



**US Army Corps  
of Engineers** ®  
Fort Worth District

# Public Notice

Section 408 Request ID #: 408-SWF-2021-0012

Date issued: February 9, 2023

Close of comment period: March 11, 2023

USACE Point of Contact: Jason Story

## **REQUEST TO ALTER A U.S. ARMY CORPS OF ENGINEERS FEDERALLY AUTHORIZED CIVIL WORKS PROJECT UNDER 33 USC 408 (SECTION 408)**

**TITLE:** Section 408 Request ID # 408-SWF-2021-0012, U.S. Highway 59 (US 59) at Wharton, Texas

**SUBJECT:** Request for a Section 408 permission to alter the Lower Colorado River Basin Phase I, Flood Risk Management Project at Wharton, Texas, a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project. Written comments are being solicited from anyone having an interest in this proposed alteration. Comments will become part of the USACE administrative record and will be considered in determining whether to approve the proposed alteration. Comments supporting, opposing, or identifying concerns that may be considered by the USACE in its decision process are all welcome. Issuance of this notice does not imply USACE endorsement of the proposed alteration as described.

**REQUESTER:** Texas Department of Transportation (TxDOT)

**LOCATION:** The proposed project is located in Wharton County in the City of Wharton, Texas

**NON-FEDERAL SPONSOR:** City of Wharton

**LOCATION MAP(S)/DRAWING(S):** Attached figures

**DESCRIPTION OF THE PROPOSED ALTERATION:** The proposed alteration consists of activities within the Lower Colorado River Basin Phase I, Flood Risk Management Project at Wharton, Texas. The larger TxDOT roadway improvements include widening of US 59 from SH 60 to 1 mile south of FM 961 in Wharton County, Texas. The proposed alteration consists of improvements to US 59 where it crosses the future USACE Wharton Phase 1 Levee along the north bank of the Colorado River. The proposed alteration involves replacement of the US 59 bridge with a wider bridge that would span the future levee. The US 59 project would also include the addition of a one lane turnaround underneath the US 59 bridge, just north of the future levee.

**REGULATORY AUTHORITY:** This request will be reviewed pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408). A requester has the responsibility to acquire other authorizations required by federal, state, and local laws or regulations, including any required permits from the USACE Regulatory Program. An approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

**EVALUATION:** The decision whether to grant the request for the alteration under Section 408 is based on several factors which are outlined in Engineer Circular 1165-2-220. The benefits which reasonably may be expected to accrue from the proposed alteration must be balanced against its reasonably foreseeable detriments. Review of the proposed alteration will be reviewed by a USACE technical review team considering the following factors:

**1. *Impacts to the Usefulness of the USACE Project Determination.*** The review team will determine if the proposed alteration would limit the ability of the federally authorized project to function as authorized, or would compromise or change any authorized project conditions, purposes, or outputs.

**2. *Injurious to the Public Interest Determination.*** The review team will determine the probable impacts of the proposed alteration, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation.

**3. *Environmental Compliance.*** A decision on a Section 408 request is a federal action subject to the National Environmental Policy Act (NEPA) and other applicable federal environmental and cultural resources compliance requirements.

**NEPA:** The TxDOT completed a Final Environmental Assessment resulting in a Finding of No Significant Impact in 2017. The TxDOT conducted a reevaluation of the US 59 project in November 2022, due to design and right of way changes as required by applicable environmental laws. The USACE intends to adopt the 2017 TxDOT Environmental Assessment and 2022 reevaluation, as applicable for the Section 408 permission, as TxDOT is the lead federal agency under NEPA and other applicable federal environmental laws.

**THREATENED AND ENDANGERED SPECIES:** The TxDOT completed a federal and state threatened and endangered species analysis to comply with the Endangered Species Act (ESA) dated December 2021. The TxDOT coordinated with Texas Parks and Wildlife Department (TPWD) in January 2022 for the reevaluation. The TPWD coordination was completed in February 2022. The U.S. Fish and Wildlife Service (USFWS) consultation is ongoing for the Texas Fawnsfoot (*Truncilla macrodon*) and Texas Pimpleback (*Cyclonaias petrina*) in the Colorado River. Both freshwater mussel

species were proposed by the USFWS to be listed as endangered in August 2021. A final listing has not been decided; therefore, a Biological Opinion from the USFWS is not an available option. A Conference Opinion is an option with the intent of changing this to a Biological Opinion once the species is federally listed. The USACE intends to adopt the TxDOT ESA documentation as applicable for the Section 408 permission. The USACE has also reviewed an official list of species protected under the ESA, and our initial review indicates the proposed alteration would have no effect to species listed by the USFWS as threatened or endangered within the action area for the Section 408 jurisdiction. The US 59 work across and within the Colorado River is outside of the Section 408 jurisdiction.

**HISTORIC, CULTURAL, AND ARCHAEOLOGICAL RESOURCES:** The TxDOT conducted a cultural resources survey in 2015 and consultation with the Texas State Historic Preservation Office in association with this project in 2021, with a finding of No Historic Properties Affected. The USACE also conducted a cultural resources survey within the Area of Potential Effects (APE) in association with the Colorado River Flood Control Project in 2020 and 2021. The USACE reviewed the results of both surveys and identified no historic properties within the APE. Based on this review, the USACE determined that this undertaking shall have ***No Effect to Historic Properties*** in accordance with 36 CFR Part 800.4 (d)(1).

**SOLICITATION OF COMMENTS:** The USACE is soliciting comments from the public; federal, state, and local agencies and officials; federally recognized tribes; and other interested parties to consider and evaluate the impacts of the proposed alteration. Comments received will be considered by the USACE to determine whether to issue, modify, condition, or deny a permission for this proposed alteration.

Materials submitted as part of the Section 408 request become part of the public record and are available to the public under the Freedom of Information Act (FOIA). Individuals may submit a written request to obtain materials under FOIA or make an appointment to view the project file at the Fort Worth District, U.S. Army Corps of Engineers, Office of Counsel.

It is presumed that all parties receiving this notice will wish to respond to this public notice, therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed alteration as described herein.

**CLOSE OF COMMENT PERIOD:** Written comments on the proposed alteration must reach this office on or before the close of the comment period. Comments must reference the Section 408 Request ID # and project name. Comments and requests for additional information should be submitted to [CESWF-408@usace.army.mil](mailto:CESWF-408@usace.army.mil). Telephone inquiries should be directed to Mr. Jason Story, at (817) 886-1852. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available. For more information on Section 408, visit the Fort Worth District Section 408 webpage at <https://www.swf.usace.army.mil/Missions/Section-408/>.

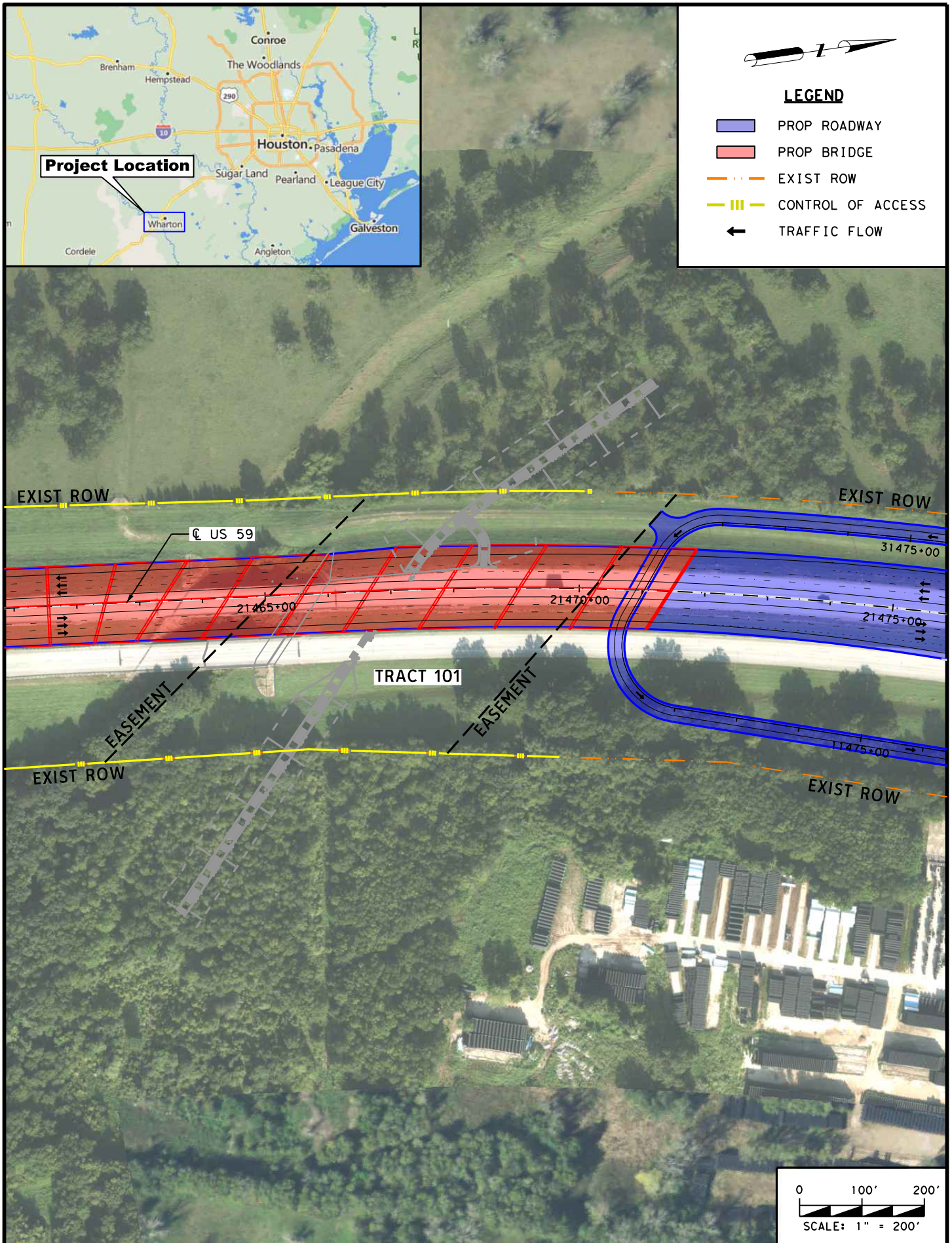


DATE: 8/24/21  
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US 59 (FUTURE I-69)  
WHARTON COUNTY  
SH 60 TO 1 MILE SOUTH OF FM 961

FIGURE 1



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FIGURE 2