



Public Notice

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

Galveston District

Permit Application No: _____

Date Issued: _____

Comments _____

Due: _____

SWG-2015-00169

5 December 2017

8 January 2018

**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 404 of the Clean Water Act (CWA).

APPLICANT: Tarkington Bayou Mitigation, LLC
4317 Elm Street
Chevy Chase, Maryland 20815
Telephone: 936-366-0800
POC: Mr. Bill Goodrum

AGENT: The Earth Partners, LP
1132 NW Stallings Drive, Suite 6
Nacogdoches, Texas 75964
Telephone: 903-245-0592
POC: Mr. Neil Boitnott

LOCATION: The project site is located on a 1,253-acre tract situated within a larger parent tract located in the U.S. Geological Survey (USGS) East Fork San Jacinto 8-digit Hydrologic Unit Code (HUC) 12040103, near Cleveland, in Liberty County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: PLUM GROVE, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 30.241431 North;

Longitude: -95.030870 West

PROJECT DESCRIPTION: The Sponsor proposes the establishment of the establishment and operation of the Tarkington Bayou Mitigation Bank (TBMB, Bank). The TBMB will consist of restored, enhanced, and preserved wetlands. Indirectly, headwater stream channels to Tarkington Bayou, a significant tributary to Luce Bayou, will be improved through the conservation and enhancement of the watershed and wetlands within the bank to compensate for unavoidable impacts to waters of the U.S. within the geographic service area for the proposed TBMB.

AVOIDANCE AND MINIMIZATION: The specific objectives of the project are to restore the physical, chemical, and biological characteristics of the site.

MITIGATION: The applicant proposes to construct a compensatory mitigation bank.

CURRENT SITE CONDITIONS: The site consists of three distinct wetland habitat types that include depressional areas, flats, and riparian areas. The depressional areas are either forested or emergent wetlands and are periodically ponded throughout the year. Forested depressions within the Bank are typically represented by laurel oak (*Quercus laurifolia*), Drummond's maple (*Acer rubrum* var. *drummondii*), Chinese tallow (*Triadica sebifera*), sweetgum (*Liquidambar styraciflua*), loblolly pine (*Pinus taeda*), common buttonbush (*Cephalanthus occidentalis*), and dwarf palmetto (*Sabal minor*). The "Flat" communities are lowlying wetland areas of less than 1-percent slope and are dominated by laurel oak, loblolly pine, Drummond's maple, Chinese tallow, and dwarf palmetto. The riparian and floodplain systems are associated with Tarkington Bayou and consist of a mixture of large pine and hardwoods, including water oak, laurel oak, swamp chestnut oak (*Quercus michauxii*), cherrybark oak (*Quercus pagoda*), red maple (*Acer rubrum*), sweetgum, Chinese tallow, dwarf palmetto, and various understory species tolerant to moist environments (*Cephalanthus* spp., *Vaccinium* spp., *Viburnum* spp., *Morella* spp., etc.). Also within this area are pockets of bald cypress (*Taxodium distichum*) swamp. These swamps are in relatively good condition, ecologically, as the soils were too moist for commercial forestry.

Much of the existing habitats located within the bank have been altered by previous agriculture and/or intensely managed pine plantation silvicultural practices and do not optimally function as compared to similarly classified reference ecosystems within the region. Commercial pine plantation is evidenced in the presence of rows.

NOTES: This public notice is being issued based on information furnished by the applicant. Not all of the project information has been verified by the Corps. The applicant's mitigation bank Prospectus is enclosed in 68 sheets.

Due to comments from the Interagency Review Team (IRT) regarding the berm design on the Tarkington Bayou Mitigation Bank (TBMB), the Sponsor has revisited the berm design to re-establish and establish wetlands, while also considering the concerns of the IRT. The revised berm design:

- Reduces the likelihood of creating open water habitat by reducing the maximum depth of impoundment to 2 ft. in most areas. Based on reference wetland data within the parent tract, a 2-ft. depth supports herbaceous and scrub/shrub wetland habitat without creating open water.
- Is based on a site-specific water budget / hydrology study. This study is still under development, but will be submitted with the final Mitigation Banking Instrument.
- Increased the amount of non-forested (herbaceous and scrub/shrub) wetland in deeper portions of the impounded area, as supported by reference wetland data. Previously, forested wetland credit was claimed for areas with 1-2 ft. of inundation, but after further review and evaluation it became evident that reference wetlands in similar situations are supporting herbaceous and scrub/shrub wetlands, thus the revised credit type.

Berm design plans are provided as an attachment, and an overview maps are provided in Exhibits 1 and 2. A summary of acreages of re-established and established wetlands is provided in Table 1.

Table 1

Post-Implementation Wetland Habitat	Re-Establishment*	Establishment	TOTAL
Herbaceous	48.2	56.9	105.1
Scrub/Shrub	20.0	0.0	20.00
Forested (Hardwood/Pine)	37.0	88.5	125.5
TOTAL	105.2	145.4	250.6

* Re-establishment means re-establishing wetlands as an adjacent, riparian wetland system.

Also, on 31 July 2017, the applicant requested a sponsorship transfer. Earth Partners, LP, under its wholly owned Tarkington Mitigation Bayou, LLC has purchased the property and all rights (including all banking instrument documents) associated with the Tarkington Bayou Mitigation Bank action. Sponsor qualifications are attached to the public notice. A table of mitigation experience, and other qualifications, provided in the Prospectus are still applicable to the current sponsor and are in the attached qualifications.

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: 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: The proposed ground disturbing activities associated with the establishment of this mitigation bank are either of such limited nature and scope or are in areas that have been extensively impacted by levee construction or rice farming that they have no potential to effect historic properties, even if present within the project 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, 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 **8 January 2018**. 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-2015-00169**, and should be submitted to:

Regulatory Division, CESWG-RD-P
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3869 Phone
409-766-6301 Fax
swg_public_notice@usace.army.mil

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