



**RESPONSE TO PUBLIC COMMENTS
FOR CONSTRUCTION, OPERATION AND MAINTENANCE
OF TACTICAL INFRASTRUCTURE
U.S. BORDER PATROL TUCSON SECTOR, ARIZONA**



October 2008

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FOR THE
CONSTRUCTION, OPERATION, AND MAINTENANCE OF
TACTICAL INFRASTRUCTURE
U.S. BORDER PATROL TUCSON SECTOR, ARIZONA**

**U.S. Department of Homeland Security
U.S. Customs and Border Protection
U.S. Border Patrol**

OCTOBER 2008

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1. Response to Public Comments

1.1 Introduction

On April 1, 2008, the Secretary of the U.S. Department of Homeland Security (DHS), pursuant to his authority under Section 102(c) of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, as amended, exercised his authority to waive certain environmental and other laws in order to ensure the expeditious construction of tactical infrastructure along the U.S./Mexico international border. Although the Secretary's waiver means that CBP no longer has any specific legal obligations under the laws that are included in the waiver, the Secretary committed DHS to continue responsible environmental stewardship of valuable natural and cultural resources. CBP strongly supports the Secretary's commitment to responsible environmental stewardship.

U.S. Customs and Border Protection (CBP) is continuing to work in a collaborative manner with local government, state and Federal land managers, and the interested public to identify environmentally sensitive resources and develop appropriate best management practices (BMPs) to avoid or minimize adverse impacts resulting from the construction of tactical infrastructure.

CBP prepared an Environmental Stewardship Plan (ESP) which analyzes the potential environmental impacts associated with construction of tactical infrastructure in the U.S. Border Patrol (USBP) Tucson Sector. The ESP also describes measures CBP has identified—in consultation with Federal, state and local agencies—to avoid, minimize, or mitigate impacts to the environment, whenever possible. The ESP will guide CBP's efforts going forward. The tactical infrastructure described in the ESP for the USBP Tucson Sector is covered by the Secretary's April 1, 2008 waiver.

This document has been prepared to provide responses to public comments received on the Draft Environmental Assessment (DEA). **Figure 1-1** presents the Notice of Availability (NOA) and Public Open House announcement for the Draft EA. **Table 1-1** identifies those persons or agencies who provided comments on the Draft EA and presents the comments and responses.

1.2 Draft SEA Public Involvement Process

On January 18 and 23, 2008, CBP published an NOA in the *Arizona Daily Star* announcing the availability of the Draft SEA for Construction, Operation, and Maintenance of Tactical Infrastructure, U.S. Border Patrol Tucson Sector, Arizona for public review and comment. The NOA announced the availability of the Draft EA; the date, time, and place for the public open house; and publicized a request for comments on the Draft EA. Additionally, the release of the Draft SEA initiated a formal 30-day public comment period that ended February 16, 2008.

CBP hosted a public open house in Tucson, Arizona, on January 31, 2008 in order to provide an overview of the Draft EA and accept public comment. Website updates were also used to request public input and to disseminate information about draft alternatives and their effects (see **Figure 1-1**).

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Notice of Availability and Public Open House Announcement

Draft Environmental Assessment (EA) for the Proposed Construction, Operation, and Maintenance of Tactical Infrastructure, U.S. Border Patrol (USBP) Tucson Sector, Arizona

The U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) announces the availability of, and invites public comment on, the Draft EA. Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), CBP has prepared the Draft EA to identify and assess the potential impacts associated with the proposed construction, operation, and maintenance of tactical infrastructure, to include primary pedestrian fence, construction roads, access roads, and minor improvements to existing roads, along approximately 7.4 miles of the U.S./Mexico international border within USBP Tucson Sector, Arizona (the Proposed Action). The Proposed Action would be implemented in two distinct sections. Individual sections would be approximately 2.2 and 5.4 miles in length. The purpose of the Proposed Action is to assist USBP agents in gaining effective control of the U.S. border between Ports of Entry in the USBP Tucson Sector.

The Draft EA complies with NEPA, the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500-1508, and DHS Management Directive 5100.1 (Environmental Planning Program). Copies of the Draft EA can be downloaded from the project Web site at www.BorderFenceNEPA.com or <https://ecso.sfw.usace.army.mil/Pages/PublicReview.cfm> or can be requested by emailing information@borderfenceNEPA.com. To request a hard copy of the Draft EA, you may call toll-free (866) 275-5740. A hard copy of the Draft EA can be reviewed at the Nogales-Rochlin Public Library, 518 North Grand Avenue, Nogales, Arizona 85621, (520) 287-3343.

CBP invites public comment on the Draft EA. A public open house will be held on January 31, 2008, from 4:30 p.m. to 8:00 p.m. at the Tucson Convention Center, 260 South Church Avenue, Tucson, AZ 85701, (520) 791-4101.

