



Public Notice

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

Galveston District

Permit Application No: SWG-1992-00054

Date Issued: 6 January 2022

Comments

Due: 7 February 2022

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
P.O. Box 1386
Houston, Texas 77251
POC: Sue Theiss
Telephone: 713-802-5070
Email: sue.theiss@txdot.gov

AGENT: N/A

LOCATION: The project site is located in Dry Creek/Crystal Creek, at SH 242 Detention Pond 9, in Montgomery, Montgomery County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Outlaw Pond, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 30.214992 North; **Longitude:** -95.312045 West

PROJECT DESCRIPTION: The applicant is proposing to construct a storm water detention pond, designated as Detention Pond 9, associated with SH 242. The basin would be approximately 12.28 acres. A 10- to 20-foot-wide earthen maintenance berm would encircle the basin and an inflow structure would convey storm water from the basin eastward through and outfall into Dry Creek. The construction of the proposed Detention Pond 9 would require a total of 6.066 acres of permanent impacts to waters of the U.S., including wetlands (5.963 acres of wetlands and 0.103 acre of non-wetland waters).

AVOIDANCE AND MINIMIZATION: The applicant has stated that they have avoided and minimized the environmental impacts by the following construction design techniques: The proposed Detention Pond 9 has been sized to the minimum area necessary to manage storm water within the SH 242 roadway ROW during rainfall and storm events. Options to relocate or redesign Detention Pond 9 are limited by the hydrological characteristics of the project area and by land development plans in the vicinity of the proposed project. Two additional storm water detention ponds, designated as Detention Pond 10 and Detention Pond 11, were considered during the early project planning phases to meet the storm water requirements within the CSJ 3538-01-055 project limits. The implementation of Detention Pond 10 and Detention Pond 11 would have allowed for the design of a slightly smaller version of the currently proposed Detention Pond 9; however, numerous design and location considerations, including potential wetland impacts, prevented the advancement of the proposed Detention Pond 10 and Detention Pond 11 design options.

A scenic easement, approximately 25-foot in width, has been designed to be maintained along the southern boundary of the proposed Detention Pond 9 project area. Wetlands (0.216 acre of Wetland Area 1) as well as existing upland wooded vegetation within the scenic easement would be avoided by the proposed project and would be retained in the current condition (see Attachment E – Project Design and Attachment J – Figures and Supporting Documentation, Detention Pond 9 Stormwater Pollution Prevention Plan Layout).

MITIGATION: The applicant proposes to mitigate for the proposed impacts by purchasing a total of 11.7 forested wetland mitigation credits (3.9 physical, 3.9 biological, 3.9 chemical) purchased at the Tarkington Bayou Mitigation Bank to compensate for permanent impacts to wetlands located on the proposed Detention Pond 9 property. A total of 5,368 forested stream mitigation credits would be purchased at the Houston-Conroe Mitigation bank to compensate for impacts to one unnamed intermittent stream (headwaters) within the Detention Pond 9 project limits.

CURRENT SITE CONDITIONS: DA Permit No 19241 was issued 15 July 1991, to TxDOT for the construction of SH 242, in Montgomery County, Texas. The following details describe the original authorization:

The approximately 17-mile-long SH 242 facility connects Interstate Highway (IH) 45 approximately 7.5 miles south of Conroe and US 59 three miles south of Splendora. Currently, the western section of the proposed project area, located between IH 45 and Lexington Drive, has already been constructed and consists of a four-lane divided facility.

SWG-1992-00054, issued 8 December 2020 proposed to widen SH 242 from Interstate 45 to US Highway 59, in Montgomery County, Texas. The total length of the project is approximately 17.0 miles (27.4 kilometers [km]). The existing ROW has an area of approximately 494.5 acres. The SH 242 alignment was previously surveyed in 2012 by Blanton and Associates (Young and Sanchez 2013).

However, following the 2012 survey, TxDOT incorporated a design change for adding detention ponds, which required the acquisition of approximately 61.86 acres of proposed new ROW. The total project area for this design change consists of the footprint of all proposed detention pond/easement improvements within the 61.86-acre proposed new ROW, which is the subject of this report.

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 8 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 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 TCEQ and initiated the Section 401 CWA process and submitted a pre-filing meeting request, on 11 November 2021. 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:

Texas Department of Transportation (TxDOT) has received funding from Federal Highways Administration (FHWA) has been identified as the lead federal agency for complying with Section 7 of the Endangered Species Act and National Historic Preservation Act. As such, please direct all comments, questions, or concerns regarding these Acts to the TxDOT/FHWA.

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:

TxDOT is receiving funding from FHWA for this project. Therefore, FHA is the lead Federal Agency, and all Section 106 consultation will be handled by TXDOT pursuant to the Programmatic Agreement between TXDOT, the Texas State Historic Preservation Officer, FHA, and the Advisory Council on Historic Preservation.

THREATENED AND ENDANGERED SPECIES:

TxDOT is receiving funding from FHA for this project. Therefore, FHA has been identified as the lead federal agency for complying with Section 7 of the Endangered Species Act. As such, please direct all comments, questions, or concerns regarding these Acts to FHA.

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 **7 February 2022**. 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-1992-00054**, and should be submitted to:

Evaluation Branch
Regulatory Division, CESWG-RDE
U.S. Army Corps of Engineers
Galveston District
2000 Fort Point Road
Galveston, Texas 77550
409-766-3869 Phone
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DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS