



**US Army Corps  
of Engineers®**

Omaha District

**PUBLIC NOTICE**

**REQUEST FOR PERMISSION  
TO ALTER A U.S. ARMY CORPS OF ENGINEERS PROJECT  
UNDER SECTION 14 OF THE RIVERS AND HARBORS ACT OF 1899, 33 U.S.C.  
408 (SECTION 408) AND NOTICE OF AVAILABILITY OF THE FINAL  
ENVIRONMENTAL IMPACT STATEMENT (FEIS) FOR THE NEBRASKA HIGHWAY  
12 (N-12) NIOBRARA EAST AND WEST PROJECT**

**Reference No:** 408-NWO-2021-0008

**Issue Date:** *December 13, 2024*

**Expiration Date:** *January 27, 2025*

**45 DAY NOTICE**

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**THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW AND TO PROVIDE NOTIFICATION THAT THE FINAL EIS IS AVAILABLE FOR REVIEW. A SECTION 408 DECISION HAS NOT BEEN MADE REGARDING ISSUANCE OF PERMISSION AT THIS TIME.**

**PROJECT TITLE:** Nebraska Highway 12 Niobrara East and West (Section 408 Reference Number: 408-NWO-2021-0008/Section 404 Reference Number: NWO-2004-10258).

**REQUESTER:** In compliance with USC Title 33, Chapter 9, Subchapter 1, Section 408, the Nebraska Department of Transportation (Requester) has requested permission from the U.S. Army Corps of Engineers (USACE) for an alteration at the Gavins Point and Fort Randall Dam and Lake Projects (Federal Project).

**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, on the recommendation of the Chief of Engineers, 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. The Secretary of the Army's authority under Section 408 has been delegated to USACE, Chief of Engineers. USACE, Chief of Engineers has further delegated the authority to USACE, Directorate of Civil Works and Division and District Engineers, depending upon the nature of the activity. An alteration is defined as any action that builds upon, alters, improves, moves, occupies or otherwise affects the usefulness, or the structural or ecological integrity of a Corps federally authorized project. This project is also under Section 404 of the Clean Water Act (33 USC 1344) review and a separate public notice was issued on January 3, 2020.

**EVALUATION:** USACE Omaha District has determined that the Nebraska Highway 12 Niobrara East and West would entail an alteration to the Federal Project, and therefore requires permission under Section 408.

**LOCATION:** The proposed Nebraska Highway 12 Niobrara East and West is located in northeastern Nebraska near Niobrara in Knox County. See Figure 1 below for a map of the project area.

**REQUESTER'S PROPOSED ACTION:** The Requester's proposed project is comprised of the following elements: Construction of two (2) segments of Nebraska Highway 12 near Niobrara, which will be located mostly atop and/or immediately adjacent to the existing roadway. One of the segments, Niobrara West, is approximately 6.2 miles long and extends from just east of Verdel, Nebraska east to two (2) miles west of the N-12 Niobrara River Bridge. The other segment, Niobrara East, is approximately six (6) miles long and extends from just east of Spruce Avenue in Niobrara east, extending into the Santee Sioux Reservation, to approximately one (1) mile east of Spur N-54D. The requester plans to use or alter the floodplain of the Missouri River and connected waterways and surface waters between Fort Randall Dam and Gavins Point Dam. The proposed project raises the existing Nebraska Highway N-12 (N-12) roadway on a parallel alignment for both the west and east segments to a minimum elevation approximately three (3) feet above the projected water surface elevation of the Missouri River during a 1-percent annual exceedance probability (AEP) flood event. This is approximately 4 to 9 feet higher than the existing N-12 profile. In addition, the roadway would be widened to meet current NDOT safety criteria, including 12-foot driving lanes, 8-foot shoulders, 30-foot lateral obstacle clearance, and sloping embankments. Curvature and ingress and egress considerations for county roads and private access would be modified to satisfy current NDOT design standards.

The purpose of the proposed action is to rehabilitate the existing roadway to maximize utilization of existing highway infrastructure, improve safety and reliability, and bring the roadway up to current NDOT design standards for a major arterial highway between Verdel and the Santee Spur (S-54D).

The land owned by the federal government under the management of USACE within the Nebraska Highway 12 Niobrara East and West Project area is associated with the USACE Gavins Point Dam (which forms Lewis and Clark Lake) and Fort Randall Dam (which forms Lake Francis Case) Federal Projects. Figure 1 shows the USACE Federal Project Lands. Only project elements that would alter the Federal Project are within the review scope for the Section 408 permission request.

