

PACKERY CHANNEL TIRZ#2 BRIEFING



**CITY OF CORPUS CHRISTI
ENGINEERING
SERVICES**

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CONCLUSION TO PACKERY CHANNEL REPAIR PROJECT

- CoCC had disputes with FEMA and USACE regarding the Hurricane Harvey Packery Channel repairs. Those disputes have reached final resolution.
 - FEMA settled the case with CoCC in response to our Request for Arbitration before the US CIVILIAN BOARD OF CONTRACT APPEALS.
 - The settlement agreed to reimburse CoCC for costs to correct direct damage from Hurricane Harvey and subsequent post-Harvey erosion.
 - Reimbursement did not include work to correct pre-existing damage or otherwise ineligible work.
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CONCLUSION TO PACKERY CHANNEL REPAIR PROJECT

- This was a hard-fought, drawn-out battle with multiple federal agencies. CoCC prevailed on nearly all major points.
 - CoCC has received \$11.6M from FEMA for the Packery Channel Repairs.
 - We expect a total of \$14.6M from FEMA & TDEM.
 - Reimbursements have mostly been received making a final reconciliation possible.
 - Unused TIRZ#2 project funds can be released and re-purposed.
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BACKGROUND



PRE-HARVEY TIMELINE

- 1980's:** Project pursued by FishTrackers.
 - 1996:** Nueces County assumes sponsorship.
 - 1999:** WRDA Authorization for "Environmental Restoration and Storm Damage Reduction" project.
 - 2000:** CoCC assumes project. TIRZ#2 established for local funding match.
 - 2001:** USACE enters into design contract.
 - 2003:** EIS & design completed. Construction contract award.
 - 2006:** Revetment damaged by Hurricane Rita while channel under construction. City pays \$538K for local share of repair cost.
 - 2006:** Construction complete.
 - 2008:** Hurricane Ike damages Packery Channel.
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PRE-HARVEY TIMELINE

- 2009:** City requests assistance from FEMA and USACE for Ike Damage.
 - 2010:** City is denied assistance from FEMA and USACE.
 - 2010:** City awards contract with 100% local funds for Ike repairs.
 - 2011:** Hurricane Ike repairs completed.
 - 2017:** Hurricane Harvey causes extensive damage to Packery Channel on August 25.
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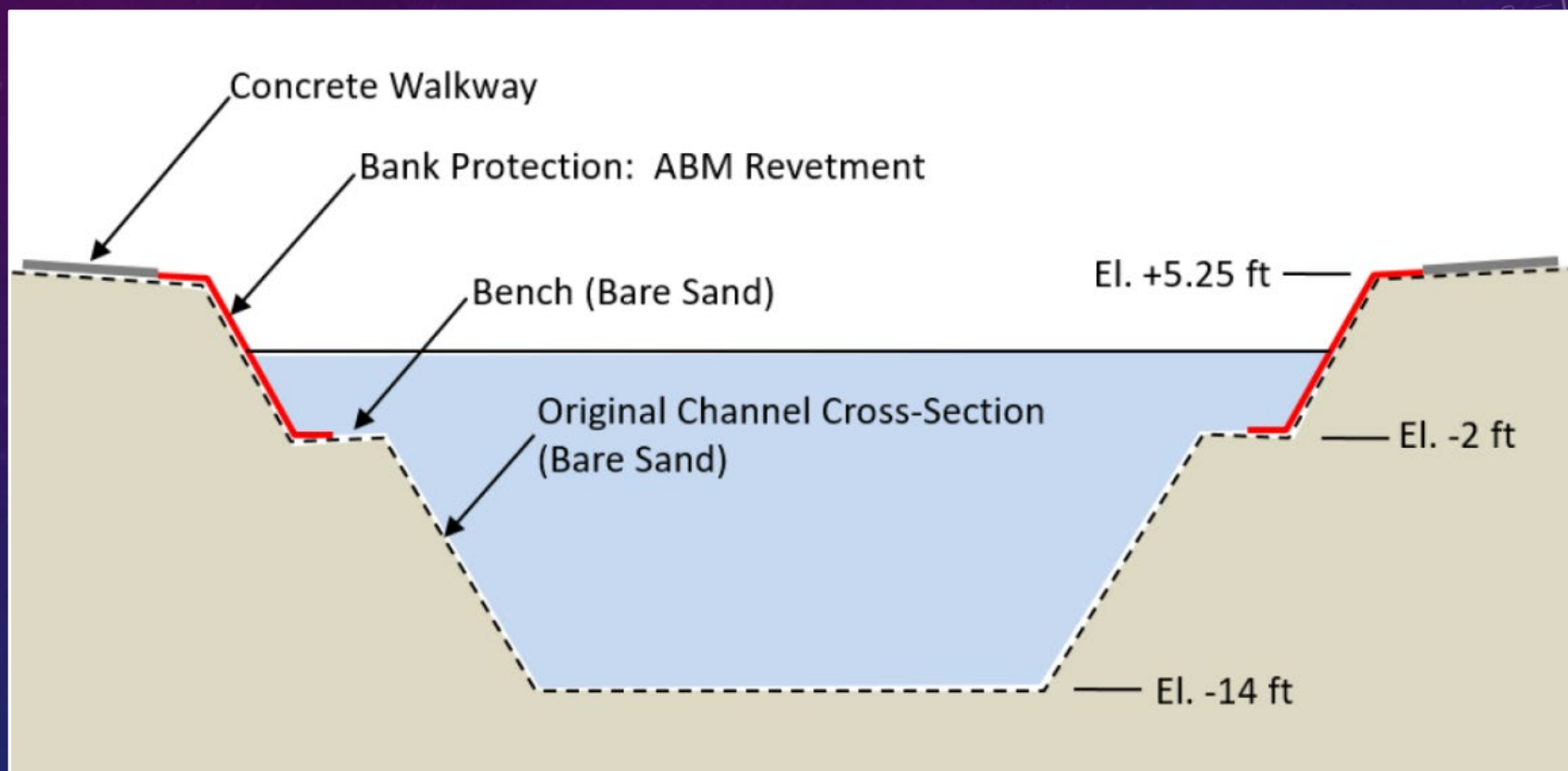


