

Engineer Circular 1165-2-216

Requests to Alter USACE Projects

Detroit District
February 2016



What is 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, 31 July 2014

What Does it Apply to:

- All USACE Civil Works projects
- Requests received after date of EC
- Only proposed alterations within real estate interests of the USACE project
- Actions that build upon, alter, improve, move, occupy, or otherwise have potential to affect the USACE project

It does NOT apply to routine operations & maintenance activities, or activities beyond the project boundary.

A copy can be obtained from

<http://www.publications.usace.army.mil/USACEPublications/EngineerCirculars.aspx>



Requests for Permission

- Modifications to projects with Non-federal sponsors:
 - ▶ Non-Federal sponsors are cost-share partners and/or have O&M responsibilities.
 - ▶ Section 408 requests must come from or have written concurrence of the non-federal sponsor
 - ▶ If there are multiple sponsors, each sponsor must provide concurrence
 - ▶ Written acknowledgment and acceptance of any new O&M requirements
 - ▶ Reminder that 33 CFR 208.10 focuses on sponsors' responsibilities. Decision to issue a Section 408 permission is a USACE responsibility. Processes for both can work together, but one does not replace the other.



Basic Steps of a 408 Request

- Step 1: Pre-Coordination
- Step 2: Formal 408 Review Request
- Step 3: Required Documentation
- Step 4: District Agency Technical Review
- Step 5: Summary of Findings
- Step 6: Division Review, *(if required)*
- Step 7: HQ Review, *(if required)*
- Step 8: Notification
- Step 9: Post-Permission Oversight



Initial Steps

- Contact the 408 Program Coordinator with any questions.
LRE408Coordinator@usace.army.mil
- Pre-Coordination Meeting (*if needed*)
- Formal 408 Review Request (*submitted electronically or via mail*)
 - Complete description of proposed alteration (drawings, maps, & plans sufficient to make a preliminary determination as to the location, purpose & need, anticipated construction schedule, and level of technical documentation needed.
 - Written statement whether Sections 10/404 apply.
 - Information whether credit under Section 221 or approval under 204 is being sought
 - Whether requires the use of federally-owned real property or owned by the non-federal sponsor
 - Written statement from non-federal sponsor endorsing the proposed alteration



Next Steps

- Submit Required Documentation
 - Technical Analysis and Design
 - Hydrologic & Hydraulics System Performance Analysis
 - Environmental Compliance
 - Real Estate Requirements
 - Discussion of E.O.11988 Considerations
 - Review Plan Requirement
 - Operations & Maintenance
 - Other Information



Corps' Responsibilities

- Evaluate the Proposal:
 - Impair the usefulness determination
 - Injurious to the public determination
 - Legal & policy compliance determination
- Prepare a Summary of Findings
- Notification: Issue/Deny Permission
- Post Permission Oversight



Other Policy Highlights



Section 408 Decision Level

- Not all requests can be approved at the District level, some will require a final decision by the Director of Civil Works at HQUSACE.
- Questions in which the answer "yes" would require a Division/HQUSACE review and decision:
 1. Does the project pose potential life safety issues, and require a Type II Independent External Peer Review (IEPR)?
 2. Does it require a Environmental Impact Statement (EIS) in which USACE is the lead agency?
 3. Does it change how authorized purpose is met?
 4. Does it impact an ongoing USACE study?
 5. Is the applicant seeking credit under Section 221 of the Flood Control Act of 1970, as amended?
 6. Does the request include installation of hydropower facilities?
 7. Is there a desire for USACE to assume operations and maintenance responsibilities of the proposed navigation pursuant to Section 204(f) of WRDA 1986?
- The Division has the ability to deny the request prior to reaching HQ



Coordination with Regulatory

- When a Section 408 request also requires a Section 10/404/103 decision, close coordination is required
- Section 10/404/103 decisions are separate decisions and require separate decision documentation
- Leverage information between the two processes
- Note, “injurious to the public interest” for Section 408 is not the same as “contrary to the public interest” for Section 10/404/103
- Section 408 decision must be made before the Section 10/404/103 decision is issued



Funding

- Procedural Reviews are anticipated to apply to most requests and will include common and low impact alterations. Decisions on requests that fall under the Procedural Review Plan will be made by USACE staff. With a complete request from the requester that is subject to a Procedural Review, the time from receipt of written request to notification is anticipated to be no more than 45 days.
- Alteration-Specific reviews will be necessary for unique or non-routine review requests that are not subject to a Procedural Review. Some of these decisions may also require HQ approval at USACE. Alteration-Specific reviews may require a separate funding source. Funding from the federal budget cycle can take up to three years, if funding is provided. Funding can also be accepted from the applicant under Section 214 of WRDA 2000 to expedite the review process. The review schedule will be dependent on the proposed alteration.



Contact Information:

Section 408 Coordinator

LRE408Coordinator@usace.army.mil

