



# Public Notice

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

**Galveston District**

Permit Application No: SWG-1996-02901

Date Issued: 1 May 2018

Comments

Due: 31 May 2018

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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 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

**APPLICANT:** Asset Development Corporation  
14650 Compass Street, Suite 1  
Corpus Christi, TX 78418  
POC: Mr. Paul Schexnailder  
Telephone: 512-565-1973

**LOCATION:** The project site is located on North Padre Island in the Padre Isles Subdivision adjacent to the Gulf Intracoastal Waterway (GIWW), southwest of Park Road 22, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle maps titled: PITA ISLAND and CRANE ISLANDS SW, Texas.

**LATITUDE & LONGITUDE (NAD 83):**  
Latitude: 27.598788 North; Longitude: 97.249032 West

**PROJECT DESCRIPTION:** The applicant proposes an extension of time to complete work authorized under Department of the Army Permit 09009(11), with Extensions of Time issued under Permits 09009(12) and SWG-1996-02901, which authorized dredge and fill activities associated with the Commodore's Cove II and Cape Summer residential canal developments. Permit 09009(11) included expansion of the permitted mitigation area to 50.8 acres constructed to address piping plover concerns; mitigation for project fill impacts; and protection of seagrasses (earthen berm). The mitigation site's success standards were determined to have been met by the Corps on 24 September 2007, with no further monitoring required.

The project, as previously permitted, would place fill into an estimated total of 133.79 acres of waters of the United States, including 45.51 acres of palustrine wetlands, 41.37 acres of estuarine wetlands, and 46.91 acres of sand flats. In addition, the project will involve excavation of 30.39 acres of estuarine wetlands, 6.15 acres of palustrine wetlands, and 19.29 acres of upland for conversion into open waters to be located in the associated canals.

**AVOIDANCE AND MINIMIZATION:** The applicant has stated that they have avoided and minimized the environmental impacts by keeping wetlands authorized to be impacted by this project *in-situ* to minimize temporal loss of functions and values until such time that impacts were necessary to initiate development.

**MITIGATION:** The 50.8-acre mitigation area was constructed to include various habitats, including seagrass, sand flat, algal flat, upland and a brackish pond. The potential or real presence of the piping plover, a listed endangered species, resulted in close coordination with the U.S. Fish and Wildlife Service (FWS) as well as other federal and state resource agencies. A condition was added to Permit 09009(10) (and carried over in subsequent Extensions of Time) that required the mitigation be performed in a manner that would not impact the piping plover or its habitat. The mitigation area was constructed in a manner that resulted in the establishment of erect vegetation causing the loss of existing algal and sand flats. Because the algal and sand flats are potential piping plover habitat, it was determined in consultation with the FWS that this action was not in compliance with Section 7 of the Endangered Species Act. Informal Section 7 coordination resulted in the Corps issuing a 14 August 2001 approval letter for conceptual mitigation plans submitted by the applicant.

**CURRENT SITE CONDITIONS:** The project site conditions are currently partially developed areas on the Laguna Madre side of North Padre Island, a low-lying barrier island along the South Texas coast. The residential development is located within the upper Laguna Madre and adjacent to the GIWW. The upper Laguna Madre provides relatively shallow and moderately hypersaline aquatic habitat for many commercially and recreationally important finfish and shellfish. The Laguna Madre also consists of dense seagrass beds with stands of coastal marsh plants along its coastal borders. The GIWW is a federally maintained channel that provides navigation primarily for commercial barge traffic, with a secondary use by recreational boating. Although the residential canals support fish and shellfish fauna, the canals have been monitored for several years due to issues with maintaining sufficient dissolved oxygen to support aquatic life.

The proposed project is an amendment to Department of the Army Permit 09009(11), with Extensions of Time issued under Permits 09009(12) and SWG-1996-02901, which authorized dredge and fill activities associated with the Commodore's Cove II and Cape Summer residential canal developments. The most recent permit amendment expired 31 December 2014; however, the applicant had requested this extension-of-time amendment prior to the expiration date with the site requiring an up-to-date wetland delineation. This extension-of-time amendment as currently proposed is based on that updated delineation.

**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 wetland delineation has been completed and was verified by the Corps on 30 March 2018. 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 Clean Water Act (CWA).

#### **OTHER AGENCY AUTHORIZATIONS:**

The permit application is for an extension of time only. Therefore, this action is not subject to consistency review under the Texas Coastal Management Program.

This project would result in a direct impact of greater than three acres of waters of the state or 1500 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.

The return water from the upland contained dredge material placement area(s) requires authorization under Nationwide Permit (NWP) 16. However, we have determined that the conditioned Section 401 certification, placed upon NWP 16 by Texas Commission on Environmental Quality (TCEQ), is not reasonably implementable or enforceable, according to 33 CFR 325.4(c). Prior to the performance of hydraulic dredging, the applicant must obtain a Section 401-water quality certification from the TCEQ for the

effluent or return water discharge. A copy of the 401-certification must also be furnished to the Corps of Engineers prior to performing hydraulic dredging.

**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 permit area has been so extensively impacted by previous dredging and placement of dredged material that there is no potential for historic properties to exist within the permit area. 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.

**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 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 **31 May 2018**. 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-1996-02901**, and should be submitted to:

Corpus Christi Field Office  
Regulatory Division, CESWG-RDR  
U.S. Army Corps of Engineers  
5151 Flynn Parkway, Suite 306  
Corpus Christi, Texas 78411-4318  
361-814-5847 Phone  
swg\_public\_notice@usace.army.mil

DISTRICT ENGINEER  
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