



Public Notice

U.S. Army Corps Of Engineers Galveston District	Permit Application No:	SWG-2019-00169
	Date Issued:	31 March 2020
	Comments Due:	30 April 2020

**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: Chocolate Bay Conservation Holdings LLC
c/o Eco-Capital Advisors, LLC
3414 Peachtree Road NE, Suite 990
Atlanta, Georgia 30326

AGENT: Alluvion Resource Company, LLC
8010 FM 699
Joaquin, Texas 75954
POC: Keith Webb
Phone: 936-488-8137
Email: keith@alluvion.com

LOCATION: The proposed mitigation bank consists of five sites located in Brazoria County, Texas. Freeport 1 and Freeport 2 sites are located approximately 3 miles northeast of Surfside, Texas, adjacent to the Gulf Intracoastal Waterway. Freeport 3 is located approximately 2 miles east of Oyster Creek, Texas. Freeport 4 and Freeport 5 are located approximately 2.5 miles north to northeast of Oyster Creek, Texas, adjacent to Salt Bayou. The Chocolate Bay site is located approximately 3.5 miles southeast of the intersection of FM 2917 and FM 2004. The sites can be depicted on the United States Geological Survey (USGS) ANGLETON, Texas and FREEPORT, Texas 7.5 maps.

LATITUDE & LONGITUDE (NAD 83):

Freeport 1: Latitude: 28.997264° North; Longitude: -95.249591° West;
Freeport 2: Latitude: 28.995800° North; Longitude: -95.257208° West;
Freeport 3: Latitude: 29.015368° North; Longitude: -95.282767° West;
Freeport 4: Latitude: 29.033137° North; Longitude: -95.296727° West;
Freeport 5: Latitude: 29.040213° North; Longitude: -95.319049° West;
Chocolate Bay: Latitude: 29.213827° North; Longitude: -95.126932° West.

PROJECT DESCRIPTION: The applicant proposes the establishment and operation of a 5,377-acre mitigation bank named the Frentress-Johnson West Bay Mitigation Bank (FJWBMB). The Sponsor is proposing the restoration and enhancement of coastal wetland habitat within the West Galveston Bay USGS Hydrologic Unit Code 12040204 to serve as compensatory mitigation for unavoidable, permitted impacts to waters of the United States.

The purpose of the FJWBMB will be to provide an effective approach to satisfy compensatory mitigation requirements of the USACE Regulatory Program developed in accordance with the Compensatory Mitigation for Losses of Aquatic Resources (73 Fed. Reg. 19594, 10 April 2008 (codified in 33 CFR 332)). A Mitigation Banking Instrument (MBI) will be developed following the aforementioned policy and will detail the legal and physical characteristics of the bank and how the bank would be established and operated. Subjects addressed in detail in the MBI will include development of the site, service area, credit determination, financial assurances, site protection, purpose and goals of the bank, baseline conditions, performance standards for restoration or enhancement activities, accounting procedures, monitoring and reporting, long-term maintenance and protection, and transfer of bank ownership or sponsorship. The applicant will be working with the USACE and other Federal and State resource agencies (the Interagency Review Team-IRT) in the development and evaluation of the MBI.

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.

CURRENT SITE CONDITIONS: The sites are comprised of undeveloped land containing high marsh, low marsh, tidally influenced open water, palustrine emergent wetlands, palustrine scrub shrub wetlands, and uplands.

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 verified the wetland delineation. The applicant's prospectus which includes a more detailed description of the proposed project plans are enclosed in 117 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 will comply with Texas' approved Coastal Management Program goals and policies and will be conducted in a manner consistent with said program. This project may 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 and has determined that a survey of high probability areas is required.

THREATENED AND ENDANGERED SPECIES: An evaluation will be conducted on the bank site and proposed design processed under this proposal to determine if threatened and/or endangered species, or their critical habitat, will be affected by the proposed work. If necessary, 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. Preliminary indications are that no known threatened and/or endangered species or critical habitat will be affected by the proposed work.

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 **30 April 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-2019-00169**, and should be submitted to:

Regulatory Division, CESWG-RDP
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