



# SECTION 408 Process

**U.S. ARMY CORPS OF ENGINEERS**

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## **Background**

The US Army Corps of Engineers (USACE) Section 408<sup>1</sup> policy, contained in the document Engineer Circular (EC) 1165-2-220 effective starting September 10, 2018, sets forth the process and criteria USACE uses to review requests to alter USACE Civil Works projects. For example, communities may want to alter existing USACE projects to increase recreational opportunities or improve flood risk management. Section 408 also applies if a business or utility company seeks to run power lines or pipelines over or through a USACE project. The purpose of a Section 408 review is to ensure that the Congressionally-authorized benefits of a USACE project are not undermined by an alteration made by others, and to ensure the alteration is not injurious to the public interest (e.g., flood risk management, coastal storm damage reduction, navigation).

## **Benefits of the Section 408 Process**

The benefits of the Section 408 process include:

- Provides a mechanism for others to alter an existing USACE Civil Works project without seeking reauthorization of the project from Congress.
- Provides a consistent approach across all Civil Works projects for evaluating and documenting alterations.
- Provides a process to help ensure that existing Civil Works projects continue to deliver the public benefits for which they were authorized and constructed.
- Ensures compatibility of new infrastructure with existing Civil Works projects.
- Ensures that alterations to USACE projects do not have unintended negative impacts to the public.

## **Improvements to the Section 408 Process**

Based on lessons learned over the past few years and comments received on the draft of EC 1165-2-220 (provided for comment in February 2018), USACE improved its Section 408 process to include:

- Delegation of all decisions from Headquarters.
- Authority for District Commanders to further delegate Section 408 decisions.

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<sup>1</sup> The authority to grant permission for temporary or permanent alterations to USACE Civil Works projects is contained in Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 USC 408 (Section 408), which states that it is not lawful for any person to alter a project built by USACE unless the Secretary of the Army determines the alteration will not be injurious to the public interest and will not impair the usefulness of the project.

- Refining and limiting what activities must be reviewed under the process set forth in EC 1165-2-220 to the maximum extent possible, including better clarifying that operation, maintenance, and repair activities by non-federal sponsors do not require Section 408 permission.
- Clarification on the applicability of the process set forth in EC 1165-2-220 to activities in navigable waters, reducing the number of activities that require Section 408 permission.
- Requiring one decision transmittal to requesters for cases when a proposed activity requires both a Section 408 and a USACE Regulatory decision.
- Offering an option for requesters to obtain a Section 408 permission through multi-phased reviews for projects that may require incremental reviews. .
- Elimination of the 60% minimum design requirement for Section 408 decisions so information requirements can be scaled to the scope of the Section 408 request.
- Timelines for reviews and notifications in accordance with the Water Resources Development Act of 2016.
- Designation of a lead USACE district for projects that cross multiple districts or states.

### **Section 408 Tracking Database**

Along with improvement to the Section 408 process, USACE has developed a database for tracking Section 408 requests, which will include a public interface to provide the status of requests. The database is currently undergoing testing and will be available for use late calendar year 2018.

For more information or questions related to USACE's Section 408 process, please email [HQ-Section408@usace.army.mil](mailto:HQ-Section408@usace.army.mil).