DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the
Illegal Immigration Reform and Immigrant Responsibility Act of 1996,
as Amended

AGENCY: Office of the Secretary, Department of Homeland Security

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border of the United States.

DATES: This Notice is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

DETERMINATION AND WAIVER:

109-367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In Section 102(a) of the IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In Section 102(b) of the IIRIRA, Congress has called for the installation of fencing, barriers, roads, lighting, cameras, and sensors on not less than 700 miles of the southwest border, including priority miles of fencing that must be completed by December of 2008.

Finally, in section 102(c) of the IIRIRA, Congress granted to me the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of the IIRIRA.

I determine that the area in the vicinity of the United States border as described in the attached document, hereinafter the Project Area, which is incorporated and made a part hereof, is an area of high illegal entry. In order to deter illegal crossings in the Project Area, there is presently a need to construct fixed and mobile barriers and roads in conjunction with improvements to an existing levee system in the vicinity of the border of the United States as a joint effort with Hidalgo County, Texas. In order to ensure the expeditious construction of the barriers and roads that Congress prescribed in the IIRIRA in the Project Area, which is an area of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of the IIRIRA as amended. Accordingly, I hereby waive in their entirety, with
Wildlife Refuge System Administration Act (Pub. L. 89-669, 16 U.S.C. 668dd-668ee),
the Fish and Wildlife Act of 1956 (Pub. L. 84-1024, 16 U.S.C. 742a, et seq.), the Fish and
Wildlife Coordination Act (Pub. L. 73-121, 16 U.S.C. 661 et seq.), the Administrative
403), the Eagle Protection Act (16 U.S.C. 668 et seq.), the Native American Graves
Protection and Repatriation Act (25 U.S.C. 3001 et seq.), the American Indian Religious
2000bb), and the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C.
6303-05).

I reserve the authority to make further waivers from time to time as I may determine to be
necessary to accomplish the provisions of section 102 of the IIRIRA, as amended.

Dated: 4/1/08

Michael Chertoff,
Secretary