

SECTION 408 PERMISSION – MODIFICATIONS TO CIVIL WORKS PROJECTS

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Los Angeles District

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PRESENTATION OUTLINE



Phil Serpa

- USACE Permission, Permit and Outgrant
- Section 408 Authority & Corps Policy
- Section 408 Geographical Limitations
- Standard 408 Review Time

Clayton Lay, M.S.

- Section 408 Application Submittal Requirements
- Emergency Section 408 Permission
- WRDA 214 Agreements

Jenniffer Oroxon, M.S.

- Submittal Checklist 408 Permission

John Lei, P.E.

- Resubmittal and Time Extension Details

Priyo Majumdar, P.E.

- Environmental Requirements Details

Phil Serpa

- Questions



**USACE Permission, Permits and Outgrant
Section 408 Authority & Corps Policy**

By

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USACE PERMITS: SECTION 408 PERMISSION, 404 PERMIT, SECTION 10 PERMIT, & OUTGRANTS



Section 408 Permission – Rivers and Harbors Act Section 408 permission of 1899 (33 USC 408) applies to permanent or temporary actions that build upon, alter, improve, move, occupy, or otherwise could affect an authorized USACE Civil Works projects. Established in Section 14 of the Rivers and Harbors Act of 1899, which has since been amended several times, and is codified at 33 U.S.C. 408—the section of U.S. Code that gives the program its name.

Section 404 Permit - Discharges of dredged or fill material into all Waters of the U.S. (aka, WOTUS). Current regulations define WOTUS to include tidal waters, rivers, streams.

Section 10 - any work or structures in navigable waters. For SPL, those are tidal waters (oceans, bays, coastal shores) and major rivers such as the Colorado River.

Outgrant - Real Property of USA – US Army Corps manages surface rights or Fee Simple Titles on behalf of the USA - Outgrant (License, Easement, Lease, etc.)



SECTION 408 AUTHORITY & POLICY



Section 14 of the Rivers and Harbors Act provides the Secretary of the Army authority to grant permission to alter a USACE Civil Works (CW) Project if

1. *It will not impair usefulness of the project* **12.1.a**
2. *It is not injurious to the public interest* **12.1.b**

“Alteration” is defined as:

- Actions that: build upon, alter, improve, move, occupy, or otherwise affect
- Temporary or permanent occupation or use
- Can be in, over, under, project boundaries

Governed by

Engineer Circular (EC) 1165-2-220, or most current EC and guidance document(s)

