

**Restoration of small shell island on Bill Day's Reef to enhance nesting for
American Oystercatchers**

**Final Report
TGLO Contract No. 22-045-017-D114**

Prepared By:

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and

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By the:

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**A REPORT FUNDED BY A TEXAS COASTAL MANAGEMENT PROGRAM GRANT APPROVED BY THE
TEXAS LAND COMMISSIONER PURSUANT TO NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION FINANCIAL ASSISTANCE AWARD NO. NA21NOS419036**



Project Background:

Project Background: American Oystercatchers (*Haematopus palliatus*) (AMOY), often found along the Texas Coast, are dependent on intertidal habitat for nesting, foraging and roosting needs. Threats to oystercatchers include wash-over of their nesting areas during high tides, predation, and human disturbance. Pairs nesting on small islands without large Laughing Gull (*Leucophaeus atricilla*) colonies fare better than those associated with Laughing Gull colonies on large islands. However, smaller islands are typically lower in elevation and have a higher risk of wash-over. Bill Day's Reef is a reef complex in eastern Espiritu Santo Bay on the mid-Texas coast that has eroded severely over the past several years. While at least one AMOY pair has successfully reproduced on a larger island at the eastern end of the Bill Day's Reef chain in recent years, nests built by other AMOY pairs in the western part of the reef chain have often been washed over and destroyed by spring tides.

Project Summary: To address this loss of AMOY nesting sites, San Antonio Bay Partnership (SABP) applied to the Texas General Land Office (TGLO) for, and was awarded, Coastal management Program (CMP) Cycle 26 funds to restore one particular area of AMOY nesting habitat on a small island within the Bill Day's Reef complex to a viable nesting site for American Oystercatchers. Project funds were allocated to purchase, bag, and transport the shell by barge to the site, to construct the habitat improvements on site, and to administer the project design/management. After several years of planning, permitting, preparation and implementation efforts led by SABP, in the spring of 2024 approximately 600 sq. ft. of the 1,850 sq. ft. island was elevated by up to 2 ft. with bagged oyster shell, then covered with shell hash to provide suitable nesting habitat. The higher elevation should lessen the threat of wash over events during spring high tides. Volunteers bagged, transported, and placed the donated oyster shell on the site.

In addition to the direct benefits of improving AMOY nesting habitat at this particular site, this project serves as a model for other potential restoration sites within the Middle Texas Coast and provides lessons on how to mobilize volunteers to enhance the capacity of local conservation organizations for hands-on conservation work.

Additionally, as birding tourism is an important economic driver for the Texas Coast, providing additional opportunities to observe oystercatchers will enhance the area's ability to attract visitors who generate economic benefits to the region.

Summary of Completed Tasks:

Task 1: Restoration Design and Permitting: SABP drafted a restoration design/plan and submitted it to TGLO for comment and approval. The design included maps of the water depths at the site and locations of areas with live oysters that require protection. After TGLO approval of the draft restoration design, SABP then created a final restoration design and submitted a surface lease application to TGLO, as well as a permit application to the US Army Corps of Engineers (USACE). A TGLO surface lease for use of the State-owned project site was obtained, and a USACE permit for activities in navigable waters was issued.

Task 2: Construction Planning and Implementation

SABP developed a construction plan that identified the volumes of shell and shell hash required for the project, where SABP could obtain the shell, the location of the shell bagging site on the mainland, the equipment needed, and a logistical plan to deliver the shell to the reef site for placement on the designated construction area. In two separate events, SABP enlisted volunteers to bag the shell, load it into trucks for transport and then re-load the shell onto volunteers' boats (first work event) and a rented barge (second work event) for transport to the construction site on the reef. The bags of shell and loose shell hash were offloaded from the barge and placed, according to the project design, in a previously staked-out area of the reef to complete the construction.

Project Goals:

San Antonio Bay Partnership (SABP) was awarded CMP Cycle 26 funds to support the restoration of a small island within the Bill Day's Reef complex to restore a degraded historic nesting site for American Oystercatchers, a vulnerable species.

This project's primary project goal was to restore a small portion of the previous extent of the American Oystercatcher nesting/rookery area on the Bill Day Reef complex within the Northeast Espiritu Santo Bay area. The restoration effort involved the strategic placement of additional oyster shell on top of the existing eroding reef to elevate the reef surface and facilitate the re-establishment of a small, but critically important, portion of this reef complex as a functioning American Oystercatcher nesting/rookery colony site.

The project funds TGLO awarded to SABP were utilized to fund the design and permitting expenses associated with the project, the expenses involved in accessing suitable shell material, the bagging and transporting of the shell to the project site, and the placement of the bagged and loose shell on the site according to the project design, as well the necessary project administrative support expenses.

Approximately 600 sq. ft. of the often submerged 1,850 sq. ft. island was to be elevated by up to 2 ft with bagged oyster shell, then covered with shell hash to provide suitable nesting habit for the AMOY that have utilized this island historically. The higher island elevation resulting from this site-specific project is designed to lessen the likelihood of wash over events during spring high tides.

A secondary project goal was to develop a model of a stakeholder/volunteer driven habitat restoration project with the capacity to successfully design, permit, and implement a habitat restoration project within the San Antonio Bay Partnership's program area.

Documentation of Project Deliverables:

Task 1: Restoration Design, Project Permitting and Site Leasing

Bill Day's Reef is an oyster reef complex in eastern Espiritu Santo Bay that has eroded over the past several years. Observations by area "birders" confirm that an American Oystercatcher (AMOY) pair has successfully reproduced on a larger island at the eastern end of the reef; however, nests by other pairs at the proposed project site (see **Figure 1, next page**) have frequently been washed over by spring tides and destroyed.

SABP Board Chairman/Project Initiator, Allan Berger, and SABP Program Facilitator/Project Manager, James Dodson, visited the proposed project site on a portion of the Bill Day's Reef complex (see Figure 1., next page) on several occasions at the beginning of the project to obtain information relevant to the design of the project, including water and surface elevations at the anticipated project construction site. A preliminary site design resulted from the information obtained during these site visits.

Restoration Site Design: While the Bill Day Reef "complex" is fairly sizable in total, the site selected for this reef restoration project was largely determined by the fact that it had, historically, hosted a relatively sizable rookery colony of American Oystercatchers), but as the reef eroded over time due to wave action induced erosion, subsidence, and sea level rise, the reef area above high tide level diminished significantly— along with its use by oystercatchers.

American Oystercatchers are dependent on intertidal habitat for nesting, foraging and roosting needs. Threats to oystercatchers include over wash, predation, and human disturbance. Pairs nesting on small islands without large Laughing Gull colonies fare better than those associated with Laughing Gull colonies on large islands. However, smaller islands are typically lower in elevation and have a higher risk of over wash.



Figure 1: Bill Day's Reef Restoration Project Location within Upper Espiritu Santo Bay near Port O'Connor, TX

Project Permitting: Implementation of the Bill Day's Reef restoration project design necessarily involved construction activities in what are designated as "navigable waters" of the United States. Since the reef restoration project would place new material (oyster shell/shell hash) on a small area of the existing oyster reef, these activities required SABP to apply for and obtain a U.S. Army Corps of Engineers' (USACE) Section 501.C.3 permit for "dredge and fill" activities in, and affecting, "navigable waters of the U.S." SABP prepared and submitted the required information and application for the USACE 501.C.3 permit, along with the permit application fee. SABP filed an application for this permit, it was processed by USACE, and a "Nationwide Permit" (Permit # SWG-2022-00375 was issued. **(See Attachment 1.)**

Site Leasing: As the SABP project site is on land owned by the Texas General Land Office (TGLO), a second requirement for project construction was to obtain a "coastal surface lease" from TGLO for use of the small area comprising the project site. SABP prepared and submitted the necessary lease application materials and received notification of approval of that lease (#SL20230014), which commenced on 5-1-23 and extends thru 4-30-2033. Since the issuance of that lease, SABP has paid (*and will continue to pay*) TGLO's annual lease fee to keep the lease in effect. **(See Attachment 2.)**

Task 2: Construction Planning, Materials Procurement and Construction Implementation

Based on information obtained during the early field reconnaissance stage of the project, and the guidance received from the TGLO and USACE on construction in navigable waters, the project team developed a preliminary plan for the procurement/transportation/installation of the reef restoration materials. This plan addressed the sourcing of the necessary construction materials (oyster shell, limestone aggregate, burlap bags, and staking materials); loading and transporting those materials to the project site via boats/barge; unloading and carrying – by hand -- the materials to the project site, and, finally, properly placing those materials within the designated project footprint at the designated site leased from the TGLO and according to the approved project design parameters.

In addition to the time, and significant efforts, spent to locate and get access to/procure the materials required to carry out the construction of the proposed nesting site elevation, additional time was required to arrange for and execute the transport of these materials to the project site. Several scheduled attempts at carrying out this project task were delayed by bad weather and lack of access to the barges necessary to transport the bagged shell and loose limestone to the project site. However, weather and logistics finally allowed the transport and placement of the project construction materials – facilitated by the boats and volunteers who hauled and placed those materials -- to take place on May 29th and 30th, 2024. *Final project implementation will occur with the installation of the required signage – signs must be acquired from TGLO and installed.*

Task 3: Project Monitoring and Reporting

Per TGLO requirements for contract management, SABP prepared and has submitted all required monthly reports and project deliverables, including this final project report.

Illustrations & Project Photos:

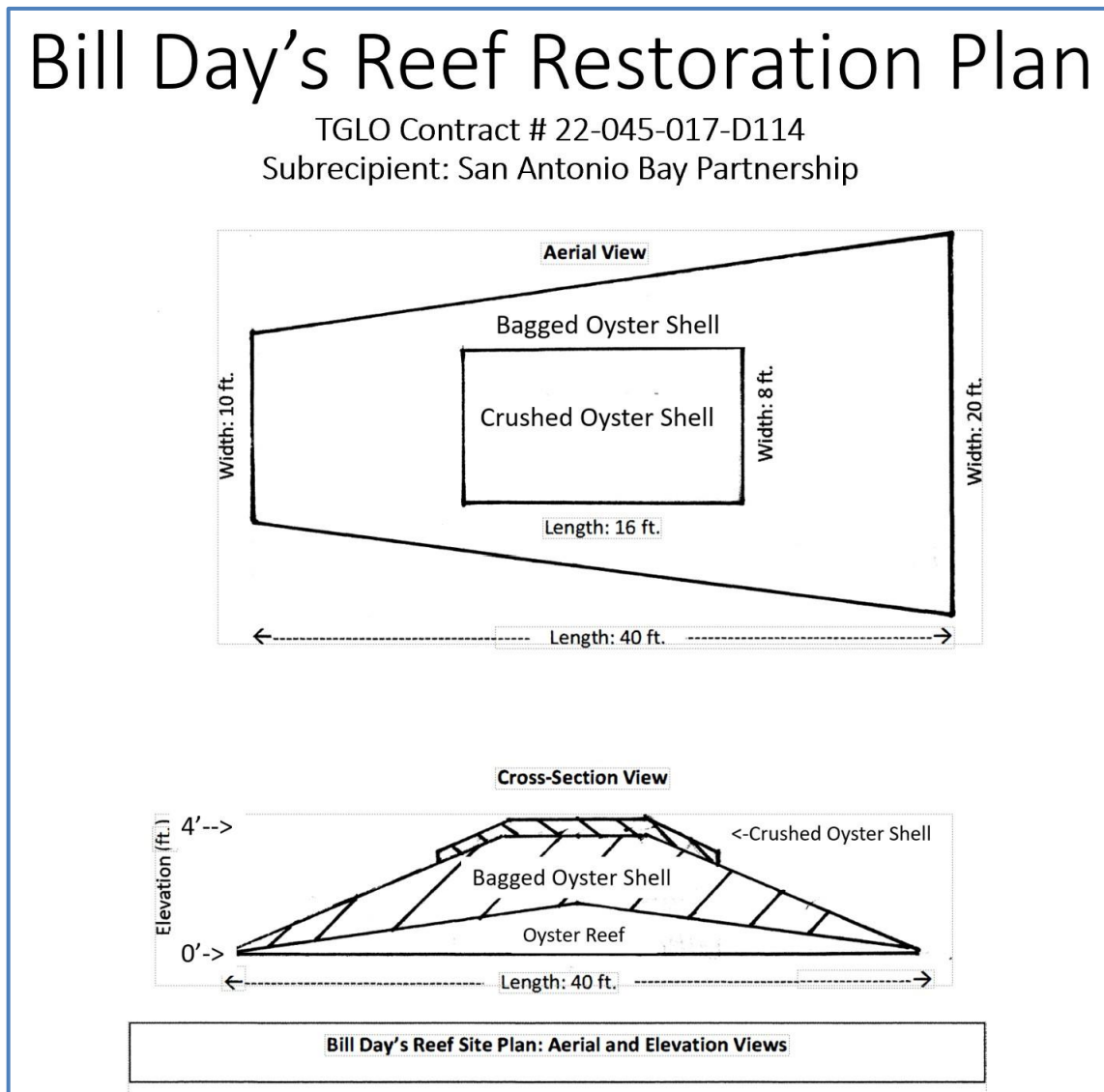


Illustration 1: Generalized Cross-Section of Shell Placement Design



Photo 1: San Antonio Bay Partnership Board Chair, Allan Berger – who conceived of the Bill Day's Reef Restoration Project – staking one of the corner points defining the restoration project boundaries during an early site visit. Note that the entire reef area was submerged by a spring high tide event taking place at that time. (Photo: James A. Dodson)



Photos 2 and 3: Volunteers loading bagged shell into truck at the Calhoun County Yard and unloading bagged shell at Texas Parks and Wildlife dock in Port O'Connor for transfer to a barge and transport to the project site on Bill Day's Reef.



