



# Public Notice

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

**Galveston District**

Permit Application No: SWG-2021-00775

Date Issued: 16 June 2023

Comments

Due: 18 July 2023

## U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

**PURPOSE OF PUBLIC NOTICE:** To inform you of a **MITIGATION BANK** proposal for work (PROSPECTUS) 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 Clear Creek Regional Mitigation Bank application will be reviewed pursuant to Section 404 of the Clean Water Act.

**APPLICANT:** Harris County Flood Control District  
9900 Northwest Freeway  
Houston, Texas 77092  
POC: Mr. Brock Nedland, M.S., ENV SP  
Telephone: 346-286-4160  
Email: [Brock.nedland@hcdcd.hctx.net](mailto:Brock.nedland@hcdcd.hctx.net)

**AGENT:** BGE, Inc.  
10777 Westheimer Road, Suite 400  
Houston, Texas 77042  
POC: Amanda Gregory  
Telephone: 713-488-8105  
Email: [AGregory@bgeinc.com](mailto:AGregory@bgeinc.com)

**LOCATION:** The proposed bank is an approximately 329-acre site. It is located approximately 1 mile west of State Highway (SH) 35, 0.5-mile north of Heights Road, and 0.3-mile east of Pearland Sites Road within the Clear Creek watershed in the San Jacinto – Brazos River basin, northeast Brazoria County, Texas.

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

Parent Tract: **Latitude:** 29.482700 North; **Longitude:** -95.274067 West

**PROJECT DESCRIPTION:** Proposed Mitigation Bank Prospectus. The Sponsor proposes the establishment and operation of a **wetland mitigation bank** to be named the Clear Creek Regional Mitigation Bank. The Sponsor's plan is to restore approximately 166 acres of riverine forested (RF) wetlands; enhance approximately 2 acres of RF wetlands; establish approximately 83 acres of mixed RF and riverine herbaceous/shrub (RHS) wetlands; re-establish site hydrology to allow for physical retention and chemical sequestration of local site runoff and Chigger Creek floodwaters; and promote stand diversity via selective plantings and forest management techniques to increase site flora and fauna biodiversity. The project work is being conducted within the Clear Creek-frontal Galveston Bay USGS Hydrologic Unit Code 1204020401 to serve as compensatory mitigation for unavoidable, permitted impacts to waters of the United States.

**AVOIDANCE AND MINIMIZATION:** The specific objectives of the project are to restore the physical, chemical, and biological characteristics of the site.

**MITIGATION:** The applicant proposed to construct a compensatory mitigation bank.

**WATER RIGHTS ACQUISITION / TX SURFACE WATER USE, AVAILABILITY & ASSURANCES FOR LONG TERM HYDROLOGIC SUSTAINABILITY OF A MITIGATION BANK:** The site sufficiency evaluation elements as defined in the 2008 Mitigation Rule direct the Corps to take into account watershed scale features such as aquatic habitat diversity, habitat connectivity, and relationships to hydrologic sources (including the availability of water rights). The rule states this consideration should begin at the Prospectus Phase of mitigation bank proposal review. Based on individual state water use/apportionment laws, this rule-required siting consideration is more pertinent to some Corps districts than others in assessing the hydrologic sustainability of a mitigation bank plan relative to the site where it is proposed.

In the State of Texas, landowner right to use of "surface" waters is not assured based on waterway proximity. At the time of a mitigation bank proposal, bank-needed surface waters may have been previously allocated to another interest or may later be assigned to a competing interest if a surface water right is not or cannot be secured to meet a bank project's needs.

Therefore, the Corps recommends that Texas sited bank projects that have a need for surface water use (excluding direct precipitation or groundwater) submit a complete water right application to the TCEQ. This application must be consistent with the representations of hydrogeomorphic models and other information presented to the Corps.

If the bank applicant cannot secure Texas Water Rights for a proposed bank site and project plan, the Corps may otherwise be able to meet its hydrology sustainability assessment due diligence by requiring additional site and surrounding area hydrology information to be provided by the applicant. The Corps will make a determination if a site is considered an acceptable location for the proposed mitigation banking project on a case-by-case basis.

The bank applicant states the project is not required by the TCEQ to obtain a water rights permit and that a water right may not be issued based on the proposed project plan. Therefore, the Corps will require additional hydrology information including site and vicinity hydrology use and demand information to assess long term hydrologic sustainability risk and site suitability per the 2008 Mitigation Rule.

**CURRENT SITE CONDITIONS:** The site appears to have historically been part of a Chigger Creek riparian forest that was converted to agriculture prior to 1944. The Bank has been maintained predominantly as open land and used for farming since then. Three irrigation reservoirs were excavated between 1944 and 1969 on the northern portion of the project area and were constructed to support agricultural production (rice farming). Other infrastructure such as canals, contour levees, and drainage ditches can still be observed within the project area and a transmission line corridor was constructed between 2002 and 2004. The site contains two road easements (20' wide/per), the one transmission line easement (80' wide), 5 known plugged oil/gas wells and one plugged dry hole. The property had a residence that was constructed prior to 1989 and was later cleared.

A wetland delineation was completed in October 2021, which identified 17 palustrine forested wetlands, 9 palustrine scrub-shrub wetlands, 18 palustrine emergent wetlands, and 3 palustrine, unconsolidated bottom (PUB) areas. Additionally, there is one perennial stream, and two upland drainage ditches. Based on an approved jurisdictional determination, issued 30 September 2022 (Appendix B). Of these site aquatic resources, six wetlands and two upland drainage ditches (totaling 46.74 acres and 2,381 linear feet) were determined by the USACE to be non-jurisdictional.

The Bank is almost entirely located in the 100-year floodplain of Chigger Creek. Based on consultant modeling, a 4-inch rainfall event represents the amount at which Chigger Creek would significantly overtop its banks and approximately 233 acres of the site would be inundated in a typical year event. Some site areas are dominated by notable species such as Chinese tallow, poison ivy, southern dewberry, and annual ragweed.

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 and finalized the verification of the Wetland Delineation. The Functional Assessment Verification is currently under review. The applicant's prospectus & associated documents are enclosed in **44 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 does not appear to have a TPWD regulated stream use or impact that would trigger a specific permitting component.

The project site is not located within the Texas Coastal Zone and therefore, does not require certification from the Texas Coastal Management Program.

**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 relative to this proposed project. 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 previously investigated for historic properties, and none were identified as documented in the report titled “An Intensive Cultural Resources Survey for the 330-acre Clear Creek Mitigation Bank, HCFCD Project ID: A700-01-00-Y001, Brazoria County, Texas” prepared by BGE, Inc. January 2022. In addition, the Texas Historical Commission reviewed the cultural resources survey results and provided concurrence to HCFCD on 25 February 2022, that no historic properties are present or will be affected by the proposed project.

**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 **18 July 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-2021-00775 Clear Creek Regional MB**, and should be submitted to:

Mitigation Banking - 214 Harris County / Policy Branch  
Regulatory Division  
U.S. Army Corps of Engineers  
Swg\_public\_notice@usace.army.mil

DISTRICT ENGINEER  
GALVESTON DISTRICT  
CORPS OF ENGINEERS