



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

PUBLIC NOTICE

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

TITLE: Horace, West Fargo, North Dakota Flood Damage Reduction Project
(Public Notice ID #2024-0001)

PUBLIC NOTICE COMMENT PERIOD:

Begins: 13 May 2025

Expires: 12 June 2025

Interested parties are hereby notified that a request for permission to alter a U.S. Army Corps of Engineers (Corps) project has been received and will be evaluated by the St. Paul District. The request will be evaluated by the Corps under the authority of Section 14 of the Rivers and Harbors Act of 1899 (33 USC Section 408). Written comments are being solicited from anyone having an interest in the requested alteration. The comment period closes at the date listed below. Comments will become part of the Corps' administrative record and will be considered in the decision on the request. Comments supporting, opposing, or identifying concerns that should be considered by the Corps in its decisions process are all welcome. Comments providing substantive information or a rationale for the commenter's position are the most helpful.

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

REQUESTER: In compliance with 33 U.S.C. 408 (Section 14 of the Rivers and Harbors Act of 1899; hereinafter Section 408), Cass Rural Water District has requested to install a new watermain via horizontal directional drilling under the Sheyenne Diversion channel in four locations.

LOCATION: The proposed project is to cross the Sheyenne Diversion at four locations; 52nd Avenue, 64th Avenue, 76th Avenue and Wall Avenue in Cass County, North Dakota.

LOCATION MAP(S)/DRAWING(S): See Figure 1.

REQUESTER'S PROPOSED ACTION: To cross the Sheyenne Diversion channel via horizontal directional drilling to install a new watermain.

REGULATORY AUTHORITY: This request will be reviewed according to the provisions of Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408). A requestor has the responsibility to acquire all other permissions or authorizations required by federal,

state, and local laws or regulations, including any required permits from the USACE Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413). The compliance determination for any Section 10/404/103 permit decision associated with the proposed alteration is separate from and will not be included in the Section 408 compliance determination. An approval under Section 408 does not grant any property rights or exclusive privileges nor does it authorize any injury to the property or rights of others.

EVALUATION: The decision whether to grant the requested permission for project modification under Section 408 is based on several factors which are outlined in Engineering Circular (EC) 1165-2-220, *Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to Section 408*. The decision will reflect the national concern for both protection and utilization of important resources. The benefit which may reasonably 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 District 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 federally authorized project to function as authorized, or if it 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 USACE project may have on the public interest requires a careful weighing of all those factors that are relevant in each particular 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 therefore subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements, including the National Historic Preservation Act and the Endangered Species Act. While ensuring compliance is

the responsibility of the District, the requester is providing all information the District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and ordinances. ***Based on information provided by the applicant to date, current USACE regulations governing NEPA implementation, and/or the contents of existing NEPA documentation if available, it is likely that the proposed action will be determined to be categorically excluded from the need to prepare an Environmental Assessment or Environmental Impact Statement.***

- a. According to EC 1165-2-220, Real estate grants for rights-of-way as referenced in ER 200-2-2 Paragraph 9(h) should be broadly interpreted to include grants of rights-of-way by either USACE or the non-federal sponsor. According to ER 200-2-2 Paragraph 9(h) dated 4 March 1988, "Real estate grants for rights-of-way which involves only minor disturbances to earth, air, or water:
 - (1) Minor access roads, streets, and boat ramps,
 - (2) Minor utility distribution and collection lines, including irrigation,"
 - i. this action is categorically excluded from NEPA documentation.
 - b. The permit area has been surveyed for cultural resources and there are no historic properties within the Federal interest portion of the project. The permit area is not within an historic district and is not adjacent to historic structures. The area has been extensively disturbed by industrial and modern urban development efforts since the 1950s. Due to prior disturbance and lack of previously documented cultural resources, there will be no historic properties affected by the proposed work within the permit area. Further evaluation under Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) is not warranted.
4. *Technical Analysis.* The District is working closely with the requestor to ensure all required technical plans, maps, drawings, and specifications are provided and complete. A District-led Agency Technical Review is being conducted to determine any potential adverse impacts to the USACE-authorized flood reduction project.

SOLICITATION OF COMMENTS: The District is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties to consider and evaluate the impacts of the proposed activity. Any comments received will be considered by the District 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 used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

It should be noted, materials submitted as part of the Section 408 request become part of the public record and are 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 Corps of Engineers St. Paul District, Office of Counsel.

It is presumed all parties receiving this notice will wish to respond to this public notice; therefore, a lack of response will be interpreted as meaning there is no objection to the project as described.

COMMENT SUBMISSION AND ADDITIONAL INFORMATION: Written comments on the described work should reference the U.S. Army Corps of Engineers Public Notice number 2024-0001. Comments must reach this office no later than June 12, 2025. Comments or requests for additional information should be mailed or emailed to the following address:

Email: cemvp-pm@usace.army.mil.

Mail:

Department of the Army
Corps of Engineers, St. Paul District
ATTN: Michelle Prosser
332 Minnesota Street, Suite E1500
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