

DRAFT RECORD OF DECISION
Northern Border Activities

U.S. Department of Homeland Security
U.S. Customs and Border Protection

June 2012

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DECISION: In accordance with National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4335), the Council on Environmental Quality (CEQ) Regulations for implementing NEPA (40 CFR Parts 1500-1508), and the Department of Homeland Security (DHS) Directive 023-01, Environmental Planning Program, U.S. Customs and Border Protection (CBP) is issuing this Record of Decision (ROD) for the Programmatic Environmental Impact Statement for Northern Border Activities (Northern Border PEIS).

The Northern Border PEIS was prepared to inform CBP decision-makers about potential environmental impacts resulting from CBP northern border activities. As noted therein, the Northern Border PEIS was not developed or prepared in response to a new or specific northern border strategy or security initiative. Rather, it is a planning tool that CBP can use to assess potential impacts as its northern border activities evolve. Thus, the action alternatives that were considered in the PEIS were designed to address reasonably foreseeable changes to CBP's northern border security program. Each alternative in the Northern Border PEIS emphasized an aspect of the CBP "toolkit" of assets that enables CBP personnel to effectively secure the border and represent the full range of foreseeable changes that might be needed for CBP's program activities over the next five to seven years.

CBP has determined that, of the alternatives examined in the Northern Border PEIS, the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative is most representative of the approach CBP will employ in order to respond to border security threats while advancing trade and travel facilitation over the next five to seven years. This alternative would focus on enhancing deployment of technologies that provide greater communications, situational awareness, and interoperability to CBP agents and officers to support a risk-based approach to border security. This alternative also incorporates increased patrol and inspection activity by CBP agents and officers when necessitated by increased cross-border violator activity or risk factors.

Although the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative is most representative of the approach CBP will employ over the next five to seven years, changes in the nature, intensity, or locations of cross-border threats, or changes in national security or trade, travel, and economic priorities may compel CBP to adopt a greater security enhancement framework than the one that is envisioned in the Detection, Inspection, Surveillance, and Communications Expansion

Alternative. In such a case, CBP would implement the Flexible Direction Alternative as a viable framework for enhancing its response as it provides CBP with the most operational flexibility.

Implementation of individual elements of either the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative or the Flexible Direction Alternative will require further and more appropriately detailed review and evaluation under NEPA. The location, timing, and individual characteristics of specific proposed projects would dictate the level of site-specific impacts anticipated.

CBP based its decision upon a comparative analysis of the alternatives considered within the Northern Border PEIS. The relative environmental impacts, compatibility with all aspects of the purpose and need for action, and the technical and economic reasonableness of the approach were factors in the selection. The PEIS also identified other planning and policy considerations that informed an understanding of the reasonably foreseeable future. Implementation of elements of these alternatives would be subject to availability of funds and potentially other legislative and executive branch approvals.

I. BACKGROUND

Since CBP was made an operational component of DHS in 2003, its presence along the northern border and the environmental conditions it operates within has continued to evolve. The northern border extends from the Atlantic Ocean to the Pacific Ocean (approximately 4000 miles), encompassing the contiguous northern tier states from Maine to Washington and around the Great Lakes, up to 100 miles into the United States. Over the last five years (since after 2007) manpower, facilities, and infrastructure assigned to the northern border have increased in number. In addition, newer quality technologies have been fielded in greater numbers with more of a focus on protection against terrorist as well as interdiction of smuggling activities. CBP prepared the “*Draft Programmatic Environmental Impact Statement for Northern Border Activities*” as a proactive mechanism for incorporating consideration of environmental effects into its overall planning for northern border security activities.

A Notice of Intent (NOI) to prepare four programmatic environmental impact statements for CBP’s activities along the northern border appeared in the Federal Register on July 6, 2010. After CBP issued the NOI, it held 11 scoping meetings at various locations along the northern border in July of 2010. On November 9, 2011, CBP issued a second NOI, which explained that, rather than preparing four separate programmatic environmental impact statements, it would instead prepare one programmatic environmental impact statement addressing the four regions mentioned in the original NOI. The Notice of Availability (NOA) for the “*Draft Programmatic Environmental Impact Statement for Northern Border Activities*” (PEIS) was published in the Federal Register on September 16, 2011, beginning a mandatory 45-day public review and comment period.¹

¹ Just under 2,500 pieces of correspondence on the available Draft PEIS were mailed out by CBP, including around 1,500 folders sent to local and tribal libraries containing compact discs of the Draft PEIS and hard copies of the PEIS’s Executive Summary as well as instructions on how to make comments. The Draft

The PEIS evaluated a range of alternative approaches that could provide CBP with a well-integrated, reasonable framework for sustaining and enhancing effective control along the United States border with Canada over the next five to seven years. The alternative approaches included consideration of additions to, or expansions of, current law enforcement tools and techniques for border security and trade and travel facilitation that could be implemented, if so required, by changes in the threat environment or national security and trade and travel priorities.

Through the public review and comment period, CBP held 12 public meetings in various locations within the area of study and 1 additional meeting in the Washington, DC, metropolitan area to reach any national interest groups seeking information on CBP's proposal. CBP received 123 individually identifiable pieces of correspondence providing comments and over 700 identifiable comments on the Draft PEIS. The Final PEIS, released in July of 2012, reflects the consideration and incorporation of public comments received on the September 2011 Draft PEIS.

II. FACTORS CONSIDERED IN THE DECISION

CBP leadership arrived at the decision documented in this ROD by weighing each alternative's capability to enhance effective control of the border and respond to changes in border security. National strategic priorities, economic perspectives, as well as each alternative's associated potential environmental impacts, were additional factors considered in making the final decision. The following paragraphs in this section summarize major factors incorporated into the agency's decision-making process.

CBP Border Security and Trade and Travel Facilitation Mission

CBP's mission encompasses securing America's borders and securing and expediting the movement of people and goods through America's borders. CBP seeks to maintain border security and enforcement of trade laws without stifling legitimate trade and travel as a vital part of our national economy. CBP's broad view of border security extends the security perimeter outward from the physical borders whenever possible to make the geographic boundary the last line of defense. Due to the various environmental and economic conditions as well as different cross-border threats, CBP analyzes specific regional considerations to develop strategies and implementation plans tailored to address specific challenges.

The northern border is the longest non-militarized open border in the world. It includes land and water boundaries and is the most environmentally diverse contiguous border protected by CBP. The terrain south of the border ranges from densely forested lands on the west and east coasts, to open plains in the central portion of the country, to the maritime environment of the Great Lakes. There are several Federal, state, and tribal lands and sparsely distributed towns and smaller cities along the immediate border area. Around the Great Lakes and in the Pacific Northwest there are more densely populated urban areas. Securing and maintaining effective control of the northern border requires a different mixture of facilities, operations, infrastructure, and technology resources from

PEIS and related documents were also made available on the www.northernborderpeis.com website. The new website address for the Final PEIS is: <http://www.cbp.gov/xp/cgov/about/sr/>.

those appropriate to the southwest and coastal borders because the operating environment and the nature of threats faced on the northern border are different. CBP processes more than 70 million international travelers and 35 million vehicles each year coming through northern border crossings. Each year, CBP makes around 6,000 arrests and interdicts approximately 40,000 pounds of illegal drugs at and between the ports of entry (POEs) along the northern border. In general, the northern border is subjected to a significantly lower number of illegal incursions than the southwest border. However, attempts at illegal immigration and smuggling regularly occur. There are also known terrorist affiliates and extremist groups present along the northern border, in both the United States and Canada.

National Policy Directives

On February 4, 2011 President Obama and Canadian Prime Minister Harper announced the United States-Canada joint declaration, *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*, which articulated a shared approach for security with both countries working together to address threats within, at, and away from our borders, while expediting lawful trade and travel.

The *Beyond the Border Action Plan* released on December 7, 2011, describes specific action items, each including a timeline for completion. This PEIS was not prepared to support proposals to implement the *Beyond the Border Action Plan* but it is consistent with them.

In May 2012, DHS released its first unified “Northern Border Strategy,” which reflects the expertise of all of its components and guiding departmental policies and operations along the U.S.-Canada border. It reinforces the close relationship between security and lawful trade and travel, stresses risk-management approaches such as separating higher-risk traffic from lower-risk traffic, utilizing advance information, and inspecting people and goods bound for our shared borders at the earliest opportunity. The three strategic goals for DHS at the northern border are to: 1) Deter and prevent terrorism and other illegal activity; 2) Safeguard and facilitate the secure flow of lawful trade and travel; and, 3) Ensure community resilience to natural and man-made disasters. Mechanisms for executing the strategy and achieving its goals include leveraging information sharing and analysis resources inside DHS and with key partners and enhancing coordination of U.S.-Canada joint interdictions and investigations. Technology deployment for joint security efforts as well as updating infrastructure to facilitate travel and trade are also key components of a more comprehensive strategy. The DHS strategic approach includes continued fostering of partnerships with Federal, state, local, tribal, private sector, and Canadian agencies to resolve border management issues more efficiently.

Economic and Technical Factors

Between 2009 and 2011, CBP made considerable investments in northern border security improvement, including a significant investment in new facility construction and modernization projects. The modernization of over 35 older land POEs to meet security and operational needs was largely funded under the American Recovery and Reinvestment Act (ARRA) program. Additionally, several new Border Patrol stations

have been planned, initiated, and construction completed since 2009. However, in the last two years CBP's total enacted budget has been below the fiscal year 2010 level. In particular, the facilities construction and sustainment budget is a little over half of the \$525 million allocated in FY2010.² Meanwhile, technology and border security operations budgets have maintained a more consistent average since 2010. Overall, management and infrastructure budgets have been enacted at tens of million dollars lower than prior budget years.

III. ENVIRONMENTALLY PREFERABLE ALTERNATIVES

The actual potential for impacts from any alternative course of action would be highly dependent on determinations of any future selected site-locations for projects within any of the alternatives, but the Flexible Direction Alternative clearly has the greatest potential and range of adverse impacts to the environment. The No Action Alternative represents the least environmental harm approach purely on the basis of no net increase in impact causing activities beyond the status quo. Among the action alternatives, it is CBP's determination that the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative would have the least potential for major adverse environmental impacts among the action alternatives. This alternative has the least potential for fragmenting habitats, recreational resources, or community resources. It also has low potential for work in waterways and has greater flexibility for mitigation via site selection for individual projects. Therefore, the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative is the environmentally preferable action alternative.

IV. CONSIDERATION OF ALTERNATIVES

CBP's border security and trade and travel facilitation mission requires that it have the capability to pursue effective control of air, land, and maritime borders. This includes CBP having the necessary tools that enable it to consistently: (1) stay abreast of current cross-border violations and activities in order to maintain "situational awareness," (2) identify and classify each situation to determine the level of threat involved, (3) efficiently and effectively respond to these situations, and (4) bring each event to a satisfactory law enforcement resolution. CBP's goal is to sustain an appropriate mix of infrastructure, technology, and facilities to support personnel responding to evolving cross-border threats and border protection priorities.

The approach selected from among the alternatives identified in the PEIS must be able to provide CBP law enforcement components with the means to keep pace with evolving conditions along the border and to discriminate the risks among a variety of types and levels of threats to the United States and its citizens. The ultimate goal is to create conditions so that CBP (working in collaborative partnerships with local, state and tribal law enforcement partners) would be able to resolve all cross-border violations through deterrence, interdiction, and confinement as appropriate to achieve the satisfactory law enforcement result efficiently and effectively. The selected approach must facilitate CBP's safeguarding of land, sea, and aerial border areas and the lawful execution of trade

² This includes \$420 million allocated for POE modernization under the ARRA.

and travel. Analysis of the alternatives in PEIS Chapter 2, Table 2.9-1 “Comparison of Action Alternatives” revealed that only the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative and the Flexible Direction Alternative fully met the purpose and need of the proposed action.

The following discussion of alternative approaches to achieve the aforementioned goals evaluated in the PEIS summarizes the consideration of mission, technical, economic, and environmental factors.

- **No Action Alternative:** CBP would continue the current level of operations with approximately the same manpower. The No Action Alternative would include routine maintenance and repairs of facilities, equipment, and technology (including commercial upgrades of equipment presently in use as these become available). An important part of CBP’s overall strategy is to partner with other law enforcement agencies of the United States, as well as Canada and other international partners, in order to build a shared commitment to border security and facilitate and to respond to situations more quickly and efficiently. These partnerships can help reduce the need for increases in staffing, technology, and infrastructure for any participating agency. The use of partnerships is currently a part of CBP’s day-to-day operational activities, and will continue to be a part of CBP’s day-to-day practice no matter what potential alternative direction CBP chooses to follow. NEPA regulations require analysis of a No Action Alternative (40 CFR 1502.14(d) to provide a baseline for analyzing impacts from other proposed alternatives.
- **Facilities Development and Improvement Alternative:** The Facilities Development and Improvement Alternative would focus on replacing or providing new permanent facilities, such as Border Patrol stations, housing, and other facilities and making major modifications to permanent facilities, such as POEs, to allow CBP agents, officers, and agricultural specialists to operate more efficiently and respond to situations more quickly. In some cases, U.S. Border Patrol (USBP) agents have been based out of buildings not optimized for their operational responsibilities. This includes space leased in buildings primarily occupied by other Federal, state, or local governments/law enforcement agencies that may not meet space, location, or accommodation requirements for USBP Stations and the area of operations. Many of the POE inspection facilities along the northern border have high traffic volume and operate 24 hours per day, 365 days per year in extreme climates. As a result, they undergo considerable wear and tear. These facilities, built during different eras of operations, are not all optimally configured to support CBP’s evolving trade facilitation and antiterrorism mission. Replacing or extensively upgrading any POEs would involve major construction, but it would also divert traffic from or increase the capacity of the more heavily used POEs. In the long term, this would decrease waiting times for vehicles engaged in legal trade and travel. This alternative also includes construction of semi-permanent and temporary facilities, such as forward operating bases (FOB), temporary housing (where local housing stock may not be readily available), checkpoints, and other facilities necessary to support CBP law enforcement agents and officers as they carry out their operational duties. It would help meet the need for the proposed action in that it would provide operational bases

for USBP agents that would make it more difficult for cross-border violators to penetrate deeper into the interior between POEs.

Although all of the alternatives would add to CBP's abilities to execute its security and trade and travel missions, the Facilities Development Alternative would face significant challenges to implement in the five to seven year time horizon due to the real estate acquisition and capital planning processes. CBP improved the physical quality, the personnel capacity, and strategic placement/alignment of a large number of POEs and border patrol stations over the last three years. Although facility enhancements might prove beneficial to processing CBVs and contraband, CBP does not currently foresee another major round of large facility construction or realignment projects along the northern border within the next seven years as likely under most circumstances. It is unlikely that such projects would enhance situational or domain awareness in lieu of technology enhancements for communications and observation and discrimination of potential threats.

- **Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative:** The Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative would focus on increased patrol activity and deploying more and better technologies to support CBP's detection, inspection, and surveillance capabilities and operational communications. It would include either hiring additional USBP and Office of Air and Marine (OAM) agents or shifting these agents from the other borders, to conduct surveillance and respond to situations. It would include improvements to the identification and inspection technologies used by the Office of Field Operations (OFO). It would also include continuing deployment of integrated remote video surveillance systems (RVSS) and plans such as fielding upgraded surveillance and telecommunications systems (e.g., remote sensors, short-range radar, remote and mobile video surveillance and communications systems, new camera systems, and upgrades to stationary communications systems) that would improve CBP's situational awareness and allow it to more efficiently and effectively direct its resources for cross-border violator interdiction.

Given the constraints in projecting future budgets, the complex and varied physical terrains, and the relatively low rate of operations between the POEs compared to the southern border, CBP is interested in leveraging all it can out of its existing resources to improve border security and trans-border commercial and civil movement. The Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative enhances the tool kit for CBP and its partners to visualize the whole border and coordinate more effectively. Deployment of towers and radar to new emplacements would potentially change the visual landscape of the northern border somewhat, but in ways that might be more easily mitigated relative to the other action alternatives. Technology enhancements to facilitate scanning and screening of personnel and goods at POEs would expedite CBP's ability to facilitate legitimate cross boundary trade and travel in the long-term while avoiding the more prominent delays associated with rerouting traffic and closing lanes to accommodate construction to increase lane numbers or size on existing facilities.

This Detection, Inspection, Surveillance, and Communications Expansion Alternative is otherwise more consistent with a risk-based approach of extending technology

where a human presence would be more difficult or disruptive to maintain. Although the northern border in general, has yielded significantly lower numbers of illegal incursions when compared with the southwest border, the high volume of trade and travel through the ports of entry as well as a high concern for terrorist and weapons crossing the border makes threat discrimination a high national security priority. This alternative would enhance communication and the flow of information and intelligence among CBP's components and their partners in northern border security on both sides of the border. It would also increase interoperability among the CBP components and the effective range of individual CBP agents and officers. The Final PEIS identifies the Detection, Inspection, Surveillance, and Communications Expansion Alternative as the environmentally preferred alternative. Likewise, the Draft ROD selects the Detection, Inspection, Surveillance, and Communications Expansion Alternative as the one that is most representative of the approach CBP will employ in the next five to seven years.

- **Tactical Security Infrastructure Deployment Alternative:** The Tactical Security Infrastructure Deployment Alternative would focus on expanding access roads and related facilities to increase the mobility of Border Patrol agents for surveillance and response, and constructing additional barriers, such as selective fencing or vehicle barriers, at selected points along the border to deter and delay cross-border violators. This alternative would hinder cross-border violators and improve CBP's ability to respond quickly and effectively.

Greater use of new and improved roads, culverts, and low water crossings to improve CBP personnel access to all points along the northern border, in conjunction with increased use of fences, checkpoints, and barriers at very specific corridors to impede cross border violations, would improve CBP's relative mobility and presence along the northern border. However, a large scale effort to increase infrastructure would likely have profound impacts on the northern border landscape, increase CBP's maintenance requirements, and provide a greater array of environmental impact analysis and minimization requirements at the site level. Furthermore, the process of determining locations and environmental requirements for new infrastructure projects could prove to be extensive depending on changes to the threat environment. While this alternative might be technically feasible within the five to seven year time span, it does not offer the greatest flexibility to enhance overall agent and officer awareness and the ability to bring all situations to successful law enforcement resolution.

- **Flexible Direction Alternative:** The Flexible Direction Alternative would allow CBP to implement any of the above program changes based on what CBP deems to be the most effective way to respond to the changing threat environment along the northern border. It is impossible to predict what combination of the above alternatives is likely to be needed at any time, and the needed mix is likely to change constantly because the threat environment changes constantly. Therefore, CBP is assessing the maximum scope of impact that might result from selecting this alternative as the sum of the impacts that would result from full implementation of all three alternatives. This alternative affords CBP the greatest flexibility with respect to covering the full range of augmentation activities that CBP might be required to undertake in response to changes in threats or priorities and combines the majority of

elements from all the other alternatives. It has the same advantages and disadvantages as any of its elements, but would also increase the combined environmental impacts and increase overall facility, infrastructure, and technology maintenance and sustainment requirements for CBP. Sustainment of a large build-up would provide additional challenges for CBP while also more prominently altering the northern border landscape.

V. IMPLEMENTATION

This ROD does not commit CBP to expanding northern border security measures beyond the level of activities outlined in the No Action Alternative in the next five to seven years. This decision statement, however, does acknowledge that the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative is most representative of CBP's strategic approach to managing border security risks at this time and for the foreseeable future. CBP would anticipate expanding upon the lines identified in the Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative in response to foreseeable potential evolutions in the threat environment.

CBP will continue to plan for and develop specific responses to actual evolving security threats and trade and travel priorities occurring within the area of analysis. The location, timing, and individual characteristics of specific proposed projects and activities would dictate the level of NEPA review and scope of stakeholder involvement required. The PEIS and this ROD provide a framework for evaluating environmental impacts and identifying measures to mitigate environmental harm at the programmatic and site-specific level. Any proposed project and accompanying mitigations would be subject to availability of funds and accompanying authorizations and compliance with applicable environmental laws and regulations, additional NEPA analysis notwithstanding.

If unforeseen changes in national priorities required CBP to implement a program of enhancements beyond the scope of the selected alternative, CBP would issue an appropriate supplemental NEPA document and a revised ROD in accordance with previously cited legal and administrative authorities and all procedural and substantive requirements therein.

VI. AVOIDANCE AND MINIMIZATION OF ENVIRONMENTAL HARM

CBP is committed to avoiding or minimizing harm to the environment to the greatest extent practicable while carrying out its border protection responsibilities. It currently avoids significant adverse impacts to the environment through a combination of best management practices (BMPs), siting plans, design strategies, mitigation measures, and monitoring plans best suited to the scale and the location of each particular action. The selection of the preferred alternative analyzed within the PEIS includes commitments to use practicable and appropriate measures to avoid or minimize harm to the environment. Decisions on what BMPs and mitigation measures would be implemented for specific projects and activities will necessarily be made and clarified at the time the individual project proposals are ripe for assessment.