EC 1165-2-217, Review Policy for Civil Works

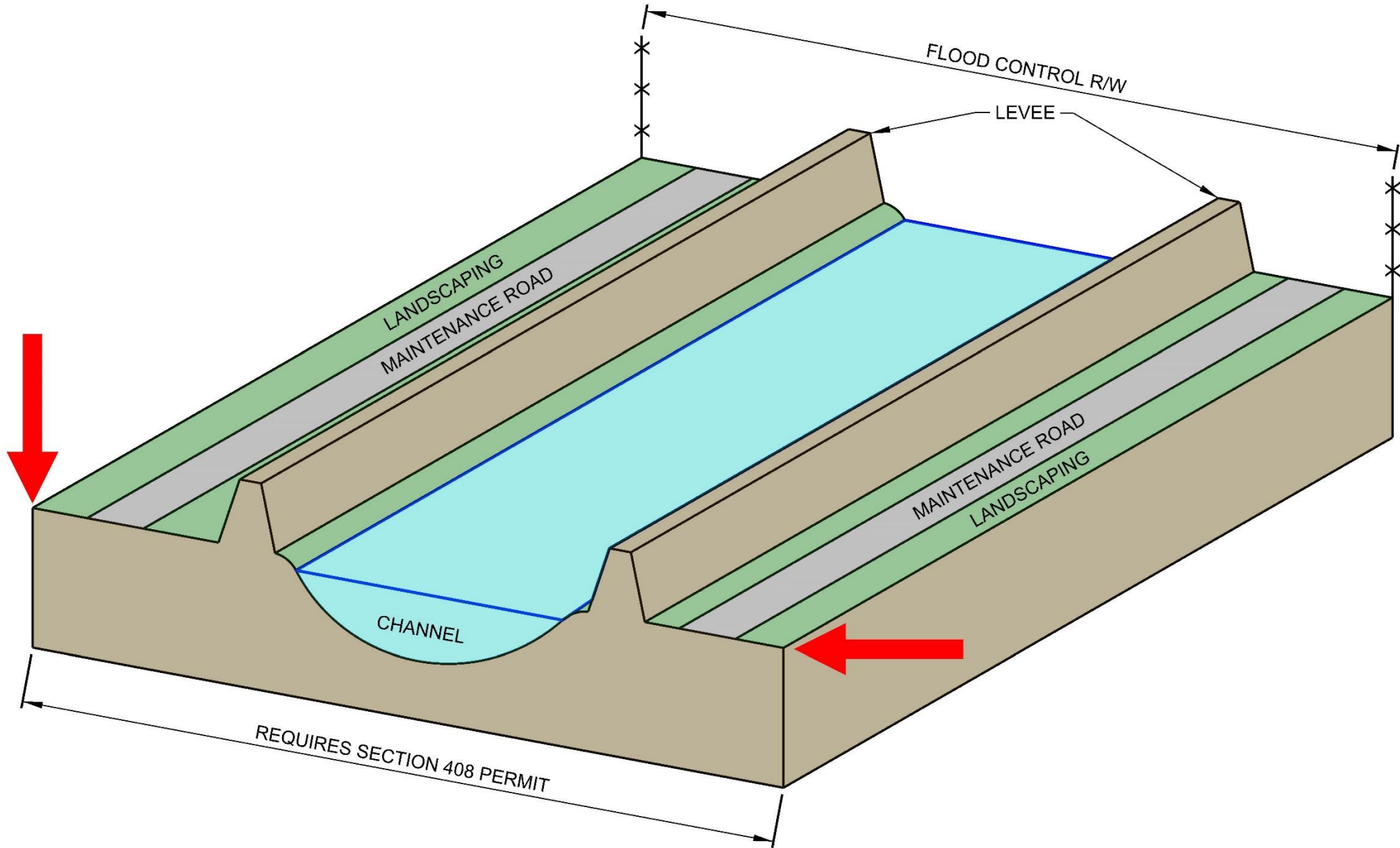
ER 405-1-12, Real Estate Handbook

ER 11102-401, Operations, Maintenance, Repair, Replacement, and Rehabilitation Manual

EC 405-1-11, Real Estate Acquisition



SECTION 408 GEOGRAPHICAL LIMITATIONS





SECTION 408 REVIEW AND DECISION STEPS



Step 1: Permission Inquiry:

To determine if a Section 408 permission or other USACE Regulatory permit is applicable for the proposed project.

Step 2: Pre-Application Meeting:

Provides a clear idea about Section 408 permission's policies and procedural guidance that the USACE follows.

Step 3: Pre-Submittal Meeting:

If the Section 408 team determines that the package is acceptable, then a **DOD SAFE link** will be provided.

Step 4: Application Completeness Determination:

30-day timeline for completeness determination; restarted upon any subsequent resubmittal of information.

Step 5: Application Evaluation & Decision:

The proposal will be evaluated for impacts to flood conveyance, structural integrity, operation and maintenance.

Step 6: Final Decision:

A decision will be issued within 90-days following the conclusion of completeness determination.