HURRICANE HARVEY DAMAGE

- Hurricane Harvey made landfall in the vicinity of Rockport, TX as a Category 4 storm on August 25, 2017.
 - As the hurricane approached from the southeast, the winds caused Gulf waters to flow into Corpus Christ Bay through the Port Aransas and Packery Channels.
 - As the eye of the storm passed to the north of Packery Channel, the winds increased in intensity and reversed to an easterly direction.
 - The wind reversal after eye passage caused a sudden and intense flow reversal in the Packery Channel.
 - The high velocity flow reversal caused extensive erosion, undermined the channel's articulated block mat revetment system, undermined the walkways and displaced rip rap and armor stones in the jetties.
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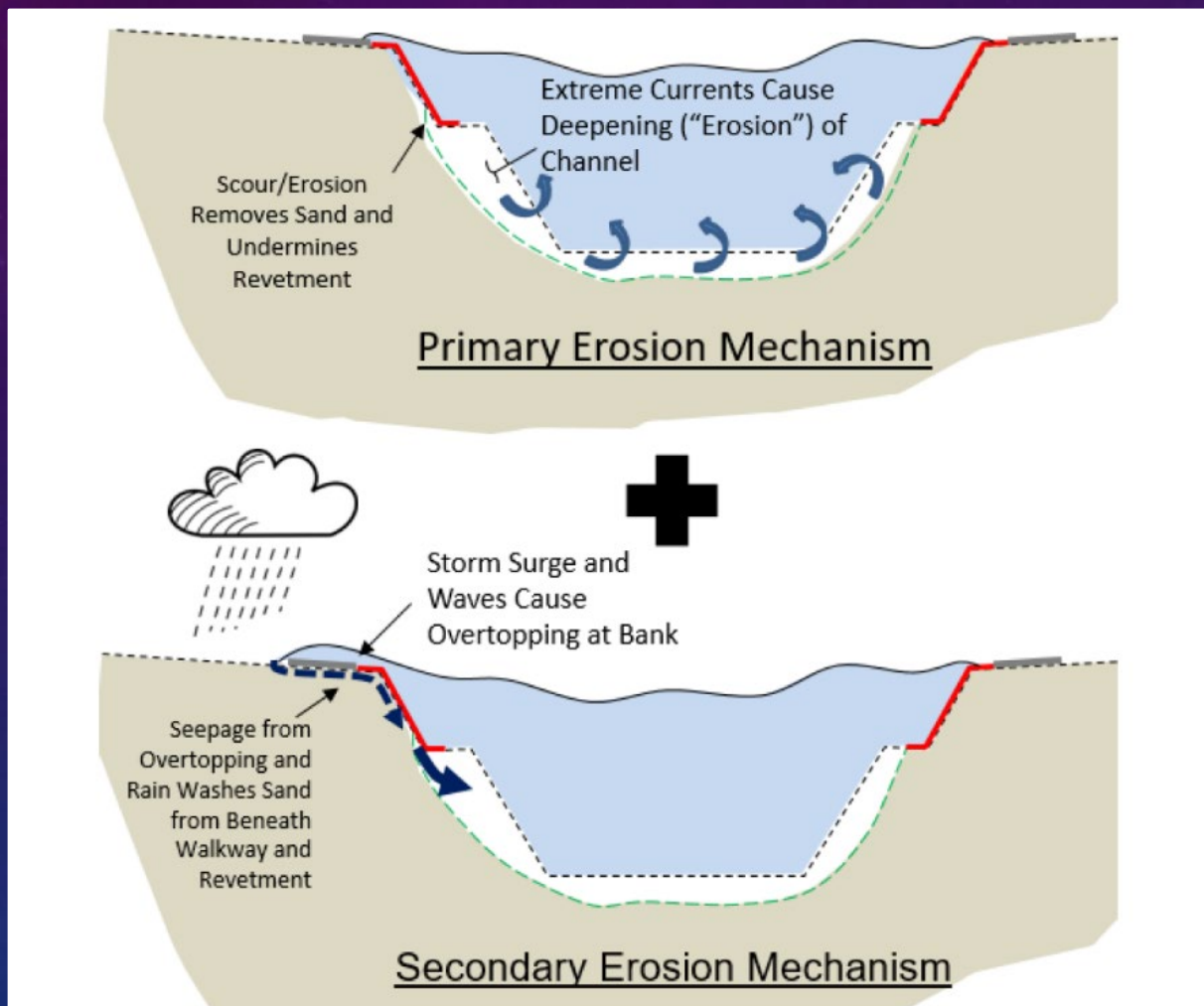
HARVEY DAMAGE



