

construction activities.

d. If there is a situation that involves a long-term or large-scale plan, such as a watershed-based master plan, comprised of the construction of multiple alterations occurring over time, this case should be coordinated vertically through the appropriate RIT to the HQUSACE Section 408 proponent to determine the most efficient process to manage such a request.

11. Basic Requirements for a Complete Section 408 Request. All costs associated with information required for obtaining a Section 408 permission, constructing the alteration if approved, and complying with any conditions associated with the Section 408 permission is at 100 percent cost to the requester. This does not include costs for USACE to conduct the review of the request. Costs associated with USACE review is addressed paragraph 7.f. If submitting information for a categorical permission, reference the process in Appendix C. If the multi-phased review approach is used, then the information needed for a complete Section 408 request may be provided at different milestones for review. Because proposed alterations vary in size, level of complexity, and potential impacts, the procedures and required information to make such a determination are intended to be scalable. Requirements for data, analyses, and documentation may be subject to change as additional information about the Section 408 proposal is developed and reviewed. Determination for the required information for each Section 408 submittal is led by the district. Supplemental information specific to dams, levees, hydropower, and navigation can be found in the appendix appropriate to the type of infrastructure (Appendices E-G). Note, identification of whether or not the proposed alteration also requires Section 10/103/404 authorization should be done up front, and districts should encourage requesters to submit any required Section 10/103/404 request in a manner to facilitate concurrent and efficient reviews with the Section 408 permission request, to the maximum extent practicable. Basic requirements for a complete Section 408 request include the following:

a. Statement of No Objection. For USACE projects with a non-federal sponsor, a written “Statement of No Objection” from the non-federal sponsor is required if the requester is not the non-federal sponsor. Non-federal sponsors typically have operation and maintenance responsibilities; have a cost-share investment in the USACE project; and/or hold the real property for the USACE project. The purpose of the Statement of No Objection is to document that the non-federal sponsor is aware of the scope of the Section 408 request and does not object to the request being submitted to USACE to initiate the evaluation of the request. Districts must coordinate with non-federal sponsors throughout the review process and ensure feedback from non-federal sponsors is considered prior to USACE rendering a final decision on the Section 408 request. Requesters can ask the USACE district office to facilitate coordination with, and seek to obtain the Statement of No Objection from, the non-federal sponsor. If a Statement of No Objection cannot be obtained, the district will not proceed with the Section 408 review with the following exceptions:

(1) A Statement of No Objection is not required if the requester is the non-federal sponsor.

(2) A Statement of No Objection is not required when USACE has all operation and maintenance responsibilities for the portion of the USACE project proposed to be altered.

(3) If a USACE project has multiple non-federal sponsors and potential impacts of the proposed alteration are limited to the location of the alteration, Statements of No Objection are required only from the non-federal sponsors associated with the locations with potential impacts. However, if the proposed alteration may impact the usefulness of the USACE project as a whole, Statements of No Objection must be obtained from all non-federal sponsors.

(4) A Statement of No Objection from the non-federal sponsor is not required if the requester could obtain the real property necessary to undertake the alteration through eminent domain without the consent of the non-federal sponsor, and the alteration will not be integral to the functioning of the USACE project. An alteration would be considered integral to the USACE project if the alteration must be complete, functional, and in-place in order for the USACE project to function and meet its authorized purpose. In cases in which the alteration is not considered integral to the USACE project, if the requester makes reasonable efforts, but is unable to obtain a Statement of No Objection from the non-federal sponsor, the requester may submit a Section 408 request with a written statement documenting the efforts to obtain a Statement of No Objection, and cite the authority and process through which the requester will have the sufficient authority to condemn all real property required for the alteration in the event the Section 408 request is approved by USACE. For these cases, USACE will independently seek input from the non-federal sponsor on the potential impacts of the proposed alteration relative to the non-federal sponsor's responsibilities, and will take that input into consideration in making the Section 408 decision. Within 30 days of notification by USACE, the non-federal sponsor must provide its input or may propose a timeline for providing feedback commensurate with the complexity of the proposed alteration. If the non-federal sponsor provides no response within 30 days of USACE's notification, USACE may proceed with the review of the alteration request without such input. Throughout the USACE review phase, USACE will continue to provide the non-federal sponsor opportunities to provide input on the Section 408 request up until and just before USACE renders a final decision. For these subsequent opportunities for input, districts can use judgment as to the appropriate time in which to provide non-federal sponsors to respond. Approval of the Section 408 under these circumstances does not negate the process the requester must follow in order to obtain the real property needed to construct the alteration, nor provides the requester with eminent domain authority.

