

DEPARTMENT OF THE ARMY
US Army Corps of Engineers
Baltimore District – Section 408 Request

INFORMATION REQUIRED TO PROCESS SECTION 408 REQUESTS

by private, public, tribal, or other federal entities to make alterations to, or temporarily or permanently occupy or use, any US Army Corps of Engineers federally authorized civil works projects pursuant to 33 USC 408

1. Purpose. The purpose of this document is to provide guidance for private, public, tribal, or other federal entities regarding the information the US Army Corps of Engineers (USACE) Baltimore District needs to complete a review pursuant to 33 USC 408 (Section 408). This review is necessary to obtain permission from the USACE Baltimore District for proposed alterations to any USACE federally authorized civil works project, referred to as a “USACE project” within this document.
2. Applicability. This guidance applies to alterations proposed within the lands and real property interests identified and acquired for the USACE project and to lands available for USACE projects under the navigational servitude. In the Baltimore District, USACE projects typically include: local protection projects consisting of levees, floodwalls, channel improvement, and interior drainage features; Federal navigation channels; and flood risk management projects consisting of earthen or concrete dams, outlet works, spillways, abutments, support facilities, and reservoir pool. Routine operations and maintenance activities specified in the O&M manual and performed by the non-federal sponsor or USACE do not require permission from USACE under Section 408.
3. References. Engineering Circular 1165-2-216, *Policy and Procedural Guidance for Processing Requests to Alter USACE Civil Works Projects pursuant to 33 USC 408*
4. Authority. The authority for the US Army Corps of Engineers to grant permission for temporary or permanent alterations to federally authorized civil works projects is contained in Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 USC 408, which states that “*the Secretary [of the Army] may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any [work built by the United States] when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.*” It is otherwise unlawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct, or in any manner whatever impair the usefulness of any work built by the United States.
5. Exclusions. Per Engineering Circular 1165-2-216, the following activities do not require permission from USACE under Section 408:
 - a. Routine operations and maintenance activities specified in the O&M manual and performed by the non-federal sponsor or USACE
 - b. Activities contained in 36 CFR 327, including the implementation of an approved USACE Project Master Plan, Shoreline Management Plan, or Operational Management Plan

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6. Requester. A request for Section 408 permission can originate from a non-federal sponsor or an independent requester. For USACE projects with a non-federal sponsor, the requester must either be the non-federal sponsor or have the endorsement of the non-federal sponsor prior to a written request being submitted to USACE.

7. Request. The Requester must submit the information that follows for all requests to alter USACE projects within the Baltimore District. Requests must be in writing, signed, and submitted to the USACE Baltimore District Regulatory Point of Contact. Requests may be sent by regular mail or electronic mail for attachments under 10MB. Attachment A contains a comprehensive list of additional information that may be requested to facilitate the Section 408 review process. Attachment B provides an example of the local sponsor statement of no objection.

Points of Contact:

GOVERNMENT:

Name: Marion Gall,
Organization: USACE Baltimore District
Title: Regulatory Point of Contact
Address: 1631 South Atherton Street, Suite 101
State College, Pennsylvania 16801
Phone: (814) 235-1761
E-mail: marion.gall@usace.army.mil

REQUESTER:

Name: _____
Organization: _____
Title: _____
Address: _____
Phone: _____
E-mail: _____

LOCAL SPONSOR: (if not the Requester)

Name: _____
Organization: _____
Title: _____
Address: _____
Phone: _____
E-mail: _____

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Project Description

USACE Project being altered, used or impacted: _____

City and State: _____

Stream, River or Water Body: _____

Proposed Project Name: _____

Latitude, Longitude: _____

USACE Project Type

_____ Local Protection Project** _____ Navigation _____ Flood Risk Management

****Have you obtained a Statement of No Objection from the Non-Federal Local Sponsor of the Local Protection Project? If no, please explain.**

Note: Requests will not accepted as complete without this statement. See Appendix A for an example.

Brief description of the proposed work and how the USACE project will be altered

Note: Indicate if the proposed alteration is to a previously-modified feature (e.g., re-aligning a pipe through the embankment that had been installed as a modification to the project).

Description of project alternatives (if any) that avoid impacts to the USACE project

List of all real property interests

Note: Include maps clearly depicting both existing real estate rights and additional real estate required.

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Approximate schedule for work (list activities by Month/Year)

Describe operations and maintenance that will be required as a result of this alteration

Note: Requester is responsible for performing all operations and maintenance required as a result of the alteration, as well as for all associated costs. For local protection projects, the non-federal local sponsor is required to ensure that all required operations and maintenance associated with the alteration are adequately performed.

Documents included with the alteration request

Note: USACE may request additional information as part of the review process.

General Project: Report _____ Plans _____ Specs _____ Drawings _____

Hydrology & Hydraulics: Report _____ Models _____

Geotechnical: Report _____ Drilling Plan _____

Other (describe): _____

Questions:

(Yes/No)

1. Will the proposed project require the use of federal property? _____
2. Will the proposed project require the use of property owned by the non-federal sponsor? _____
3. Have any Environmental Reports been completed for this Project? If yes list below. _____
4. Are you required to pursue authorization pursuant to Sections 10/404/103? If yes, list date or anticipated date of application/pre-construction notification submittal. _____
5. Is this proposed project identified as a priority project in an established in-place funding agreement? If yes, provide documentation of the funding agreement and point of contact. _____
6. Are you seeking credit under Section 221 of the Flood Control Act of 1970 or other laws such as approval under Section 204 (f) of WRDA 1986? _____

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Signature Block

Request is hereby made for permission to alter the USACE project as described in this form and supporting documentation. I certify that the information provided in this request is complete and accurate to the best of my knowledge. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the requesting organization and/or non-federal local sponsor.

REQUESTER:

Name

Organization

Title

Signature

Date

LOCAL SPONSOR: (If not the requester, for local protection projects)

Name

Organization

Title

Signature

Date

TO BE COMPLETED BY USACE

Date Received: _____

USACE Project Name: _____

Resource Manager or Local Sponsor: _____

Regulatory Permit Number: _____

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8. USACE Review Criteria. USACE will review the alteration request for potential adverse impacts to the project based on the following criteria (as applicable):
- a. Reliability of the project to function as designed.
 - b. Local sponsor and/or USACE ability to adequately inspect the project during normal conditions.
 - c. Local sponsor and/or USACE ability to adequately inspect the project during potential or actual emergency conditions.
 - d. Local sponsor and/or Requester ability to adequately operate and maintain the project.
 - e. Local sponsor and/or Requester legal rights to enter and/or have contractors enter all properties affected, either through fee deed(s) or easement deed(s), which should be attached to application.
 - f. Local sponsor ability to conduct flood fighting operations and temporary repairs during an emergency.
 - g. Alteration impacts to the structural or geotechnical integrity of project components (including embankment, floodwall, or retaining wall strength; slope stability; stone protection; crest elevation; miscellaneous structures, etc.).
 - h. Alteration impacts on the hydraulic functioning of the project.
 - i. Alteration impacts to a floodplain or floodway (flood risk management projects only).
 - j. Alteration impacts on the interior drainage system or drainage facilities (i.e. outfalls, gate wells, storm sewer lines, pump stations, drainage ditches, etc.).
 - k. Alteration impacts on environmental aspects of the project, including compliance with National Environment Policy Act (NEPA) requirements.
 - l. Alteration impacts on safety aspects of the project.
 - m. Alteration impacts to the real estate easement requirements, including project access.
 - n. USACE Section 10/404 Regulatory permit requirements.
 - o. Impacts to the public and other stakeholders.
 - p. Other criteria as available.
9. USACE Review and Decision. Work or usage shall not begin until written approval from the USACE Baltimore District Commander, or his designee, is obtained. Upon completion of review of the request, the Baltimore District will send a letter from the District Commander, or his designee, either granting or denying the request for permission to alter the USACE project. If granted, the Requester's signature may be required on an Alteration Conditions Form to confirm acceptance of any special conditions required. If denied, reasons for not granting permission will be provided.

If applicable, an Emergency Action Plan (EAP) should also be provided as a prerequisite to approval. Requestor must provide information about emergency response in the event of a flood during construction. This should include at a minimum: notification tree, stockpiled materials, how flooding will be anticipated, and specific activities at each phase of construction to restore flood risk reduction.

USACE reserves the right to require construction inspections or meetings with the Local Sponsor, Requester, and other interested parties.