ORIGINAL CROSS SECTION

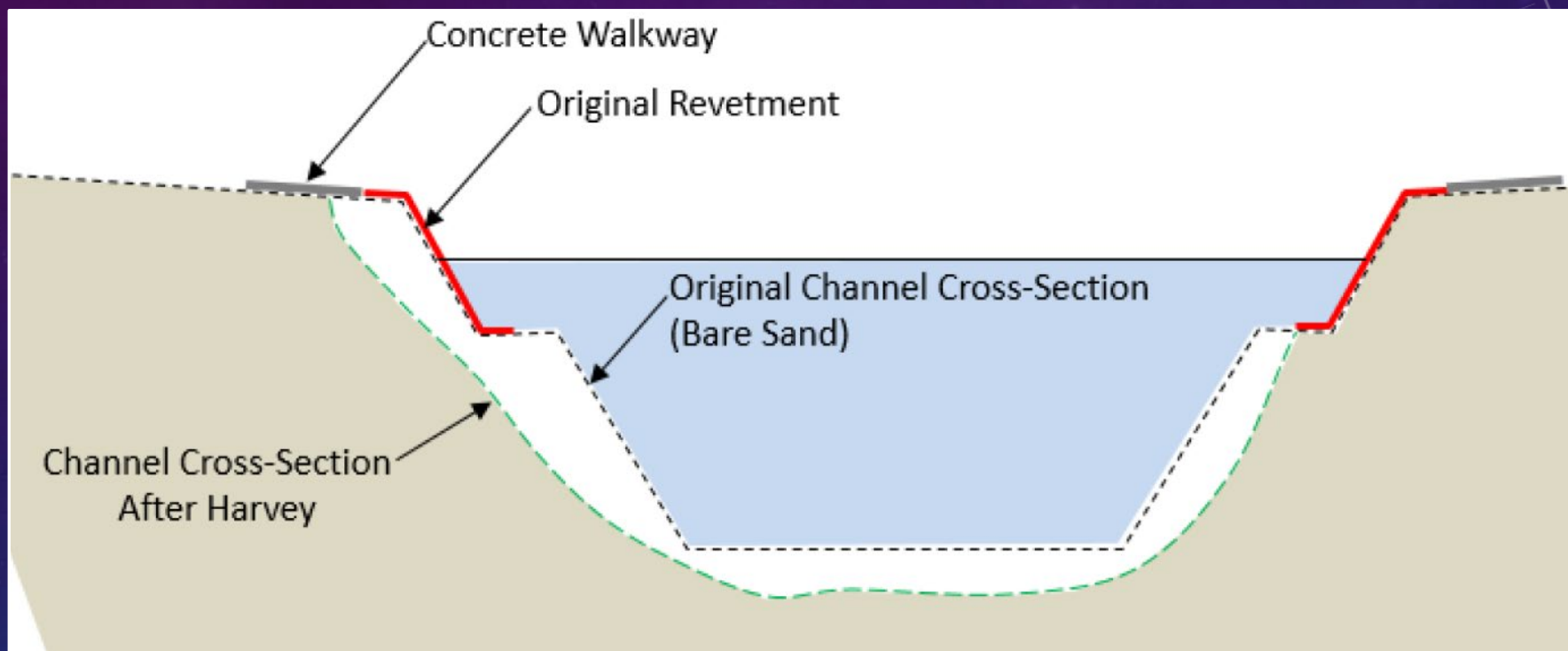


HARVEY DAMAGE





