



# Public Notice

<b>U.S. Army Corps Of Engineers</b>	Permit Application No: _____	SWG-2011-00070
	Date Issued: _____	14 May 2019
	Comments _____	
<b>Galveston District</b>	Due: _____	14 June 2019

---

**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. 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 (CWA).

**APPLICANT:** Fisher Industrial Gateway Terminals, LLC  
5117 West Bay Road  
Baytown, Texas 77523  
POC: Johnnie Jennings  
Telephone: 281-427-7517  
Email: mtiller@tillerco.com

**AGENT:** Crouch Environmental Services, Inc.  
402 Teetshorn Street  
Houston, Texas 77009  
POC: Ms. Kelly Gonzales  
Telephone 713-955-77009  
Email: kelly@crouchenvironmental.com

**LOCATION:** The project site is located at the terminus of Tri City Beach Road south of Cedar Bayou, in Baytown, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Morgan's Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 17N; Easting: -854311.31; Northing: 3365724.44.

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

Latitude: 29.264555°North; Longitude: 094.896683°West

**PROJECT DESCRIPTION:** The applicant proposes to construct a commercial goods dock and fleeting project intended for the loading of steel rolls, containers, and liquid products safely and efficiently. The proposed project would shorten trips needed for hauling loads to only half-mile upstream of Cedar Bayou, saving transportation costs, delays, traffic, and barge collisions while providing a safer alternative for the shipping and receiving of commercial goods. In order to complete the project, the applicant is proposing to install 1,338 feet (ft) of steel corrugated bulkheading to stabilize the banks of the commercial dock, expand the existing, privately owned Tri City Beach Road to a width of 200 ft to allow safe thoroughfare that would fill 1.69 acres (ac) of Waters of the United States (WOUS), including wetlands. The proposed project would also raise the loading and unloading dock to an elevation of +9 ft above Mean Lower Low Water (MLLW). The applicant proposes to mechanically dredge approximately 32.94 ac and 684,000 cubic yards to a depth of -14 ft below MLLW to facilitate barge access within the area. Dredged material will be placed within a previously approved upland disposal site located 0.2 mile from the project. It is anticipated that 0.08 ac of oyster reef, 33.55 ac of waterbodies, and 0.53 ac of estuarine wetlands will be directly impacted by the proposed project.

**PROJECT PURPOSE:** The purpose of the proposed project is to construct a commercial dock for the loading and off-loading of commercial goods (including steel rolls, containers, and liquid products) safely and efficiently and to provide a safe area for fleeting barges. The Cedar Bayou Mobility Project meets the industry-driven demand for dockage and wharfage with the dramatic increase of industrial expansion along Cedar Bayou, while providing proximity to the Houston Ship Channel. The proposed project also would shorten trips required for ships hauling loads, reducing transportation costs, delays, traffic, and the potential for barge collisions, while providing a safe alternative for shipping and receiving commercial goods.

**AVOIDANCE AND MINIMIZATION:** The applicant conducted a thorough and extensive planning process in order to design a project that avoids and minimizes impacts to wetlands, special aquatic sites, and WOUS as much as possible and feasible, that also satisfies the applicant's purpose and need. The proposed project would minimize impacts to wetlands and oyster reefs within the project area to the greatest extent practicable. Due to the water dependent nature of this project, impacts to WOUS are unavoidable.

The proposed project avoids impacting the navigation and shipping channel (Cedar Bayou), threatened and endangered species habitat, and cultural resources. The proposed project will also relocate 0.24 ac of estuarine emergent (E2EM) wetland vegetation (*Spartina alterniflora*) to a nearby, existing wetland along Cedar Bayou and 0.08 ac of impacted oyster reef to a more productive and protected reef just south of the proposed project. With only 0.53 ac of impacts to E2EM wetlands, the proposed project cannot be re-designed further to reduce impacts without compromising the practicability and overall purpose of the commercial dock and fleeting development.

**MITIGATION:** To compensate for the unavoidable loss of oyster reefs and WOUS, the Applicant proposes to mitigate for these resources. The project is in the secondary service area of the USACE approved Gulf Coastal Plains Mitigation Bank. The Applicant intends to purchase 1.78 credits to mitigate impacts to E2EM wetlands, resulting in no net loss of wetlands.

There are currently no credits available within Mitigation Banks or in lieu fee programs to compensate for the unavoidable impacts to oyster reef habitat. The Applicant proposes to provide in kind, Permittee Responsible Mitigation (PRM) that will protect 1.17 ac of existing oyster habitat and create 0.08 ac of artificial oyster reef habitat at approximately 200 feet south of the Project site, along Cedar Bayou totaling to 1.25 ac of oyster reef habitat. The habitat would also be enhanced with the removal of excess debris and garbage. The enhancement, creation, and preservation would protect and increase the existing oyster reef habitat within the Cedar Bayou watershed at a 15-to-1 compensatory mitigation-to-impact ratio, resulting in no net loss of aquatic resources.

**CURRENT SITE CONDITIONS:** The Project site is located within the North Galveston Bay watershed (Hydrologic Unit Code [HUC] 12040203) and is included in the Cedar Bayou Watershed Protection Plan that was developed and approved by the Environmental Protection Agency (EPA) in June 2016. The project site also occurs within the Texas Commission of Environmental Quality water quality segment identified as 'Cedar Bayou Tidal (Segment 0901),' an impaired waterbody.

According to the ecoregions of Texas described by Griffith et al, the Project site is in the Northern Humid Gulf Coastal Prairies, a sub-ecoregion of the Western Gulf Coastal Plains. This ecoregion is described by quaternary-age deltaic sands, silts, and clays which underlie this gently sloping coastal plain. The historical vegetation included mostly grasslands with a few clusters of oaks, known as oak mottes or maritime woodlands. Almost all the coastal prairies have been converted to cropland, rangeland, pasture, or urban land uses. The invasive Chinese tallow (*Triadica sebifera*) tree and Chinese privet (*Ligustrum sinense*) have invaded large areas in this region. Soils are mostly fine-textured: clay, clay loam, or sandy clay loam (see Exhibit 3). Annual precipitation varies from 37 inches in the southwest portion to 58 inches in the northeast, with a summer maximum (Griffith et al 2010).

Based on a review of historical aerial photographs, in 1953 the southwestern portion of the project site was comprised of herbaceous vegetation with few scattered trees but over time, this part of the project site appears to have become forested and cleared. In 1995, the southern portion of the project site was forested and in 2008, a significant amount of tree clearing is evident. The north and northwestern portions of the project site appear to have been developed and used commercially on and off since 1941. Previously, a road connected the project site to the other side of the Cedar Bayou as early as 1941 but the road appears to have been deconstructed sometime between 1982 and 1995. In 1995, a small, landlocked waterbody can be seen in the northwest portion of the project site. In 2012, the waterbody is no longer present.

The Applicant has owned the project site for over 80 years and previously used the surrounding land adjacent to Cedar Bayou and Fisher Marsh to support agricultural activities, including rice field farming and livestock use. Portions of the project site are currently being used as a marina, currently permitted under SWG-2011-00070. The project site consists of E2EM, herbaceous uplands, and forested uplands. Most of the project site consists of shallow water ranging in depths from 2 inches (in) to 4 ft. The benthic habitat consists of sand, mud, silt, clay particles, and shell. No seagrasses occur within the Project site. The oyster reef comprises 0.08 ac along the Cedar Bayou and Fisher Marsh, a perennial waterbody. The entire project site is located within the Federal Emergency Management Agency 100-year flood zone (see Exhibit 4).

**NOTES:** This public notice is being issued based on information furnished by the applicant. This project information has not been verified by the Corps. As of the date of this public notice, the Corps has received but not yet verified the wetland delineation. The applicant's proposed project summary, plans, alternative analysis, and compensatory mitigation plan are enclosed in 61 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.

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.

Pursuant to 33 USC 408, the proposed project will require Section 408 coordination and review. This is a requirement for activities that seek permission, to temporarily or permanently, alter, occupy, or use a federally authorized United States Army Corps civil works project. Changes to the proposed project, from the Section 408 process, may warrant additional coordination.

**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 has been so extensively impacted by subsidence (prior to 1970, the permit area was identified as Fisher Marsh) that there is no potential for historic properties to exist within the permit area. Therefore, the proposed project has no potential to effect historic properties.

**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 **14 June 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-2011-00070**, and should be submitted to:

Central Unit  
Regulatory Division, CESWG-RDE  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229  
409-766-3869 Phone  
409-766-3931 Fax  
swg\_public\_notice@usace.army.mil

DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS