps-toxic-waste-site/>

Imelda⁹ resulted in significant flooding in the San Jacinto River, raising the possibility of further spread of contaminants. More recent data must be collected (including additional parameter data), especially for sediments within a designated AOC, to adequately assess the chemistry of the planned dredged material.

IV. Environmental Justice Policy Has Not Been Considered

The approval of this proposed disposal site would also be contrary to existing USEPA environmental justice policy as the use of the USEPA screening tool shows that the census tract encompassing the proposed disposal site, which also includes the City of Devers north of Highway (Blockgroup: 482917013003) may already be disproportionately impacted by environmental justice variables. USEPA uses an environmental justice mapping and screening tool¹⁰ to combine environmental and demographic socioeconomic indicators. This mapping and screening tool provides a high-level screening approach to understand the demographics and environmental concerns that exist in the community that would be impacted by this proposed disposal site. There are twelve environmental justice indicators that make up the mapping and screening tool and the area of the proposed disposal site, and when compared to the rest of the United States, the area surrounding the site is disproportionately impacted by six of the indicators: 1) particulate matter 2.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) in size; 2) air toxics cancer risk and ratio of exposure concentration to health-based reference concentrations; 3) number of homes with lead paint; 4) the proximity to superfund sites; 5) the proximity to facilities required to have a risk management program; and 6) number of underground storage tanks nearby. Additionally, compared to the rest of Texas, the area is disproportionately impacted by: 1) particulate matter 2.5 $\mu\text{g}/\text{m}^3$; 2) air toxics; 3) lead paint; and 4) proximity to superfund sites.

There are also seven socioeconomic indicators used to evaluate environmental justice, split into a demographic index and a supplemental demographic index. The demographic index is based on the two socioeconomic indicators: low-income families and people of color. The supplemental demographic index is based on the average of five socioeconomic indicators: low-income families, unemployment, limited English, education levels less than high school, and low life expectancy. When compared to the rest of the United States, this area has a higher percentage of 1) minority residents, 2) low-income families, 3) unemployment, 4) education levels less than high school, and 5) children under the age of 5. When compared to the rest of Texas, this area has a higher percentage of 1) low-income families; 2) unemployment; 3) children under the age of 5; and 4) adults over the age of 64. In alignment with USEPA's Equity Action Plan¹¹, the Application should consider the cumulative impacts associated with relocating dredged materials from the San Jacinto AOC before taking action on the Application.

V. Impacts to Groundwater Have Not Been Evaluated

An adequate review of potential impacts to groundwater has not been conducted for the proposed disposal site. A comprehensive design of the sediment disposal site – including measures to prevent groundwater contamination – was not provided as part of the Application. Based on lack of information of such a design, there is potential for pollutants in the disposed sediment to leach from the soil to the groundwater. There are four active groundwater wells for domestic or industrial use (462070, 51324, 222733, 423787) located within an approximately three-mile radius of the proposed sediment disposal

⁹ USEPA, San Jacinto River Waste Pits Superfund Site. Accessed online from <https://19january2021snapshot.epa.gov/tx/sjrwpl.html>.

¹⁰ USEPA. EJScreen. Version 2.1. Accessed online from <https://ejscreen.epa.gov/mapper/>.

¹¹ USEPA. April 2022. Executive Order 13985 Equity Action Plan. Accessed online from: https://www.epa.gov/system/files/documents/2022-04/epa_equityactionplan_april2022_508.pdf.

site.¹² The Applicant did not consider groundwater impacts and/or design of the disposal area to prevent groundwater quality impacts, but should have, given the source of the sediments proposed for disposal.

VI. Request for Project to be Approved with Hazardous Waste Landfill Disposal Only

Based on these factors, the City believes that the planned project with a disposal location near the City of Devers is untenable and has not been adequately assessed. As such, the Application should be denied. The disposal of sediments from a designated AOC with known contamination to a minimally designed disposal area with drainage to a WOTUS and adjacent floodplain is not a project that meets applicable requirements for approval.¹³ The City requests that the USACE, TCEQ, Texas Parks and Wildlife Department, and USEPA require the disposal of the dredged materials in a hazardous waste landfill, rather than adjacent to a rural community. As agencies that value environmental justice and public involvement, we request consideration of an alternate disposal method.

If you have any questions or would like to discuss further, please feel free to reach out to me, the City's environmental consultant, Meg Pierce-Walsh (mpierce-walsh@plummer.com), or legal counsel, Nathan Vassar (nvassar@lglawfirm.com).

Sincerely,



Meg Pierce-Walsh
Water Quality/Permitting Practice Leader
Plummer Associates, Inc.

cc: The Honorable Steve Horelica, Mayor, City of Devers
Mr. Nathan Vassar, Principal, Lloyd Gosselink

Enc: Exhibit A: Prior Opposition to Letter of Permission Permit Application No. SWG-2015-00855
Exhibit B: Upland Confined Disposal Facility Definition Correspondence
Exhibit C: Hydrology Snap Pour Point for Proposed Sediment Disposal Site Near Devers, Texas
Exhibit D: Threatened and Endangered Species Desktop Review

¹² Texas Water Development Board Groundwater Data Viewer – Well Reports. Available at: www3.twdb.texas.gov.

¹³ 42 U.S.C. § 4331 (Congressional declaration of Federal Government policy to protect the environment for the general welfare.); 33 U.S.C. § 1252 (The Administrator shall prepare or develop comprehensive programs for preventing, reducing, or eliminating pollution of navigable waters and ground waters.); 33 U.S.C. § 1344 (The Secretary may issue permits the discharge of dredged or fill material.); 33 U.S.C. § 407 (Making it illegal to discharge material into any tributary of any navigable water.); 16 U.S.C. § 1538 (Making it illegal for any person to violate any regulation pertaining to endangered or threatened species of fish and wildlife under 16 U.S.C. § 1533.)

Exhibit A

Prior Opposition to Letter of Permission Permit Application No. SWG-2015-00855

City of Devers
P.O. Box 338
Devers, TX 77538

June 9, 2021

Mr. Brian Bader
Galveston District Corps of Engineers
P.O. Box 1229
Galveston, Texas 77552

RE: Holtmar Land, LLC Permit Application No: SWG-2015-00855

Dear Mr. Bader,

The City of Devers (the "City") writes in follow-up to its previously-submitted comments provided to the U.S. Corps of Engineers ("the Corps") concerning the above-referenced application ("Application"). Based on discussions and correspondence from the Corps, the City understands that the Corps is evaluating the Application, along with the responses provided by Holtmar Land, LLC ("Applicant") to the substantial comments from stakeholders ranging from individuals to municipalities to concerned coalitions of affected parties. At this critical juncture, the City requests that the Corps return the Application to the Applicant as the Letters of Permission permitting option is not suitable for a project of this magnitude and one that has generated appreciable opposition.

I. The Project is more appropriate under an Individual Permit Application

Letters of Permission are only applicable to projects that are considered minor and lack appreciable opposition.¹ As evidenced by the City's March 2021 resolution, and manifold opposition letters submitted by other stakeholders, significant concerns have been raised, generating opposition from affected individuals/entities in both the proposed dredge site as well as the proposed placement area. Simply put, the Letters of Permission "abbreviated processing" (as provided in 33 C.F.R. § 325.2(e)) is inappropriate in this case, where affected individuals and entities like the City have flagged environmental concerns that merit a more searching permitting process that requires applicable evaluations and public input.

The City stands by its previous concerns, but notes that an individual permitting process would be appropriate to address many of the concerns, including avoiding the impacts to vegetation, water quality, runoff, flooding, impacts from the transportation of such materials, and other externalities as more specifically set forth in the City's earlier comments and adopted resolution.

¹ 33 C.F.R. § 325.2(e)(1)(i)

II. Public Meeting Request

At a minimum the City requests the Corps conduct a public hearing to address the comments received and address necessary environmental and public interest evaluations necessary for a project of this magnitude. The Application should not be advanced without such input opportunity, and engagement with those who stand to be most directly affected by the Applicant's proposed activities. Such meetings are contemplated under the individual permitting process outlined in 33 C.F.R. § 325.2(a)(3) and are appropriate in this instance to ensure adequate opportunity for dialogue and discussion on the Application. There is simply no reason to rush the Application forward under the Letters of Permission process when appropriate public input and health/environmental concerns are abundant.

