



Public Notice

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

Galveston District

Permit Application No: _____

SWG-2007-01509

Date Issued: _____

25 July 2023

Comments _____

Due: _____

24 August 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: AXYS CAPITAL CREDIT FUND, LLC
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Houston, Texas 77056
POC: Mr. Charles Duffley
Telephone: 361-730-3630
Email: cduffley@tam-llc.com

AGENT: ANCHOR QEA
1217 Highway 35 South
Rockport, Texas 78382
POC: Mr. Chris Belaire
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LOCATION: The 11.5-acre project site is located in palustrine wetlands on North Padre Island immediately adjacent to, and southwest of, the intersection of South Padre Island Drive/Park Road 22 and Whitecap Boulevard, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Crane Islands SW, Texas.

LATITUDE & LONGITUDE (NAD 83):

Project Site: Latitude: 27.60059° North; Longitude: 97.22332° West

Proposed Mitigation Site: Latitude: 27.51216° North; Longitude: 97.26941° West

PROJECT DESCRIPTION: The Applicant proposes to place approximately 21,500 cubic yards of clean earthen fill into 8.8 acres of palustrine wetland in order to construct a hotel and condominium residences on North Padre Island, Texas. The project would consist of a five-story development, including one-, two-, three-, and four-bedroom units with ground floor retail and office components, and a rooftop pool, restaurant, bar, and amenity desk. Site development would also include additional commercial pad sites within the property boundary to support the overall project. In total, the project includes 245 residential units, 27,802-square-foot of commercial space, 15,645-square-foot of office space, 2,635-square-foot of storage, two restaurant pad sites totaling 11,148-square-foot, parking facilities for 690 vehicles, and various other common areas and amenities.

AVOIDANCE AND MINIMIZATION: The applicant has stated that onsite avoidance and minimization is not achievable due to the project's purpose and need. Available offsite alternatives would result in impacts to high value aquatic resources.

The Applicant proposes to implement BMP measures to protect overall surface water quality and nearby unimpacted wetland habitat, including wetland habitat preserved as part of the southern adjacent development (SWG-2015-00270). The Applicant would install a silt curtain along the property boundary, which would be maintained and remain in place during construction. The curtain would not be removed until the side slope of the fill area is vegetated. To further avoid impacts to offsite wetland habitats, equipment would access the area only by Park Road 22 and Whitecap Boulevard. Clean earthen fill would be trucked in from offsite and would be staged within upland areas or would be placed within onsite wetland areas permitted for fill.

To avoid potential impacts to federally listed threatened and endangered species, the Applicant would also implement the following BMPs related to avian species:

- Construction personnel would be trained to recognize threatened and endangered species that could occur in the project area.
- Construction personnel would be advised that there are civil and criminal penalties for harming, harassing, or killing animals protected under the Endangered Species Act (ESA).
- Species identification posters would be posted at the worksite. Posters would further advise that it is unlawful "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." All posters would be in both English and Spanish.
- A stormwater pollution prevention plan (SWPPP) would be developed for the site and would include soil erosion and dust control measures.
- Work would be limited to daylight hours.
- Appropriate agency notifications would be made if any threatened or endangered species are identified at the worksite area.

Prior to initiating construction, the contractor would be required to submit an activity and site-specific SWPPP for review and approval and coordinate with Texas Commission on Environmental Quality (TCEQ) to receive the appropriate SWPPP permit coverage for the project. The contractor would be required to keep the applicant's property free of debris during operations, removal of all excess construction material upon completion, and appropriately dispose of any construction waste. Construction activity-related sewage must be collected and disposed of by a state approved contracting service (e.g., waste management service or approved equivalent).

MITIGATION: Unavoidable impacts to approximately 8.8 acres of palustrine wetland would be compensated for by the implementation of an approximate 21.4-acre offsite permittee-responsible mitigation project on Nueces County-owned land in Kleberg County property, located approximately 6.5 miles south-southwest of the impact site. The proposed mitigation property includes a historical access road and disturbed area, and historically excavated drainage features that act to drain natural wetland habitat. Proposed mitigation components total approximately 21.4 acres and include wetland creation, enhancement, and restoration. As proposed, the applicant states that the mitigation project would result in no-net-loss of aquatic habitat value and function and would provide enhanced value to the watershed and to numerous avian and mammalian species at a 2.4:1 mitigation-to-impact ratio.

CURRENT SITE CONDITIONS: The project site is currently an undeveloped tract of land surrounded by commercial development to the south, a large boulevard to the east and north, and a housing subdivision to the west. Vegetation within this community consists almost entirely of broad-leaf cat-tail (*Typha latifolia*). However, portions of this community situated along Park Road 22 also contain three-square (*Schoenoplectus pungens*) and salt-meadow cord grass (*Spartina patens*). The subject wetlands are adjacent to the Laguna Madre.

NOTES: This public notice is being issued based on information furnished by the applicant. This project information has not been verified by the Corps. As of the date of this public notice, the Corps has received but not yet verified the wetland delineation. The applicant's plans are enclosed in five sheets, and the Draft Mitigation Plan (Attachment A) in 6 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 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 is composed of low-lying wetlands with no existing or subsided natural levee landforms and has a low potential for containing cultural deposits that may be eligible for inclusion in the National Register of Historic Places. No cultural resource survey is warranted.

THREATENED AND ENDANGERED SPECIES: Threatened and/or endangered species or their critical habitat may be affected by the proposed work. Consultation with the U.S. Fish and Wildlife and/or the National Marine Fisheries Service will be initiated to assess the effect on endangered species.

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 **24 August 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-2007-01509**, and should be submitted to:

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DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS