

Public Notice

Applicant: Mr. Kirk Pearson, Dave Berndt Interest, Ltd.

Permit Application No.: SWF-2015-00075

Date: June 12, 2015

The purpose of this public notice is 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. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States.* The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

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JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States (WOUS) associated with the proposed Terraces at Las Colinas project, located in the city of Las Colinas, Dallas County, Texas.

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LOCATION: The proposed 65.59 acre Terraces at Las Colinas development is located in northwestern Dallas County, near the intersections of I-635 and President George Bush Freeway, in the city of Las Colinas. The project is located at Latitude 32.904 and Longitude -96.953.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification

PROJECT DESCRIPTION: The applicant proposes to discharge 10,850 cubic yards of native fill materials into 0.89 acre of WOUS consisting of 130 linear feet of ephemeral stream, 591 linear feet of intermittent stream, 0.02 acre of open water, 0.39 acre of emergent wetlands, and 0.39 acre of forested wetlands. In addition, the applicant proposes to dredge 2.61 acres of WOUS, including 1.63 acres of emergent wetlands, 0.11 acre of forested wetlands, and 0.87 acre of open water. The total permanent impacts to WOUS associated with the construction of the proposed development would be 3.5 acres, which includes 720 linear feet of streams.

The project would be constructed in two phases, the northern phase and the southern phase. The northern phase of development would construct a retail center with over 3,000,000 square feet of retail building space, to include roads, docks, and parking. The southern phase would include the construction of high density residential pad sites. To facilitate the development of these two phases, storm water improvements including storm water conveyance infrastructure and a storm water retention area would be constructed along the western extent of the property.

- I. INTRODUCTION: The applicant's stated purpose for the project is to satisfy a need for a mixed-use development that would provide housing, businesses, and amenities for the rapidly growing city of Las Colinas within a single mixed-use development.
- II. EXISTING CONDITIONS: The proposed project area is an approximately 65.59 acres of undeveloped land dominated by a mix of native and introduced grasses, forbs, and woody vegetation. Approximately 20 percent of the area is comprised of riparian vegetation and is dominated by black

willow, Chinese tallow saplings, great and western ragweed, poison ivy, and narrowleaf cattails. A deciduous forest makes up approximately 70 percent of the project area and is dominated by hackberry, Osage-orange, mesquite, poison ivy, and green brier. Approximately 10 percent of the area is maintained as a right-of-way and is dominated by Bermuda, Johnson, and threeawn grasses.

III. APPLICANT'S ALTERNATIVES: The applicant has provided an alternatives analysis, which is described below and includes the no action alternative and the applicant's preferred alternative (Alternative 1 and D in the LEDPA analysis). The property for the No Action Alternative and Alternative 1 (i.e., D in the LEDPA analyses) is currently owned by the applicant. Alternatives 2, 3, and 4 are not owned by the applicant, but were available for acquisition at the time of this analysis.

No Action Alternative: The no action alternative would avoid all impacts to waters of the U.S., however it would not meet the applicant's stated purpose and need for the proposed project.

Off-Site Alternatives 2, 3, and 4: The applicant is has selected the Las Colinas market because of the demonstrated demand and existing market for a single mixed-use development which includes housing, businesses, and amenities. The applicant developed a coarse screening methodology in searching for properties before deciding upon the proposed location and searched for a site that met the following criteria:

- 1. The site had to be located near a major highway interchange within the city of Las Colinas.
- 2. The site had to be located within a 1-mile radius of a high residential density area (one resident per 30 square feet of gross leasable area (GLA).
- 3. Existing technology must exist to construct the proposed project at that particular location.
- 4. The site had to be available, i.e., for sale. When the Applicant purchased the property at the preferred location, this site was the only known property within the city of Las Colinas that met these criteria.
- 5. The site had to be zoned for commercial and residential use.
- 6. The site had to be 40 to 80 acres in size.
- 7. The site had to be reasonably priced.

Alternative 1 was determined by the applicant to be the preferred alternative using the previously discussed screening criteria. The applicant believes this alternative met all the required screening to be carried forward as the preferred location for the project.

Alternative 2 is located within the city of Las Colinas, in an approximate 1-mile vicinity of a major highway interchange. Although this site is located near a major highway interchange, is in close proximity to existing high density residential developments and has the appropriate zoning required, the site is not of sufficient size. This site is too small to support the purpose and need of the project, therefore it was rejected.

Alternative 3 is located within the city of Las Colinas and is within a 0.5-mile vicinity of a major highway interchange. Although this site is located near a major highway interchange and is of sufficient size, it is not located near existing high density residential developments and does not have the appropriate zoning required, therefore it was rejected. A review of remote mapping indicates the presence of approximately 500 linear feet of low quality stream on the northern portion of the property and approximately 2,100 linear feet of perennial stream on the southern portion of the property. To meet the purpose and need of the project, the project would likely result in some impacts to both the northern and southern streams onsite.

Alternative 4 is not located within the city of Las Colinas, nor is it located near a major highway interchange. This site is also not located near existing high density residential developments and does not have the appropriate zoning required, therefore it was rejected. A review of remote mapping indicates the presence of approximately 550 linear feet of low quality stream on the property. To meet the purpose and need of the project, the project would likely result in some impacts to the stream onsite.

The following section describes how the applicant determined which on-site project configuration had the least adverse impacts to the aquatic ecosystem at the preferred alternative location. In accordance with the Guidelines at 40 CFR 230.10(a) (The Guidelines), a permit cannot be issued if a practicable alternative exists that would have less adverse impact on the aquatic ecosystem (known as the LEDPA), provided that the LEDPA does not have other significant adverse environmental consequences to other natural ecosystem components.