The City appreciates the opportunity for continued engagement on the Application, and is willing to participate in a meeting at the earliest noticed opportunity.

Respectfully,


Steve Horelica, Mayor

cc: Col. Timothy R. Vail, Galveston District Commander
The Honorable Brian Babin
The Honorable Ernest Bailes

Exhibit B

Upland Confined Disposal Facility Definition Correspondence

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting and Enhancing Texas' Natural Resources

July 16, 2021

The Honorable Steven Horelica
Mayor of City of Devers
P.O. Box 338
Devers, Texas 77538

Dear Mayor Horelica:

We are in receipt of the July 8, 2021 email you sent to the Governor's Office regarding concerns about the US Army Corps of Engineers review of a permit for a project near the City of Devers. The TCEQ does not have any pending actions associated with the proposed project by Holtmar Land, LLC, which is seeking authorization from the U.S. Army Corps of Engineers (USACE) for maintenance dredging activities in the San Jacinto River near Channelview, Texas. A state water quality certification from the TCEQ Water Quality Division under Section 401 of the Clean Water Act (CWA) is not required for the project since, as described in the USACE public notice, the project does not involve a proposed discharge of dredged or fill material, which is regulated by the USACE under CWA Section 404.

Because the project location occurs within the Area of Concern associated with the San Jacinto River Waste Pits Superfund Site, the TCEQ Remediation Division reviewed the project according to criteria set forth in the Permit Evaluation Requirement Process developed by the TCEQ, the USACE, and the U.S. Environmental Protection Agency. Based on sediment sample results provided by the project sponsor, the TCEQ Remediation Division, by letter dated August 25, 2016, recommended that the dredged material be placed in a hazardous waste landfill or an upland confined disposal area. The recommendation does not specify requirements for where the hazardous waste landfill or upland disposal area may be located.

Thank you for your interest in your community's environmental well-being. If you have any questions, please contact Mr. Peter Schaefer in TCEQ's Water Quality Division at (512) 239-4671 or Ms. Monica Harris in TCEQ's Remediation Division at (512) 239-2200.

Sincerely,

Earl Lott

Earl Lott
Director
Office of Water

Pierce-Walsh, Meg

From: Bader, Brian J CIV USARMY CESWG (USA) <Brian.J.Bader@usace.army.mil>
Sent: Friday, March 18, 2022 5:30 PM
To: Pierce-Walsh, Meg
Cc: Steve Horelica
Subject: RE: Holtmar LLC sediment disposal area questions
Attachments: tx_san_jacinto_public_announcement_20091021.pdf

Ms. Pierce-Walsh,

Question 1a. The basis for the sediment sampling for any project seeking a Corps of Engineers Regulatory Permit within the San Jacinto Waste Pits - Area of Concern is found in the Public Announcement dated October 21, 2009 attached. Other programs may have other sediment sampling requirements.

Question 1b. There is not a statute or regulation that specifies how long laboratory results may be considered relevant for analysis. Our preference is that the sediment sampling occur within a year or two prior to filing the permit application. The submitted sediment sampling was performed July 20 and 21, 2016, after the initial permit application for this dredging project was filed in May 2016.

Question 2a. The criteria used to determine the disposal site for sediment originating from the San Jacinto Waste Pits - Area of Concern is found in the Public Announcement dated October 21, 2009 attached. The determination is made by TQEQ and communicated to the Corps in accordance with the Public Notice.

Question 2b. USACE does not have a statutory or regulatory definition of an upland confined disposal area. However, we define an upland confined disposal area as an area proposed for placement of material, that does not contain wetlands, AND is capable of retaining and containing dredged material in such a manner as it will continuously remain physically separated and unable to flow into any and all other waters.

Question 2c. The application filed in 2021 represented the proposed placement area as uplands (an area devoid of wetlands) and proposed to construct a berm around the placement area and place a clay liner in the bottom of the placement area in order to contain the dredged material in a manner that would keep the dredged material physically separated and unable to flow into any and all other waters; and in this case to due to the presence of the liner to leach material into the ground below the placement area. This was the information relied on too issue the Interagency Coordination Notice.