Photos 4 & 5: Volunteers loading bagged shell into truck at the Calhoun County Yard and unloading bagged shell at Texas Parks and Wildlife dock in Port O'Connor for transfer to a barge and transport to the project site on Bill Day's Reef.



Photo 6: Volunteers unloading shell bags from barge and placing them on the staked-out reef footprint.



Photo 7: Volunteers Celebrating Reef Completion!

Project Results Photos: Before and After Project Implementation:



Photo 7: Project Area Before Reef Restoration



Photo 8: Project Area After Reef Restoration



Photos 9 & 10: Project Area with Stacked Shell-Filled Mesh Bags Topped with Shell Hash

Appendix: Monitoring Bird Use in the Project Area and Observations Regarding the Project

Monitoring Bird Use

The Bill Day Reef Area is monitored for nesting American oystercatcher (AMOY) each spring.

A nesting pair has successfully utilized a larger island immediately east of the project site, including this year.

The photo below show an pair immediately west of the proposed site in Feb 2024.



In the 2023 and 2024 nesting season, no AMOY have been observed on the project site. Pelicans, cormorants, gulls, and terns have been observed loafing, but no nesting of any kind due to reef submergence at higher tides.

The monitoring will start again in Spring 2025.

Observations regarding Project:

- The project successfully raised the elevation of a small section of the Bill Day Reef complex.
- The effort involved a significant number of dedicated volunteers willing to invest their time and energy in a very physical task.
- The bio-degradable burlap bags used in Phase 1 deteriorate as desired. They must be placed shortly after filling – or they will fail during transport.
- The plastic mesh bags were filled using a 24" x 8" pvc pipe and resulted in bag weight appropriate for volunteer handling.
- The plastic bags on the top were opened and emptied on the lower bags. As the reef weathers, exposed mesh will also be removed.
- The Phase 1 placement held up well to several high tide events since placement in December 2023. If warranted, additional shell might be added after a year or two of weathering.
- Shell availability is an issue.
- Bird use of the site has been limited to loafing by several species—no AMOY have been observed on the site. Monitoring of bird use will continue during next year's nesting period.

Attachments:

- 1) USACE 501.C.3 Nationwide Permit (# SWG-2022-00375) to “discharge fill into an approximately 600 square foot area in order to restore a portion of Bill Day's oyster reef in Espiritu Santo Bay ...”.
- 2) TGLO Coastal Surface Lease (#SL20230014) for Project Site (“Portions of State Tract 233, Espiritu Santo Bay, Calhoun County, Texas”).

Acknowledgements:

San Antonio Bay Partnership would like to acknowledge, and express its appreciation to, the following:

- The Texas General Land Office (TGLO) and the U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) for the funding and support required to undertake and complete this project.
- TGLO's project management staff for their patience and advice.
- All the volunteers who spent their valuable time and exerted great efforts in support of the implementation of this project.



**TEXAS GENERAL LAND OFFICE
COASTAL SURFACE LEASE NO. SL20230014**

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

§

COUNTY OF CALHOUN

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This Coastal Surface Lease SL20230014, ("Lease"), is granted by virtue of the authority granted in Section 51.121, et seq., TEX. NAT. RES. CODE ANN., 31 TEX. ADMIN. CODE, Chapter 13, Land Resources, et seq., and all other applicable statutes and rules, as the same may be amended from time to time, and is subject to all applicable regulations promulgated from time to time.

ARTICLE I. PARTIES

1.0 I. In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the STATE OF TEXAS, acting by and through the Commissioner of the General Land Office, on behalf of the Permanent School Fund of the State of Texas (the "State"), hereby grants to San Antonio Bay Partnership, Inc., whose address is 410 N. Vine St., Victoria, TX, 77901, ("Lessee"), the right to use the surface estate of certain Permanent School Fund land (the "Leased Premises") for the purposes identified in Article V below.

ARTICLE II. LEASED PREMISES

2.01. The Leased Premises is described below and further described or depicted on Exhibits attached hereto and collectively incorporated by reference for all purposes:

Portions of State Tract 233, Espiritu Santo Bay, Calhoun County, Texas

2.02. LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE LEASED PREMISES AND ACCEPTS SAME "AS IS" IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF THE STATE REGARDING ANY ASPECT OF THE LEASED PREMISES, BUT IS RELYING ON LESSEE'S OWN INSPECTION OF THE LEASED PREMISES. THE STATE DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS LEASE. THE STATE AND LESSEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERMS "GRANT" AND/OR "CONVEY" IN NO WAY IMPLIES THAT THIS LEASE OR THE LEASED PREMISES ARE FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. LESSEE IS HEREBY PUT ON NOTICE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCES MAY BE OF RECORD AND LESSEE IS ADVISED TO EXAMINE ALL RECORDS OF THE STATE AND COUNTY IN WHICH THE LEASED PREMISES ARE LOCATED. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

ARTICLE III. TERM

3.01. This Coastal Surface Lease No. SL20230014 is for a term of ten (10) years, commencing on May 1, 2023 and terminating on April 30, 2033, unless earlier terminated as provided herein. The State reserves the right to review, amend, cancel, or otherwise modify this Lease at any time during its term upon 30-day written notice to Lessee as prescribed in Article XI. Renewal of this Lease is at the sole discretion of the State, and no right to renew is implied or provided for herein.

ARTICLE IV. CONSIDERATION

4.01. A. As consideration ("Consideration") for the granting of this Lease, Lessee shall pay rent ("Rent") to the State (payable to the Commissioner of the General Land Office at Austin, Texas) the sum of **One Hundred And 00/100 Dollars (\$100.00)**.

B. Consideration for this Lease shall be payable in ten (10) installments, in advance, of **Ten And 00/100 Dollars (\$10.00)**. The first annual installment shall be made upon the execution hereof and subsequent annual installments are to be made on or before each anniversary of the effective date hereof.

C. Past due Rent and other past due payments shall bear interest from maturity at the per annum rate provided under Section 51.301, TEX. NAT. RES. CODE ANN. from the due date until the date they are actually paid. If Lessee fails to make a payment by its respective due date, then the State will have the option to make all payments due and payable immediately.

ARTICLE V. USE OF THE LEASED PREMISES

5.01. The Leased Premises may be used by Lessee solely for **600 SQUARE FEET HABITAT RESTORATION** and for no other purpose. The Leased Premises are to remain in their current topographical and hydrologic condition during the term of the Lease. Lessee is specifically prohibited from modifying the Leased Premises in any manner not authorized herein, and from using, or allowing the use by others, of the Leased Premises for any other purpose.

5.02. Lessee shall not use, or permit the use of the Leased Premises for any illegal purpose. Lessee will comply with, and will cause its officers, employees, agents and invitee to comply with, all applicable federal, State and local laws, ordinances and rules concerning the use of the Leased Premises.