Pursuant to the CEQ's regulations, CBP invites public participation in the NEPA process. In order for comments to be considered for inclusion in the Final EA, comments on the Draft EA must be received by February 16, 2008. Please provide comments using only one of the following methods:

- (a) Attend and submit comments at the public open house to be held from 4:30 p.m. to 8:00 p.m. on January 31, 2008 at the Tucson Convention Center, 260 South Church Avenue, Tucson, AZ 85701.
- (b) Electronically through the Web site at www.BorderFenceNEPA.com
- (c) By email to: TSEAComments@BorderFenceNEPA.com
- (d) By mail to: Tucson Sector Tactical Infrastructure EA, c/o Gulf South Research Corporation, 8081 GSR Avenue, Baton Rouge, Louisiana, 70820
- (e) By Fax to: (225) 761-8077

When submitting comments, please include your name and address, and identify your comments as for the Tucson Sector Draft EA. Requests for information may be submitted to: Charles McGregor, U.S. Army Corps of Engineers, Engineering and Construction Support Office, 819 Taylor Street, Room 3610, Fort Worth, Texas 76102; and by Fax to: (225) 761-8077. Publish January 18 & 23, 2008 Arizona Daily Star Tucson Citizen

Figure 1-1. Notice of Availability and Public Open House Announcement

CBP received three submissions by fax, by email, and by regular mail from Federal and state agencies. Two comments were submitted by the general public, including one provided during the public open house. From the five submissions received on the Draft EA, approximately 12 individual comments were extracted and responses are included in **Table 1-1**. Where appropriate, the ESP has been revised to address these comments.

Table 1-1. Summary of Public Comments Response Matrix

#	Reviewer	Comment	Response
Federal Agency			
1	Environmental Protection Agency (EPA)	EPA feels strongly that the DEA does not justify a FONSI, because it does not contain any site specific information, but rather is based on secondary information and general knowledge of the area.	Due to the waiver issued on April 1, 2008, the requirements of NEPA are no longer applicable to the project. However, CBP has included an analysis of related projects in the ESP. The initial impact analyses were made based on literature searches, known locations of sensitive species habitat, and aerial photograph interpretation. The data and analyses in the Draft EA were sufficient to facilitate a decision whether the pedestrian fence would potentially result in a major adverse impact. Since release of the Draft EA, CBP has received rights of entry, which has allowed surveys to be conducted. Information gleaned from these surveys has been incorporated to the ESP and confirm the determinations presented in the Draft EA.
2	EPA	EPA is concerned about the total number of crossings at Waters of the US (WUS), in particular the Santa Cruz River, which is a major migratory corridor for jaguar. Impacts to these WUS will impact flow and sediment transport. These conditions need to have specific studies to address them and be presented in a revised EA or EIS.	Based on field surveys that were completed after the Draft EA was released, the total impact to WUS would be approximately 1 acre for the entire 7.6-mile corridor. The largest single crossing would be at the Santa Cruz River (0.21 acre) which would still satisfy NWP 14 criteria. It should be noted too that this crossing would be installed at the existing road crossing (i.e., the stream bank and bed is already disturbed) and that Normandy style vehicle fence is planned for use within the Santa Cruz River. This style fence, as detailed in the ESP, would be removed prior to each monsoon season. Thus, there would be no impact to flow or sediment transport and it would not impede migration of jaguar, should they happen to use this area.

#	Reviewer	Comment	Response
3	EPA	The approach of releasing an incomplete EA to satisfy a schedule is not consistent with NEPA or CEQ Regulations. Even if the incomplete issues are resolved in the Final EA, the pre-set schedule does not allow adequate time for public and agency review.	Due to the waiver issued on April 1, 2008, the requirements of NEPA are no longer applicable to the project. However, CBP prepared a comprehensive ESP that addresses comments received on the Draft EA and has included an analysis of related projects in the ESP.
4	EPA	A comprehensive mitigation strategy needs to be implemented to offset adverse impacts to sensitive resources. CBP should continue coordination with USFWS to identify and implement such a program.	CBP has continuously coordinated with the USFWS regarding potential impacts to species in the project corridor and has also worked closely with the USFWS on a programmatic mitigation agreement for the entire tactical infrastructure fence program.
5	EPA	EPA feels strongly that the DEA does not justify a FONSI, because it does not contain any site specific information, but rather is based on secondary information and general knowledge of the area.	Due to the waiver issued on April 1, 2008, the requirements of NEPA are no longer applicable to the project. The initial impact analyses were made based on literature searches, known locations of sensitive species habitat, and aerial photograph interpretation. The data and analyses in the Draft EA were sufficient to facilitate a decision whether the pedestrian fence would potentially result in a major adverse impact. Since release of the Draft EA, CBP has received rights of entry, which has allowed surveys to be conducted. Information gleaned from these surveys has been incorporated to the ESP and confirm the determinations presented in the Draft EA. See also response to comment 2 regarding impacts to WUS.
6	EPA	The Draft EA does not evaluate all reasonable alternatives; specifically, EPA suggests an additional alternative evaluated which integrates infrastructure, manpower and new technologies, as referenced in the Congressional Research Service Report, especially in environmentally sensitive areas.	Due to the waiver issued on April 1, 2008, the requirements of NEPA are no longer applicable to the project.. CBP did prepare an ESP that does provide a comprehensive analysis of the potential environmental impacts associated with the fence construction. Accordingly, alternatives were not addressed in the ESP. In addition, USBP operational assessments of the most effective locations for the tactical infrastructure are law enforcement sensitive and, thus, beyond the scope of this ESP.

