Engineer Circular 1165-2-216
Requests to Alter USACE Projects

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Topics

- Background
- Process Overview
- Key Policy Highlights
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

- 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
- 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?

- Routine operations and maintenance activities
- Shoreline Management and Master Planning Programs
- Certain Real Estate Outgrants
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
Terminology

- No more “minor” versus “major”
- Permission (instead of permit)
- Alteration (instead of modification or encroachment)
- Requester (instead of applicant)
- H&H System Performance Analysis (instead of H&H Risk Analysis)
- Categorical Permission (similar to General Permit)
Process Overview
Basic Steps

- Step 1: Pre-Coordination
- Step 2: Written 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
Key Points

- Process is intended to be scalable, based on the scope and scale of the proposed alteration
- Process is district led
- Created some ways to streamline the process
- Coordination throughout the process is encouraged
Team Members

- Non-federal sponsor
- Applicant, if not the non-federal sponsor
- District Section 408 Coordinator
  - To ensure coordination across business lines
  - To provide requestors with one point of contact
- Appropriate Regional Integration Team
Key Policy Highlights
Real Estate Outgrants

- Lead is the Real Estate Contracting Officer
- Can follow processes for recreational and nonrecreational outgrants
- Real Estate must ensure technical requirements in appendices of the EC are met
- Real Estate must check if HQ review and decision is need based on decision questions in EC. If HQ review is required, then considered a Section 408 and Director of CW approval will be required
- Outgrants not covered by Real Estate guidance is a Section 408
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.
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.
Environmental Compliance

- Categorical exclusions may apply
- Leverage existing NEPA documentation
- EAs will not be circulated without Division approval
- EISs do not have to come up to HQ before released for public review
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.
Review Requirements

- Section 408 review requirements are not covered in detail in Engineer Circular 1165-2-214 (review policy)
- Type I Independent External Peer Reviews (IEPRs) are not required
- Review requirements are determined by the district based on the scope and scale of the alteration
- The requester is responsible to develop a review plan for Type II IEPRs and quality control as determined by the district
- The district is responsible to develop a review plan to cover the district’s review of the Section 408 request
District Review Plans

- Cover district-led Agency Technical Review (ATR) of the Section 408 requests
- ATR will make three determinations –
  1. Impair the usefulness of the USACE project
  2. Injurious to the public interest
  3. Legal and policy compliance
Decision Level

- Delegation of authority: From ASACW to Chief of Engineers to DCW
- The Division can create a regional process
- DCW has delegated certain Section 408 requests to the District Commanders
- The required documentation is based on the alteration and should be the same regardless of decision level
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
Categorical Permission
New Concept

- Similar to a General Permit for the Regulatory Program
- Cover alterations similar in nature with similar impacts
- Provide public notice of the potential activities
- Create a validation process
WRRDA 2014

- Section 1006: Policy for accepting funds under Section 214 of WRDA 2000 will be updated

- Section 1007:
  - Post process for public comment within one year
  - Establish specific timelines
  - Create a public database for tracking

- Section 1008: Provision for expedited hydropower projects
Submit internal and external feedback on USACE Civil Works webpage at http://www.usace.army.mil/Missions/CivilWorks
Discussion