(5) A Statement of No Objection is not required if, after a good faith effort, neither the requester nor USACE can locate the non-federal sponsor or the non-federal sponsor's successor. If a requester is able to secure the necessary real property to execute the alteration but cannot identify the non-federal sponsor or successor, the requester should document the measures taken to locate the non-federal sponsor or successor and request that USACE determine if there is a viable non-federal sponsor or successor. USACE should document their efforts and decision for the administrative record and notify the requester.

b. USACE Project and Alteration Description. Basic requirements for a complete Section 408 submittal include the identification of the USACE project and a complete description of the proposed alteration(s), including necessary drawings, sketches, maps, and plans.

c. Technical Analysis and Design.

(1) The requester is responsible for ensuring a proposed alteration meets current USACE design and construction standards. However, a requester is not required to bring those portions or features of the existing USACE project that are not impacted by the alteration up to current USACE design standards. The district will work closely with the requester to determine the applicable USACE standards to be applied and the specific level of detail necessary to be provided in order for USACE to make a decision for a particular alteration request. The district determination of the appropriate level of detail will be risk-informed and documented in the USACE review plan.

(2) Districts will inform the requester if a hydrologic and hydraulic system analysis is required. The purpose of a hydrologic and hydraulics system analysis is to determine the potential hydrologic and hydraulic changes of proposed alterations. Districts will determine if such an analysis is needed and, if so, the appropriate scope of analysis based on the complexity of the proposed alteration. See Appendix H for more details regarding the requirements of a hydrologic and hydraulics system analysis.

(3) For alterations involving professional design services, the requester will be required to submit a certification that the design underwent a quality control process.

(4) If the district determines a SAR is required, a SAR review plan must be developed by the requester and the requester will be required to cover the costs of the SAR. A SAR is required for design and construction activities where potential hazards pose a significant threat to life safety. Districts will work with requesters to coordinate the development of the SAR review plan. See paragraph 12.c.(4).

d. Environmental and Cultural Resources Compliance. A decision on a Section 408 request is a federal action subject to NEPA and other federal environmental and cultural resources compliance requirements, such as Section 7 of the Endangered Species Act (ESA), Section 106 of the NHPA, essential fish habitat (EFH) consultation, tribal consultation, etc. When applicable, government-to-government tribal consultation is inherently a federal obligation and must be conducted in a meaningful, collaborative and effective communication process working toward mutual consensus, to the extent practicable and permitted by law, and begins at the earliest planning stages. Ensuring and conducting environmental and cultural resources compliance for a Section 408 request is the responsibility of USACE. However, the requester is responsible for providing all supporting information and documentation that the district identifies as necessary to assess compliance, such as species surveys, habitat assessments, and/or cultural resource surveys. Requesters may, but are not required to, draft the NEPA environmental

assessment or fund a contractor to prepare an environmental impact statement for a Section 408 request consistent with 40 CFR 1506.5. However, the district must ensure that any NEPA documentation drafted by a requester or contractor is accurate and compliant with USACE and Council on Environmental Quality (CEQ) requirements prior to accepting it for use with the Section 408 request. A final Section 408 request cannot be rendered until the requester has provided all information necessary for the district to complete its assessment for environmental and cultural resources compliance. The district will work with the requester to determine the requirements for the information the requester is required to submit to constitute a complete request. The information required of the requester to facilitate the completion of environmental compliance will be scaled to be commensurate with the degree of potential environmental effects of the activity within the scope of the Section 408 analysis. Environmental and cultural resources compliance for Section 408 requests will typically not require the same level of detailed analysis as needed for feasibility reports or other planning studies. See Appendix D for further information.

(1) Alterations that are expected to not result in significant effects to the environment, both individually and cumulatively, should be evaluated for applicability with the approved categorical exclusions at 33 CFR 230.9. However, activities that qualify for a NEPA categorical exclusion must still satisfy compliance requirements under other statutes such as NHPA and ESA, and must fulfill consultation obligations with federally recognized tribes. Documentation of applicability of a categorical exclusion may be signed by the Section 408 decision-maker or other appropriate district staff.

(2) For categorical permissions, the district will inform the requester if additional documentation is necessary to complete environmental compliance.

(3) Districts are strongly encouraged to adopt and/or incorporate by reference any NEPA documentation that may already exist for the USACE project.

(4) For those alterations in which another federal agency is the NEPA lead agency (e.g. such as when FERC is the lead agency for private hydropower licensing, reference Appendix F), districts will participate in the NEPA review as a cooperating agency to the maximum extent practicable. Districts will typically adopt or incorporate by reference that federal agency's Environmental Impact Statement (EIS) or Environmental Assessment (EA) and consider it to be adequate for NEPA compliance for a Section 408 permission, unless the district finds substantial doubt as to the technical or procedural adequacy or omission of factors important to the Section 408 permission decision. Districts also have discretion to adopt/use another lead federal agency's environmental compliance documentation (ESA, NHPA, EFH, etc.) as allowable and appropriate for the Section 408 permission decision. Districts should ensure that the lead agency is informed of all needs to determine technical adequacy and environmental and cultural resources compliance for the purposes of Section 408 early in the process.

(5) Districts have discretion and are encouraged to develop new or use existing

programmatic NEPA documents (consistent with 40 CFR Part 1500.4(i)) and/or programmatic environmental consultations for Section 408 requests, when appropriate.

(6) Clean Water Act, Section 401 Water Quality Certification. If the requirement for a state water quality certification (33 USC 1341) applies to the alteration that is subject to a Section 408 review, as determined by USACE, then Section 408 authorization cannot be granted until the certification has been obtained or waived, as provided for by statute.

(7) Per USACE tribal consultation policy, federally recognized tribes have the right to request government-to-government consultation with the district. All requests by a tribe for government-to-government consultation with USACE will be honored.

e. Real Estate Requirements. A description of the real property required to support the proposed alteration must be provided. Non-federal sponsors issuing permits, outgrants, or consents for alterations undertaken by others will ensure that the terms of the instrument or agreement are consistent with the terms and conditions of the Section 408 permission, if applicable. If additional real property is required for an alteration that will be integral to the functioning of the USACE project, the district must follow the normal procedures to request approval of any non-standard estates under the guidance in chapter 12 of reference A.28. Maps clearly depicting both existing real property and the additional real property required must also be provided.

f. Operation, Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R). Requesters must identify any projected requirements for OMRR&R needed throughout the life of the proposed alteration and the responsible entity. For instances when there may be a desire for USACE to assume or incorporate operations and maintenance of the proposed alteration as part of its responsibilities for the USACE project being modified, a justification must be provided. See paragraph 9.f.(5) for federal assumption of maintenance associated with navigation features. If operation and maintenance of the USACE project is affected by the alteration, the requester, if not the non-federal sponsor, must provide written documentation that the non-federal sponsor agrees to assume responsibility for the changed OMRR&R of the USACE project at no cost to the federal government. This written documentation must be received prior to USACE issuing the Section 408 decision. If the Section 408 request is approved and an update to the USACE issued O&M manual is needed as the result of the alteration, the requester will be required to provide the district with sufficient information to update the portion of the O&M manual related to the approved alteration. As part of this update, as-builts may be required. See paragraph 17.

g. If applicable, a written statement regarding whether credit under Section 221 of the Flood Control Act of 1970, as amended, or other law or whether approval under Section 204 of WRDA 1986, as amended is being or will be sought must be provided.

12. **USACE Review Requirements.** In general, each Section 408 request will be reviewed by USACE consistent with the following:

a. Main Determinations.

