



**US Army Corps  
of Engineers** ®  
Memphis District

**ISSUE DATE: April 30<sup>th</sup>, 2025**

**EXPIRATION DATE: May 15<sup>th</sup>, 2025**

### **PUBLIC NOTICE**

#### **U.S. Army Corps of Engineers Memphis District**

#### **U.S.C. Chapter 33, Section 408 Permission Evaluation**

**TITLE:** Section 408 Permission Evaluation for construction of a road off the Birds Point-New Madrid Frontline Levee to provide access to a landlocked section of property.

**INTRODUCTION:** The authority to grant permission for temporary or permanent alterations of any U.S. Army Corps of Engineers (USACE) federally authorized civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 USC 408. Mr. Fred Tomera is requesting permission to construct an access road from the Birds Point-New Madrid Frontline Levee to his property south of the levee. The authorized federal project being altered is part of the Mississippi River Levee system. The federal project provides for managing flood risks to lands outside of the levees from floodwaters of the Mississippi River. Federal responsibility extends 15 feet from the landside toe and 15 feet from the riverside toe of the levee.



Figure 1. Location of proposed construction in Mississippi County, MO.

**PROJECT DESCRIPTION:** Section 408 authorizes USACE to grant permission for the alteration or occupation or use of the project if USACE determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project.

**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. The scope of analysis for the NEPA and environmental compliance evaluations for the Section 408 review should be limited to the area of alteration and those adjacent areas that are directly or indirectly affected by the alteration. Mr. Tomera has requested a Section 408 evaluation on the proposed action from the Memphis District, and the environmental compliance branch is

currently conducting a preliminary determination by reviewing the proposed work of the footprint of this project that may affect USACE interests.

A list of potential threatened or endangered species possibly in the project area was created on 22 April 2025 utilizing the Information for Planning and Consulting (IPaC) tool provided by the United States Fish and Wildlife Service (USFWS). The proposed Section 408 alteration was determined to have the following effects on threatened or endangered species or their critical habitats in the project area, pursuant to the Endangered Species Act:

| Common Name               | Binomial                      | Status              | Effect Determination |
|---------------------------|-------------------------------|---------------------|----------------------|
| Gray Bat                  | <i>Myotis grisescens</i>      | Endangered          | No effect            |
| Indiana Bat               | <i>Myotis sodalis</i>         | Endangered          | No effect            |
| Tricolored Bat            | <i>Perimyotis subflavus</i>   | Proposed Endangered | No effect            |
| Alligator Snapping Turtle | <i>Macrochelys temminckii</i> | Proposed Threatened | No effect            |
| Pallid Sturgeon           | <i>Scaphirhynchus albus</i>   | Endangered          | No effect            |
| Fat Pocketbook Mussel     | <i>Potamilus capax</i>        | Endangered          | No effect            |
| Monarch Butterfly         | <i>Danaus plexippus</i>       | Proposed Threatened | No effect            |

The USACE Memphis District Archaeologist has determined that the proposed activities would cause no effects to known historic properties, pursuant to Section 106 of the National Historic Preservation Act. The area has been previously surveyed and there are no known properties within the project area or surrounding areas.

The decision on this Section 408 request is being analyzed in accordance with NEPA and is limited to the Section 408 boundaries described herein.

**PUBLIC INTEREST REVIEW:** The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties. Comments received within 15 days of this publication would be used in the evaluation of potential impacts of the proposed action on important resources. All comments would be considered in preparing environmental documentation pursuant to NEPA. USACE has jurisdiction under 33 USC 408, only over the specific activities that have the potential to alter existing USACE projects. Please limit comments to the area of the alteration and those adjacent areas that are directly or indirectly affected by the alteration to the federally authorized civil works project described herein. **Comments may be submitted to [robert.w.prebeck@usace.army.mil](mailto:robert.w.prebeck@usace.army.mil) and should be received by 5/15/2025.**

Sincerely,

Mark R. Smith

Chief, Environmental Compliance Branch  
Regional Planning and Environmental Division South