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10. Special Conditions. The following are examples of special conditions, which may be included in the permission to alter, use, or impact a USACE project. Additional special conditions may be included depending on the nature of the work:
- a. Requester shall obtain all appropriate local, state, and Federal permits (or waivers from these permits) before performing the proposed alteration. USACE approval of the proposed alteration does not negate the need to obtain the aforementioned permits.
 - b. Requester must notify the USACE Baltimore District at least fifteen (15) days before work/usage is started and receive approval to proceed from the designated Baltimore District point of contact. Time may vary depending on project.
 - c. Requester shall provide copies of pertinent design, construction, and/or usage submittals/documents. Photographic documentation of the alteration work and the impacted project area may be requested to be taken before, during, and after construction.
 - d. Requester must develop a safety plan prior to commencing the alteration and ensure that all officers, agents, employees, or others who may be present on the premises at their invitation are thoroughly familiar with the plan and follow it.
 - e. The Requester may be required to perform an inspection of the USACE project with the Baltimore District prior to the Requester's use of the project to document existing conditions.
 - f. Alterations approved in this request shall be progressed in such a manner to avoid interference with the inspection, operation, and maintenance of the USACE project.
 - g. Requester must schedule a final inspection with the Baltimore District within fifteen (15) days after completion of the alteration. Time may vary depending on project.
 - h. Requester shall submit a copy of as-built drawings within 30 days of completion of work showing the new work as it relates to identifiable features of the USACE project.
 - i. Requester shall remove all structures constructed on or within the USACE project upon completion of usefulness of such structures, if they no longer serve the purposes originally intended, or upon expiration of the agreement with USACE Baltimore District. The Requester shall restore the USACE project to its original condition after removal of these structures. Permanent alterations approved by USACE are excluded from this requirement, however must be maintained in good condition.
 - j. Field work shall be coordinated with the designated USACE Baltimore District point of contact, to be determined prior to the start of work.

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ATTACHMENT A
Section 408 Request Supplemental Information

The following list is designed to assist you in providing a complete review package when submitting a Section 408 request to the USACE Baltimore District. The intent is to provide a comprehensive list of information our technical staff may need to complete the review process. The list below is not all inclusive and may not apply to every situation; our technical staff may request additional documentation. Please provide the information in this list to the extent possible and submit with your request.

A. General Documentation. Please provide at minimum the following items:

- 1) Project Location Map (8.5"x11") including:
 - a) Aerial image with proposed project features
 - b) City, county, and state
 - c) Latitude and longitude
 - d) Name of Stream, River or Body of Water
 - e) River mile (if applicable)
- 2) Project Description. Please provide a detailed and complete project description, including all areas of disturbance to the USACE project. Include areas to be used for ingress, egress, or staging of materials or equipment. Fully describe construction techniques to be used on the USACE project alteration. Include quantities and types of materials used as fill or removed from the site. Accurately describe any ground disturbing activity that will occur and provide acreage or lineal area of impact. Include maps, pictures, and figures as necessary to fully explain the proposed work.
- 3) Right-of-Way Maps from agency responsible for operating and maintaining the facility
- 4) Pre-final project plans and specifications
- 5) Project schedule
- 6) Photographs of current conditions at the site
- 7) Written Statement of No Objection by the Local Sponsor

B. Real Estate

- 1) List of all real property interests required to support the proposed alteration, including those in federally managed lands and those owned by the Requester.
- 2) Maps clearly depicting both existing real estate rights and the additional real estate required.
- 3) GIS shapefiles of the full project extents.
- 4) Deed or other real estate instruments
- 5) Agreements between the United States of America and Proponent
- 6) Office of the Assessor Property Information Report
- 7) Assessor's Parcel Number (APN)

C. Environmental Compliance

- 1) List of any State or Federal Threatened or Endangered Species
- 2) List of any noise sensitive receptors and provide description of the receptor and its distance from the source
- 3) List and describe all Hazardous Toxic and Radioactive waste (HTRW) present at the site

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- 4) List all recreation amenities that would be impacted due to this alteration
- 5) List all public services that would be disrupted due to this alteration
- 6) Indicate whether public transportation will be impacted due to this alteration
- 7) Section 401 Certification
- 8) Air Quality Analysis
- 9) All cultural surveys conducted in the last five years
- 10) Tribal Contact List

