



Public Notice

**U.S. Army Corps
Of Engineers
Galveston District**

Permit Application No: SWG-2007-01958 (Preserve)
2nd Public Notice
Date Issued: 8 January 2009
Comments Due: 9 February 2009

**U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
AND
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

PURPOSE OF PUBLIC NOTICE: To inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. **This second public notice is being issued for correction of errors in the first public notice (22 February 2008) and clarification of project plans and mitigation.** Numerous public comments were received on the first public notice that were reflective of the errors and lack of clarity in the original project drawings. No substantive project changes have occurred other than correction of errors and clarification of graphics. The project plans are the same as approved by the City of Galveston in November 2007. A portion of the conservation zone south of Stewart Road was moved to the Marina Project since it contained estuarine habitats appropriate to mitigate for estuarine impacts associated with the marina. Several small parcels of the Preserve Project have been determined to have independent utility (as described below) and are excluded from this permitting process. Those parcels are shown on Sheet 2 of 12. In addition to the proposed conservation zone, large portions of wetland and upland habitats are being avoided as part of the agreed “open space” requirements of the City of Galveston. However, these avoided habitats are **not** included as part of the proposed mitigation effort.

AUTHORITY: This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

APPLICANT: Marquette Galveston Investments
463 Briargate Drive
South Elgin, Illinois 60177-2225

AGENT: Horizon Environmental Services, Inc.
1507 South Interstate Highway 35
Austin, Texas 78741-2502
Telephone: 512-328-2430
POC: Mr. Lee Sherrod

LOCATION: The project is located on a 547.07-acre tract of land on West Galveston Island in the City of Galveston and Galveston County. It begins approximately one mile west of the seawall at 8-Mile Road and continues to 11-Mile Road. The project boundary comprises most of the property between FM 3005 and Stewart Road, with 1 parcel (Tract 1) totaling 64.26 acres located on the Gulf side of FM 3005. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 314204.77; Northing: 3234206.78.

PROJECT DESCRIPTION: Within the 547.07-acre tract, there are 394.29 acres of non-jurisdictional coastal prairie uplands, 151.48 acres of palustrine wetlands, and 1.30 acres of estuarine wetlands. The applicant proposes to discharge fill material into 50.36 acres of palustrine wetlands and 233.85 acres of non-jurisdictional coastal prairie uplands to construct building and infrastructure sites associated with a mixed use residential and resort development known as The Preserve at West Beach. There would be no impacts to estuarine wetlands. The development would include single-family lots, attached single-family units, mid-rise condominiums, commercial areas, common area/parks, and internal rights-of-way.

To compensate for impacts to jurisdictional wetlands the applicant proposes to permanently protect a 128.36-acre conservation zone comprised of 71.39 acres of uplands and 56.97 acres of palustrine wetlands. The applicant proposes restoration and enhancement of existing degraded palustrine wetlands in the conservation zone as compensation. The entire conservation zone would be subject to a permanent conservation easement. In the event a permit is issued, the applicant agrees that within 12 months of receipt of the U.S. Army Corps of Engineers (Corps) permit(s) that the applicant would transfer or sell the conservation zone, subject to the terms of the conservation easement, to a qualified 501(c)(3) charitable entity, a governmental entity, or to the master association. The applicant would provide the City of Galveston with advance notice of such transfer or sale. The applicant states that in the event a permit is issued and the permit is legally contested, then the transfer or sale would not be completed until the legal challenge is concluded.

Currently there are two applications for Marquette Galveston Investments (Marquette) for projects proposed on West Galveston Island. Those two applications are identified as SWG-2007-1958, Preserve at West Beach (this public notice), and SWG-2007-1956, Marina at West Beach. The applicant has demonstrated the Independent Utility of the two Marquette applications. In the Corps Regulatory Program the definition of "Independent Utility" is as follows:

A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Each of the projects, as well as several smaller parcels within each project area, have direct access to all necessary services; land transportation, utilities, etc., and can be developed independently of the other. Both proposed projects have been planned and are pursuing permits so that each can be built in separate and independent phases. Each of the proposed projects would be developed by separate and independent developers and each would be a stand-alone community with self-supporting land uses and amenities packages.

This public notice is being issued based on information furnished by the applicant. The applicant's project plans are enclosed in 13 sheets and the mitigation plans are enclosed in 10 sheets. The project plans, mitigation plans, and color aerials can also be viewed on the Galveston District Web page at <http://www.swg.usace.army.mil/reg/pn.asp>.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is not required. Since permit assessment is a continuing process, this preliminary determination of EIS requirement will be changed if data or information brought forth in the coordination process is of a significant nature.

Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404 (b)(1) of the Clean Water Act (CWA).

OTHER AGENCY AUTHORIZATIONS: Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said program.

This project would result in a direct impact of greater than three acres of waters of the state or 1,500 linear feet of streams (or a combination of the two is above the threshold), and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with Corps processing of this application, the TCEQ is reviewing this application under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the Corps and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of work is made available for review in the TCEQ's Austin office. The complete application may be reviewed in the Corps office listed in this public notice. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how the application, if granted, would adversely affect such interest.

NATIONAL REGISTER OF HISTORIC PLACES: NATIONAL REGISTER OF HISTORIC PLACES: The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic properties and the effects of the undertaking upon these properties:

The permit area is likely to yield resources eligible for inclusion in the National Register of Historic Places. An investigation for the presence of potentially eligible historic properties has been conducted and will be coordinated with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act.

THREATENED AND ENDANGERED SPECIES: Threatened and/or endangered species or their critical habitat may be affected by the proposed work. Consultation with the U.S. Fish and Wildlife and/or the National Marine Fisheries Service will be initiated to assess the effect on endangered species.

ESSENTIAL FISH HABITAT: This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Programs of the Corps, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people.

SOLICITATION OF COMMENTS: The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Impact Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

This public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the Corps may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues are substantial and should be considered in the permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before **9 February 2009**. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should be submitted to:

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Regulatory Branch, CESWG-PE-RB
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3962 Phone
409-766-6301 Fax

DISTRICT ENGINEER
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