Navigation Approach to 408 Guidance

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Background

- 33 USC 408

- Provides the Secretary of the Army authority to grant permission to alter a USACE civil works project if

  1. _Does not impair usefulness of the project_
  2. _Not injurious to the public interest_

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Purpose of EC 1165-2-216

- Improve consistency in the way USACE considers, processes, and documents decisions for requests for alterations to Civil Works projects.

- Create a process that is applicable to all types of Civil Works projects.

- Be transparent on what information is required.

- Create a process that can be tailored by districts to the appropriate scope, scale, and complexity of a proposed alteration.

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What does this EC 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 could affect the USACE project

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What does this EC NOT apply to?

- For now – activities beyond the USACE project boundary to include setbacks
- Routine operation and maintenance activities
- Shoreline Management and Master Planning Programs
- Certain Real Estate Outgrants

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Role of the Non-federal Sponsor

- Because 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 Layout of the EC

- The main EC applies to all Section 408 requests
- The appendices provide supplemental guidance -

  Dams and Reservoirs (including Navigation Dams)

  Non-Federal Hydropower Development

  Levee, Floodwall or Flood Risk Management Channel Projects

  Navigation Channels, Harbors, Locks, Jetties, Bridges, and Features

  Accepting funds through Section 214

  System Performance Analysis

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Division/HQ Review

- Questions in which the answer "yes" would require a Division/HQUSACE review and decision
    1. Type II IEPR?
    2. EIS?
    3. Change how authorized purpose is met?
    4. Impact study alternatives?
    5. Crediting being sought?
    6. Installation of hydropower facilities?
    7. **Is ASACW approval needed under Section 204(f)?**
- Only complete "Summary of Findings" should be submitted to Division then to HQ
- The Division Commander has the ability to deny the request prior to reaching HQ

Environmental Compliance

- A Section 408 decision is a federal action and NEPA and other environmental compliance is required.

- Scope of analysis limited to the federal project areas that would be directly or indirectly affected by proposed alteration.

- NEPA documentation – the requester's proposal will be identified as the "requester's preferred alternative."

- Alternatives analysis is limited to 1) no action and 2) requester's preferred alternative.

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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

Navigation Intent

- Falls w/in one of 2 Categories (maybe 3?)
    - Section 204
    - Regulatory 404/10/103
- Supplements the existing process, does not replace or trump
- Generally results in simply documenting (separately) that these processes have met the 408 intent

Discussion

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