



# Public Notice

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

**Galveston District**

Permit Application No: SWG-2020-00178

Date Issued: 30 November 2023

Comments

Due: 2 January 2024

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

**PURPOSE OF PUBLIC NOTICE:** To inform you of a mitigation bank 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:** International Paper Company  
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**AGENT:** RPS  
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**LOCATION:** The proposed bank site project is approximately a 1,652-acre site, in Orange County, Texas. The proposed Bank fronts approximately 6.65 river miles of the Sabine River and is located approximately 5.1 miles north of Orange Texas. The project can be located on the U.S.G.S. quadrangle map entitled: "Echo TX-LA" 7.5-minute topographic map.

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

**Latitude:** 30.203187° North; **Longitude:** -93.717625° West

**PROJECT DESCRIPTION:** The applicant proposes the establishment and operation of a mitigation bank named the West of Neutral Mitigation Bank (WNMB). The bank site is 1,652 acres that fronts approximately 6.65 river miles of the lower Sabine River. It proposes to preserve approximately 1,455.70 acres of high priority bottomlands and 4.82 acres of open water in a key location that will contribute to the ecological sustainability of the watershed. There are also minor aspects of enhancement through recovery of areas previously used for silviculture, and removal of invasive species, but the acreages where this will occur are limited. The proposed Bank Prospectus details specific physical, chemical, and biological characteristics of the site and services to the Sabine Lake estuary.

**AVOIDANCE AND MINIMIZATION:** The objectives of the project are to establish a compensatory mitigation bank to preserve and enhance the physical, chemical, and biological characteristics of the site.

**MITIGATION:** The applicant's proposal is to construct a compensatory mitigation bank.

**CURRENT SITE CONDITIONS:** The proposed WNMB is located almost exclusively within the 100-year floodplain of the Sabine River and has extant wooded wetlands covering approximately 88.1% of the plot. The wetlands are mature, climax community, high-quality wooded wetlands. The proposed WNMB fronts the western bank of the lower Sabine River and is approximately 6.65 river miles in length. Physicochemical monitoring data of the Sabine indicates the environmental gradients across the WNMB are not just the wooded wetlands that transition between the terrestrial and aquatic ecosystems, but the bank is located at the head of tide which results in a transition between mesohaline tidal at seaward bank boundary during low inflows to a nontidal riverine aquatic ecosystem at the inland boundary of the plot.

The Bank's forested wetlands are mature climax communities dominated by either cypress tupelo community, or an Oak Sweetgum community. The bank also includes 179.72 acres of contributing uplands in irregular imbedded riparian transition areas that provide habitat and refuge to aquatic and terrestrial wildlife. The bank has habitat that is used by state threatened Texas Pigtoe, and there have been possible sightings of endangered Red-cockaded woodpeckers on the bank site as well. Various agency reports have acknowledged the threats of regional development of these types of high priority resources not only in this area regionally, but the USFWS also had recommended this particular property for acquisition due to dependent species and the habitats along this reach. The addition of this proposed WNMB site to the other protected management areas along the lower Sabine River will form a continuous wildlife corridor along the lower 14.2 miles of the river that would protect an approximate 14,593 total acres in Texas and Louisiana providing for communities and species that have an extended ranges or avoid anthropogenically disturbed areas.

Water quality data of the Sabine indicates the bank reach is near the head of tide, and in a transition zone. The data available suggests that the reach is likely to contain the estuarine turbidity maximum (ETM) or maximum turbidity zone (MTZ) much of the time. This zone is important in biogeochemical cycling of the estuary due to the increased secondary production due to allochthonous loading, the change in ionic speciation causing flocculation, and hydrodynamic trapping. This zone is also used as important spawning and juvenile nursery habitat for many estuarine dependent species.

Due to the high-quality extant wetlands covering 88.1% of the plot, the proposed bank is strongly preservation dominated. There are some more minor activities where ecological lift will be practicable as detailed in the Prospectus and they are proposed to be enacted, but as a percentile of bank total coverage they are of limited extent. However, preservation is appropriate for high priority, unique, rare, or difficult-to-replace aquatic resources that contribute to the ecological sustainability of the watershed. The applicant's plans and details of the site are in an October 2023 Prospectus of 153 sheets plus appendices.