(1) Impacts to the Usefulness of the USACE Project. The objective of this determination is to ensure that the proposed alteration will not limit the ability of the USACE project to function as authorized and will not compromise or change any authorized project conditions, purposes or outputs. All appropriate technical analyses including geotechnical, structural, hydraulic and hydrologic, real estate, construction, and operations and maintenance requirements, must be conducted, and the technical adequacy of the design must be reviewed. In addition, the district will determine whether or not the alteration is an integral component of the USACE project and therefore, will be treated as a federal component of the USACE project once constructed, including for purposes of the USACE Rehabilitation Program, reference A.29. An alteration would be considered integral to the USACE project if the alteration must be complete, functional, and in-place in order for the USACE project function and meet its authorized purpose. If at any time it is concluded that the usefulness of the authorized project will be negatively impacted, any further evaluation should be terminated and the requester notified. Section 408 permission will not be granted for a proposed alteration that would have an effect of deauthorizing a USACE project or eliminating an authorized project purpose.

(2) Injurious to the Public Interest. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. Evaluation of the probable impacts that the proposed alteration to the USACE project may have on the public interest requires a careful weighing of all those factors that are relevant in each particular case. The benefits that reasonably may be expected to accrue from the proposal must be compared against its reasonably foreseeable detriments. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks. If the potential detriments are found to outweigh the potential benefits, then it may be determined that the proposed alteration is injurious to the public interest. Factors that may be relevant to the public interest depend upon the type of USACE project being altered and may include, but are not limited to, such things as conservation, economic development, historic properties, cultural resources, environmental impacts, water supply, water quality, flood hazards, floodplains, residual risk, induced damages, navigation, shore erosion or accretion, and recreation. This evaluation should consider information received from key stakeholders, interested parties, tribes, agencies, and the public. As a general rule, proposed alterations that will result in substantial adverse changes in water surface profiles will not be approved. The Regulatory Program also conducts a public interest review and cannot authorize activities that are “contrary to the public interest.” When an activity requires both a Regulatory review and Section 408 review, Regulatory and the office conducting the Section 408 review should closely coordinate and leverage any information to inform their respective analyses to ensure efficiency and consistency, to the extent appropriate.

(3) Legal and Policy Compliance. A determination will be made by the appropriate Office of Counsel as to whether the request meets all legal and policy requirements.

b. **Public Notice.** Districts must make diligent efforts to solicit public input as part of the decision-making process for a Section 408 request. Except for requests that meet an established categorical permission (where a public notice is issued as part of the establishment of the categorical permission), districts should issue a public notice for all Section 408 requests advising interested parties of the proposed alteration for which permission is sought and soliciting information necessary to inform USACE's evaluation and review. At a minimum, public notices should contain the requester, a description of the alteration being proposed, and the location of the alteration. As such, this public notice must be circulated to the public by methods deemed appropriate by the district (e.g., websites, email, social media, or media outlets) as early in the evaluation of a proposed alteration as possible to generate meaningful public and agency input to inform the evaluation and decision-making processes. Because input solicited through the public notice process can inform various aspects of the Section 408 review, such as the public interest determination, environmental compliance, Executive Order 11988, informing navigation stakeholders of alterations located in inland and intracoastal waterways, Section 214 funding agreements, and corresponding Regulatory standard individual permit applications, all effort should be made to ensure the public notice is developed and coordinated in a manner that helps maximize the value and use of the input received, and reduces the potential for issuing multiple public notices for different purposes. Likewise, for those Section 408 requests in which another federal agency is the lead federal agency, districts should coordinate with the lead agency to issue concurrent or joint public notices, when feasible and appropriate. The comment period associated with the public notice should generally be no more than 30 calendar days, but the comment period may deviate from this guideline in order to satisfy multiple purposes (i.e., 60-day comment period for a draft EIS) or to facilitate a joint public notice with another federal agency. Section 408 requests for which an environmental assessment (EA) is prepared or a categorical exclusion is used, draft NEPA compliance documents should not be circulated for public comment, except in rare circumstances. Instead, this public notice soliciting input will serve as the method of involving the public in the NEPA process that is required by 40 CFR 1501.4(e)(1). Environmental compliance may require other consultation and public engagement activities beyond a basic public notice. See Appendix D for more information on environmental compliance.

c. **USACE Review Plan.** The review of each Section 408 request will be conducted in conjunction with a review plan. Districts should ensure requesters understand the review requirements as early in the process as possible. A review plan will define the USACE resource requirements and procedures of how the review and decision for the Section 408 request will be conducted and rendered, respectively. **The USACE review team will be subject matter experts based on expertise, experience, and skills, from multiple disciplines as necessary to ensure a comprehensive review.** If the requester is not the non-federal sponsor, the review plan must also include opportunities for the non-federal sponsor to provide input on potential impacts to their responsibilities throughout the review process. Districts are encouraged to review information submitted by requesters as the review plan is being finalized, but no final Section 408 decision will be rendered without an approved review plan in place. Section 408 review plans do not

have to be posted on the internet. If a SAR is required, districts and divisions may use discretion to post the SAR report on the district or division website. If the decision is made to post the SAR report, districts and/or divisions will ensure appropriate protection of sensitive or security related information when posting the SAR report.

(1) For categorical permissions, the review and validation process is established and documented as part of the creation of the categorical permission; therefore, no separate review plan is needed. Reference Appendix C for additional information for categorical permissions.

(2) Districts have the option to develop an overarching review plan, called a **Procedural Review Plan**, that establishes the review procedures to be used for Section 408 requests similar in nature and that have similar impacts and do not require a Safety Assurance Review (SAR), reference paragraph 12.c.(4). Procedural Review Plans are approved by the Division Commander; however, the Division Commander may delegate signature authority for the Procedural Review Plan to either the Division Regional Programs Director or the Division Regional Business Director. Districts must review and update approved Procedural Review Plans on an annual basis. The division must reapprove the Procedural Review Plans if there are any significant changes in scope or process.

(3) Districts must develop alteration-specific review plans for Section 408 requests that are not covered by a categorical permission or Procedural Review Plan. Section 408 requests using the multi-phased review approach, reference paragraph 10.c., or requiring a **SAR, must have an alteration-specific review plan**. If the multi-phased review approach is being used, documentation of established milestones will be managed in the district's review plan for the Section 408 request. Milestones can be adjusted as part of the process for updating the review plan. The decision-maker for the Section 408 request, reference paragraph 8, will be the approver of alteration-specific review plans. For example, if the decision-maker is the Division Commander, the Division Commander or the Division Commander's designee must approve the review plan. The Division Commander may delegate signature authority for the review plan to either the Division Programs Director or the Division Regional Business Director. If the Section 408 is to be approved by the District Commander, the District Commander must approve the review plan and so on. The division may choose to approve alteration-specific review plans that could be approved at the district level. Approved alteration-specific review plans must be updated as needed; however, if there are any significant changes in scope or process of the review, then the review plan must be reapproved at the appropriate approval level. **The Review Management Organization (RMO) responsibilities can be at the level in which the Section 408 decision is made, with the exception of Section 408 requests that require a SAR, reference paragraph 12.c.(4). See reference A.40 for RMO responsibilities.**

(4) The district Chief of Engineering will refer to reference A.40, or subsequent policy, to determine if a SAR is required for a proposed alteration. For alterations involving a levee or dam, this decision will be made in consultation with the district Dam Safety Officer or Levee Safety Officer when they are not the same person as the Chief of Engineering. If the district

determines a SAR is required, an alteration-specific review plan must be developed and the Risk Management Center (RMC) will be assigned as the RMO for the entire Section 408 review including the SAR. The final alteration-specific review plan and SAR review plan must be endorsed by the RMC and approved by the Division Commander or the Division Commander's designee. The Division Commander may delegate signature authority for the review plan to either the Division Regional Programs Director or the Division Regional Business Director. The district will work with the requester in the development of the review plan for the SAR. The district will include the requester's SAR review plan as an appendix to the USACE alteration-specific review plan.

