



# Public Notice

<b>U.S. Army Corps Of Engineers</b>	Permit Application No: _____	SWG-2004-1704
	Date Issued: _____	2 June 2020
	Comments _____	
<b>Galveston District</b>	Due: _____	2 July 2020

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

**LOCATION:** The project site is located in 49 separate wetlands and 17 separate streams or tributaries including Big Creek, Buffalo Creek, Mound Creek, and Varner Creek; within the State Highway (SH) 36 right-of-way (ROW) from Farm-to-Market Road 2218 to SH 35, in Fort Bend and Brazoria Counties, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Needville, Texas.

**LATITUDE & LONGITUDE (NAD 83):**

**Latitude:** 29.492929° North;      **Longitude:** 095.807112° West

**BACKGROUND:** Department of the Army Permit SWG-2004-01704 was issued on 31 October 2008 and authorized the discharge of dredged or fill material into approximately 2.23 acres of jurisdictional wetlands and approximately 1.42 acres of other jurisdictional waters of the United States, for the purpose of widening the roadway and other improvements along a 28-mile segment of the existing SH 36 corridor. The project was delayed due to costs and areas were not filled as authorized. The project has undergone additional development and design and is now ready for construction; however, the permit expired 31 December 2013. Compensatory mitigation for the previously approved permit was provided through the purchase of 11 credits from the Coastal Bottomlands Mitigation Bank, for the proposed 2.23 acres of wetland impacts. These impacts are included as part of the 8.434 acres of proposed wetland impacts for the current project resulting in 6.204 acres of additional proposed impacts.

**PROJECT DESCRIPTION:** The applicant proposes to permanently discharge approximately 13,564 cubic yards of dredged or fill material into approximately 8.434 acres of waters of the United States, including wetlands, and 5,041 linear feet of streams and tributaries, within 66 separate locations, to facilitate the widening of SH 36. The applicant proposes to expand SH 36 from a two-lane roadway to a four-lane roadway with a grassy center median in rural sections and a continuous center left-turn lane in urban areas. To reduce impacts the applicant is proposing to use bridges instead of culverts for stream crossings.

**AVOIDANCE AND MINIMIZATION:** The applicant has stated that they have avoided and minimized the environmental impacts by minimizing the ROW where feasible, and maintaining the existing SH 36 alignment. The applicant has also proposed to span 10 separate streams which were previously culverted to minimize disturbances to aquatic and wetland functions and habitats. This change not only reduces the overall impacts, but also serves to improve the post project condition. Appropriate soil erosion and sediment controls will be used and maintained in effective operating condition during construction. All exposed soil and other fills, as well as any work below the ordinary high-water mark, would be stabilized at the earliest practicable date. Best Management Practices (BMPs) will be used during all facets of construction.

**MITIGATION:** The applicant has proposed to mitigate for the proposed impacts by purchasing nineteen (19) credits at the Coastal Bottomlands Mitigation Bank to mitigate for the remaining wetland impacts (6.204 acres). The amount of credits required was calculated using an average ratio of 3:1.

The permittee proposes to mitigate for the proposed impacts to 5,041 linear feet of streams and tributaries by purchasing stream credits at the Katy Prairie Stream Umbrella Mitigation Bank (KPSUMB). The applicant is proposing to purchase credits at a ratio of 3:1 based on the proposed project being located immediately adjacent to the secondary service area of the KPSUMB. While the proposed project is outside of the secondary service area, the relative functions and values of the streams at the project site and the KPSUMB are in kind. Streams in the project area and KPSUMB possess similar hydrologic regimes and plant community types. Both sites are within the Level IV Ecoregion: Northern Humid Gulf Coastal Prairie, and are tall-grass prairie streams draining into wooded bottoms in coastal Texas.

**CURRENT SITE CONDITIONS:** The project site currently lies within a SH ROW through primarily rural areas. Along the ROW is some residential and light commercial development. However, tracts adjacent to the ROW are primarily agricultural in usage. The project ROW receives regularly mowing, allowing mainly herbaceous vegetation to grow. As a result maintenance of the SH ROW and periodic road improvement over time, many of the surface drainage ways along the ROW have been previously altered. These alterations have included grading of side slopes, the installation of water control structures, including culverts and cross drainages, and other impacts. Natural drainage in the project area includes Seabourne Creek, Foss Creek, Fairchilds Creek, unnamed tributaries of Fairchilds Creek, Buffalo Creek, Deer Creek, Mound Creek, unnamed tributaries of Mound Creek, unnamed tributaries of Cow Creek, unnamed tributaries of Varner Creek, and Varner Creek. Each of these streams flows into either the Brazos River or San Bernard River watersheds, both of which ultimately flow into the Gulf of Mexico. Jurisdictional wetland areas proposed to be impacted are emergent herbaceous wetlands with some Chinese tallow (*Triadica sebifera*) infestation. Dominant emergent wetland species include horned beakrush (*Rhynchospora corniculata*), smartweed (*Polygonum hydropiperoides*), sedges (*Cyperus* spp.) and rushes (*Juncus* spp.)

**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 64 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.

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 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 proposed project is funded by Federal Highways Administration (FHA). All Section 106 consultation will be handled by FHA and Texas Department of Transportation under the Programmatic Agreement titled "First Amended Programmatic Agreement among the Federal Highway Administration, the Texas Department of Transportation, the Texas State Historic Preservation Officer, the Advisory Council on Historic Preservation Regarding the Implementation of Transportation Undertakings."

**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, 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 **2 July 2020**. 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-2004-01704**, and should be submitted to:

North Evaluation Unit  
Regulatory Division, CESWG-RDE  
U.S. Army Corps of Engineers  
P.O. Box 1229  
Galveston, Texas 77553-1229  
409-766-3869 Phone  
409-766-3931 Fax  
swg\_public\_notice@usace.army.mil

DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS