



**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS, SOUTH PACIFIC DIVISION**  
450 GOLDEN GATE AVE.  
SAN FRANCISCO CA 94102

**PUBLIC NOTICE**

**CATEGORICAL PERMISSION FOR SECTION 408 REQUESTS**  
**U.S. ARMY CORPS OF ENGINEERS, SOUTH PACIFIC DIVISION**

**Unique Identification Number:** PEAX-202-00-L00-1729271185

**PUBLIC NOTICE COMMENT PERIOD:**

Begins: December 16, 2024

Ends: January 15, 2025

**AUTHORITY:** The authority to grant permission for temporary or permanent use, occupation, or alteration of any U.S. Army Corps of Engineers (USACE) Civil Works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified in 33 U.S.C. § 408 ("Section 408"). Section 408 authorizes the Secretary of the Army, on the recommendation of the USACE Chief of Engineers, to grant permission for the use, occupation, or alteration of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Secretary of the Army's authority under Section 408 has been delegated to the USACE Chief of Engineers. The USACE Chief of Engineers has further delegated the authority to the USACE Directorate of Civil Works, division and district commanders, and supervisory division chiefs, depending upon the nature of the activity. Colonel James J. Handura, PMP, Commander and Division Engineer of the South Pacific Division, USACE is the approval authority for the categorical permission for Section 408 requests in the South Pacific Division.

**INTRODUCTION:** There are numerous USACE Civil Works projects within the boundaries of the South Pacific Division. These projects have been federally authorized by the U.S. Congress and then turned over to a nonfederal sponsor to operate and maintain.

Projects may include flood risk reduction projects, such as embankments and channels located in both rural and urban areas, as well as coastal projects, such as seawalls and beach nourishment. Each year the districts within the South Pacific Division receive requests through the nonfederal sponsors from private, public, tribal, and other federal entities (requesters) to alter USACE federally authorized Civil Works projects (USACE projects) pursuant to Section 408.

When a district receives a request to alter a USACE project, it follows a review process outlined in Engineer Circular (EC) 1165-2-220, *Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408* ([https://www.publications.usace.army.mil/Portals/76/Publications/EngineerCirculars/EC\\_1165-2-220.pdf?ver=2018-09-07-115729-890](https://www.publications.usace.army.mil/Portals/76/Publications/EngineerCirculars/EC_1165-2-220.pdf?ver=2018-09-07-115729-890)). To simplify the review process and reduce review times, EC 1165-2-220 states that USACE districts can develop categorical permissions to potential alterations that are similar in nature and have similar effects on a USACE Civil Works project or on the environment. The USACE, Director of Civil Works has extended the use of EC

1165-2-220 until the Section 408 policy is published in the Code of Federal Regulations (<https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/6583>).

South Pacific Division districts receive numerous Section 408 requests for minor alterations to USACE projects each year, most of which are for changes to an embankment or channel such as installation of irrigation pipes or horizontal directional drilling for the placement of utility lines. Many of the project descriptions for proposed alterations are similar and the effects tend to be negligible. The current review and approval process, however, is time intensive and can take months. USACE South Pacific Division proposes to reduce Section 408 request review times by simplifying engineering and environmental analysis for specific categories of minor alterations within the division's boundaries (Figure 1), excluding consultation required under Section 106 of the National Historical Preservation Act and any other federally required consultations.



**Figure 1.** USACE South Pacific Division Area with Civil Works Projects

**ALTERNATIVES:** The decision options are to continue with the current process or establish a categorical permission to facilitate review of alterations to USACE Civil Works projects.

**SCOPE OF THE DECISION:** The division's area of responsibility covers a wide geographic area and includes portions of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, and Wyoming (Figure 1). The decision does not apply to any USACE-owned reservoir or lake project. The temporal scope of the decision to be made is for 5 years; after 5 years, the decision would be reevaluated and may be renewed or revised, if appropriate.

**PROPOSED CATEGORICAL PERMISSION:** Comments were received on a list of potential alterations to be covered by the proposed categorical permission in September 2024. The feedback received prior to October 4, 2024 was used to prepare the *Draft Regional Categorical Permission for Section 408 Requests* (Attachment 1).

For the categorical permission to apply, a Section 408 request must incorporate standard mitigation measures and best management practices into the project plan. Projects would be required to minimize disturbance to surrounding vegetation, return disturbed areas to pre-project conditions, remove spoils, control stormwater runoff and erosion, and not exceed federal *de minimis* levels of criteria air pollutants or precursors.

If a separate environmental assessment (EA) or environmental impact statement (EIS) is needed for the National Environmental Policy Act (NEPA) documentation of a proposed alteration, the proposed categorical permission would not apply, the Section 408 request would be evaluated using the current review process for an individual request as described in EC 1165-2-220. Furthermore, the proposed categorical permission neither alters nor removes consultation with Native American Tribes required under the National Historic Preservation Act or other laws, Executive Orders, or Army regulations or guidance. The proposed categorical permission would also not alleviate the need for other federal, state, or local permits.

**ENVIRONMENTAL IMPACTS OF PROPOSED ACTION:** The South Pacific Division will prepare a programmatic EA in compliance with NEPA. As implementation of the categorical permission would not involve any on-the-ground work, there are no anticipated direct effects on environmental resources. Although the categorical permission would be for a variety of alteration types that individually could result in effects on resources, it is important to note that the decision to be made on the categorical permission would not authorize any specific Section 408 requests. If the proposed categorical permission is approved, future Section 408 requests would be individually reviewed to determine if they fit under the categorical permission.

Under the proposed categorical permission, each individual Section 408 request would be evaluated on a case-by-case basis for compliance with all applicable environmental laws. Additionally, adequacy of the programmatic EA for the categorical permission would be verified for each request. If the programmatic NEPA documentation is not adequate, a separate NEPA analysis would be conducted. Section 408 requests for alterations that are not described in the categorical permission (see descriptions in Attachment 3) or that do not adhere to the standard mitigation measures would be evaluated using the current review process for an individual request as described in EC 1165-2-220.

Although the decision whether to implement the proposed categorical permission would not have direct effects on resources, the types of alterations described under the proposed categorical permission have the potential to affect several different resources. Resources that could potentially be affected by these types of alterations include aesthetics, air quality, cultural

resources, fish and wildlife, floodplains, invasive species, noise, recreation, threatened and endangered species, transportation and traffic, vegetation, water quality, and wetlands. It is expected that the effects associated with the types of alterations covered by the categorical permission described in Attachment 3 would be minor or negligible. If a proposed alteration is determined to involve more than minor effects or would not meet the parameters identified in the project description and there is not an applicable categorical exclusion, the categorical permission would not apply and an EA, or EIS would be prepared, as appropriate.

Under the proposed categorical permission, the district would continue to individually evaluate each Section 408 request for the potential to affect cultural resources and, when there is the potential for effects, consult with the appropriate State or Tribal Historic Preservation Officer and interested Native American tribes pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. § 306108 *et seq.*).

Under the proposed categorical permission, the districts within the South Pacific Division would continue to individually evaluate Section 408 requests for potential effects on threatened and endangered species (and their designated critical habitat) listed under the federal Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. § 1531 *et seq.*) and, as appropriate, conduct consultation pursuant to Section 7 of the ESA with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (NMFS). The district also would continue to individually evaluate each Section 408 request for potential adverse effects on essential fish habitat. If adverse effects on essential fish habitat are anticipated, the district would consult with NMFS pursuant to the Magnuson- Stevens Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. § 1801 *et seq.*).

Additionally, the district would continue to individually evaluate Section 408 requests for environmental compliance with the Clean Water Act, the Coastal Zone Management Act of 1972, the Marine Mammal Protection Act of 1972, the Migratory Bird Treaty Act of 1918, and other applicable environmental regulations.

**PUBLIC INVOLVEMENT:** The purpose of this notice is to solicit comments from federal, state, and local agencies and officials; the public; and other interested parties regarding Attachment 1, the *Draft Regional Categorical Permission for Section 408 Requests* (November 2024). Sovereign Native American Tribes have been contacted separately. Comments received within 30 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources.

**SUBMITTING COMMENTS:** Written comments, referring to “Section 408 Categorical Permission,” must be submitted by email or mail to the office listed below on or before January 15, 2025.

Brian Dela Barre, Section 408 Coordinator  
U.S. Army Corps of Engineers, South Pacific Division  
RE: Section 408 Regional Categorical Permission  
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