Alternative A: Northern Detention Pond Alternative. This alternative proposes a detention facility on the northwestern extent of the site. The proposed detention pond would be 4.05 acres (176,315 square feet) in size. The proposed detention pond would hold 25.40 acre-feet of water. To construct the detention facility this alternative would result in the loss of potential retail units. This alternative includes 13 retail units rather than the applicant's preferred 16 units. This alternative is not preferred because it is not economically feasible. The cost of losing tenant space would be too costly upfront, resulting in an increase in the price per square foot.

This alternative would result in permanent impacts to 130 linear feet of ephemeral stream (0.01-acre), 591 linear feet of intermittent stream (0.08-acre), 0.50-acre of forested wetlands, and 0.22-acre of emergent wetlands. This alternative proposes to avoid 2.16 acres of emergent wetlands, and 0.91-acre of open water. Although this is the least environmentally damaging alternative, it is not practicable because it does not meet the purpose and needs of the project; therefore it is not preferred by the applicant.

Alternative B: Maximization of Residential Lots Alternative. This alternative proposes a maximization of residential lots. The proposed detention pond would be 3.97 acres (172,921 square feet) in size. The proposed detention pond would hold 24.90 acre-feet of water.

This alternative would result in permanent impacts to 130 linear feet of ephemeral stream (0.01-acre), 507 linear feet of intermittent stream (0.07-acre), 2.23 acres of emergent wetlands, 0.35-acre of forested wetlands, and 0.91-acre of open water. This alternative proposes to avoid 84 linear feet of intermittent stream (0.01-acre), 0.15-acre of emergent wetlands, and 0.15-acre of forested wetlands. Although this alternative meets the purpose and need, it is not the least damaging practicable alternative, therefore it was rejected by the applicant.

Alternative C: Larger Retention Pond Alternative. This alternative proposes a larger detention pond. This alternative would result in permanent impacts to 130 linear feet of ephemeral stream (0.01-acre), 591 linear feet of intermittent stream (0.08-acre), 2.38 acres of emergent wetlands, 0.50-acre of forested wetlands, and 0.91-acre of open water. This alternative does not propose to avoid waters of the U.S. onsite. Although this alternative meets the purpose and need, it is the most environmentally damaging alternative, therefore it was rejected by the applicant.

Alternative D: Applicant's Preferred Alternative. The proposed retention pond would be approximately 3.89 acres (169,615 square feet) in size to support the retention and detention needs of the project. The pond is designed to have 4-feet of retention at all times. The purpose of the 4-feet of retention is an aquatic amenity. The remaining proposed volume will be used for water detention. The proposed volume

for the pond will be approximately 24.4 acre-feet with 4-feet of retention. The minimum required detention volume for the entire site is 12.5 acre-feet, not including water retention. The proposed development project is located near large existing traffic thoroughfares which serve the city of Las Colinas. This location offers a unique opportunity to take advantage of an existing intersection of two major highway interchanges (I-635 and President George Bush Freeway).

It is anticipated the northern portion of the detention pond would not remain inundated year-round. Although the area within the proposed detention pond would be graded during construction, hydric soils and hydrophytic vegetation are expected to return once the area is saturated for a sufficient amount of time. In total, the project would result in 2.61 acres of minimization to waters of the U.S. The preferred alternative would avoid 0.02-acre of open water and 0.36-acre of emergent wetlands. In total, the preferred alternative would avoid 0.38-acre of waters of the U.S. According to the applicant, the preferred alternative is the least environmentally damaging practicable alternative because it meets the housing, retail, and amenity needs of the project while proposing minimal impacts to waters of the U.S. necessary to complete the project.

Table 2: Summary of On-Site Alternatives & Impacts to WOUS

On-Site Alternatives	WOUS Impacts (acres)	WOUS Avoided (acres)
Northern Detention Pond (Alternative	0.81	3.07
A)		
Maximization of Residential Lots	3.57	0.31
(Alternative B)		
Larger Retention Pond (Alternative C)	3.88	0.00
Applicant's Preferred (Alternative D)	3.50	0.38

IV. COMPENSATORY MITIGATION: The applicant proposes to compensate for the loss of WOUS through the purchase of legacy stream credits, wetland credits, and open water credits from the South Forks Trinity River Mitigation Bank and riparian buffer credits from the Mill Branch Mitigation Bank in accordance with the methodologies prescribed within their respective mitigation banking instruments.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns 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, including its cumulative effects. Among the factors addressed 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, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE 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 USACE in determining whether to issue, issue with

modifications, or conditions, 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 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.

STATE WATER QUALITY CERTIFICATION: 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 USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and 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 USACE 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 the work is made available for review in the TCEQ's Austin Office. 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 requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any species may occur in the project area. The proposed project would be located in Dallas County where the Black-Capped Vireo (*Vireo atricapilla*), golden-cheeked warbler (*Denrocia chrysoparia*), Least tern (*Sterna antillarum*), and the Whooping crane (*Grus Americana*) are known to occur or may occur as migrants. The Black-Capped Vireo, golden-cheeked warbler, Least tern, and the Whooping crane are endangered species. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The proposed development has never been formally surveyed for the presence of historic or prehistoric cultural resources. Due to this, no sites eligible for, or listed in, the National Register of Historic Places are known from the proposed project area. Based on cultural resources work from other areas within the Elm Fork of the Trinity River drainage, the presence of historic and prehistoric sites is possible. The area lies within a highly urbanized portion of Dallas County and previous construction impacts may have altered portions of the proposed development.

FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE 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: 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 whether the issues raised are substantial and should be considered in his permit decision. 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 July 12, 2015, which is the close of the comment period. 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 be submitted to; Regulatory Division, CESWF-DE-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to Mr. Steve Lindamood at (817) 886-1744. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER FORT WORTH DISTRICT CORPS OF ENGINEERS

















