

THE STATE OF TEXAS §

COUNTY OF CAMERON §

BE IT REMEMBERED on the 20th day of August 2010, there was conducted a Special Meeting of the Cameron County Regional Mobility Authority, at the Levis Building, thereof, in San Benito, Texas, for the purpose of transacting any and all business that may lawfully be brought before the same.

THE BOARD MET AT:

12:00 NOON

PRESENT:

DAVID E. ALLEX
CHAIRPERSON

MICHAEL SCAIEF
DIRECTOR

DIRECTOR

YOLANDA VILLALOBOS
DIRECTOR

VICTOR ALVAREZ
DIRECTOR

DAVID N. GARZA
DIRECTOR

FRANK PARKER, JR.
DIRECTOR

Secretary

RUBEN GALLEGOS, JR.
ABSENT

ABSENT

ABSENT

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The meeting was called to order by Chairman David E. Allex at 12:00 Noon. At this time, the Board considered the following matters as posted and filed for Record in the Office of the County Clerk on this August 17, 2010 at 10:41 A.M.

AGENDA

Special Meeting of the Board of Directors
of the
Cameron County Regional Mobility Authority

1100 E. Monroe
Brownsville, TX 78520

Friday, August 20, 2010

12:00 Noon

I. Public Comments

CONSENT ITEMS:

II. Consideration and Approval of the Minutes for August 12, 2010 Special Meeting

ITEMS FOR DISCUSSION AND ACTION:

III. Consideration and Approval of Surface Use Agreement between the Cameron County Regional Mobility Authority and Isla Largo, Ltd. Regarding the SH 550 Project

IV. Adjournment

Signed this 17th day of August, 2010


David E. Allex
Chairman

ACCEPTED FOR FILING
CAMERON COUNTY
2010 AUG 17 A 10:41
JOE G. RIVERA
COUNTY CLERK

PUBLIC COMMENTS

I. PUBLIC COMMENTS

Mr. Joe Ballenger made comments regarding the West Rail Relocation Project and other Cameron County Regional Mobility Authority Projects.

CONSENT ITEMS

ALL ITEM(S) UNDER THE CONSENT RMA AGENDA ARE HEARD COLLECTIVELY UNLESS OPPOSITION IS PRESENTED, IN WHICH CASE THE CONTESTED ITEM WILL BE CONSIDERED, DISCUSSED AND APPROPRIATE ACTION TAKEN SEPARATELY

II. Consideration and Approval of the Minutes for August 12, 2010 Special Meeting

No action.

ACTION ITEMS

III. Consideration and Approval of Surface Use Agreement between the Cameron County Regional Mobility Authority and Isla Largo, Ltd. regarding the SH 550 Project

Mr. Pete Sepulveda, Jr., RMA Coordinator introduced the item and advised the Board of the purpose of the Agreement. Mr. Sepulveda advised the Board that there were two options that were available; one was to haul the material/soil to the adjacent property that is owned by Mr. John Freeland. Mr. Freeland is agreeable to allow the material to be placed in his property. The second option would be to build a disposal site across the ship channel and pump the soil across the ship channel. Mr. Sepulveda advised the Board that the second option would require further coordination with the U.S. Corps of Engineers and other federal agencies because of navigation issues. Furthermore, the second option would be approximately \$800,000 more expensive.

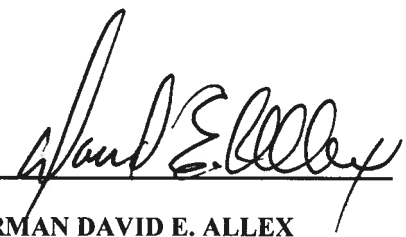
Director Scaief moved to approve the Surface Use Agreement between the Cameron County Regional Mobility Authority and Isla Largo, Ltd. regarding the SH 550 Project as presented. The motion was seconded by Director Alvarez and carried unanimously.

The Agreement is as follows:

XIX. ADJOURNMENT

There being no further business to come before the Board and upon motion by Director Parker, seconded by Director Alvarez and carried unanimously the meeting was **ADJOURNED** at 12:16 P.M.

APPROVED this 16th day of September, 2010.



CHAIRMAN DAVID E. ALLEX

ATTESTED:



SECRETARY RUBEN GALLEGOS, JR.