Question 3a. The disposal site location is represented differently on different documents due to the fact that the applicant for this permit (Holtmar, LLC.) has proposed different placements areas to receive the material proposed to be dredged. The Public Notice dated January 2019 prosed to place the material in a placement area located 15.28 miles east of the dredge site. That application was withdrawn. The application was withdrawn without prejudice. The applicant refiled the application in January 2021 with a new proposed placement area. In this case the proposed dredged material placement area located north of the City of Devers in Liberty County. There is no discrepancy as the placement area described in the 2019 Public Notice is no longer being considered by the applicant.

Question 3a.i. There was not a Public Notice issued that included the placement area north and outside the City of Devers. The prior iteration of this application (filed in 2018) was being evaluated as an Individual Standard Permit and requires a Public Notice, issued in January 2019. The current application was filed in January 2021 as an application for a Letter of Permission Permit. This is a different type of permit that the applicant believes that this project would qualify for. A Letter of Permission requires an Interagency Coordination Notice which was issued in March 2021.

Question 3a.ii. Plummer nor the City of Devers are listed as the agent of record for this pending permit application nor are they listed as the applicant. As such, all information provided to date has been provided as a courtesy, as we wish to be as transparent as we are able in our Regulatory processes.

However, considering that this is a pending permit application your request to obtain any studies available for the proposed sediment disposal site locations (proposed previously or currently proposed) would need to be requested through a Freedom of Information Act request. (Link Provided below)

<https://www.swg.usace.army.mil/Business-With-Us/Office-of-Counsel/Freedom-of-Information-Act/>

I hope this information addresses your concerns. If you have further questions or I did not sufficiently answer any of your inquiries please let me know.

Thank You.

Brian J. Bader
Regulatory Project Manager
CISM Peer Supporter
USACE-SWG-RD-E
(409) 766-3037
Brian.J.Bader@usace.army.mil
www.swg.usace.army.mil/reg

"To assist us in improving our service to you, please complete the survey found at

<https://regulatory.ops.usace.army.mil/ords/f?p=136:4>

From: Pierce-Walsh, Meg <mpierce-walsh@plummer.com>

Sent: Friday, March 18, 2022 4:10 PM

To: Bader, Brian J CIV USARMY CESWG (USA) <Brian.J.Bader@usace.army.mil>

Subject: [WARNING: UNSCANNABLE EXTRACTION FAILED][URL Verdict: Neutral][Non-DoD Source] Holtmar LLC sediment disposal area questions

Mr. Bader,

Please see attached for my questions regarding the Holtmar LLC sediment disposal area near Devers, Texas. Thank you very much for your patience with getting these to you.

I look forward to hearing back from you.

Thank you again,



PLUMMER

Meg Pierce-Walsh, M.S.

Water Quality/Permitting Practice Leader

6300 La Calma Drive, Suite 400

Austin, Texas 78752

P: 512.452.5905

D: 512.359.7764

C: 715.520.7630

Water we up to now? Find out at the new plummer.com

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Public Announcement



October 21, 2009

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

INTRODUCTION: Notice is hereby given of a Permit Evaluation Requirement Process (Process) effective as of **November 1, 2009** for all proposed and existing permits within the identified Area of Concern until further notice. The Area of Concern and Process is summarized in Attachment A.

BACKGROUND: On March 19, 2008, the EPA placed the San Jacinto River Waste Pits Superfund Site (Site) on the National Priorities List. This event marks the beginning of several steps that the EPA will be taking to clean up the Site thru the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. The Site is comprised of an area of land and an area of the San Jacinto River bottom, i.e., river sediment that is contaminated with certain hazardous materials from released waste paper mill sludge in an area where the Interstate Highway 10 Bridge crosses over the San Jacinto River.

Due to the Site being partially located in the San Jacinto River, area permitted activities, issued under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers & Harbors Act of 1899 (RHA) may impact the Site. Those permitted activities that impact the Site may expose permittees to CERCLA liability. To minimize permittee exposure to CERCLA liability and to continue to effectively evaluate proposed and permitted activities, an interagency workgroup between U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and Texas Commission on Environmental Quality (TCEQ) developed a Process, which all permit applicants and existing permittees within the area of concern must undertake.

In summary, as part of the Process, all permit applicants and existing permittees within the area of concern must conduct certain sampling events to ensure that any activities conducted, especially activities involving dredging or disposal of dredged materials, do not impact Site investigation and cleanup.

The verification of such sampling events and adherence to the Process will be completed by TCEQ. The issuance of permits for work and/or activities regulated under Section 10 of the RHA and/or Section 404 of the CWA, with any associated special conditions (if necessary), will be completed by USACE.

Questions concerning the Process should be addressed to: Mr. Stephen Ellis, Project Manager, Superfund/SSDAP Section, Remediation Division, Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, TX 78753, phone: (512) 239-5337, email: stellis@tceq.state.tx.us

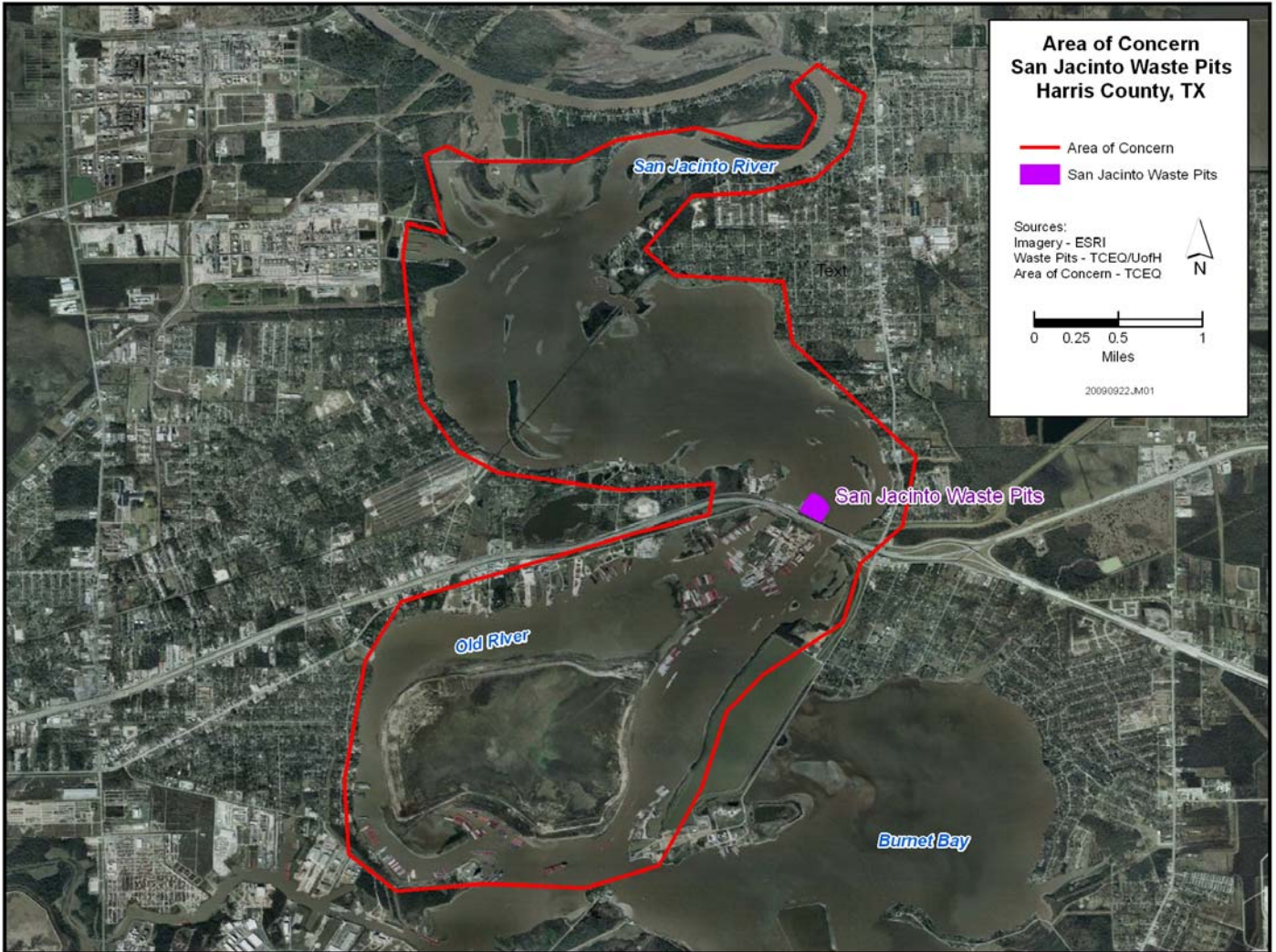
Questions concerning the permits issuance should be addressed to: Ms. Felicity Dodson, Project Manager, U.S. Army Corps of Engineers, Galveston District, 2000 Fort Point Road, Galveston, TX 77550, phone: (409) 766-3105, email: felicity.a.dodson@usace.army.mil

