



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

PUBLIC NOTICE COMMENT PERIOD:

Begins: September 4, 2024

Ends: October 4, 2024

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). 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.

A programmatic environmental assessment is being prepared in conjunction with the proposed categorical permissions to identify, analyze and evaluate environmental impacts of the potential alterations.



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: The proposed categorical permission covers a list of potential alterations with similar effects on a USACE project and on the environment. 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, and the Section 408 request would be reviewed and a decision made following the current process 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.

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.

The proposed categorical permission would encompass the following types of alterations:

1. Agriculture and Landscaping
 - Variety of standard agricultural activities may occur.
 - Total area of work not to exceed 350 acres for agricultural activities and 5 acres for landscape activities.
 - Applicable only to prior converted agricultural lands; does not cover new land use type conversion to cultivated land.
2. Beach Nourishment
 - Placement of suitable fill material to stabilize coastal shorelines and eroding beaches.
3. Borings, Explorations, and Instrumentation
 - Variety of geotechnical boring or exploratory activities and instrumentation may be used in the floodway, on the embankment, and adjacent to the toe.
 - Drilling Program Plan required for activities in the embankment or embankment foundation.
4. Borrow Areas
 - Excavation activities.
 - Total area of work not to exceed 5 acres or occur within 300 feet of toe.
 - Geotechnical investigation required.

5. Bridges
 - Construction, modification, and replacement of pedestrian, railroad, and vehicular bridges, including the approach.
 - Total area of ground disturbance not to exceed 15 acres.
 - Slope stability analysis required.
6. Buildings and Other Structures
 - Construction and modification of buildings and other structures, including artwork, decks, patios, and solar arrays.
 - Total area of work not to exceed 5 acres.
 - No habitable buildings or structures.
 - Geotechnical investigation, slope stabilization, and seepage analysis required for new building construction within 300 feet of the levee on native soils.
 - An existing structure damaged more than 50 percent of market value must receive approval of the nonfederal sponsor before reconstruction.
 - Nonfederal sponsor must be notified of removal plans for any building or structure.
7. Ditches and Canals
 - Construction, fill, and modification of ditches and canals.
 - Must be located outside the levee embankment.
 - Total length not to exceed 1,000 linear feet.
8. Docks
 - Construction, modification, and removal of debris boom, floating dock structure, gangways, landing structures, and riprap.
 - Total area not to exceed 2,000 square feet.
9. Environmental Restoration
 - Variety of restoration activities may occur.
 - Total area of work not to exceed 500 acres for non-channel restoration activities or 5,000 linear feet for channel restoration activities.
10. Erosion Control
 - Variety of erosion control activities.
 - Total area of work not to exceed 2,000 linear feet of bank.
 - Maintenance is required to preserve functionality.
11. Fences, Gates, and Signage
 - Installation, modification, and replacement of fences, gates, and signage.
 - Gates must be accessible to USACE, nonfederal sponsor, or the local maintaining agency and of sufficient size not to inhibit levee construction, inspection, high-water patrol and flood-fighting, or maintenance personnel, equipment, and vehicles.

12. Fiber Optic and Dry Utility Pipes

- Installation, modification, and replacement of dry utility pipes.
- Total area not to exceed 5 acres.
- Pipe location and orientation must be clearly marked.

13. Fish Screens

- Installation, modification, and replacement of fish screens on water intake pipes and associated facilities (maintenance structures, supports, and walkways).
- Total area not to exceed 5 acres.

14. Gravity Pipes

- Installation, modification, and replacement of gravity pipes and culverts.
- Total area not to exceed 5 acres.

15. Horizontal Directional Drilling

- Installation of pipes by horizontal directional drilling.
- Total area not to exceed 15 acres.
- Entry and exit points at no less than 300 feet from the landside levee toe.

16. Landside Pump Stations

- Installation, modification, and replacement of landside pump stations and associated facilities.
- Total area not to exceed 5 acres.

17. Pressurized Pipes

- Installation, modification, and replacement of pressurized pipes.
- Total area of work not to exceed 5 acres.

18. Research and Monitoring

- Installation, operation, and replacement of devices whose purpose is to measure and record data, including meteorological stations; seismic, sonar, and staff gauges; tide and current gauges; and water quality and chemical and biological observation devices.
- Once monitoring is complete, all measuring devices, associated structures, and equipment must be removed and the site restored to pre-alteration conditions.

19. Retaining Walls, Seawalls, and Other Wall Structures

- Construction, modification or repair, and replacement of retaining walls, seawalls, and other wall structures.

20. Seepage and Stability Berms

- Construction, modification, and replacement of seepage and stability berms within the easement of the floodway.
- Total area not to exceed 10 acres.

21. Stairs and Handrails
 - Installation, modification, and replacement of stairs and handrails.
22. Swimming Pools
 - Installation, modification, and replacement of swimming pools and associated support facilities.
 - Total area not to exceed 1 acre.
 - Geotechnical analysis required if located within 300 feet of the levee toe.
23. Trails, Roads, and Ramps
 - Installation, modification, and replacement of access ramps, roads, trails, and associated lighting, signage, and so forth within the easement of the floodway.
 - Total area of ramps not to exceed 5 acres and 5 miles in length for roads and trails.
24. Utility Poles
 - Installation, modification, and replacement of utility poles and towers.
 - Total area not to exceed 5 acres.
25. Water Supply Pump Stations
 - Installation, modification, and replacement of water supply pump stations and associated facilities.
 - Total area not to exceed 5 acres.
26. Wells
 - Installation of wells and associated structures.
 - Not to be located within 300 feet of the landside levee toe or 15 feet of the waterside levee toe.
 - Any new surface area of a concrete pad not to exceed 200 square feet.

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The South Pacific District 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 existing 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, the categorical permission would not apply and a categorical exclusion, 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 the proposed Section 408 categorical permission. 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 October 4, 2024.

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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