

US Army Corps of Engineers Regulatory Program Workshop

408 Permission Section Overview

September 15, 2023

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408 Permission Section

Levees & Channels Branch

Operations Division

US Army Corps of Engineers, Sacramento
District



US Army Corps of Engineers
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Presentation Overview

- Authorization and Policy
- Roles and Responsibilities
- Expected Timeframes
- Categorical Permissions



Authorization - Section 408

Authorized in Section 14 of the River and Harbors Appropriation Act of 1899 (33 USC 408).

Provides that the Secretary of the Army may, on recommendation of the Chief of Engineers, ***grant permission for the alteration of a public work so long as that alteration is not injurious to the public interest and will not impair the usefulness of the work.***



Policy Highlights – EC 1165-2-220

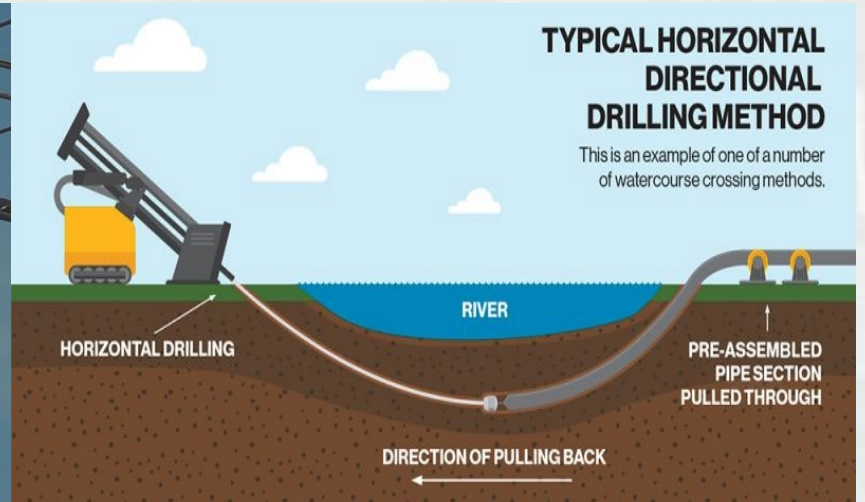
USACE Policy - Engineering Circular 1165-2-220 :

Updated as of 10 September 2018 – Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408.

- Defines what USACE considers an Alteration:
 - Alteration refers to any action by any entity other than USACE that builds upon, alters, improves, moves, obstructs, occupies an existing **USACE project**.
 - Proposed alterations must not be injurious to the public interest or impair the usefulness of the USACE project.

- USACE project = Federally authorized Civil Works Project.





Policy Highlights – EC 1165-2-220

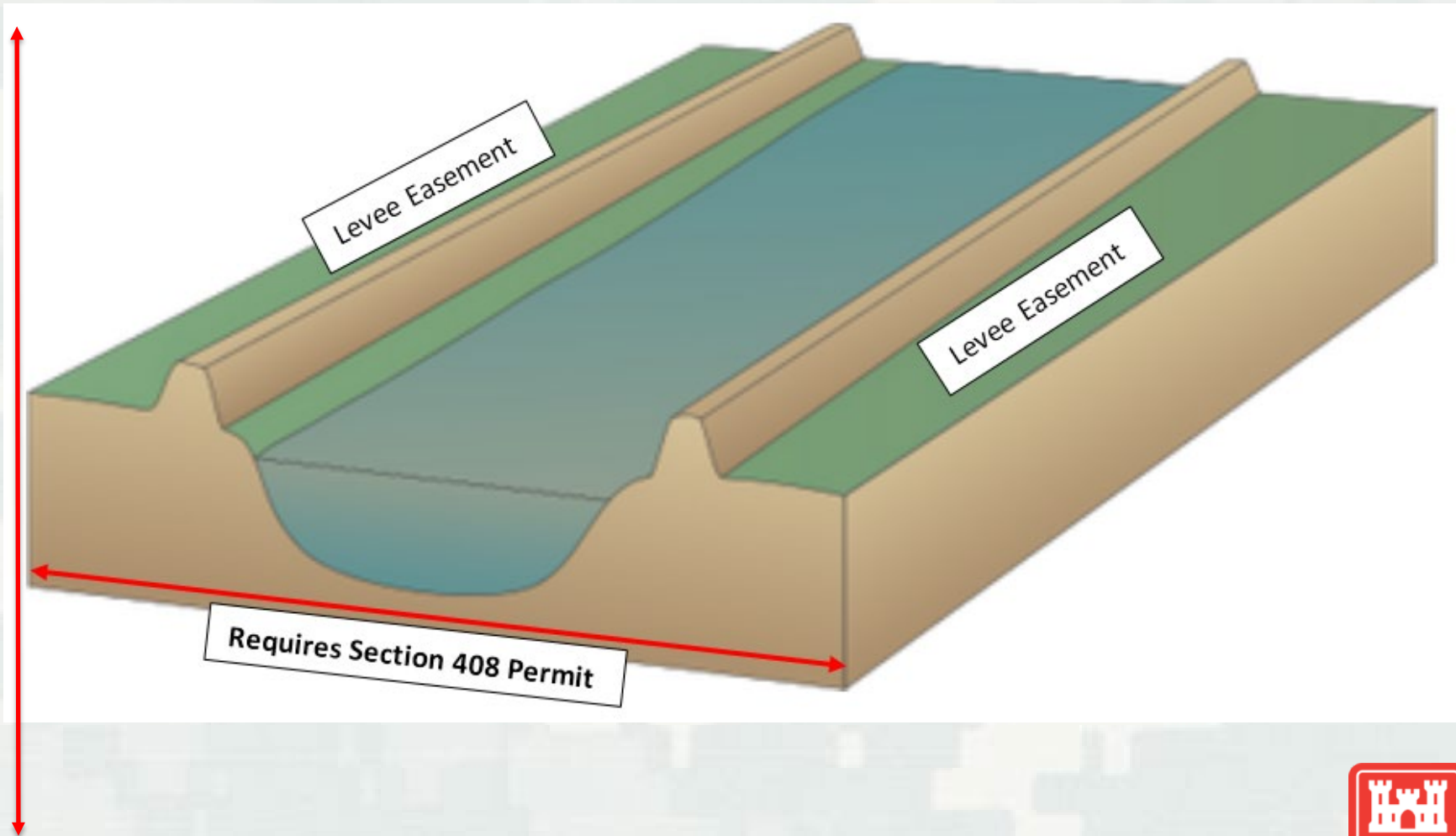
- USACE Jurisdictional Reach:
 - 408 Permissions are only required for alterations proposed within the lands and real property interests identified and acquired for the USACE project and to lands available for USACE projects under the navigation servitude.

- Requester Requirements:
 - 408 requests must come from the non-federal sponsor. The non-federal sponsor must also provide a statement of no objection for the proposed alteration.
 - All 408 projects must meet current USACE design and construction standards.
 - The requester is responsible for providing all documentation necessary for the 408 Permission Section to issue the letter of permission.

- Decision Level Criteria:
 - District versus Division level of approval.



Section 408 Jurisdiction

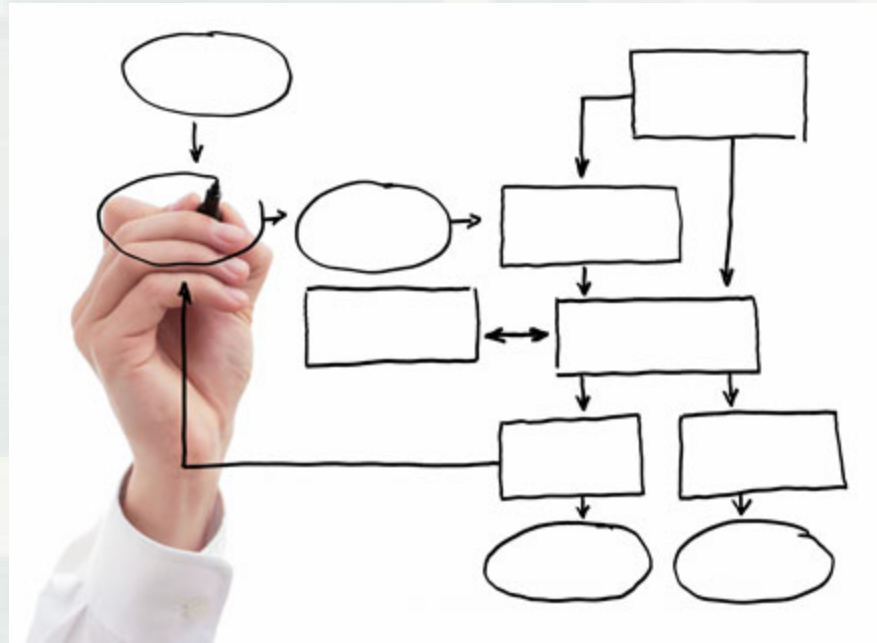


Regulatory Coordination

- 408 requests are not handled by the Regulatory Program, however there is close coordination between the two groups.
- Regulatory decisions are separate decisions and require separate decision documentation.
- Section 408 decision must be made (typically) before the Section 10/404 decision is issued.
- Regulatory and 408 decisions utilize the same consultation documents. The program with the largest jurisdictional area will often take the “lead”.