Questions concerning the National Priorities List, the Site, or steps involved in a Superfund site cleanup should be addressed to: Mr. Donn Walters, Regional Community Relations Liaison, U.S. Environmental Protection Agency, 1445 Ross Ave, Dallas, TX 75202, phone: (214) 665-6483, email: walters.donn@epa.gov

Questions concerning CERCLA liability should be addressed to: Ms. Barbara Nann, Assistant Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Ave, Dallas, TX 75202, phone: (214) 665-2157, email: nann.barbara@epa.gov

PERMIT PRE-CONDITIONS AND CONDITIONS PROCESS

I. AREA OF CONCERN DESCRIPTION



Horizontal Datum Name: NAD 83

Ellipsoid Name: GRS 80

SOUTH of:

longitude -95.063977 latitude 29.833028

(line perpendicular to river channel from approximately 20400 Rio Villa Drive)

NORTH of:

longitude -95.086488 latitude 29.761463

(line of sight bearing from DeZavalla Point to south terminal of Lynchburg Ferry, then along ferry route to north terminal).

II. PRE-CONDITIONS AND CONDITIONS PROCESS

II.A. PERMIT PRE-CONDITIONS PROCESS

TCEQ shall verify the fulfillment of the pre-conditions process (sections II.A.1. to II.A.4.) and certify to USACE the resulting conditions to be integrated into the permit (section II.A.5.).

II.A.1. Required Sampling Procedures

- SOP 1.4- Management of IDW
- SOP 1.5- Decontamination
- SOP 6.1- Documentation
- SOP 6.2- Homogenization of Soil Samples
- SOP 6.4- Sample Handling and Control
- SOP 8.1- Surface Water Sampling Using the Direct Method
- SOP 9.1- Sediment Sampling
- SOP 17.1-GPS Data Collection and Submission

II.A.2. Required State of Texas Lab Certification

- NELAC standard and accreditation process:
<http://www.nelac-institute.org/docs/2003nelacstandard.pdf>
- Current list of accredited labs:
http://www.tceq.state.tx.us/assets/public/compliance/compliance_support/qa/txnelap_lab_list.pdf

II.A.3. Required Sample Number & Distribution

II.A.3.1. Sample Number: A minimum of two samples (one vertical composite sample and one post-dredged surface sample) shall be submitted per 5,000 cubic yards of total planned dredged volume (including any planned overdredges or advanced maintenance).

- Post-dredged surface sample (ie- representing the sediment to be exposed by the dredging) equates to one discrete sample that represents the 6” section immediately below the planned dredged depth in the same location(s) as determined in section II.A.3.2.

II.A.3.2. Sample Distribution: Samples identified in section II.A.3.1. shall be distributed evenly across the total planned dredged area.

II.A.4. Required Sample Analysis

- Laboratory sample analysis shall be via EPA 1613, EPA 8280b, or EPA 8290a.
- Laboratory results shall be reported as TEQ and TCDD organic carbon normalized or TCDD non-organic carbon normalized.
- Laboratory shall use WHO 2005 TEF to calculate TEQ.

