

nue, N.E., along the arc of a curve to the right, with a radius of 665.00 feet and whose chord bears south 53 degrees, 17 minutes 33 seconds west 64.05 feet, an arc distance of 64.08 feet to a 5/8-rebar set; thence south 56 degrees 03 minutes 30 seconds west on the northwesterly right-of-way line of Relocated Erieside Avenue, N.E., a distance of 248.38 feet to a 5/8-rebar set; thence northwesterly on the northeasterly right-of-way line of Relocated Erieside Avenue, N.E., along the arc of a curve to the right, with a radius of 265.00 feet and whose chord bears north 79 degrees 02 minutes 42 seconds west 374.09 feet, an arc distance of 415.31 feet to a drill hole set; thence north 34 degrees 08 minutes 55 seconds west on the northeasterly right-of-way line of Relocated Erieside Avenue, N.E., a distance of 505.30 feet to a 5/8-inch rebar set; thence northwesterly on the northeasterly right-of-way line of Relocated Erieside Avenue, N.E., along the arc of a curve to the left, with a radius of 112.00 feet and whose chord bears north 40 degrees 32 minutes 41 seconds west 24.95 feet, an arc distance of 25.01 feet to a drill hole set on the southerly right-of-way line of former Erieside Avenue, as vacated by city of Cleveland Ordinance No. 1100-87, passed June 16, 1987; thence northeasterly on the former right-of-way line along the arc of a curve to the right, with a radius of 515.00 feet and whose chord bears north 75 degrees 36 minutes 18 seconds east 136.45 feet, an arc distance of 136.85 feet to a 5/8-inch rebar set; thence north 86 degrees 13 minutes 04 seconds east on said former right-of-way line a distance of 294.57 feet to a 5/8-inch rebar set; thence north 52 degrees 57 minutes 23 seconds east on said former right-of-way line a distance of 56.98 feet to a 5/8-inch rebar set; thence south 33 degrees 53 minutes 08 seconds east a distance of 244.65 feet to a 5/8-inch rebar set; thence south 78 degrees 53 minutes 08 seconds east a distance of 105.04 feet to a 5/8-inch rebar set; thence north 56 degrees 06 minutes 52 seconds east a distance of 70.75 feet to a 5/8-inch rebar set; thence south 33 degrees 53 minutes 08 seconds east a distance of 274.74 feet to the true place of beginning containing 325,706 square feet (7.477 acres) more or less.

**(b) Limits on applicability; regulatory requirements**

The declaration under subsection (a) of this section shall apply to those parts of the areas described in subsection (a) of this section which are or will be bulkheaded and filled or otherwise occupied by permanent structures, including marina facilities. All such work is subject to all applicable Federal statutes and regulations, including sections 401 and 403 of this title, section 1344 of this title, and the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

**(c) Expiration date**

If, 20 years from October 31, 1992, any area or part thereof described in subsection (a) of this section is not bulkheaded or filled or occupied by permanent structures, including marina facilities, in accordance with the requirements set forth in subsection (b) of this section, or if work in connection with any activity permitted in subsection (b) of this section is not commenced

within 5 years after issuance of such permits, then the declaration of nonnavigability for such area or part thereof shall expire.

(Pub. L. 102-580, title III, §335, Oct. 31, 1992, 106 Stat. 4853.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

**§ 59hh. Declaration of nonnavigability for portion of Pelican Island, Texas**

**(a) In general**

The Secretary of the Army is authorized to convey to the City<sup>1</sup> of Galveston, Texas, fee simple absolute title to all or any part of a parcel of land containing approximately 605 acres known as the San Jacinto Disposal Area located on the east end of Galveston Island, Texas, in the W.A.A. Wallace Survey, A-647 and A-648, City<sup>1</sup> of Galveston, Galveston County, Texas, being part of the old Fort San Jacinto site, at the fair market value of such parcel to be determined in accordance with the provisions of subsection (d) of this section. Such conveyance shall only be made by the Secretary of the Army upon the agreement of the Secretary and the City<sup>1</sup> as to all compensation due herein.

**(b) Compensation for conveyance**

**(1) In general**

Upon receipt of compensation from the city of Galveston, the Secretary shall convey the parcel, or any part of the parcel, as described in subsection (a) of this section.

**(2) Full parcel**

If the full 605-acre parcel is conveyed, the compensation shall be—

(A) conveyance to the Department of the Army of fee simple absolute title to a parcel of land containing approximately 564 acres on Pelican Island, Texas, in the Eneas Smith Survey, A-190, Pelican Island, city of Galveston, Galveston County, Texas, adjacent to property currently owned by the United States, with the fair market value of the parcel being determined in accordance with subsection (d) of this section; and

(B) payment to the United States of an amount equal to the difference between the fair market value of the parcel to be conveyed under subsection (a) of this section and the fair market value of the parcel to be conveyed under subparagraph (A).

