



Public Notice

U.S. Army Corps Of Engineers	Permit Application No: _____	SWG-2018-00573
	Date Issued: _____	14 April 2020
	Comments _____	
Galveston District	Due: _____	14 May 2020

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.

APPLICANT: River Plantation MUD
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Conroe, Texas 77032
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AGENT: SMC Consulting, Inc.
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LOCATION: The project site is located in a tributary to the West Fork San Jacinto River, approximately 4.25 miles south of Conroe, within Montgomery County, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: Conroe and Tamina, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 30.249771° North; **Longitude:** 095.438642° West

PROJECT DESCRIPTION: The applicant requests to retain approximately 7,300 linear feet of existing concrete lined channel and proposes to repair by replacement 911 linear feet (0.31 acres) of channel with new concrete. These repairs are necessary due to storm damage caused by Hurricane Harvey. The applicant proposes no new temporary or permanent impacts to wetlands or waters of the United States, no mechanized land clearing of trees or shrubs, nor modifications outside of the existing concrete lined ditch. The applicant has stated that they will utilize public roads, the Plantation Creek Drainage Easement, and the concrete lined ditch for construction access. The applicant has stated no construction access or activities will occur on adjacent properties.

PROJECT HISTORY: Between the 1960s and 1996, the subject stream channel was straightened and concrete lined. A review of Corps records indicates that no permits were issued for this work. In 2018, Hurricane Harvey damaged the project site and FEMA agreed to fund the necessary repairs. As a condition of FEMA funding, the applicant must obtain a Corps permit for the straightening of the stream channel and concrete lining. As such, the applicant requests to retain the existing structures and obtain authorization to replace them in kind. The project agent has stated the following in regard to project history:

“It is understood that the development project began in the mid to late 1960’s. The [attached] **1971** historical aerial photograph shows the construction of the golf course, streets, housing, the tennis courts / recreation center, and wastewater treatment plant. This historical aerial photograph shows that the subject channel was widened and straightened from the wastewater treatment plant (near southern downstream end) to Stonewall Jackson Drive (upstream). Using the JW Beard 1995 stationing system, this reflects an improved and straightened channel of approximately 3400 linear feet of channel, from station 0+00 to 34+00. This work was clearly completed prior to the implementation of the Clean Water Act of 1972. With regard to the concrete lining of this section of the channel – we have no records that indicate when any of the concrete lining was done on this section – other than the fact that the 1995 project plans that call out that “existing concrete lining” areas under Stonewall Jackson Drive and River Plantation Drive and that the rest of this stretch is “proposed concrete paving”. As such, it appears that while the southern approx. 3400 linear feet of the channel was straightened, only small portions were concrete paved. Using an approximate bottom width of 15’ – this reflects 3400 linear feet and 1.17 acres of area.

Additionally, the **1971** historical aerial photograph appears to show that the northern approximate 50% of the overall channel is not evident. Either this section of the channel was excavated out of uplands, or the historic channel was filled in/improved during the development of the golf course and neighborhood. This is the condition indicated from approximately Stonewall Jackson Drive (approx. station 34+00) to the upper end of the project (approx. station 73+00). Alterations to the ponds and fairways of the golf course are evident.

The **1979** historical aerial photograph also seems to indicate the construction / improvement of the “mid-section” of channel – showing the extension of a straightened channel along the eastern edge of the golf course. This straightening / construction indicates that approx. 2100 linear feet of channel were dug/improved along the eastern edge of the golf course. This reflects improvement from approx. station 34+00 to station 55+00. Using an approximate 15’ bottom width – this reflect 2100 linear feet and 0.72 acres of area.

Additionally, the **1979** historical aerial photograph does appear to show some lesser improved drainage pathways upstream (north) of the end point of improvements near station 55+00. These noted improvements are likely manmade drainage improvements along the eastern edge of the golf course – as these areas are not readily evident in the above referenced 1971 historical aerial photograph.

The **1996** historical aerial photograph shows the construction / straightening of the channel from the prior ending point of station 55+00 to the project terminus of station 73+00. This reflect channelization of the remaining 1800 linear feet of the overall project area. Using an approx. 15’ bottom width this reflects 1800 linear feet and 0.62 acres of area.