408 Process



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408 Process Cont'd

- Step 1: Pre-Coordination
- Step 2: Written Request
- Step 3: Required Documentation
- Step 4: District Agency Technical Review
- Step 5: Notification of Complete Submittal
- Step 6: Summary of Findings
- Step 7: District (SPK) vs Division (SPD) Review
- Step 8: Letter of Permission (LOP)
- Step 9: Post-Permission Oversight



408 Process Cont'd

- Step 1: Pre-Coordination
 - Pre-application meetings to help identify USACE procedures and potential issues
- Step 2: Written Request
 - Officially initiates USACE involvement and review
 - Determines documentation and approval level requirements
- Step 3: Required Documentation
 - Technical Analysis (i.e. Basis of Design)
 - Hydrologic and Hydraulics System Performance Analysis
 - Geotechnical Analysis
 - Environmental Compliance (NEPA)
 - Real Estate Requirements
 - Requester's Review Plan (district determination)



408 Process Cont'd

- Step 4: District Agency Technical Review
 - Impair of the Usefulness of the Project Determination
 - Injurious to the Public Interest Determination
 - Legal and Policy Compliance Determination
- Step 5: Notification of Complete Submittal
 - SPK determines that the package is complete
 - SPK has 90 days to issue LOP
- Step 6: Summary of Findings
 - Summary of Findings is drafted for review
- Step 7: District or Division review
 - The District will review locally approved 408 requests
 - The Division will review 408 requests that require a SAR



408 Process Cont'd

- Step 8: Letter of Permission (LOP)
 - SPK provides the LOP to the non-federal sponsor for the proposed alteration.

- Step 9: Post-Permission Oversight
 - Construction Oversight
 - As-Builts
 - O&M Manual Update
 - Post Construction Closeout
 - Administrative Record



ROLES AND RESPONSIBILITIES



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The USACE Role

- Environmental Compliance
 - NEPA (if we are the lead agency), ESA Consultations, NHPA Section 106 Consultations, Tribal Coordination, E.O. 11988, E.O. 12898, E.O. 14008, Wild and Scenic Rivers Act Consultations, etc.
- Engineering Technical Reviews
 - Hydraulics Review, Levee Safety Review, Structural Review, etc.
- Real Estate Reviews
- Operations Reviews
- Safety Assurance Review (if need is identified)
- Recommendation for Approval
- Final Approval of Permissions (LOP)



Project Sponsor/Requester's Role

- Engineering documentation
 - Drilling Program Plans, Hydraulics Reports
- Environmental documentation
 - Cultural Report, Biological Assessment
- Real Estate Documentation
- Safety Assurance Reviews
- Operations and Maintenance
- Funding (Section 214 of WRDA 2000)



Expected Timeframes



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Expected Time Frames

From Written Request to Issuance of Permission:

- *(Assuming 408 funding is consistent)*

District Decision Level - 9-12 months

- Majority of 408 Reviews are District Level.
- Funding Shortfalls can extend to 13-16 months

Division Decision Level - 2-3 years

- These decisions require a SAR
 - Cutoff walls, setback levees, new levees, etc.



Expected Time Frames

From Written Request to Issuance of Permission:

- *(Assuming 408 funding is consistent)*

District (CP) Decision Level - Can potentially shave a couple months off the standard 9-12 month review.



Categorical Permissions



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Categorical Permission

- What is a Categorical Permission?
 - Can be used to expedite and streamline the review and decisions of 408 Permission requests.
 - There are 25 different Categorical Permission alteration types...



Categorical Permissions Types

1. Agriculture and Landscaping
2. Borings, Levee Explorations and Instrumentation
3. Borrow Areas
4. Bridges
5. Buildings and Structures
6. Ditches and Canals
7. Docks
8. Environmental Restoration
9. Erosion Control
10. Fences, Gates, and Signage
11. Fiber Optic and Dry Utility Pipes
12. Fish Screens
13. Gravity Pipes
14. Horizontal Directional Drilling
15. Landside Pump Station
16. Pressurized Pipes
17. Retaining Walls
18. Seepage and Stability Berms
19. Stairs and Handrails
20. Swimming Pools
21. Trail, Roads, and Ramps
22. Utility Poles
23. Water Supply Pump Station
24. Wells
25. Research and Monitoring

<https://www.spk.usace.army.mil/Missions/Civil-Works/Section-408-Permissions/Categorical-Permission/>



FIN