III. CONSIDERATION ON APPROVAL OF SURFACE USE AGREEMENT BETWEEN THE CAMERON COUNTY REGIONAL MOBILITY AUTHORITY AND ISLA LARGO, LTD. REGARDING THE SH 550 PROJECT

SURFACE USE AGREEMENT

STATE OF TEXAS	§	
	§	KNOW ALL MEN
	§	BY THESE PRESENTS
COUNTY OF CAMERON	§	

This Surface Use Agreement (“Agreement”) is entered into and made to be effective the 17th day of August 2010 by and between the CAMERON COUNTY REGIONAL MOBILITY AUTHORITY (the “CCRMA”) and ISLA LARGO, LTD. “Surface Owner”).

A.
RECITALS

1. The CCRMA is a Regional Mobility Authority authorized by the Texas Transportation Commission and approved by the Cameron County Commissioners’ Court pursuant to Chapter 370 of the Texas Transportation Code and 43 Tex. Admin. Code §§ 26.01 *et seq.*
2. CCRMA, in cooperation with the Texas Department of Transportation (“TxDOT”) and the Federal Highway Administration (“FHWA”) is the developer of the State Highway (“SH”) 550 project between US Highway 77/83 and SH 48 in Cameron County, Texas. In connection with the foregoing, CCRMA obtained a permit no. SWG-2009-00258 from the United States Army Corps of Engineers (“Corps”) pursuant to section 404 of the Clean Water Act, 33 U.S.C. § 1344, that authorizes certain impacts to “waters of the United States” (“jurisdictional waters”) that are necessary for the construction of the project (the “550 Permit”).
3. As a condition to the issuance of the 550 Permit, CCRMA is required to provide compensatory mitigation for unavoidable impacts to jurisdictional waters. Accordingly, CCRMA obtained Corps approval of the Mitigation Plan for SH 550 in conjunction with the approval of the 550 Permit. The Mitigation Plan calls for various restoration measures to be implemented on an approximately 33-acre tract located on the southern tip Long Island (the “Mitigation Site”) adjacent to certain real property owned by the Surface Owner to the north.
4. The Mitigation Site is owned by the Brownsville Navigation District (“BND”), which has agreed to grant a perpetual conservation easement for the purposes of facilitating the implementation of the Mitigation Plan pursuant to that certain Agreement Regarding Wetlands

Mitigation for the State Highway 550 Project, executed by CCRMA and BND to be effective as of 26 July 2010.

5. Surface Owner is the owner of the surface estate of the real property more particularly described in Exhibit D attached hereto and incorporated herein for all purposes (the "Property"). The Property is located adjacent to the northern boundary of the Mitigation Property.
6. Surface Owner intends to develop the Property pursuant to Corps permit no. 15760(05) (the "Freeland Permit"), which authorizes impacts to approximately 111 acres of jurisdictional waters.
6. CCRMA desires to have ingress and egress from the Property, to place on the surface of the Property certain sediment and soils dredged or excavated from the Mitigation Site (the "Soils"), and to construct such facilities on the Property as may be necessary and useful for that purpose.
7. Surface Owner is agreeable to granting rights of ingress and egress and to the placement of such soil on the Property and the construction of such facilities as may be necessary and useful to accomplish the same.
8. Placement of the Soils on the Property is contemplated by the 550 Permit.
9. Impacts to jurisdictional waters on the Property that may occur as a result of the placement of the Soils on the Property and the construction of such facilities as may be necessary and useful to accomplish that purpose are authorized by the Freeland Permit, and all conditions precedent to the commencement of regulated activity under the Freeland Permit have been satisfied.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

B.
AGREEMENT

1. Grant of Access and Use

Surface Owner agrees and grants to CCRMA the right to place approximately 120,000 cubic yards of virgin Soils excavated from the

Mitigation Site within an approximately 20-acre "Placement Area" on the Property as more specifically described on Exhibits A, B and C attached hereto and incorporated herein for all purposes. Surface Owner also grants to CCRMA the right of ingress and egress on the Property and to the Mitigation Site through the Ingress and Egress Corridor (the "Corridor") generally depicted on Exhibits A, B and C, and any and all other rights to the Property and useful to CCRMA for the transportation and placement of the Soils on the Placement Area. CCRMA agrees to provide Surface Owner with written notice ten (10) days prior to CCRMA's entry upon the Property for the placement of Soils on the Placement Area.

2. Improvements to Access Road Within Ingress & Egress Corridor

Access to and from the Property and the Mitigation Site for the placement of Soils shall be accomplished via a reconstructed access road within the Corridor. Surface Owner grants CCRMA the right to remove the existing caliche and gravel road within the Corridor with the understanding and agreement that CCRMA shall, at its sole cost and expense, replace said road in accordance with the "Road Construction Specifications" attached hereto as Exhibit E and incorporated herein for all purposes, which were designed for the purpose of facilitating transportation and placement of Soils as provided herein. The road constructed pursuant to the aforementioned Specifications shall be left in a good state of order and repair following the completion of CCRMA's operations.

