



Public Notice

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

Galveston District

Permit Application No: SWG-2017-00518

Date Issued: 25 January 2018

Comments

Due: 26 February 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: Cunningham Interest II LTD
400 East Friar Tuck
Houston, Texas 77024
POC: Mr. Christopher Gilbert

AGENT: Berg Oliver Associates, Inc.
14701 St. Mary's Lane, Suite 400
Houston, Texas 77079
POC: Mr. Keith Morgan
Telephone: 281-589-1981

PROJECT DESCRIPTION: The Sponsor proposes the establishment and operation of a large-scale wetland and stream complex available for regional wetland and stream compensation that would be managed and maintained in perpetuity. The objective of the Cypress Creek Mitigation Bank (CCMB) is to provide replacement of the various functions and values of wetlands and streams lost due to permitted impacts to jurisdictional areas within the proposed Primary and Secondary Service Areas. In addition to the creation of wetlands, the bank will propose preserving high quality stream habitat and riparian corridor along Cypress Creek.

The proposal is to create approximately 88 acres of herbaceous wetlands on-site within existing, previously disturbed upland agricultural fields. The applicant proposes enhancement of the existing 16 acres of herbaceous wetlands, while 3 acres of agricultural ponds will be restored to wetlands. All these aquatic resources will be held in perpetuity by the placement of a conservation easement held by a qualified third party land trust. Additionally, there is the potential to restore and enhance portions of Cypress Creek tributaries.

LOCATION: The proposed CCMB would be on a 509-acre tract located along Cypress Creek, in Harris County, Texas. More specifically, the site is located on the United States Geological Service (USGS) Warren Lake topographic quadrangle, coordinates 29.940665° N and -95.817147° W.

AVOIDANCE AND MINIMIZATION: The specific objectives of the project are enhancement, restoration, and establishment of the physical, chemical, and biological characteristics of the site.

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

CURRENT SITE CONDITIONS: Based on a preliminary wetland and stream delineation of the site, it is estimated that approximately 16 acres of potential wetlands, 3 acres of man-made stock ponds, and 5,500 linear feet of drainage ditches currently exist on the tract. The 509-acre proposed bank site, with the exception of the southeast corner, lies entirely within the 100-year floodplain of Cypress Creek as published by the Federal Emergency Management Agency. The project area is dominated by open pasture areas primarily used for livestock. The majority of this site is currently utilized for agricultural livestock production and is improved grazing pasture for the livestock.

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 mitigation bank prospectus and checklist are enclosed in 33 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: 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 contemporary drainage or rice farming that they have no potential to effect historic properties, even if present within the project area. The staff archaeologist will review the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information.

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 **28 February 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-2017-00518**, addressed to Mr. Dwayne Johnson or submitted to:

swg_public_notice@usace.army.mil

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS