

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

January 14, 2009

His Excellency Héctor Morales
Ambassador, Permanent Representative
Permanent Mission of the United States of America
to the Organization of American States
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Mr. Ambassador:

At the Inter-American Commission on Human Rights hearing of October 22, 2008, a series of inquiries were made of the United States Government ("government") regarding the planning processes used for the installation of border security fencing along the southern border of the United States. As was stated during the government's oral presentation, many of these matters are the subject of current litigation in the federal courts of the United States. Accordingly, U.S. Customs and Border Protection (CBP) is restrained in its ability to respond. Please find CBP's written answers to the Commission's inquiries below:

Process used to identify need for fencing –

After extensive debate, the United States Congress adopted legislation charging the Secretary of Homeland Security with a mandate to achieve and maintain operational control of the United States border with Mexico. In furtherance of that mandate, Congress called for the installation of fencing, barriers, roads, lighting, cameras and sensors in areas of the southwest border where such infrastructure would be most practical and effective in deterring illegal entry into the United States. Congress has further recognized the priority need for physical barriers to secure the border through the appropriation of more than \$2 billion for fence construction. Congress also expressed the importance of this initiative by setting a December 31, 2008, deadline for the completion of certain priority miles of this border infrastructure.

Analyses and processes used in planning fence alignment –

Fence locations were not selected by the government on the basis of considerations of politics, demographics, or any other factors other than operational considerations. As a general rule, fence locations are intended to use limited amounts of fence to divert illegal entrants from crossing in populated areas where they can easily blend into the surroundings, to more rural areas

where first detection is easier and where surveillance systems, availability of enforcement personnel, and other factors increase the likelihood of apprehension. Apparent differences in the demographics of the owners of land parcels affected by the planned fence locations are more aptly explained by these operational evaluations than by any other factor.

After identifying proposed fence locations based on border security operational assessments, the government also evaluated numerous factors, including environmental and engineering assessments and consultations, prior to construction. Each of the factors is discussed in greater detail below:

- Border security operational assessments – Operational assessments conducted by local Border Patrol Agents and Chiefs – based on illegal cross-border activity and the Border Patrol’s extensive field experience – identified multiple locations where pedestrian or vehicle fencing would most effectively enhance border security against all threats.

It is important to recognize that fencing is only one element of the government’s layered defense plan to gain effective control of our nation’s borders. The comprehensive plan includes additional, substantial investments in technology, infrastructure and enforcement personnel. The government is working to deploy the right mix of technology, tactical infrastructure, and personnel to secure each mile of the border as quickly and efficiently as possible.

During the hearing, there was discussion of the Government’s plans for fencing in a specific area – in the vicinity of the River Bend Golf Course near Brownsville, Texas. It is important to note that the planned location of fencing is based on the Border Patrol’s evaluations of land use in that area - open farmland, residential neighborhoods and major roads - and enforcement resources. Plans call for a break in the fence near the golf course where there is much open land, the Border Patrol is routinely able to launch boats and the Government has cameras in place to detect illegal entries.

- Environmental and Engineering assessments – The government has pursued a comprehensive effort to address potential environmental impacts associated with constructing, maintaining, and operating tactical infrastructure to secure the southern border. The government openly scoped pedestrian fence projects in coordination with federal and state agencies as well as the public to ensure potential environmental impacts were identified and thoroughly evaluated for each project. The government notified applicable federal, state, and local agencies of the project and requested information and input on potential areas of sensitive environmental resources within the project corridor, and consulted with these agencies to identify methods to minimize impacts from the placement and construction of fencing along the southwest border.

The government has conducted a transparent process during its environmental analyses and development of planning documents. Draft environmental analysis documents were made available to the public through public open houses, the internet, and at local public libraries. The public, state and local officials, and state and local agencies were provided with an

opportunity to comment on these draft documents. All agency and public comments received via email, letter, fax and during the open house were considered and incorporated in the final documents. All of these comments and the government's responses have been posted to the BorderFencePlanning.com website. The enclosed excerpt from the Rio Grande Valley (RGV) Border Patrol Sector environmental plan explains the process used by the government to review public comments and provides an example of how these comments were addressed and incorporated into the final environmental planning document. Additionally, even where planning documents have been completed, the government continues to consult with stakeholders to seek advice and input and make appropriate changes to address concerns.