**(3) Partial parcel**

If the conveyance is 125 acres or less, compensation shall be an amount equal to the fair market value of the parcel to be conveyed,

<sup>1</sup> So in original. Probably should not be capitalized.

with the fair market value of the parcel being determined in accordance with subsection (d) of this section.

**(c) Disposition of spoil**

Costs of maintaining the Galveston Harbor and Channel will continue to be governed by the Local Cooperation Agreement (LCA) between the United States of America and the City<sup>1</sup> of Galveston dated October 18, 1973, as amended. Upon conveyance of the parcel, or any part of the parcel, described in subsection (a) of this section, the Department of the Army shall be compensated directly for the present value of the total costs to the Department for disposal of dredge material and site preparation pursuant to the LCA, if any,<sup>2</sup> in excess of the present value of the total costs that would have been incurred if this conveyance had not been made.

**(d) Determination of fair market value**

The fair market value of the land to be conveyed pursuant to subsections (a) and (b) of this section shall be determined by independent appraisers using the market value method.

**(e) Navigational servitude**

**(1) Declaration of nonnavigability; public interest**

Unless the Secretary finds, after consultation with local and regional public officials (including local and regional public planning organizations), that the proposed projects to be undertaken within the parcel described in subsection (a) of this section are not in the public interest then, subject to paragraphs (2) and (3), such parcel is declared to be non-navigable waters of the United States.

**(2) Limits on applicability; regulatory requirements**

The declaration under paragraph (1) shall apply only to those parts of the parcel described in subsection (a) of this section which are or will be bulkheaded and filled or otherwise occupied by permanent structures, including marina facilities. All such work is subject to all applicable Federal statutes and regulations including, but not limited to, sections 401 and 403 of this title, section 1344 of this title, and the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

**(3) Expiration date**

If, 20 years after October 28, 1993, any area or part thereof described in subsection (a) of this section is not bulkheaded or filled or occupied by permanent structures, including marina facilities, in accordance with the requirements set out in paragraph (2), or if work in connection with any activity permitted in paragraph (2) is not commenced within 5 years after issuance of such permits, then the declaration of nonnavigability for such area or part thereof shall expire.

**(f) Survey and study**

The 605-acre parcel and the 564-acre parcel shall be surveyed and further legally described prior to conveyance. Not later than 60 days following October 28, 1993, if he deems it necessary,

the Secretary of the Army shall complete a review of the applicability of section 1344 of this title to the said parcels.

(Pub. L. 103-126, title I, §108, Oct. 28, 1993, 107 Stat. 1320; Pub. L. 106-53, title V, §585, Aug. 17, 1999, 113 Stat. 377.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (e)(2), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-53, §585(1), inserted “all or any part of” after “absolute title to” in first sentence.

Subsec. (b). Pub. L. 106-53, §585(2), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Upon receipt of compensation from the City of Galveston, the Secretary shall convey the parcel as described in subsection (a) of this section. Such compensation shall include—

“(1) conveyance to the Department of the Army of fee simple absolute title to a parcel of land containing approximately 564 acres on Pelican Island, Texas, in the Eneas Smith Survey, A-190, Pelican Island, City of Galveston, Galveston County, Texas, adjacent to property currently owned by the United States. The fair market value of such parcel will be determined in accordance with the provision of subsection (d) of this section; and

“(2) payment to the United States of an amount equal to the difference of the fair market value of the parcel to be conveyed pursuant to subsection (a) of this section and the fair market value of the parcel to be conveyed pursuant to paragraph (1) of this subsection.”

Subsec. (c). Pub. L. 106-53, §585(3), in second sentence, inserted “, or any part of the parcel,” after “parcel” and “, if any,” after “LCA”.

**§ 59ii. Declaration of nonnavigability of a portion of the canal known as the James River and Kanawha Canal in Richmond, Virginia**

**(a) Canal declared nonnavigable**

The portion of the canal known as the James River and Kanawha Canal in Richmond, Virginia, located between the Great Ship Lock on the east and the limits of the City of Richmond on the west is hereby declared to be a non-navigable waterway of the United States for purposes of subtitle II of title 46.

**(b) Ensuring public safety**

The Secretary of Transportation shall provide such technical advice, information, and assistance as the City of Richmond, Virginia, or its designee may request to insure that the vessels operating on the waters declared nonnavigable by subsection (a) of this section are built, maintained, and operated in a manner consistent with protecting public safety.

**(c) Termination of declaration**

**(1) In general**

The Secretary of Transportation may terminate the effectiveness of the declaration made by subsection (a) of this section by publishing a determination that vessels operating on the waters declared nonnavigable by subsection

<sup>2</sup> So in original.