

SECTION 404 & SECTION 408 INTEGRATION

“One Door to the Corps”

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“The views, opinions and findings contained in this report are those of the author(s) and should not be construed as an official Department of the Army position, policy or decision, unless so designated by other official documentation.”



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DIRECTORS POLICY

DPM CW 2018-10 directs the USACE Regulatory and Section 408 programs to synchronize their differing reviews, in order to be responsive to Administration priorities and support efforts toward streamlined federal environmental reviews.

**August 17, 2018, DPM CW 2018-10, Strategy for Synchronization of the Regulatory and 408 programs*



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404/408 INTEGRATION FAQs

How do I know if my project requires a Regulatory permit and/or 408 permissions?

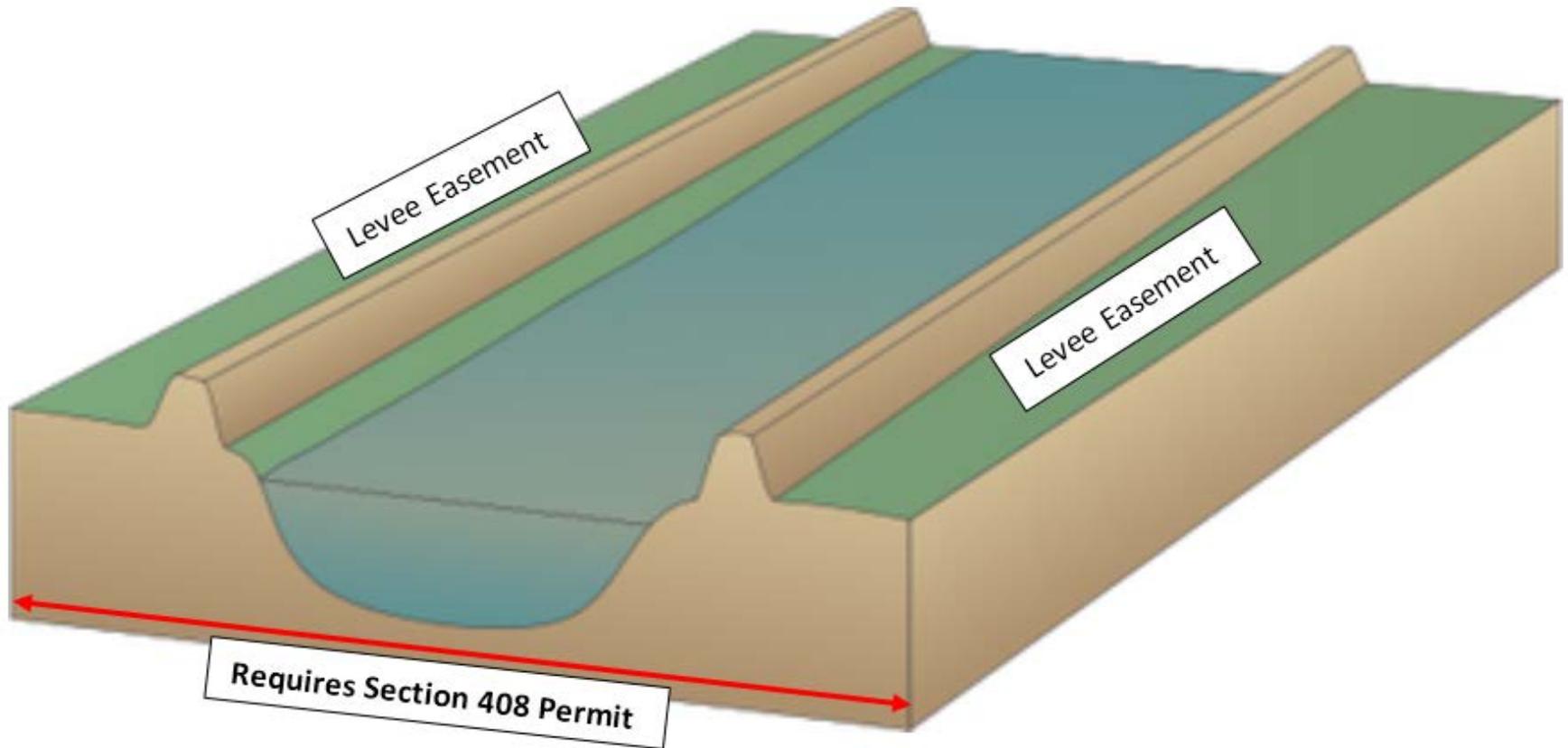
- **408 Permissions are only required for alterations proposed within the lands and real property interests identified and acquired for Corps projects and to lands available for Corps projects under the navigation servitude.**
- **Activities in navigable waters such as dredging, construction of docks and bulkheads and placing aids to navigation require review under Section 10 of the Rivers and Harbors Act of 1899, to ensure that they will not cause an obstruction to navigation. Section 404 of the Clean Water Act requires projects proposing “discharge of dredged or fill material into any waters of the United States, including wetlands” obtain authorization (permit) through the Regulatory program.**



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SECTION 408 JURISDICTION

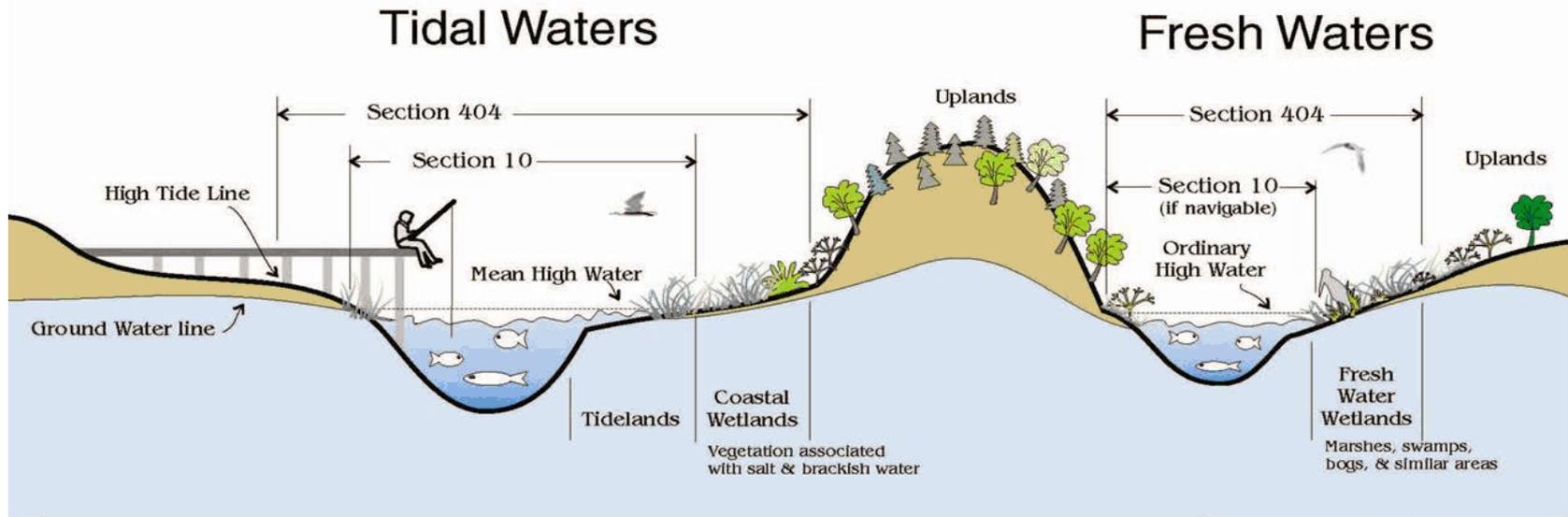


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SECTION 10/SECTION 404 JURISDICTION

CORPS OF ENGINEERS REGULATORY JURISDICTION



Typical examples
of regulated activities

Section 103 Ocean Disposal of Dredged Material

Ocean discharges of
dredged material

Section 404 Discharge of Dredged or Fill Material (all waters of the U.S.)