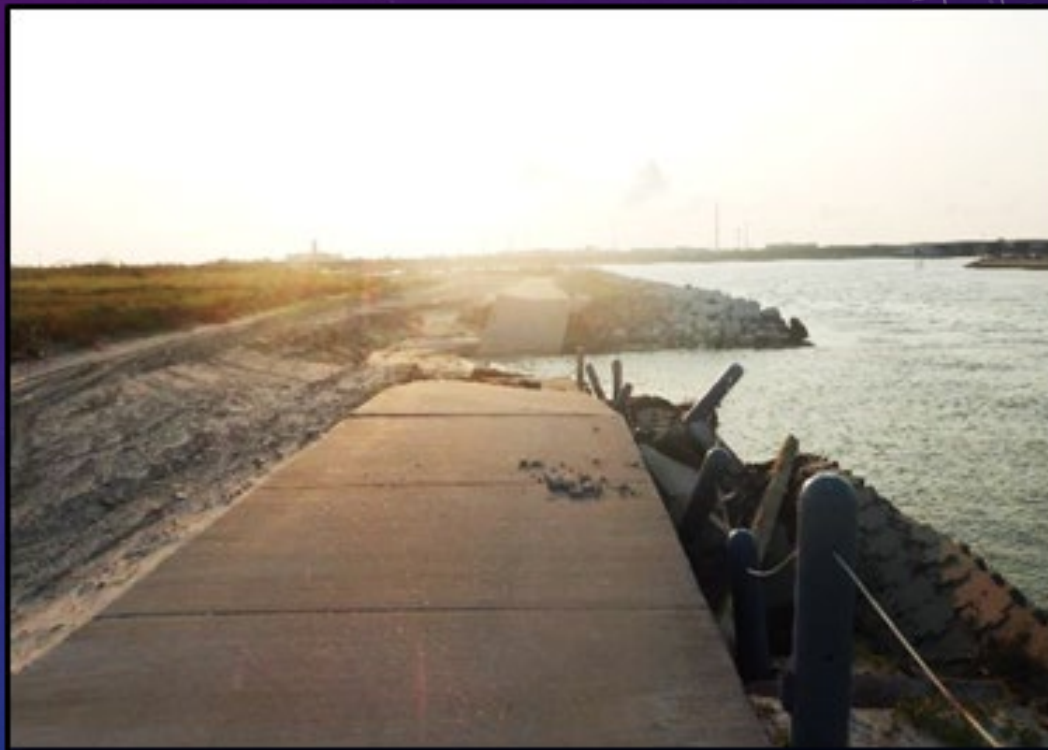
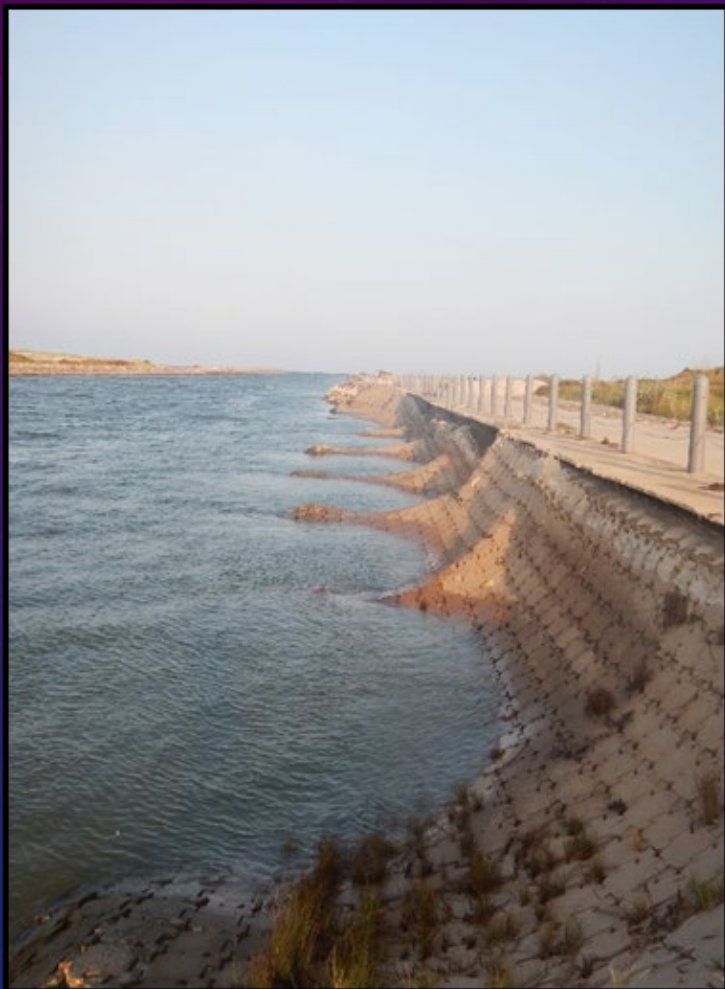
HARVEY DAMAGE



