



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ROCK ISLAND DISTRICT
PO BOX 2004 CLOCK TOWER BUILDING
ROCK ISLAND, ILLINOIS 61204-2004

Programs and Project
Management Division

PUBLIC NOTICE

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

TITLE: Utility Poles, Flagpoles, and Gas Station Retaining Wall Encroachment Modifications along the Bettendorf, IA, Flood Risk Management Project (**Public Notice ID #2022-0004**)

PUBLIC NOTICE COMMENT PERIOD:

Begins: 3 January 2023
Expires: 18 January 2023

Interested parties are hereby notified that an application has been received for a Department of the Army Section 408 permission for certain work at or near a federally-authorized flood risk management project of the United States, as described below and shown on attached figures. Written comments are being solicited from anyone having an interest in the requested alteration. Comments providing substantive information or a rationale for the commenter's position are the most helpful. All comments supporting, opposing, or identifying concerns the U.S. Army Corps of Engineers (USACE) should consider in its decisions process are welcome. Comments will become part of the USACE' administrative record and will be considered in determining whether to approve the request.

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

REQUESTER: In compliance with 33 USC 408 (Section 14 of the Rivers and Harbors Act of 1899; hereinafter Section 408), IMEG, Corp., on behalf of the City of Bettendorf, Iowa, has requested permission for encroachment modifications to the Bettendorf, IA, Flood Risk Management Project, an existing federally-authorized flood risk management project along the Mississippi River.

LOCATION: The encroachment modifications are located at multiple locations along the Bettendorf, IA, Flood Risk Management Project in Bettendorf, Iowa.

LOCATION MAP(S)/DRAWING(S): See Figures 1, 2, and 3.

REQUESTER'S PROPOSED ACTION: The modifications are as follows:

- A retaining wall at a gas station adjacent to a portion of floodwall. The retaining wall is not tied to the flood wall and acts independently. There is no evidence of movement, cracking, or ground settling in the area of the retaining wall.
- Multiple flagpole foundations are located at the levee toe in a built-up area. The flagpole foundations do not impact the toe of the levee and there is no evidence of movement, seeping, or ground settling in the area.
- Multiple utility pole foundations are located along the levee toe. The utility pole foundations do not impact the toe of the levee and there is no evidence of movement, seeping, or ground settling in the area.

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 USC 403), Section 404 of the Clean Water Act (33 USC Section 1344) and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 USC 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 reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. A USACE technical team will review the requests for modification 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, 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 considering 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 USACE is responsible for ensuring compliance, the requester is providing all information that the USACE, Rock Island District (District), identifies as necessary to satisfy all applicable Federal laws, executive orders, regulations, policies, and ordinances. ***Based on information provided by the applicant, 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. EC 1165-2-220 instructs the USACE to broadly interpret real estate grants for rights-of-way, as referenced in 33 CFR 230.9(i), to include either USACE or the non-Federal sponsor if the proposed alteration is within the intended scope of the specific categorical exclusion. The proposed action is similar in scope to those actions covered by Categorical Exclusion 33 CFR 230.9(i): “Real estate grants for rights-of-way which involve 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.”
 - b. There are no identified historic properties in the Section 408 permission area vicinity. The permission area has been subjected to prior archeological survey. All modifications associated with the Federal interest portion of this project are situated in previously disturbed locales. The Federal interest portion of this project has No Potential to Affect historic properties, therefore, further evaluation under Section 106 of the National Historic Preservation Act (NHPA; 54 USC § 306108) is not warranted.
4. *Technical Analysis.* The District is working closely with the requestor to ensure that 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 protection system.

SOLICITATION OF COMMENTS: The USACE 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 USACE 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 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 USACE Rock Island District, Office of Counsel.