D. Technical Analysis

- 1) Civil. Each submittal should clearly identify the existing condition of the dam and/or appurtenant structures to include plan, profile and design details of the proposed alteration in relation to the existing USACE project. Below are examples of information necessary to understand the existing and proposed conditions.
 - a) Alteration location (Vicinity map and specific alteration location)
 - b) Applicable datum
 - c) Real estate interests, existing and to be acquired, needed for the proposed alteration
 - d) Grading plans
 - e) Layout plan, profiles, and cross-sections of the proposed alternation
 - f) Previous inspection reports to assist in identifying existing deficiencies and their proximity to the proposed alteration
 - g) Sections and details
 - h) Temporary measures required during construction (bypasses, cofferdams, etc.)
- 2) Geotechnical. The following is a list of analyses or information that may be necessary to consider in evaluating geotechnical impacts if proposed alterations alter the dam embankment or penetrate the natural blanket or foundation.
 - a) Erosion control (changes in erosive forces on a slope)
 - b) Liquefaction susceptibility
 - c) Material usage/borrow/waste/transport/hauling
 - d) Placement of stockpiles, heavy equipment, or other surcharges
 - e) Results of subsurface investigation – boring logs, test pit logs, laboratory test results, etc.
 - f) Seepage analysis
 - g) Settlement analysis
 - h) Stability analysis
 - i) Vegetation
- 3) Structural. The following is a list of analysis or information that may be necessary to evaluate the impacts of proposed alterations to concrete, sheet-piling, or drainage structures.
 - a) Bridges and related abutments
 - b) Design analysis for retaining walls and excavation support system
 - c) Design of shallow or deep foundations, including bearing capacity and settlement analysis if the construction is located within the line of protection or right-of-way and creates potential seepage problems
 - d) Design recommendations for foundations on expansive soils

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- e) Diaphragm walls
 - f) Gates or other operable features
 - g) Other structural components integral to the project
 - h) Pier penetrations of levee embankments
 - i) Stability analysis including sliding, overturning, bearing, flotation, uplift and any seismic load effects for any alteration to the channel walls and/or flood walls
 - j) Structural drainage control methods
 - k) Water stops and contraction/expansion joints
- 4) Hydrology and Hydraulics. The following factors may be considered when evaluating the hydrologic and hydraulic (H&H) impacts to a USACE project. Please provide an Executive Summary detailing how each of the below items is addressed and how your project impacts the USACE project. H&H models may be requested for review.
- a) Changes in inflow
 - b) Changes in velocity
 - c) Changes in water surface profiles and flow distribution
 - d) Consideration of impacts to energy dissipation measures; hydropower generation; sedimentation; or navigation
 - e) Scour Analysis
 - f) Sediment transport analysis
 - g) Upstream and downstream impacts of the proposed alterations
- 5) Operations, Maintenance and Flood Fighting. Alterations may change operation, maintenance or require special flood fighting procedures.
- a) Effects on existing maintenance access
 - b) Effects on maintenance practices
 - c) Flood contingency plan during construction, measures proposed to protect area under construction, monitoring of river level, river stage at which plan will be activated, materials and equipment to be used to activate plan, and personnel contact and telephone number to activate plan.
 - d) Flood fighting requirements and practices
 - e) Special inspection requirements
- 6) Potential Failure Mode Analysis. Depending on the proposed alteration, the requester may be required by the district to provide a potential failure mode analysis with the proposed alteration in place.
- 7) Review Plan. If the alteration will either 1) temporarily impair the purpose and function of the existing Federally-constructed project or 2) be a major repair, rehabilitation, relocation, replacement or modification of the existing Federally-constructed project, please provide the following:
- a) Independent External Peer Review (IEPR) Plan (Reference EC 1165-2-217)
 - b) Design Quality Control Plan

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ATTACHMENT B
Local Sponsor Statement of No Objection

SUBJECT: Request to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408

TO: USACE Baltimore District Regulatory 408 POC

The <*Name of Non-Federal Local Sponsor*> (Sponsor) is the Non-Federal Local Sponsor to the U.S. Army Corps of Engineers Baltimore District for the <*Name of USACE Project*> Local Protection Project (USACE Project).

The Sponsor is aware of the Section 408 Request by <*Name of Requester*> to alter the USACE Project in order to complete the proposed <*Description of work to be performed and impacts to the local protection project*>.

The Sponsor does not object to the Section 408 Request nor its review by the U.S. Army Corps of Engineers. The Sponsor acknowledges continued responsibility for the operation and maintenance of the USACE Project at no cost to the government and will hold and save the government free from all damages arising from the construction, operation, maintenance, repair, rehabilitation, and replacement of the project.

Printed Name

Signed Name

Date