3. Compliance With Applicable Permits, Regulations and Laws

Surface Owner shall maintain in full force and effect the Freeland Permit, attached hereto as Exhibit F and incorporated herein for all purposes, which authorizes the placement of Soils within the Placement Area as contemplated by this Agreement. CCRMA shall comply with all terms and conditions of the Freeland Permit applicable to its activities, and will cooperate with Surface Owner regarding the submission of notifications and reports to the Corps required by the Freeland Permit in connection with the commencement of regulated activity on the Property. The parties acknowledge that such notifications and reports shall be submitted to the Corps by Surface Owner. CCRMA further agrees to: (a) obtain and abide by the terms and conditions of any other necessary federal, state or local approvals that may be required in connection with its transportation of Soils to the Property and the placement of Soil within the Placement Area; (b) otherwise comply with any applicable federal, state and local laws or ordinances that may be applicable to its activities on the Property; and (c) to implement generally recognized and accepted best management practices

("BMPs") for the operations and activities contemplated by this Agreement. Such BMPs are more fully described in Exhibits A, B and C.

4. Post-Construction Grading and Restoration

CCRMA agrees that after placement of Soils at the Placement Area, it shall grade the Placement Area so that surface water is properly drained and is not impounded on the Placement Area. In addition, CCRMA shall, upon the conclusion of transportation and placement activities, attempt to restore any other part of the Property affected by CCRMA's operations hereunder to the condition existing as of the Effective Date of this Agreement to the extent reasonably possible except that any improvements made by CCRMA for purposes of Ingress and Egress shall remain in place.

5. Effective Date, Term and Amendments

This Agreement shall be construed as being effective as of 17 August 2010, and shall supersede all prior agreements relating to the subjects addressed herein, including without limitation that certain temporary Right of Entry and Possession that was executed for a 10-day term by Surface Owner on 17 August 2010. The term of this Agreement shall be for a period of eighteen (18) months from the Effective Date, which may be extended. This Agreement may be amended only by written instrument executed by both parties.

6. Release and Indemnity

CCRMA agrees to release, indemnify and hold Surface Owner harmless from and against any and all claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) (collectively "Claims") arising from or related to CCRMA's activities and operations under this Agreement. "Claims" shall be construed to include, but not necessarily be limited to, claims for wrongful death, personal injury or damage to property arising from CCRMA's activities or operations on the Property under this Agreement. The indemnity in this Paragraph 6 shall survive the termination of this Agreement.

7. Entire Agreement

The terms and conditions of this Agreement represent the entire agreement of the Parties hereto with respect to the subject matter hereof and this Agreement shall inure to the benefit of and be binding upon the Parties and each of their respective heirs, successors and assigns.

8. Notice

Any written notices required hereunder or any other communications between the parties may be sent or delivered by United States mail or express delivery addressed as follows:

To CCRMA:

Pete Sepulveda, Jr.
RMA Coordinator
CCRMA
1100 E. Monroe
Brownsville, Texas 78521

Telephone: 956-982-5414
Telecopy: 956-983-5099

To Surface Owner:

Isla Largo, Ltd.
c/o John Freeland, Esq.
P.O. Box 2586
McAllen, Texas 78502

Telephone: 956-682-8316
Telecopy: 956-682-8653

With a copy to:

Craig M. Douglas, Esq.
Smith, Robertson, Elliott, Glen, Klein & Douglas, L.L.P.
221 West Sixth Street, Suite 1100
Austin, Texas 78701

Telephone: 512-225-5800
Telecopy: 5152-225-5838

9. Other Rights of Parties Unaffected

Except as provided herein, the rights and interests of the Surface Owner in the Property shall remain unaffected. This Agreement neither grants nor vests any rights in any third parties, and unless otherwise expressly waived, the parties retain all defenses, affirmative or otherwise.

10. Counterpart Execution

This Agreement may be executed in counterparts each of which will be considered an original and which taken together shall constitute one instrument. Each person signing this agreement on behalf of a party hereto represents that they have the authority to execute this Agreement and to bind the party on whose behalf they are signing.

IN WITNESS WHEREOF, the parties have executed and attested this Agreement by the officers hereunder duly authorized.

CAMERON COUNTY REGIONAL
MOBILITY AUTHORITY

By: 

Name: David E. Alley

Title: Chairman

ISLA LARGO, LTD.

By: 

Name: John R. Freeland

Title: Manager