This public notice is being issued based on information furnished by the sponsor. This project information has not been verified by the Corps. However, an Approved Jurisdictional Determination and iHGM verification have been completed and verified by the Corps. The AJD was issued by Galveston District (SWG USACE) on 18 February 2022, identifying a total acreage 1,455.70 acres of jurisdictional resources, or 88.1% of the proposed Bank has coverage of climax community dominated reference high quality wetlands. The riverine forested interim Hydrogeomorphic Model (iHGM) was verified by SWG USACE and a letter issued on 9 June 2022. Based on the iHGM functional assessment review, the total existing riverine forested FCUs for the wetland acres on the site was 1,455.7 Physical FCUs, 1,345.8 Biological FCUs, and 1,455.7 Chemical FCUs.

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:**

**STATE OF TEXAS COASTAL MANAGEMENT PLAN:** 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.

**STATE WATER RIGHTS ASSURANCES FOR LONG TERM HYDROLOGIC SUSTAINABILITY OF A MITIGATION BANK:** In the State of Texas, landowner right to use of “surface” waters is not assured based on waterway proximity. Therefore, the Corps recommends that Texas sited bank projects submit a complete water right application to the TCEQ.

Based on direct precipitation, site elevation relative to MSL and shallow groundwater connections, the sponsor stated that the area was sustainable and self-maintaining without reliance on State Waters. Using the Orange Texas long term NWS gage that supports the NRCS Climate Analysis for Wetlands Tables (WETS Table), indicated that the area receives an annual average of 62.1 inches of precipitation. The area is humid, and NOAA estimated pan evaporation is also only 62.1 inches a year. Thus, the sponsor stated that there was likely not a deficit between precipitation and evapotranspiration.

Following the USACE recommendation the sponsor summarized available hydrologic information and formally made a presentation of the data to the TCEQ Water Rights and Permitting and Availability Section on 23 January 2023. The TCEQ responded with a 22 February 2023 letter stating that the West of Neutral Mitigation Bank project does not require a water rights permit to meet hydrologic sustainability.

**SECTION 401 WATER QUALITY CERTIFICATION:** The proposed project will trigger review under Section 401 of the Clean Water Act (CWA). The TCEQ 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 sponsor has been working with the TCEQ as part of the Interagency Review Team (IRT) in the preliminary review processes. A Section 401 CWA review will be needed for this project. If you have comments or questions on this proposed project’s State water quality certification, please contact [401certs@tceq.texas.gov](mailto:401certs@tceq.texas.gov). You may also find information on the Section 401 process here: <https://www.epa.gov/cwa-401/basic-information-cwa-section-401-certification>.

**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 project.

The proposed project, the establishment and operation of a mitigation bank through the preservation of 1,455 acres of wetlands, is of such limited nature and scope that it has no potential to affect historic properties, even if present within the project area.

**THREATENED AND ENDANGERED SPECIES:** Preliminary indications are that there may be threatened and/or endangered species and their habitat onsite, and they may include species administered under either USFWS or NOAA (NMFS). However, the bank is preservation dominated and no earth work will be done. Due to the preservation-based nature of the bank, it would be highly unlikely that there would be an effect on listed species, or their critical habitats, related to the proposed establishment of a mitigation

bank. But because of the probable presence of threatened and endangered species, consultation with the U.S. Fish and Wildlife and/or the National Marine Fisheries Service may occur to assess any effects on endangered species.

**ESSENTIAL FISH HABITAT:** The reach within the WNMB is identified to contain Essential Fish Habitat (EFH). This notice initiates the EFH 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. The proposed Bank may help sustain EFH functions of the local area, as well as contribute to the regional Sabine estuary. 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 **2 January 2024**. 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-2020-00178**, and should be submitted to:

Policy Analysis  
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