II.A.5. Conditions Determination

- If sample >1000 ppt TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill.
- If sample >33 ppt TCDD organic carbon normalized and <1000 TEQ; or, >0.45 ppt TCDD non-organic carbon normalized and <1000 TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill or upland confined disposal area.
- If sample <33 ppt TCDD organic carbon normalized; or, <0.45 ppt TCDD non-organic carbon normalized, then no restrictions on disposal location of sample's representative volume (or dredged materials).

II.B. PERMIT CONDITIONS PROCESS:

After the TCEQ's evaluation of Section II.A. is submitted to the USACE Galveston District, the USACE will review the information and will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements under the Clean Water Act and Rivers and Harbors Act of 1899 to otherwise satisfy the public interest requirement. The USACE will only be responsible for enforcing those conditions that are specifically tied to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

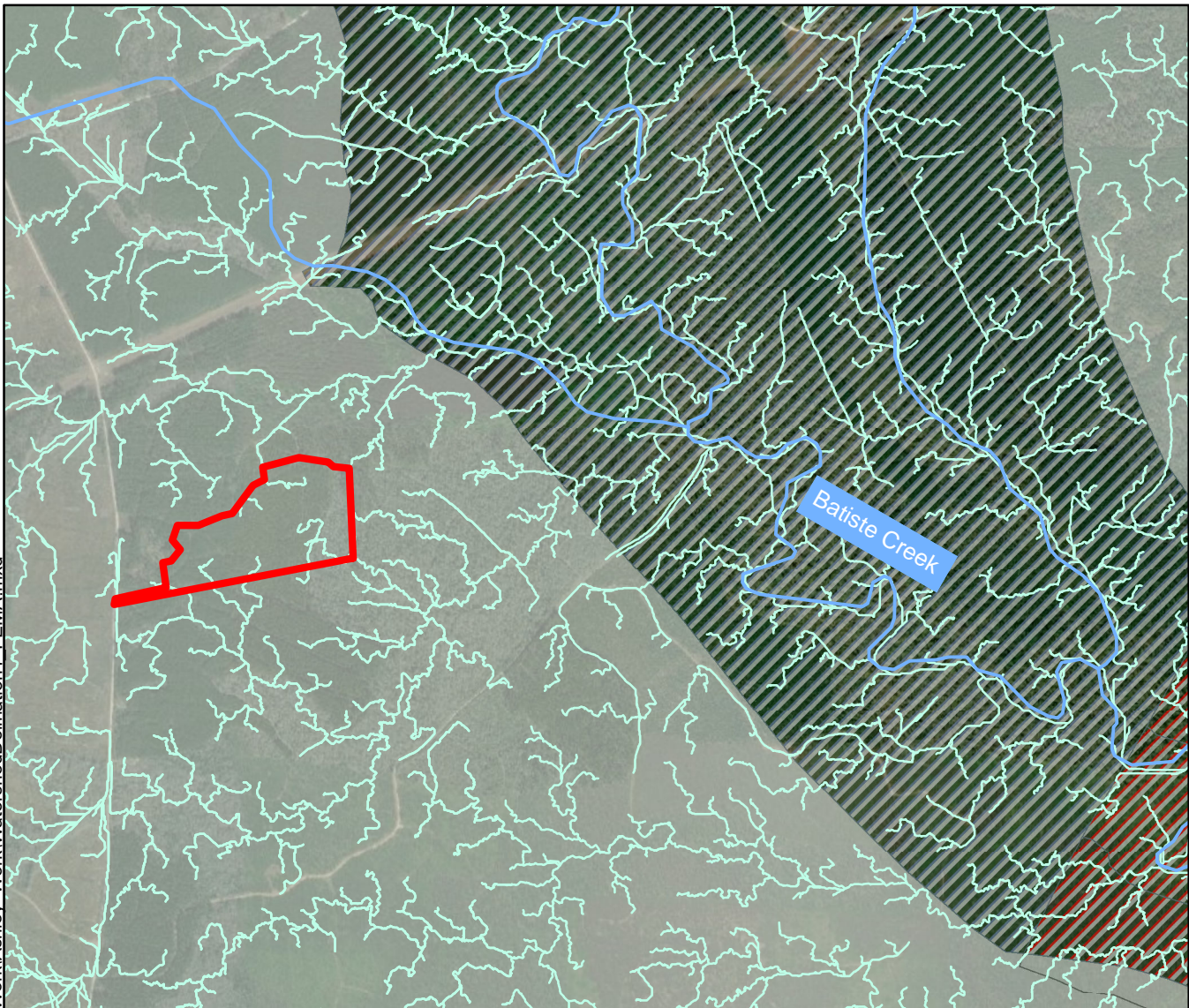
In addition, the permit shall contain the following language:

"By accepting this permit, the permittee agrees to accept potential liability for both response costs and natural resource damages, to the same extent as would be inherent under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et. Seq.). Further, the permittee agrees that this permit does not exclude the permittee from liability under the CERCLA, nor does the permit waive any liability for response costs, damages, and any other costs that may be assessed under the CERCLA."

Exhibit C









Hydrology Snap Pour Point for Proposed Sediment Disposal Site Near Devers, Texas

Document Path: M:\Projects\0468\044-01\5_Reference_Material\Kris\in_Work\Ashley_Work\WatershedDelineation1_FEMA.mxd




FEMA Flood Hazard Layer


FLOOD ZONE

-  A - 1% annual chance flooding; BFEs not determined
-  AE - 1% annual chance flooding; BFEs determined
-  AH - 1% annual chance flooding (usually an area of ponding)
-  AO - 1% annual chance flooding (usually sheet flow on sloping)
-  AREA NOT INCLUDED
-  OPEN WATER
-  VE - 1% annual chance flooding with velocity hazard
-  X - Area of Minimal Flood Hazard

NOTE: This map was developed using watershed delineation tools in ArcGIS including the Fill tool, Flow Direction tool, Flow Accumulation Tool, and Snap Pour Point tool.



0 0.15 0.3 Miles



Hydrology Snap Pour Point for Proposed Sediment Disposal Site Near Devers, Texas

Legend




-  Proposed Disposal Area
-  Streams
-  Pour Flow Lines

Exhibit D

Threatened and Endangered Species Desktop Review

Rare, Threatened, and Endangered Species Listings	
Federally Listed – Endangered	
<ul style="list-style-type: none">• Houston toad• Red-cockaded woodpecker	
Federally Listed – Threatened	
<ul style="list-style-type: none">• Black rail• Piping plover• Rufa red knot• Louisiana pine snake	
Federally Proposed Listed – Threatened	
<ul style="list-style-type: none">• Texas fawnsfoot	
State Listed – Endangered	
<ul style="list-style-type: none">• Houston toad• Red-cockaded woodpecker	
State Listed – Threatened	
<ul style="list-style-type: none">• Black rail• Piping plover• Rufa red knot• Louisiana pine snake• Texas fawnsfoot• White-faced ibis• Wood stork• Swallow-tailed kite• Bachman’s sparrow• Chub shiner• Blackside darter• Rafinesque’s big-eared bat• Louisiana black bear• Alligator snapping turtle• Texas horned lizard• Sandbank pocketbook• Louisiana pigtoe• Texas heelsplitter	
Federally – Critically Imperiled	
<ul style="list-style-type: none">• Houston toad• Texas fawnsfoot• Louisiana pine snake• Louisiana pigtoe• Neotrichia mobilensis (No accepted common name)• Texas heelsplitter• Marsh-elder dodder	

Rare, Threatened, and Endangered Species Listings

Federally – Imperiled

- Louisiana pine snake
- Louisiana pigtoe
- Neotrichia mobilensis (No accepted common name)
- Texas heelsplitter
- Marsh-elder dodder
- Houston burrowing crayfish
- Sandbank pocketbook

State – Critically Imperiled

- Houston toad
- Louisiana pine snake
- Louisiana pigtoe
- Texas heelsplitter
- Sandbank pocketbook
- Cypress knee sedge
- Blackside darter
- Spotted dusky salamander
- Neotrichia mobilensis (No accepted common name)
- Interior least tern
- Eastern spotted skunk

Note: This may not be a comprehensive list.