



*Office of Public Affairs*

# Public Affairs Guidance

## Border Wall – San Diego Waiver

### Background

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### Questions and Answers

**Q1: Will CBP follow the National Environmental Protection Act (NEPA) process for prototype and other construction projects related to the Wall?**

A1: CBP is currently assessing its options with respect to environmental compliance for prototype and other border infrastructure. At this time, no decisions have been made as to whether CBP will follow the traditional NEPA process or request that the Secretary exercise his authority to waive certain legal requirements. This waiver specifically covers border projects in San Diego at a segment of approximately fifteen miles within the San Diego Sector. This segment starts at the Pacific Ocean and extends eastward to approximately (b) (7)(E) east of Border Monument (b) (7)(E)

**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. Thus, as was the case with past projects covered by a waiver, DHS evaluated the potential impacts of the border infrastructure that is planned for the project area. Among other things, DHS performed and reviewed environmental surveys, coordinated and consulted with state and federal stakeholders, and analyzed potential impacts. Reports can be found in the link below.

<https://www.cbp.gov/about/environmental-cultural-stewardship/nepa-documents/esp-essr>

**Q3: Did 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.

**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 border infrastructure that is necessary 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 border infrastructure that is necessary 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 the border infrastructure that is necessary to deter illegal entry into the United States by minimizing the risk of administrative delays and litigation. The waiver authority has been instrumental to DHS's ability to construct border infrastructure that has made a real and material difference in deterring illegal entry into the United States.

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**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 this initial effort 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. The current project is a critical early step in what will be a sustained effort to construct that physical infrastructure. Utilizing the Secretary's waiver authority for this initial effort 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: The Secretary has issued five previous waivers. The five previous waivers were issued between 2005 and 2008.

**Q13: Does this waiver supersede all prior waivers?**

A13: No. The Secretary's \_\_\_\_, 2017 waiver explicitly states that it does not supersede or modify any of the previous waivers.

**Q14: What environmental impacts does DHS anticipate as a result of border wall construction?**

A14: At this early stage, DHS cannot reasonably forecast what the environmental impacts of a wall might be. As noted, however, DHS is committed to responsible environmental stewardship. That means that DHS will continue to assess potential impacts, coordinate with relevant stakeholders, and to the extent possible, offset or mitigate potential impacts.

**Additional Information**

**ENVIRONMENTAL LAWS WAIVED**

Per the signed waiver pursuant to section 102(c) of IIRIRA, the Secretary for Homeland Security waived in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the Project Area, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, and safety features) in the Project Area, the following statutes, including all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.))

The Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.))

The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 et seq.))

The National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113-287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 et seq., now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 et seq.))

The Migratory Bird Treaty Act (16 U.S.C. 703 et seq.)

The Migratory Bird Conservation Act (16 U.S.C. 715 et seq.),

The Clean Air Act (42 U.S.C. 7401 et seq.),

The Archeological Resources Protection Act (Pub. L. 96-95 (16 U.S.C. 470aa et seq.)),

The Paleontological Resources Preservation Act (16 U.S.C. 470aaa et seq.),

The Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 et seq.),

The National Trails System Act (16 U.S.C. 1241 et seq.),

The Safe Drinking Water Act (42 U.S.C. 300f et seq.),

The Noise Control Act (42 U.S.C. 4901 et seq.),

The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)

The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.)

The Archaeological and Historic Preservation Act (Pub. L. 86-523, as amended, repealed, or replaced by Pub. L. 113-287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 et seq., now codified at 54 U.S.C. 312502 et seq.))

The Antiquities Act (formerly codified at 16 U.S.C. 431 et seq., now codified 54 U.S.C. § 320301 et seq.)

The Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 et seq., now codified at 54 U.S.C. 3201-320303 & 320101-320106)

The Wild and Scenic Rivers Act (Pub. L. 90-542 (16 U.S.C. 1281 et seq.)), the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)

The Coastal Zone Management Act (Pub. L. 92-583 (16 U.S.C. § 1451 et seq.))

The Wilderness Act (Pub. L. 88-577 (16 U.S.C. 1131 et seq.))

The Federal Land Policy and Management Act (Pub L. 94-579 (43 U.S.C. 1701 et seq.))

The National Wildlife Refuge System Administration Act (Pub. L. 89-669 (16 U.S.C. 668dd-668ee))

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105-57)

National Fish and Wildlife Act of 1956 (Pub. L. 84-1024 (16 U.S.C. 742a, et seq.))

The Fish and Wildlife Coordination Act (Pub. L. 73-121 (16 U.S.C. 661 et seq.))

The Wild Horse and Burro Act (16 U.S.C. 1331 et seq.), 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 (5 U.S.C. 551 et seq.)

The Otay Mountain Wilderness Act of 1999 (Pub. L. 106-145), sections 102(29) and 103 of Title I of The California Desert Protection Act (Pub. L. 103-433)

The Rivers and Harbors Act of 1899 (33 U.S.C. 403)

The Eagle Protection Act (16 U.S.C. 668 et seq.)

The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.)

The American Indian Religious Freedom Act (42 U.S.C. 1996), and the Religious Freedom Restoration Act (42 U.S.C. 2000bb)