

SAD 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



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.



What does this EC apply to?

- All USACE Civil Works projects
- 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



What does this EC NOT apply to?

- Activities beyond the USACE project boundary
- Routine operation and maintenance activities
- Shoreline Management and Master Planning Programs
- Certain Real Estate Outgrants



Navigation Specific Approach

- 3 Basic Categories
 - ▶ Triggers Section 10/404 Regulatory Action
 - ▶ Assumption of Maintenance 204(f) process
 - ▶ Stand alone 408
- Supplements the existing process, does not replace or trump
- Generally results in simply documenting (separately) that these processes have met the 408 intent
- District setback (offset) criteria is key to a streamlined process



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



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.



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
- Section 408 decision must be made before the Section 10/404/103 decision is issued
- Note: “injurious to the public interest” for Section 408 is not the same as “contrary to the public interest” for Section 10/404/103



Decision Level

- Delegation of authority: From ASA(CW) to Chief of Engineers to Director of Civil Works (DCW)
- EC Sets approval at: DCW or District Commander; based on answers to 7 questions. Any answer “yes” = DCW approval
 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)?



How's it going in SAD?

- Initial confusion on complexity
- Division Webinar clarified intent and scalability
- Setback criteria established both formally and informally
- Dozens approved at the District level
- 1 coordinated with SAD
 - ▶ Later withdrawn by the applicant
- Overall the process is working well to move forward low risk items and question high risk items



Is this a 408? - Example 1

- Applicant wants to place a dock along a waterway w/ an existing navigation channel
- The dock is outside of the boundaries of the established setback limits.
- There is no surrounding Corps real estate interest.
- **No.** It is outside of the project boundary. No additional analysis or 408 permission is required.



Is this a 408? - Example 2

- Applicant wants to place a dock along a waterway w/ an existing navigation channel
- The dock is outside of the boundaries of the established setback limits.
- There is underlying Corps real estate interest that extend to the shoreline.
- **Yes.** It is within the project boundary. **However**, minimum setback criteria has been met and no additional analysis is required. Signed 408 permission by the District Commander just prior to signature of Regulatory permit.



Is this a 408? - Example 3

- Applicant wants to deepen the existing navigation channel
- There are no surround Corps projects (pilings, jetties, etc.)
- Assumption of maintenance is not being request.
- Yes. The applicant is crossing through real estate interest of the federal government. **However**, no additional analysis is required since our federal channel doesn't change. Signed 408 permission by the District Commander just prior to signature of Regulatory permit.



Is this a 408? - Example 4

- Applicant wants to deepen the existing navigation channel
- There are no surround Corps projects (pilings, jetties, etc.)
- Assumption of maintenance is being requested. 204(f)
- Yes. The applicant is crossing through real estate interest of the federal government. Additional analysis is required since our federal channel changes. Requires HQ 408 approval prior to issuing Regulatory permit. Requires ASA(CW) 204 (f) approval prior to starting work (advertising).



Is this a 408? - Example 5

- Sponsor wants to perform maintenance on placement sites
- Activities are included in the PPA, PCA, or LCA.
- **No.** Maintenance activities are exempt from 408. No additional analysis or 408 permission is required.



Questions/Discussion