POST-HARVEY CROSS SECTION



HURRICANE HARVEY DAMAGE





PRE-HARVEY IMAGE



February 2017, Pre-Harvey



POST-HARVEY IMAGE

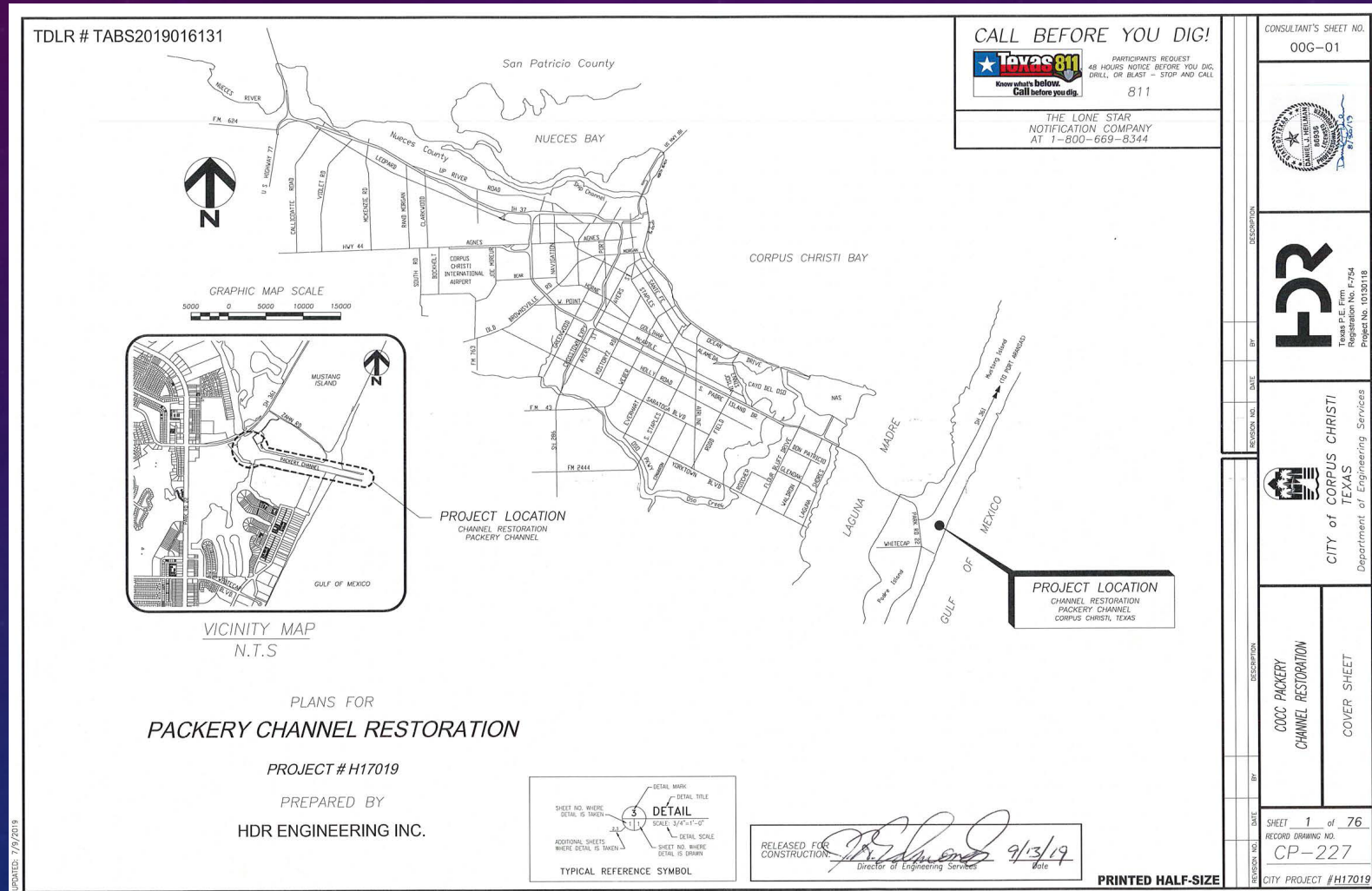


August 2017, Immediately Post-Harvey



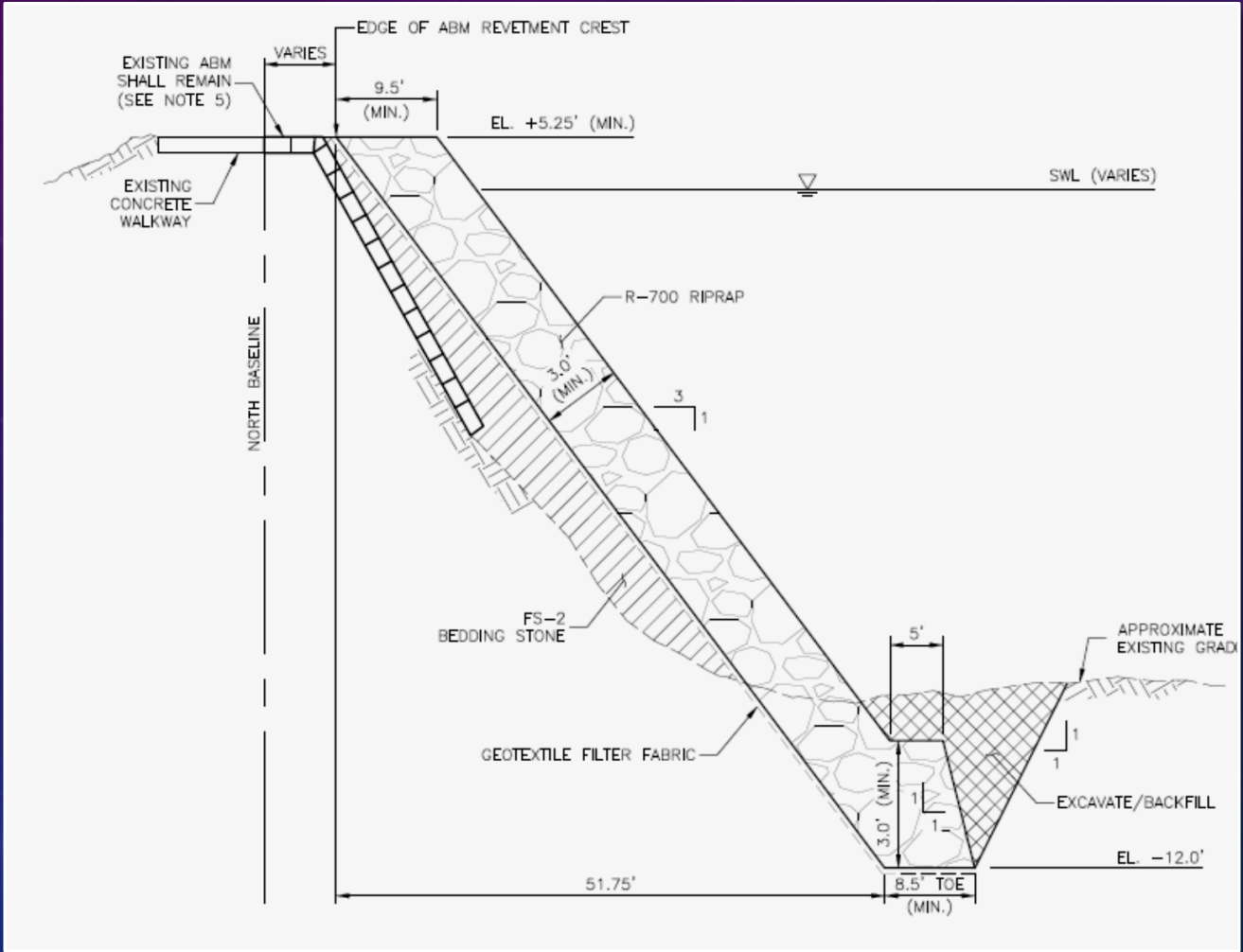
PRE-RESTORATION IMAGE







REPAIR PROJECT





REPAIR TIMELINE

- 2017:** City requests FEMA PA for Harvey repairs. FEMA includes Packery in the preliminary damage assessment.
 - 2018:** FEMA conducts site inspection and detailed Damage Assessment on March 1.
 - 2018:** City contracts for design & permitting of repair project.
 - 2019:** Design & permitting completed. CoCC advertises for bids in August, no bids are received.
 - 2020:** FEMA informs CoCC on Jan 30 that the project is not eligible for PA since USACE has authority to make repairs as per PL84-99. USACE claims they are not responsible per CoCC failure to request annual inspections.
 - 2020:** CoCC engages legislative delegation for assistance.
 - 2021:** On May 21, USACE confirms that Packery Channel is not eligible for rehabilitation assistance from USACE.
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REPAIR TIMELINE

- 2021:** July 7 FEMA determines Packery Channel is eligible for FEMA PA.
- 2021:** FEMA completes EHP review August 11 (roughly 4 years after hurricane).
- 2021:** Construction contract awarded by City Council in October.
- 2022:** Contractor mobilizes in January. Early work includes bathymetric survey to update quantities of work. FEMA aware that CoCC used original plans to bid project. Overruns are expected.
- 2023:** CoCC notifies FEMA of additional cost on Jan 18 after change order approved by council.
- 2023:** FEMA denies amendment request for change order work.
- 2023:** City appeals FEMA denial on July 24.
- 2024:** FEMA notifies CoCC of appeal denial on Feb 6.
- 2024:** City files request for arbitration on April 5.



REPAIR TIMELINE

- 2024:** After CoCC files Request for Arbitration, FEMA begins to engage on a negotiated settlement.
 - 2024:** On October, CoCC agrees to FEMA's offer for dismissal of the arbitration case based on a settlement that would allow CoCC to be reimbursed for nearly all costs that we believed were eligible.
 - 2025:** Final construction cost of repair was \$14,979,102.30.
 - 2025:** On August 26, CoCC received a wire deposit for \$11,550,541.29.
 - 2025:** CoCC expects to ultimately receive \$14.6M from FEMA/TDEM.
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PA POLICY DISPUTES

1. Original FEMA estimates contemplated a repair of the articulated block mat (ABM). CoCC argued successfully that repairing the ABM was not constructable.
 2. FEMA claimed that Packery Channel was under USACE authority therefore not eligible for FEMA PA. USACE claimed that Packery was under their authority but not eligible for assistance under Public Law 84-99.
 3. FEMA claimed that damage occurring after the hurricane from continued erosion was ineligible for PA assistance since it was not a direct result of the event.
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PL84-99/PA POLICY DILEMMA

CFR 44 CFR § 206.226 states that, “generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.”



PL84-99/PA POLICY DILEMMA

FEMA POSITION: Since USACE claimed authority over the Packery Channel as a Flood Control Work under PL84-99, the channel repair work was not eligible for FEMA Public Assistance.

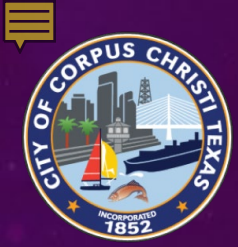
USACE POSITION: To have been eligible, the Packery Channel would have had to be active in the USACE Rehabilitation and Inspection Program, but it was not. The City had not requested annual inspections to remain active in the PL84-99 program.



PL84-99/PA POLICY DILEMMA

CITY POSITION:

1. The PCA made it very clear that USACE had no ongoing responsibility after the Packery Channel project was completed and should be FEMA eligible.
 2. The City had sought USACE assistance with repairs to Hurricane Ike damage. USACE referred to the PCA in their assistance denial.
 3. The Packery Channel was the “Environmental Restoration” element of the original construction project therefore PL84-99 should not apply since the channel was not a Flood Control Work.
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USACE 2021 DENIAL

- USACE review of specific project design information within the Design Documentation Report (DDR), determined the jetties and associated structures were primarily built for channel alignment, protection against shoreline erosion, and for the benefit of fish and wildlife. These categories of project purposes are not permitted for rehabilitation assistance under ER 500-1-1. Therefore, the proposed repairs to Packery Channel are not eligible for USACE rehabilitation assistance under P.L. 84-99.
- This denial by USACE reopened the door to FEMA PA.



CHANGE ORDER

- The bid documents were based on surveys completed in 2019. CoCC actually advertised for bids in late 2019 but none were received.
 - When FEMA finally approved the project in 2021, the project was advertised for bid using the 2019 bid set rather than delaying construction to update the survey and drawings.
 - FEMA was aware at the time of contract award that a change order would be forthcoming.
 - In 2023, FEMA claimed the change order work was ineligible because it covered damage that had occurred after the hurricane. CoCC appealed this decision.
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CHANGE ORDER APPEAL DENIAL

- CoCC argued that we were in a Catch-22 whereby undertaking the repair work would have invalidated FEMA eligibility if done before FEMA EHP clearance.
 - CoCC also argued that federalization after FEMA denial made the project USACE responsibility until USACE denial 15 months later. Therefore, CoCC could not have mitigated ongoing damage during the debate over federal agency responsibility.
 - FEMA determined the Subrecipient did not demonstrate the additional damage to the Facility is a direct result of the declared incident. Accordingly, the CoCC appeal was denied.
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CITY REQUEST FOR ARBITRATION

- The erosion damages occurred as a result of Hurricane Harvey.
 - Stop-gap solutions and temporary measures were not available to protect the facility before permanent work could be performed.
 - The work could not have been performed before FEMA's EHP review without jeopardizing FEMA funding.
 - The erosion damage did not occur after Project Obligation.
 - Ultimately, FEMA settled the case with CoCC to avoid arbitration before the UNITED STATES CIVILIAN BOARD OF CONTRACT APPEALS.
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THANKS TO:

- Office of Senator John Cornyn
 - Office of Senator Ted Cruz
 - Office of Congressman Michael Cloud
 - Texas Dept. of Emergency Management
 - CoCC IGR Office
 - Hance Scarborough, LLP
 - Disaster Recover Services – FEMA Consultant
 - Baker, Donelson, Bearman, Caldwell & Berkowitz, PC – Outside Counsel
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