13. Overall Process. The overall USACE review process for Section 408 requests involves four main steps: completeness determination (reference paragraph 14); review and decision (reference paragraph 15); final decision notification (reference paragraph 16); and construction oversight (reference paragraph 17). All information submitted by the requesters should be transmitted to the appropriate USACE district office having jurisdiction over the USACE project being altered.

a. The first submittal of information to the USACE district office should have a cover letter signed by the entity requesting the Section 408 permission.

b. Submittals may be accepted electronically (such as by email or file transfer) or by hard copy. When the initial submittal is received, the district will create a database entry for that request, including the assignment of a unique identifier (to be automatically generated by the Section 408 database). The unique identifier will be used for tracking purposes throughout the entire Section 408 request process and will be referenced in all correspondence with the requester.

c. USACE will provide timely responses to requesters regardless of the type of Section 408 request or the stage of the review. Districts and divisions should prioritize work in a manner to support timely responses and decisions (and within the timelines specified in paragraphs 14 and 15) to the maximum extent practicable.

d. Written notifications by districts to requesters can be provided by the district electronically or by hardcopy, depending on the preference of the requester. Districts will tailor content of the written notifications to each given situation. See Appendix J for example letters to requesters.

e. At any time in the process, a requester may choose to withdraw their Section 408 request in writing. In this case, the district will record the date of withdrawal in the Section 408 database.

f. For Section 408 requests involving funding agreements, the time required to develop and execute funding agreements, reference paragraph 7.g., themselves will not be subject to the

notification timelines referenced in paragraphs 14 and 15. The districts will ensure timely responses and engagement in developing and executing funding agreements.

g. The written notifications to requesters may be issued and signed by the Section 408 Coordinator or other signatory designated by the District Commander, except for final decision notifications. Final decision notifications for validation of categorical permissions, single-phased decisions, or multi-phased review decisions will follow appropriate decision processes as specified in paragraph 8.

14. Step 1: Completeness Determination. This first part of the process involves the requester providing information to the district in one or more submittals in order to satisfy all the basic requirements of a complete Section 408 request as indicated in paragraph 11. When a requester submits information to a district office, districts are expected to provide a written completeness determination within 30 days of receipt. If the district determines a submittal is not complete, the district will provide the requester a written notification within 30 days of receipt, providing a description of what information is required in order for the submittal to be complete. The 30 day timeline for a completeness determination is then restarted upon any subsequent submittals of information. A submittal will be determined complete and therefore initiating the 90-day review and decision step (reference paragraph 15) when it meets one of the following scenarios:

a. For categorical permissions, information submitted by the requester will be considered complete when the information provided demonstrates the proposed alteration appears to meet the conditions of an established categorical permission. If the district can validate the use of the categorical permission based on the information in the submittal of information within 30 days of receipt, then the district can proceed and grant permission under the categorical permission and notify the requester in lieu of providing a completeness determination letter. If not, then the 90-day review and decision step will be initiated with the district providing a written notification that the submittal seeking authorization under a categorical permission is complete.

b. For requests using the multi-phased review approach, a completeness determination will be done on each milestone submittal. The requirements to determine what information is required for each milestone should be pre-determined and planned by agreement between the district and requester. When a district issues a written notification that a milestone is complete, that will initiate the 90-day review and decision step for that milestone.

c. For requests intended for a single-phased review, a submittal will be determined complete when all the basic requirements, reference paragraph 11, has been submitted. When a district issues a written notification that all basic requirements have been submitted, that will initiate the 90-day review and decision step for that Section 408 request.

d. If after evaluating the information provided by a requester the district determines that processes in this EC do not apply, the district will provide the requester a written notification within 30 days of receipt of the information with a description of why this EC would not apply

and any other recommendations for the requester's next course of action, if needed.