#	Reviewer	Comment	Response
7	U.S. Section International Boundary Commission (USIBWC) Letter dated February 6, 2008 Richard Peace	USIBWC noted that it is apparent (from the Draft EA) that the proposed action includes fence construction across the Santa Cruz River. USIBWC requested that the proposed construction be accomplished in a manner that does not change historic surface runoff characteristics of the river and is consistent with the stipulations of Article IV-B of the 1970 Boundary treaty between the U.S. and Mexico. USIBWC also noted that it will require assurances in an adequate manner, and that liability issues created by the fence are addressed.	CBP has revised the proposed action by proposing to place vehicle fence in lieu of primary pedestrian fence within the Santa Cruz River floodplain. In light if this change, USIBWC concerns of altering historic flows of the Santa Cruz River would be satisfied. CBP will continue to coordinate with USIBWC regarding construction activities within the remaining washes relative to consistency with the 1970 treaty.
8	USIBWC Richard Peace Continued	USIBWC reminded CBP of the recently signed Memorandum of Agreement which requires that USIBWC review and approve project drawing before any construction begins.	CBP concurs with the stipulations of the recently signed MOA. CBP will submit engineering designs to USIBWC for review prior to construction.
State Agency			
9	Arizona Game and Fish Department (AGFD) Letter dated February 12, 2008 Ginger Ritter	AGFD concurs that the Preferred Action Alternative has less impact on wildlife and their associated habitats than the Secure Fence Act Alternative.	Comment acknowledged.

#	Reviewer	Comment	Response
10	AGFD Ginger Ritter	AGFD recommends reconsideration of specific determinations in the draft EA. Specifically, AGFD contends that it is unlikely that suitable habitat exists within the project area for the Southwestern willow flycatcher and not the Western yellow-billed cuckoo.	<p>The initial species determinations were made based on literature searches, known locations of sensitive species habitat, and aerial photograph interpretation. Therefore, as stated in the Draft EA, these determinations were limited and required pedestrian ground truthing surveys in order to make definitive statements.</p> <p>Since release of the draft EA CBP has received ROEs, which has allowed surveys to be conducted. The Environmental Stewardship Plan (ESP) has been revised accordingly; Section 8 of the ESP identifies the results of recent pedestrian surveys.</p>
11	AGFD Ginger Ritter	AGFD did not concur with the determination that prevention of transboundary migration of larger animals is a minor impact. The loss of movement and permeability across roads and other linear structures prevents wildlife from re-colonizing areas where local extirpations may have occurred. Also, riparian areas are important travel corridors for many wildlife species, including large animals. Therefore, AGFD recommended that, in lieu of primary pedestrian fence, CBP install permanent vehicle barriers within riparian areas that this project transects.	The Draft EA reported that fragmentation impacts would be moderate rather than minor. Because of the reasons stated in the Draft EA and ESP, CBP does not believe these impacts would result in a major impact to local or regional wildlife populations. In addition, as noted in response #2 above, CBP has decided to currently install vehicle fence, rather than pedestrian fence, within the Santa Cruz River floodplain, which would further mitigate potential impacts on transboundary migration of larger mammals.
Private Citizens			
12	Open Public Forum Tucson Arizona, January 31, 2008 (Marcelino Varona, (Nogales, Arizona)	The commenter noted that they are in support of Alternative number 2 and support it wholeheartedly. It will be beneficial to the community, as well as businesses in the area.	Comment acknowledged.

#	Reviewer	Comment	Response
13	Concerned Citizen Letter dated February 6, 2008 Edith & David Lowell (Rio Rico, Arizona)	The reviewers noted that they understand that the fence and road are needed to help stop illegal and dangerous activity. They also thanked the U.S. Border Patrol for making their continued residence at a nearby ranch possible and offered continued support.	Comment acknowledged.

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