Step 7: Post-Permission Oversight:

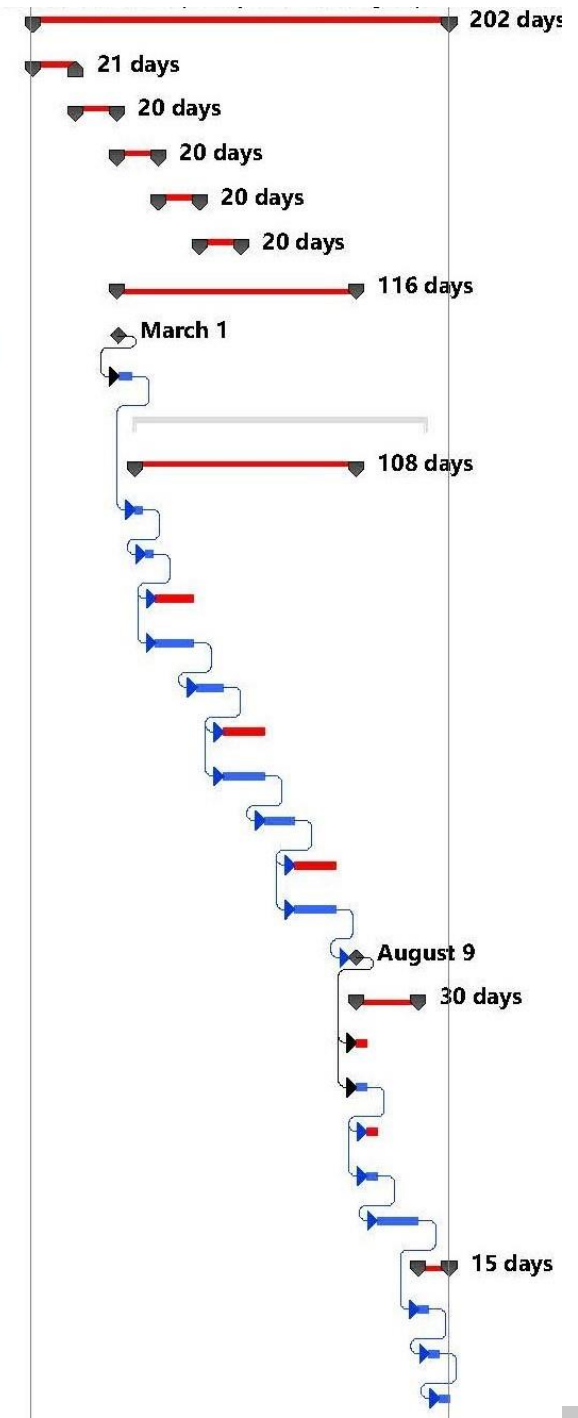
Construction shall begin within 24-months of an approved Section 408 Permission.

For detailed information, please visit our Website: <https://www.spl.usace.army.mil/Missions/Section-408-Permits/>



SECTION 408 PERMISSION PROCESSING TIME FRAME

	202 days	Jan 3	Oct 11
Initial Completeness Determination -30 day cycle Start (para 14.1)	21 days	Jan 3	Jan 31
Requester action ----- for Resubmittal (Review-1)	20 days	Feb 1	Feb 28
Completeness Determination (Review -1) -30 day cycle Start	20 days	Mar 1	Mar 28
Requester action----- for Resubmittal (Review-1)	20 days	Mar 29	Apr 25
Review-2 Completeness Determination 30 day cycle Start	20 days	Apr 26	May 23
NEPA Compliance Review -start after requester 1st Resubmittal	116 days	Mar 1	Aug 9
Beginning of NEPA Compliance process	1 day	Mar 1	Mar 1
Study and Validated Cultural Resource Report	7 days	Mar 2	Mar 10
US Endangered Species Act (Section 7), if needed-	141 days	Mar 13	Sep 25
National Historic Preservation Act (Section 106)	108 days	Mar 13	Aug 9
Prepare Letter for NSPH for tribal and interesting parties list	5 days	Mar 13	Mar 17
Routing & Send letter to NSPH	5 days	Mar 20	Mar 24
Receive tribal and interest parties list from NAHC	20 days	Mar 27	Apr 21
Prepare Tribal letter based on NAHC list for tribal & interested parties	20 days	Mar 27	Apr 21
Routing & Send Tribal & interested Parties letter	14 days	Apr 24	May 11
Receive Concurrence from Tribal communities	20 days	May 12	Jun 8
Prepare SHPO Letter based on Tribal & interested Parties Input	20 days	May 12	Jun 8
Routing and send SHPO Letter	14 days	Jun 9	Jun 28
Receive Concurrence from SHPO Letter	20 days	Jun 29	Jul 26
Prepare MFR	20 days	Jun 29	Jul 26
Routing and Approved MFR	10 days	Jul 27	Aug 9
Completeness Determination Completed -90 days Cycle Start	30 days	Aug 10	Sep 20
Prepare Summary of finding	5 days	Aug 10	Aug 16
Prepare Permission Instrument	5 days	Aug 10	Aug 16
Engineering ATR Review for comply EC -220	5 days	Aug 17	Aug 23
Real Estate Review & Certificate	5 days	Aug 17	Aug 23
Office of Consul Policy and Compliance review and Certificate	20 days	Aug 24	Sep 20
Routing Process for Final Decision (part of 90 days Cycle)	15 days	Sep 21	Oct 11
Routing- Applicant to review unexecuted permit	5 days	Sep 21	Sep 27
Routing - 408 Permit maker to executed permit	5 days	Sep 28	Oct 4
Update- Closeout national Data base	5 days	Oct 5	Oct 11





SECTION 408 TIMELINE



408 Permission follows two time lines:

1. 30-day cycle of completeness determination of Section 408 request (comments and responses).
2. Followed by, 90-day cycle of Review & Decision step.

If responses from applicant are incomplete and/or late, then there could be multiple 30-day cycles.

Prior to the current complete package submittal requirements, we used to have 10-12 30-day review cycles.

To reduce review cycles we have implemented:

1. Active website
2. Yearly training
3. Pre-Application meeting and Pre-Submittal meeting

Now, we have an average of 3-4 30-day review cycles. However, our 90-day Review & Decision step shall not have multiple review cycles.



Section 408 Submittal Requirements
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SECTION 408 SUBMITTAL REQUIREMENTS



A Complete Application is a Must

- A signed SPL Form 25 Application and checklists
- Accurate Requester and Third Party Permittee, if applicable, identified on application

Statement of No Objection if Requester is not the Non-Federal Sponsor (NFS) – 11.a

- To ensure NFS is aware of the Section 408 request and does not object to the request

Technical Analysis and Design – 11.c

- USACE Standards: Structural, Geotechnical, H&H and Levee Safety
 - Caltrans, AWWA, and/or County standards are **NOT** acceptable.
 - *For alteration involving professional design services, the requester will be required to submit a QC Certification. (11.c.3)*

Environmental Compliance – 11.d

- A cultural report will be required to meet application submittal completeness
- *Section 408 permission cannot be granted until 401 Water Quality Certification is received or waived.*



SECTION 408 SUBMITTAL REQUIREMENTS



Real Estate – 11.e

- PIMS report, Deed, Easement & Lease documents.
- Maps Showing Right of Way or Easement related to proposed alteration
- Real Estate requirements are not the same for every permission; please consult the real estate submittal checklist

Update of OMRR&R Requirements – 11.f

- If the requester is not a Non-Federal Sponsor, then a written letter will be required that Non-Federal Sponsor will assume full responsibility for the Changed OMRR&R. Must be submitted prior to a 408 permission is issued

Public Notice Requirement

- All Section 408 requests will require a public notice: <https://www.spl.usace.army.mil/Media/Public-Notices/>

Pre-Application and Pre-Submittal Meetings

- Requester should coordinate with SPL on information requirements prior to submission



SECTION 408 SUBMITTAL REQUIREMENTS



Non-Federal Sponsor/ Requester Role

1. Application, Letters and Checklist
2. Technical Review Analysis
3. Environmental Analysis
4. Real Estate Analysis
5. Operations and Maintenance
6. Safety Assurance Review Plan (SAR)
7. Funding (Section 214 of WRDA 2000)

USACE Role

1. National Database Entry
2. Review Submittal
3. Final Approval or Denial of Request
4. Process Section 214 of WRDA Request



EMERGENCY PERMISSION



Operations and Maintenance (O&M) activities, including any flood fighting and/or other emergency activities, specified in a USACE-issued **O&M manual** do not require Section 408 Permission.

Per EC 1165-02-220

Historic and Cultural Resources. Specific procedures to comply with Section 106 of the NHPA during a disaster or emergency are located at 36 CFR 800.12, “Emergency Situations.”

36 CFR 800.12.b

Alternatives to agency procedures. In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster, or emergency declared by **the President**, a tribal government, or **the Governor of a State**, or another immediate threat to life or property.



FUNDING AGREEMENTS – SECTION 214 WRDA

Section 214, as amended (33 USC 2352), provides that the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-federal public entity, to expedite the permission review process through **Improved coordination and communication.**



Voluntary



Additional Pre-app coordination, Enhanced processing procedures, and continuation of reviews through budget shortfalls.



Funding agreements are not a shortcut for reviews but provide enhanced procedures/follow-up/coordination



408 Submittal Checklist
By
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SECTION 408 SUBMITTAL



Submittal Folder Structure

- A - General
- B - Technical
- C - Operation and Maintenance
- D - Real Estate
- E - Environmental Compliance

A - General Folder:

1. Section 408 Application, No Objection Letter signed by the Agency's binding officer.
2. As-Built plan with Red Marking to show where this alteration will happen.
3. Checklist & Quality Control Certificate.
4. Construction Plan and Related Specification.
5. **Please don't add any Picture, ARC GIS & CEQA documents.**



408 PERMISSION APPLICATION - SPL FORM 25



(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)			
1. PERMIT APPLICATION NO.	2. REFERENCE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
(ITEMS BELOW TO BE FILLED BY APPLICANT)			
5. AGENCY RESPONSIBLE for O&M of Feature (Permit will be issued to ...) Agency/Company – Represent and warrant that s/he is duly authorized to execute and bind the Agency Address		6. PERMIT APPLICANT / DESIGNEE Name – Title –	
		7. PERMIT APPLICANT POC –	
		Phone No. –	
		E-mail Address –	
8. THIRD-PARTY PERMITTEE (If applicable):			
NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY			
9. PROJECT NAME OR TITLE			
10. NAME OF STREAM, RIVER, or WATERBODY			
11. CORPS REFERENCE STATION, RIVER MILE, or nearby LANDMARK			
12. LOCATION OF PROJECT			
Latitude: °N		Longitude: °W	
13. PROJECT DESCRIPTION			



SECTION 408 SUBMITTAL



B - Technical Folder:

1. H&H - Hydraulic Analysis model, report, calculation, etc.; not just a report.
2. Geo-Tech - A Drilling Plan or any existing Geotech Report or Geotech Engineer Memo.
3. Structural - Structural Plans and USACE standard calculation.

