



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
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Operations and Readiness Branch

PUBLIC NOTICE

**CATEGORICAL PERMISSION FOR SECTION 408 REQUESTS
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT**

PUBLIC NOTICE COMMENT PERIOD:

Begins: September 18, 2017

Ends: October 18, 2017

AUTHORITY: The authority to grant permission for temporary or permanent use, occupation or alteration of any U.S. Army Corps of Engineers (USACE) civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 ("Section 408"). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of Army's authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE, Directorate of Civil Works, Division and District Commanders, and supervisory Division Chiefs depending upon the nature of the activity.

INTRODUCTION: There are numerous USACE civil works projects within the boundaries of the South Pacific Division, Sacramento District. These projects have been federally authorized by the U.S. Congress and then turned over to a non-federal sponsor to operate and maintain. Projects may include flood risk reduction projects such as levees and channels located in both rural and urban areas. Each year the Sacramento District receives requests through the non-federal sponsors from private, public, tribal, and other federal entities (requesters) to alter USACE federally authorized civil works projects ("USACE projects") pursuant to Section 408.

When the Sacramento District receives a request to alter a USACE project, the district follows a review process outlined by Engineering Circular (EC) 1165-2-216, *Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408* (Attachment 1). To simplify the review process, EC 1165-2-216 states that USACE districts can develop categorical permissions to cover potential alterations that are similar in nature and that have similar impacts.

The Sacramento District receives numerous Section 408 requests for minor alterations to USACE projects each year; a total of 105 requests were received in 2015 and 107 requests were received in 2016. The majority of these requests are for relatively minor alterations of the levee or channel, such as installation of irrigation pipes, horizontal directional drilling for the placement of utility lines, and private recreational boat docks. Many of the project descriptions for proposed alterations are similar and the effects tend to be minor or negligible. However, the current review and approval process is time intensive and can take months. The need for the proposed action is to increase efficiencies in the review process of Section 408 requests for minor alterations to USACE federal projects.

The Sacramento District proposes to implement a categorical permission in order to create efficiencies in the review process for Section 408 requests for minor alterations to USACE projects within the civil works boundaries of the district.

ALTERNATIVES: The decision options are: 1) No Action Alternative: continue with the current process of reviewing and making decisions on Section 408 requests individually, as described in EC 1165-2-216, or 2) Preferred Alternative: approve a categorical permission to cover potential alterations that are similar in nature and have similar impacts.

SCOPE OF THE DECISION: The Sacramento District's area of responsibility covers a wide geographic area and includes portions of the states of Arizona, California, Colorado, Idaho, Nevada, Oregon, Utah, and Wyoming. The geographic scope of the decision to be made is limited to federal USACE projects under the responsibility of the Sacramento District. Federal projects within the Sacramento District are located in California, Colorado, Nevada, and Utah (Attachment 2). The decision would only apply to the Sacramento District and would not apply to any other USACE districts. The decision only applies to federal levees and channel modification projects and does not apply to any lake projects. The temporal scope of the decision to be made is for five years; after five years the decision would be reevaluated and may be renewed or revised, if appropriate.

PROPOSED CATEGORICAL PERMISSION: The proposed categorical permission would encompass a list of potential alterations that are similar in nature and have similar and minor impacts. If an environmental assessment (EA) or environmental impact statement (EIS) is needed for the National Environmental Policy Act (NEPA) documentation of a proposed alteration, then the proposed categorical permission would not apply and the Section 408 request would be reviewed and a decision made following the current process described in EC 1165-2-216.

In order for the categorical permission to apply, a Section 408 request must incorporate standard mitigation measures and best management practices into the project plan. Projects would be required to minimize disturbance to surrounding vegetation, return disturbed areas to pre-project conditions, remove spoils, control storm water runoff and erosion, and not exceed federal *de minimis* levels of criteria air pollutants or precursors.

The proposed categorical permission would encompass the following types of alterations:

1. **Agriculture and Landscaping:** A variety of standard agricultural activities may occur in the floodway. These activities may include, but are not limited to, orchard installation and cultivation, orchard removal, planting of row crops, or installation of temporary or permanent irrigation lines in the floodway. The total area of work per proposed alteration must not exceed 350 acres in size. The proposed categorical permission covers work in land previously used for agriculture (fallow fields, row crops, etc.) and does not cover type conversion of native habitat to cultivated land.
2. **Boat Docks:** New private recreational boat docks (and associated access) may be constructed and existing boat docks may be modified. The proposed categorical permission would cover landing structures, gangways, the floating boat dock structure, and debris booms associated with boat docks. The maximum boat dock size (including the gangway and the floating platform) covered under the categorical permission is 2000 square feet.

3. **Borings and Other Levee Explorations:** Multiple geotechnical or other exploratory borings may be conducted within the levee prism, adjacent to the levee toe, and/or in the floodway. A maximum of 25 borings per proposed alteration may be covered by this categorical permission. A variety of drilling methods may be used, including, but not limited to, cone penetration tests (CPTs) and geotechnical borings.
4. **Borrow Sites:** Borrow sites may be excavated in the floodway. Borrow sites authorized under this categorical permission may not exceed 5 acres in size and must be located at least 100 feet from the waterside or landside levee toes. The project area must be free of riparian habitat and woody vegetation. Non-woody vegetation may be cleared and grubbed to allow for the removal of clean material. The borrow site must be revegetated with native species or returned to the previous use after material is removed.
5. **Bridges:** The proposed categorical permission would cover alterations that include construction, replacement, modification, or removal of vehicle, pedestrian, or railroad bridges, or actions that are similar in nature. Modification or rehabilitation may occur on the approach roadways to the bridge. Bank protection (e.g. riprap) must be placed on the banks upstream and downstream of the bridge an appropriate distance.
6. **Buildings and Similar Structures:** This categorical permission covers construction or modification of buildings or other similar structures along with associated work, such as minor landscaping, in the floodway. The maximum area of construction must not exceed 2 acres. The buildings or similar structures may not be used for human habitation. Structures must be constructed in previously disturbed areas, this categorical permission does not cover conversion of native habitat.
7. **Ditches and Canals:** The proposed categorical permission would cover the construction or modification of ditches and canals in the floodway, as well as other similar actions. Ditches or canals may be native soil or lined with concrete or another durable material. Ditches and/or canals may be a maximum length of 1000 linear feet.
8. **Erosion Control and Bank Stabilization:** The proposed categorical permission would cover alterations that include bank stabilization and erosion control features, and/or actions that are similar in nature when the same activities are not considered to be operations and maintenance activities for federally authorized project. Rock slope protection (e.g. riprap) is the most common type of erosion control; however, other types of erosion control and bank stabilization methods and materials may be used. Asphalt (or other petroleum based materials) and floatable or refuse material must not be used as erosion control. Riprap must not be grouted into place. The maximum area of construction is 500 linear feet of bank and a maximum average of one cubic yard of fill per linear foot.
9. **Fences and Gates:** The proposed categorical permission would cover the installation, modification, and/or removal of fences and gates located on the levee or in the floodway. New fences and gates must not limit access or visibility for operation, inspection, maintenance, and flood-fighting. Fences must be constructed of see-through materials, such as chain link or barbed wire and fence posts must not penetrate more than 12 inches into the levee prism.
10. **Fish Screens:** Fish screens of a variety of designs, including drums, plates, cylindrical, cones, or other designs, may be installed on water intake pipes. Associated facilities, such as maintenance structures, walkways, and supports, may be installed as well. The maximum area of construction of fish screen support facilities must not exceed 1 acre.
11. **Pipes:** Both pressurized and non-pressurized pipes, including utility lines, may be installed up and over, through, or beneath the floodway and/or levees. Existing pipes may be abandoned, new pipes may be installed, or existing pipes may be modified. New culverts may be installed through the levee or in the floodway, and existing culverts

may be modified or removed. All gravity-flow culverts through the levee must have a flap gate on the waterside end and provisions for positive closure (slide gate or sluice gate) on the waterside, accessible from the crown of the levee. The proposed categorical permission does not apply to requests for new, long distance pipelines crossing multiple USACE navigation and flood risk reduction projects or crossing a single project in multiple locations

Depending on the type of pipe, construction may include associated structures, such as outfall structures, positive closure devices, (*i.e.* sluice gates, slide gates), electrical boxes, utility boxes, etc. Additionally, construction may include installation of small water supply or water drainage pump stations on either the landside or the waterside of a levee. Pumps are often installed on platforms and may include additional associated infrastructure such as a utility pole. A maximum of five utility poles associated with a pipe/pump structure may be allowed under this categorical permission.

Pipes may be installed using open cut methods (*i.e.* trenching) or horizontal directional drilling (HDD) methods. Using open cut methods, levee embankment material or material from the floodway is removed and then replaced according to design criteria. When HDD methods are used, a pit is excavated on either side of the floodway, and then pressure and drilling fluids are used to install the pipe beneath the levee embankment and/or channel.

The total area of drill pad work space disturbance, excluding staging and access areas, must not exceed 5 acres. Following construction, areas of disturbance must be restored to the pre-construction condition.

12. **Restoration:** The proposed categorical permission would cover a variety of restoration activities, including, but not limited to, planting of native vegetation (grasses, forbs, shrubs, and/or trees), placement of spawning gravels in active stream channels, removal of invasive species, and restoration and enhancement of ponds, stream channels, and/or wetlands. Stream and wetland restoration activities may include removal of sediment, installation, removal, or modification of small, non-federal water control structures (*e.g.*, dikes and berms), modification of stream bed and/or banks, and/or removal of stream barriers, among other activities. The total area of restoration must not exceed 500 acres in size and the total length of channel restoration must not exceed 5000 linear feet.
13. **Retaining Walls:** This categorical permission would cover the construction of new retaining walls and the modification or removal of existing retaining walls. Retaining walls must be constructed of reinforced concrete or of equivalent durable materials.
14. **Seepage and Stability Berms:** Seepage and stability berms may be constructed on either the waterside or the landside levee slopes, as needed. The construction site may be cleared and grubbed of all vegetation; the total area of ground disturbance must not exceed 5 acres. New berms must be planted with native plants and/or grasses following construction.
15. **Stairs and Handrails:** New stairs may be installed or existing stairs may be modified on either the waterside or the landside levee slopes or in the floodway. Stairs must be made of concrete, rock, brick, or other sufficiently durable inorganic materials, no wood or wood-based products are allowed.
16. **Swimming Pools:** Swimming pools and associated support facilities (*e.g.* plumbing, pool patios) may be installed in the floodway. New swimming pools (both above-ground and in-ground) must not be built within 15 feet of a levee toe. The total area of

permanent disturbance associated with the proposed alteration must not exceed 2000 square feet.

17. **Trails/Roads and Access Ramps:** New trails/roads may be constructed, and existing trails/roads may be modified, on the levee crown; access ramps on the sides of the levee may also be constructed or modified. Gravel, asphalt, or concrete materials may be used in construction. The total area of construction for ramps must not exceed 2.5 acres in size and total length of trails/roads must not exceed 2 miles.
18. **Utility Poles:** A maximum of 1 acre of permanent disturbance may be associated with the installation, replacement, and/or removal of utility poles/towers from either the landside or the waterside of the levee system. Additionally, this categorical permission would cover aerial utility lines associated with utility poles. Tower installation may require the installation of concrete slabs and footings. Tower removal would require demolition of the existing tower and excavation of any existing foundation.
19. **Wells:** New wells to supply water for agricultural and other uses may be installed within the floodway. Construction may include a concrete platform (not to exceed 200 square feet in size) and a single power pole/guy wires.

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The Sacramento District proposes to implement a categorical permission that, in accordance with EC 1165-2-216, would simplify the review process for Section 408 requests for minor alterations to USACE projects. The Sacramento District has determined that, in compliance with NEPA, a programmatic EA will be prepared. As the implementation of the categorical permission would not involve any on-the-ground work, there are no anticipated direct effects to environmental resources resulting from the programmatic decision at hand. Although the categorical permission would be for a variety of alteration types that individually could result in impacts to resources, it is important to note that the decision to be made on the categorical permission would not authorize any specific Section 408 requests or any on-the-ground work. If the proposed categorical permission is approved, future Section 408 requests would be individually reviewed to determine if they fit under the categorical permission.

Under the proposed categorical permission each individual Section 408 request would be evaluated on a case-by-case basis for compliance with all applicable environmental laws. Additionally, adequacy of the existing NEPA documentation (a programmatic EA for the categorical permission) would be verified for each individual Section 408 request. If the existing NEPA documentation is not adequate, a separate NEPA analysis would be conducted. Section 408 requests for alterations that are not described in the categorical permission (see descriptions above) or that do not adhere to the standard mitigation measures would be evaluated using the current review process for an individual request as described in EC 1165-2-216.

Although the decision on whether or not to implement the proposed categorical permission would not have direct impacts on resources, the types of alterations described under the proposed categorical permission have the potential to impact a number of different resources. Resources that could potentially be affected by these types of alterations include aesthetics, air quality, cultural resources, fish and wildlife, floodplains, invasive species, noise, recreation, threatened and endangered species, transportation/traffic, vegetation, water quality, and wetlands. It is expected that the effects associated with the types of alterations covered by the categorical permission described above would be minor or negligible. If a proposed alteration is determined to involve more than minor impacts or would not meet the parameters identified in the project

description, the categorical permission would not apply and a categorical exclusion, EA or EIS would be prepared, as appropriate.

Under the proposed categorical permission, the Sacramento District would continue to individually evaluate each Section 408 request on a case-by-case basis for potential effects to threatened and endangered species (and their designated critical habitat) listed under the federal Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*) and, as appropriate, conduct consultation pursuant to Section 7 of the ESA with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS). The Sacramento District would also continue to individually evaluate each Section 408 request for potential adverse effects to Essential Fish Habitat (EFH). If adverse effects to EFH are anticipated, the Sacramento District would consult with NMFS pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 *et seq.*).

Under the proposed categorical permission the Sacramento District would continue to individually evaluate each Section 408 request on a case-by-case basis for the potential to affect cultural resources and, when there is the potential for effects, conduct consultation with the appropriate State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 306108 *et seq.*). When a proposed alteration has the potential to affect cultural resources, the Sacramento District would coordinate, and consult as appropriate, with potentially interested Native American tribes.

PUBLIC INVOLVEMENT: The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the proposed Section 408 Categorical Permission. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources.

SUBMITTING COMMENTS: Written comments, referencing “Section 408 Categorical Permission” must be submitted by email or mail to the office listed below on or before October 18, 2017.

Kaleigh Maze, Biologist
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Email: Kaleigh.Maze@usace.army.mil

Attachments:

- 1) EC 1165-2-216
- 2) Sacramento District Boundary and USACE Federal Project Location Maps