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

COMMENT SUBMISSION AND ADDITIONAL INFORMATION: Written comments on the described work should reference the USACE Public Notice number 2022-0004. Comments must reach this office no later than January 18, 2023. Comments or requests for additional information should be mailed or emailed to the following address:

Email: MVR408@usace.army.mil

District Engineer
US Army Corps of Engineers, Rock Island District
Attn: Keller (PM-M)
Clock Tower Building
P. O. Box 2004
Rock Island IL 61204-2004

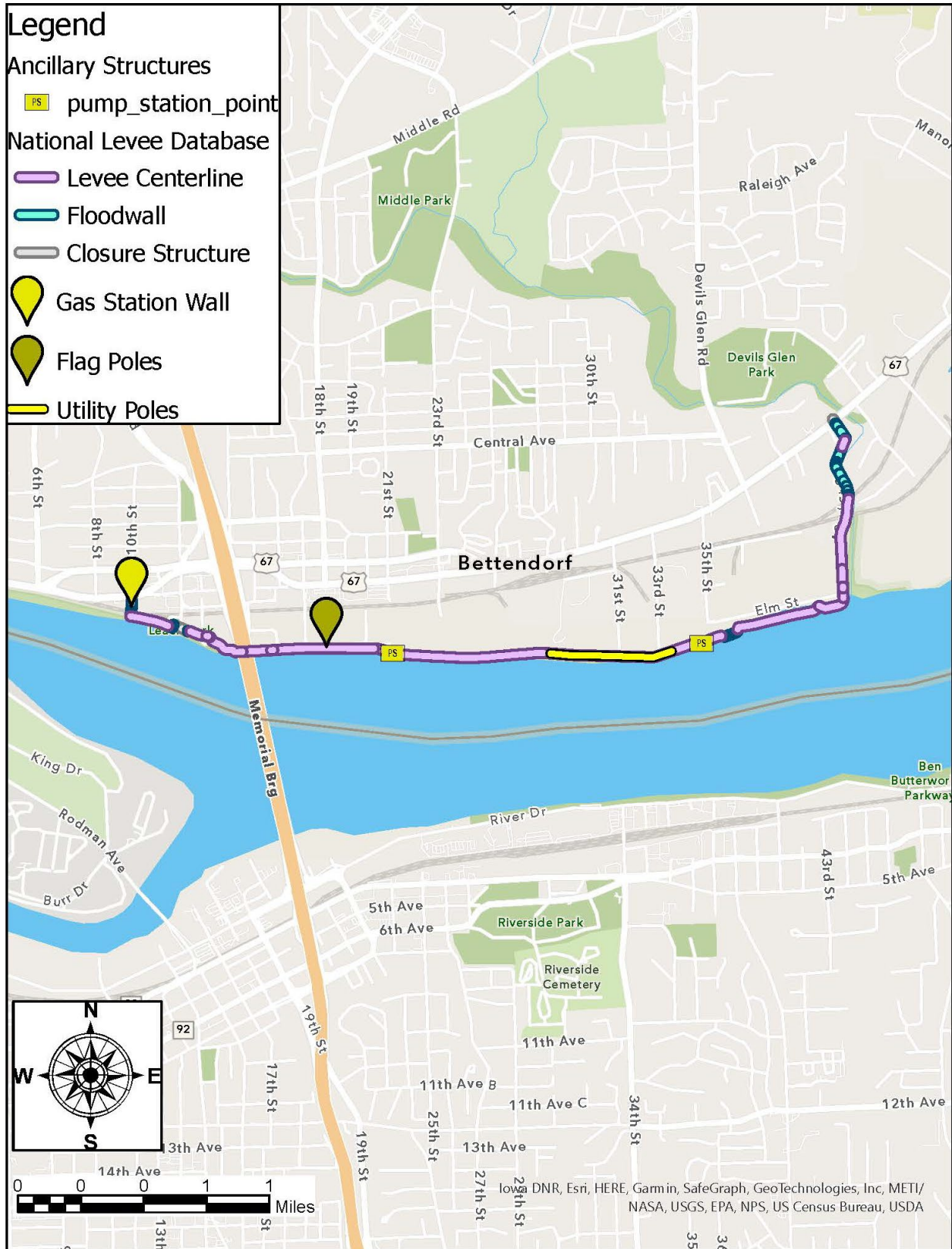


Figure 1. Project Area Vicinity Showing the Locations of Encroachments in Bettendorf, IA

