



# Public Notice

<b>U.S. Army Corps Of Engineers</b>	Permit Application No: _____	SWG-2015-00537
	Date Issued: _____	27 December 2018
	Comments	
<b>Galveston District</b>	Due: _____	29 January 2019

## U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

**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. The U.S. Army Corps of Engineers (Corps) is not the entity proposing or performing the proposed work, nor has the Corps taken a position, in favor or against the proposed work.

**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:** Pete Garland  
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Spring, Texas 77387  
Telephone: (713) 417-4832  
Email: petegarland1@hotmail.com

**AGENT:** Dan Ellis  
305 W. Mill  
Livingston, Texas 77351  
Telephone: (936) 328-9088  
Email: profish@livingston.net

**LOCATION:** The project site is located in Lake Livingston, at 11840 United States Highway 190 East, in Point Blank, San Jacinto County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Onalaska, Texas.

**LATITUDE & LONGITUDE (NAD 83):**

**Latitude:** 30.79476° North; **Longitude:** 95.16089° West

**PROJECT DESCRIPTION:** The applicant proposes to retain a 1,437.7 foot bulkhead that was constructed in slightly different areas than what was authorized, remove the unauthorized discharge of fill material from wetlands A, B, and C (totaling 0.08 acre), restore the wetland areas to preconstruction contours, and retain the dredging area that was 0.23 acre larger than what was authorized (1.79 acres vs 1.56 acres). Approximately

7,420 cubic yards of material was dredged (only 4,405-cubic yards was authorized) and placed in uplands adjacent to the bulkhead. The applicant also proposes to remove 50 feet of bulkhead during the restoration of wetland B (0.036-acre). In addition, the applicant proposes to complete the remaining portion of the bulkhead as shown in the project plans for a total of 1,543 linear feet.

The project purpose as stated by the applicant is “development of property for residential subdivision comprised of 53 residential lots while reserving approximately 5 acres with frontage on Highway 190 for commercial use.”

**PERMIT HISTORY:** Department of Army Permit SWG-2015-00537 was issued on 15 August 2016 and authorized dredging of 4,405 cubic yards of material from Lake Livingston and placement of the material into uplands and to construct a 1,543 linear foot bulkhead. It was determined that the project was not in compliance with the permitted plans. What was constructed included: numerous areas of bulkhead that were reconfigured and constructed in areas that were not authorized by the permit, additional areas were dredged that were associated with the bulkhead reconfiguration, and discharge of fill material was placed in three wetlands totaling 0.08 acre. The project is being evaluated as an after the fact project.

**AVOIDANCE AND MINIMIZATION:** The applicant has not proposed avoidance and minimization, because this project is being evaluated after the fact.

**MITIGATION:** The applicant has not proposed mitigation.

**CURRENT SITE CONDITIONS:** The project site is currently an undeveloped tract of land and a portion of Lake Livingston. Unauthorized dredging in Lake Livingston has increased the overall depth of the cove and unauthorized fill of three wetlands (totaling 0.126 acres) has decreased the functions and values associated with the filled wetlands. This wetland fill has also changed the shape of the cove.

The applicant has stated they own all adjoining properties.

This public notice is being issued based on information furnished by the applicant. This project information has not been verified by the Corps. The applicant’s plans are enclosed in 10 sheets.

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:**

This project incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier I project criteria. Tier I projects are those which result in a direct impact of three acres or less of waters of the state or 1500 linear feet of streams (or a combination of the two is below the threshold) for which the applicant has incorporated best management practices and other provisions designed to safeguard water quality. The Corps has received a completed checklist and signed statement-fulfilling Tier I criteria for the project. Accordingly, a request for 401 certification is not necessary and there will be no additional TCEQ review.

The return water from the upland contained dredge material placement area(s) requires an independent certification by the Texas Commission on Environmental Quality (TCEQ). The applicant must obtain a Section 401-water quality certification from the TCEQ for the effluent or return water discharge. A copy of the 401-certification must also be furnished to the Corps of Engineers prior to the Corps making a decision on the proposed project.

**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 constructed project is of such limited nature and extent that an archeological survey would not have been requested. The constructed project has no potential to effect historic properties even if present within the permit area.

**THREATENED AND ENDANGERED SPECIES:** Preliminary indications are that no known threatened and/or endangered species or their critical habitat will be affected by the proposed work.

**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 of Engineers, 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 of Engineers 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 of Engineers 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 of Engineers 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:** The purpose of a public hearing is to solicit additional information to assist in the evaluation of the proposed project. 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 if the reasons identified for holding a public hearing are sufficient to warrant that a public hearing be held. 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 **29 January 2019**. 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 reference our file number, **SWG-2015-00537**, and should be submitted to:

Evaluation Branch, North Unit  
Regulatory Division, CESWG-RD-E  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229  
409-766-3869 Phone  
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DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS