

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) shall apply to those parts of the areas described in subsection (a) 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) is not bulkheaded or filled or occupied by permanent structures, including marina facilities, in accordance with the requirements set forth in subsection (b), or if work in connection with any activity permitted in subsection (b) 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

“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 City¹ 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, City¹ 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). Such conveyance shall only be made by the Secretary of the Army upon the agree-

ment of the Secretary and the City¹ 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).

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

(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 City¹ of Galveston dated October 18, 1973, as amended. Upon conveyance of the parcel, or any part of the parcel, described in subsection (a), 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,² 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) 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) are not in the public interest then, subject to paragraphs (2) and (3), such parcel is declared to be nonnavigable waters of the United States.

¹ So in original. Probably should not be capitalized.

² So in original.

(2) Limits on applicability; regulatory requirements

The declaration under paragraph (1) shall apply only to those parts of the parcel described in subsection (a) 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) 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 non-navigability 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.)

Editorial Notes

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 nonnavigable 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) 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) by publishing a determination that vessels operating on the waters declared nonnavigable by subsection (a) have not been built, maintained, and operated in a manner consistent with protecting public safety.

(2) Public input

Before making a determination under this subsection, the Secretary of Transportation shall—

(A) consult with appropriate State and local government officials regarding whether such a determination is necessary to protect public safety and will serve the public interest; and

(B) provide to persons who might be adversely affected by the determination the opportunity for comment and a hearing on whether such action is necessary to protect public safety and will serve the public interest.

(Pub. L. 106-32, §2, June 1, 1999, 113 Stat. 115.)

Statutory Notes and Related Subsidiaries

FINDINGS

Pub. L. 106-32, §1, June 1, 1999, 113 Stat. 115, provided that: “The Congress finds the following:

“(1) The canal known as the James River and Kanawha Canal played an important part in the economic development of the Commonwealth of Virginia and the City of Richmond.

“(2) The canal ceased to operate as a functioning waterway in the conduct of commerce in the late 1800s.

“(3) Portions of the canal have been found by a Federal district court to be nonnavigable.

“(4) The restored portion of the canal will be utilized to provide entertainment and education to visitors and will play an important part in the economic development of downtown Richmond.

“(5) The restored portion of the canal will not be utilized for general public boating, and will be re-