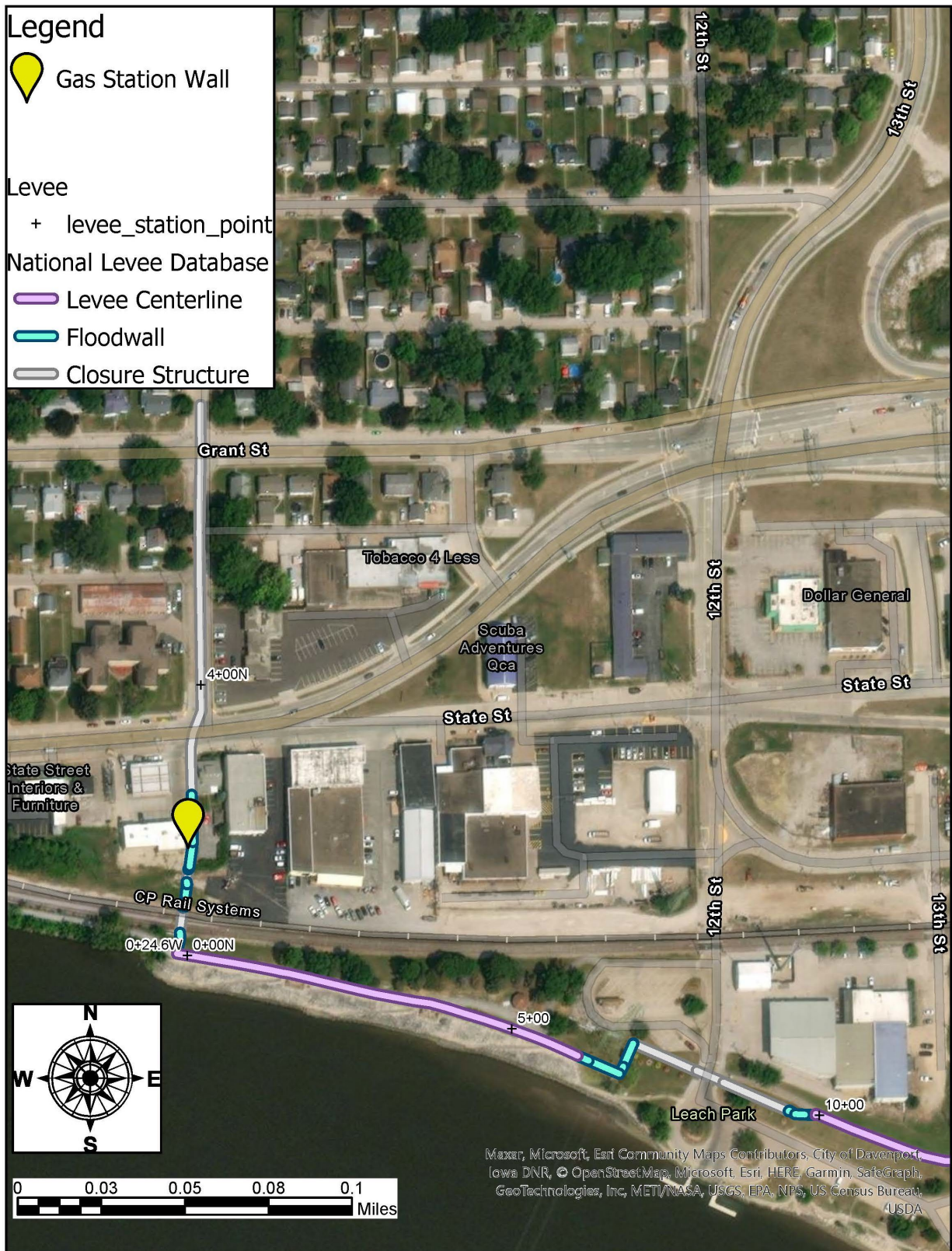


Figure 2. Project Site Map Showing Gas Station Retaining Wall Encroachment



Figure 3. Project Site Map Showing Flagpoles and Utility Poles Encroachments