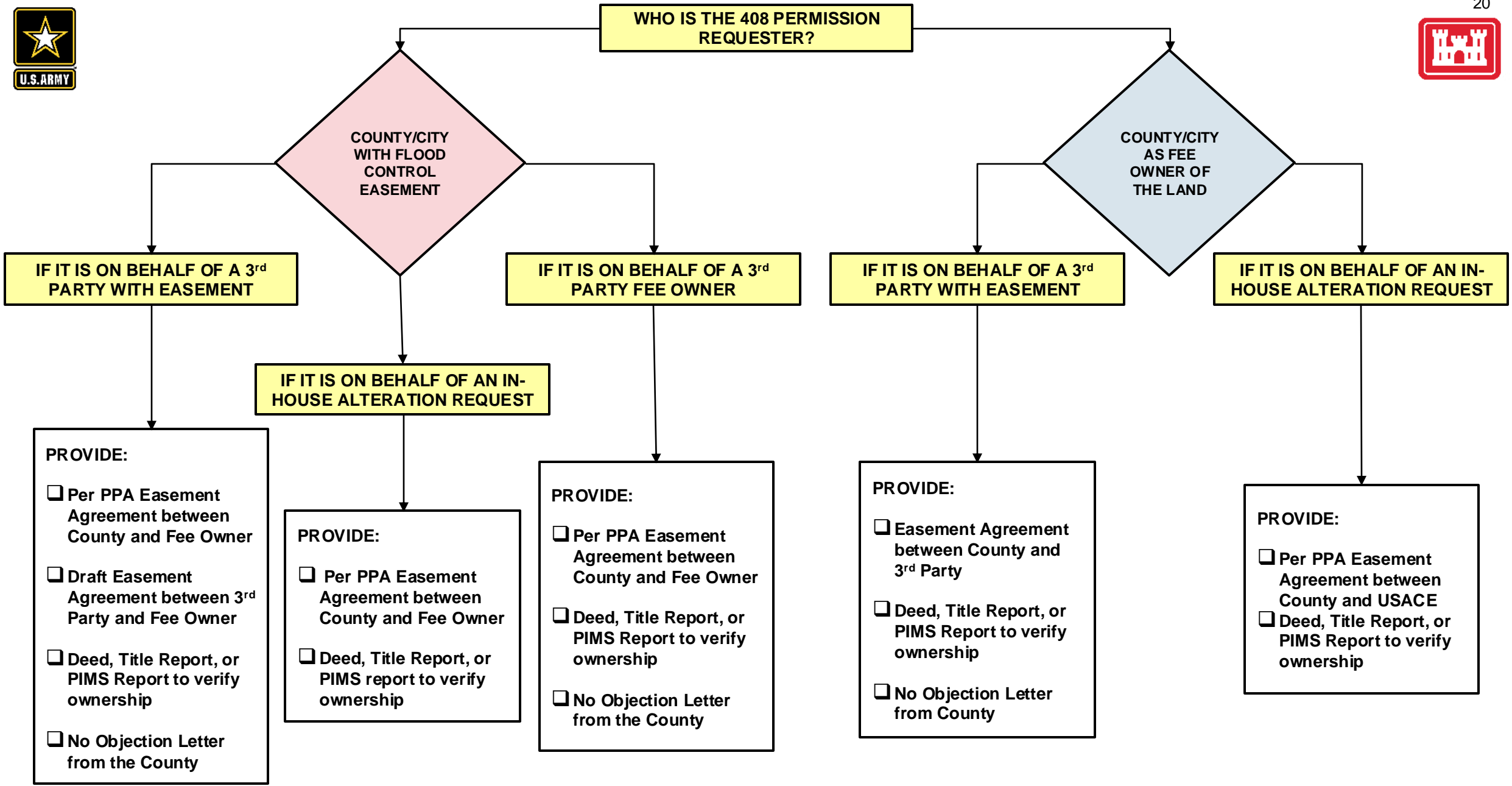
If any of these requirements don't apply then provide an Executive Summary *

C - Operation and Maintenance Folder (if applicable):

1. O&M Letter signed by the Agency's binding Officer or a draft copy of the O&M agreement.
2. O&M manual for the proposed alteration with contact names, email and phone required (if USACE maintains the facility).

D - Real Estate Folder:

1. PIMS Report or Deed or Easement document or Draft agreements (this is a must item).
2. R.O.W. map showing the alteration description.



NOTE: in this flow chart County represents Non-Federal Sponsor, City, Project Partners and others. Please check off boxes of documents provided when completing Section 408 Permission Application.



SECTION 408 SUBMITTAL



E - Environmental Compliance Folder :

1. Environmental Review Checklist.
2. Cultural Resources Report.
3. Any CEQA, NEPA documents, or other environmental documents (if available).
4. MAPS, KMZ and recent pictures.
5. Please **don't** add any ARC GIS documents.



Resubmittal Review Details
By
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RESUBMITTAL REQUIREMENT



A: [Review 20XX-00XX_ Reviews.xlsx](#)

- Requester - Please open and review the spreadsheets.
- Make sure all the reviewers' comments are addressed by the Requester/Third Party Permittee.
- Review resubmittal documents for Quality Control purposes.
- Request a link for resubmittal to be uploaded to the DoD SAFE Site.

*For alteration involving professional design services, the requester will be required to submit a QC Certification. **11.C.3.***

Remember it is your reputation on the line, not the third party's.

Resubmittal for Technical, Real Estate & Operation to:
John Lei @ John.Q.Lei@usace.army.mil and
cc - spl.408permits@usace.army.mil



408 PERMISSION TIME EXTENSION-REQUIREMENTS



To consider a time extension for an existing/approved Section 408 Permission, the following would be required:

1. **The schedule of construction.** No request will be processed until SPL receives this item.
2. **A letter from the permission applicant** (signatory of the permission). The letter needs to address:
 - a. Reason: **why this permission requires an extension?**
For Example: Funding issue, other permits, COVID 19, etc.
 - b. Requester to certify that there will be no change to the Section 408 activity's construction plans and calculation as approved.
3. **A letter from Engineer of Record**, confirming that there will be no changes in the executed conditions, construction plans, and calculations.
4. **A letter from Project Biologist** confirming that Environmental (NEPA) conditions have not changed.

****Certain permissions may not be extended if NEPA review was completed more than 5 years ago, and if environmental conditions have changed.****

Please send you request with all the items as listed to:
John Lei @ John.Q.Lei@usace.army.mil and
cc - spl.408permits@usace.army.mil



Environmental Review Details

By

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ENVIRONMENTAL LAWS AND REGULATIONS



A decision on a section 408 request (Rivers and Harbors Act, 1899) is a federal action subject to NEPA and other federal environmental and cultural resources compliance requirements.

Some of the key environmental laws and regulations for Section 408

1. National Environmental Policy Act (NEPA), 1969, as amended
2. National Historic Preservation Act (NHPA), 1966, as amended
3. Endangered Species Act (ESA), 1973, as amended
4. Clean Air Act, 1970, 1977, 1990, as amended
5. Clean Water Act, 1972, as amended
6. Noise Control Act, 1972, as amended
7. Magnuson-Stevens Fishery Conservation and Management Act (MSA), 1996, as amended
8. Fish and Wildlife Coordination Act, 1958, as amended
9. Migratory Bird Treaty Act, 1918, as amended
10. Executive Orders
 - i. Protection of Wetlands, Executive Order 11990; 1977.
 - ii. Floodplain Management, Executive Order 11988; 1977.



ENVIRONMENTAL LAWS AND REGULATIONS



1. National Environmental Policy Act (NEPA), 1969, as amended

- i. Categorical Exclusion (CE or CatEx) or
- ii. Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or
- iii. Environmental Impact Statement (EIS) and Record of Decision (ROD)

2. National Historic Preservation Act (NHPA), 1966, as amended

- i. Need Cultural Resource Report written by persons qualified per Secretary of Interior (SOI).
- ii. Template is available on our website.
- iii. Need to evaluate channel (Corps built features) for eligibility to be included in National Register of Historical Places (NRHP).
- iv. Consult with State Historic Preservation Officer (SHPO) – Corps does this.
- v. Consult with Tribes – Corps does this.
- vi. Cultural Resource Report – may take 3 months to more than a year.
- vii. Consultation with SHPO and Tribes – may take 2-4 months. Conditions are included in 408 permission.

3. Endangered Species Act (ESA), 1973, as amended

- i. Need Biological Assessment (BA) written by applicant
- ii. Consult with US Fish and Wildlife Service (USFWS)
- iii. Consult with National Marine Fisheries Service (NMFS)
- iv. USFWS/NMFS issue Biological Opinion (BO)
- v. Conditions in the BO are made part of 408 permission.



ENVIRONMENTAL LAWS AND REGULATIONS



4. **Clean Water Act, 1972**, as amended

Section 404 – jurisdictional wetlands, waters of the US (WOUS).

Processed by Corps Regulatory Division.

