



Public Notice

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

Galveston District

Permit Application No: SWG-2003-01965

Date Issued: 6 June 2023

Comments

Due: 10 July 2023

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 404 of the Clean Water Act (CWA).

APPLICANT: Passport Shores, LLC
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Buda, Texas 78610-3525
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AGENT: Anchor Qea
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POC: Ms. Sara Flaherty
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LOCATION: The project site is located on a 55.81-acre tract of land located in Landblock 244, Burton & Danforth Subdivision adjacent to the Gulf Intracoastal Waterway (GIWW), on the east side of State Highway 35 (Bus) and north of Palm Harbor Subdivision, approximately 3 miles north of Aransas Pass, in Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Estes, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 27.9722 North; **Longitude:** 97.0899 West

PROJECT DESCRIPTION: The applicant proposes to amend the footprint for a previously authorized project for a waterfront residential development as depicted on the attached plans (figures 1-3). The revised project would eliminate the previously authorized access channel and residential canals and place clean fill material within approximately 28 acres of the site. Overall, the proposed fill area is composed of 19.11 acres of upland, 7.48 acres of salt marsh, and 1.41 acres of salt flats, which would require 13,665 cubic yards of fill in jurisdictional area. No work has been initiated at the project site at this time.

BACKGROUND: The proposed project is an amendment to Permit SWG-2003-01965 (formerly 23225), issued 27 July 2007, which authorized dredging to construct a canal subdivision and access channel to the Gulf Intracoastal Waterway, maintenance dredging, docks, stabilization structures, and a mitigation area, and expired on 31 December 2012. The (01) amendment was issued on 28 December 2012 authorizing an extension of time without any changes and expired 31 December 2018. The (02) amendment was issued on 14 October 2021 and authorized an extension of time to complete the project, elimination of the large boat basin, and changing the mitigation project protection from conservation easement to deed restriction.

AVOIDANCE AND MINIMIZATION: The applicant has stated that they have avoided and minimized the environmental impacts by eliminating the access channel and residential canals. Aquatic resources have been avoided to the maximum extent practicable, the current project design would reduce impacts to Waters of the US by approximately 1.2 acres, no activity is proposed below the mean high-water line of the adjacent waterbody, and therefore, the amendment would remove all impacts to submerged aquatic vegetation. Additionally, the permittee would complete permittee responsible mitigation consistent with the existing permit authorization including preserving in perpetuity the on-site aquatic habitats that will not be impacted by this project.

MITIGATION: The existing mitigation plan would remain unchanged. The plan provides in-kind creation of 6.48 acres of salt marsh on-site, and 2.55 acres created off-site. In total, the applicant proposes to create 9.03 acres of salt marsh to compensate for the unavoidable impacts to this habitat. The mitigation area will employ a deed restriction to preserve 24.25 acres of salt marsh habitat in perpetuity. The plan also provides creation of 0.86 acre of salt flat habitat and preservation of an additional 4.03 acres of salt flat habitat in perpetuity.

CURRENT SITE CONDITIONS: The project site is located along the GIWW between Aransas Bay and Redfish Bay. This area is bounded to the north by undeveloped land similar to the project site, to the east by the GIWW, to the west by State Highway 35 Business, and to the south by the Palm Harbor residential subdivision. Redfish Bay and Aransas Bay offer shallow water habitat where seagrass beds and oyster reefs exist. Water depths in the project area are approximately 6 feet and are devoid of either seagrasses or oyster reefs. The bottom substrate of the project area is predominantly sand. The bays provide habitat for numerous species of finfish, shellfish, shorebirds, wading birds, waterfowl and four species of sea turtles. The area tidal flats and bay

waters also support populations of waterfowl, wading birds, and shorebirds. Waterfowl use the shallow vegetated bay areas and tidal flats for feeding and the deeper waters for resting. The shallow waters within these bays also provide nursery and feeding grounds for numerous species of fish and crustaceans important to sport and commercial fishing interests. These include black drum, red drum, speckled trout, southern flounder, sheepshead, brown and white shrimp, and blue crab. The project site occurs on the GIWW between Aransas and Redfish Bay and consists of uplands interspersed with areas of: saltmarsh dominated by salt-flat grass, saltwort, glasswort, and sea ox-eye daisy; unvegetated sandflats; brackish marsh dominated by coastal dropseed and sea ox-eye daisy; and a narrow band of seagrasses immediately offshore. A number of black mangroves are present along the GIWW shoreline.

NOTES: This public notice is being issued based on information furnished by the applicant. This project information has not been verified by the Corps. The wetland delineation has been completed and was verified by the Corps on 23 June 2021. The applicant's plans are enclosed in three 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 CWA.

OTHER AGENCY AUTHORIZATIONS:

Consistency with the State of Texas Coastal Management Plan is required. The applicant has stated that the proposed activity complies with Texas' approved Coastal Management Program goals and policies and will be conducted in a manner consistent with said program.

The proposed project will trigger review under Section 401 of the Clean Water Act (CWA). The Texas Commission on Environmental Quality (TCEQ) will review 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. The applicant has not yet reached out to the TCEQ to initiate the Section 401 CWA process. If you have comments or questions on this proposed project's State water quality certification, please contact 401certs@tceq.texas.gov. You may also find information on the Section 401 process here: <https://www.epa.gov/cwa-401/basic-information-cwa-section-401-certification>.

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 was previously investigated for historic properties and none were identified as documented in the technical report titled "A Cultural Resources Survey of the Proposed Passport Shores Development Project in Aransas County, Texas" prepared by Archeology Consultants, Inc. and dated 2004.

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 EIS 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: 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 **10 July 2023**. 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-2003-01965**, and should be submitted to:

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