



Public Notice

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

Galveston District

Permit Application No: SWG-2019-00234

Date Issued: 16 February 2023

Comments

Due: 20 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: Landmark Industries, LLC
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Houston, Texas 77042-4739
POC: Kent Brotherton
Telephone: 713-789-0310
Email: jkb@landmarkindustries.com

AGENT: BGE, Inc.
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Houston, Texas 77042-3475
POC: Jonathon Bolton
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Email: jbolton@bgeinc.com

LOCATION: The project site is located in wetlands and other waters of the United States, at the intersection of State Highway 99 and Farm-to-Market Road 529, in Cypress, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Katy, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.8794° North; **Longitude:** 095.7513° West

PROJECT DESCRIPTION: The applicant proposes to discharge fill material into a total of 10.61 acres of wetlands consisting of 4.83 acres of palustrine emergent wetlands, 0.06 acre of palustrine scrub-shrub wetlands, 1.91 acres of palustrine unconsolidated bottom wetlands, and 3.81 acres of palustrine forested wetlands, on an 847-acre tract for the purpose of constructing a mixed-use development.

AVOIDANCE AND MINIMIZATION: The applicant has submitted an analysis of alternatives. (Published with this public notice). The applicant has stated that their preferred alternative will avoid impacts to 1.08 acres of palustrine emergent wetlands and 0.14 acre of palustrine forested wetlands. The applicant has also stated that this alternative will avoid all impacts below the ordinary high-water mark of all delineated streams within the project area and a 500-foot reserved corridor along Bear Creek. The applicant states that this alternative avoids impacts to wetlands and waters of the United States to the maximum extent practicable.

MITIGATION: The applicant has proposed a permittee responsible mitigation (PRM) plan for a mitigation site located 7 miles from the project site. The applicant states that this plan will provide compensation for 10.61 acres of wetlands proposed to be impacted as a result of this project. The PRM Plan includes establishment of 4.7 acres of forested wetlands and re-establishment of 7.8 acres of herbaceous and prairie depressional wetlands. The expected increase in wetland functional values to be provided through the implementation of the PRM Plan would meet or exceed the decrease in functional values expected to result from the proposed project.

CURRENT SITE CONDITIONS: The project site is currently an undeveloped tract of land surrounded by residential and commercial development to the north and east, and State Highway 99 to the west. The majority of the site is currently pasture land. Approximately 43% of the site lies within the 100-year floodplain. The entire site contains 11.83 acres of wetlands subject to the Corps regulatory authority. A completed Approved Jurisdictional Determination found that 30.61 acres of wetlands on the northern portion of the subject tract are non-jurisdictional and therefore not subject to the Corps jurisdictional authority. This AJD was coordinated with the EPA as may be viewed at <https://www.swg.usace.army.mil/Portals/26/SWG201900234.pdf>.

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 13 January 2023. The applicant's plans are enclosed in 21 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: The project site is not located within the Texas Coastal Zone and therefore, does not require certification from the Texas Coastal Management 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 investigated for historic properties and one historic site (41HR1263) was found in the permit area. Based on information contained in the report, the Corps has determined that site 41HR1263 is not eligible for inclusion in the National Register of Historic Places and further investigation is not justified. The Corps is currently coordinating the results of the investigation with the Texas State Historic Preservation Officer.

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.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Programs of the Corps of Engineers, 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 **20 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-2019-00234**, and should be submitted to:

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DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS