



June 18, 2019

By Email and U.S. Mail:

Cheryl Seager, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
seager.cheryl@epa.gov

David W. Galindo
Water Quality Division
Texas Commission on Environmental Quality
P.O. Box 13087 [MC 145]
Austin, Texas 78711-3087
David.Galindo@tceq.texas.gov

David Hoth
Asst. Field Supervisor
U.S. Fish & Wildlife Service - Coastal Ecological
Services, Houston Field Office
17629 El Camino Real, Suite 211
Houston, TX 77058
david_hoth@fws.gov

CC: Andria Davis
Regulatory Branch CESWG-PE-RE
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston TX 77553-1229
andria.e.davis@usace.army.mil

Re: Withdrawn permit application no. SWG-2012-00720 and unauthorized wetland fill in League City, Texas

We are writing on behalf of Bayou City Waterkeeper,¹ Healthy Gulf,² and the concerned residents of the Bayou Brae neighborhood in League City about an ongoing residential development project, which has filled and destroyed potentially jurisdictional wetlands without a § 404 permit. The property owner, Broad Reach Partners, abandoned the § 404 permitting process in 2014 after the agencies receiving this letter (collectively, the “Agencies”) presented comments regarding mitigation and an inadequate wetland delineation that could not be resolved.³ As a result, this development is proceeding without any of § 404’s protections. We ask the Agencies to address our serious concerns about this potentially unlawful project.

¹ Bayou City Waterkeeper works to protect and restore the integrity of bayous, rivers, streams, and the bays making up the lower Galveston Bay watershed and has members in the Bayou Brae neighborhood of League City, Texas. More information is available at bayoucitywaterkeeper.org.

² Healthy Gulf is committed to uniting and empowering people to protect and restore the natural resources of the Gulf Region, forever protecting it for future generations. Healthy Gulf has members throughout the Gulf states. More information is available at healthygulf.org.

³ The property has an active stormwater construction permit (TXR15826P).

The property has been undeveloped since at least the 1940s, and its wetlands have protected neighboring homes from flooding for more than 50 years.

The site in question is located in League City, Texas, in Galveston County, at 29.528467, -95.078393. It is directly to the east of Robinson Bayou, a navigable water that feeds into Clear Creek and Clear Lake, which in turn connects to Galveston Bay; it is immediately to the north of Bayou Brae, a middle class neighborhood that also abuts Robinson Bayou. According to documents prepared by Broad Reach's engineer and submitted to the City of League City, FEMA's updated maps, which will go into effect in August 2019, place almost the entire property within the 100-year floodplain.⁴

Before Broad Reach began developing the property without a § 404 permit, it had been undeveloped since the 1940s. During that time, aerial images showed a densely forested tract with visible wetlands stretching from Robinson Bayou into the center of the property.⁵

In 2006, the U.S. Fish and Wildlife Service documented more than 9.5 acres of potentially jurisdictional wetlands on the tract and added them to the National Wetlands Inventory.⁶ The FWS classified 0.80 acres as estuarine and marine wetland habitat (E2USM) and 8.77 acres as freshwater forested/shrub wetland habitat (PFO1A). Also in 2006, the U.S. Army Corps of Engineers separately issued an approved jurisdictional determination—later questioned by the U.S. Environmental Protection Agency as inadequate—that identified only 1.35 acres of wetlands as jurisdictional.

Given the site's proximity to water and the Texas coast, its wetlands historically have offered significant value to local residents and the environment. As a general matter, forested wetlands serve the important purpose of minimizing the effects of flooding—and have, in fact, served this purpose for more than 50 years for the residents of Bayou Brae. Before being filled, the wetlands also long served as a resting place for area birds and wildlife. On the still partially intact western edge of these wetlands, connected directly to Robinson Bayou, is a lagoon, which fish inhabit and which kayakers and other recreational boaters visit.

In addition to lamenting the loss of an aesthetically-pleasing forest from their backyards and the buffer it provided from traffic noise, Bayou Brae's residents have serious concerns that the development and unauthorized fill and regrade of the Broad Reach site will lead to unprecedented flooding of their homes.⁷ A concerned resident has reported that after Broad Reach began to clear the property, several properties located closest to Robinson Bayou flooded for the first time. The threat of increased flooding and the loss of the forest's aesthetic value have affected property values and made it more difficult to sell homes in this previously desirable neighborhood.

⁴ Attachment 3.

⁵ See page 5 below.

⁶ Attachment 2.

⁷ During the 2013 comment period, Roger Barth, a resident of Bayou Brae, detailed these concerns. See Attachment 8.

Broad Reach's efforts to obtain a § 404 permit failed after the EPA, USFWS, and TCEQ expressed concerns about an incomplete wetland delineation, the failure to consider alternatives, and inadequate mitigation.

In 2012 and again in 2013, Broad Reach Partners attempted to obtain a § 404 permit and proposed to fill 1.08 acres of jurisdictional wetlands and excavate 0.3 more. After Broad Reach repeatedly failed to resolve a number of issues raised by the Agencies during the comment process, summarized immediately below, the application was withdrawn.⁸ **Copies of these comments are attached to this letter.**⁹

EPA asked the Corps to verify the wetland delineation before issuing a permit, due to Broad Reach's failure to account, at all, for 8.77 acres of forested wetlands identified in the National Wetlands Inventory that would be affected by its proposed development. At that point, satellite footage showed no development on the forested wetland acreage. The EPA acknowledged that these wetlands "provide good quality habitat for wildlife,... provide floodwater storage and perform valuable water quality maintenance functions by removing excess nutrients and pollutants from the water."

The EPA also asked Broad Reach to consider alternative, non-wetland locations for its project; avoid and minimize impacts to waters of the U.S.; and provide a plan to conduct non-water dependent activities in uplands--all requirements under the Clean Water Act, which had not been met. **FWS** raised similar concerns as the EPA and detailed several issues Broad Reach and the Corps must account for when determining how to mitigate the impacts of Broad Reach's development.

The **Texas Commission on Environmental Quality** cautioned it could not make its required water quality certification without more information. The TCEQ expressed its concerns that Broad Reach had not considered any practicable alternatives and requested more detail on its plan to minimize adverse impacts. The TCEQ recommended that Broad Reach submit a compensatory mitigation plan and specifically requested that the proposed mitigation would replace the functions and values of the aquatic resources being impacted.

To address some of these concerns, in early 2014, the Corps visited the site and identified additional areas on the tract that met wetland criteria. The site visit confirmed the presence of low geomorphic areas containing sediment deposits, hydrophytic vegetation, and soil mottling. As a result of this visit and the Agencies' comments, the Corps asked Broad Reach to submit an accurate wetland delineation and other supplemental information.

In February 2014, Broad Reach's application continued to fall short in several key respects. By the end of March 2014, the Corps withdrew Broad Reach's permit application.

⁸ Application no. SWG-2012-00720.