The government has also considered engineering issues and related international treaty considerations in its planning process. For example, after extensive analyses of hydrology studies by the government, it was concluded that it would not be feasible to move forward in 2008 with the construction of 14 miles of fence proposed for the western end of the RGV Sector. While the Border Patrol has identified a critical operational need for fencing in these areas, at the same time, the construction of this fencing must be consistent with international treaty obligations that limit river diversions. Accordingly the government is investing additional time to analyze the data and evaluate potential options to build the most practical tactical infrastructure possible.

- Consultations with landowners, communities and Native American Tribes -

While fencing is an important component of the government's effort to gain control of our borders, there is also recognition of the potential impact that physical security barriers may have on local communities and landowners. The government has worked diligently to provide opportunities for interested stakeholders to express concerns and provide feedback regarding our project plans and to maintain an open dialogue with affected communities and landowners.

The government has had extensive consultations and discussions with state and local officials and community stakeholders, federal government resource agencies, tribes, and landowners concerning the placement of fencing. The government has contacted almost 600 landowners and held more than 200 meetings along the southwest border, including town hall meetings, meetings with public groups, meetings with state and local officials, meetings with tribal groups, and public open houses. Over 1,000 individuals attended the public open houses and more than 1,000 comments on draft environmental documents were provided in writing, by dictation, and via email. CBP analyzed and responded to all substantive comments and posted this information to the Internet. CBP has continued to post detailed planning documents to the Internet through the BorderFencePlanning.com website and has provided copies of environmental documents to libraries in affected communities.

These extensive consultations have allowed CBP to continue to identify areas where they can make accommodations to meet both operational needs and other elements in the decision-making process, including local stakeholder input. Examples include: numerous fence alignment changes to limit the impact on residences, historical sites, educational institutions, and bird watching areas in the Rio Grande Valley area of Texas. CBP is also continuing to

consider viable alternatives, including the clearing of Carrizo Cane to enhance visibility in the Laredo, Texas BP Sector, and is constructing a joint project with Hidalgo County, Texas, that combines our security infrastructure with local levee improvement efforts in the Rio Grande Valley BP Sector. CBP also engaged in extensive consultations with Cameron County, Texas, regarding the potential for a similar levee-barrier project in their area.

In addition, the government also negotiated with private landowners in order to acquire the property needed to accommodate the fencing and associated infrastructure. In many instances, these negotiations resulted in an agreement to voluntarily sell the property. However, in some instances and for various reasons, the government was not able to acquire the needed property through a voluntary sale. Thus, in order to acquire such property, the government is pursuing condemnation actions through the appropriate United States District Court pursuant to established United States federal law.

Regarding consultation with Native Americans, the government has consulted extensively with federally acknowledged tribes. This includes the Kickapoo Traditional Tribe of Texas and the Ysleta Del Sur Pueblo of Texas. The government has consulted with the Ysleta Del Sur regarding access to cultural sites in the El Paso Sector that may be impacted by the fence. The government has worked closely with the Tohono O'odham Nation of Arizona regarding the placement of fencing on tribal lands in the Tucson Sector and to develop plans to mitigate potential impacts to cultural sites. The government has also worked extensively with leadership of the Quechan Tribe of Yuma, Arizona to resolve a final land use agreement for tribal lands upon which border fence was to be built. Additionally, the government coordinated with the tribe on the recovery and disposition of tribal artifacts that could potentially be recovered during fence construction on adjacent government land, an issue which was of great concern to the Quechan and other nearby tribes.

Number of landowners potentially impacted by the fence dividing their land -

The issue of private land being divided by the Government's border security fence is unique to Texas and is concentrated in Cameron and Starr Counties in the Border Patrol's RGV Sector. This is due to several factors:

- The majority of land along the United States-Mexico border in New Mexico, Arizona and California is public land;
- International treaty obligations administered by the IBWC have required the Government to install fencing outside of the floodplain of the Rio Grande River;
- In the RGV Sector, this has led to fencing to be planned for construction outside of the IBWC's flood protection levee system.
 - The portion of any private land tract that may be affected by the fence is the area located on the river-side of the levee in the floodplain.
- In Hidalgo County, Texas, the Government reached an agreement to build a joint levee-border barrier. Thus, the levee-border barrier runs approximately along the existing levee alignment with some private lands running along both sides of the levee-border barrier.