5.03. The State reserves the exclusive right to grant easements, rights-of way and/or other grants of interest authorizing use of the Leased Premises, provided such use does not unreasonably interfere with Lessee's use thereof.

5.04. Lessee shall not grant other rights in or to the Leased Premises to any other person or entity, and any attempt to do so shall be void and of no effect and shall constitute a default by Lessee hereunder.

5.05. The State reserves the right to enter upon the Leased Premises at any time with or without prior notice to Lessee to inspect the condition thereof and/or take action authorized by this Lease.

5.06. The Leased Premises are subject to prospecting, production and development of oil, gas and other minerals and other materials of commercial value by the State, its lessees, permittee, licensees or other agents, assigns or representatives. Lessee shall not interfere with such use of the Leased Premises and shall allow any lessee, permit holder, licensee or other agent, assignee or representative of the State and/or the School Land Board the right of ingress and egress over, across and through, and the use of, the Leased Premises for any and all purposes authorized by the State.

5.07. Lessee may not charge the State's authorized lessees, permit holders, licensees or other agents, assigns or representatives surface damages, or any other fee, for use of the Leased Premises; provided, however, the foregoing shall not limit the liability of any person or entity to Lessee for damages caused to property owned by Lessee.

5.08. Lessee's use of the Leased Premises is subject to and contingent upon compliance with the following covenants, obligations and conditions (the "Special Conditions")

- I. Lessee is responsible for securing all permits required to develop the Leased Premises at its expense. Lessee must submit any and all applications and required documentation related to any permits it seeks to the State for approval in advance of submission for review or approval by any regulating entity. Lessee must also submit a copy of any reports submitted to any federal, state, or local agency concerning operations on the Leased Premises to the State as such reports are prepared.

2. Lessee shall not place any permanent structures or improvements anywhere on the Leased Premises.
3. Lessee shall provide the State, by providing the Texas General Land Office Corpus Christi Field Office two (2) weeks advance notice before beginning the post-construction survey to enable State staff to participate if desired. The post-construction survey shall be performed within twelve (12) weeks of completion of the activity authorized herein. Two copies of the report summarizing results of the post-construction survey shall be submitted to the Texas General Land Office Corpus Christi Field Office no more than ninety (90) days following completion of the survey.
4. The boundary of the created oyster reef shall be clearly marked using temporary navigation aids (posts, pilings, poles, buoys, flags, etc.) so that construction crews can properly delineate boundaries of the authorized work area and avoid impacts to state-owned land and resources adjacent to the project site. All materials used to mark the work area shall be removed by the Lessee and properly disposed of on private upland property within thirty (30) days following completion of construction.
5. Lessee shall not place any material that has not been pre-approved by the State on the Leased Premises without prior approval of the State. Pre-approved materials are reefing materials that meet national and state guidelines for durable, stable, and complex reef materials and are agreed to in advance by Lessee and the State. The initial agreed list of approved reefing materials includes crushed limestone, river **rock, rock**, recycled crushed concrete, and/or oyster shell. Materials can be added to the list of pre-approved materials by mutual written agreement between the Lessee and the State. No less than thirty (30) days prior to placement of any habitat-building structure material on the Leased Premises, Lessee shall provide the State with advance notification of the proposed materials to be placed if they are not listed as pre-approved materials. The State will review the proposed material to determine whether there will be any unacceptable impacts to mineral or wind energy research, exploration, or development, other State resources and within thirty (30) days provide written comments or approval or denial of the proposed placement. The State will not approve the placement of material containing human remains.
6. Lessee is prohibited from selling, exchanging, or otherwise transferring credits for mitigation purposes related to its activities on the Leased Premises without the express consent and involvement of the State.
7. At the termination of the lease, lessee will not be required to remove pre-approved oyster reef material that has been placed according to the terms and conditions of the lease.

ARTICLE VI. ASSIGNMENTS

6.01. Lessee shall not assign the Leased Premises or the rights granted herein, in whole or part, to any third party for any purpose without the prior written consent of the State, which may be granted or denied in the State's sole discretion. Any unauthorized assignment shall be void and of no effect and such assignment shall not relieve Lessee of any liability for any obligation, covenant, or condition of this Lease. This provision, and the prohibition against assignment contained herein, shall survive expiration or earlier termination of this Lease. For purposes of this Lease, an assignment is any transfer, including by operation of law, to another of all or part of the property, interest or rights herein granted.

ARTICLE VII. PROTECTION OF NATURAL AND HISTORICAL RESOURCES

7.01. Lessee shall take no action on the Leased Premises which results in the discharge of any solid or liquid material. Lessee shall use the highest degree of care and all appropriate safeguards to: (i) prevent pollution of air, ground, and water in and around the Leased Premises, and (ii) to protect and preserve natural resources and wildlife habitat. Lessee shall comply with all applicable rules and regulations of the General Land Office and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution or an incident that may result in pollution of the Leased Premises or adjacent property which is the result of Lessee's (or Lessee's

employees, contractors, invitees and agents) acts or omissions, Lessee shall immediately notify the State, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.

7.02. LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915; §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN. IN THE EVENT THAT ANY SITE, OBJECT, WCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING ANY ACTIVITY ON THE LEASED PREMISES, LESSEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY THE STATE AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.

ARTICLE VIII. INDEMNITY

8.01. LESSEE SHALL BE FULLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE, OF ANY NATURE, ARISING OR RESULTING FROM ITS OWN ACTS OR OMISSIONS RELATED TO ITS EXERCISE OF THE RIGHTS GRANTED HEREIN. LESSEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE STATE, THE STATE'S OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST CLAIMS, SUIT, COSTS, LIABILITY OR DAMAGES OF ANY KIND, INCLUDING STRICT LIABILITY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO CAUSE OF THE DAMAGES OR THE NEGLIGENCE OF ANY PARTY, EXCEPT FOR THE CONSEQUENCES OF THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF THE STATE, THE STATE'S OFFICERS, AGENTS, EMPLOYEES, OR INVITEES, ARISING DIRECTLY OR INDIRECTLY FROM LESSEE'S USE OF THE LEASED PREMISES (OR ANY ADJACENT OR CONTIGUOUS PSF LAND) OR **FROM ANY BREACH BY LESSEE OF THE TERMS, COVENANTS OR CONDITIONS CONTAINED HEREIN. THE PROVISIONS OF Tms SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

ARTICLE IX. DEFAULT, TERMINATION AND EXPIRATION

9.01. If, following thirty (30) days prior written notice from the State specifying a default or breach, Lessee fails to pay any money due hereunder or is in breach of any term or condition of this Lease, the State shall have the right, at its option and its sole discretion, to terminate this Lease and all rights inuring to Lessee herein by sending written notice of such termination to Lessee in accordance with ARTICLE XI of this Lease. Upon sending of such written notice, this Lease shall automatically terminate, and all rights granted herein to Lessee shall revert to the State. Such termination shall not prejudice the rights of the State to collect any money due or to seek recovery on any claim arising hereunder.

