



U.S. Army Corps of
Engineers
Huntington District

PUBLIC NOTICE

REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS (USACE) PROJECT UNDER SECTION 14 OF THE RIVERS AND HARBORS ACT OF 1899, 33 U.S.C. 408 (SECTION 408)

SECTION 408 NUMBER: 408-LRH-2020-0004 – Limestone Creek Pump Station
Improvements Project

PUBLIC NOTICE COMMENT PERIOD:

Begins: March 2, 2021

Ends: April 1, 2021

REQUESTER:

City of Maysville
216 Bridge Street
Maysville, Kentucky 41056

LOCATION OF PROPOSED ACTION: The proposed alteration would be located at the existing Limestone Creek Pump Station, on Pumphouse Road and adjacent to East Second Street, in the City of Maysville, Mason County, Kentucky (38.64586°N, 83.75864°W). Refer to the enclosed location map (Sheet 1 of 2).

REQUESTER'S PROPOSED ACTION: The City of Maysville has requested authorization under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408) for the proposed alteration to the Maysville Local Protection Project (LPP). The Maysville LPP is operated and maintained by the City of Maysville, the local sponsor. The proposed Limestone Creek Pump Station Improvements project would include the addition of a fourth pump within the pump station (flood control pump #4), expansion of the existing gatewell structure atop the levee where flows transition from pressurized to gravity, construction of associated discharge piping, structures and valves, and an outfall to the Ohio River. The Limestone Creek Pump Station serves to dispose of accumulated water from a basin in Limestone Creek to an area outside of the LPP levee/floodwall. The purpose of the proposed project is to improve pumping capacity of the existing Limestone Creek Pump Station during times of high water when the normal outfall for the creek is inundated. Refer to the enclosed map (Sheet 1 of 2).

ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION:

THREATENED AND ENDANGERED SPECIES: Based on a review of the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) tool, the proposed project is located within the range of the federally listed gray bat (*Myotis*

grisescens), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), clubshell mussel (*Pluerobema clava*), fanshell mussel (*Cyprogenia stegaria*), northern riffleshell mussel (*Epioblasma torulosa rangiana*), orangefoot pimpleback mussel (*Plethobasus cooperianus*), pink mucket pearly mussel (*Lampsilis abrupta*), rabbitsfoot mussel (*Quadrula cylindrica cylindrica*), ring pink mussel (*Obovaria retusa*), rough pigtoe mussel (*Pleurobema plenum*), sheepnose mussel (*Plethobasus cyphyus*), spectaclecase mussel (*Cumberlandia monodonta*), and the running buffalo clover (*Trifolium stoloniferum*).

The USACE determined that the proposed project would have no effect to the running buffalo clover as the project area contains no suitable habitat. The proposed project would involve the removal of one (1) 10-inch diameter silver maple tree; however, all tree removal would occur between November 15 and March 31. Based on this information, the USACE determined the project *may affect, but is not likely to adversely affect* the Indiana bat, northern long-eared bat, and gray bat. In addition, the USACE determined that the project *may affect, but is not likely to adversely affect* the above-mentioned mussel species due to the minimal area of impact associated with in-water work. The USACE will consult with the USFWS for the aforementioned effects determination. In addition, this Public Notice serves as a request to USFWS for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended; (ESA)). No Section 408 permission will be issued until the USACE has verified that all obligations under Section 7 of the ESA have been fulfilled

HISTORIC AND CULTURAL RESOURCES: According to the National Register of Historic Places (NRHP), there are no properties currently listed on the NRHP that would be indirectly or directly affected by the proposed work. In 2017, the floodwall (MSM-774) was recommended as eligible for inclusion in the NRHP under Criterion A for its association with important events in history, namely the vital flood protection the floodwall system provides to Maysville and the significance of its construction to the city's modern stability. The proposed project would not affect the characteristics that make the Maysville Floodwall eligible for the NRHP and would bolster the floodwall systems capacity to provide its vital protection to historic Maysville. Civil and Environmental Consultants, Inc., on behalf of the requester, conducted a Phase I archaeological survey of the 0.66-acre project area. No archaeological resources were identified within the Phase I survey area. Therefore, the USACE has determined that the proposed project would have no effect to historic properties. The USACE will complete all necessary coordination under Section 106 of the National Historic Preservation Act (NHPA) and a National Environmental Policy Act (NEPA) document evaluating the impacts associated with the request. No Section 408 permission will be issued until all obligations under Section 106 of the NHPA of 1966 have been fulfilled.

AUTHORITY: The alteration request will be reviewed in accordance with the provisions of Section 14 of the Rivers and Harbors Act of 1899. The work and discharge of dredged or fill material into the Ohio River in association with the construction of the outfall structure are under consideration by the Louisville District Regulatory Division for

authorization under the USACE Regulatory Program's Nationwide Permit (NWP) No. 7 (*Outfall Structures and Associated Intake Structures*), as described in the January 6, 2017 Federal Register (FR), Issuance and Reissuance of NWPs (82 FR 1860).

LIMITS OF SECTION 408 AUTHORITY: A requester 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) and Section 404 of the Clean Water Act (33 U.S.C. Section 1344). In addition, 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 FACTORS: The decision whether to grant the requested permission for the 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 USACE technical review team (review team) considering the following factors:

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. In order for an alteration to be approved, the requester must demonstrate that the alteration does not impair the usefulness of the federally authorized project.

Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Factors that may be relevant to the public interest depend on the type of federal project being altered and the nature of the proposed alteration 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. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks and by the net impact of the alteration on the public interest using the public interest factors.

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. While the USACE is responsible for ensuring environmental compliance, the requester is responsible for providing all information that the Huntington District identifies as necessary to satisfy all applicable federal laws, executive orders, regulations, policies, and procedures. The NEPA and other analysis completed to comply with other environmental statutes (e.g., the Section 7 of the ESA,

Section 106 of the NHPA, etc.) should be commensurate with the scale and potential effects of the activity that would alter the USACE project. The Huntington District will work with the requester to determine the requirements, which will be scaled to the likely impacts of the proposed alteration and should convey the relevant considerations and impacts in a concise and effective manner.

PUBLIC INVOLVEMENT: The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the Limestone Creek Pump Station Improvements project, a proposed alteration to an existing federally authorized project. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources and in the evaluation of whether the proposed alteration would be injurious to the public interest and/or would impair the usefulness of the authorized project. Only the specific activities that have the potential to occupy, use or alter the Maysville LPP will be evaluated. Please limit comments to the area of the alteration and those adjacent areas that would be directly or indirectly affected by the alteration to the Maysville LPP. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act (FOIA).

SUBMITTING COMMENTS: Comments and requests for additional information should be submitted electronically to Audrey Richter by email at Audrey.M.Richter@usace.army.mil.

If you do not have internet access, comments may be submitted through the U.S. Postal Service (USPS) to the following address:

U.S. Army Corps of Engineers
ATTN: Audrey Richter, CELRH-RD-E
Public Notice: 408-LRH-2020-0004
502 Eighth Street
Huntington, WV 25701-2070

Comments should only be provided through the USPS when electronic transmission is not possible. Precautionary internal mail handling procedures may be instituted to protect our workforce, which may result in longer than normal times to process and receive hard copy submissions. To be considered in our evaluation, comments submitted through the USPS should have a postmark dated on, or prior to, the close of the comment period listed on page one (1) of this Public Notice.

As described above, the names and addresses of those who submit comments in response to this Public Notice become part of our administrative record, and, as such, may be available to the public under provisions of the FOIA.



NORTH

VICINITY MAP
NOT TO SCALE

408-LRH-2020-0004
Sheet 1 of 2