The Government is acquiring approximately 400 tracts of land in RGV Sector. No estimate is available on the number of tracts that may be divided by the fence. The Government is discussing access to land on the river-side of the levee with landowners during negotiations for acquisition of private land. Enclosed is a copy of the brochure that is being provided to landowners to explain this process.

Impact of vehicle fencing on illegal crossing traffic on the Tohono O'odham Nation –

Border Patrol statistics indicate that illegal crossing have been reduced on the Tohono O'odham Nation because of the installation of vehicle fencing supplemented by additional personnel and deployment of technology. The government's comprehensive plan for border security includes additional, substantial investments in technology, infrastructure and enforcement personnel.

Sincerely,



David Pagan
Acting Director of Policy and Planning and State & Local Liaison
U.S. Customs and Border Protection
U.S. Department of Homeland Security

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.

Prior to the issuance of the waiver, a Draft Environmental Impact Statement (EIS) was prepared and issued to the public. This Response to Public Comments document has been prepared to provide responses from CBP to the comments received on the Draft EIS. **Table 1-1** presents generic comments and CBP responses, which have been incorporated into the ESP as applicable.

CBP prepared an Environmental Stewardship Plan (ESP) that analyzes the potential environmental impacts associated with construction of tactical infrastructure in the U.S. Border Patrol (USBP) Rio Grande Valley Sector. The infrastructure will consist of approximately 70 miles of primary pedestrian fence, concrete flood protection structures/concrete fence, and patrol and access roads. 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. Public and agency comments received during the Draft EIS process were evaluated and incorporated as appropriate into the ESP. The ESP will guide CBP's efforts going forward. The tactical infrastructure described in the ESP for the USBP Rio Grande Valley Sector is covered by the Secretary's April 1, 2008 waiver.

1.2 Draft EIS Public Involvement Process

A Notice of Availability (NOA) for the Draft EIS was published in the *The Monitor*, *The Brownsville Herald*, *The Valley Morning Star*, *La Frontera* and *El Nuevo Herald* on November 16 and 18, and December 5 and 11, 2007, announcing the release of the document for a 45-day public comment period. The NOA announced the availability of the Draft EIS; the date, time, and place for the public open house meetings on the Draft EIS; and publicized a request for comments on the Draft EIS. The release of the Draft EIS initiated a formal 45-day public comment period that ended December 31, 2007. In addition, a NOA was published in the *Federal Register* announcing the availability of the

Draft EIS and the times and locations of the public open houses (see **Figures 1-1** and **1-2**).

Public open houses were held in McAllen, Brownsville, and Rio Grande City, Texas, to provide an overview of the Draft EIS and accept public comments. The open houses were attended by approximately 1,000 people. Newspaper notices, the *www.BorderFenceNEPA.com* Web site, and the public open houses were used to request public input and to disseminate information about draft alternatives and their potential effects (see **Figures 1-1** and **1-2**).

During the 45-day public review and comment period for the Draft EIS, CBP received approximately 920 comment submissions at the public open houses, by fax, by email, through the project specific Website (*www.BorderFenceNEPA.com*), and by regular mail. These were from the public, Federal and state agencies, and local elected officials, stakeholder organizations, and businesses. These included letters from nongovernmental organizations, such as the Environmental Defense Fund, Frontera Audubon Society, Texas Border Coalition, Sierra Club, and World Birding Center.

Of these 920 comment submissions received, 96 letters were from citizens of Granjeno stating their opposition to the Proposed Action. Also included in the 920 letters were 304 form letters received via email from private citizens asserting the position "that any virtual or physical infrastructure are environmentally appropriate, do not impact the local economy and do not violate human rights."

In addition to the 920 comment submittals, CBP received a petition from No Border Wall containing 4,600 signatures (3,308 on paper and 1,292 electronically). The petition stated that the signatories were opposed to "the construction of a solid wall along more than 700 miles of the U.S./Mexico border." The No Border Wall petition is in addition to detailed specific comments that CBP also received from this group.

1.3 Methodology for Analyzing Comments

Comments on the Draft EIS that were received covered a wide spectrum of opinions, ideas, suggestions, and concerns, some of which have resulted in additions or modifications to the ESP. While each person's viewpoint was diligently considered, for the purposes of presenting them in this document and the ESP, comments were determined to be either substantive or nonsubstantive in nature. CBP used a common methodology to identify substantive and nonsubstantive comments, as described below. Substantive comments were defined as those that do one or more of the following:

- Question, with reasonable basis, the accuracy of information in the Draft EIS
- Question, with reasonable basis, the adequacy of the environmental analysis
- Cause changes or revisions to the proposal.

From the 920 comment submissions received on the Draft EIS, approximately 442 individual substantive comments were extracted. These substantive comment letters are presented in **Appendix A** of this report. Comments on the Draft EIS were summarized and grouped by resource area or issue, and are presented along with a response in **Table 1-1**. Substantive comments raise, debate, or question a point of fact

or policy. Many of the substantive comments resulted in changes in the development of the ESP.

Nonsubstantive comments are comments that offer only opinions, provide information not directly related to project issues or the impact analyses, or show general opposition to or support of the Project. Nonsubstantive comments have been considered by the planning team but not formally grouped, nor were individual responses prepared.

Because of the large volume of comments, similar comments were grouped together, where possible, to create comment statements that capture the essence of two or more commenters. Therefore, comment statements may not be exact quotes of any one person or organization. The comments have also been edited for brevity, clarity, and grammar. They have been organized by similar topics under the headings listed in the table of contents. The substantive comments and responses are included in **Table 1-1**.

Agency and public comments on the Draft EIS were considered and incorporated into the analysis of potential environmental impacts in the ESP, as applicable. Due to the issuance of the Secretary's waiver, some comments related to elements of the National Environmental Policy Act (NEPA) process are not applicable to the ESP analysis and have not been directly addressed in comment responses. Comments related to alternatives, scope of alternatives analysis, and purpose and need also fall into this category and are not included in **Table 1-1**. **Appendix B** presents a list commenters who made comments related to alternatives and purpose and need analysis on the Draft EIS. The list of commenters in **Table 1-1** is provided below.

Federal Agencies

- U.S. Environmental Protection Agency
- U.S. International Boundary and Water Commission
- U.S. Department of the Interior

State and Local Agencies

- Hidalgo County Resolution
- Texas Parks and Wildlife Department (TPWD)
- Texas Commission on Environmental Quality (TCEQ)
- Texas Historical Commission (THC)

Federal Elected Officials

- Honorable Solomon P. Ortiz, U.S. House of Representatives

State Elected Officials

- Honorable Eddie Lucio, Jr., Texas State Senate
- Honorable Carlos Cascos, CPA, Cameron County Judge
- Honorable Patricio M. Ahumada, Jr., Mayor, City of Brownsville
- Honorable John David Franz, Mayor, City of Hidalgo
- Honorable J.D. Salinas III, Hidalgo County Judge
- Honorable Eloy Vera, Starr County Judge

Stakeholder Organizations

- Immigration Reform Law Institute (IRLI)
- Sonia Najera, Friends of the Laguna Atascosa Refuge (FOLAR)
- Defenders of Wildlife (DOW)
- Nye Plantation
- Jones, Galligan, Key, & Lozano, LLP (JGK & L)
- The University of Texas at Brownsville and Texas Southmost College (UT & TSC)
- Peter Goodman, Historic Downtown Director, City of Brownsville
- Sabal Palm Grove Sanctuary
- No Border Wall (NBW)
- Texas Border Coalition (TBC)
- The Nature Conservancy (TNC)
- Sierra Club – Lower Rio Grande Valley Chapter (Sierra Club LRGVC)
- Environmental Defense Fund (EDF)
- Frontera Audubon Society (FAS)
- Sierra Club – Lone Star Chapter (Sierra Club TSC)
- Friends of the Wildlife Corridor (FOWC)
- Blackburn Carter
- Lawrence Dunbar

Private Citizens

- Ford Sasser
- Eric Ellman
- Elisa Garza-Leal
- Merriwood Ferguson
- William Hudson
- David Benn
- Eloisa Tamez
- Steve Mondel
- Nancy Devlin
- Xanthe Miller
- Scott Werner

Improving the quality of life.



Before

Images from San Diego Sector



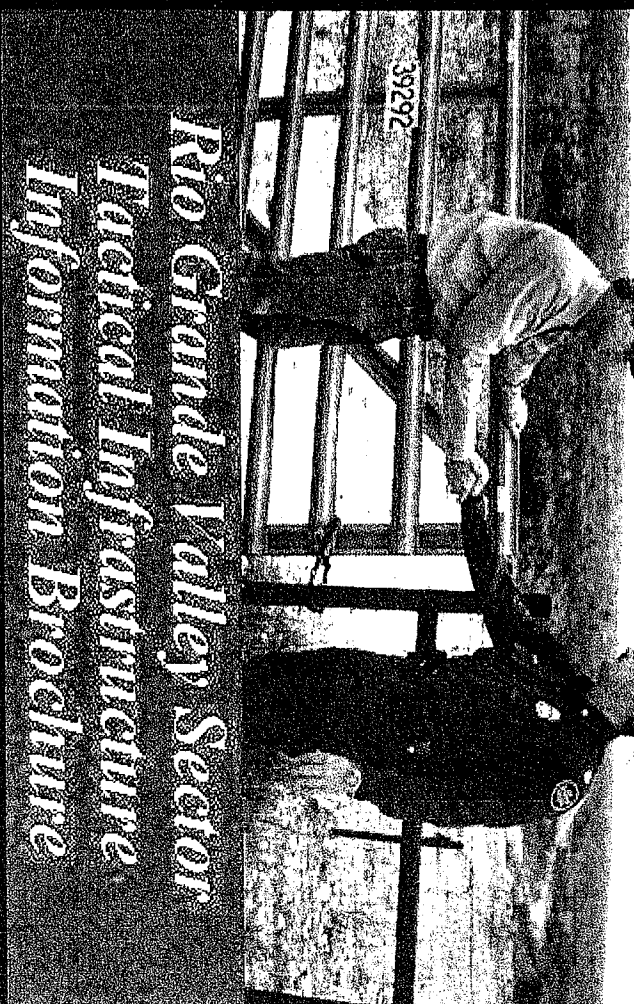
After

National Border Patrol Strategy

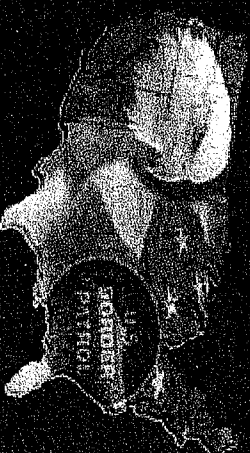
To apprehend terrorists and terrorist weapons illegally entering the United States. Deter illegal entries through improved enforcement. Detect, apprehend and deter smugglers of humans, drugs, and other contraband. Use "Smart Border" technology. Reduce crime in border communities, improving the quality of life.