**NATIONAL ENVIRONMENTAL POLICY ACT:** In accordance with the National Environmental Policy Act (NEPA) 42 USC 4321, the Council on Environmental Quality NEPA Implementing Regulations (40 CFR 1500-1508), the United States Army Corps of Engineers Regulation ER 200-2-2 (33 CFR Part 230) and Engineering Circular EC 1165-2-220 for Section 408, the USACE Omaha District has prepared a final environmental impact statement (FEIS) to analyze the potential impacts of the proposed



N-12 project and a range of reasonable alternatives, including No Action, on the natural and human environment. A Notice of Availability (NOA) of the FEIS for a 45-day public review will be published in the Federal Register on December 13, 2024. The USACE Omaha District invites the public to comment on the impacts of the proposal on the quality of the human environment.

The FEIS will be used to inform USACE's permit and permission decisions under Section 404 and Section 408 and may inform the decisions of other agencies that evaluate the proposed N-12 project as part of their regulatory or permit processes. The information in the FEIS will help decision makers, public officials, and the public to understand the potential environmental impacts of the proposed N-12 project and its alternatives before decisions regarding the proposed N-12 project are made.

**LIMITS OF SECTION 408 AUTHORITY:** The 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 USC 403) and Section 404 of the Clean Water Act (33 USC 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.

**PUBLIC INVOLVEMENT:** USACE will accept comments on this Public Notice and make them part of the evaluation record, and they will be considered in USACE's determination whether the proposed alteration would be injurious to the public interest and would impair the usefulness of the Federal Project, as well as assessing the impacts of the proposal on the quality of the human environment. The USACE Omaha District is soliciting written comments on the N-12 FEIS from the public; federal, state, and local agencies and officials; Tribal Nations; and other interested parties. Individuals may submit in writing any comments concerning this notice. USACE will consider all submissions received before the expiration date of this notice. USACE will post this Public Notice to the following website:

<https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Nebraska/EIS-Highway-12/>

After the 45-day public review period, USACE will issue a record of decision (ROD) on the proposed N-12 project. The ROD will state USACE's decisions whether to authorize the proposed N-12 project under its respective authorities, and if so, the conditions under which the N-12 project would be allowed to occur, and the factors considered in USACE's decisions.

See "Submitting Comments" section below for methods to submit public comments.

**PRINTED FEIS COPIES AVAILABLE FOR REVIEW AT:** This is a listing of publicly accessible locations where a copy of the FEIS can be viewed. Where schools are listed, the document would reside in the library of that institution. Any public library would

have the availability to access the electronic copy of the FEIS at the website address listed above.

- US Army Corps of Engineers Gavins Point Project Office, Lewis and Clark Visitor Center, 55245 Highway 121, Crofton, SD 68730
- Niobrara Public Library/Niobrara Civic Center, 25414 Park Avenue Ste 3, Niobrara, NE 68760
- Evelyn Lange Library, 605 8th Street, Springfield, SD 57062
- Verdigre City Public Library, 101 E 3rd Street, Verdigre, NE 68783
- Ponca (Tribe of Nebraska) Tribal Museum and Community Building, 88915 521st Avenue, Niobrara, NE 68760
- Ohiya Casino and Resort, 53142 Highway 12, Niobrara, NE 68760
- Santee Sioux Tribe Museum, Spirit Lake Dwellers Avenue, Santee, NE 68760
- Isanti (Santee Sioux Nation) Community Schools, 206 E Frazier Avenue E, Niobrara, NE 68760
- Nebraska Indian Community College, Macy South Campus, 1111 Highway 75, Macy, NE 68039

**SUBMITTING COMMENTS:** Comments pertaining to this public notice must be submitted via email or conventional mail on or before the **January 27, 2025** and must include the **408 Reference Number NWO-408-2021-0008**. Comments received will become part of the Administrative Record and are subject to public release under the Freedom of Information Act.

All email comments should be sent to: [ne404reg@usace.army.mil](mailto:ne404reg@usace.army.mil)

Conventional mail comments should be sent to:

U.S. Army Corps of Engineers - Omaha District  
Nebraska Regulatory Field Office  
ATTN: N-12 EIS Project Manager  
8901 South 154<sup>th</sup> Street  
Omaha, Nebraska 68138

**Attachments:**

*Figure 1: Project Location Map.*



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