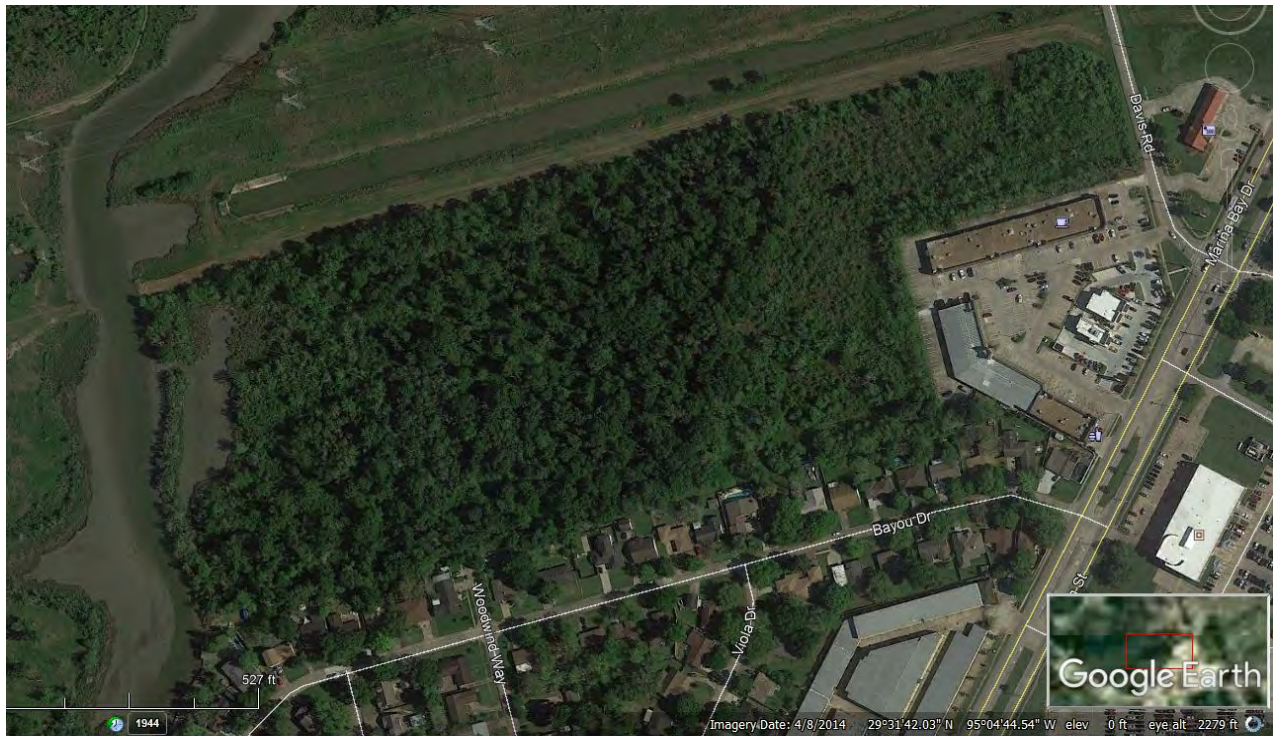
⁹ Attachment 8.

In late 2014, Broad Reach moved forward with developing the property despite not having a § 404 permit and destroyed evidence showing the presence of jurisdictional wetlands.

According to concerned residents in Bayou Brae, Broad Reach began clearing the property of trees in November 2014. In January 2015, while many of the trees were still intact, the development came to a halt while the Corps investigated a complaint about unauthorized activity on the site. The Corps ultimately concluded that the initial clearing activities did not affect any jurisdictional wetlands.

But soon after the Corps' investigation, Broad Reach began more aggressively clearing the property of trees and other vegetation. Google Earth data shows a significant loss of trees between April 2014 and March 2015. As of the date of this letter, the tract has been cleared of almost all trees, and most of the site has been built up with fill material.

To illustrate, on April 8, 2014, the tract still appeared densely forested.¹⁰

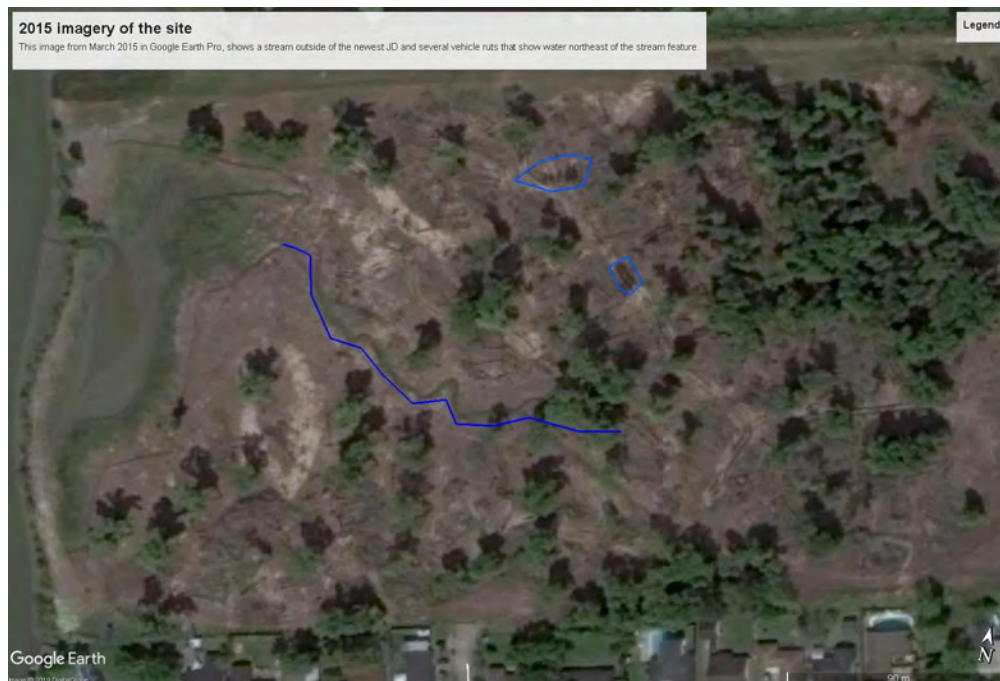


¹⁰ Attachment 1.

These trees appear to have been on the site as far back as the 1944 imagery, which shows sunlight shining off water throughout the site:



In March 2015, even after some tree clearing, a stream is visible in Google Earth Pro imagery, and several vehicle ruts show water on the site:



In contrast, by the start of this year, the tract was stripped of trees, and much of the previous wetland area had been filled:



When we compare the January 2019 photo below with previous photography, we see discoloration from a sediment plume migrating off the construction area into the lake and wetland adjacent to the construction site, and further polluting Robinson Bayou. By filling and regrading much of the area containing wetlands documented in the National Wetlands Inventory, Broad Reach caused muddy water to flow over the site and into the jurisdictional wetlands that remained intact, as well as Robinson Bayou.



In 2019, the Corps issued an approved jurisdictional determination, omitting wetlands that had been filled by Broad Reach, and has not yet required a § 404 permit.

In late 2018, the Corps investigated another complaint of unauthorized activity. In April 2019, presumably in the process of attempting to resolve that complaint, the Corps issued an approved jurisdictional determination that identified 1.24 acres of wetlands that would be subject to a § 404 permit and a separate 0.25-acre wetland that the Corps deemed as non-jurisdictional.¹¹ This AJD identifies fewer wetlands than identified in the delineation that the EPA, in 2013, suggested fell far short of identifying all jurisdictional wetlands.

It is unclear whether and when the Corps will require Broad Reach to obtain a permit and comply with § 404's requirements. Meanwhile, Broad Reach continues to develop the property using an incomplete wetland delineation and without investing in proper mitigation, complying with § 404's other safeguards, or addressing any of the other concerns already raised by the Agencies in their 2013 comments.

The Agencies should independently investigate Broad Reach's property to assess the presence of jurisdictional wetlands.

The data reviewed by Bayou City Waterkeeper and Healthy Gulf, together with the record built in the comment process in 2013, strongly suggest that Broad Reach's development requires a § 404 permit and the mitigation that comes with it.

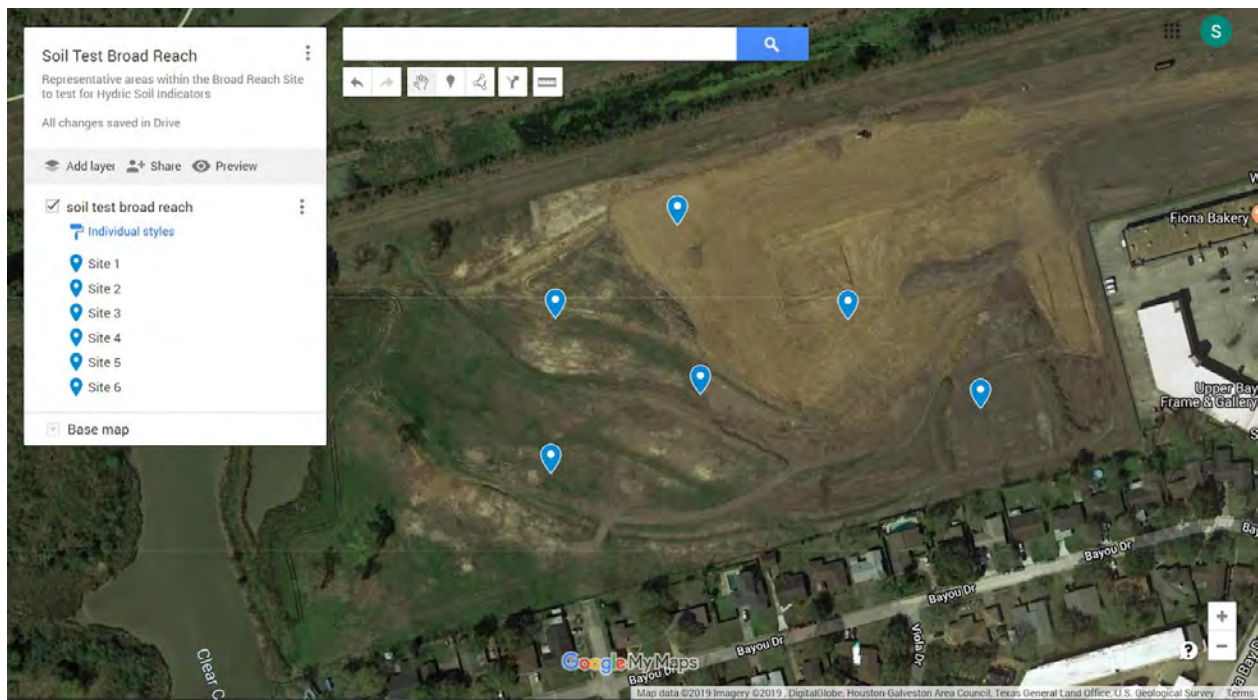
Broad Reach has been on notice of wetlands on its site since at least 2006, when its long-time consultant Berg Oliver submitted a request for a wetland delineation to the Corps. Broad Reach has been aware that its wetland delineation potentially has significantly undercounted the jurisdictional wetlands on its site since at least 2013, when the EPA raised this as an issue during the comment process. And yet, even after failing to meet the requirements of a § 404 permit in 2014, Broad Reach continues to develop the property.

Broad Reach has repeatedly not followed the rules despite long being aware of the presence of wetlands on its property. We strongly urge the Agencies—and particularly the EPA, which has power to define jurisdiction under § 404—not to rely on any data provided by Broad Reach and independently investigate the presence of wetlands on its property. This investigation must account for the development that Broad Reach has already undertaken and not reward its recent destruction of potentially jurisdictional wetlands.

¹¹ See Attachment 9. The Corps consulted the EPA by email regarding its exclusion of the 0.25-acre wetland, but did not reference or attempt to account for the EPA's previous objections or the Corps' failure to include the 8.77 acres of forested wetlands identified in the National Wetlands Inventory. See Attachment 10.

At a minimum, the Agencies should:

- Require sampling for hydric soils at several representative locations, such as on the map below,¹²
 - Site 1: 29.52915, -95.07746
 - Site 2: 29.52842, -95.07749
 - Site 3: 29.52842, -95.07749
 - Site 4: 29.5296, -95.0768
 - Site 5: 29.52915, -95.07587
 - Site 6: 29.52873, -95.07515
- Evaluate historical imagery of water and vegetation on the site; and
- Re-evaluate the jurisdictional nature of the eastern wetland.



After investigating these issues and establishing an accurate wetland delineation that includes those improperly filled and destroyed by Broad Reach, the Corps must require Broad Reach to go through the § 404 permitting process, and the Agencies must work together to require Broad Reach to develop a mitigation plan that will account for the wetlands losses that already have occurred, including the increased risk of flooding to Bayou Brae's residents.

¹² See <https://drive.google.com/open?id=11LHol86acXZW6BJqRneNv1W0QmVY-B-&usp=sharing>.

To keep Bayou City Waterkeeper, Healthy Gulf, our members, and the public properly informed, we request notification of any public notices or meetings relating to Broad Reach Partners' development.

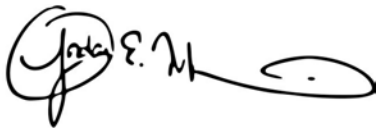
You can reach us at:

Bayou City Waterkeeper
ATTN: Kristen Schlemmer, Legal Director
2010 N Loop W, Suite 103
Houston, Texas 77018
(713) 714-8442 ext. 9630
kristen@bayoucitywaterkeeper.org

Healthy Gulf
ATTN: Scott Eustis, Community Science Director
1010 Common Street, Suite 902
New Orleans, Louisiana 70112
(504) 525-1528 ext. 212
scott@healthygulf.org

We look forward to your written response.

Sincerely,



Jordan Macha
Executive Director
Bayou City Waterkeeper
Houston, Texas



Matt Rota
Senior Policy Director
Healthy Gulf
New Orleans, Louisiana



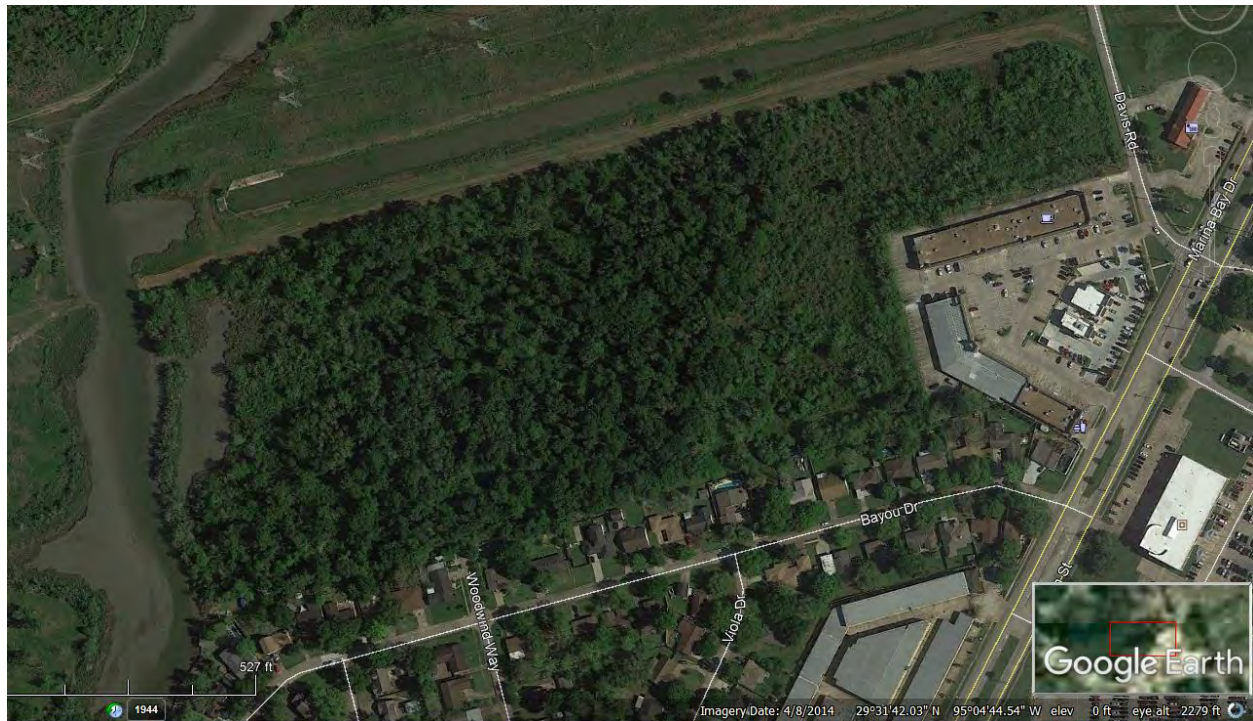
Kristen Schlemmer
Legal Director
Bayou City Waterkeeper
Houston, Texas



Scott Eustis
Community Science Director
Healthy Gulf
New Orleans, Louisiana

ATTACHMENT 1

Image from Google Earth, listed as 8 April 2014. This image shows substantial forest vegetation within the full 8.77 acres outlined by the National Wetlands Inventory.



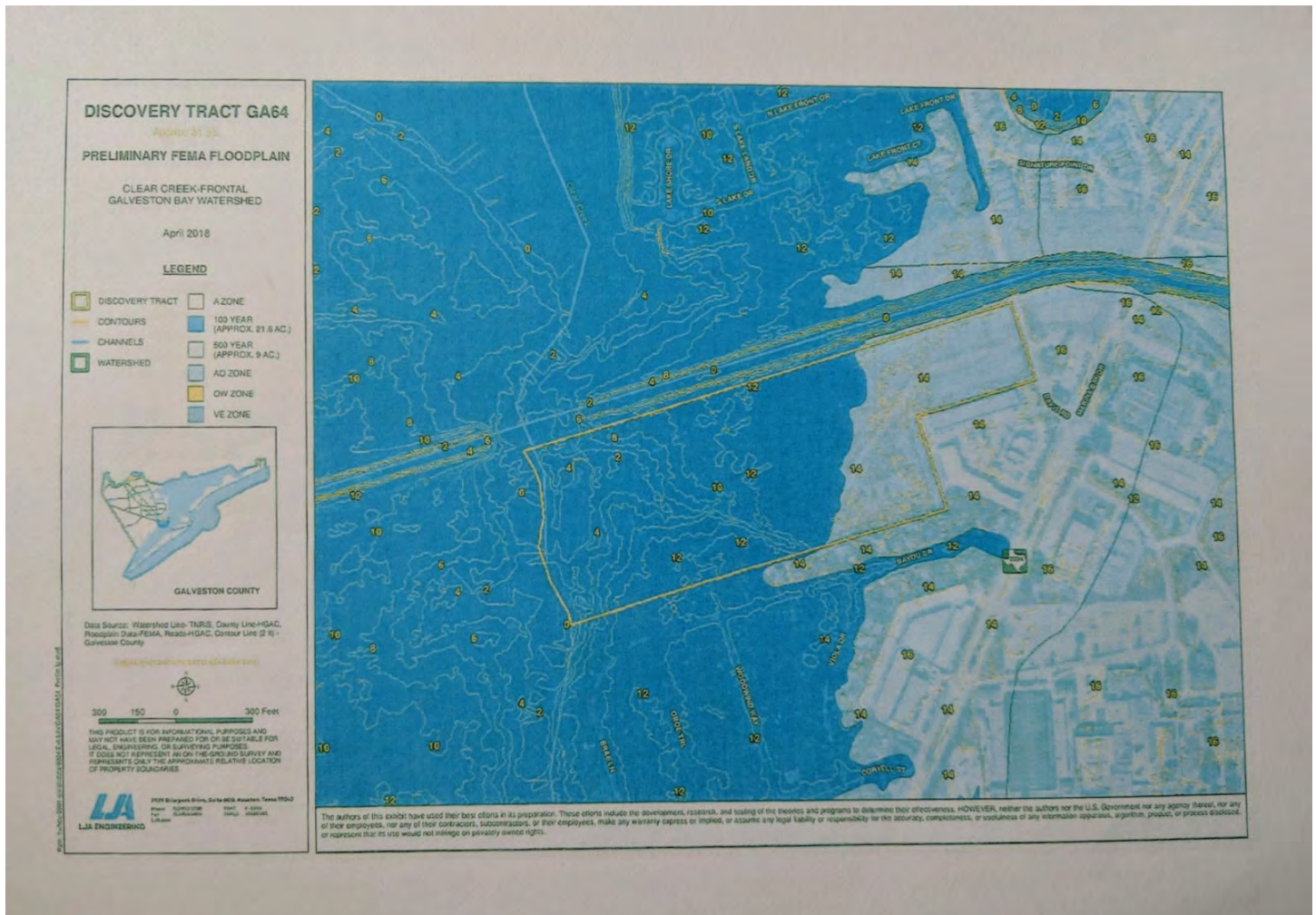
ATTACHMENT 2

Image downloaded from USFWS National Wetland Inventory Mapper website. From a 2006 aerial photo, the National Wetland Inventory classified 0.80 acres as estuarine and marine wetland habitat (E2USM), and 8.77 acres as freshwater forested/shrub wetland habitat (PFO1A). The year of the aerial photograph used in the National Wetlands Inventory is unknown.



ATTACHMENT 3

According to documents prepared by an engineer believed to have been hired by Broad Reach and submitted to the City of League City, FEMA's updated maps, which will go into effect in August 2019, place almost the entire property (outlined below in yellow) within the 100-year floodplain.



ATTACHMENT 4

Composite aerial photograph taken on 12 January 2019 of the Broad Reach Site. This image shows clearing of forest and shrub from the 8.77 acres. Also visible is sediment migrating off the construction area into the lake and wetland adjacent to the construction site, and further polluting Robinson Bayou. A larger image is available upon request.



ATTACHMENT 5

Composite aerial photograph of the Broad Reach Site taken on 13 February 2019. This image shows an increased amount of fill from the January aerial photo into the 8.77 acres in question, demonstrating a need for additional fill in this area relative to the non-wetland area. A larger image is available upon request.



ATTACHMENT 6

Aerial photo from 7 June 2019. This image shows the current conditions at the Broad Reach site, and its connection to Robinson Bayou and Clear Creek.



ATTACHMENT 7

Aerial photo from 7 June 2019. This oblique image facing east shows the cleared 8.77 acres, which is now also filled. A larger image is available upon request.



ATTACHMENT 8

Comment letters submitted by the Agencies in 2013.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

DEC 09 2013

December 4, 2013

Ms. Andria Davis
Regulatory Branch, CESWG-PE-RE
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, TX 77553-1229

Dear Ms. Davis:

The U.S. Environmental Protection Agency (EPA) has reviewed the Public Notice (PN), dated November 7, 2013, concerning Department of the Army (DA) Permit Application Number SWG-2012-00720. The applicant, Broad Reach Partners, proposes to construct a residential development of single-family homes with a canal on a 30.6-acre site, which includes excavation and fill of 0.87 acre of waters of the U.S. including Robinson Bayou, 1.38 acres of adjacent tidal wetlands and 0.14 acre of headwaters of Robinson Bayou. An additional 2.60 acres of waters of the U.S. would be dredged to a depth of 6 feet. The project site is adjacent to Robinson Bayou and Clear Creek/Clear Lake, between Davis and Bayou Drive in League City, Galveston County, Texas.

The comments that follow are being provided for use in reaching a decision relative to compliance with the EPA's *404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material* (40 CFR Part 230) (Guidelines).

National Wetland Inventory (NWI) data for the proposed site indicates that there are approximately 8.77 acres of forested wetlands located on the property, adjacent to the headwater streams, in addition to the tidal emergent wetlands and waters of the U.S. These potential wetland resources are not represented in the applicant's wetland delineation. Due to the significant discrepancy between the NWI data and the delineated resources, the EPA requests that the Corps of Engineers verify the wetland delineation for the site, which has not yet been done, according to the PN. All wetlands on the property should be accurately represented for purposes of determining the least damaging practicable alternative and mitigation requirements.

The jurisdictional wetlands that would be impacted by this project not only provide good quality habitat for wildlife, but also provide floodwater storage and perform valuable water quality maintenance functions by removing excess nutrients and pollutants from the water. The *404(b)(1) Guidelines* prohibit the discharge of dredged or fill material into waters of the United States, including wetlands, if there is a practicable alternative. Part 230.10(a)(3) of the Guidelines states that if the activity associated with a discharge which is proposed for a special aquatic site does not require proximity to or siting within the special aquatic site to fulfill its basic purpose (i.e. not "water dependent"), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. The JPN does not indicate that the applicant considered alternative, non-wetland locations nor is there any indication that the applicant attempted to avoid and/or minimize impacts to wetlands and waters of the U.S. on the property.

The applicant must provide an analysis of alternative sites considered for this development to demonstrate this site is the least environmentally-damaging practicable alternative to meet the local

Internet Address (URL) • <http://www.epa.gov>

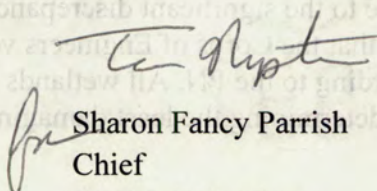
housing needs cited by the applicant. The EPA recommends the work be restricted to upland portions of the site, and avoid impacts to waters of the U.S. and wetlands. The proposed canal feature, which would be used for recreational boat access to Clear Lake, would not provide the habitat and water quality benefits that are currently provided by the wetlands and headwaters on the property.

The applicant proposes to mitigate for impacts to wetlands and waters of the U.S. by using dredged material to establish approximately 2.83 acres of emergent wetlands in an area adjacent to Clear Creek, approximately 1,200 linear feet north of the project site. Until the aquatic resources on the property are confirmed by the Corps, it is unclear whether or not the proposed mitigation would adequately compensate for the proposed impacts. However, the current proposed location appears appropriate to mitigate for the impacts to tidal emergent wetlands. The EPA recommends that a mitigation ratio of at least 2:1 for biological, chemical, and physical function units be required for created wetlands to impacted wetlands due to the functional lag between created and natural wetlands. The final mitigation plan should include performance standards and plans for monitoring, long-term management and perpetual site protection. The EPA requests the opportunity to review any future mitigation plans for the project.

In summary, the EPA requests that no permit be issued for the proposed project until the applicant has fulfilled the Guidelines, including conducting an alternatives analysis, avoiding and minimizing impacts to waters of the U.S. and conducting non-water dependent activities in uplands to the maximum extent practicable. We also request that the wetland delineation be verified prior to permit issuance. Mitigation for any remaining unavoidable impacts should fully replace the loss of wetland functions and ecosystem services according the results of an appropriate functional assessment, and include all of the components required by the 2008 Final Mitigation Rule.

If you have any questions regarding these comments, please contact Ms. Alison Kitto of my staff at Kitto.Alison@epa.gov or (214) 665-7482.

Sincerely yours,


Sharon Fancy Parrish
Chief
Wetlands Section

cc: U.S. Fish and Wildlife Service, Clear Lake, TX
National Marine Fisheries Service, Galveston, TX
Texas Parks and Wildlife Department, Dickinson, TX
Texas Commission on Environmental Quality, Austin, TX

DEC 10 2013



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Coastal Ecological Services Field Office
17629 El Camino Real, Suite 211
Houston, Texas 77058
281/286-8282 / (FAX) 281/488-5882



In Reply Refer To:
FWS/R2/CLES/
SWG-2012-
00720

December 3, 2013

RECEIVED
Colonel Richard P. Pannell
Galveston District, Corps of Engineers
Attn: Andria Davis
P.O. Box 1229
Galveston, Texas 77553-1229

Dear Colonel Pannell:

REGULATORY

Thank you for the opportunity to comment on the public notice for U.S. Army Corps of Engineers (Corps) permit application SWG-2012-00720, dated November 7, 2013. The applicant, Mr. Joe Watson, proposes to fill 1.67-acres of waters of the U.S., including 1.08 acres of tidal wetlands and 0.59-acres of other waters, excavate an additional 0.61-acre of other waters, and dredge 0.3-acre of tidal wetlands and 2.6 acres of Robinson Bayou to construct a waterfront single-family housing development. The project is located between Davis Road and Bayou Drive in League City, in Galveston County, Texas.

The U.S. Fish and Wildlife Service's (Service) comments are provided in accordance with the provisions of the Endangered Species Act (16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667(e)), and the National Environmental Policy Act (42 U.S.C. §4321-4347 et seq.).

In the absence of the information, clarification, and coordination requested herein, the Service recommends denial of application SWG-2012-00720 based on the following:

Jurisdictional determination

The public notice references "discharge of fill material into 0.56-acre of waters of the U.S., including Robinson Bayou." Additionally it references fill placed into 0.03-acre of "headwaters" and the excavation of 0.11-acre of the same without further clarifying what type of aquatic resource is being proposed to be impacted. Are these wetlands or are these areas more appropriately classified as streams? The delineation provided depicts these areas as contiguous with "adjacent wetlands" so by calling them out as "headwaters" the Service assumes that these linear features are streams and not "wetlands" as the applicant's plans categorize them.

Therefore, it is inappropriate to quantify impacts to streams (e.g., a narrow first order stream) in area measurements, since such streams could be thousands of feet long and not measure more than an acre in area. Thus, the Service recommends that the Corps verify the proposed impacts as their classification is now in question. Once verification of the classification is complete, the Service requests that a revised public notice that correctly quantifies project impacts be coordinated with resource agencies for review and comment.

Site Selection/Alternatives

The public notice contains no information on the alternatives the applicant examined. Thus, the information in the notice contains too little substantive information for the Service to make meaningful comment on the selection of this site. A 30-acre site with more than 27 acres of uplands would appear to support a significant number of housing lots without the need to fill wetlands and streams at all. The Service requests the Corps ask the applicant these questions and hold the applicant to the standards set forth in regulation (40 CFR 230.10). A revised public notice should be coordinated that contains the relevant site selection criterion and the alternatives. If the applicant has submitted an alternatives analysis to the Corps for this project, the Service hereby requests a copy. Alternately the Service will meet with the applicant and Corps to discuss these items at a mutually agreeable time and location.

Avoidance and Minimization

The notice states that the applicant cannot avoid impacts to jurisdictional areas while still meeting the basic overall needs of the project. This applicant has undertaken similar projects in the past and should be familiar with the permit process, sequencing (avoidance, minimization, and compensation) and information needs of the Corps and resource agencies. The Service understands that the basic purpose of the project is housing, which the Corps and applicant should well know is not water dependent. Likewise, the applicant has demonstrated no effort whatsoever regarding minimization of impacts. Regardless, in the absence of a permit denial, the Service recommends the applicant limit the construction of housing to upland areas of the site, and eliminate all wetland and stream fill, as well as the dredging of a blind canal and an access channel. There are adjacent housing developments that do not include these types of impacts so an argument that such developments are unprofitable or not in keeping with local practice or market demands appears to be a questionable argument. The destruction of aquatic resources the Corps is entrusted to protect demand a more critical examination of this proposal than that put forth to date.

Mitigation Plan

The conceptual mitigation plan is in conflict with the text of the public notice. The text states that dredged material will be used to establish 2.83 acres of wetlands in Robinson Bayou. The conceptual plans depict no dredged material placement or alteration of the natural grade. Likewise the plans do not depict any containment of dredged material placed for beneficial use or provide the reader any details regarding the ownership, bathymetry, construction access, quantities of material needed, etc. to execute such a plan. The public notice does not specify the method of dredging, meaningfully speak to the disposal plan, or disclose the composition of the material to be dredged. All of these are required to make an application administratively

Colonel Pannell

3

complete (33 CFR 325.1(d)(3)). Thus, the Service would appreciate inclusion of this information in the revised plans. The reader is left to assume that the only action to be taken is vegetative plantings. As emergent vegetation does not occur on this area naturally now, planting such areas without a well-reasoned plan would not provide a reasonable expectation of success.

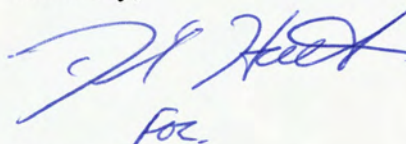
Regarding the proposed fill of wetlands and other waters, the Service recommends that any compensatory mitigation proposal include wetland restoration and site protection measures, beyond mere deed restrictions, and fully comply with the permittee responsible mitigation requirements of 33 CFR 332.4(c)(2-14). Such plans should, at a minimum be re-coordinated with the resource agencies for their review and comment. The conceptual plan provided may be sited on state-owned submerged lands. As such, the Service is concerned with the site protection mechanism the applicant intends to utilize. Similarly, adjacent parcels are owned by the City of League City and have been the focus of recent on-going restoration efforts, some of which included the expenditure of federal funds. The coordination of the current plan should be closely coordinated with the resource agencies to ensure that there are no conflicts with the existing restoration work.

Regarding our earlier concern for stream impacts, the Service recommends in-kind compensation be provided. The preamble to the Corps' regulations at 33 CFR 332 states, "district engineers will generally require stream restoration, enhancement, or preservation activities to provide required compensatory mitigation for permitted impacts to streams." Furthermore, 33 CFR 332.4(c)(7) states, "For stream compensatory mitigation projects, the mitigation work plan may also include other relevant information, such as plan form geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings." As none of these details have been provided, the Service expects that an additional public notice will be published to allow for review and comment.

Lastly, the Service requests of the Corps that the applicant not simply be allowed to "address" the comments provided herein, but that the Corps and applicant engage the Service and other resource agencies to meaningfully resolve these objections. The process and end project are made better through that effort in our experience. We stand ready to work with the Corps and applicant to meet their goals while protecting our trust resources.

Thank you for the opportunity to review and provide comments on these documents. If you need any additional information, please contact Jeff Hill, staff biologist, at 281/286-8282, ext. 241.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edith Erfling".

Edith Erfling
Field Supervisor

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



DEC 17 2013

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 10, 2013

Ms. Andria Davis, Project Manager
Galveston District CESWG-PE-RE
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Re: USACE Permit Application No. SWG-2012-00720

Dear Ms. Davis:

As described in the Joint Public Notice, dated November 7, 2013, the applicant, Mr. Joe Watson, proposes to construct a single-family residential development with a canal for boat access to Robinson Bayou and Clear Creek/Clear Lake. The project is located on Bayou Drive, Robinson Bayou and adjacent wetlands, League City, Galveston County, Texas.

The applicant proposes to fill/excavate 2.39 acres of jurisdictional waters and dredge 2.60 acres of waters of the U.S. for construction of the proposed development. Impacts include discharge of fill material into: 0.56 acre of waters of the U.S. including Robinson Bayou, 0.03 acre of headwaters of Robinson Bayou, and 1.08 acres of adjacent tidal wetlands. Excavation impacts include: 0.11 acres of headwaters of Robinson Bayou, 0.30 acre of adjacent tidal wetlands, and 0.31 acre of water of the U.S. The applicant also proposes to dredge 2.60 acres of Robinson Bayou to a depth of 6.0 feet. The applicant proposes to mitigate for the proposed impacts by using dredged material to establish 2.83 acres of wetlands within a mitigation area located north of the project site on Clear Creek.

In addition to the information contained in the public notice, the following information is needed for review of the proposed project. Responses to this letter may raise other questions that will need to be addressed before a water quality certification determination can be made.

1. Title 30, Texas Administrative Code (TAC), Chapter 279.11(c)(1), states that "No discharge shall be certified if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, . . ." The public notice does not detail any proposed alternatives considered in the development of this project. Please have the applicant complete and submit the enclosed Tier II 401 Questionnaire and Alternatives Analysis Checklist. Practicable alternatives are preliminarily assumed to exist, but the applicant does have the opportunity to clearly demonstrate that no practicable alternatives exist.

Ms. Andria Davis, Project Manager
U.S. Army Corps of Engineers
USACE Permit Application No. SWG-2012-00720
Page 2

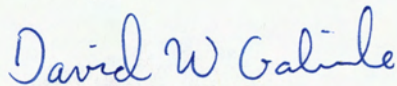
2. If the aquatic resources cannot be avoided, appropriate and practicable steps should be taken to minimize potential adverse impacts (30 TAC §279.11(c) (2)). Please provide more detailed information on what options were considered to minimize impacts and why they were eliminated. The public notice states “they have avoided and minimized the environmental impacts by excavating some jurisdictional areas so that they still function from a water quality and habitat perspective.” Please have the applicant further explain this statement and provide plans to show where these avoided and minimally impacted areas are within the project boundary. Please have the applicant demonstrate how on-site water quality will be maintained and protected pre-and post-construction. Please have the applicant review and incorporate the enclosed list of best management practices for canal subdivisions. If these or other options are not feasible, please explain why.
3. Mitigation of impacts is considered for “. . . all unavoidable adverse impacts that remain after all practicable avoidance and minimization has been completed . . .” (30 TAC §279.11(c) (3)). Please have the applicant demonstrate that the proposed mitigation replaces the functions and values of the aquatic resources being impacted. The applicant should submit a complete Compensatory Mitigation Plan containing all components as set forth in the 2008 Mitigation Rule.
4. Page 12 of 15 of the project plans indicates the applicant proposes to construct a boardwalk through the mitigation site. Please have the applicant consider using signage for environmental educational purposes and maintain the site to ensure the created wetlands are free from excessive trash and debris.
5. The proposed project plans depict the mitigation site within the confluence of Clear Creek and Robinson Bayou and that the applicant proposes to use the dredged and excavated material to create tidal wetlands. Placement of the material within Clear Creek and Robinson Bayou can be considered an additional impact. Please have the applicant re-evaluate plans to ensure that additional fill impacts to jurisdictional waters are avoided.
6. The public notice describes impacts to “jurisdictional waters” and lists the current site condition as containing tidal wetlands, non-tidal wetlands, Robinson Bayou and headwaters of Robinson Bayou. The applicant proposes to mitigate for the proposed impacts by creating tidal wetlands only. Please have the applicant describe the “jurisdictional waters” impacts in full detail. Mitigation should be in-kind and therefore if “jurisdictional waters” include freshwater wetlands and stream impacts, please have the applicant mitigate for each impacted resource.
7. The applicant is proposing to fill tidal waters of the U.S. The applicant should contact the Texas General Land Office to obtain the appropriate lease or permit prior to beginning construction on the site.

DEC 17 2013

Ms. Andria Davis, Project Manager
U.S. Army Corps of Engineers
USACE Permit Application No. SWG-2012-00720
Page 3

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to comment and looks forward to receiving and evaluating other agency or public comments. Please provide any agency comments, public comments, as well as the applicant's comments, to Ms. Brittany Lee of the Water Quality Division MC-150, P.O. Box 13087, Austin, Texas 78711-3087. Ms. Lee may also be contacted by e-mail at *Brittany.Lee@tceq.texas.gov*, or by telephone at (512) 239-5210.

Sincerely,



David W. Galindo, Director
Water Quality Division
Texas Commission on Environmental Quality

DWG/BML/gbg

Enclosures

ccs: Mr. Joe Watson, Broad Reach partners, 916 Herkimer, Houston, Texas 77008
Mr. Andy Boswell, Berg-Oliver Associates, Inc., 14701 St. Mary's Lane, Suite 400,
Houston, Texas 77079
Ms. Sheri Land, Texas General Land Office, P. O. Box 12873, Austin, Texas 78711-2873

TCEQ BMPs for Canal Subdivisions

In an effort to protect and maintain water quality in canal subdivisions, the TCEQ recommends the following Best Management Practices (BMPs).

Typically the source of most pollutants into the canals surrounding these types of developments is runoff during construction and from impervious surfaces and the use of fertilizers, herbicides, pesticides on lots adjacent to the canals.

- Residential and commercial lots should be sloped away from the canals and preferably routed through a centralized storm water treatment feature.
- There should be no direct discharge of treated wastewater effluent in the canals.
- The use of fertilizers, herbicides, and pesticides on residential lots should be minimized through homeowner education and deed restrictions.
- For shoreline stabilization purposes, shallow, vegetated shelves or "living shorelines" should be used in lieu of or in addition to bulkheading to provide aquatic habitat and enhance water quality.
- The opening of the canals to the parent water body should be delayed until after completion of the canals to prevent sedimentation in the canals.
- Hydraulic dredge material return water should not exceed 300 milligrams per liter total suspended solids.

Another water quality concern with canal subdivisions is sustaining adequate circulation and dissolved oxygen in the water to protect the aquatic life according to the Texas Surface Water Quality Standards (TSWQS).

- There should be numerous connections with the parent water body and other canals (dead-end canal designs should be avoided when practicable);
- Canal depths should be no deeper than the parent water body and should become gradually shallower from the parent water body inland;
- Canal widths should be a minimum of 100 feet (not including piers and docks);
- Canals should be aligned with the prevailing wind direction.
- Submit a dissolved oxygen monitoring plan incorporating the following components to assure the canals are meeting TSWQS:
 - a) Monitor for dissolved oxygen, temperature, and conductivity in the canals and parent water body bimonthly from May through October, starting as soon as the project begins.
 - b) One site in each of the canals and at least one control site in the parent water body should be monitored until 90% build out.

DEC 09 2013

Roger Barth
2211 Bayou Drive
League City, TX 77573
832-397-9070
Roger.Barth@hotmail.com

SUBJECT: Response to public notice no. SWG-2012-00720

December 5, 2013
Ms. Andria Davis
Regulatory Branch, CESWG-PE-RE
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, TX 77553-1229

Ms. Davis:

For over 25 years, I have owned and lived at 2211 Bayou Drive. This property is adjacent to the southwest corner of the subject development tract owned by Broad Reach Partners. I am also a boater and am familiar with Robinson Bayou and its connecting waters. Following are my questions, concerns, and comments related to the proposed development.

1. Flood Control

1.1. Robinson Bayou flow and rise

- 1.1.1. The bayou often overflows onto the development tract and onto the side of our yard that abuts the tract. I am concerned that elevation of the tract and/or addition of a bulkhead adjacent to our property will act as a dam, impeding the flow and increasing flooding on our land.
- 1.1.2. The bayou appears to be about two feet shallower than it was when we moved to our property. This, combined with the recent Robinson Bayou bank stabilization project, and possibly other local flood projects, means that the flow and rise of the bayou during heavy rainfall is much greater than it was in the past.

1.2. Drainage

- 1.2.1. There is a utility easement at the border of our property and the development property. In part, this contains the outlet ditch for a storm sewer pipe servicing Bayou Drive. It ends about 65 feet from Robinson Bayou. From the terminus of the pipe there is an open, concrete-lined ditch that connects to the bayou. During periods of heavy rain, the bayou rises rapidly, sometimes covering the end of the pipe. This overwhelms the storm sewer system, causing Bayou Drive and Brae Lane to flood. The storm water then drains from the streets to the bayou through my yard and those of my neighbors.
- 1.2.2. Obviously, the new bulkhead should not block the concrete-lined ditch. In addition, the proposed increase in elevation should be limited so as to not create a dam effect and increase

the likelihood of water covering the pipe. If not managed carefully, our property could be subject to increased flooding, both from the bayou and the streets.

1.2.3. I cannot tell from the proposal documents how the developer intends to slope the land to maintain existing drainage through the raised land. Additional runoff to Bayou Brae would increase the likelihood of flooding in this neighborhood.

1.2.4. The bottom line is that the existing storm water system is barely adequate. Anything that would impede the flow of water in the Bayou, or cause more water to drain onto Bayou Drive, or cause the bayou to more quickly cover the end of the storm sewer pipe, will increase the likelihood of flooding in Bayou Brae.

1.3. Impending regulations

1.3.1. The proposed site development cross section indicates a house pad elevation of 12.5 feet. As you know, FEMA has developed a new MAP (Risk Map6) that calls for BFE in this location of 15 feet. In addition, I believe FEMA recommends new houses be built at elevations 3 feet above the BFE. This remapping, coupled with the new requirements of the Biggert-Waters Flood insurance Reform Act of 2012, may potentially lead the developer to greatly increase the pad elevation, perhaps to as much as 18 feet. Is it the intent of the developer to build "stilt" houses? If not, I am concerned that the tract elevations will end up being much higher than indicated in the proposal, and thus greatly exacerbate the problems noted here.

2. Traffic

2.1. Opening Woodwind Way to the new subdivision and Davis Road

2.1.1. Bayou Brae traffic accesses FM2094 at Bayou Drive and at Coryell Street. Clear Creek ISD main campus is across the street. Entering or leaving is very difficult during rush hour, noon and when school lets out or has events. Traffic on FM2094 awaiting the lights at SR518 and Egret Bay Blvd backs up and blocks both entrances to the subdivision. Besides causing more delay, I am concerned that increasingly dangerous situations will develop as more vehicles try to make left hand turns into the neighborhood across the westbound traffic flow.

2.1.2. If Woodwind Way is opened, I am concerned that drivers from both Davis Road and the new subdivision will cut through Bayou Brae in order to avoid traffic lights on FM2094. Bayou Brae roads are narrow and cars are often parked on the streets. There are few sidewalks and a lot of pedestrians, including children playing and walking to school. Adding traffic to the Bayou Brae neighborhood will increase the likelihood of accidents.

3. Environmental

3.1. I do appreciate that the replacement wetlands is proposed to be in the same watershed. I have noticed that boaters and jet skiers like to play at high speeds in that area. This may bother birds and wildlife and cause erosion. The effects might be mitigated by making it a no-wake zone.

The following studies are recommended before the project be considered for approval:

- **Flooding.** An independent and professional review of the potential for flooding, taking into consideration the **combined** effects of the new project, the shoaling of the bayou, the Robinson Bayou bank project, and the drainage systems for Bayou Drive and Brae Lane.
- **Traffic.** A study similar to the flood study with a view to determine the effects of the proposed traffic change and addressing ways to mitigate the effects.

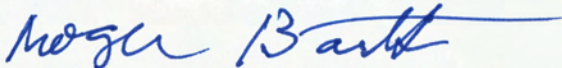
DEC 09 2013

Page 3

Finally, your thorough analysis of this project will be greatly appreciated. As a practical matter, the combined effects of FEMA re-mapping and the implementation of the Biggert-Waters Act may mean that many homeowners in Bayou Brae will have to be self-insured for flooding. This makes it very important to do a careful review of projects that may increase their risk.

Thank you for the opportunity to comment. Please let me know if I may provide more information or assist in any way.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roger Barth", with a long horizontal flourish extending to the right.

Roger Barth

Cc: Nick Kondejewski
Plan Reviewer, CFM
Building Department
City of League City
600 W Walker St
League City, Texas 77573

ATTACHMENT 9

Approved Jurisdictional Determination, dated April 5, 2019.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
P. O. BOX 1229
GALVESTON, TEXAS 77553-1229

April 5, 2019

Compliance Branch

SUBJECT: **SWG-2012-00720**; Broad Reach Partners I, LP, Approved Jurisdictional Determination, 29.7-Acre Tract, League City, Galveston County, Texas

Mr. Keith Morgan
Natural Resource Group Manager
Berg-Oliver Associates, Inc.
14701 St. Mary's Lane, Suite 400
Houston, Texas 77079

Dear Mr. Morgan:

This letter is in response to your request received on June 15, 2018, on behalf of Broad Reach Partners I, LP, for an approved jurisdictional determination. The property is located approximately 200 feet north of the intersection of Davis Road and East Main Street, League City, Galveston County, Texas.

Based on our September 27, 2018 site visit and desk review, we determined that the property contains waters of the United States, specifically, tidal open water and wetlands adjacent to Robinson Bayou (see the enclosed map). Robinson Bayou is subject to the ebb and flow of the tide and as such is a navigable water of the United States subject to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and Section 404 of the Clean Water Act (Section 404). The wetlands (Wet 1 and Wet 2) identified on the property totaling 1.24 acres are abutting, and, therefore, adjacent to Robinson Bayou; therefore, these adjacent wetlands are waters of the United States subject to Section 404. Any discharge of dredged and/or fill material into these adjacent wetlands requires a Department of the Army (DA) permit. The tidal open water totaling approximately 1.79 acres extends the mean high water of Robinson Bayou and is a water of the United States subject to Section 10 and Section 404; and, as such, any discharge of dredged and/or fill material and work or structures requires a DA permit.

Another wetland (Wet 3) totaling 0.25 acre was identified in the project area; however, this wetland is isolated and lacks any known nexus to interstate commerce, and as such is not a water of the United States (US) subject to Section 404 of the Clean Water Act (Section 404). As such a Department of the Army (DA) permit will not be required for the discharge of dredged and/or fill material into this 0.25-acre wetland (Wet 3) on the 29.7-acre tract. All the wetlands delineated in the project area were identified using the Regional Supplement to the 1987 Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0), which requires under normal circumstances, a predominance of hydrophytic vegetation, hydric soils, and sufficient hydrology at/or near the surface for adequate duration and frequency to support this aquatic ecosystem.

Areas of Federal Interests (federal projects, and/or work areas) may be located within this proposed project area. Any activities in these federal interest areas would also be subject to federal regulations under the authority of Section 14 of the Rivers and Harbors Act (aka Section 408). Section 408 makes it unlawful for anyone to alter in any manner, in whole or in part, any work (ship channel, flood control channels, seawalls, bulkhead, jetty, piers, etc.) built by the United States unless it is authorized by the Corps of Engineers (i.e., Navigation and Operations Division).

This determination has been conducted to identify the limits of the United States Army Corps of Engineers (USACE) CWA jurisdiction for the site identified in this request. However, this determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985 as amended. If you or your tenant are USDA program participants or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This letter contains an approved jurisdictional determination for your subject site. If you wish to appeal the approved jurisdictional determination, please see the enclosed sheets regarding the administrative appeal process for jurisdictional determinations: Notification of Appeals Process (NAP) fact sheet and Request for Appeal (RFA) form. If you object to this determination, you may request an administrative appeal under USACE Regulations at 33 CFR Part 331. If you request to appeal this determination, you must submit a completed RFA form to the Southwestern Division Office at the following address:

Mr. Elliott Carman
Appeal Review Officer, CESWD-PD-O
U.S. Army Corps of Engineer Division,
Southwestern
1100 Commerce Street, Room 831
Dallas, Texas 75242-1731
Telephone: 469-487-7061; FAX: 469-487-7199

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within **60 days** of the date of the NAP; noting the letter date is considered day 1. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

JDC
4/4/2019

-3-

This approved jurisdictional determination is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date. If you have any questions concerning this jurisdictional determination, please reference file number **SWG-2012-00720** and contact Ms. Lynne Ray at the letterhead address or by telephone at 409-766-6322. To assist us in improving our service to you, please complete the survey found at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0 and/or if you would prefer a hard copy of the survey form, please let us know, and one will be mailed to you.

Sincerely,

John Davidson
Team Lead
Compliance Branch

JDC
DAVIDSON
RD-C
4/5/2019

Enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: BROAD REACH PARTNERS I, LP	File Number: SWG 2012-00720	Date: 04/05/2019
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Ms Lynne Ray
Regulatory Specialist CESWG-RD-C
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-6322 FAX: 409-766-3931

If you only have questions regarding the appeal process you may also contact:

Mr. Elliott Carman
Administrative Appeals Review Officer (CESWD-PD-O)
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas , Texas 75242-1317
469-487-7061

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

SWG 2012-00720

Tidal Open Water Subject to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

Isolated Wetland Not Subject to Section 404 of the Clean Water Act.

Wet 3

Wetlands Abutting Robinson Bayou Subject to Section 404 of the Clean Water Act.

Wet 2

Wet 1

Google Earth

© 2018 Google

ATTACHMENT 10

Email exchange between Corps and EPA on April 2, 2019.

Ray, Diana Lynne CIV USARMY CESWG (US)

From: Kaspar, Paul <kaspar.paul@epa.gov>
Sent: Tuesday, April 02, 2019 2:56 PM
To: Jaynes, Kenneth E CIV USARMY CESWG (US)
Cc: Ray, Diana Lynne CIV USARMY CESWG (US); Davidson, John P II CIV USARMY CESWG (USA)
Subject: [Non-DoD Source] RE: One isolated wetland file SWG 2012-00720 League city, Galveston County

Kenny,

Thank you for coordinating the draft JD for the single isolated wetland, approximately 0.25 acre in size, located in Galveston County, TX. We have reviewed the information provided and will take no further action regarding this draft JD.

Paul Kaspar
Environmental Engineer
US. EPA - Region 6 (Houston Lab)
Water Division, Wetlands Section (6WQ-EM)
10625 Fallstone Road
Houston, TX 77099
Office: 214.665.7459
Fax: 281.983.2124
Email: kaspar.paul@epa.gov

-----Original Message-----

From: Jaynes, Kenneth E CIV USARMY CESWG (US) <Kenneth.E.Jaynes@usace.army.mil>
Sent: Tuesday, April 02, 2019 12:06 PM
To: Isolated Waters <Isolated.Waters@usace.army.mil>; Kaspar, Paul <kaspar.paul@epa.gov>
Cc: Ray, Diana Lynne CIV USARMY CESWG (US) <Diana.L.Ray@usace.army.mil>; Davidson, John P II CIV USARMY CESWG (USA) <John.P.Davidson@usace.army.mil>
Subject: One isolated wetland file SWG 2012-00720 League city, Galveston County

Folks;

This coordination is being done in accordance with the Rapanos guidance as directed. There has been one wetland polygon (~ 0.25 acre in size) identified on this tract that are subject to this coordination. It has been determined to be "isolated" and lack a nexus to interstate commerce. It was identified using the 87 WDM and the Atlantic Gulf Coast Regional supplement. This identification was done using off-site and on site information (site visit was done on 27 Sept 2018).

The nearest water of the U.S. is the Robinson bayou --noting there is also an irrigation canal nearby also. This wetland is not tidal nor part of a surface tributary system.

We have reviewed and determined that this wetland is located outside the anticipated high flow of any known water of the U.S. and are not located in an ecological landscape position that would be utilized for any known species in the geo-region that would require it and the nearest water of the U.S. to fulfill their life cycle requirements.

Based on our analysis and using contemporary off-site information; it is SWG position that this wetland is "isolated" and does not have any known nexus to interstate commerce; as such not subject to federal jurisdiction under Section 404 of the Clean Water Act.

Attached is the aerial photo & USGS map indicated the approximate center of the wetland plus the required JD form.

In conclusion, the Corps has verified this wetland is located in an "isolated" (as defined by federal regulation: 33 CFR 330.2 Definitions:(e) Isolated waters means those non-tidal waters of the U.S. that are:(1) Not part of a surface tributary system to interstate or navigable waters of the US; and (2) Not adjacent to such tributary waterbodies) geomorphic position. There is no known nexus to interstate commerce associated with it and as such, it is the Corps draft determination that it is not subject to federal jurisdiction under Section 404 of the Clean Water Act.

Kenny Jaynes
SWG POC
409-766-3985