



# Alterations of USACE Civil Works Projects (Under 33 U.S.C. Section 408)

## Galveston District Implementation Plan

02 February 2016

The purpose of this Implementation Plan is to begin establishing the Galveston District (SWG) method for processing requests (by private, public, tribal, or other federal entities) to make alterations to, or temporarily or permanently occupy or use, any US Army Corps of Engineers (USACE) federally authorized civil works project, pursuant to 33 USC 408 (Section 408).

The development of a method for a complex process (such as Section 408) inherits the need for updates and refinements through active feedback. Official copy and version will be located in SharePoint @ [SWG Section 408 SharePoint](#).

**Approved for use:**

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Chief Operations Division

Date

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Chief Engineering and Construction Division

Date

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# Introduction

## Introduction

The purpose of this Implementation Plan is to establish Galveston District (SWG) method for the processing of requests (by private, public, tribal, or other federal entities) to make alterations to, or temporarily or permanently occupy or use, any US Army Corps of Engineers (USACE) federally authorized civil works project, pursuant to 33 USC 408 (Section 408).

The [Engineering Circular EC 1165-2-216](#), “Policy and Procedural Guidance for Processing Requests to Alter USACE Civil Works Projects Pursuant to 33 USC 408”, 13 Jul 2014 establishes USACE policies and provides overall guidance of “nine steps” that districts can modify for their organization and specific Section 408 requests.

## Applicability

The EC 1165-2-216 contains policies applicable to all types of Civil Works projects. SWG methods prescribed in this Implementation Plan apply to all 408 Proposals that propose to alter/modify completed USACE projects within CESWG’s area of responsibility for review and approval.

## Refinement of this Plan

Revisions to this Plan are expected and any lessons-learned, comments, suggestions should be provided to the Section 408 Program Manager (PgMgr). If the PDT finds benefits in formalizing any examples, checklists, or documents, they should request approval through the Section 408 PgMgr to the E&C Quality Manager (QM).

## How to Use this Plan

This Implementation Plan for the Section 408 Program is conveyed mainly through detailed flowcharts supplemented with notes.

**Section 1** introduces the 9 Steps Review, points out key decisions that occur in the Review and Approval process of 408 proposals.

**Section 2** provides information on Environmental Compliance and application to request.

**Section 3** provides summaries of key technical reviews and certifications.

**Section 4** provides steps in the development of a Section 214 Memorandum of Agreement.

**Section 5** provides instructions on processing/documenting those proposals that fall under SWG categorical permissions.

**Annex A** includes detailed flowcharts.

**Flowchart 1** demonstrates a generalized relationship of the nine steps to each other.

**Flowchart 2** demonstrates the SWG decision-making of varying permit categories for received requests.

**Flowchart 3** provides a comprehensive flow and description of SWG “nine Steps” for District Level Review.

**Flowchart 4** provides a comprehensive flow and description of SWG “nine Steps” for when HQUSACE Review is needed.

**Annex B** includes recommended tasks and assignments to fulfill implementation and execution of this plan.

**Annex C** describes permits actions related to the Section 408 Permit process.

**Annex D** provides a list of references, guidance, and applicable documents to Section 408.

**Annex E** has relevant definitions.

The SWG method is supplemented with collected examples and checklists used by other USACE offices for the SWG Section 408 Project Delivery Team (PDT) consideration, development, and/or use. The purpose of such documents is to increase quality control and compliance and sound decision making.

**Annex F** provides drafted documents for Section 408 PDT, including examples, templates, checklists, plans and forms.

**Annex G** provides link to an example District Procedural Review Plan for use in Categorical Permissions.

\*Proposals submitted pursuant to Section 408 are referred to hereinafter as “408 Proposals.”

## SECTION 1 Review and Approval Method

Although EC 1165-2-216 identifies “Nine Steps” - not all steps will be applicable to every Section 408 request.

In simple cases, steps may be combined or occur simultaneously. For more complex cases, there may be the need for extensive coordination between the district and requester throughout the process. To assist in determining which steps apply, the PDT can consider asking the following screening questions.

- ❖ What has the requestor asked or submitted as their proposal?
- ❖ Is the requestor’s proposal subject to Section 408?
- ❖ If so, is it covered in SWG’s categorical permissions or is considered project specific?
- ❖ Will Section 404/10 permit be required?
- ❖ Will a Section 214 MOA (funds) be processed?
- ❖ For NEPA requirements, does the proposal fit into the Categorical Exclusions (CatEX) list, or will an Environmental Assessment (EA) or Environmental Impact Statement (EIS) be prepared?
- ❖ Will the Requestor outsource the NEPA documents?
- ❖ Will the district review and approve or will it need to go to HQUSACE?
- ❖ What level of design has the request been submitted (initial, intermediate, final)?
- ❖ What is to be included in the Section 408 permit, once approved?
- ❖ What is to be done after permit is issued and to close out the permit?

### STEPS 1 and 2 Pre-Coordination and Written Request

#### **What has the requestor asked or submitted as their proposal?**

A Requestor initiates a 408 Proposal with either a letter of intent (LOI) or other preliminary coordination that may be received by any District point-of-contact. Upon receipt of an LOI or preliminary coordination information, the recipient must forward the 408 Proposal to the 408 PM for processing.

Letter of Intent A LOI begins the 408 Proposal review process. The District assigns a 408 Proposal number and begins identifying the District components who will comprise the 408 PDT. The 408 Pgmgr responds to the LOI with the district’s preliminary determination classifying (HQUSACE or District level) the Section 408 request.

Processing Order of Requests Permits will be processed on a first-come-first-served basis, unless special arrangements are made to process with a formal WRDA 214 agreement. See (below) “Will a Section 214 MOA (funds) be processed?”

### **Is the requestor's proposal subject to Section 408?**

Some requests may be received that do not require permission from USACE under Section 408. These include routine operations and maintenance (O&M) activities specified in the O&M manual and performed by the non-federal sponsor or USACE per EC 1165-2-216, para 6f. See EC for other exclusions.

If determined that the request is not a Section 408, the Section 408 PgMgr should notify the requestor.

### **If so, is it covered in SWG's approved 408 permit proposals or categorical permissions or is it considered project specific?**

For District approved 408 Permit Proposals Basic design criteria are provided to the requestor on the USACE' website. However, in a few cases, it may be beneficial for the requestor to schedule a conference to discuss the proposed project.

For Categorical Permissions Request The district, division, and/or HQUSACE have the ability to create a categorical permission for Section 408 that would cover potential alterations that are similar in nature and that have similar impacts. Categorical permissions should be established by providing public notice of the activities covered by the categorical permission. There should be appropriate documentation and analysis developed to determine that the impacts of activities covered by the categorical permission are permissible and that environmental compliance for those activities has been met. Once established, a simplified process to validate application of the categorical permission and specify any special conditions that may apply on a site-specific basis may be used.

Categorical permissions reviews are conducted for projects that are similar in nature and are typically of small size, not complex, and have minimal to no impacts to the USACE civil works project (Reference paragraph 7.c.(4)(a) in EC 1165-2-216). Development and use of a "District Procedural Review Plan" (example provided in **Annex G**) and screening list (examples provided in **Annex F1**) should be considered to help expedite the processing of proposals. **See Section 5** for SWG process.

If the Section 408 PDT determines that the request falls into its approved categorical permissions, then the 408 PgMgr notifies the requestor.

For Project Specific Requests If the Request is not eligible for district determined categorical permission then the request goes through a more extensive review process which may require district or HQUSACE level review.

### **Will the district review and approve or will it need to go to HQUSACE?**

A determination has to be made as to the level of technical review (District or HQUSACE). Coordination efforts between the PDT and the Requestor will vary depending on the scope and complexity of the 408 Proposal.

HQUSACE approved 408 Proposal review and evaluation process requires greater coordination within USACE than review of a District approved 408 Proposal. Submittal or application materials will vary depending on the unique circumstances of the alteration/modification requested in the 408 Proposal. See **Step 3** for more information regarding decision making.

### **Will Section 404/10 permit be required?**

If the proposed alteration requires a Section 404/10 permit, the required public interest and technical evaluations may be done concurrently.

### **Will a Section 214 MOA (funds) be processed?**

Funding for the 408 PDT and Section 408 related activities is limited. Pursuant to EC 11-2-187, funding may be furnished through the Inspection of Completed Works (ICW) program, but only to the extent that providing funding for 408 Proposal reviews will not adversely affect or constrain the District's ability to prioritize necessary Project operations or maintenance. Project funding may be used to supplement ICW funding where the 408 Proposal Requestor is the NFS, and is also requesting credit or reimbursement.

Additionally, WRDA Section 214 provides an alternative avenue for funding, but also has certain requirements. See **Section 4** for processing an MOA.

### **For NEPA requirements, does the proposal fit into the Categorical Exclusions (CatEX) list, or will an Environmental Assessment (EA) or Environmental Impact Statement (EIS) be prepared?**

For Environmental Categorical Exclusion and Applicability Upon receipt of a preliminary 408 Proposal package from an Requestor/NFS, or a request for a pre-application consultation meeting, the 408 PM will forward the information to the District's Regulatory Division for determination of Section 404 or Section 10 applicability.

See **Section 2** Environmental Compliance for additional information, to include EA and EIS.

### **Will the Requestor outsource the NEPA documents?**

If a Requestor elects to outsource preparation of environmental compliance documents, the District must request a third-party contractor agreement, also known as a Third Party Contractors and Statements of Responsibility (SOR), to establish the roles and responsibilities of the District, Requestor and contractor who will be preparing the environmental compliance documentation.

While third-party contractors may be used to draft environmental compliance documents, the legal responsibility to comply with applicable laws and regulations is a non-delegable government responsibility. The District reserves the option to prepare these documents itself.

### **STEP 3 Required Documentation**

#### **What documents will be required of the requestor?**

The PDT shall assess whether a 408 Proposal is either a HQUSACE approved or District approved 408 Proposal based upon information furnished by the Requestor. The Operations Division Chief shall consider the PDT's assessment and provide a preliminary determination classifying the 408 Proposal.

If the 408 Proposal is determined to be a HQUSACE approved, the preliminary determination shall be documented in a letter to the Requestor (and the NFS if not the same). A District approved 408 Proposal shall be documented in a memorandum for record. Any correspondence with an Requestor should clearly state that the classification is based on the information provided by the Requestor and is subject to change as additional information on the 408 Proposal is developed and reviewed.

### **STEPS 4 THRU 7 Technical Reviews**

#### **Will the district review and approve or will it need to go to HQUSACE?**

The processing time for HQUSACE approved 408 Proposals is significantly greater than the processing time for District approved 408 Proposals. Early engagement by a 408 PDT during development of a HQUSACE approved 408 Proposal is strongly recommended to ensure the required information is developed in accordance with USACE standards and to reduce the length of review time.

District Review Level The 408 PDT reviews the supporting submittals, prepares or supervises the preparation of the appropriate environmental compliance documentation, and determines the technical sufficiency of materials received.

HQUSACE Review Level For HQUSACE approved 408 Proposal: there are additional processing and review requirements for the District to make a recommendation for an MSC endorsement and HQUSACE decision. For most HQUSACE approved 408 Proposals, approval of the Proposal may have significant impacts requiring more environmental analysis and/or additional documentation. Several key environmental compliance requirements are discussed in the proceeding Section "Environmental Compliance".

For HQUSACE approved 408 Permit Proposals, an Initial/Pre-application meeting is recommended. Pre-application consultation usually involves one or more meetings between a Requestor/NFS, 408 PDT, and interested resource agencies (Federal, state, or local). The basic purpose of such meetings is to provide for informal discussions about a 408 Proposal before a

Requestor/NFS makes irreversible commitments of resources (funds, detailed designs, etc.). The pre-application process is intended to provide the Requestor/NFS with an assessment of the viability of some of the more obvious alternatives available to accomplish the project purpose, to discuss measures for reducing the impacts of the Project, and to inform the Requestor/NFS of the factors the USACE must consider in its decision-making process.

Note that the USACE cannot commit to more than just a limited number of initial meetings throughout the year due to budgetary constraints.

### **What level of design has the request been submitted (initial, intermediate, final)?**

A Requestor/NFS may submit initial/intermediate submittals to obtain District input early in the design process. This should be encouraged, although it is not a requirement. The 408 PM, in coordination with the 408 PDT, will determine what level of design the document supports.

Initial Design is sufficient to initiate NEPA process and provide initial feedback on the plans and technical analyses/or environmental compliance.

Intermediate Design: is sufficient for recommendation to MSC/HQ; proceed with. However, if a requestor submits a document or product supporting intermediate design, then concurrent steps of the preparing NEPA documents, coordinating with resource agencies, and reviewing technical documents will occur.

Final Design is the 100% design for final permit evaluation.

See Annex A Flowchart 4 for process.

## **STEP 8 Permit Issuance**

### **What is to be included in the Section 408 permit, once approved?**

If a 408 Proposal is approved, the District is responsible for issuing a permit and ensuring that final design documents align with the 408 Proposal submittals and any conditions required by the District and/or HQUSACE. Additionally, environmental coordination and compliance often results in additional conditions or requirements that should be included as special conditions in the 408 Permit. Compliance with Federal environmental laws is a non-delegable governmental obligation for which USACE is responsible.

## **STEP 9 Post-Permit Issuance**

### **What is to be done after permit is issued and to close out the permit?**

The District conducts quality assurance to ensure construction comports with 408 Permit conditions and 408 Proposal/408 Permit submittals. A post-construction review is necessary to ensure that the final alteration/modification comports with the Permitted Activity. The District is also responsible for approving Requestor/NFS-submitted revisions to the O&M manual, and for ensuring that the Requestor/NFS provides proper records (ex: as-builts). Finally - the District performs the fiscal closeout of the 408 permit project.

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## SECTION 2 Environmental Compliance

A list of environmental laws which are generally applicable to each 408 Proposal as well as USACE applicable guidance for compliance is provided in **Annex F2**. The list is not intended to be comprehensive or conflict with existing guidance. Environmental compliance requirements will likely require coordination with other Federal agencies. Early coordination between the environmental manager and Office of Counsel is strongly encouraged once sufficient information has been developed to understand the scope of the 408 Proposal. Other additional environmental laws, regulations and Executive Orders may apply.

### National Environmental Policy Act

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* is intended to incorporate an analysis of environmental impacts in Federal Agencies' deliberative processes for discretionary actions. A clear understanding of any potential environmental impacts from a 408 Proposal by the PDT is critical for determining the level of environmental documentation necessary. Federal compliance with NEPA is required for both HQUSACE approved and District approved 408 actions and shall be achieved through the appropriate means, which could include application of Categorical Exclusion (CatEX) or preparation an Environmental Assessment (EA) or Environmental Impact Statement (EIS). **Annex F2** provides some available resources with guidance for this determination, as well as information on Section 214 Agreement for third-party contractor developed NEPA documents.

Compliance with Other Environmental Laws. Compliance with other environmental laws may be accomplished in conjunction with the NEPA process. Coordination is strongly encouraged to ensure timely and relevant feedback from the resource agencies. The environmental lead should seek District OC input and concurrence on applicable laws, regulations, and policies. The PDT should ensure that all tasks necessary to comply with applicable environmental laws are assigned to the appropriate PDT team member(s) early in the Section 408 permit process. The environmental lead is responsible for consultation with NMFS and USFWS, and the cultural resources lead is responsible for coordination with the SHPO.

Third Party Preparation. If environmental compliance documents and other associated documents (e.g., biological assessment, cultural/historical records searches) are prepared by the third party contractor, the District environmental lead and other 408 PDT members as appropriate will review them.

Draft NEPA Document. A draft NEPA document may be based on information in the "initial submittal" at the election of the Requestor/NFS. Ideally, the draft NEPA document is based on a level of design which has a higher level of certainty. Regardless, as designs are refined, the draft NEPA document should also be refined such that it adequately supports the proposed activity. Prior to public review, the NEPA document must be submitted for legal sufficiency review by the District OC.

For Section 404/10 Requirements. Close coordination with Regulatory Division is recommended to ensure the NEPA document addresses both the Section 404/10 and 408 requirements. If necessary, Regulatory Division can prepare a draft Section 404(b)(1) analysis for incorporation into the draft EIS to ensure that the section 408 action is not in conflict with the potential LEDPA determination.

### **Processing of a Categorical Exclusion (CatEx)**

The Environmental Manager shall assess whether the 408 Proposal fits within the list of activities that have been categorically excluded in 33 CFR 230.9 and whether extraordinary circumstances exist. **Annex F2.1** (Environmental Applications to Section 408 Requests) provides requirements when CatEx applies and does not apply to the proposal.

### **Processing of an EA**

The Environmental Manager shall coordinate with USACE Regulatory Division to ensure that the draft EA adequately analyzes impacts to waters of the U.S. The draft EA shall be reviewed by the 408 PDT for sufficiency and for legal and policy compliance prior to release to any third party.

### **Processing of an EIS**

A draft EIS is prepared when a 408 PDT anticipates that a proposed activity will result in significant impacts to the environment. The draft EIS shall be reviewed in-house for sufficiency and for legal and policy compliance.

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## SECTION 3 Reviews

### Quality Control and Assurance (QC/QA) Review

The Requestor shall perform QC/QA on all 408 Proposal submittal products prior to submitting the 408 PDT for its review. A QCP must be submitted by the Requestor to the District upon submittal of the administrative draft NEPA document to ensure that all technical documents supporting the 408 Proposal comport with USACE review requirements. To ensure that technical documents have undergone a QC/QA all engineering documents submitted to the 408 PDT for review must include a P.E. stamp. A QC/QA certificate is signed by the District and included in a HQUSACE approved 408 Proposal packages for MSC and HQUSACE review.

### Agency Technical Review (ATR)

The Section 408 PDT functions as the ATR team for the Requestor's 408 Proposal documents. An ATR is undertaken to ensure the quality and credibility of information in a 408 Proposal. At a minimum, an ATR certification is required for hydraulics, geotechnical, and real estate documents.

### Safety Assurance Review (SAR)

A SAR is an extensive review process, the requirements for which are dictated by 33 U.S.C. § 2344, Safety Assurance Review (Reference C). An SAR is required for review of design or construction activities for hurricane and storm damage reduction and flood damage reduction projects and where potential hazards pose a significant threat to human life, including any proposed HQUSACE approved alterations, repair, rehabilitation, replacement or modification of existing facilities (Reference E). The purpose of an SAR is to inform the Chief of Engineers on the adequacy, appropriateness and acceptability of the design and construction activities for the purpose of assuring public health, safety and welfare.

HQUSACE approved 408 Requestors are responsible for developing a Safety Assurance Review Plan as part of the permitting process, Reference I).

A SAR is *not* required for a District approved 408 Proposal.

The SAR informs the Chief of Engineers of the adequacy, appropriateness and acceptability of the design and construction activities for the project. Public health, safety and welfare are the most important factors that determine project adequacy. The SAR is an ongoing review that is implemented under an SAR Plan by independent reviewers that form a panel to assess the design and construction activities required by the 408 Proposal/Permitted Activity.

Note that the SAR activities should not duplicate the ATR; nor are not required for district approved 408 actions, unless specifically required by the District.

Prior to undertaking the SAR, the Requestor must prepare a SAR Plan for District and NFS, if not the Requestor, review at the early stages of the 408 Proposal ATR. The SAR Plan should include National Academy of Sciences Conflict of Interest Disclosure Form 3 and a résumé for each panel member. The 408 PM must ensure that the Requestor prepares a draft SAR Plan at an early stage of the 408 PDT review.

Upon receipt from the Requestor, the 408 PM must submit the draft SAR Plan for review by the Engineering Division Chief, who if finding the SAR panel to be adequate, may sign a certificate of independence and qualification for each SAR panel member. The draft SAR Plan and signed certificates are then submitted to the MSC for review and approval.

Once the SAR Plan is approved, the Requestor funds the SAR panel members (i.e. individuals identified by the SAR Plan) to independently review each of the 408 Proposal engineering documents. Comments received by a SAR panel must be considered by the Requestor and appropriate responses generated. The 408 PDT shall review Requestor responses to the SAR panel's comments and determine whether changes to the 408 Proposal are necessary.

## HQUSACE Review

USACE policy requires a minimum of 60% design to recommend a HQUSACE approved 408 Proposal for decision to HQUSACE. While not required, submission of preliminary/intermediate designs should be encouraged. The need for design confidence may lead the Requestor to choose not to submit preliminary /intermediate designs and instead to develop or obtain additional technical data to support a higher level of designs to provide greater certainty in the 408 Proposal.

Additionally, the NEPA process in identifying potential environmental impacts may inform the Requestor that the 408 Proposal as submitted requires modification to avoid and/or minimize environmental impacts. The 408 PM and Environmental Manager should work closely with the Requestor to determine when sufficient information on 408 Proposal has been developed to begin preparing NEPA documents.

The estimated length of time for processing and approval of HQUSACE approved 408 Proposals is 18 to 24 months, depending on the complexity of the 408 Proposal. The estimated length of time for processing and approval of District approved 408 Proposals can range from 60 days to longer than 18 months, depending on the complexity of the 408 Proposal. The PDT may provide the Requestor/NFS with an estimated duration of time required for the review, but should notify the Requestor/NFS that the schedule is largely dependent on the Requestor's ability to provide complete information. The Requestor/NFS should also be made aware that environmental compliance requirements and agency coordination could also add additional time to the overall schedule.

## SECTION 4 Section 214 MOA Process

If the Requestor/NFS determines that it is in their interest to expedite their Section 408 permit(s), the Requestor/NFS shall include in their Letter of Intent language indicating their desire to contribute funds for the sole purpose of prioritizing the processing of their permit applications. The PM, upon receipt of the LOI, manages the WRDA 214 Memorandum of Agreement (MOA) process to completion. The process can be summarily described as follows:

1. Requestor/NFS LOI includes language to enter into a WRDA 214 Memorandum of Agreement to Provide Funds Under Section 214.
2. The DE makes a preliminary determination as to whether acceptance of WRDA 214 funds would
  - a. Adversely impact existing workload
  - b. Impact impartiality on the Section 408 permit decision
3. If the answer to 2(a) and (b), above, are both "NO", the PM will draft and publish the Initial Public Notice – Proposal to Accept Funds
  - a. Public comments are solicited for 30 days
  - b. Any comments received should be directed to the PM
  - c. PM addresses public comments, if any
4. PM drafts and routes a DE Decision Memo. If the DE decides not to accept funds based upon public comments or other reasons, the Decision Memo shall reflect the reasons for the denial. Otherwise, the DE Decision Memo shall include a statement that the DE has found that acceptance would not affect current workload or impact the Section 408 permit decision process.
5. PM shall publish an Informational Public Notice advising the public of the DE's decision.– Decision to Accept Funds (\*No public comment period)
6. If the decision is to accept WRDA 214 funds, the PM, in consultation with Counsel, shall draft a Memorandum of Agreement - Funding Agreement
  - a. USACE provides draft MOA to Requestor/NFS for initial review
  - b. Requestor/NFS provides comments/changes on draft MOA to USACE. PM provides comments/changes to Office of Counsel for resolution.
  - c. USACE provides cost estimate to Requestor/NFS
  - d. USACE provides final draft MOA to Requestor/NFS for signature/execution. Requestor/NFS returns two (2) signed copies to USACE.
  - e. USACE executes MOA and returns the original copy to Requestor/NFS.
    - i. Request Debtor ID from Finance and Accounting (provide name, address, and Tax ID #)
    - ii. Request Advance Account from Budget Office (provide Debtor ID, MOA, and DE Decision Memo)
    - iii. Provide Debtor ID and Advance Account to F&A
    - iv. USACE sends letter to Requestor/NFS requesting payment of funds
    - v. Requestor/NFS sends payment to USACE (check or Electronic Funds Transfer)

## Annexes

## Annex A – Flowcharts with Notes

A1 FLOWCHART 1 Overview of Nine Steps

A2 FLOWCHART 2 Determine Which Permits are Applicable to Request

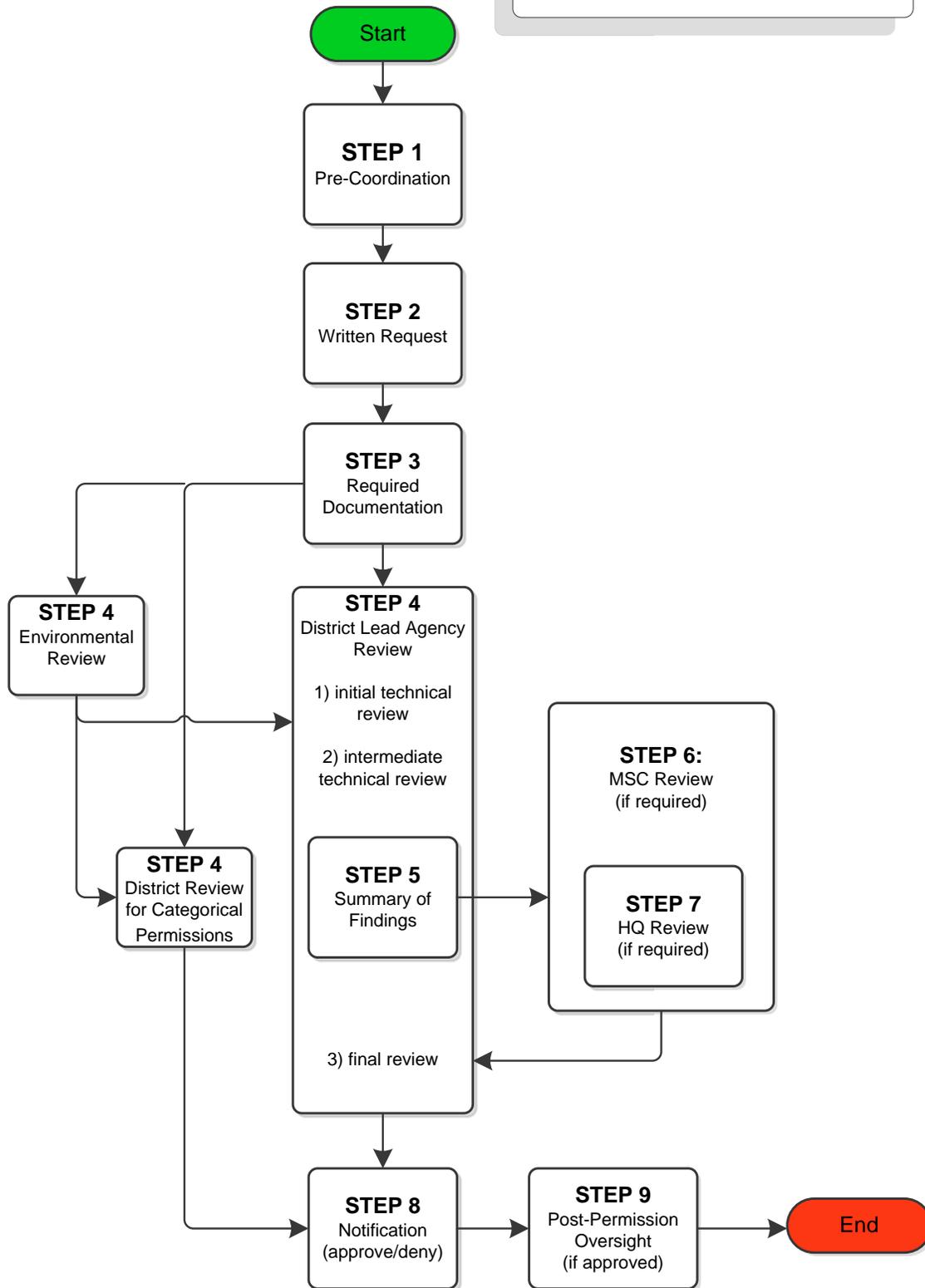
A2 FLOWCHART 3 Procedure for District Level Review, Permit Issuance, and Construction Oversight

A3 FLOWCHART 4 Procedure for Conducting Technical Review and Obtaining HQUSACE Level Review

A4 FLOWCHART 3 AND 4 ACCOMPANYING NOTES

Note: Neither the flow chart, descriptions, or inputs-outputs are all inclusive. Inherent with developing a flow chart for a complex process is the consolidation of certain actions and events. The flow chart does not display all actions in the process. The descriptions of the actions occurring within each box, does not include all actions being performed particularly those that are inherent to PM duties. See EC 1165-2-216 for additional guidance.

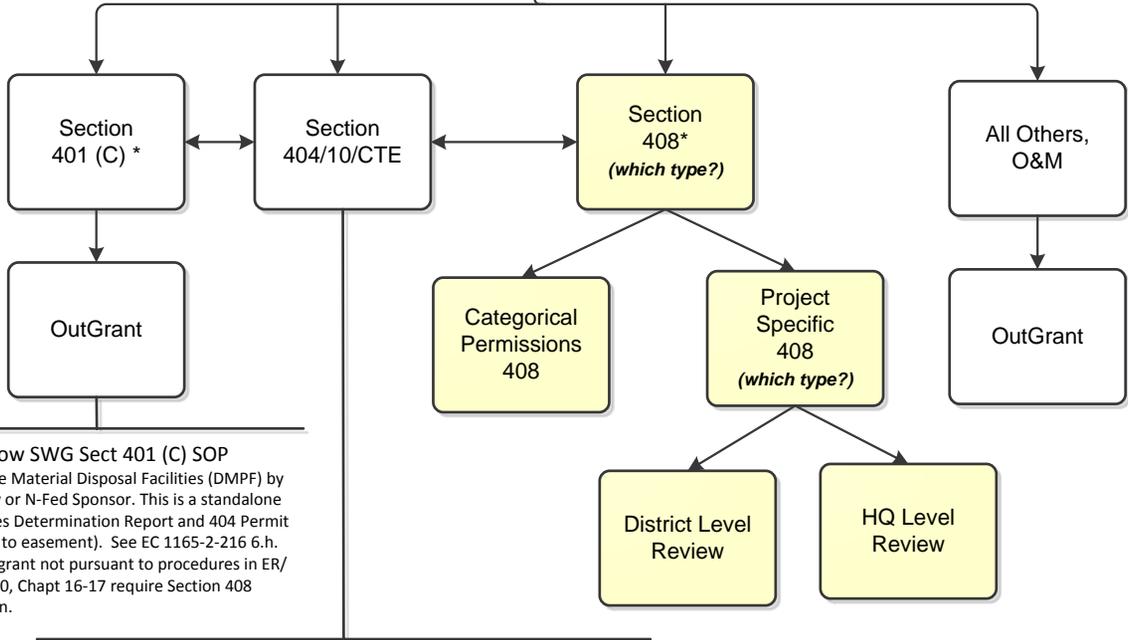
**FLOWCHART 1:  
SWG Section 408 Process  
Overview**



Start

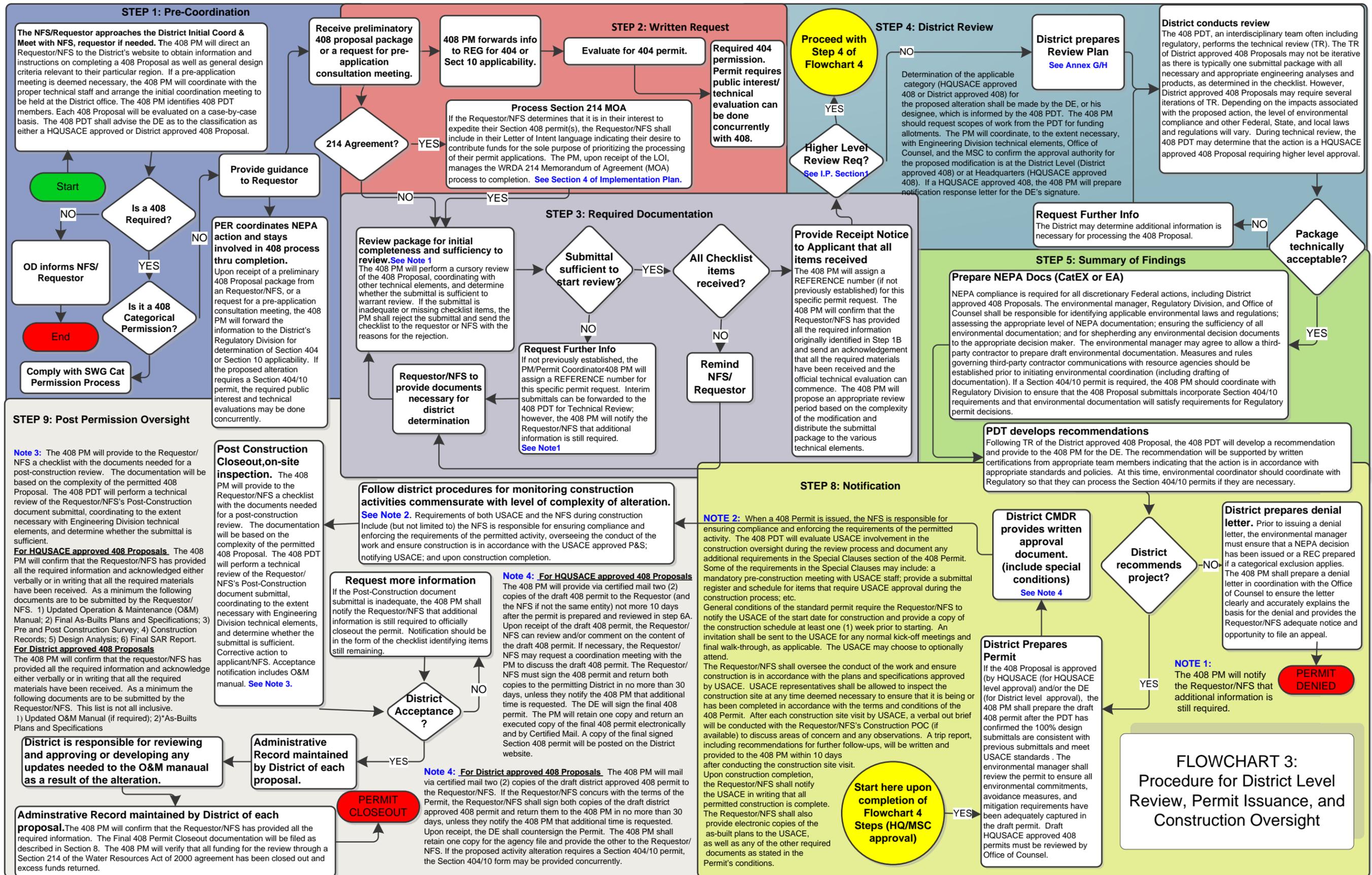
PDT determines applicable Permit Category(ies)?

FLOWCHART 2: Determine Which Permits are Applicable to Request

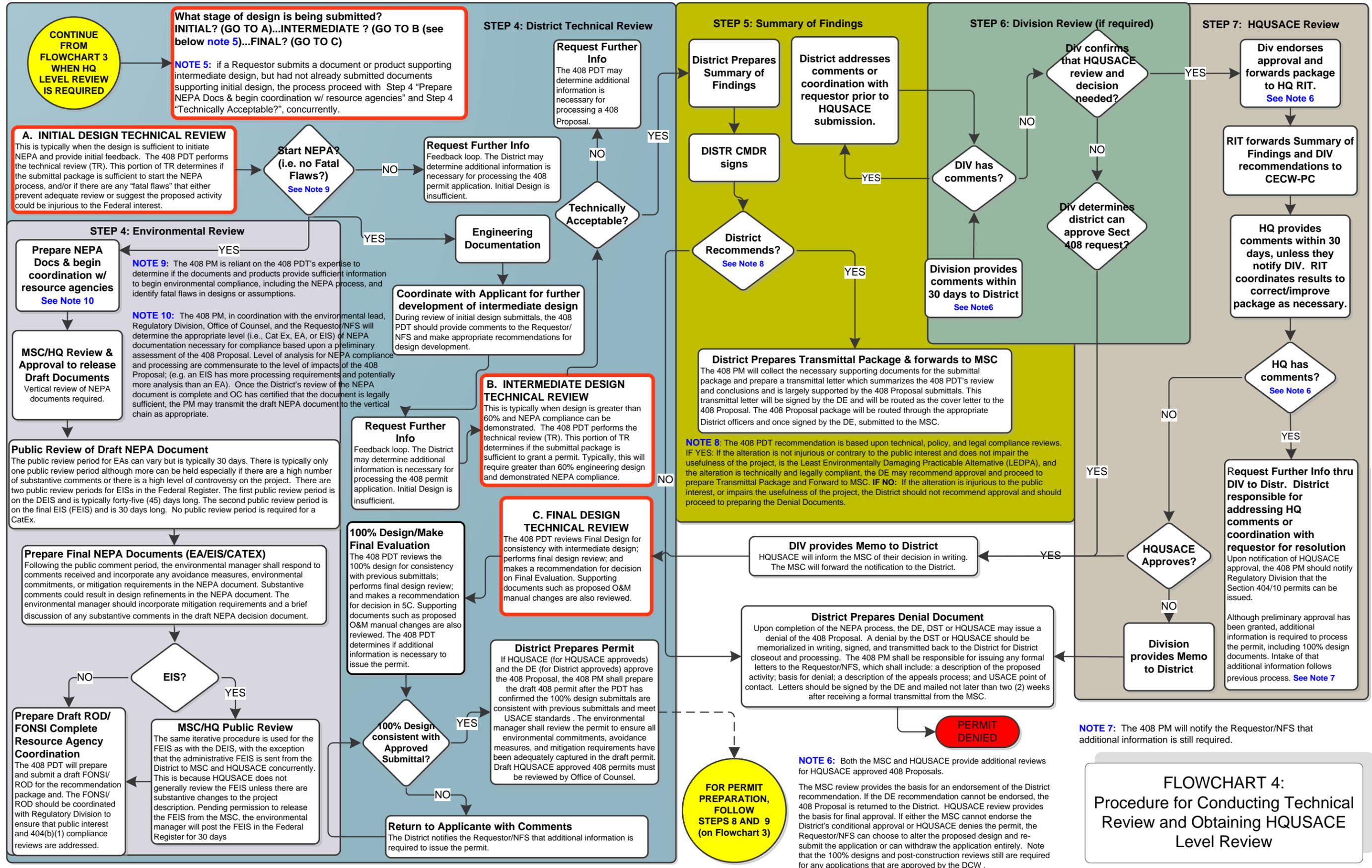


Follow SWG Sect 401 (C) SOP  
 Use of Dredge Material Disposal Facilities (DMPF) by Private Entity or N-Fed Sponsor. This is a standalone MOA, requires Determination Report and 404 Permit CTE (consent to easement). See EC 1165-2-216 6.h. Per 6.h.4 outgrant not pursuant to procedures in ER/EP 1130-2-550, Chapt 16-17 require Section 408 determination.

\* Check Sect 401 (C) and Sect 408 for Sect 404/10/CTE. Check throughout Sect 408 process. The discharge of dredged or fill material into waters of the U.S. and most categories of work in navigable water bodies require Corps of Engineers authorization under authority of *Section 404 of the Clean Water Act* and *Section 10 of the Rivers and Harbors Act of 1899*, respectively.



**FLOWCHART 3:**  
 Procedure for District Level Review, Permit Issuance, and Construction Oversight



**FLOWCHART 4:**  
 Procedure for Conducting Technical Review and Obtaining HQUSACE Level Review

## Annex B – Projected Tasks

### 408 Project Manager (PM)

The 408 PM (may also be referred as the Permit Coordinator) is the leader of the 408 PDT and manages District resources, information and commitments, facilitates the 408 PDT toward effective 408 Proposal reviews and is the Requestor's primary interface with the District. The 408 PM would typically conduct the following (list is not all inclusive):

- Identifies 408 PDT members that will be involved in reviewing 408 Proposal application materials.
- Requests a scope of work (SOW) from the 408 PDT members for funding allotments.
- Coordinates with the Requestor/NFS to ensure 408 Proposal submittals are complete and processed appropriately.
- Coordinates technical review of 408 Proposal submittals as well as requests for additional information.
- Prepares all transmittal memoranda and letters to the Requestor/NFS.
- Spearheads drafting and routing of related 408 Proposal documents and correspondence for DE signature and/or MSC review.
- Coordinates issue resolution between District and Requestor/NFS.
- Coordinates issue resolution between District Support Team (DST), Regional Integration Team (RIT) and District.

### 408 Project Delivery Team (PDT)

The 408 PDT is comprised of members who possess the skills needed to review the proposed activity and its impacts on the system as a whole. The PDT provides a preliminary recommendation of whether a 408 Proposal is classified as a HQUSACE approved or District approved to the District Decision Officer. Necessary knowledge and skill typically fall into the following four categories:

- Engineering – assesses the proposed activity for engineering adequacy, risk transfer, structural integrity and any other technical assessments deemed necessary by USACE.
- Environmental/Regulatory – ensures the proposed activity meets all environmental and regulatory requirements.
- Legal/Policy – ensures legal and policy compliance.
- Financial/Project Management – manages administrative fees or Section 214 Agreement funds.
- Real Estate – PDT realty specialist determines additional requirements upon further evaluation of the real estate rights as part of the 408 Proposal. The realty specialist ensures that reviews consider applicable land use (outgrant) laws, regulations and policies, and provides necessary support to meet the requirements of the Section 408 Permit Process.

The 408 PDT's largest emphasis is the review for technical adequacy 408 Proposal technical documents (i.e. Agency Technical Review (ATR)). The PDT evaluates the 408 Proposal in light of applicable Section 408 conditions/ requirements as may be applicable to HQUSACE approved or District approved 408 Proposals and determines if the technical analysis and documentation

is sufficient. The PDT can request additional information from the Requestor as necessary, recommend classifying the proposed activity as either a HQUSACE approved 408 or District approved 408 Proposal. The PDT makes the initial recommendation to approve or deny the 408 Proposal.

### **SWG District Engineer (DE)**

The DE as the District Decision Officer signs a 408 Proposal decision document, i.e. a “408 Permit” for both HQUSACE approved and District approved 408 Proposals. The DE may also sign the FONSI/ROD for NEPA documents associated with District approved 408, and Section 404 /10 permits, unless otherwise delegated. For HQUSACE approved 408 Proposals, the DE may recommend approval/denial through the HQUSACE approved Subordinate Command (MSC) to the Director of Civil Works (DCW), or deny at the District level without recommending the Section 408 Proposal to the MSC. The DE may also delegate decision-making authority for District approved 408 Proposals to the Engineering Division Chief. A delegation to the Engineering Chief must be in writing and signed by the DE.

### **Southwestern Division (SWD)/Division Commander**

MSC staff provides a quality assurance review of the DE’s recommendation for approval of the Requestor’s HQUSACE approved 408 Proposal and approves for public release the draft EIS/EIR, if applicable. EA’s do not require MSC approval prior to public release, but elevation of the draft EA prior to public release may be requested by the MSC for HQUSACE approved 408 Proposals. The MSC Division Commander may endorse the recommendation to HQUSACE or deny the District Engineer’s recommendation of the 408 Proposal.

### **USACE Headquarters (HQUSACE)**

HQUSACE is the decision making authority for approval or denial of HQUSACE approved 408 Proposals. Approval is formally signed by the Director of Civil Works (Reference J) via a ROD (or other NEPA decision document) and transmittal memorandum for the MSC and the District. The MSC provides quality assurance for the DE’s recommendation and may endorse the DE’s recommendation of a HQUSACE approved 408 Proposal or deny the HQUSACE approved 408 Proposal. HQUSACE is the final decision authority for approval of a HQUSACE approved 408 Proposal. For vertical coordination as part of the decision process, Districts should work with their respective District Support Team (DST) Lead at the MSC and with the Regional Integration Team (RIT) Lead at HQUSACE.

### **Requestor**

The Requestor is the agency, organization, or other entity requesting approval to implement the proposed activity. The Requestor may or may not be the Non-Federal Sponsor (NFS). The Requestor is responsible for the planning, design and construction of the proposed activity. The Requestor’s responsibilities include:

- Submits a Letter of Intent.
- Completes all analyses and evaluations required.
- Facilitates Safety Assurance Review (SAR) for HQUSACE approved 408 Proposals.

- Informally coordinates with the 408 PDT to ask and answer questions, and address issues and/or concerns.
- Provides draft revisions and updates to the Project Operation and Maintenance (O&M) Manual for District review and approval that may be necessary to incorporate the 408 Proposal into the larger Project O&M requirements.

### **Non-Federal Sponsor (NFS)**

The Non-Federal Sponsor (NFS) is the organization which operates and maintains the Federal project. The NFS plays a very important role in Section 408 actions. In all cases, regardless of whether the NFS is the Requestor or not, the NFS is responsible for the following:

- Operates and maintains completed flood risk reduction project.
- Coordinates with the Requestor (public or private) proposing the activity to develop sufficient information for the proposed activity.
- Ensures sufficient technical information in support of the 408 Proposal is submitted to USACE for proper and timely evaluation.
- Formally and informally coordinates with the 408 PDT to ask and answer questions, and address issues and/or concerns.

### **Third-Party Contractor**

The Third-Party Contractor is the organization which is paid for by the Requestor/NFS, but directed by the USACE for preparation of NEPA compliance documents.

### **Environmental Manager**

The Environmental Manager typically coordinates the 408 PDT member reviews (e.g., engineering team members) and ensuring comments are incorporated into environmental documents to comply with applicable laws, regulations and policies and that USACE documentation accurately describes and analyzes the potential impacts of a 408 Proposal. The Environmental Manager coordinates the drafting of NEPA documents and may supervise the Third-Party Contractor's preparation of the NEPA documents or may personally draft the documents. The Environmental Manager coordinates and shares information with Regulatory Division, as necessary, to ensure that District actions are consistent. The scope of the Environmental Manager's part typically varies with the complexity of the 408 Proposal.

## Annex C – Related Permit Actions

### Section 214

Refers to the Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541) as amended, allows the Corps to accept funds from non-federal public entities to provide priority review of their permit applications. Section 214 of WRDA 2000 reads as follows: IN GENERAL—In Fiscal Years 2001 through 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army. EFFECT ON PERMITTING—In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to permits, either substantively or procedurally. This authority was extended under Section 2002 of Water Resources Development Act of 2007 (PL 110-114) until December 31, 2009.

### Section 404 /10

Refers to Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and Section 10 of the Rivers and Harbors Act, respectively. Section 404 requires requestors to acquire a permit(s) from USACE for activities involving the discharge of dredged or fill material in waters of the United States, whereas Section 10 requires a permit(s) for placement or construction of certain structures or work in, over or affecting navigable waters for the deposition of dredge materials. Many activities necessitating a Section 408 permit will require a Section 404/10 permit as well. To the extent that USACE anticipates additional permits may be necessary, early and on-going coordination with USACE Regulatory is recommended to ensure that environmental coordination comprehensively considers the impacts of all USACE actions necessary for a single proposal. Collectively, a requirement for a Section 404 and/or Section 10 permit is referred to throughout this document as “Section 404/10 permit,” and applications for a Section 404/10 permit is processed by the SWG’ Regulatory office; separate from the 408 permitting process.

### Section 401(c)

Refers to Section 401(cx) of the Clean Water Act, 33 U.S. Code § 1341. Section 401 (c) authorizes the Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees. In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts. See **Annex F2.4** for Section 401c application information to SWG District.

### Real Estate

For 408 Proposals that affect projects that are located on lands owned by the United States in fee or encumbered by a Federal easement. A Requestor must also acquire sufficient real estate rights or permissions to carry out the activity proposed in the 408 Proposal. An outgrant is a real estate instrument, issued by the District Chief of Real Estate or his designated representative, that grants the authority to use Federally owned or encumbered real property

for a specific use and/or purpose. ; The outgrant instrument shall include the time period of use; type and amount of the consideration for such use and will outline any specific conditions or restrictions. Outgrant is a generic term - from the U.S. to another entity. Shoreline use permits, Section 10 and Section 404 permits are not considered real estate outgrants. The Galvestion District Real Estate Division will issue any required supporting real estate outgrant. .

## Annex D – Applicable Documents, Guidance, and Reference

- A. 33 U.S.C. § 408, Section 14 of the River and Harbors Appropriation Act of 1899. Taking possession of, use of, or injury to harbor or river improvements. This Reference establishes the Federal authority for approval of all alterations of U.S. Army Corps of Engineers projects.
- B. 33 U.S.C. § 701c. Rights-of-way, easements, etc.; acquisition by local authorities; maintenance and operation; protection of United States from liability for damages; requisites to run-off and water-flow retardation and soil erosion prevention assistance.
- C. 33 U.S.C. § 2344. Safety Assurance Review.
- D. 33 CFR Part 208, Section 208.10 (“Section 208.10”). Local flood protection works; maintenance and operation of structures and facilities.
- E. Engineer Circular (EC) 1165-2-209 Water Resources Policies and Authorities - Civil Works Review Policy, 31 January 2010. Provides guidance for review requirements for all USACE decision, implementation, operations and maintenance documents and work products.
- F. Engineer Regulation (ER) 1165-2-119 Modifications to Completed Projects, 20 September 1982.
- G. Assistant Secretary of the Army (Civil Works) Memorandum for the Chief of Engineers, Subject: Delegation of Authority Pursuant to 33 U.S.C. § 408, 16 April 2004.
- H. CECW-PB Memorandum Policy and Procedural Guidance for the Approval of Modifications and Alterations of Corps of Engineers Projects, 23 October 2006.
- I. CECW-PB Memorandum Clarification Guidance on the Policy and Procedural Guidance for the Approval of Modifications and Alterations of Corps of Engineers Projects, 17 November 2008.
- J. Chief of Engineers Memorandum for the Director of Civil Works, Subject: Delegation of Authority Pursuant to Section 408, 2 April 2009.
- K. CECW-PB Memorandum Delegation of Authority to District Commanders to Approve Pursuant to 33 U.S.C. 408 Those District approved, Low Impact Modifications to Flood Protection Works Operated and Maintained by Non-Federal Sponsors Previously Being Considered under 33 CFR 208.10(a)(5), 18 June 2010.
- L. Section 214. CECW-PB Memorandum Implementation Guidance for Utilizing Section 214 of the Water Resources Development Act of 2000, Public Law 106-541, as amended by Public Law 111-120, to Accept Funding from Non-Federal Public Entities to Expedite the Evaluation of Permits pursuant to 33 U.S.C. § 408.
- M. ER 200-2-2 Procedures for Implementing NEPA [National Environmental Policy Act], 4 March 1988.
- N. ER 1110-2-1150 Engineering and Design for Civil Works Projects, 31 August 1999.
- O. EC 1165-2-216 Policy and Procedural Guidance for Processing Requests to Alter USACE Civil Works Projects Pursuant to 33 USC 408.
- P. ER 405-1-80 6 Sep 10 Real Estate MANAGEMENT AND OUTGRANT PROGRAMS, 6 Sep 2010.

## Annex E - Definitions

### Non-Federal Sponsor

The Non-Federal Sponsor (NFS) is the entity responsible for the operation and maintenance of a Federally authorized project in accordance with law and/or a Project Partnership Agreement (PPA) or equivalent. . See **Annex B** for additional information.

### Requestor

Any agency, organization or other entity (public or private) that submits a 408 Proposal. The Requestor is responsible for preparing most of the technical analysis for USACE review. In most cases, the NFS is also the Requestor. See **Annex B** for additional information.

### Requestor/NFS

This SOP uses “Requestor/NFS” throughout to describe roles, responsibilities and actions for 408 Proposals, which will largely depend upon the facts and circumstances of the 408 Proposal and the role and relationship of the NFS to the 408 Proposal (the 408 Project Manager should consult the Office of Counsel on the respective roles, responsibilities and actions for Requestors and NFSs when they differ based on the 408 Proposal or the relationship between Requestors, NFSs and USACE).

### Letter of Intent

The Letter of Intent (LOI) is prepared by the Requestor who then submits the letter to the District. The letter should include a project description and be sufficient for the District to preliminarily determine if the proposed alteration/modification is a HQUSACE approved or District approved 408 Proposal. If the NFS desires to provide funding to USACE to prioritize identified Section 408 Proposals, the LOI should state that the NFS is seeking to enter into a Section 214 Agreement (per **Reference I**).

### 408 Proposal

Refers generally to a 408 Proposal requesting permission to alter, modify, permanently occupy or use a completed USACE Project. The HQUSACE approved/District approved classification for each proposal will be made on a case-by-case basis.

### HQUSACE approved 408 Proposal

HQUSACE approved 408 Proposals propose to change the scope or function of a Federal flood damage reduction project and/or change the authorized geometry or hydraulic capacity of a Project. HQUSACE approved 408 Proposals could include actions which raise material policy issues that require Safety Assurance Reviews (SARs). HQUSACE approved 408 Proposals include a requirement to submit proposed changes to the Project Operations and Maintenance (O&M) Manual and may cause the Project or Project feature to be eligible for rehabilitation assistance in the future after a flood event.

## **District approved 408 Proposal**

District approved 408 Proposals are requests that propose relatively district approved, low impact alterations that pass over, under or through a completed USACE project. District approved 408 Proposals do not change the authorized purpose, scope or function of a completed USACE Project; do not change the authorized geometry of a structural feature of a completed USACE Project; do not result in a reduction in the hydraulic capacity to the USACE Project; nor result in otherwise adverse hydraulic impacts to the completed USACE Project (**Reference H**). All other 408 Proposals, including anything that is not clearly a District approved, should be considered a HQUSACE approved and require DCW decision. District approved 408 actions may be approved by the District Engineers (DE) or his or her designee(s). Examples are provided in **Annex F.1** of proposal that could be eligible for district level approval, depending on the 408 PDT determination.

## **Permitted Activity**

The Permitted Activity is defined as the activity outlined in the HQUSACE approved 408 or District approved 408 Proposal as approved by USACE.

## **Project**

As the term is used in this QMS document, it refers only to authorized Federal hurricane, storm and/or damage flood risk reduction projects that were completed and constructed by the USACE, which may be the subject of a 408 Proposal. Guidelines provided in this QMS document may be applied with the input of the Office of Counsel and MSC, as necessary, to 408 Proposals for projects authorized for other purposes.

## **Section 214 Agreement**

### **Quality Control Plan (QCP)**

A QCP is the document setting out the specific quality practices, resources and sequence of activities relevant to a 408 Proposal. It shall include the review team and its responsibilities, the schedule and costs for reviews, the agreed-upon requirements of the customer and the appropriate laws, regulations, policies and technical criteria for development of the 408 Proposal.

### **Safety Assurance Review (SAR)**

Section 2005 of WRDA 2007 (**Reference C**) requires an independent external peer review (IEPR) for design and construction activities for hurricane and storm damage reduction projects, as well as, flood risk management projects. This IEPR is known as a Type II IEPR, or more commonly, a SAR.

