



Public Notice

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

Galveston District

Permit Application No: SWG-2007-00597

Date Issued: 2 September 2022

Comments

Due: 3 October 2022

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: HD Flamingo Isles Holdings, LP
2101 Lakeway Boulevard, Suite 100
Austin, Texas 78734
POC: Haythem Dawlett
Phone: 512-610-0518
Email: hdawlett@legendcommunitiesinc.com

AGENT: Horizon Environmental Services, Inc.
1507 South Interstate 35
Austin, Texas 78741
POC: Lee Sherrod
Phone: 512-328-2430
Email: lee_sherrod@horizon-esi.com

LOCATION: The project site is located in wetlands and West Bay, near 1445 Harborwalk Boulevard, in Hitchcock, Galveston County, Texas 77563. The project can be located on the U.S.G.S. quadrangle map titled: Long Island, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.290403° North; Longitude: 094.964547° West

PROJECT DESCRIPTION: The applicant proposes to discharge approximately 400,000 cubic-yards of clean native fill into approximately 22.449 acres and mechanically dredge approximately 0.47 acre (2,288 cubic-yards) of open water associated with the completion of previously authorized work captured under SWG-2007-00597. Such activities include the completion of a previously authorized marina, floating docks, bulkheads, and bank stabilization for a canal lot subdivision.

PERMIT HISTORY AND BACKGROUND: Historically, the subject property was developed in the mid-1960's and originally platted an approximately 3,600-acre area south of the City of Hitchcock to be developed into an expansive canal lot residential area and marina. Twenty-two canals were completely dredged with depths ranging from -5 to -12 feet. Eight canals were partially dredged to depths ranging between -2 and -3 feet. While the applicant was constructing Flamingo Isles, he lost his financing and was forced to abandon the construction of the site. At that time, five houses had been constructed and several thousand feet of bulkhead had been installed. Since the 1960's, many developers attempted to finish the original applicant's project. However, due to inadequate financing or other problems, they were unable to complete the development.

June 21, 2001 – Authorized the fill of 4.2 acres of interior brackish wetlands, 4.9 acres of smooth cordgrass wetlands, 0.4 acres of sandflats, and 25 acres of shallow to deep water habitat to complete the construction of a residential canal lot subdivision and marina to be known as Flamingo Isles. In addition, 0.2 acres of interior brackish wetlands, 4.1 acres of smooth cordgrass wetlands, 0.5 acres of sand flats, and 44.2 acres of shallow to deep water habitat will be dredged. As compensation for the impacts due to filling and dredging, the applicant will restore a 40-acre marsh located within a 139.31-acre area designated as a dredge material placement area for marsh restoration. The applicant will also deed restrict a 185-acre area located at the southwest corner of the project site. This area, a high-quality functioning freshwater to brackish marsh, will be preserved by conservation easement and deeded to a recipient at a later date. The applicant will also construct an on-site sewage treatment plant. The effluent from the plant will be directed through existing wetlands prior to its discharge into the Diversionary Canal and Galveston Bay. Furthermore, the applicant will install 22 interconnecting culverts, 24-inch in diameter, between canals to increase the tidal flow between them.

August 19, 2009 - To amend the original authorization, Department of the Army (DA) Permit Number 22079, to extend time to perform previously authorized work, to retain a portion of unauthorized impacts, and to authorize additional impacts for the construction of a marina and canal lot subdivision located adjacent to Galveston Bay. The project development plan, which included the previously authorized/unauthorized and proposed work will impact 5.41 acres of interior marsh, 9.53 acres of Spartina wetlands, 0.75 acre of sand flats, 126.57 acres of open water, and the excavation of 6.25 acres of uplands to create open water. The project will also consist of the construction of 17.06 acres of new structures located over open water including marina piers, private boathouses, private piers, fishing/boating/kayak piers, and access boardwalks. The canals within the development vary from a depth of -7 feet to a maximum depth of -9 feet. The unauthorized impacts consist of 0.64 acre of interior marsh, 1.47 acres of spartina wetlands, 0.07 acre of sand flats, and 65.73 acres of open water habitat. Unauthorized

activities also include the excavation of 8.42 acres of uplands lastly, 3.37 acres of unauthorized structures also exist, including Marina piers, private boathouses, and private piers. A portion of the unauthorized impacts will be restored in the proposed project development plan. This authorization impacts differ from the originally authorized impacts by an increase of 1.01 acres of interior marsh, 1.53 acre of spartina wetlands, 57.37 acres of open water, 5.27 acres of fill and 52.1 acres of dredging. The dredge material from the proposed dredging will be placed on-site. To mitigate for the additional impacts, 7 acres of salt marsh will be created in four sections of uplands located along the western bank of the Highland Bayou Diversion Channel, in Galveston County, Texas. The previously authorized mitigation under DA Permit 22079 consisted of restoring 40 acres of marsh located within a 139.31-acre area located at the southwest corner of the project site. The applicant also placed a 185-acre area into a conservation easement and deeded it to a third party. This mitigation remains as a requirement of this permit. The project will be conducted in accordance with the attached plans.

July 6, 2010 - Transfer requested for SWG-2007-00597 from Harborwalk, LP to P.I. Holdings.

June 26, 2016 - The applicant proposes to perform maintenance dredging of the Harborwalk Marina Channel. The channel will be mechanically dredged to a depth of -8 feet. Approximately 5,880 cubic yards of material will be removed and will be placed in an upland placement area located approximately 0.25 mile to the northwest of the channel's center. Berms will be constructed around the perimeter of the placement area in order to contain the dredged material to be placed. The berms will be constructed using existing material located at the placement area and silt fences will be installed. Dredging of the channel and the use of the upland placement area were originally authorized under DA Permit 22079. The permit has undergone an amendment and extension of time. The permit expired on 31 December 2014 and the applicant is in the process of seeking an extension of time. The applicant was solely seeking authorization to perform the minimum amount of maintenance dredging of the Harborwalk Marina Channel needed to provide safe boating access to residents and users of Harborwalk's marina and subdivision.

August 12, 2022 - At this time, the applicant is solely seeking authorization to complete work as previously authorized under Permit Numbers 22079 and SWG-2007-00597.

AVOIDANCE AND MINIMIZATION: The applicant has stated that previously authorized works avoided and minimized impacts to adjacent wetlands and waters. Majority of work to be completed is within the partially constructed marina and canal residential area.

MITIGATION: The applicant has stated that the mitigation requirements of the original permit (22079) were completed during the term of that permit. Those mitigation requirements included beneficial use of dredged material in the Pierce Marsh north of Harborwalk, a 40-acre marsh restoration project west of Harborwalk, deed restriction of 185 acres of existing marsh west of Harborwalk, and habitat creation along the north side of Harborwalk. There was a 25-acre parcel deed restricted as part of a settlement agreement for the unauthorized activities associated with an after the fact (ATF) permit. The revised ATF permit (SWG-2007-00597) issued in 2009 required an additional 7 acres of salt marsh creation to compensate for the unauthorized and new impacts authorized by that new permit. Therefore, it appears all previously required mitigation under 22079 and SWG-2007-00597 have been completed even though some of the impacts authorized by the 2009 permit have not yet been completed (the subject of this permit reissuance request). No additional mitigation is proposed.

CURRENT SITE CONDITIONS: The project area is a mostly-completed canal residential development with associated marina originally authorized in the 1960s and with authorized development continuing up to permit expiration in 2015. Several areas within the previously authorized footprint have not been fully completed prior to permit expiration. Those remaining areas subject of this permit re-authorization request are largely previously disturbed with fill, grading, or excavation. Current conditions include bare exposed soils, weedy/brushy upland areas, wetland vegetation along water lines or areas subject to inundation, and open water of various depths. Typical wetland vegetation along disturbed water lines or disturbed areas subject to inundation includes cattails (*Typha sp.*), spikerush (*Eleocharis sp.*), bulrush (*Schoenoplectus sp.*), smooth cordgrass (*Spartina alterniflora*), marshhay cordgrass (*Spartina patens*), saltgrass (*Distichlis spicata*), saltwort (*Batis maritima*), and glasswort (*Salicornia virginica*). Weedy or brushy vegetation on disturbed uplands includes baccharis (*Baccharis halimifolia*), dewberry (*Rubus trivialis*), prickly pear (*Opuntia engelmannii*), ragweed (*Ambrosia sp.*), goldenrod (*Solidago sp.*), and various other grasses and forbs.

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.

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 applicant contacted TCEQ and initiated the Section 401 CWA process, on 25 August 2022. If you have comments or questions on this proposed project's State water quality certification, please contact 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 undertaking upon these properties:

The permit area has been so extensively impacted by previous residential development, 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, 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 **3 October 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-2007-00597**, and should be submitted to:

North Unit Evaluation
Regulatory Division, CESWG-RDE
U.S. Army Corps of Engineers
Galveston District
2000 Fort Point Road
Galveston, Texas 77550
409-766-3869 Phone
409-766-3931 Fax
swg_public_notice@usace.army.mil

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS