



**DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
7400 LEAKE AVENUE  
NEW ORLEANS, LA 70118**

**October 7, 2020**

**PUBLIC NOTICE  
REQUEST FOR PERMISSION TO ALTER A U.S. ARMY CORPS OF ENGINEERS  
PROJECT PURSUANT TO 33 U.S.C. SECTION 408**

**PUBLIC NOTICE/FILE NUMBER: St. Bernard Parish Government**

Interested parties are hereby notified that a request for permission to alter a U.S. Army Corps of Engineers (USACE) project pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 408) has been received and will be evaluated by the New Orleans District. Written comments, including any objections to the proposed alteration, stating reasons therefor, are being solicited from anyone having an interest in the requested alteration. Comments must be mailed or emailed by or before the last day of the comment period and must reference the file number of this public notice. Comments will become part of the record and will be considered in the decision on the request. See below for contact information and address. The proposed action would alter the Mississippi River Gulf Outlet Closure which is a Federal Project.

**COMMENT PERIOD EXPIRES: October 8, 2020\***

*\*This is an emergency action associated with a land falling tropical system. Typical comment Periods are not appropriate.*

**REQUESTED ALTERATION:** St. Bernard Parish Government is requesting an emergency authorization to remove a portion of the MRGO Rock Closure Structure, approximately 50 feet wide to a depth of 12 feet below the average ordinary water surface elevation, or approximately 19 feet, to provide relief from the after effects of tropical storm surges from Hurricane Delta and any future tropical events this season. According to the Parish, continuous inundation from floodwaters can have a damaging effect on the health and resiliency of St. Bernard's coastal residents, marine habitats and the commercial fisheries they support. Specifically, St. Bernard Parish contends that the closure structure inhibits the effective egress of storm surge accumulations within the unprotected areas of the parish, and providing an opening allows surges to drain out more rapidly, reducing the time of inundation in the outlying areas of the parish. St. Bernard Parish finds the risk to life, vessels, and the health of St. Bernard's residents and commercial fisheries constitutes a legitimate emergency which can be mitigated to some degree by authorizing St. Bernard to move forward with urgency. By this request, St. Bernard Parish Government is formally requesting Emergency Authorization to proceed with this work.

**REQUESTER:** St. Bernard Parish Government, c/o ELOS, 607 W. Morris Avenue • Hammond, LA 70403

**PERMISSION AUTHORITY:** The authority to grant permission for temporary or permanent use, occupation or alteration of any USACE civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 USC 408 ("Section 408"). Section 408 authorizes the Secretary of the Army to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project.

**LOCATION OF PROPOSED ACTION:** The proposed emergency action is located at the Mississippi River Gulf Outlet Closure Structure in St. Bernard Parish Louisiana.

**WRITTEN COMMENTS MAY BE MAILED TO:** (Please note that due to the emergency nature of this action, written comments would only be considered in preparation of after-the-fact documentation)

Department of the Army  
Corps of Engineers, New Orleans District  
ATTN: Howard Ladner (CEMVN-PDC)  
7400 Leake Ave.  
New Orleans, Louisiana 70118

**WRITTEN COMMENTS MAY BE EMAILED TO:** [howard.w.ladner@usace.army.mil](mailto:howard.w.ladner@usace.army.mil)

ALL comments must contain the full name and address of the individual commenting and must be received by the USACE by the expiration of the public notice period.

**EVALUATION:** This request will be reviewed pursuant to Section 408 and USACE Engineering Circular (EC) 1165-2-220, which provides policy and procedural guidance for processing requests to alter USACE civil works projects.

The decision whether to grant permission for the requested alteration will be based on several factors. The benefits that reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable detriments. Review of the requests for modification will be reviewed by a USACE technical review team considering the following factors:

- 1) Potential to Impair the Usefulness of the Project. Proposed alterations will be reviewed to determine whether the alteration would limit the ability of the USACE project to function as authorized, or would compromise or change any authorized project conditions, purposes or outputs. If USACE determines that the usefulness of the authorized project would be impaired, the request will be denied.

- 2) Potential to be Injurious to the Public Interest. 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 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. This evaluation will consider information received from the interested parties, including tribes, agencies, and the public. 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 subject to the National Environmental Policy Act (NEPA) and other environmental compliance requirements. EC 1165-2-220 9.a.(5)b states that, "Alterations by others that are considered an emergency and/or urgent, which may include interim risk reduction measures, but not implemented under PL 84-99, may require Section 408 permission and this EC would apply. Districts will consider if the alteration meets other criteria defined under this paragraph 9. If this EC applies, districts can reprioritize and expedite reviews as appropriate given the urgency required for each specific situation. Reference Appendix D on expediting environmental compliance in emergency situations."
  - a. Appendix D states, "The district has discretion to use the emergency procedures provided for in environmental statutes to process Section 408 requests." Engineering Regulation (ER) 200-2-2, Environmental Quality, Procedures for Implementing the National Environmental Policy Act (NEPA), at paragraph 8, provides that district commanders may respond to emergency situations to prevent or reduce imminent risk of life, health, property, or severe economic losses in advance of compliance with the documentation and procedural requirements of NEPA Paragraph 8 of the regulation states that NEPA documentation should be accomplished prior to initiation of emergency work if time constraints render this practicable; however, if appropriate, such documentation may be accomplished concurrently or after completion of the emergency work.
  - b. Based on current data and conditions, there is a high likelihood of adverse effects to life, property and environment behind the MRGO closure structure. Mitigative measures need to be conducted immediately. Therefore, time constraints render the completion of NEPA documentation prior to taking action impractical. It is anticipated

that the emergency actions are not major in scope, and therefore, consultation with the Council for Environmental Quality is not required. All work would be conducted to minimize any adverse impacts to the extent practicable. Therefore, NEPA documentation could be completed for the Section 408 permission as soon as practical after the emergency actions are completed.

- c. Endangered Species Act Section 7 regulations recognize that an emergency (natural disaster or other calamity) may require expedited consultation (50 CFR §402.05). Where emergency actions are required that may affect listed species and/or critical habitats, a Federal agency may not have the time for the administrative work required by the consultation regulations under non-emergency conditions. During emergency consultation, the Service may provide recommendations for how to minimize or avoid adverse effects to listed species during the emergency response. Such recommendations are strictly advisory and are to be implemented at the discretion of the emergency response personnel.
- d. The National Historic Preservation Act (NHPA) provides emergency action provisions based on an "immediate threat to life or property." In accordance with 36 CFR 800.12 (d), CEMVN has determined that the temporary opening and closure of a portion of this structure would be exempt from standard consultation provisions of the act (Section 106). Further, there is little likelihood of directly affecting historic properties from the proposed action; however, more specifics are necessary to document this in support of after-the-fact NEPA analysis, should the action be taken.

All factors that may be relevant to the proposal will be considered, including the potential cumulative effects associated with the proposed project. The review will consider the potential impact to the usefulness of the Federal project and whether the proposed alteration would be injurious to the public interest. Policy and legal compliance will also be considered.

USACE is soliciting comments from interested parties to evaluate the potential impacts of the proposed alteration. Comments will be considered to assess impacts on the public interest factors listed above, as well as endangered species, historic properties, water quality, and general environmental effects. Comments will be used for environmental compliance coordination as required by NEPA.

**COORDINATION:** This action will be coordinated with the relevant State, Federal and Tribal entities as appropriate.

Issuance of this notice does not imply Corps of Engineers endorsement of the project as described.

If you have any questions, please contact Howard Ladner, Project Manager, by telephone at 504-862-2021 or via email at [Howard.W.Ladner@usace.army.mil](mailto:Howard.W.Ladner@usace.army.mil).

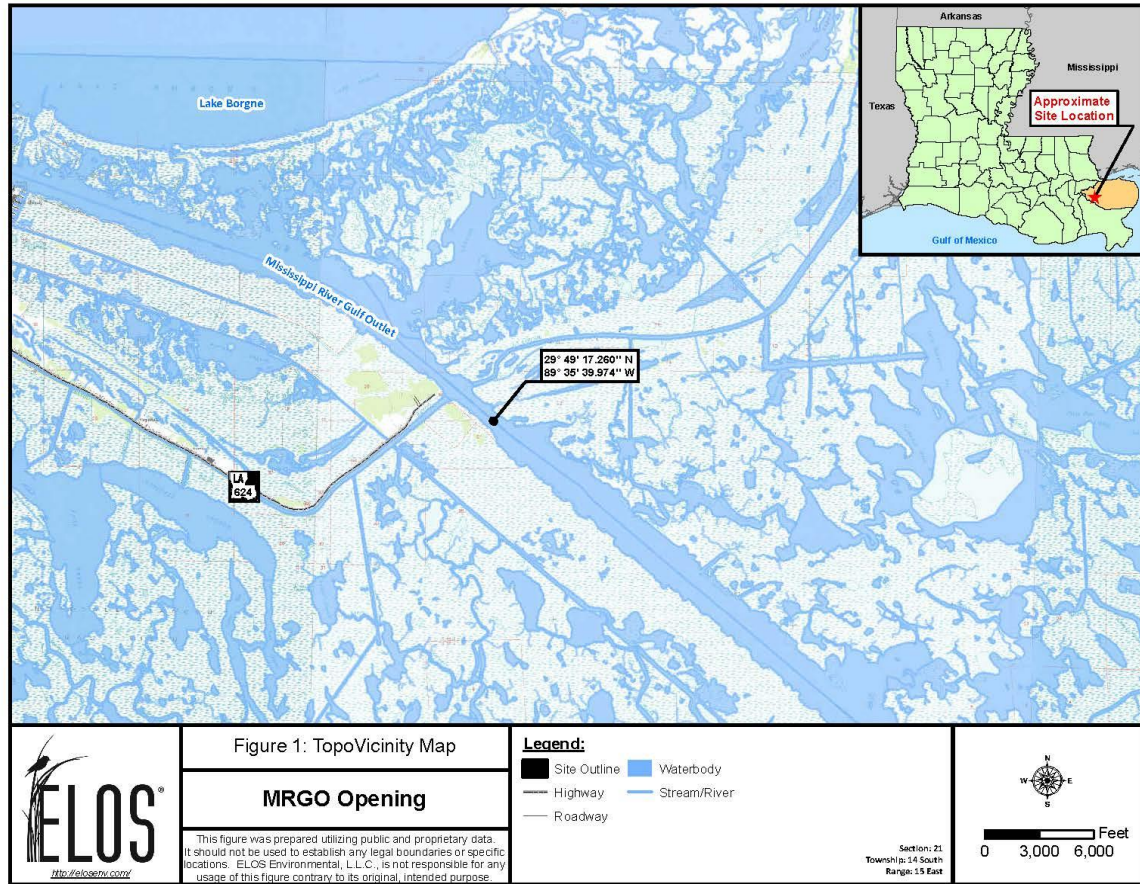
FOR THE DISTRICT COMMANDER:

Enclosures

Marshall K. Harper  
Chief, Environmental Planning Branch

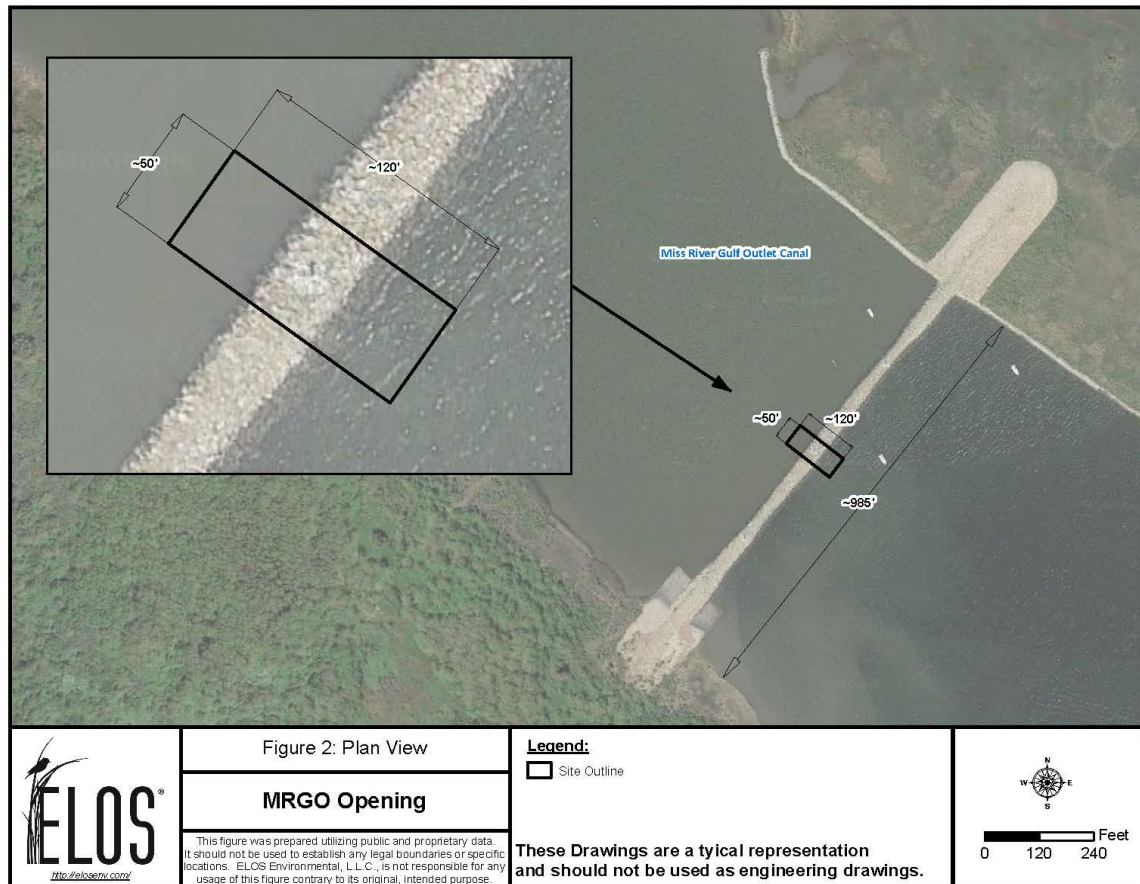


Figure 1: Vicinity Map



F:\VLE\MRGO Opening\GIS Maps\Permit\Hurricane Delta Emergency Request\Figure 1\_TopoVicinity Map

Figure 2: Proposed Action (Plan View)



F:\VLE\MRGO Opening\GIS Maps\Permit\Hurricane Delta Emergency Request\Figure 2\_Plan View

Figure 3: Proposed Action (Cross-section)

