



Public Notice

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

Galveston District

Permit Application No: _____

Date Issued: _____

Comments _____

Due: _____

SWG-2021-00412

17 March 2022

18 April 2022

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 application will be reviewed pursuant to Section 404 of the Clean Water Act.

APPLICANT:

D. MAYES MIDDLETON II NON-EXEMPT TRUST /
OYSTER BAYOU MITIGATION BANK
4306 Yoakum, Suite 540
Houston, Texas 77006
POC: Tori Keeton
Telephone (713) 621-1915
Email: tkeeton@middletonoil.com

AGENT:

WILDWOOD ENVIRONMENTAL CREDIT COMPANY, LLC
P.O. Box 6602
Tyler, Texas 75711
POC: Cliff Sunda
Telephone (903) 579-9326
Email: cliff@wildwoodcredits.com

LOCATION: The proposed bank is a 769-acre site. It is located on both sides of Oyster Bayou, approximately 6.1 miles east of the intersection of FM 562 and Fairview Road, and 9.5 miles southeast of the City of Anahuac in Chambers County, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.70847° North; Longitude: -94.53870° West

PROJECT DESCRIPTION: The applicant proposes the establishment and operation of a mitigation bank to be named the Oyster Bayou Mitigation Bank. The sponsor's plan is to rehabilitate 541.6 acres of palustrine forested wetlands. The bank will also preserve an additional 48.2 acres of palustrine forested wetlands. The bank will also enhance 64.0 acres of palustrine forested wetlands. The bank will also rehabilitate an additional 115.4 acres of forested upland buffer. The project work is being conducted within the East Galveston Bay USGS Hydrologic Unit Code 12040202 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 proposes to construct a compensatory mitigation bank.

WATER RIGHTS ACQUISITION: Need for water rights (WR) will be based on the proposed bank need for surface water use (TX sites) per the CFR and not limited to only projects that are required to obtain WR's under state rules. Per the Mitigation Rule, the ultimate Corps determination of site appropriateness may be contingent on the acquisition of water rights at the proposed bank location. Texas water rights application information can be found at https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr_applications.html#permitting. The bank does not need surface hydrology to be sustained in perpetuity consistent with their HGM assessments. The Sponsor will include the full TCEQ application for water rights in the DMBI submittal to meet the CFR banking rule requirements and for Corps review for sufficiency.

CURRENT SITE CONDITIONS: The project site is currently farmed and grazed land surrounded by additional undeveloped agricultural land. The subject wetlands are adjacent to Oyster Bayou. There are predominantly four vegetation communities present on the site: wet native prairie, rice field, grazed scrub/shrub wetlands, and grazed forested wetlands. The vegetation communities at the site, are summarized below:

- The dominant wet pasture species observed were *Paspalum plicatulum* (brown-seed crowngrass, FAC), *Paspalum floridanum* (Florida crowngrass, FACW) *Rhynchospora colorata* (narrow-leaf whitetop, FACW), *Cyperus virens* (green flatsedge, FACW), *Eleocharis montevidens* (sand spikerush, FACW), and the invasive species *Cynodon dactylon* ((Bermuda grass, FACU). These areas are subject to ongoing grazing, prescribed burning, mechanical brush control, shredding, and herbicide applications.
- The rice fields are dominated by *Oryza sativa* (domestic rice, OBL), *Sesbania herbacea* (bigpod sesbania, FACW), *Juncus effusus* (soft rush, OBL), and invasive species *Cyperus entrerianus* (woodrush flatsedge, FACW). These areas are subject to intensive cultivation followed by years where the fields are allowed to lay fallow, during which time they are grazed.
- The scrub/shrub dominant species are *Andropogon glomeratus* (bushy bluestem, FACW), brown-seed crowngrass, sand spikerush, *Ilex vomitoria* (yaupon, FAC), *Fraxinus pennsylvanica* (green ash, FACW), *Liquidambar styraciflua* (sweetgum, FAC), *Ulmus rubra* (slippery elm, FAC), and invasive species *Triadica sebifera*

(Chinese tallowtree, FAC) and *Ligustrum sinense* (Chinese privet). These are areas subject to prolonged ponding which prevents brush control efforts. They are reverting to forest due to lack of disturbance but are subject to grazing.

- The forested dominant species consist of green ash, sweetgum, slippery elm, *Celtis laevigata* (sugarberry, FACW), *Chasmanthium laxum* (slender woodoats, FACW), *Carex cherokeensis* (Cherokee sedge, FACW), other observed species are *Pinus taeda* (loblolly pine, FAC), *Carya illinoensis* (pecan, FACU), *Platanus occidentalis* (American sycamore, FACW), *Nyssa sylvatica* (black tupelo, FAC), *Acre rubrum* (red maple, FAC), and *Carya aquatica* (water hickory, OBL), and invasive species Chinese tallow tree. The forested areas are subject to grazing when the adjacent fields are grazed.

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 finalized the verification of the wetland delineation or functional assessment. The applicant's prospectus and associated documents are enclosed in 193 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 Clean Water Act (CWA).

OTHER AGENCY AUTHORIZATIONS: This project has been coordinated with TPWD permitting. It does not 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.

The proposed project will trigger review under Section 401 of the Clean Water Act (CWA). The Texas Commission on Environmental Quality 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 Texas Commission on Environmental Quality to initiate the Section 401 CWA process.

Pursuant to 33 USC 408, the proposed project will not require Section 408 coordination and review. This is a requirement for activities that seek permission, to temporarily or permanently, alter, occupy, or use a federally authorized United States Army Corps of Engineers civil works project. Changes to the proposed project, from the Section 408 process, may warrant additional coordination.

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 portion of the permit area where ground disturbing activities will occur has been so extensively impacted by rice farming that there is no potential for historic properties to exist. The portion of the permit area that has not been impacted by rice farming will not be subject to ground disturbing activities. Therefore, the proposed project has no potential to effect historic properties.

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 of Engineers, 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 of Engineers 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 of Engineers 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 Environmental Impact Statement 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 of Engineers 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 April 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-2021-00412**, and should be submitted to:

Mitigation Banking Program
Regulatory Division, CESWG-RD-P
U.S. Army Corps of Engineers-SWG
2000 Fort Point Road
Galveston, Texas 77550
409-766-3869 Phone
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DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS