



Public Notice

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

Galveston District

Permit Application No: SWG-2006-00484

Date Issued: 1 February 2023

Comments

Due: 6 March 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: Texas Department of Transportation-Houston District
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LOCATION: The project site is located in adjacent wetlands along State Highway 146, near La Porte, in Harris County, Texas 77571. The project can be located on the U.S.G.S. quadrangle map titled: LaPorte and League City, Texas.

LATITUDE & LONGITUDE (NAD 83):

Starting Latitude: 29.652819° North; **Longitude:** 095.030006° West

Ending Latitude: 29.582282° North; **Longitude:** 095.028887° West

PROJECT DESCRIPTION: The applicant proposes to permanently discharge fill material into a total of 2.59 acres of wetlands during construction activities associated with improvements to the existing State Highway (SH) 146. The associated fill activities include grading on banks along the main lane and frontage road locations, as well as the construction of a concrete batch plant that is required to complete additional work in addition to the previously authorized project under Nationwide Permit (NWP) SWG-2006-00484.

PROJECT HISTORY: Department of the Army (DA) SWG-2006-00484 verified a Nationwide Permit (NWP) 14 on 6 March 2009, and expired on 18 March 2012, and authorized a linear transportation project and a structural discharge project. The permit was conditioned to purchase mitigation bank credits.

DA SWG-2006-00484 issued on 14 June 2010, and expired on 6 March 2011, reverified the previous authorization and replaced sheet 2 of 9 of the permitted plans showing an incorrect alignment of SH 146 with a revised plan.

DA SWG-2006-00484 issued on 24 February 2011, and expired on 18 March 2012, reverified previous work at three jurisdictional crossings, this NWP 14 is for work associated with construction of three new grade separated overpasses at SH 146 and Wharton Weems Road.

DA SWG-2006-00484 issued on 16 April 2013, and expired on 18 March 2017, verified impacts to 0.024 acre of waters and wetlands during construction of a 14-foot sound barrier wall and provide drainage through the sound barrier wall through two culverts and the associated riprap erosion protection. In addition, the contractor will have temporary workspaces within Wetland G, Wetland L-1, and Water N-2 as labeled on the project plans.

On 13 April 2022, a NWP 14 (SWG-2006-00484) was verified by the U.S. Army Corps of Engineers (USACE) Galveston District authorizing TxDOT to permanently discharge a total of 2,137 cubic yards of fill material into a total of 0.74 acre of palustrine emergent, palustrine scrub shrub, and estuarine emergent wetlands, and 54 linear feet of a perennial stream, Taylor Bayou, dispersed throughout 15 single and complete crossings during the improvements to the existing SH 146. These improvements include culvert extension, placement of a culvert headwall, placement of riprap, construction of a detention pond, and placement of bridge columns. The roadway improvements include adding lanes, sidewalks/side paths, additional frontage road lanes, adding pedestrian bridges, and adding detention ponds.

After NWP SWG-2006-00484 was authorized, TxDOT determined that additional impacts to Ditch 2, Ditch 3, Ditch 4, Wetland 6, Wetland 7, Wetland 9, Wetland 10, and Wetland 18 are required. These additional impacts are due to fill required to accommodate the appropriate grade on banks along the main lane and frontage road locations, as well as construct a concrete batch plant that is required to complete work associated with the previously authorized project under NWP SWG-2006-00484. TxDOT purchased 1.8 wetland credits for impacts to Crossing 3 (0.476 acre) and Crossing 12 (0.24 acre) to satisfy the compensatory mitigation requirements for previously authorized NWP SWG-2006-00484. The previously permitted and mitigated portions of Crossing 3 and Crossing 12 would be deducted from the impact totals and compensatory mitigation under this new Standard Permit (SP) application.

A total of 14.96 acres of jurisdictional waters including twenty freshwater wetlands (9.18 acres), five estuarine wetlands (2.80 acres), and one tidal perennial stream, Taylor Bayou (2.98 acres) were identified during the field reconnaissance for this SP project and 3.41 acres of permanent impacts to jurisdictional waters is anticipated as a result of the proposed project. A total of 0.7423 acre were previously permitted and mitigated for under NWP SWG-2006-00484. No additional impacts to jurisdictional waters are anticipated to occur from the changes after SWG-2006-00484 within the following nine crossings: Crossing 1, Crossing 2, Crossing 4, Crossing 5, Crossing 10, Crossing 11, Crossing 13, Crossing 14, and Crossing 15. Therefore, any proposed construction within those jurisdictional waters is authorized and authorized to begin under the NWP SWG-2006-00484, which was issued on 13 April 2022. A total of 2.60 acre of additional impacts to jurisdictional waters are proposed within the following six crossings: Crossing 3, Crossing 6, Crossing 7, Crossing 8, Crossing 9, and Crossing 12; and therefore, will be evaluated under this SP application.

AVOIDANCE AND MINIMIZATION: The applicant proposes to minimize impacts for the completion of construction by staying within the existing right-of-way (ROW). All proposed improvements within the wetlands have been minimized to the extent practicable to still accomplish project objectives by avoiding 11.6287 acres of the 14.96 acres of WOUS within the project area. With the large amount of commercial/residential properties and staying within existing ROW, route realignment options to reduce impacts to waters of the US were limited, but impacts could not be completely avoided. Compensatory mitigation is required for unavoidable impacts to 3.3413 acres of wetlands and 8.4 FCUs (0.7423 acre/1.8 FCU previously permitted) at Gulf Coastal Plains MB. Compensatory mitigation for this SP would include 6.6 FCUs for 2.60 acres.

MITIGATION: The applicant has stated that compensatory mitigation is required for unavoidable impacts to 3.3413 acres of wetlands totaling 8.1 FCUs (of which 0.7423 acre/1.8 FCU is previously permitted and purchased) at Gulf Coastal Plains Mitigation Bank (GCPMB). Compensatory mitigation for this SP would include an additional 6.6 FCUs for 2.60 acres of impacts.

The Gulf Coastal Plains Mitigation Bank has a service area that overlaps the proposed project area. The project area occurs within the secondary service area for this bank, so a 1.5 multiplier is required. The bank also only releases credits in a credit suite, meaning an equal amount in each Functional Capacity Unit (FCU) category determined by the highest value must be purchased. The Atlantic and Gulf Coastal Plains utilizes HGM interim (HGMi) assessments to mandate credits of wetlands or other water of the U.S. that are adversely impacted. This bank recognizes the HGMi assessment method and for credit purchases combines Palustrine Emergent (PEM) wetlands and Palustrine Scrub-Shrub (PSS) wetlands into one credit. A Wetland Functional Assessment Report was completed detailing the calculations for determining the functional loss of Temporary Storage & Detention of Storage Water (TSDSW), Maintain Plant and Animal Communities (MPAC), and Removal & Sequestration of Elements & Compounds (RSEC) anticipated from unavoidable impacts to wetlands as a result of the proposed project. HGMi functional assessments that were completed for the four crossings which would require mitigation.

TxDOT previously purchased 0.6 FCU for TSDSW, MPAC, and RSEC totaling 1.8 FCUs under NWP SWG-2006-00484. TxDOT proposes to purchase an additional 6.6 FCUs for 2.60 acres of impacts to fulfill the additional mitigation requirements for impacts associated with this SP application. Since Gulf Coastal Plains Mitigation Bank sells credits in a credit suite for PSS/PEM impacts, 2.2 FCUs of each TSDSW, MPAC, and RSEC (6.6 FCUs total) are required to mitigate for impacts to PSS/PEM.

CURRENT SITE CONDITIONS: Currently, the project area consists of a mix of single-family residential, commercial, industrial, and open space/undeveloped parcels. The open space/undeveloped parcels are dominated by pasture with scattered wooded areas, primarily along the streams. Dominant habitat types are urban and riparian in the existing ROW. The project site conditions contains palustrine emergent, palustrine scrub shrub, and estuarine emergent wetlands, and the waters of Taylor Bayou, which are adjacent to the ROW of SH 146. The project site is limited at the north by West Fairmont Parkway and limited at the south by Red Bluff Road.

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 applicant's plans are enclosed in 34 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 contacted the TCEQ and initiated the Section 401 CWA process, on 7 October 2022. 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>.

LEAD FEDERAL AGENCY:

TxDOT has been identified as the lead federal agency for complying with Section 7 of the Endangered Species Act, National Historic Preservation Act, and Magnuson-Stevens Fishery Conservation and Management Act. As such, please direct all comments, questions, or concerns regarding these Acts to the TxDOT.

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 industrial, commercial, residential, and infrastructure development 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: 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 **6 March 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-2006-00484**, and should be submitted to:

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