15. Step 2: USACE Review and Decision. During this step, USACE will evaluate the information provided for the completeness determination following the review requirements in paragraph 12. This second step of the process results in USACE providing a final decision for either validating use of a categorical permission; a specific milestone; or a complete Section 408 request. Approval of the use of a categorical permission or a complete single-phase Section 408 request means that the requester can proceed to construction of the alteration, subject to specified conditions. Approval of a specific milestone results in the requester proceeding to the next milestone, unless the submittal is the final milestone. Approval of the final milestone constitutes approval of the entire Section 408 request; must be rendered by the appropriate Section 408 decision-maker (reference paragraph 8); and results in the requester being able to proceed to construction of the alteration, subject to specified conditions. Approved alterations for construction must result in a fully functional element once construction is complete.

a. Timeline for Review and Final Decision. A final decision will be provided by USACE to the requester within 90 days from the date the completeness determination was made by the district, unless one of the following stipulations apply. This 90-day timeframe is inclusive of the time needed for division review and decision, if required, and issuance of the final notification (reference paragraph 16).

(1) If a final decision cannot be made within 90 days, the district will provide a written notification to the requester with an estimated decision date. If the decision date extends beyond 120 days from a completeness determination, the district will send a memorandum through the Division Commander to the Director of Civil Works with a description of the Section 408 request and a justification for the decision extending beyond 120 days. HQUSACE will provide this information to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(2) There may be cases during the USACE review and decision phase in which it is identified that more information is needed to render a final decision. If the additional information is needed to support or clarify the pending Section 408 request, the coordination for obtaining the additional information can be done informally between the district and requester. The 90-day timeframe for the final decision is not paused during this informal coordination. If this coordination causes the USACE review and decision timeframe to extend beyond 90 days, follow procedures in paragraph 15.a.(1). If the need for additional information is triggered by a change in the scope or scale of the alteration to the extent that it would require significant new information, such as new technical analyses, development of supplemental/re-initiation of environmental compliance, and/or additional real estate review, the USACE review should stop and the request should be withdrawn. This action will cease the 90-day review and decision timeline. The district then must provide written notification to the requester that a new request should be submitted to reflect the change in scope of the alteration. When the requester submits all of the required information, a new completeness determination will be made (subject to the

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30-day timeline in paragraph 14) and the 90-day timeline will be restarted from the date of the new completeness determination.

b. Summary of Findings. The district will create a Summary of Findings (content and format scalable to the request) to serve as the decision document to summarize the administrative record, including the review findings and the basis for the final Section 408 decision. A Summary of Findings does not have to be developed for each individual milestone for the multi-phased review approach, but is required when the final milestone is reviewed and must summarize the entire Section 408 decision collectively. The Summary of Findings must include the following, as a minimum:

- (1) USACE project description and authorization;
- (2) Brief description of the request;
- (3) Description and reference to the review plan process followed, including SAR determination;
- (4) Summary of rationale and conclusions for recommending approval or denial, including determinations for the impact to the usefulness of the USACE project; whether or not the alteration is considered integral to the USACE project; and impacts to the public interest;
- (5) Certification of legal sufficiency by Office of Counsel;
- (6) Certification by the District Chief of Real Estate Division that all real property required for the proposed alteration has been identified; the identified real property is sufficient to support the alteration; and the proposed alteration will not adversely affect the USACE project's real property. If the proposed alteration will be integral to the functioning of the USACE project, the District Chief of Real Estate Division must also certify that standard estates are being used for the acquisition of any new real property that will become or may become a part of the USACE project, or that the requester is seeking approval to use non-standard estates (see paragraph 11.e.);
- (7) Description of any related, ongoing USACE studies (if applicable), including how the proposed alteration may impact those studies;
- (8) Summary of input from the non-federal sponsor, if the non-federal sponsor is not the requester demonstrating that the district provided opportunity for the non-federal sponsor to review and evaluate the proposed alteration along with the technical analysis and design, environmental effects, real estate requirements, and potential O&M effects and that the district sought to incorporate the non-federal sponsors feedback and concerns into the decision-making process;

(9) Summary of any changes to the O&M manual;

(10) If the district has determined that USACE would assume O&M responsibilities as part of its responsibilities for the USACE project, include the rationale and any anticipated increase in USACE O&M costs or if changes to O&M requirements would have to be implemented by the non-federal sponsor, documentation that the non-federal sponsor has agreed to those changes to their responsibilities;

(11) The NEPA Finding of No Significant Impact or Record of Decision, if the NEPA decision has not already been documented (such as applicability of a categorical exclusion, validation of a categorical permission, or an EIS led by another federal agency); and,

(12) Any additional final conclusions or information, including any associated controversial issues.