All filling activities, utility lines, outfall structures,
road crossings, beach nourishment, riprap,
jetties, some excavation activities, etc.

Section 10 All Structures and Work (navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pillings, bulkheads, ramps, fills,
overhead transmission lines, etc.



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404/408 INTEGRATION FAQs

Who do I contact at the Corps to begin the 404/408 process?

- **The Corps single point of contact (SPOC) is the Regulatory Administrative Officer (916-557-5250).**
- **The SPOC will provide contact information to the Regulatory and Section 408 point of contact, and may be able to provide further information on the process.**



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404/408 INTEGRATION FAQs

What about pre-application meetings?

- **Regulatory encourages their applicants to schedule pre-application meetings for complex and/or and large scale actions.**
- **On projects that may require Section 408 permission, representatives can be present at pre-application meetings to answers questions.**



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404/408 INTEGRATION FAQs

A preliminary determination on the need for a Regulatory permit or Section 408 permission can be made in the pre-application stage, or at any stage of the review process.

- No Regulatory Permit or 408 permission.**
- Both a Regulatory permit and Section 408 permission is required.**
- Regulatory permit is needed, but Section 408 permission is not needed.**
- Regulatory permit is not needed, but Section 408 permission is needed.**



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404/408 INTEGRATION FAQs

If the Corps is the lead federal agency, how do I know which Corps program is the lead for consultations and NEPA?

- **After review of the proposed activity, the Regulatory PM and 408 staff will determine their respective scopes of analysis under NEPA, action area under Sec 7 of ESA, and the APE under NHPA. In most cases, the program with the larger scope will act as the lead for the Corps action.**
- **The Corps will determine internally which program will be the lead and communicate this decision to the applicant/requestor.**



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404/408 INTEGRATION FAQs

If the Corps programs have different Scopes of analysis, should I prepare my project descriptions different for each program?

Short answer: No. Your project description should meet the permitting requirements for Regulatory and Section 408 permissions.

Turning your applications in at the same time is highly recommended!



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404/408 INTEGRATION FAQs

Which Corps program will be initiating consultations under Section 7 for ESA, Section 106 for NHPA, and coordination with federally recognized tribes?

The lead program will initiate consultations on behalf of the Corps. Biological Assessments and cultural resource reports should address scopes for both Regulatory and Section 408 permissions.



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404/408 INTEGRATION FAQs

Will my project require a 401 of the CWA (33 U.S.C. 1341) Water Quality Certification (WQC) for Regulatory and 408 permissions?

Applicants seeking Regulatory permits are required to obtain Section 401 WQC.

- Regulatory permits are not valid until a WQC is obtained or a waiver is issued.**
- Section 408 permission cannot be granted until the WQC has been obtained or waived (EC 1165-2-220).**



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404/408 INTEGRATION

Next Steps:

After Regulatory and Section 408 staff have completed their review process and necessary consultations, and Regulatory and Section 408 decision documents and permissions have been signed by the appropriate officials, the Corps will issue its Regulatory decision and 408 permission to the applicant/non-federal sponsor. These documents will be issued together.



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404/408 INTEGRATION TIPS

- Take advantage of the pre-application meetings.
- Contact Central Valley Flood Protection Board (or other USACE non-federal sponsors) early in the process.
- Make sure the project description meets the requirements for Regulatory Permitting and Section 408 permissions.
- Make sure the project's scope meets the requirements for Regulatory Permitting and Section 408 permissions.
- Determine if you need 401 WQC.
- Submit information, including the PCN/application, in an electronic format.



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USEFUL LINKS

1. National Levee Database, to determine if your project might be on or near a federal project.
<https://levees.sec.usace.army.mil/#>
2. The 408 website is active and available for public consumption.
<https://www.spk.usace.army.mil/408permits/>
3. For most of California's Federal Projects the Central Valley Flood Protection Board is the Non Federal Sponsor. <http://cvfpb.ca.gov/>
4. Give Us a Call 916-557-5250 or your PM



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Any Questions or Comments?



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