5. **Clean Air Act, 1970,1977,1990**, as amended

6. **Noise Control Act, 1972**, as amended

7. **Magnuson-Stevens Fishery Conservation and Management Act (MSA), 1996**

Concerned with effects to Essential Fish Habitat (EFH) from federal undertakings, e.g. 408 projects.

Consultation with National Marine Fisheries Service (NMFS).

8. **Fish and Wildlife Coordination Act, 1934**, as amended

9. **Migratory Bird Treaty Act, 1918**, as amended

10. **Rivers and Harbors Act, 1899**, as amended

Section 10 – navigable waters of the U.S.

Processed by Corps Regulatory Division.

11. 401 Water Quality Certification. This is processed by Regional Water Quality Control Board, and is independent of requiring 404 permit. Please provide details of construction site stormwater quality control methods, BMPs, NPDES permitting, SWPPP, etc.

Executive Orders

- i. Protection of Wetlands, Executive Order 11990 (1977).
- ii. Floodplain Management, Executive Order 11988 (1977).



ENVIRONMENTAL REQUIREMENTS – SPECIAL CONSIDERATIONS



1. Cultural Resource – NHPA Section 106
 - i. As part of the complete section 408 application package, a **cultural resource report** just for the 408 action will be required. This will usually include a boots-on-the-ground cultural survey.
 - ii. If another federal agency has completed NHPA Section 106 compliance (under their existing Programmatic Agreement with SHPO, or via standalone consultation), then:
 - a. Corps will consider designating that agency as lead for NHPA Section 106 for 408 action.
 - b. May require memo from that agency that a specific channel (Corps built feature) is exempted under their Programmatic Agreement (PA) if not explicit in the PA itself.
 - c. This way Corps will not have to do separate consultation – may save significant environmental review time.

2. Adoption of NEPA Document
 - i. If CatEx, EA or EIS is under preparation by another federal agency (e.g., Caltrans) - please ensure that scope of work, effects analysis, consultations, etc. specifically describe the 408 related work, Corps built features, and 408 permission requirements. This facilitates adoption of CatEx, EA or EIS if need be.
 - ii. If previously prepared NEPA document (CatEx determination memorandum, EA or EIS) covers the 408 activity in its entirety, then Corps will consider adopting that NEPA document.
 - iii. In the Environmental Review Checklist, please delineate the relationship between applicant, third party permittee, and federal agency preparing NEPA document.



ENVIRONMENTAL SUBMITTAL REQUIREMENTS



1. Clearly show the Corps/Flood Control right of way boundaries, and the proposed work within those boundaries.
2. In the application and checklist, please make sure that only the 408 work is described as the scope of work, and not just the larger project of which it is a part.
3. The checklist should be filled in as completely as possible. Simply referring to other documents while responding to specific items in the checklist increases the review time.
4. The biologist's comments and archaeologist's comments may or may not be provided at the same time.
5. If an action requires Regulatory permit (Section 404, Section 10, etc.) in addition to 408 permission, Corps' Regulatory Division may conduct the environmental review. In that case, communication on environmental matters would occur with Regulatory's Project Manager as well.



CONTACT INFORMATION



1. Do I need a 408 permission or not?

Visit: <https://www.spl.usace.army.mil/Missions/Permitting/> & send email to: SPLPermitInquiries@usace.army.mil

2. Request for a New Permission pre-application meeting:
spl.408permits@usace.army.mil with required documents.

3. Submit New Permission Application and Pre submittal meeting:
spl.408permits@usace.army.mil.

4. Technical, Real Estate & Operation Resubmittal:
John.Q.Lei@usace.army.mil and cc - spl.408permits@usace.army.mil.

5. Environmental Review Resubmittal:
Priyodarshi.Majumdar@usace.army.mil and cc - spl.408permits@usace.army.mil.

6. 408 permit 214 Agreement:
Phillip.J.Serpa@usace.army.mil and cc - spl.408permits@usace.army.mil.



SECTION 408 - MOD. OF CIVIL WORKS PROJECT



Questions ?