



Public Notice

**US ARMY CORPS
OF ENGINEERS**
St. Louis District
Gateway to Excellence

Reply To:
U.S. Army Corps of Engineers
Attn: CEMVS-OD-R
1222 Spruce Street
St. Louis, Missouri 63103-2833

Permission No.
OD-R 23-040
Public Notice Date
April 12, 2024

Postmaster, Please Post Conspicuously Until:

Expiration Date
May 11, 2024

REQUEST FOR PERMISSION TO MODIFY A U.S. ARMY CORPS OF ENGINEERS PROJECT UNDER SECTION 408

Interested parties are hereby notified that an application has been received for a Department of the Army Section 408 permission for certain work near federally constructed flood protection projects of the United States, as described below and shown on the attached maps.

COMMENTS AND ADDITIONAL INFORMATION: Comments on the described work should reference the U.S. Army Corps of Engineers Public Notice number shown above and must reach this office no later than the above expiration date of the Public Notice to become part of the record and be considered in the decision. Comments should be mailed to the following address:

U.S. Army Corps of Engineers
Readiness Branch
1222 Spruce Street
St. Louis, Missouri 63103-2833
ATTN: Jeffrey Wells, P.E.
or Jeffrey.M.Wells@usace.army.mil

REQUESTER: Thouvenot, Wade & Moerchen, Inc. on behalf of LKQ Midwest, Inc. Attention: Mr. Jordan Harr, P.E.

LOCATION: The site is located along and perpendicular to the MESD / Chain of Rocks East Levee System. The work is located at the approximate coordinates 38°48'15.08"N 90°5'28.16"W in Hartford, IL. (Madison County, Illinois).

PROPOSED ACTION: The applicant is requesting to make alterations to the MESD / Chain of Rocks East Levee embankment. The proposed alteration includes the construction of a warehouse, 80 acre stone yard for storage, and retention ponds. Specifically, this Section 408 application details the fill that will be placed on the levee to facilitate drainage away from the levee for the entire parcel and the retention pond which will be used as the source of fill material. These areas are highlight on the location maps that are attached to this notice. The details of the fence located the property boundary are also

being reviewed under this Section 408 permission request, but all other site work is outside of the jurisdiction of the Section 408 program and therefore not covered under this request.

LOCATION MAPS AND DRAWINGS: See Attachment

ADDITIONAL INFORMATION: Additional information may be obtained by contacting Jeffrey Wells, P.E., St. Louis District 408 Coordinator, U.S. Army Corps of Engineers, at (314) 331-8568. Your inquiries may also be sent by e-mail to Jeffrey.M.Wells@usace.army.mil.

REGULATORY AUTHORITY: The St. Louis District Regulatory Branch has conducted a preliminary review of the proposed project. Based upon review of the project activity description, as well as the location of the work, the Regulatory Branch determined that this activity does not trigger the need for a Department of the Army Permit under Section 404 of the Clean Water Act. If additional infrastructure plans are developed that include impacts to Waters of the U.S., then a permit application would need to be submitted to the Regulatory Branch. It should be noted that although this proposal does not need a Section 404 permit based on submitted plans, any revisions to the applicant's proposal may be subject to permitting.

EVALUATION: The decision whether to grant the requested permission for project modification under Section 408 will be based on several factors. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. Review of the requests for modification will be reviewed by a U.S. Army Corps of Engineers technical review team considering the following factors:

1. **Impair the Usefulness of the Project Determination.** The review team will determine if the proposed alteration would limit the ability of the project to function as authorized, or would compromise or change any authorized project conditions, purposes, or outputs. The decision whether to approve a request for modification would be based on a determination of no impairments.
2. **Injurious to the Public Interest Determination.** Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Evaluation of the probable impacts that the proposed alteration to the U.S. Army Corps of Engineers project may have on the public interest requires a careful weighing of all those factors that are relevant in each case. Factors that may be relevant to the public interest depend upon the type of USACE project being altered and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks. If the potential detriments are found to outweigh the potential benefits, then it may be determined that the proposed alteration is injurious to the public interest.
3. **Environmental Compliance.** A decision on a Section 408 request is a federal action and is therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. While ensuring compliance is the responsibility of USACE, the requester is providing all information that the St. Louis District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and ordinances. NEPA and

other analysis completed to comply with the other environmental statutes (e.g. Endangered Species Act) should be commensurate with the scale and potential effects of the activity that would alter the US Army Corps of Engineers project. The scope of analysis for the NEPA and environmental compliance evaluations for the Section 408 review is limited to the area of alteration and those adjacent areas that are directly or indirectly affected by the alteration.

In compliance with Section 7(c) of the Endangered Species Act (ESA) of 1973, as amended, a list of species and critical habitat was acquired from the USFWS Information for Planning and Conservation (IPaC) website on 11 April 2024 (Project Code: 2024-0024603) for the Proposed Action Area. The listed species included Indiana bat, northern long-eared bat, tricolored bat, eastern massasauga, monarch butterfly, decurrent false aster, and eastern prairie fringed orchid. No tree clearing is anticipated. However, the construction disturbance may cause temporary minor impacts in the form of noise and vibration during the day, which could disturb bats roosting nearby. The existing conditions in the action area do not favor the establishment of decurrent false aster, eastern prairie fringed orchid, or host milkweed plants. The levee is routinely mowed and the area where the detention basin will be constructed is currently an agricultural field. Furthermore, the site is behind a functioning levee, greatly limiting the flooding disturbance events that generally precede a population of decurrent false aster from becoming established. The eastern massasauga is not known to occur in the action area. The proposed work would not fragment existing massasauga habitat or serve as a significant barrier to movement.