As such, CBP elaborates below on the practicable BMPs and mitigation measures from the PEIS that CBP can reasonably adopt in this ROD. Site specific BMPs, mitigation measures, or other practices would be implemented after appropriate site level review under NEPA where they are technically and economically practicable. In all cases, CBP considers the health and safety of its agents and officers, its partners, and the public, non-negotiable when selecting acceptable practices for a reducing environmental harm from a project.

A. *Biological Resources (9.3), Geology and Soils (9.4), and Water Resources (9.5)*

Potential impacts to biological resources, geology and soils, and water resources from construction and other ground-disturbing activities often overlap with local ecological systems. CBP adopts the following practices in Environmental Design and Planning Considerations, Sections 9.3 *Biological Resources*, 9.4 *Geology and Soils*, and 9.5 *Water Resources*, as measures that it will implement programmatically or routinely to avoid or minimize impacts to these resource areas. CBP will:

A.1 Improve ongoing cooperation and coordination practices with the local and regional U.S. Fish and Wildlife Service (FWS), National Oceanic and Atmospheric Administration-National Marine Fisheries Service (NMFS), and the U.S. Army Corps of Engineers to ensure early consultation on construction-related ground disturbing activities and work in water. As appropriate and required by Federal laws, CBP will plan around breeding, migration, and spawning schedules and pathways and areas for endangered and threatened species and other sensitive wildlife whenever feasible and non-detrimental to project completion, and under advisement of the aforementioned agencies. Where CBP activities occur in areas of special protection or unique value, CBP will seek to make greater use of the Borderland Management Task Force structure to enhance its coordination with Federal and state managers of lands and environmental resources along the northern border. Such areas include, but are not limited to, Department of Interior (DOI) lands and U.S. Department of Agriculture (USDA) lands. DOI lands include units of the National Park Service, units of the Bureau of Land Management, units of the Bureau of Reclamation, areas protected or held in reserve by the Fish and Wildlife Service, and tribal lands. USDA lands including National Forests, designated wilderness areas, designated roadless areas, designated and candidate river segments found in the Nationwide River Inventory.

A.2 Use an ecological conceptual model approach to investigate and characterize potential impacts to ecosystem resources from proposed CBP projects when coordinating with agencies of DOI, the NMFS, and U.S. Department of Agriculture – Forest Service (USFS) regarding lands under their jurisdiction. CBP will coordinate with DOI and USFS to begin routine use of a conceptual model approach in its environmental impact analysis documents along the northern border by FY2014.

A.3 Reduce the risk of transporting non-native/invasive species into off-road and aquatic environments by:

A.3.1 requiring that construction vehicles and equipment brought into remote/off-road locations, natural areas, and areas within sensitive habitat and resources be washed

and inspected for vegetation, seeds, insects, and marine and non-marine animals prior to movement to and entry into construction sites;

A.3.2 incorporating identification and removal of non-native/invasive vegetation, seeds, insects, and marine and non-marine animals into protocols for routine inspection, and maintenance, and cleaning of law enforcement vehicles and watercraft; and,

A.3.3 ensuring that proper washing practices and cleaning or herbicide products are used in accordance with product guidelines.

A.4 Implement appropriate site-level erosion and sediment control plans using accepted engineering design practices and/or established state or local standards to maintain slope and soil stability, maintain native vegetation, and protect wetlands and other waterways from additional storm water runoff as appropriate. Erosion and sedimentation prevention techniques that CBP will use when appropriate include:

A.4.1 minimizing the length of time that bare soil remains exposed during construction by reseeded and mulching and other timely measures;

A.4.2 restoring landscapes with native woody and herbaceous cover that may benefit some birds, small mammals, and insects by providing food and cover, and protect areas such as wetlands from introduction of invasive species, as appropriate for adjacent land use, terrain, and slope control;

A.4.3 using silt fences and diversion ditches at active construction sites as temporary measures to control erosion and direct stormwater sites featuring road or trail construction;

A.4.4 implementing drainage projects along impermeable surfaces that reflect the specific hydrologic requirements of the area to be served in projects related to road construction and improvement; and,

A.4.5 reusing established access roads and trails, whenever sufficient, to control soil compaction impacts instead of creating new pathways to access construction sites.

A.5 Follow FWS and Federal Communication Commission Recommendations for design and construction of cell phone and other towers (last updated May 15, 2008) concerning tower height, lighting regimes, and placement, except when to do so would impair the operational effectiveness of the tower. Due to the need to locate towers in remote areas and preserve line-of-sight connectivity, siting recommendations may not always be fully applicable. However, CBP will consult as appropriate with FWS and land managers when concerns for strikes from migratory birds and threatened and endangered flying species are present at a site.

A.6 Continue to obtain and follow requirements of Federal National Pollutant Discharge Elimination System (NPDES) permits for construction activities proximate to surface waters.

A.7 Adopt other mitigations and BMPs listed in Environmental Design and Planning Considerations Sections 9.3 *Biological Resources*, 9.4 *Geology and Soils*, and 9.5 *Water Resources* individually on a case-by-case basis as found to be appropriate and practicable after further evaluation at the site-specific level.

B. *Climate and Resource Sustainability*

B.1 CBP adopts *Climate and Resource Sustainability* BMPs and mitigations identified within the PEIS at Environmental Design and Planning Considerations Section 9.7 for implementation as part of its overall program to reduce adverse impacts to the climate and resource sustainability.

C. *Land Use, Aesthetic and Visual Resource, and Recreation.*

Potential impacts to *Land Use, Aesthetic and Visual Resources, and Recreation*, from construction activities and other activities often overlap. CBP adopts the following practices in Environmental Design and Planning Considerations Sections 9.8 *Land Use*, 9.9 *Aesthetic and Visual Resource*, and 9.17 *Recreation* as measures that can be implemented programmatically or routinely to avoid or minimize impacts to these resource areas. CBP will:

C.1 Coordinate with Federal, state, and local land use managers, as well as appropriate U.S. government sanctioned transboundary commissions or bodies, with jurisdiction over project sites to avoid or minimize, to the greatest extent practicable, fracturing of contiguous land parcels. CBP would consult to prevent or limit adverse impacts to community land uses, sensitive habitats, or recreation resources. CBP will continue to strengthen partnerships, communication, and discussion with Federal land managers of areas used for recreational purposes to coordinate law enforcement activities in accordance with the 2006 MOU among DHS, DOI, and USDA.

C.2 Coordinate with land owners and land managers to limit adverse visual impacts from proposed towers, associated facilities, and accompanying outdoor lighting. Situating new tower sites at least 1.5 miles away from areas designated for their visual sensitivity (e.g., scenic roads, rivers, national parks and monuments, scenic vistas within national and state forests, and open-space districts) whenever feasible would be the first goal, if operational effectiveness of the tower would not be adversely impacted.

C.3 Use colors, texturing, and camouflage techniques for structures to complement/blend with surrounding natural or man-made landscape features when applicable and practicable to reduce adverse visual impacts and maintain aesthetic continuity. Factors such as agent and officer safety, public safety, and wildlife impacts will be balanced when considering methods to reduce visual impacts.

C.4 Use full cut-off light fixtures and other light pollution minimizing techniques, where determined feasible and safe after evaluation for appropriateness and security purposes, to decrease impacts to the night sky in areas designated as wilderness and units of the National Park Service.

D. *Cultural and Paleontological Resources.*

D.1 CBP is committed to seeking mitigation strategies that are acceptable to all interested stakeholders while being cost effective and practical. The specific types and degree of mitigation techniques vary considerably state-to-state and project-to-project across a broad spectrum of cultural and paleontological resources. CBP will engage in Federal consultation protocols established under the National Historic Protection Act (NHPA) and the Paleontological Resources Protection Act, as appropriate, when CBP determines in good faith that construction-related and ground-intruding activities may

adversely affect cultural and paleontological resources. CBP acknowledges the critical role that federally recognized Tribes have in the Section 106 process under the NHPA. Tribes possess special expertise in identifying traditional cultural properties and assessing the National Register eligibility of properties with Tribal religious and cultural significance, and CBP will conduct government-to-government consultations on matters related to potential effects on historic properties of cultural and religious significance to the Tribes.

E. *Socioeconomic Resources.* CBP will implement BMP mitigations identified within the PEIS for socioeconomic resource impacts to the point they do not interfere with CBP's mission objectives. CBP considers it part of its mission to increase the rate and flow of legitimate cross border movement to the extent that its ability to satisfactorily resolve threats is not compromised. CBP will continue to engage the public as well as Federal, state, local, and tribal governments and land-owners about socioeconomic concerns when making proposals for large construction activities.

F. *Environmental Justice/Protection of Children.* CBP will implement BMP mitigations identified within the PEIS for environmental justice and the protection of children to the point they do not interfere with CBP's mission objectives. To the extent that CBP employs BMPs in the construction of facilities and the modernization and management of existing facilities, potential adverse effects to individuals would be minimal for all populations and would not be disproportionately experienced by populations of concern for environmental justice. Potential risk to human health, especially for populations of children under the age of 18 would be minimized through adherence to applicable Federal and state safety regulations as indicated in the Human Health and Safety section below.

G. *Hazardous Wastes and other regulated Hazards.*

G.1 CBP will implement BMP mitigations identified within the PEIS as standard operating procedures at the site level in accordance with accepted industry and regulatory guidelines during construction and maintenance activities where technically and economically feasible. This includes recycling waste oil and solvents as local markets or regional or national contracts permit and proper handling, storage, or disposal of solid and hazardous or regulated materials in accordance with applicable Federal laws and state program guidelines.

H. *Human Health and Safety.*

H.1 CBP considers the safety of its personnel and the general public non-negotiable priorities while carrying out its missions. CBP will implement site safety measures for construction sites and training and other controls for operational activities as identified within the PEIS as standard procedures in accordance with applicable Federal laws and state program guidelines and regulations.

I. *Utilities and Infrastructure.*

I.1 CBP will implement the BMP mitigations identified within the PEIS as a part of the component's overall activities to comply with the Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding for new facilities construction.

J. Roadways and Traffic.

J.1 CBP will coordinate with local, state, and Federal transportation authorities to facilitate development of alternative routes and traffic control measures when and if it makes plans for creating, upgrading, or accomplishing long-term closures of public roadways or lanes. CBP will follow all local, state, and Federal planning guidelines and regulations when maintaining or upgrading roadway infrastructure. Best practices such as minimizing construction vehicle movement during peak traffic hours and placing construction staging areas where they would least interfere with traffic would be goals dependent upon the location of the project and ability to achieve best value for taxpayers.

K. *Air Quality and Noise.* Although CBP did not propose mitigation measures for these resource areas, measures undertaken under *Climate and Sustainability* and *Land Use* may reduce CBP's overall potential to impact these resource areas.

VII. INTERAGENCY COOPERATION

The U.S. Department of Agriculture (USDA) and the Department of the Interior (DOI) acted as cooperating agencies for the PEIS. In this capacity, they assisted in identifying U.S. Forest Service and DOI agency lands and resources affected by the proposed action in the PEIS.

VIII. PUBLIC AVAILABILITY

Copies of the Final PEIS and the signed ROD as well as the Draft PEIS and Draft ROD are available on the CBP.gov website under the Social Responsibility page: <http://www.cbp.gov/xp/cgov/about/sr/> and www.dhs.gov/nepa.

IX. STATEMENT OF DECISION

This Record of Decision confirms that CBP considers the **Detection, Inspection, Surveillance, and Communications Technology Expansion Alternative** to be most representative of the approach CBP will employ in order to respond to border security threats while advancing trade and travel facilitation over the next five to seven years. This alternative is consistent with current statements of National policy with regard to northern border security and trade and travel facilitation goals. However, to the extent that changes in the nature, intensity, or locations of cross-border threats, or changes in national security or trade, travel, and economic priorities compel CBP to adopt a greater security enhancement framework than the one that is envisioned in the Detection, Inspection, Surveillance, and Communications Expansion Alternative, CBP would implement the **Flexible Direction Alternative** by issuing a revised ROD stating this change. If within five years of signing this ROD, CBP is required to adopt additional measures beyond the scope of the alternative selected at this time, CBP will evaluate whether environmental conditions have changed or additional alternatives need to be evaluated such that a supplemental PEIS is required.

Karl H. Calvo
Executive Director
Facilities Management and Engineering

Date