CBP Office of Public Affairs (202)344-1770

For more information, go to www.cbp.gov



*Rio Grande Valley Sector
Tactical Infrastructure
Information Brochure*



*Information for Residents
Along the Border*



**U.S. Customs and
Border Protection**

Fence Conception

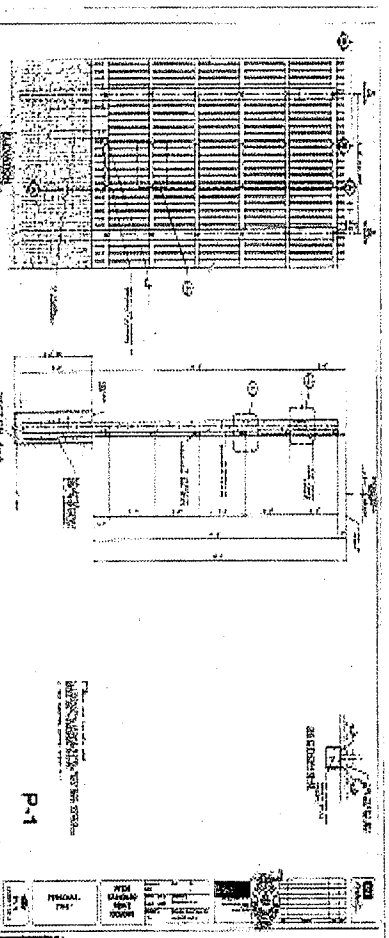
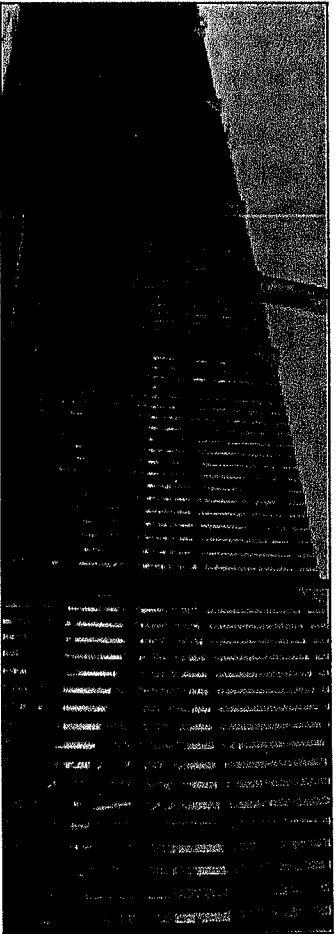
Fence locations were selected based on Border Patrol's operational assessments following a comprehensive analysis of alternatives to determine which areas along the border would most benefit from fencing and which type of fencing would be most appropriate for each identified area.

Q: What kind of fencing will be used?

A: Bollard & picket style fencing have been chosen based on Border Patrol's operational requirements. For each area, solutions are tailored to suit the environment (urban, rural, and) and its geographic (hills, rivers, arroyos, ditches, etc.) and climatic characteristics.

Q: What are the dimensions of the fence?

A: Fencing will range between 15 to 18 ft. tall, depending on the assessed operational needs in a given area.



Border Patrol Tactical Infrastructure Point of Contact (POC) Numbers

Rio Grande City Border Patrol Station

956-487-2113

McAllen Border Patrol Station

956-984-3839

Mercedes Border Patrol Station

956-968-0602

Harlingen Border Patrol Station

956-366-3023

Brownsville Border Patrol Station

956-983-1156

Fort Brown Border Patrol Station

956-547-3118

Rio Grande Valley Border Patrol Sector

1-800-863-9382

Partnering with the Community



Working Together



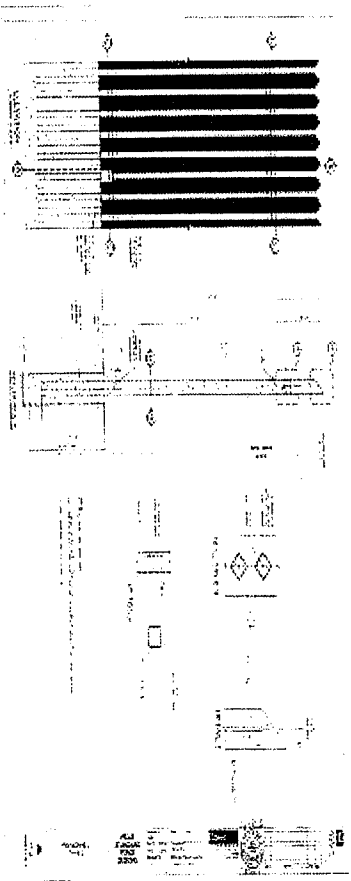
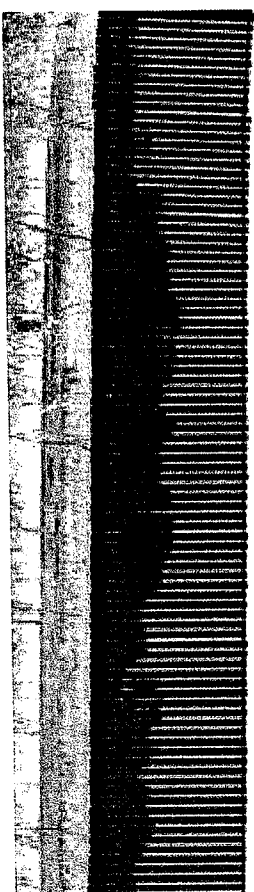
Q: Will I have to check in and out of my own property?
A: No.