## **Annex F – Draft Documents for Section 408 PDT Use and Consideration**

F1 : Example Categories for District Approved 408 Proposal

F2: SWG Communication Plan

F3: Templates for Section 408 Processing

F4: Checklists

## **F1 Categorical Permissions for District Level Approval**

- Upgrades to authorized interior drainage structures
- Cutoff Barriers
- Stability Berms
- Seepage Berms
- Relief Wells
- Toe Drains
- Monitoring and water wells
- Piezometers
- Irrigation pumps and distribution lines
- Pipelines, conduits and overhead utilities
- Construction in overflow areas
- Patrol roads and access ramps
- Storm drains and outfalls
- Erosion control measures
- Bridges
- Structures (homes and outbuildings)
- Boating docks and boat facilities
- Fences and gates
- Staircases
- Bike trails
- Sidewalks
- Driveways
- Plantings

See Annex G attachment 2 for additional listings.

NOTE: Per EC 1165-2-214, the district, division, and/or HQUSACE have the ability to create a categorical permission for Section 408 that would cover potential alterations that are similar in nature and that have similar impacts. Categorical permissions should be established by providing public notice of the activities covered by the categorical permission. There should be appropriate documentation and analysis developed to determine that the impacts of activities covered by the categorical permission are permissible and that environmental compliance for those activities has been met. Once established, a simplified process to validate application of the categorical permission and specify any special conditions that may apply on a site-specific basis may be used.

## **F2 SWG Section 408 Communication Plan**

F2.1 Communication Schedule and Methods

F2.2 TEMPLATE – Information Paper

F2.3 Available SWG Briefs

## F2.1 Communication Schedule and Methods

*EXAMPLE ONLY. To be prepared for SWG. How and when will SWG report on status?*

Audience	Media	Purpose	Topics	Owner	Frequency	Notes
Sponsor	Email P/S	Update	Status	BB	Monthly and as needed	Freq. depends on Situation
Mr. Constantaras	Email P/S	Update	Status	BB	As needed	
Project Team	Email P/S Phone	Progress	Project issues	BB	Weekly (minimum) and as needed	
Division QMR	Email P/S Phone	Update	Project issues Context management	BB	Weekly and as needed, tollgate	
Division RMB	thru SPD QMR	Update	Status/Extraordinary Issues	QMR	Quarterly or as needed	
Coach	Email P/S	Update	Problem solving Status	BB	As needed	
Districts	Email P/S	Update	Pending decisions	PDT members	As needed	Situation
HQUSACE (Jan Rasgus)	Email	Update	Pending decisions	Team leader	As needed	Situation
Maj Project <i>Requestor/requestors</i>	Email	Coordinate	Approach/Pending decisions	PDT members	As needed	Approach/Status

## F2.2 Information Paper

CESAJ-RD

25 June 2012

### INFORMATION PAPER

PROJECT NAME: Via Verde Natural Gas Pipeline (Puerto Rico)

STATEMENT OF ISSUE: **The Jacksonville District is currently evaluating a permit application for a highly controversial and politically charged proposed energy project in Puerto Rico. The Corps review of the proposed project has been the subject of multiple congressional letters to HQUSACE and SECARMY.**

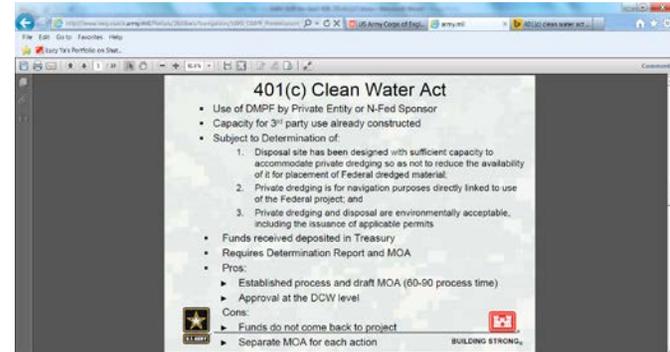
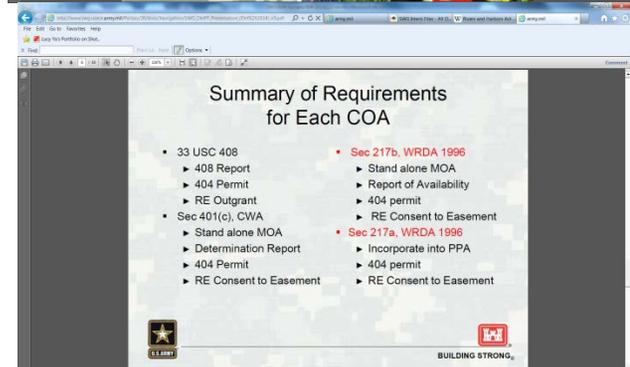
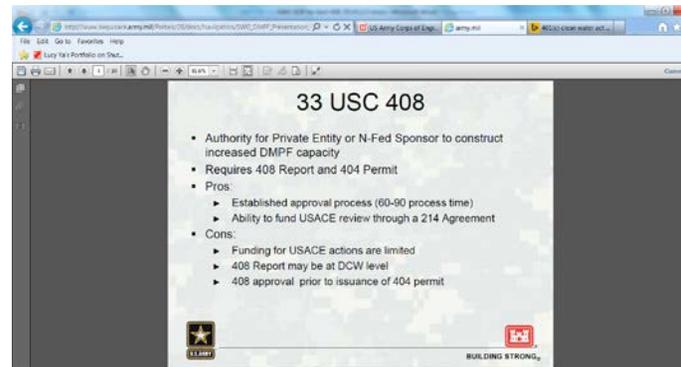
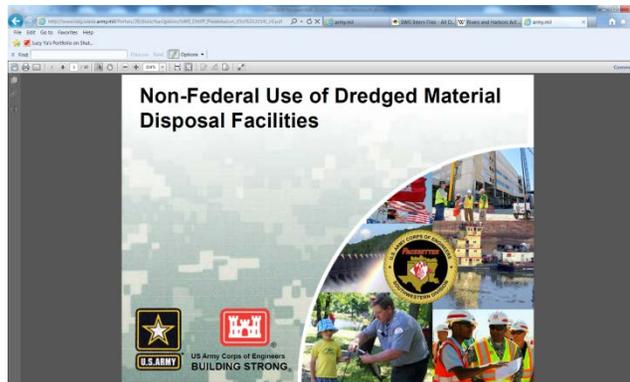
BACKGROUND: **Puerto Rico Energy and Power Authority (PREPA) proposes to construct a 92-mile natural gas pipeline starting at the EcoEléctrica, L.P., Liquid Natural Gas import terminal on the south coast to provide an alternative fuel for three oil fired power plants on the north coast. The Federal Energy Regulatory Commission regulates the import terminal but not the pipeline. About 33% of the right-of-way crosses waters of the U.S. and the project as proposed will require Department of Army authorization for 289-acres of temporary and 1.68-acres of permanent impacts for 240 river and wetland crossings. The Governor's office has stated that utilizing less expensive fuel is an important step in improving the economy by reducing the cost of electricity. Approximately 1,700 public comments were received regarding environmental impacts, risk of explosion, and alternative measures to reduce the cost of electricity.**

CONCERNS: **Protecting the integrity of the District's delegated permitting authority while maintaining situational awareness across all levels of the Army.**

CURRENT STATUS: **During late November and December 2011, the District published a draft Environmental Assessment (EA), including releasing a Spanish translation of the Executive Summary for public comment. In January 2012, the SECARMY stated the ASA(CW) will review the District Engineers' decision on whether or not an EIS will be required, when reached. In February 2012, the Governor established a committee to report on measures to comply with EPA's new regulations on power plant emissions, including an analysis of alternatives besides the proposed pipeline to deliver natural gas to the northern power plants. The Governor delivered the report to the ASA(CW) in meeting on 20 June 2012 and we have yet to hear from ASA(CW). The District is reviewing the Applicant's responses to requests for additional information to address multiple permit evaluation concerns.**

POINT OF CONTACT: **Donnie Kinard, Chief of the Jacksonville Regulatory Division (904-232-2255)**

## F2.3 Available SWG Briefs



[http://www.swg.usace.army.mil/Portals/26/docs/Navigation/SWG\\_DMPF\\_Presentation\\_\(Oct%202014\)\\_v3.pdf](http://www.swg.usace.army.mil/Portals/26/docs/Navigation/SWG_DMPF_Presentation_(Oct%202014)_v3.pdf)

## **F3 Templates for Section 408 Processing**

- F3.1 Sponsor's Request (Proposed Alternative)
- F3.2 Sponsor Request (Proposed Alt Navigation)
- F3.3 Sponsor Request (Exist Unauthorized Alt)
- F3.4 District Receipt of Requestor LOI
- F3.5 District Letter to Requestor (Sec 214)
- F3.6 District Memo for Permission/Denial
- F3.7 District Letter for 408 Permit Issuance
- F3.8 District Permit Letter for Local Sponsor Requestor
- F3.9 District Permit for Third Part Requestor
- F3.10 Documentation of Section 408 Review/Approval Level
- F3.11 District Final Memo to Requestor

(as needed, PDT can cut/paste into Word file)

### F3.1 Sponsor Request (Proposed Alt)

SUBJECT: Sponsor Request - Proposed Alteration to USACE – Buffalo District Inspection of Completed Works Project

To: Robert W. Remmers, P.E., PMP  
Chief, Operations and Technical Support Section  
U.S. Army Corps of Engineers, Buffalo District  
1776 Niagara St.  
Buffalo, NY 14207  
Phone: (716) 879-4277  
E-Mail: [robert.w.remmers@usace.army.mil](mailto:robert.w.remmers@usace.army.mil)

Name of Federal Inspection of Completed Works Project:

---

Sponsor's Organization:

---

Sponsor's Point of Contact Information:

Name:

---

Title:

---

Address:

---

Phone Number:

---

E-Mail Address:

---

1. **General:** The above sponsor requests U.S. Army Corps of Engineers' (USACE) review and approval of the proposed alteration as described below.

2. **Brief description or scope of work of alteration:**

---

2. **Purpose of alteration:**

---

4. **Approx. timeframe that work is to be performed (Mo./Yr. to Mo./Yr.):**

---

5. **Property name or description, and property address (if applicable):**

---

6. **Location of alteration (Body of Water, Bank, Approximate Stationing, Nearby Streets, etc.):**

---

7. **Potential Impacts to project by alteration:** Will this alteration, in the Sponsor's opinion, impact any of the following?

a. Reliability of the project to function as designed?  
Yes \_\_\_ No \_\_\_

Comments:

---

b. Sponsor's and/or USACE's ability to adequately inspect the project during normal conditions?  
Yes \_\_\_ No \_\_\_

Comments:

---

c. Sponsor's and/or USACE's ability to adequately inspect the project during potential or actual flood conditions?  
Yes \_\_\_ No \_\_\_

Comments:

---

d. Sponsor's ability to adequately operate and maintain the project?  
Yes \_\_\_ No \_\_\_

Comments:

---

e. Sponsor's ability to conduct flood fight operations during an emergency?  
Yes \_\_\_ No \_\_\_  
Comments:

---

f. Will the alteration affect the structural or geotechnical integrity of project components (including stability, embankment or floodwall strength, seepage, sideslopes, closure structures, miscellaneous structures, etc.)?  
Yes \_\_\_ No \_\_\_

Comments:

---

---

g. Will the alteration have adverse impacts on the hydraulic or coastal functioning of the project?

Yes \_\_\_ No \_\_\_

Comments:

---

h. Will the alteration have adverse impacts on the interior drainage system or drainage facilities (i.e outfalls, gatewells, storm sewer lines, pump stations, drainage ditches, etc.)?

Yes \_\_\_ No \_\_\_

Comments:

---

i. Will the alteration have adverse impacts on environmental aspects of the project?

Yes \_\_\_ No \_\_\_

Comments:

---

j. Will the alteration have adverse impacts on safety aspects of the project?

Yes \_\_\_ No \_\_\_

Comments:

---

k. Will the alteration have impacts to the project's real estate easement requirements?

Yes \_\_\_ No \_\_\_

Comments:

---

l. Will the alteration have any other adverse impacts on project components not addressed in 7.f. – 7.k. above?

Yes \_\_\_ No \_\_\_

Comments:

---

m. Will a USACE Regulatory permit be required (for work within "Waters of the United States")? If so, what type – Section 10, Section 404?

Yes \_\_\_ No \_\_\_ Type: \_\_\_\_\_

Comments:

---

n. Describe additional operations and maintenance that will be required as a result of this alteration. (Note: Sponsor is required to ensure that adequate additional operations and maintenance is performed, even if alteration is by a third party).

Comments:

---

**o. Describe alternatives to the proposed alteration that avoid impacts to the public project works.**

Comments:

---

**8. The following documents are attached in support of this alteration request:**

Detailed Plans \_\_\_ Drawings/Sketches \_\_\_ Photos \_\_\_ Written  
Details \_\_\_ Map \_\_\_ GIS Dataset \_\_\_ Other \_\_\_ (Describe):

**9. CONDITIONS:** If the alteration request is approved, work shall not begin until written approval is obtained from USACE. USACE reserves the right to require a pre/post-construction inspection or meeting with sponsor and other interested parties. If request by USACE, as-built drawings, construction photographs, or other documentation of the work is required. Further conditions or requirements apply and will be provided in writing at the time of approval of the request.

If the alteration request is disapproved, the sponsor will be notified in writing of the justification for disapproval.

**10. Signature/Date:**

**Requestor:**

\_\_\_\_\_  
Name of requestor's organization or agency

\_\_\_\_\_  
Printed name of requestor's representative

\_\_\_\_\_  
Signature of requestor's representative

\_\_\_\_\_  
Date signed

**Sponsor:**

\_\_\_\_\_  
Name of sponsor's organization or agency

\_\_\_\_\_  
Printed name of sponsor's representative

\_\_\_\_\_  
Signature of sponsor's representative

\_\_\_\_\_  
Date signed

**NOTE: An electronic copy of this form is available by contacting Robert Remmers at e-mail address [robert.w.remmers@usace.army.mil](mailto:robert.w.remmers@usace.army.mil).**

**Updated: 10/2/13 (RWR)**

## **F3.2 Sponsor Request (Proposed Alt Navigation)**

Per Buffalo District – need another request template for Section 408 wrt navigations structures.

### F3.3 Sponsor Request (Exist Unauthorized Alt)

**SUBJECT: Sponsor Request - Existing Unauthorized Alteration to USACE – Buffalo District Inspection of Completed Works Project**

To: Robert W. Remmers, P.E., PMP  
Levee Safety Program Manager  
U.S. Army Corps of Engineers, Buffalo District  
1776 Niagara St.  
Buffalo, NY 14207  
Phone: (716) 879-4277  
E-Mail: [robert.w.remmers@usace.army.mil](mailto:robert.w.remmers@usace.army.mil)

Name of Federal Inspection of Completed Works Project:

\_\_\_\_\_

Sponsor's Organization:

\_\_\_\_\_

Sponsor's Point of Contact Information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

1. **General:** The above sponsor requests after-the-fact U.S. Army Corps of Engineers (USACE) review and approval of the existing unauthorized alteration as described below.

2. **Brief description or scope of work of alteration:**

\_\_\_\_\_

3. **Purpose of alteration:**

4. **Approx. timeframe that work was performed (Mo./Yr. to Mo./Yr.):**

5. **Property name, description, and address (if applicable):**

6. **Location of alteration (Body of Water, Bank, Approximate Stationing, Nearby Streets, etc.):**

7. **Potential Impacts to project by alteration:** Is this alteration, in the Sponsor's opinion, impacting any of the following?

a. Reliability of the project to function as designed?

Yes \_\_\_\_ No \_\_\_\_

Comments:

b. Sponsor's and/or USACE's ability to adequately inspect the project during normal conditions?

Yes \_\_\_\_ No \_\_\_\_

Comments:

c. Sponsor's and/or USACE's ability to adequately inspect the project during potential or actual flood conditions?

Yes \_\_\_\_ No \_\_\_\_

Comments:

d. Sponsor's ability to adequately operate and maintain the project?

Yes \_\_\_\_ No \_\_\_\_

Comments:

Comments:

---

e. Sponsor's ability to conduct flood fighting operations during an emergency?

Yes \_\_\_\_ No \_\_\_\_

Comments:

---

f. Has the alteration affected the structural or geotechnical integrity of project components (including stability, embankment or floodwall strength, seepage, sideslopes, etc.)?

Yes \_\_\_\_ No \_\_\_\_

Comments:

---

g. Has the alteration had adverse impacts on the hydraulic or coastal functioning of the project?

Yes \_\_\_\_ No \_\_\_\_

Comments:

---

h. Has the alteration had adverse impacts on the interior drainage system or drainage facilities (i.e outfalls, gatewells, storm sewer lines, pump stations, drainage ditches, etc.)?

Yes \_\_\_\_ No \_\_\_\_

Comments:

---

i. Has the alteration had adverse impacts on environmental aspects of the project?

Yes \_\_\_\_ No \_\_\_\_

Comments:

---

j. Has the alteration had adverse impacts on safety aspects of the project?

Yes \_\_\_\_ No \_\_\_\_

---

k. Are there changes to the easement requirements for this project as a result of this alteration?

Yes \_\_\_\_ No \_\_\_\_

Comments:

---

l. Has the alteration had any other adverse impacts on project components not addressed in 7.f. – 7.k. above?

Yes \_\_\_\_ No \_\_\_\_

Comments:

---

m. Was a USACE Regulatory permit required/obtained (for the completed alteration work within "Waters of the United States")? If so, what type – Section 10, Section 404?

Yes \_\_\_\_ No \_\_\_\_ Type: \_\_\_\_\_

Comments:

---

n. Describe additional operations and maintenance required as a result of this alteration. (Note: Sponsor is required to ensure that adequate additional operations and maintenance is performed, even if alteration is by a third party).

Comments:

---

**8. The following documents are attached in support of this alteration request:**

Detailed Plans \_\_\_\_ Drawings/Sketches \_\_\_\_ Photos \_\_\_\_ Written Details \_\_\_\_

**Maps** \_\_\_\_ **GIS Dataset** \_\_\_\_ Other \_\_\_\_ (Describe):

**9. CONDITIONS:** A site inspection between USACE and the sponsor (and other interested stakeholders) may be conducted during an upcoming USACE inspection, or at some other time, to determine the acceptability of the completed work. As-Built drawings, construction photographs, and/or other documentation of the work may also be required, if requested by USACE. Other conditions or requirements may apply and will be provided in writing at the time of approval of the request.

If the alteration request is disapproved, the sponsor will be notified in writing as to the reasons for disapproval. Corrections to, or complete removal of, the completed work may be required if it is determined during the USACE review of this request, or during the site inspection, that the alteration work is not in accordance with submitted documentation.

**10. Signature/Date:**

**Requestor:**

\_\_\_\_\_  
Name of requestor's organization or agency

\_\_\_\_\_  
Printed name of requestor's representative

\_\_\_\_\_  
Signature of requestor's representative

\_\_\_\_\_  
Date signed

**Sponsor:**

\_\_\_\_\_  
Name of sponsor's organization or agency

\_\_\_\_\_  
Printed name of sponsor's representative

\_\_\_\_\_  
Signature of sponsor's representative

\_\_\_\_\_  
Date signed

**NOTE:** An electronic copy of this form is available by contacting Robert Remmers at e-mail address [robert.w.remmers@usace.army.mil](mailto:robert.w.remmers@usace.army.mil).

**Updated: 10/2/13 (RWR)**

### F3.4 District Receipt of Requestor LOI

Dear *Permission/permit Requestor/requestor*:

We have received your Letter of Intent that you submitted pursuant to 33 U.S.C. Section 408 (Section 408) on \_\_\_\_\_. Additional details will be provided to you in writing within [xx] days. Your application is filed in our records as *permission/permit* application no. \_\_\_\_\_.

[OPTIONAL LANGUAGE: If 214 agreement requested: The Corps has also received your request to provide funds to prioritize *permission/permit* activities related to your *permission/permit* application(s) pursuant to Section 214 of the Water Resources and Development Act of 2000 (Public Law 106-541), as amended. Accordingly, the Corps shall advise the public that the xxxx District Engineer is considering accepting funds from [NAME OF ENTITY/AGENCY] for the purpose of prioritizing its *permission/permit* application(s). We will inform you of the District Engineer's decision as soon as one is made.]

You are further advised that any activity which involves the discharge of dredged or fill material in waters of the United States or certain structures or work in, over or affecting navigable waters of the United States requires a separate Department of the Army *permission/permit* issued pursuant to the provisions of Section 404 of the Clean Water Act (33 USC 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), respectively. An application for a Department of the Army *permission/permit* is available on our website: [\[insert District-specific website address\]](#) and should be submitted to the U.S. Army Corps of Engineers, Regulatory Division as soon as possible. You may also contact our Regulatory Division office directly to schedule a pre-application consultation by calling (xxx) xxx-xxxx. Please Reference your Section 408 *permission/permit* application number in any communications or correspondence with our Regulatory Division. Construction activities may not begin in waters of the United States unless and until applicable *permission/permits* have been acquired.

Should you have any questions with regard to your Section 408 *permission/permit* application, please contact \_\_\_\_\_ *Permission/permit* Coordinator, Engineering Division at (xxx) xxx-xxxx.

Thank you,

Signed by PM/*Permission/permit* Coordinator

## F3.5 District Letter to Requestor (Sec 214)

Date

[insert addressee block]

Subject: Section 408 Review and Use of Section 214 Authority [Project]

Dear [insert addressee]:

On behalf of the [Agency], this letter is to confirm our support for use of authority provided in Section 214 of the Water Resources Development Act (Public Law 111-120) as amended, to provide funding from non-federal public entities to the U.S. Army Corps of Engineers (Corps) to expedite *permission/permit* reviews for requests to modify, alter or occupy completed federal flood risk management facilities under 33 U.S.C. Section 408 (Section 408). Section 214 states:

- (a) The Secretary, after public notice, may accept and expand funds contributed by non-federal public entities to expedite the evaluation of *permission/permits* under the jurisdiction of the Department of the Army.
- (b) In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision making with respect to *permission/permits*, either substantively or procedurally.
- (c) The authority provide under this section shall be in effect from December 31, 2009, through December 31, 2010.

[Brief Project Description].

The Secretary of the Army, by memorandum dated June 18, 2010, has authorized the District Engineers of the Corps to accept and expend funds contributed by non-Federal entities to expedite the evaluate of Section 408 *permission/permits*. The Corps has indicated that it is not able, without additional resources, to expedite the evaluation of [Agency]'s projects that have the potential to alter, modify, or occupy completed federal flood risk management facilities. Section 214 will provide an important avenue for funding the Corp's work if the Corp's own funding is insufficient to meet the non-federal sponsor's timeframe.

We would appreciate your consideration of our request and hope that under Section 214

the Corps is able to receive funds directly from the Authority for 33 U.S.C. Section 408 evaluations. We also request approval to establish a generic Section 214 funding agreement between the Corps and Authority that may be used as needed for specific 33 U.S.C. Section 408 activities as they arise.

We appreciate your consideration of our request and look forward to working with you, the Corps, on the [Project]. Should you require additional information or have any questions, please call [POC] or email [email address].

Sincerely,

### F3.6 District Memo for Permission/Denial

If you have any questions, please contact [Contact Name] of my staff at [phone number] or via e-mail at [email@usace.army.mil].

[Name  
Agency  
Title  
Street  
City, California Zip Code]

Sincerely,

[Name]  
[DE or designee]

Dear [Permit Requestor]:

signature block]

This letter responds to your request for permission to alter or modify the U.S. Army Corps of Engineers (Corps) Project, [insert Corps project name] by [description of work] pursuant to Section 14 of the Rivers and Harbors Act of 1899, codified at 33 U.S.C. § 408 (hereinafter "Section 408"). After a detailed review of your Section 408 Proposal application, I have concluded that I must deny your permit request because for the reasons stated in the enclosed decision document.

Enclosure(s)      Decision Document

If you object to this decision, you may request an administrative appeal to the Division Commander, South Pacific Division, U.S. Army Corps of Engineers at the address provided below. In your appeal letter, you must Reference your 408 Proposal number and explain why you believe that the District's decision to deny your 408 Proposal is incorrect. You may submit any supporting materials necessary to support your appeal. If you choose to appeal, please submit the appeal and all supporting information and all materials to the following address:

[Attn: \_\_\_\_\_]  
South Pacific Division  
U.S. Army Corps of Engineers  
1455 Market Street  
San Francisco, California  
94103-1398

For an appeal to be accepted by the Corps, the Corps must determine that information you submit is complete and that it has been received by [party to review appeal] within 60 days of the date on the this letter. Should you decide to submit a request for an appeal, it must be received at the above address by [date 60 days from today]. It is not necessary to submit any further information to the Division office if you do not object to the decision in this letter.

## F3.7 District Letter for 408 Permit Issuance

DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 532711  
LOS ANGELES, CALIFORNIA 90053-2325  
[Date]

REPLY TO  
ATTENTION OF

Office of the Chief  
Engineering Division

[Name  
Street Address  
County, State Zip Code]

Dear [Permit Requestor]:

This letter responds to your request for permission to alter or modify the [insert project name] (Project) by [insert description of work]. In support of your request, you submitted permit application materials that were deemed complete on [date]. We have reviewed the design documents that you have submitted; find them to be acceptable; and have concluded that your proposed work would not adversely impact the [insert name of Federal Project] constructed by the U.S. Army Corps of Engineers (Corps).

Enclosed please find two copies of Corps permit number [insert] (Permit). [Optional: incorporating changes required by the Corps to avoid adverse affects to Project operations]. This Permit is issued pursuant to Section 14 of the Rivers and Harbors Act of 1899, codified at 33 U.S.C. § 408 (Section 408). Please execute both copies of the enclosed Permit indicating your acceptance of its terms and conditions and return them to this office for execution. A copy of the fully executed Permit will be returned to you for your files providing final approval of your request.

This Permit to modify and/or alter the Project is conditioned upon your compliance with all of the stated conditions, both general and special. If you fail to comply with the terms and conditions of this Permit or if your activity changes in scope, size, or in any other substantive manner, you are required contact the Corps' Permit Coordinator immediately prior to initiating or continuing work.

[Directions: If a Corps Regulatory permit is required and the process has been initiated, insert the following paragraph AND coordinate with the appropriate Chiefs to obtain a paragraph as to the status of the permit and what further action may be required on the requestor's part. The Regulatory Branch Chiefs by area are: Orange and Riverside Counties - Corice Farrar; Los Angeles, San

Bernardino and Kern Counties - Daniel Swenson; Ventura, Santa Barbara, San Luis Obispo, Inyo, and Mono Counties - Aaron Allen; San Diego and Imperial Counties - Therese Bradford; Transportation - Spencer MacNeil; All of Arizona - Sallie McGuire.]

**This Permit does not obviate the need to obtain a Department of the Army permit for activities which involve the discharge of dredged or fill material into "waters of the U.S." pursuant to Section 404 of the Clean Waters Act of 1972 (33 USC 1344), and/or structures or work in or affecting "navigable waters of the United States," pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403)). A permit must be obtained before work within waters of the United States begins.**

[Directions: If a Corps Regulatory permit is required and the process has not been initiated, include the following paragraph:

**We have determined that your project requires a Corps permit for the discharge of dredged or fill material into "waters of the United States" pursuant to Section 404 of the Clean Water Act of 1972 (33 USC 1344), and/or structures or work in or affecting "navigable waters of the United States" pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). An application for a Department of the Army permit is available on our website: <http://www.spl.usace.army.mil/Missions/CivilWorks/Regulatory.aspx> and should be submitted to the Regulatory Division. A permit must be obtained before work within waters of the United States begins.]**

[Directions: If Regulatory Division has determined a permit is not required, omit the above paragraph(s) and include the following paragraph:

We have determined that your project does not require a Corps permit for the discharge of dredged or fill material into "waters of the United States" pursuant to Section 404 of the Clean Water Act of 1972 (33 USC 1344), and/or structures or work in or affecting "navigable waters of the United States" pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). If you have not already received a letter to this effect from the Regulatory Division, one will be forthcoming. A change in size or scope to your project could trigger a Corps permitting requirement, should this occur, we recommend that you contact Regulatory Division immediately by calling (213) 452-3245. For any changes to your project that result in discharge of dredged or fill material into "waters of the United States," you are reminded that a permit must be obtained before work within waters of the United States begins.]

[Directions: If there is a Federal Property Interest and a Consent to Easement is required, attach the Consent and include the following paragraph:

We have further determined that the permitted activity would require occupation of Federal lands. We have concluded that occupation of Federal lands is compatible with the Project and that the permitted activities are not adverse to the United States' ownership interest in the area. Enclosed with this Permit is a permission to occupy lands encumbered by a Federal easement, called a Consent to Easement. Please sign, date and return both copies of the Consent to Easement along with the enclosed Permit. A copy of the consent may be retained by you pending receipt of a fully executed copy.]

This Permit is effective only insofar as the jurisdiction of the Department of the Army applies to the Project. You may be required to obtain additional permits, comply with applicable laws or regulations as may be required by Federal, state, or local statutes, and/or acquire any necessary real estate rights or permissions from third parties necessary to commence the permitted actions.

Thank you for participating in the Section 408 permit process. If you have any questions, please contact *[insert name and phone number]* or via e-mail at *[insert e-mail address]*.

Sincerely,

Richard J. Leifield, P.E.  
Chief, Engineering Division  
Los Angeles District  
U.S. Army Corps of Engineers

## F3.8 District Permit for Local Sponsor Requestor

DEPARTMENT OF THE ARMY  
33 U.S.C. § 408 PERMIT  
U. S. Army Corps of Engineers  
Los Angeles District

**PERMITTEE/LOCAL SPONSOR:** *[Name and address]*

**PERMIT NUMBER:** *[insert permit number]*

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Los Angeles District, Engineering Division (Corps)

**CORPS PERMIT COORDINATOR:** *[insert name and phone number and e-mail address]*  
(Permit Coordinator)

**AFFECTED FEDERAL PROJECT AND DESCRIPTION:** *[Insert Project Name, completion date and brief description of the specific facility proposed for alteration or modification]* (Federal Project).

**LOCATION:** *[Description of limits of the approved modification/alteration plus latitude and longitude]*

**APPROVED MODIFICATION OR ALTERATION OF THE FEDERAL PROJECT:** *[Insert Description]* (Authorized Activity).

### GENERAL CONDITIONS:

1. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the construction, operation, maintenance, repair, rehabilitation and replacement of the Authorized Activity, or for damages to the Federal Project. Permittee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.
2. Permittee shall comply with all applicable federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county and municipality wherein the Federal Project is located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, use of pesticides, and licenses or permits necessary for the Authorized Activity.
3. Permittee shall maintain the Authorized Activity in good condition and in conformance with the terms and conditions of this Permit. Permittee shall not be relieved of this requirement even if the Authorized Activity is abandoned. Should the Permittee wish to cease to maintain the Authorized Activity or desire to abandon

it, Permittee must obtain from the Corps a modification of this permit, which may require additional construction activities to abandon the facility.

4. If previously unknown historic or archeological remains are discovered in carrying out the Authorized Activity, Permittee must cease activity, protect the site and immediately notify the Corps. The Corps will initiate Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
5. If the scope or details of the Authorized Activity change from the approved plans and specifications upon which this Permit is based, the Permittee must resubmit the permit application with the permit number and revisions clearly identified. Work associated with the Authorized Activity that does not pertain to the revised portion of the project, may continue while the revisions are being reviewed unless the Corps indicates otherwise.
6. Permittee shall keep the Permit Coordinator apprised of anticipated start and completion date of construction to the Permit Coordinator.
7. Permittee is required to invite the Permit Coordinator to an onsite kickoff meeting after the construction contract is awarded and prior to the date work is expected to begin. Permittee shall provide the Corps with the date, time and location of the meeting at least one week prior to the meeting, along with a copy of the construction schedule.
8. Permittee is required to allow Corps representatives to inspect the Authorized Activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this Permit.
9. Permittee shall oversee the conduct of the work and ensure the Authorized Activity is being constructed in accordance with the approved plans and specifications.
10. Upon completion of the Authorized Activity, Permittee shall submit electronic copies of the as-built plans of the Authorized Activity to the Corps, which are signed by the Permittee's engineer of record. Electronic copies of the as-built plans shall be in pdf format.
11. **Granting of this Permit does not authorize work in waters of the United States. Work shall not begin in waters of the United States until Permittee first obtains a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).**
12. Should construction activities fail to commence within two (2) years after execution of the effective date of this Permit, this Permit shall be temporarily revoked upon further examination by the Corps. Work shall not begin until the Corps has examined this Permit and determines that the Permit conditions are sufficient or until new Permit conditions are incorporated.

**SPECIAL CONDITIONS:** *[Include as applicable]*

1. Permittee is required to provide the Corps Los Angeles District Reservoir Regulation Section with a completed Site Access Coordination Form if construction will take place within or downstream of any Corps Flood Control Basin. (See Attached.) The requestor shall provide a Point of Contact (POC) so that the Reservoir Regulation Section can be aware of project information and coordinate reservoir operations. The POC should contact the Reservoir Operation Center (ROC) by calling (213) 452-3623 at least two (2) business days prior to commencement of approved modification/alteration.
2. Permittee shall abide by the terms and conditions of the permission to occupy lands encumbered by a Federal easement enclosed with this Permit.

By signing this 33 U.S.C. Section 408 Permit, the Permittee is accepting the terms and conditions contained within the General Conditions and Special Conditions of this Permit. This Permit becomes effective upon signature below by the U.S. Army Corps of Engineers official.

\_\_\_\_\_  
*[Official  
 Title  
 Entity Name]*

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Richard J. Leifield, P.E.  
 Chief, Engineering Division  
 Los Angeles District  
 U.S. Army Corps of Engineers

\_\_\_\_\_  
 Date

## F3.9 District Permit for Third Party Requestor

DEPARTMENT OF THE ARMY  
33 U.S.C. § 408 PERMIT  
U. S. Army Corps of Engineers  
Los Angeles District

**PERMITTEE/LOCAL SPONSOR:** *[Name and address]*

**PERMIT NUMBER:** *[Insert Permit Number here]*

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Los Angeles District, Engineering Division (Corps or Government)

**CORPS PERMIT COORDINATOR:** *[insert name and phone number and e-mail address]*  
(Permit Coordinator)

**AFFECTED FEDERAL PROJECT AND DESCRIPTION:** *[Insert Project Name, completion date and brief description of the specific facility proposed for alteration or modification]* (Federal Project).

**LOCATION:** *[Description of limits of the permitted modification/alteration with specific latitude and longitude]*

**APPROVED MODIFICATION OR ALTERATION OF THE FEDERAL PROJECT:** *[Insert Description]* (Permitted Activity).

Detailed drawings of the Permitted Activity are retained by the Corps and filed pursuant to the Permit number listed above.

### GENERAL CONDITIONS:

The Corps acknowledges that the Permitted Activity will be carried out by \_\_\_\_\_ (Third Party) and that this Permit is being issued to Permittee, as the local sponsor of the Federal Project pursuant to its obligations under any applicable Federal Project agreement and as codified in 33 U.S.C. 2213(j). Permittee shall be responsible for compliance and enforcement against Third Party of all conditions, both General and Special, and recognizes that the Corps reserves the right to enforce all conditions stated herein against Permittee. This Permit shall not diminish the overall responsibility of Permittee to operate and maintain the Federal Project as described in the Federal Project's Operation and Maintenance Manual, to include operation and maintenance of the Permitted Activity.

The determination of this office that issuance of this Permit is not contrary to the public interest was made in reliance on the information submitted. This office may reevaluate its

decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. Third Party fails to comply with the terms and conditions of this Permit and Permittee takes no immediate action to enforce the terms of this Permit.
- b. The information provided by Permittee in support of the permit application proves to be incomplete or inaccurate.
- c. Significant new information surfaces which the Corps did not consider in reaching the original public interest decision.

Prior to the commencement of any construction related to the Permitted Activity, Permittee shall enter into an agreement with, or issue a separate permit to, the Third Party which shall impose the following requirements on the Third Party:

1. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the construction, operation, maintenance, repair, rehabilitation and replacement of the Permitted Activity, or for damages to the Federal Project. Third Party shall hold the United States harmless from any and all such claims except to the extent caused by the fault or negligence of the United States or its contractors.
2. Third Party shall agree to comply with all applicable federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county and municipality wherein the Federal Project is located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, use of pesticides, and licenses or permits necessary for the Permitted Activity.
3. Third Party shall agree to maintain the Permitted Activity in good condition and in conformance with the terms and conditions of this Permit. Third Party shall not be relieved of this requirement even if the Permitted Activity is abandoned. Should the Third Party wish to cease to maintain the Permitted Activity or desire to abandon it, Third Party shall request Permittee to obtain from the Corps a modification of this permit, which may require additional construction activities to abandon the facility.
4. If previously unknown historic or archeological remains are discovered in carrying out the Permitted Activity, Third Party shall cease activity, protect the site and immediately notify Permittee and the Corps. The Corps will initiate Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
5. If the scope or details of the Permitted Activity change from the approved plans and specifications upon which this Permit is based, Third Party shall request the Permittee to resubmit the permit application with the permit number and revisions clearly identified. Work associated with the Permitted Activity that does not pertain to the revised portion of the project, may continue while the revisions are being reviewed unless the Corps indicates otherwise.
6. Third Party shall apprise Permittee and the Corps' Permit Coordinator of the anticipated start and completion dates of construction of the Permitted Activity.

7. Third Party shall notify Permittee and the Corps of the start date for construction and a copy of the construction schedule at least 1 week prior to starting. Updated construction schedules shall be made available upon request. An invitation shall be sent to Permittee and the Corps for any kick-off meetings and final walk-through, as applicable.
8. Third Party shall allow Permittee and Corps representatives to inspect the Permitted Activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this Permit.
9. Third Party shall oversee the conduct of the work and ensure the Permitted Activity is being constructed in accordance with the approved plans and specifications.
10. Upon completion of construction of the Permitted Activity, Third Party shall submit electronic copies of the as-built plans of the Permitted Activity to Permittee and the Corps, which are signed by the Third Party's engineer of record. Electronic copies of the as-built plans shall be submitted in pdf format.
11. **Work shall not begin in waters of the United States until Third Party first obtains a separate, additional Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).**
12. Third Party may commence construction for the Permitted Activity no later than two years from the effective date of this Permit. Should construction activities fail to commence within two (2) years after the effective date of this Permit, this Permit shall be immediately revoked.

**SPECIAL CONDITIONS:**     *[Include as applicable]*

The agreement between Permittee and Third Party, Referenced above, shall include the following additional requirements:

1. Third Party shall provide the Corps Los Angeles District Reservoir Regulation Section with a completed Site Access Coordination Form if construction will take place within or downstream of any Corps Flood Control Basin. (See Attached.) The Third Party shall provide a Point of Contact (POC) so that the Reservoir Regulation Section can be aware of project information and coordinate reservoir operations. The POC should contact the Corps' Reservoir Operation Center (ROC) by calling (213) 452-3623 at least two (2) business days prior to commencement of approved modification/alteration.
2. Third Party shall abide by the terms and conditions of the permission to occupy or make use of lands encumbered by a Federal easement enclosed with this Permit.

Permittee shall ensure compliance with all conditions, both General and Special, as provided herein and shall enforce the terms of this Permit against Third Party. Nothing in

this Permit shall be construed as abrogating or otherwise diminishing the responsibility of Permittee to hold and save the Government free from all damages arising from construction, operation, maintenance, repair, rehabilitation, or replacement of the Federal Project and any alterations or modifications, including any alteration or modification approved herein, except for damages due to the fault or negligence of the Government or its contractors.

By signing this 33 U.S.C. Section 408 Permit, Permittee accepts all terms and conditions contained within the General Conditions and Special Conditions of this Permit. This Permit becomes effective upon signature below by the U.S. Army Corps of Engineers official.

Official	Date
Title	
Entity Name	

Richard J. Leifield, P.E.	
Chief, Engineering Division	Date
Los Angeles District	
U.S. Army Corps of Engineers	

# F3.10 Documentation of District Decision for Section 408 Review/Approval Level

YES  NO

Does the proposed action raise policy issues?

(District office symbol goes here)

Date  
Memorandum for Record

**SUBJECT:**

**PROJECT SPONSOR:**

**PROJECT REQUESTOR/REQUESTOR:**

**PROJECT DESCRIPTION:**

**DETERMINATION CHECKLIST:**

YES  NO

Is the purpose of the proposed action to improve flood risk management(FRM)?

YES  NO

Does the proposed action include a levee raise or other HQUSACE approved performance change to the FRM project features?

YES  NO

Does the proposed action include a realignment of the levee or FRM feature?

YES  NO

Will the proposed action likely cause significant changes to hydraulic conditions?

Reason –

YES  NO

Does the scale (scope, cost, ) of the proposed action warrant higher level review?

Reason –

YES  NO

Does the complexity (controversial )of the proposed action warrant higher level review?

Reason –

YES  NO

Is there an associated credit or reimbursement request associated with the proposed action?

**ADDITIONAL INFORMATION FOR CONSIDERATION:**

**DETERMINATION of APPROVAL LEVEL:**

Based upon the above information, the proposed action is determined to be \_\_\_\_District Approval Level or \_\_\_\_ HQUSACE Level.