The USACE St. Louis District is requesting consultation with the USFWS under Section 7 of the ESA for the following effects determinations. The St. Louis District has made a “may affect, not likely to adversely affect” (NLAA) determination for the Indiana bat, northern long-eared bat, and tricolored bat. The St. Louis District has made a “not likely to jeopardize the continued existence” determination for the monarch butterfly. A “no effect” determination was made for eastern massasauga, decurrent false aster, and eastern prairie fringed orchid.

An EcoCAT report dated 08 December 2023 was obtained by USACE from the Illinois Department of Natural Resources website. The report stated that the following protected resources may be in the vicinity of the action area including the Chouteau Botanical Illinois Natural Area Inventory (INAI) site, the Mississippi River – Hartford INAI Site, the butterfly mussel (*Ellipsaria lineolata*), and the Indiana bat. The INAI sites do not lie within the action area and would not be adversely impacted if the project is constructed. The butterfly mussel would not be impacted because the work would take place behind a levee in an upland area. Adverse indirect impacts from sedimentation are unlikely given the location of the proposed work. On 13 December 2023, IDNR provided a response saying that adverse impacts are unlikely and terminated consultation. They also recommended a winter tree clearing restriction for the forest bat species should there be any tree clearing, but no tree clearing is required.

The Migratory Bird Treaty Act (MBTA) of 1918 provides protection for bird species native to North America. The project area is in the Mississippi Flyway, a bird migration route which follows the Mississippi River, the Missouri River, and the Lower Ohio River in the United States. A variety of migratory birds might occur in the project areas, some as migrants and some as breeders, depending on the time of year. Year-round residents would also be present. The construction disturbance may cause temporary minor adverse impacts to individuals migrating through the area. The proposed detention basin may provide some stopover habitat.

Although the bald eagle (*Haliaeetus leucocephalus*) was removed from the federal list of

threatened and endangered species in 2007, it continues to be protected under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act (BGEPA). The BGEPA prohibits unregulated take of bald eagles, including disturbance. The U.S. Fish and Wildlife Service developed the National Bald Eagle Management Guidelines to provide landowners, land managers, and others with information and recommendations regarding how to minimize potential project impacts to bald eagles, particularly where such impacts may constitute disturbance. The nearest known bald eagle nest is approximately 1.75 miles upstream of the proposed project area on the right descending bank of the Mississippi River. This nest is further than 660 feet from any work area, so a disturbance permit is not required. If a bald eagle nest is found in the project area, or in the vicinity of the project area, then the USFWS should be contacted, and the National Bald Eagle Guidelines shall be implemented.

The Illinois State Historic Preservation Office (SHPO) reviewed the project before a 408 application was submitted to the St. Louis District. The SHPO requested a cultural resource survey be conducted. This consisted of a Phase I survey and Phase II testing. Two archaeological sites were revisited and ten archaeological sites were identified. All sites were determined to be ineligible to the National Register of Historic Places. The District has determined "No Historic Properties Affected."

Consulting Tribal Nations will be consulted pertaining to this project within the next couple of weeks.

4. Environmental Impact Statement. A preliminary determination has been made that an environmental impact statement is not required for the proposed work.
5. Technical Analysis. The St. Louis District is working closely with the requestor to ensure that all technical plans, maps, drawings, specifications are provided and complete. A District-led Technical Review is being conducted to determine any potential adverse impacts to the US Army Corps of Engineers flood protection system.

SOLICITATION OF COMMENTS: The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, State, and Local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed activity. Any comments received will be considered by the U.S. Army Corps of Engineers to determine whether to issue, modify, condition, or deny a permission for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are taken into consideration 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.

SUMMARY: It should be noted that materials submitted as part of the Section 408 request become part of the public record and are thus available to the general public under the procedures of the Freedom of Information Act (FOIA). Individuals may submit a written request to obtain materials under FOIA or make an appointment to view the project file at the St. Louis District Corps of Engineers, Office of Counsel.

Interested parties wishing to comment on the proposed activity must do so in writing no later than **May 11, 2024**. It is presumed that all parties receiving this notice will wish to respond to this public notice;

therefore, a lack of response will be interpreted as meaning that there is no objection to the project as described.

This public notice is not a paid advertisement and is for public information only. Issuance of this notice does not imply Corps of Engineers endorsement of the project as described.

ORIGINAL SIGNED

John L. Osterhage
Chief, Readiness Branch

Attachment

NOTICE TO POSTMASTERS:

It is requested that this notice be conspicuously and continually placed for 30 days from the date of this issuance of this notice.



SEAL:

NOT FOR CONSTRUCTION

SUBMITTALS / REVISIONS:

2023.10.06 PRELIM PLANS

PROJECT NO.: 221311 DRAWN BY: JBH

SHEET TITLE:
SITE PLAN (OVERALL)

These plans drawings are the property of the registered architect and may not be copied, reproduced or used without his written permission.

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