



# Public Notice

<b>U.S. Army Corps Of Engineers</b>	Permit Application No: _____	SWG-2007-01078
	Date Issued: _____	28 March 2019
	Comments _____	
<b>Galveston District</b>	Due: _____	29 April 2019

## 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 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

**APPLICANT:** Kirby Marina, Inc.  
816 County Road 792  
Freeport, Texas 77541  
POC: L.J. Kirby  
Telephone: 979-239-1081  
Email: kirbymarina@gmail.com

**LOCATION:** The project site is located in Oyster Creek at Kirby Marina, approximately 5 miles northeast of Freeport, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Oyster Creek, Texas.

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

Latitude: 29.011097 North; Longitude: - 95.317836 West

**PROJECT DESCRIPTION:** The applicant is seeking a 10-year extension of time for Department of the Army (DA) Permit Number SWG-2007-01078 (17061(07)) to complete maintenance dredging on an existing basin, construct bulkheads, and build boat storage sheds. This is a commercial marina with project depths of 7 feet, and is connected to Oyster Creek via channel. Dredged material will be deposited at an upland disposal area located on-site.

**BACKGROUND:** The original marina was authorized under DA Permit 17061 on 21 August 1984. Amendment (01) issued on 25 November 1984 authorized the expansion of the marina. Amendment (02) issued on 15 January 1988 authorized an extension of time until 31 December 1991. Amendment (03) issued on 21 January 1993 authorized an extension of time until 31 December 1996 and the addition of a 7-acre dredge material placement area and a mitigation area. The mitigation work was completed in 1997. Amendment (04) was issued 4 January 1997 and authorized an extension of time to complete half of shed two and sheds three and four. Amendment (05) issued on 20 August 2001 authorized an extension of time until 31 December 2006. Amendment (06) was withdrawn on 1 May 2007, when the applicant did not submit requested information within the designated time period. Amendment (07) issued on 18 September 2007 authorized an extension of time to conduct work until 31 December 2012. On 1 May 2013, the DA Permit was assigned Permit Number SWG-2007-01078 and authorized an extension of time to complete work. The authorization will expire on 31 December 2018.

**AVOIDANCE AND MINIMIZATION:** The applicant has stated that they have avoided and minimized the environmental impacts by incorporate best management practices like blankets/matting to control erosion, silt fences to control sedimentation, and vegetative filter strips to control total suspended solids.

**MITIGATION:** The original marina was authorized under DA Permit 17061 on 21 August 1984. The mitigation work was completed in 1997.

**CURRENT SITE CONDITIONS:** This portion of Oyster Creek is highly developed and experiences heavy vessel traffic. There are numerous structures such as piers, boat lifts, aids to navigation, boat ramps, etc. There are special aquatic sites located within the vicinity of the action area, primarily the Brazoria National Wildlife Refuge. The action area also consists of a channel/canal complex that flows into Oyster Creek. Upland segments of the channel/canal system include vessel storage structures, residential units, and commercial units. The 7-acre plot of uplands to the northwest of the channel/canal system will serve as the proposed dredge placement area. Currently, the proposed dredge placement area consists of disturbed soils, grass, and shrub-scrubs. Palustrine emergent wetlands are also located northwest of the action area and between the action area and the Stratton Ridge Oil Field. Disturbed open space is located to the west and immediate southwest of the action area followed by palustrine forested and shrub-scrub wetlands that are adjacent to Oyster Creek. To the east/northeast of the action area is open space, grasslands and shrub-scrub adjacent to Ridge Slough, which has areas that appear to be have been used for oil exploration and stretches into the Brazoria National Wildlife Refuge.

**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:**

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.

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 was previously coordinated with the Texas SHPO with a determination of no historic properties present. The current action, an extension of time to construct the project, does not alter this determination.

**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. The whooping crane species do not occur or migrate within the action area and the proposed activity is not proposed within designated critical habitat. The proposed action area is located in Brazoria County, which is northeast of Aransas National Wildlife Refuge and outside of the migratory pathway of the Whooping Crane (TPWD). Therefore, the proposed action will have no effect on whooping cranes or their critical habitat. Therefore, the proposed action would have no effect on any threatened or endangered species or their designated critical habitat.

**ESSENTIAL FISH HABITAT:** This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

**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 **29 April 2019**. 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-2007-01078**, and should be submitted to:

Central Office  
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