9.02. If Lessee fails to remove its personal property from the Leased Premises within the time specified in Section 9.01 above, or if Lessee fails to remove improvements placed or constructed on the Leased Premises by or behalf of Lessee pursuant to a notice by the State to do so pursuant to Section 9.01 above, then the State may, at its sole option, remove and dispose of such property (with no obligation to sell or otherwise maintain such property in accordance with the Uniform Commercial Code), at Lessee's sole cost and expense, or the State may elect to own such property by filing a notice of such election pursuant to Section 51.302, et seq., TEXAS NATURAL RESOURCES CODE ANNOTATED. If the State elects to remove Lessee's property and dispose of it pursuant to this section, then in such an event Lessee shall be obligated to reimburse the State for the reasonable costs of such removal and disposal within ten (10) days of the State's demand for reimbursement **THE TERMS OF THIS SECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

9.03. In addition to the above, Lessee shall pay and discharge any and all taxes, general and special assessments, and other charges which during the term of this Lease may be levied on or assessed against the Leased Premises or the Improvements constructed thereon, provided such taxes result from Lessee's use under this Lease. Lessee shall pay such taxes, charges, and assessments not less than five (5) days prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof. Lessee shall have the right in good faith at its sole cost and

expense to contest any such taxes, charges, and assessments, and shall be obligated to pay the contested amount only if and when finally determined to be owed.

9.04. LESSEE AGREES TO AND SHALL PROTECT AND HOLD THE STATE HARMLESS FROM LIABILITY FOR ANY AND ALL SUCH TAXES, CHARGES, AND ASSESSMENTS, TOGETHER WITH ANY PENALTIES AND INTEREST THEREON, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.

ARTICLE X. HOLDOVER

10.01. If Lessee holds over and continues in possession of the Leased Premises after expiration or earlier termination of this Lease, Lessee will be deemed to be occupying the Leased Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Lease, except that as liquidated damages by reason of such holding over, the amounts payable by Lessee under this Lease shall be increased such that the Consideration payable under Section 4.01 of this Lease and any other sums payable hereunder shall be two hundred percent (200%), of the amount payable to the State by Lessee for the applicable period immediately preceding the first day of the holdover period. Lessee acknowledges that in the event it holds over, the State's actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. Lessee further acknowledges that acceptance of hold over Consideration does not imply the State's consent to hold over.

10.02. The tenancy from month-to-month described above may be terminated by either party upon thirty (30) days written notice to the other.

10.03. The Consideration due after notice of termination has been given is to be calculated according to Section 10.01 hereinabove on a pro rata basis. If upon notice of termination by the State, Lessee pays Consideration in excess of the amount due and payable and the State accepts such payment, the acceptance of such payment will not operate as a waiver by the State of the notice of termination unless such waiver is in writing and signed by the State. Any such excess amounts paid by Lessee and accepted by the State shall be promptly refunded by the State after deducting therefrom any amounts owed to the State.

ARTICLE XI. NOTICE

11.01. Any notice which may or shall be given under the terms of this Lease shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, if for the State to the Director of the Permanent School Fund Income Division, addressed to 1700 North Congress Avenue, Austin, Texas 78701-1495, Fax (512) 463-5304, and if for Lessee, San Antonio Bay Partnership, Inc., 410 N. Vine St., Victoria, TX 77901. Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Leased Premises may not be used by Lessee as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided.

11.02. For purposes of the calculation of various time periods referred to in this Lease, notice delivered by band shall be deemed received when delivered to the place for giving notice to a party referred to above. Notice mailed in the manner provided above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after posting as herein provided.

ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. **A.** Lessee shall provide written notice to the State of any change in Lessee's name, address, corporate structure, legal status or any other information relevant to this Lease.

B. Lessee shall provide to the State any other information reasonably requested by the State in writing within fifteen (15) days following such request or such other time period approved by the State (such approval not to be unreasonable withheld).

ARTICLE XUL MISCELLANEOUS PROVISIONS

13.01. With respect to tenninology in this Lease, each nwnber (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. Lf any provision of this Lease shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Lease, but such other provisions shall continue in full force and effect.

13.02. The titles of the Articles in this Lease shall have no effect and shall neither limit nor amplify the provisions of the Lease itself. This Lease shall be binding upon and shall accrue to the benefit of the State, its successors and assigns, Lessee, Lessee's successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by the State to any assignment by Lessee, but instead refers only to those instances in which an assignment is hereafter made in strict compliance with Article VI above, or in the case of a deceased natural person Lessee, refers to the instances previously referred to in this sentence and also circumstances in which title to Lessee's interest under this Lease passes, after the demise of Lessee, pursuant to Lessee's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by Lessee hereunder (or any portion thereof) to the State nor failure by the State to complain of any action, non-action or default of Lessee shall constitute a waiver as to any breach of any covenant or condition of Lessee contained herein nor a waiver of any of the State's rights hereunder. Waiver by the State of any right for any default of Lessee shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of the State hereunder or covenant, duty or obligation of Lessee hereunder shall be deemed waived by the State unless such waiver be in writing, signed by a duly authorized representative of the State.

13.04. No provision of this Lease shall be construed in such a way as to constitute the State and Lessee joint ventures or co-partners or to make Lessee the agent of the State or make the State liable for the debts of Lessee.

13.05. In all instances where Lessee is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06. Under no circumstances whatsoever shall the State ever be liable hereunder for consequential damages or special damages. The tenns of this Lease shall only be binding on the State during the period of its ownership of the Leased Premises, and in the event of the transfer of such ownership interest, the State shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership.

13.07. All monetary obligations of the State and Lessee (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas.

13.08. The obligation of Lessee to pay all Consideration and other sums hereunder provided to be paid by Lessee and the obligation of Lessee to perform Lessee's other covenants and duties under this Lease constitute independent, unconditional obligations to be perfonned at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Lease and not otherwise. Lessee waives and relinquishes all rights which Lessee might have to claim any nature oflien against, or withhold or deduct from or offset against, any Consideration or other sums provided hereunder to be paid to the State by Lessee. Lessee waives and relinquishes any right to assert, either as a claim or as a defense, that the State is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the State not expressly set forth in this Lease.

13.09. In the event any provision of this Lease is more restrictive than any administrative rule promulgated by the General Land Office and/or the School Land Board, this Lease shall control.

ARTICLE XIV. ENTIRE AGREEMENT

14.01. This Lease, including any exhibits to the same, constitutes the entire agreement between the State and Lessee; no prior written or prior oral contemporaneous oral promises or representations shall be binding. The submission of this Lease for examination by Lessee or the State and/or execution thereof by the Lessee or the State does not constitute a reservation of or option for the Leased Premises and this Lease shall become effective only upon execution of all parties hereto and deliver of a fully executed counterpart thereof by the State to the Lessee. This Lease shall not be amended, changed or extended except by written instrument signed by both parties thereto.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.





LESSOR:

THE STATE OF TEXAS

By:  _____
DAWN BUCKINGHAM, M.D.
Commissioner, General Land Office

Date: 5/11/2023

APPROVED:

Contents:  _____
Legal:  _____
Deputy Director:  _____
Executive:  _____

LESSEE:

San Antonio Bay Partnership, Inc.

By: Qd, /2.
(Signature)

A lq"" R. Betsy ...-
(Printed Name)

:r. J J> r f.J S"e.. ---o fl., vr"--YJ
(Title) ^L _L


Date: 1, "01-1

ACKNOWLEDGMENT

STATE OF U(t/5 §
COUNTY OF Vrltv t, tt §
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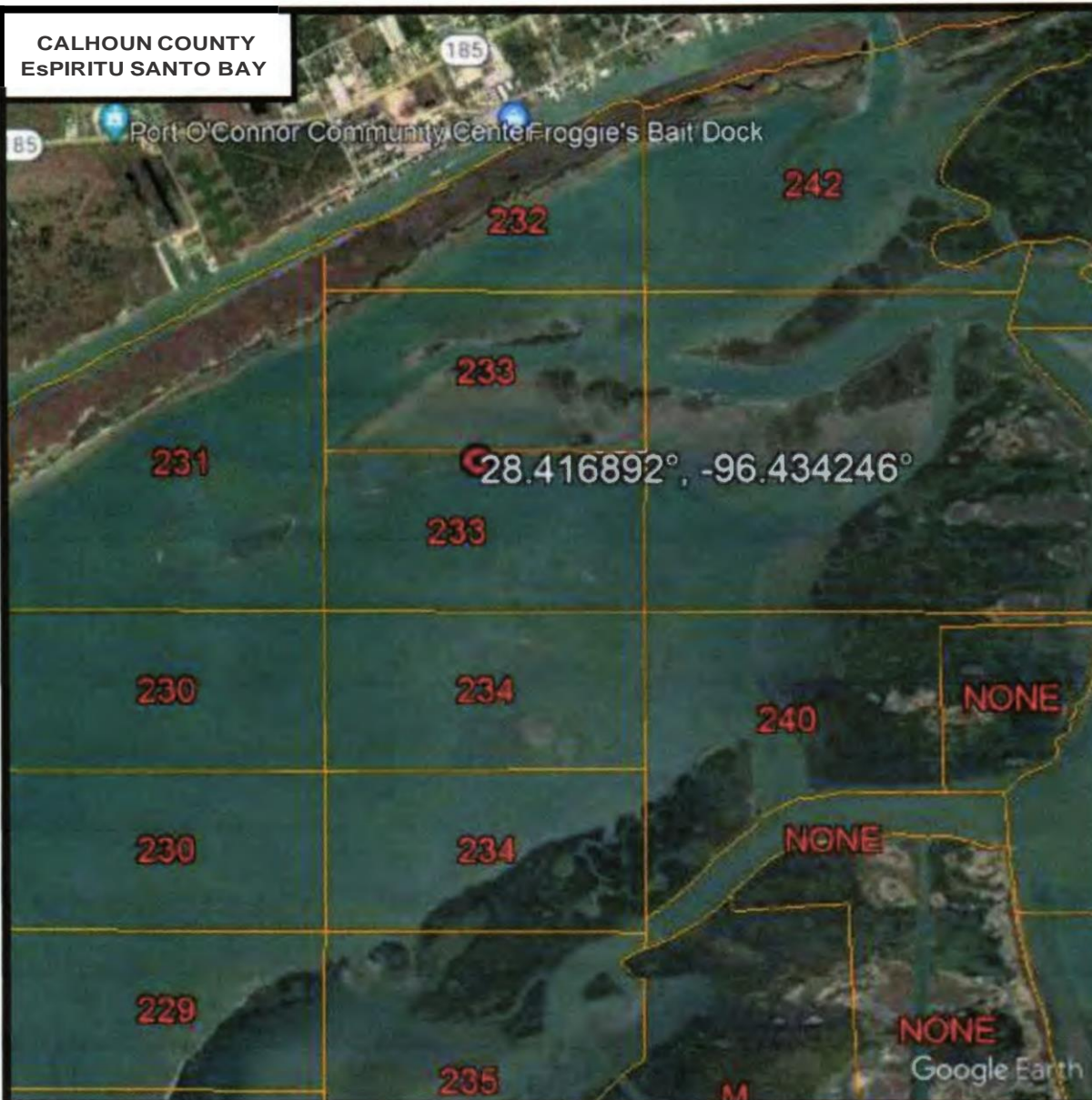
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Notary Public, State of Texas
Comm. bp: 07-02-2023
Notary ID 11653109

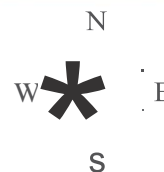
Nntmv Public. State of !L/
My commission expin:s: 7/17/2023

CALHOUN COUNTY
EsPIRITU SANTO BAY



San Antonio Bay Partnership, Inc.

SL20230014



The Texas General Land Office makes no representations or ties regarding the accuracy or completeness of the information depicted on this map or the data from which it is produced. This map IS NOT suitable for navigational purposes and does not purport to depict or establish boundaries between private and public land.

Scale: NTS

Date of Review: April 6, 2023

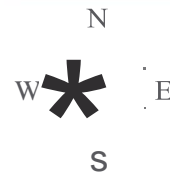
Exhibit A

CALHOUN COUNTY
EsPIRITU SANTO BAY



San Antonio Bay Partnership, Inc.

SL20230014



The Texas General Land Office makes no representations or warranties regarding the accuracy or completeness of the information depicted on this map or the data from which it is produced. This map is NOT suitable for navigational purposes and does not purport to depict or establish boundaries between private and public land.

Scale: NTS

Date of Review

April 6, 2023

Exhibit B

A: 28.416884°, -96.434313°
8: 28.416938°, -96.434205°
C: 28.416863°, -96.434303°
D: 28.416883°, -96.434185°
E: 28.416892°, -96.434246°

DRAWING SCALE: Not to scale



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
2000 FORT POINT RD
GALVESTON, TEXAS 77550

August 9, 2022

Evaluation Branch

SUBJECT: Permit No. SWG-2022-00375; Nationwide Permit Verification

San Antonio Bay Partnership, Inc.
Attn: Allan Berger
410 N. Vine Street
Victoria, Texas 77901

Dear Mr. Berger:

This is in reference to your request, dated May 31, 2022, to discharge fill into an approximately 600-square-foot area in order to restore a portion of Bill Day's oyster reef in Espiritu Santo Bay, which provides nesting, foraging, and roosting habitat for the American Oystercatcher (*Haematopus palliatus*). The restoration activity will involve the placement of bagged oyster shell approximately -2 feet below mean high water (MHW) and covered with shell hash to height of 4 feet over the degraded reef (approximately 2 feet above MHW). The project site is located in Espiritu Santo Bay at an area approximately 2.5 miles southwest of Port O'Connor, Calhoun County, Texas.

This request is verified by Nationwide Permit (NWP) 27 pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. This NWP verification is valid provided the activity is compliant with the enclosed plans, in 6 sheets. In addition, the activity must be in compliance with the NWP General/Regional Conditions, Section 401 Water Quality Certification, and the Coastal Management Program, which can be found at: <https://www.swg.usace.army.mil/Missions/Regulatory/Permits/Nationwide-General-Permits/>, a hard copy can be provided to you upon request.

NWP 27. Aquatic Habitat Restoration, Enhancement, and Establishment Activities: Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas.

The NWP verification is valid until the NWP is modified, reissued, or revoked. The subject NWPs authorized in 2021 are scheduled to be modified, reissued, or revoked prior to March 15, 2026. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

This verification does not address nor include any consideration for geographic jurisdiction on aquatic resources and shall not be interpreted as such. If you have any question regarding this verification, please contact Dr. Tasha Metz at the letterhead address or by telephone at 409-766-6384. Please notify the Chief of the Compliance Branch in the Galveston District Regulatory Division in writing at the letterhead address, upon completion of the authorized project.

FOR THE DISTRICT COMMANDER:



Andria Davis
Leader, North Evaluation Unit

cc w/Encl.

San Antonio Bay Partnership, Inc., Attn: James Dodson, 410 N. Vine Street, Victoria, Texas 77901, Email: jdodson27@gmail.com

Eighth Coast Guard District, New Orleans, LA

National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Coast & Geodetic Survey, Silver Spring, MD

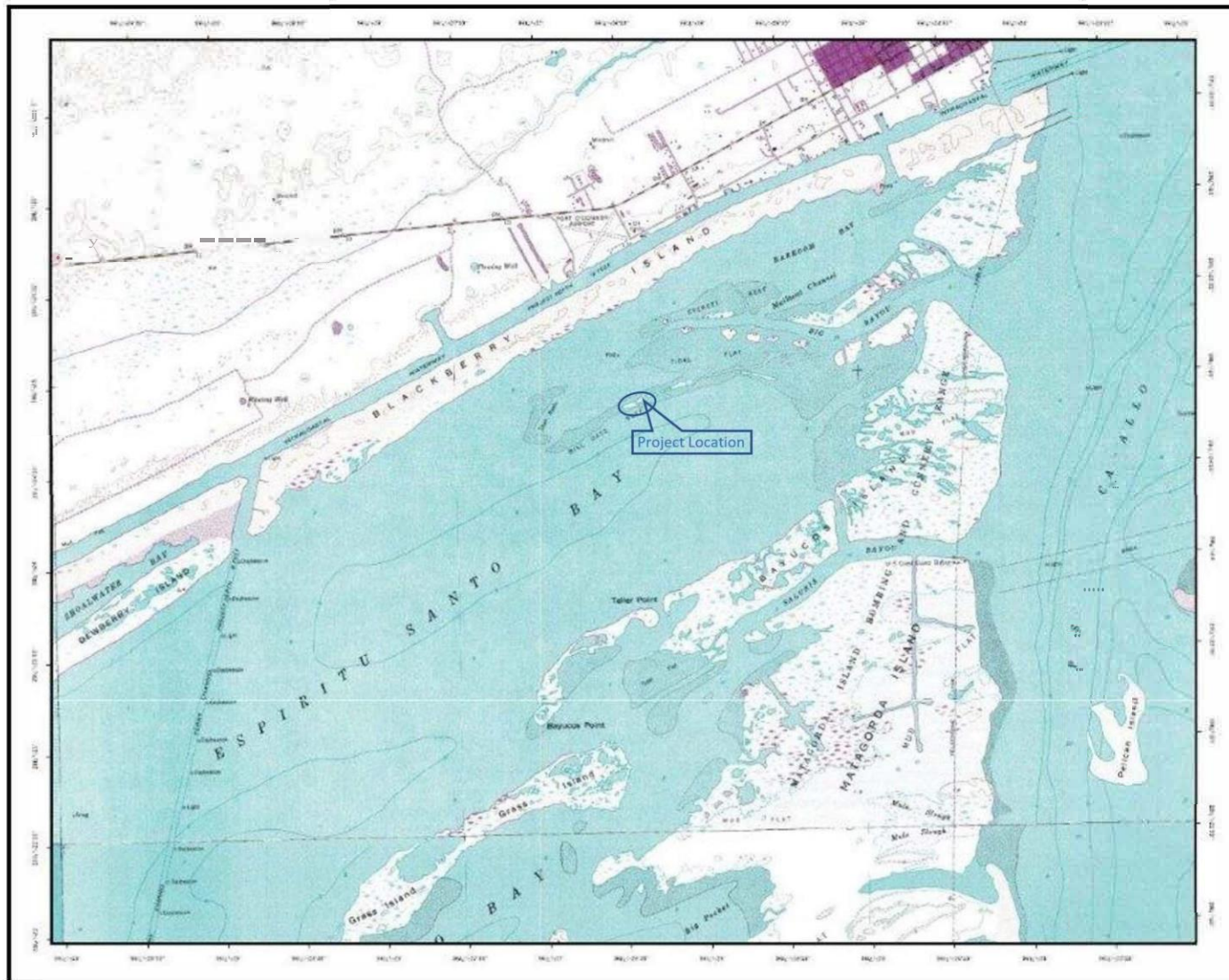
Texas Commission on Environmental Quality

Texas General Land Office

Bill Day's Reef Restoration Plan

TGLO Contract # 22-045-017-D114

Subrecipient: San Antonio Bay Partnership

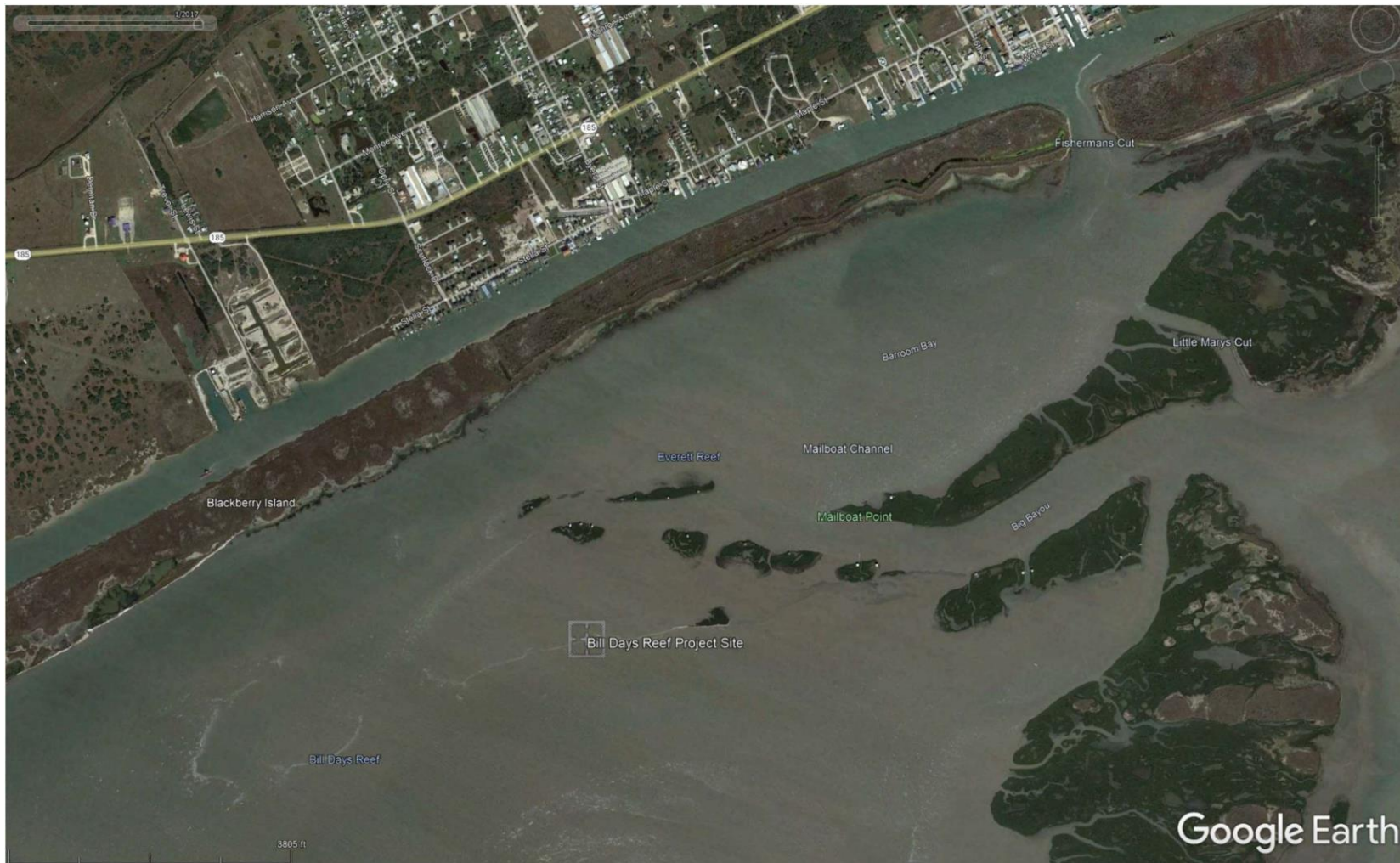


Project Location: Espiritu Santo Bay

Bill Day's Reef Restoration Plan

TGLO Contract # 22-045-017-D114

Subrecipient: San Antonio Bay Partnership

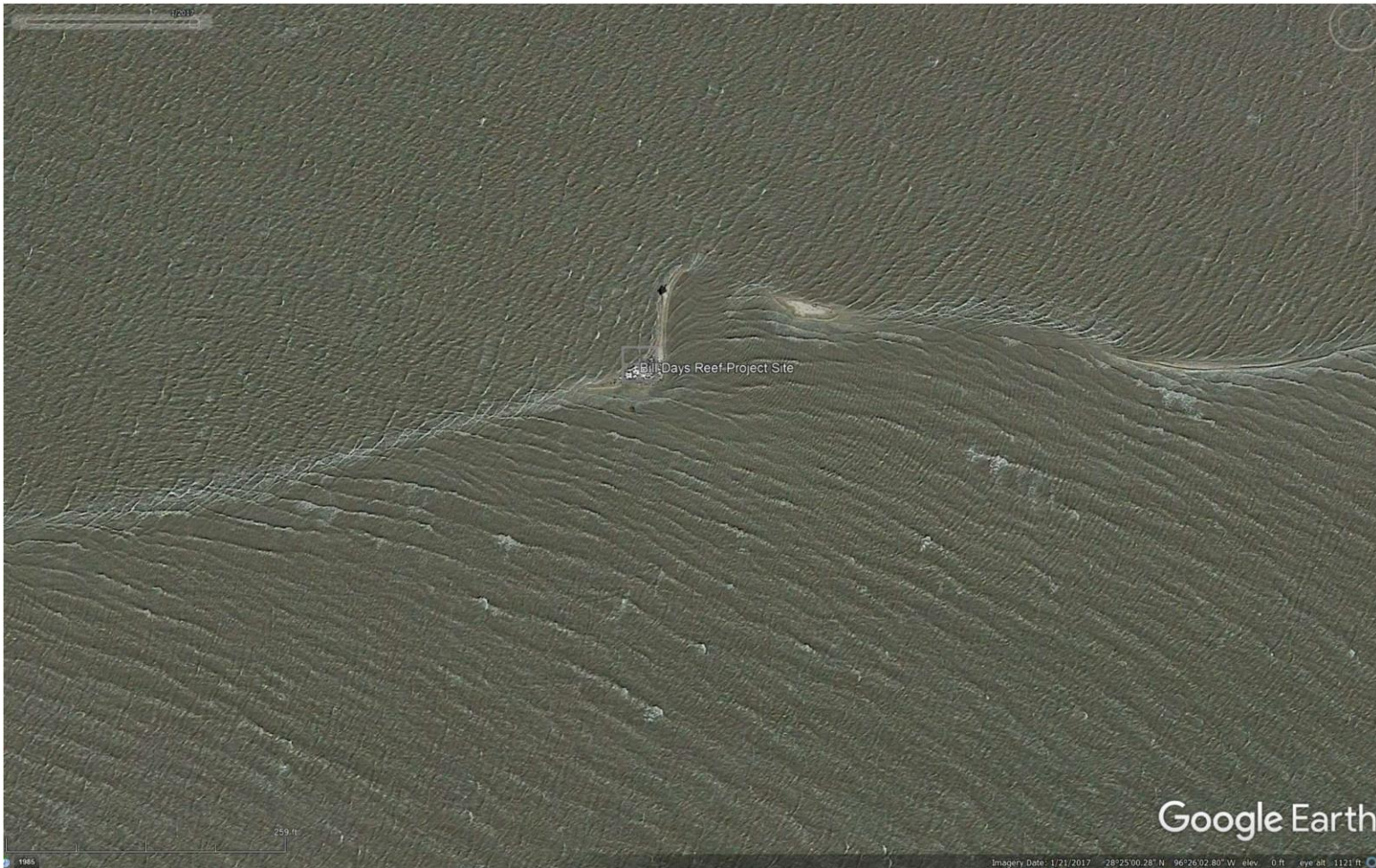


Google Earth Imagery: 1-21-2017

Bill Day's Reef Restoration Plan

TGLO Contract # 22-045-017-D114

Subrecipient: San Antonio Bay Partnership



Google Earth Imagery: 1-21-2017

Bill Day¹'s Reef Restoration Plan

TGLO Contract # 22-045-017-D114
Subrecipient: San Antonio Bay Partnership



Attachment 1: Updated Bill Day's Reef Restoration Project Site Plan Responding to USACE comments