Additionally, the **1996** historical aerial photograph and design engineering plans show that approx. 2020 linear feet of existing overall channel was concrete lined before the 1996 design drawings were developed. These same drawing show that approx. 5055 linear feet of concrete lining is to be installed as part of the 1996 project. The 1996 project plans numbering system show the project starting at station 1+25, then ending at Station 70+68 and then the last approx. 232 linear feet of the overall 7300 linear foot project being simply shown as existing concrete lining and not surveyed. Based on these plans, it appears that 5055 linear feet of channel with an approx. bottom width of 15’reflects 1.74 acres of concrete paving that was installed in 1996.

The **2004, 2008** and current historical aerial photographs show no change to the subject channel. It appears that the entire channel was completely concrete lined by the end of 1996. “

AVOIDANCE AND MINIMIZATION: The applicant has stated that they have avoided and minimized the environmental impacts by replacing existing structures, rather than proposing new work.

MITIGATION: Because the applicant does not propose to concrete line new portions of channel, they have not proposed mitigation. While the work performed over 20 years ago may have been in violation of the Clean Water Act, the Corps does not typically pursue enforcement actions on violations over 5 years old. Additionally, based on the Corps review of historic Nationwide Permits (NWP), it appears that a majority of this work may have fit the terms and conditions of #26, “Headwaters and Isolated Water Discharges,” which was in place from 1984 to 2000. This NWP required a pre-construction notification and allowed up to 10 acres of wetland fill.

However, in an effort to mitigate any potential concerns regarding compensatory mitigation for functional losses, the project agent has provided the following Clean Water Act regulatory summary:

“The Clean Water Act was implemented in 1972 – as such the southern widening and straightening work was completed prior to the implementation of the Clean Water Act and was not subject to the regulations. This applies to stations 0+00 to station 34+00. This widening and straightening work was evident in the 1971 historical aerial photograph which has been provided. As this work was performed prior to the Act – no permitting was available or required.

A search of the USACE, EPA and other available websites indicates that USACE Nationwide Permits (NWP’s) were not implemented until 1982, with reauthorization in 1987, 1992 and 1997 (and beyond). As such – the work performed at the site between 1972 and 1982 would not have been eligible for a Nationwide Permit as the systems were not in place. This assumes that the work would have required a [standard] permit for the channelization activities. The work performed between 1972 and 1979 based on aerial photographs was approx. 2100 linear feet of channel and 0.72 acres.

While NWP’s were in place during the 1996 concrete lining work – the best available information we can locate about the NWP’s is the 1997 re-issuance which says no changes were made to NWP 13 from the 1992 NWP’s. This document claims that the maximum amount of Bank Stabilization allowed is limited to 500 linear feet – well below the footage of concrete lining performed during the 1996 concrete lining work amount of approx. 5050 linear feet. As such – the 1996 concrete lining work appears to not have been eligible for a NWP.

The 1995 project plans show that the channel was constructed and straightened, but only had concrete paving under the bridges and in the curves of the channel. The 1996 plans show that approx. 2020 linear feet of existing overall channel had previously been concrete lined and proposed approx. 5055 linear feet of concrete lining was proposed in the 1996 project. The 1996 project plans numbering system show the project starting at station 1+25, then ending at Station 70+68 and then the last approx. 232 linear feet of the overall 7300 linear foot project being simply shown as existing concrete lining and not surveyed.”

CURRENT SITE CONDITIONS: The project site is currently a concrete lined channel adjacent to a golf course and several residential homes. Several portions of the channel seem to receive regularly mowing, allowing mainly herbaceous vegetation to grow. There are no wetlands within the channel limits.

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 plans are enclosed in 24 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:

The project site is not located within the Texas Coastal Zone and therefore, does not require certification from the Texas Coastal Management Program.

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 1,500 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.

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 had the potential to impact cultural resources potentially eligible for inclusion in the National Register of Historic Places. All work conducted prior to 1972 (when the Clean Water Act was enacted) would not have been subject to Section 106 of the National Historic Preservation Act. The Corps is consulting with the Texas State Historic Preservation Officer to determine how to proceed.

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, 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 May 2020**. 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-2018-00573**, and should be submitted to:

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