Q: Will County roads be gated?
A: No. Existing public access through county roads will remain unimpeded.

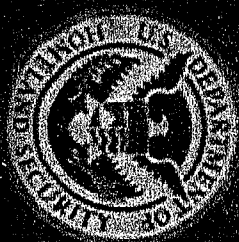
Q: Will access through gates be available 24/7?
A: The government will work with landowners to decide the best times of gate operations and if necessary, 24/7 access will generally be available.

Q: Will emergency personnel get to the south side of the fence?
A: Border Patrol, law enforcement and emergency personnel will all be able to operate the gates.

Q: Who do we call for information about the fence/gates?
A: The Border Patrol station in your area has a designated point of contact to address your concerns 24/7. Please refer to the contact information on the last page.



Partnering with the Community



Working Together



The fence and gate locations were identified based on operational assessments and landowner's access needs.

Q: What kind of gates will be used?

A: Two types of gates will be utilized for vehicular and farm equipment access. Both types of gates will utilize an overhead sliding rail system and will be constructed of materials similar to the fence.

Q: What are the dimensions of the gates, and how will they be operated?

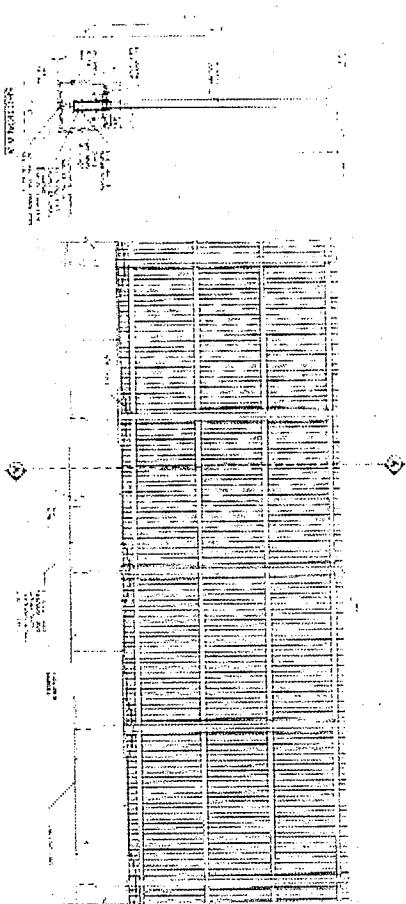
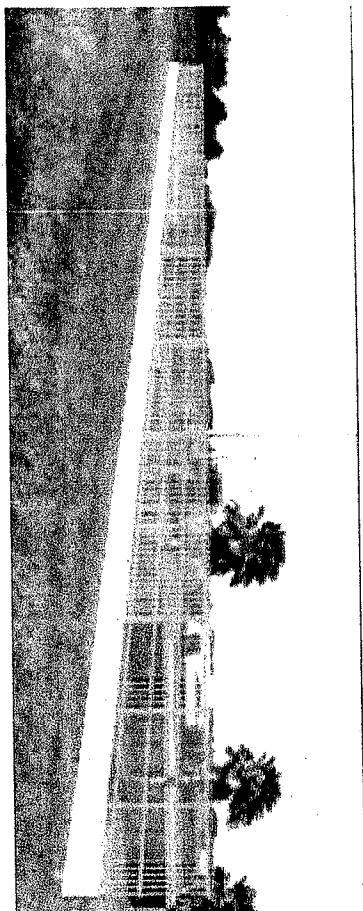
A: The vehicular gate will have a 20 ft opening and the farm gates will have 40 ft and 50 ft openings depending on individual land owner needs. A minimum of 18 ft vertical clearance will be provided. Most gates will be motorized with a manual override system accessible on both sides of the fence. A key pad entry system will be installed on either side of the gate for land owner use. Border Patrol, law enforcement and emergency personnel will be able to open the gates using an encrypted radio control system.

Q: What are the locations of any proposed gates near/on my property? Will I have a gate on my property?

A: We have designated a point of contact at the Border Patrol Station in your area. Please see the back page for contact information.

Q: If I own property on both sides of the levee will I have access to the other side on my land? If so, how?

A: Yes. An access agreement between the government and the landowner will be established in order to facilitate a workable solution.



P-3C-18