*This determination is subject to change should additional information arise in the future warranting such a change.*

District Levee Safety Officer

ROUTING LADDER

408 PM

LSPM – Operations

District Policy and Planning Chief

LSPM – Technical

LSO

File/Electronic copies to:

408 PM  
PDT Members  
LSPM – Operations  
LSPM – Technical

### **F3.11 District Final Memo to Requestor**

Need to develop? Or already available?

## **F4 Checklists**

F4.1 Levee/Floodwalls/FRMC Submittal Requirements

F4.2 Navigation Channels, Harbors, Locks, Jetties, Bridges, and Features Submittal Requirements

F4.3 Review Schedule Estimator

## F4.1 Levee/Floodwalls/FRMC Submittal Requirements

Per EC 1165-2-216, 31 Jul 14

Required Documentation.

Technical Analysis and Design. The list below is only a guide for information and/or analyses that may be needed to review alterations to levee, floodwall, or channel projects. It is not intended to list every analysis or design consideration that may be needed for all proposals.

Civil. Each request should clearly identify the existing condition of the portion of the levee, floodwall, or channel project being altered and include plan, profile and design details of the proposed alteration in relation to the existing USACE project. Below are examples of information that may be necessary to understand the existing and proposed conditions:

- Alteration location (Vicinity map and specific alteration location in station or river mile and/or decimal degrees)
- Applicable datum
- Real estate interests, existing and to be acquired, needed for the proposed alteration
- Grading plans
- Layout plan, profiles, and cross-sections of proposed alteration
- Previous inspection reports to assist in identifying existing deficiencies and their proximity to the proposed alteration
- Temporary measures required during construction (bypasses, cofferdams, etc.)

Geotechnical. The following is a list of analyses or information that may be necessary to consider for geotechnical considerations and assessing their impacts if proposed alterations alter the levee, floodwall or channel bank cross-section or penetrate the natural blanket or foundation.

- Erosion control (changes in erosive forces on a slope)
- Material usage/borrow/waste/transport/hauling
- Placement of stockpiles, heavy equipment, or other surcharges
- Results of subsurface investigation – boring logs, test pit logs, laboratory test results, etc.
- Seepage analysis
- Settlement analysis
- Stability analysis
- Vegetation

Structural. The following is a list of analyses or information that may be necessary to evaluate the impacts of proposed alterations to concrete, sheetpiling, or drainage structures:

- Bridges and related abutments
- Design analysis for retaining walls and excavation support system
- Design of shallow or deep foundations, including bearing capacity and settlement analysis if the construction is located within the line of protection or right-of-way and creates potential seepage problems
- Design recommendations for foundations on expansive soils
- Diaphragm walls
- Gates or other operable features
- Other structural components integral to the project

- Pier penetrations of levee embankments
- Stability analysis including sliding, overturning, bearing, flotation, uplift and any seismic load effects for any alteration to the channel walls and/or flood walls
- Structural drainage control methods
- Water stops and contraction/expansion joints

Hydrology and Hydraulics. Refer to Appendix F for details on when and how a hydrology and hydraulics system performance analysis should be conducted. Refer to the list below for examples of factors that should be considered when evaluating hydrology and hydraulics impacts.

- Changes in velocity
- Changes in water surface profiles and flow distribution
- Scour analysis
- Sediment transport analysis
- Upstream and downstream impacts of the proposed alterations

Water Control Management Plan. Alterations may have impacts on how water control structures are operated. In these cases, the alterations should consider any impacts or changes to water control plans that may be necessary. If a change to a water control manual is required, the NEPA document developed for the Section 408 alteration should incorporate appropriate analysis for updating the water control manual. Alterations that will work in conjunction with an existing Federal Water Control Manual (WCM) should be documented and incorporated into that WCM. Items to be considered are:

- Effects on existing Biological Opinions, Water Quality Certifications, Coastal Zone Management Concurrences, etc. should evaluate project impacts on any legal document, agreement, or requirement that informs water control management by the USACE
- Impacts/revisions to the operation of USACE facilities or other projects within the Basin

Operations, Maintenance and Flood Fighting. Alterations may change how a levee, floodwall or channel project is to be operated, maintained or require special flood fighting procedures. Reviews should consider the factors below to determine potential effects.

- Effects on existing project access
- Special inspection requirements
- Effects on maintenance practices
- Flood fighting requirements and practices
- Flood contingency plan during construction, measures proposed to protect area under construction, monitoring of river level, river stage at which plan will be activated, materials and equipment to be used to activate plan, and personnel contact and telephone number to activate plan

Requester Review Plan Requirement. If the district determines a Type II Independent External Peer Review (IEPR) is required for a proposed alteration to a levee or floodwall project, the Risk Management Center (RMC) will determine based on the information provided in the Requester Review Plan for the Type II IEPR if the Levee Senior Oversight Group (LSOG) will review the proposed alteration. If it is determined that the LSOG review is required, the RMC will inform the division who will include the LSOG review requirement within the final approval

memorandum, as required in EC 1165-2-214, for the Requester Review Plan to the District. The district should contact the HQUSACE Levee Safety Program Manager to schedule a briefing with the LSOG as soon as possible. Information to be presented should include available risk assessment (screenings or higher level risk assessments) information and a description of the proposed alteration. The LSOG briefing can occur concurrently with other steps, but should occur well before the request is submitted for division review. The RMC will consider the following in determining whether LSOG review is required:

- whether the benefits of the alteration are generally commensurate with the risks
- whether the alteration potentially worsens or creates new failure modes or risk drivers for the USACE project; and
- whether the alteration is exceptionally complex or high risk.

## F4.2 Navigation Channels, Harbors, Locks, Jetties, Bridges, and Features Submittal Requirements

EC 1165-2-216, 31 Jul 14 see para 6 of EC.

**Mission of the Navigation Program.** The mission of the USACE navigation program is to provide safe, reliable, efficient, effective, and environmentally sustainable waterborne transportation systems for movement of commerce, national security needs, and recreation. This mission is accomplished by ensuring adequate project dimensions to provide safe passage of commercial navigation through the federally-authorized navigation project, while minimizing environmental impacts.

Accordingly, any proposed alterations to an authorized navigation project must be evaluated to determine that such alteration will not impair the usefulness of the project and will not be injurious to the public interest.

### ***Categories of Navigation Alterations:***

#### **Category 1: Improvements Associated with Water Resources Development Act of 1986, Section 204 (Section 204), Construction of Projects by Non-Federal Interests.**

*Section 204(a) authorizes a non-federal interest to undertake navigational improvements in harbors or inland harbors of the United States, subject to obtaining any permits pursuant to Federal and State laws in advance of construction. Except for projects or improvements implemented under Section 204(e) and Section 204(f), non-federal interests will be responsible for the operations and maintenance of such improvements. Section 408 applies to these improvements and procedures in this EC must be followed.*

- When there is a request for USACE to assume operations and maintenance responsibilities of the non-federal improvements pursuant to Section 204(f), processes in ER 1165-2-124 for Section 204(f) approval should be followed.
- Section 408 permission will also be required; however, the Section 204(f) report prepared for the Secretary of the Army may also serve as the documentation to inform the Section 408 permission decision. In general, the Section 204(f) report will not be submitted to the Assistant Secretary of the Army for Civil Works (ASA(CW)) for approval until after the requests for the Section 408 permission and Section 10/404/103 permit have been approved. In addition, a written agreement addressing the assumption of maintenance is required. To remain eligible for assumption under Section 204(f), the ASA(CW) determinations must be made and the agreement executed prior to initiation of construction, which is defined as award of the first construction contract. Approval by the ASA(CW) is required to grant an exception to policy to allow for solicitation of the construction contract prior to the required approvals, permissions and permits, and agreement.
- Section 204(b) allows non-federal interests to contract with USACE to provide technical assistance in obtaining all necessary permits for a non-federal interest to construct navigation improvements pursuant to Section 204(a) if the non-federal interest pays all the costs for such assistance. Authority to provide this assistance has been delegated to the field in accordance with the Support For Others guidance (ER 1140-1-211). This provision may be used to provide assistance for the Section 408 process.

- Section 408 is not applicable to construction undertaken by non-federal interests pursuant to Section 204(e).

**Category 2: Alterations not included in Category 1, which will follow guidance in this EC.**

- Project Specific Setbacks. In order to help streamline the coordination and evaluation process, districts are encouraged to develop project specific setback distance criteria that establish minimum distances (adjacent, over, and/or below a navigation feature). The purpose would be to use the pre-determined technical analysis accomplished to determine the setbacks as a way to facilitate an expedited district-led Agency Technical Review (Reference Paragraph 7.c.(4)).
- These criteria would then be used in a manner to determine that if any future construction and maintenance activities occur beyond these distances, then the alteration will likely not impact the federal navigation project nor be injurious to the public interest under Section 408. At a minimum, the following should be considered when developing setbacks:
  - Maximum dredging depth and width, to include advanced maintenance, allowable overdepth, and non-pay overdepth
  - Top edge of the navigation channel, including appropriate side slopes and overdepth
  - Sufficient clearances of equipment needed for dredging the navigation channel to its full depth and width, including side slopes
  - Minimum air gap required for lines or structures crossing above the channel
  - Weather, tides, flow rates, velocities, and other factors related to the region
  - Dredged Material Disposal facility availability

***Procedure: Applicable to Category 1 and 2***

**(The information below corresponds to and supplements the steps in Paragraph 7 of the main EC).**

- Pre-Coordination (Reference step 1 in Paragraph 7 of main EC). Depending on the extent of the proposed alteration, coordination with other agencies such as the U.S. Coast Guard, National Oceanic and Atmospheric Administration (NOAA), USFWS, US EPA, US Navy, etc. may be necessary.
- The following should be considered when implementing steps 1-8 in Paragraph 7 of the main EC:
  - Activities proposed in federal navigation channels may also require evaluation by Regulatory pursuant to Section 10/404/103. In accordance with regulations, Regulatory must consider general impacts to navigation in its review of a permit application. A regulatory permit will not be issued if it is not compatible or conflicts with the authorized purpose of a federally authorized project. Therefore, Regulatory and Navigation should coordinate throughout their respective reviews.

- The HQUSACE approvability of proposed alterations to federal navigation projects that also require Section 10/404/103 authorization are proposals for utility line crossings, boat docks, bulkheads, revetments, dredging, and other similar activities. Generally, Navigation can quickly and easily determine whether these proposed alterations could be constructed to avoid impacts to operation and maintenance of the navigation project (e.g. compare the proposal to approved set-back policies and/or overdepths) and thereby recommend Section 408 approval of an alteration request rapidly.
- In these basic cases, Navigation will document the results of their Section 408 evaluation and decision in a brief written letter to be signed by the District Commander, see Appendix H for an example. This letter will serve as the documented Section 408 decision that will accompany the Section 10/404/103 decision in the district file. This letter also can be sent to the requester at the same time with the Section 10/404/103 permit, if granted, so long as the requester and Section 10/404/103 permittee are the same entity and the approval and permit decisions are distinct in the transmittal.
- If Navigation determines the proposed alteration must be revised (e.g. installed at deeper depth than that proposed), Navigation will coordinate directly with the requester and copy Regulatory on the correspondence since such an alteration would likely affect the Regulatory evaluation. Likewise, Regulatory should also copy Navigation on any changes to the proposed alteration it may require for Section 10/404/103 purposes.
- In instances where the proposed alteration cannot be quickly and easily reviewed as outlined above, such as if technical analyses are warranted, and/or Navigation has determined it cannot approve the proposal under Section 408, the Navigation business line must conduct its review in accordance with the main EC.
- Step 9: Post-Permission Oversight. Any long-term monitoring and maintenance of the approved navigation alteration will be the responsibility of the Section 408 permittee throughout the life of the alteration and without cost to the government. Navigation will continue to conduct routine inspections, maintenance and monitoring of the USACE navigation project, except for any features added by the Section 408 permittee's alteration. If the Section 408 permittee identifies potential impacts to the USACE project as a result of the construction and/or maintenance of the alteration the Section 408 permittee will notify USACE immediately. If USACE identifies potential impacts from the Section 408 permittee's construction or maintenance/ monitoring activities, USACE will notify the Section 408 permittee immediately.
- USACE will work collaboratively with the Section 408 permittee to identify the appropriate corrective action. The Section 408 permittee will be responsible for implementing the appropriate corrective action as determined by USACE. It should be noted that any proposed corrective action may require a change to the original approved alteration or a new Section 408 request depending on the proposed action. Navigation should engage Regulatory in these discussions in case the impacts and/or corrective actions also require authorization under Section 10/404/103.

### F4.3 Review Schedule Estimate

Technical Review Period.

- The 408 Lead will establish an appropriate review period based on the complexity of the modification and to provide a timely response to the sponsor.
- Team members, budget, and schedule required to complete the review will be documented by the 408 Lead.
- The 408 Lead will distribute the project modification request and supporting documentation to the Technical Reviewers.
- The Technical Reviewers will provide the 408 Lead all review comments and/or identification of the need for additional information from the sponsor.
- The 408 Lead will provide the consolidated review comments and/or additional informational requirements to the sponsor. Coordination meetings will occur between the Technical Reviewers and the sponsor as needed.
- The 408 Lead will distribute the sponsor responses to review comments and/or the additional information received from the sponsor to the Technical Reviewers.
- The 408 Lead will ensure all review comments have been addressed and the sponsor has provided all required documentation to support the proposed modification.

## **Annex G - District Procedural Review Plan for Categorical Permissions.**

[https://team.usace.army.mil/sites/SWG/pdt/mmt/SWG%20Section%20408/Tulsa%20District%20Section%20408%20Procedural%20Review%20Plan%20\(UNCLASSIFIED\).msg](https://team.usace.army.mil/sites/SWG/pdt/mmt/SWG%20Section%20408/Tulsa%20District%20Section%20408%20Procedural%20Review%20Plan%20(UNCLASSIFIED).msg)

Per KB, include in Annex G, the Categorical Permissions Process (to be determined by Section 408 PDT).