

## **Appendix D**



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS**  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

CEMP-SWD

OCT 19 2010

MEMORANDUM THRU Commander, Southwestern Division

FOR Commander, Fort Worth District

**SUBJECT: Implementation Guidance for Section 405(a) of the FY2010 Supplemental Disaster Relief and Summer Jobs Act (Public Law 111-212)**

1. Section 405(a) of the FY2010 Supplemental Disaster Relief and Summer Jobs Act (P. L. 111-212) provides that the Secretary is not required to make a determination under the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) for the project for flood control, Trinity River and tributaries, Texas, authorized by Section 2 of the Act entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," approved March 2, 1945 [59 Stat. 18], and as modified by Section 5141 of the Water Resources Development Act (WRDA) of 2007 [121 Stat. 1253].
2. This guidance applies to all USACE actions that may impact pertinent features of the existing Dallas Floodway and any modifications to that project or features defined by Section 5141 of WRDA 2007. These features may be located at any point along the Trinity River upstream from the AT&SF Railroad Bridge at Trinity River Mile 497.37, to the confluence of the West and Elm Forks at River Mile 505.50, thence upstream along the West Fork for approximately 2.2 miles and upstream along the Elm Fork approximately 4 miles.
3. In accordance with Section 405(a) of P. L. 111-212, the built environment that comprises the Dallas Floodway Project, as modified by Section 5141 WRDA 2007, will be examined, described and considered only as a cultural resource within the context of the scope of impacts that must be analyzed under the National Environmental Policy Act (NEPA). For administrative and public information purposes, a clear and concise descriptive narrative on the development, function, composition and current operation of the Dallas Floodway will be prepared to satisfy the requirements of NEPA. This narrative will focus on the Dallas Floodway as an engineering system and may contain discussion of the significance of this cultural resource's inherent structural features or relationships between the Dallas Floodway and the historical development of the City of Dallas. Any discussion of the significance of cultural resources shall be devoid of explicit reference to the criteria used to determine eligibility for the National Register of Historic Places.
4. As part of the NEPA process for the Dallas Floodway Project, as modified by Section 5141 of WRDA 2007, Fort Worth District shall document and consider project alternatives and their potential to affect the quality of the built environment. In addition to describing effects of various project alternatives on the Dallas Floodway as an engineering system, the district shall

CEMP-SWD

SUBJECT: Implementation Guidance for Section 405(a) of the FY2010 Supplemental Disaster Relief and Summer Jobs Act (Public Law 111-212)

also document and consider mitigation measures. These mitigation measures shall be developed to avoid, reduce, compensate or eliminate affects to those qualities of the built environment that contribute to the cultural resource's significant structural features or that affect those elements of the built environment that contribute to the relationship between the Dallas Floodway and the historical development of the City of Dallas.

5. It should be noted that the same limitations on the scope of impacts that must be analyzed as identified in paragraph 3, above, also apply to features included in the Balanced Vision Plan which require approval under 33 USC 408; and for analyses conducted pursuant to Section 404 of the Clean Water Act, 33 USC 1344 or Section 10 of the Rivers and Harbors Act of 1899. This guidance includes analyses for any permits required by the City of Dallas to complete repairs or other actions necessary to correct deficiencies noted in the Periodic Inspection Report issued in March 2009. This guidance also includes any actions necessary to enable the authorized project to provide at least a 100 year level of protection while a more comprehensive solution is pursued under Section 5141 of WRDA 2007.

6. In summary, the built environment and other evidence of human activities identified within the geographic areas and associated projects or programs covered by section 405(a) will be examined, described and considered only as cultural resources within the context of the scope of impacts that must be analyzed under NEPA. There will be no determinations made under the National Historic Preservation Act of 1966 in accordance with Section 405(a) of P. L. 111-212.

FOR THE COMMANDER:



STEVEN L. STOCKTON, P.E.  
Director of Civil Works

SEC. 405. (a) The Secretary of the Army shall not be required to make a determination under the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) for the project for flood control, Trinity River and tributaries, Texas, authorized by section 2 of the Act entitled “An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes”, approved March 2, 1945 [59 Stat. 18], as modified by section 5141 of the Water Resources Development Act of 2007 [121 Stat. 1253].

(b) The Federal Highway Administration is exempt from the requirements of 49 U.S.C. 303 and 23 U.S.C. 138 for any highway project to be constructed in the vicinity of the Dallas Floodway, Dallas, Texas.