

## **A. General Section 408 Guidance**

1. Requesters are responsible for preparing and submitting the required technical and environmental documentation. All proposed alterations must meet current USACE design and construction standards and must include the following information (as applicable):
  - Statement of No Objection from the Non-Federal Sponsor
  - USACE Project and Alteration Description
  - Technical Analysis
  - Environmental and Cultural Resources Compliance
  - Real Estate Requirements
  - Operation, Maintenance, Repair, Replacement, and Rehabilitation
2. Engineer Circular (EC) 1165-2-220 “Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408” provides policy and procedural guidance for processing requests by private, public, tribal, or other federal entities to make alterations to, or temporarily or permanently occupy or use, any USACE federally authorized Civil Works project under 33 USC 408 (Section 408). USACE is conducting the rule making process to convert the Section 408 policy and procedures into a binding regulation within the Code of Federal Regulations (CFR). The proposed regulation will be located at 33 CFR Chapter II, Part 350. On September 21, 2020, the USACE Director of Civil Works extended the EC 1165-2-220 authority while USACE is developing the draft Section 408 regulation. Refer to future submittal guidance in 33 CFR Chapter II, Part 350 which will replace and supersede EC 1165-2-220.
3. Section 408 applies to the real property identified and acquired for the USACE Civil Works project.
4. Standard Terms and Conditions from EC 1165-2-220 Appendix K will be included as mandatory conditions for all approved Section 408 permissions. USACE may include optional conditions from Appendix K and special conditions as applicable. Refer to 33 CFR Chapter II Part 350 once published for updated Standard Terms and Conditions.
5. Section 408 submittals must include a separate Statement of No Objection Letter signed by the Non-Federal Sponsor before USACE will begin review of the Section 408 request.
6. Submittal of the alteration as-built drawings to the Non-Federal Sponsor and USACE are required within 120 days after completion of work.

7. Submittal of previously approved USACE feasibility reports or National Environmental Policy Act (NEPA) documents are not required unless requested by USACE (incorporate these documents by reference in the submittal).
8. Pamphlet SWFP 1150-2-1 provides guidance for design and construction of alterations within the limits of Fort Worth District Civil Works projects.
9. Plans must include proposed permanent and temporary work within and adjacent to the USACE Civil Works project. Plans must include proposed staging areas, laydown areas, access routes, haul roads, borrow sites, disposal sites, etc.

## **B. General Section 408 Submittal Guidance**

1. Section 408 submittals should be concise, organized documents, containing all required information as described in EC 1165-2-220.
2. Section 408 submittals should be submitted first to the Non-Federal Sponsor (or USACE lake manager, if applicable) prior to submission to USACE.
3. The Section 408 submittal must be incorporated into a single PDF file, except plans (see C.9). Submittals may be sent by email to [CESWF-408@usace.army.mil](mailto:CESWF-408@usace.army.mil) if the file size is less than 30 MB. There are several options for the transfer of larger file sizes. The USACE Department of Defense Secure Access File Exchange (DoD SAFE) website <https://safe.apps.mil/> may be used. Use of external file transfer sites is allowed if accessible by USACE. Email correspondence regarding submittals should include the alteration project name and number in the subject line e.g., 408-SWF-YEAR-0000.
4. Section 408 re-submittals must be a single PDF file which includes an updated submittal date and requested USACE and Non-Federal Sponsor changes and additional information. The re-submittal must be complete and contain all required information as described in EC 1165-2-220.
5. Requests for Section 408 jurisdictional determinations, applicability of Section 408, and other inquiries may be submitted by email to [CESWF-408@usace.army.mil](mailto:CESWF-408@usace.army.mil).
6. If an application for permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, which are administered by the Regulatory Division, are necessary, follow the Fort Worth District Regulatory Division Electronic Submittal Instructions at <https://www.swf.usace.army.mil/Missions/Regulatory/Electronic-Submittal-Instructions/>. Submittals for 404/10 applications need to be submitted to [CESWF-Permits@usace.army.mil](mailto:CESWF-Permits@usace.army.mil). Standard guides and submittal forms for Regulatory actions relative to pre-application meetings, Nationwide Permit

templates, and jurisdictional determinations can be found at <https://www.swf.usace.army.mil/Missions/Regulatory/Permitting/Application-Submittal-Forms/>. If a Regulatory Project Number and Regulatory Project Manager have already been assigned, include the Regulatory Project Number in subject lines along with the Section 408 Project Number in email correspondence. Courtesy copy the Regulatory Project Manager on Section 408 email correspondence. The Regulatory Division will provide guidance and instructions on Section 404 of the Clean Water Act and/or Section 10 requirements. General information about the Regulatory Division can be found at <https://www.swf.usace.army.mil/Missions/Regulatory/>.

### **C. Recommended Section 408 Submittal Format**

The following is a standard outline for a Section 408 submittal:

1. Title page with the alteration project name, Section 408 project number (if provided by USACE), Regulatory project number (if applicable), and date.
2. Table of contents (sections, paragraphs, tables, figures, appendices).
3. Section 408 Initiation Letter signed by the entity requesting the Section 408 permission. The letter must include the name of the USACE Civil Works project(s) impacted, a description of the proposed alteration, full Requester contact information (name, title, address, phone, email), identification of the authorized agent(s), and statement whether authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 are also necessary. The letter may be submitted electronically attached to an email from the Requester to the USACE Section 408 Coordinator. The letter must be signed by the Requester and copied to the Non-Federal Sponsor (or USACE lake manager, if applicable). The engineering or environmental consultant or agent is not the Requester.
4. Separate Statement of No Objection Letter signed by the Non-Federal Sponsor.
5. Explanation of the project purpose and need.
6. Descriptions of the proposed alteration and the features of the alteration that will impact the USACE Civil Works project. If the alteration is part of a larger plan of development, provide a description of the larger plan and provide relevant maps and figures.
7. Overview figure(s) of the proposed alteration for use in a USACE public notice, agency coordination, and internal USACE coordination. Figure guidelines: 1) portrait orientation, 2) aerial background, 3) inset map displaying regional location, 4) three figure limit.

8. A written statement regarding whether credit under Section 221 of the Flood Control Act of 1970, as amended, or other law, or if approval under Section 204 of Water Resources Development Act 1986, as amended, is requested, or will be requested, must be provided, if applicable.
9. The plans shall be submitted as a separate PDF file. Paper copies may be required upon request. Include the General Notes for Project Construction Plans Altering a Federal Civil Works Project in the plans (see template on Fort Worth District Section 408 webpage). Plans must include proposed permanent and temporary work within and adjacent to the USACE Civil Works project. Plans must include proposed staging areas, laydown areas, access routes, haul roads, borrow sites, disposal sites, etc.
10. Geotechnical report, if required. Refer to EC 1165-2-220 Appendix E.
11. Hydrology and hydraulics report, if required. Refer to EC 1165-2-220 Appendix H.
12. Executive Order 11988 documentation. The requester may be required to submit sufficient information in order that the CESWF can conduct an analysis required by ER 1165-2-26, Implementation of Executive Order 11988 on Floodplain Management, <https://www.publications.usace.army.mil>. The request should be assessed as to whether there would be induced development in the floodplain as a result of the proposed alteration and address the positive and negative impacts to the natural floodplain functions.
13. All Section 408 submittals should include map(s) including the current FEMA 100-year and 500-year floodplains layered with the proposed alteration, and larger plan of development.
14. For alterations involving professional design services, the Requester will be required to submit a certification that the design underwent a quality control process (see template on USACE Section 408 webpage).
15. Official Species List from the U.S. Fish and Wildlife Service online Information for Planning and Consultation (IPaC) <http://ecos.fws.gov/ipac>.
16. Biological evaluation of potential effects on federally listed species, if required.
17. Statement if the proposed alteration will adhere to the engineering and environmental conditions in the 2022 PEA. Include reports, surveys, mitigation, etc. as required by the 2022 PEA, if necessary.

18. Other environmental compliance documentation, if required (mitigation documentation, other NEPA documentation, Phase 1 Environmental Site Assessments, etc.).
19. Cultural resources report, if required. Include existing State Historic Preservation Officer coordination, Antiquities Code Permit documentation, etc. Include cultural resources mitigation and agreements.
20. Real Estate Requirements. A description of the real property required to support the proposed alteration must be provided. Include the draft real estate easement, other instrument, or modification of existing agreements that the Non-Federal Sponsor would grant to the Requester, if applicable. Maps clearly depicting both existing real property and the additional real property required must also be provided. Provide copies of existing deeds, easements, licenses, consents, or similar agreements.
21. Operation, Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R) of the proposed alteration. Requesters must identify requirements for OMRR&R throughout the life of the proposed alteration and the responsible entity.