



Section 408 Requests to Alter Federal Flood Risk Reduction Projects

EXECUTIVE SUMMARY

In order to make alterations to, or temporarily or permanently occupy or use, any U.S. Army Corps of Engineers (USACE) federally authorized civil works project (e.g., federal levee) a Section 408 request must be submitted to the Omaha District for technical and policy compliance. Section 408 assures that proposed alterations are not injurious to the public interest and will not impair the usefulness of the project. Alterations proposed within a federally-constructed flood risk reduction project (FRRP) right-of-way (ROW) are subject to Section 408.

AUTHORITY

The authority to grant permission for permanent alteration or use of a USACE Civil Works project is contained in Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 U.S.C. § 408.

GUIDANCE

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 U.S.C. § 408" was published 31 July 2014 with Change 1 published 30 September 2015. Interim guidance on Section 408 decision level was published in a CECW-CE memorandum dated 10 November 2016.

The review and submittal requirements detailed in EC 1165-2-216 are scalable to the size and complexity of the proposed alteration. Certain proposed alterations, once recommended by the District and Division, will require a final decision by the Director of Civil Works at HQUSACE.

REVIEW PROCEDURE

Section 408 requests must come from or have written concurrence of the non-federal sponsor prior to USACE review. If there are multiple sponsors, each sponsor must provide concurrence. The engineer of record (EOR) for the proposed alteration must demonstrate and state that the proposed alteration does not adversely affect the operation or integrity of the FRRP. Generally, three (3) complete printed sets and one digital PDF of all documents should be provided. The proposed design must be at least 60% complete for review and at 100% for final approval. A pre-submittal meeting may be held upon request to discuss design features and USACE criteria prior to 60% design. The EOR is responsible for coordinating with other offices within USACE if other reviews, approvals, or permits are required (e.g., Section 404 Regulatory permits).

MAINTENANCE ACTIVITIES

Pursuant to Part 208.10 of Title 33 of the Code of Federal Regulation, sponsors have the responsibility and the right to do repair, replacement, and rehabilitation actions to the original design without USACE review or approval. Technical Assistance is provided upon request to sponsors who are planning repairs, upgrades, or other improvements to a FRRP. Section 408 requests often follow Technical Assistance requests.

TECHNICAL REVIEW

Most O&M Manuals contain language defining the local sponsor's responsibility to submit Technical Reviews for alterations proposed outside the ROW but within the critical area defined as 300 feet riverward and 500 feet landward of the centerline. Comments are provided as recommendations to the sponsor to reduce risk.

CONTACT

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