16. Step 3: Final Decision Notification. The district is responsible for providing a written decision signed by the USACE deciding official to the requester for all final Section 408 decisions, regardless of the decision level. This written decision must be issued within the 90-day review and decision timeline.

a. For those requests in which the non-federal sponsor is not the requester, USACE will coordinate the final decision with the non-federal sponsor.

b. If the final decision is to deny the request, the requester will be advised in writing as to the reason(s) for denial.

c. If the final decision is to approve the Section 408 request, the district will provide a written approval document. For cases involving a categorical permission, the written approval will be validation that the categorical permission is applicable.

d. In situations in which the district is evaluating a Regulatory standard individual permit application and Section 408 combined, reference paragraph 7.h.(4) and 7.h.(5), the district will ensure the final Section 408 decision letter and associated conditions be part of the single transmittal letter with the Regulatory permit.

e. Standard Terms and Conditions. At a minimum, the standard terms and conditions in Appendix K, except where noted as optional, must be included in all Section 408 approval notifications, including validation of use of a categorical permission. Districts and divisions may include any necessary special conditions as requirements for approval.

17. Step 4: Construction Oversight. District costs for construction oversight and closeout should be incorporated as part of review costs for the Section 408 request.

a. Construction oversight. The district should develop procedures for monitoring construction activities, including reviewing construction documentation at different phases if necessary, for the approved Section 408 request scaled to the complexity of the alteration to ensure the alteration is constructed in a manner consistent with the permission conditions. If a SAR was required, there may be SAR activities that carry through during construction. Any concerns regarding construction should be directed to the Section 408 requester (and the non-federal sponsor if applicable) for resolution.

b. As-builts. Plans and specifications with amendments during construction showing alterations as finally constructed will be furnished by the Section 408 requester after completion of the work if required by the district. As-builts must be provided to the district and the non-federal sponsor (if the requester is not the non-federal sponsor) within 180 days of construction completion.

c. O&M Manual Updates. The Section 408 requester is required to provide the district with sufficient information to update the portions of the USACE issued O&M manual to reflect changes as a result of the constructed alteration if necessary. If the requester was not the non-federal sponsor, the non-federal sponsor must be given an opportunity to review all proposed changes to the O&M manual. O&M manual updates may range from simple removal and replacement of paragraphs or entirely new manuals depending on the scope and complexity of the alteration. The district is responsible for reviewing and approving any updates needed to the O&M manual as a result of the alteration. At a minimum, the update should include a description of the new features, reference to the Section 408 approvals, as-builts, and instructions regarding O&M of any new features not included in the existing manual. Reference A.32 and A.34 for information on O&M manuals.

d. Post Construction Closeout. District may need to conduct a post construction on-site inspection of the completed alteration to document final condition of the USACE project.

18. Enforcement.

a. Inspection and monitoring of approved and in-place alterations will be incorporated into the inspection and oversight procedures for that specific USACE project.

b. The policy of USACE is to pursue enforcement and correction of unauthorized alterations. If an unauthorized alteration is discovered, the district, after consulting with the Offices of Counsel and Real Estate, will take the appropriate steps to remedy the unauthorized alteration. Coordination with the district Regulatory office should also occur so it can be determined if any action should be taken with respect to Section 10/404/103. Regulatory funds cannot be used for enforcement and correction of unauthorized alterations. Specific enforcement steps the district takes will depend on the particular nature of the unauthorized alteration and whether the unauthorized alteration is located on project boundaries where a non-federal sponsor holds the land rights for operations and maintenance. Non-federal sponsors with operations and

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Water Resource Policies and Authorities
POLICY AND PROCEDURAL GUIDANCE FOR PROCESSING REQUESTS
TO ALTER US ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS
PURSUANT TO 33 USC 408

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