



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

**BASIC REQUIREMENTS TO INITIATE SECTION 408 REVIEW REQUEST**

**Purpose.** The purpose of this document is to provide guidance for private, public, tribal, or other federal entities (i.e., Requester) regarding the information the US Army Corps of Engineers (USACE) Norfolk District (District) needs to initiate a review pursuant to Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 USC 408 (Section 408) and 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*. This review is necessary to obtain permission from the Norfolk District for proposed alterations to any USACE federally authorized Civil Works project (USACE project).

**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 Norfolk District, USACE projects typically include federal navigation channels; flood and coastal risk management projects consisting of earthen or concrete dams, hurricane protection floodwalls, beach nourishment projects, levees, floodway canals or channels, spillways, support facilities, and reservoir pools, etc.; and ecosystem restoration projects consisting of oyster reefs, submerged aquatic vegetation beds, wetlands, etc. Routine operations and maintenance (O&M) activities specified in the O&M manual and performed by the non-Federal sponsor (NFS) or USACE do not require permission from USACE under Section 408.

**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.

**Requester.** A request for Section 408 permission can originate from a non-Federal sponsor (NFS) or an independent Requester. For USACE projects with a NFS, the Requester must either be the NFS or have the endorsement of the NFS via the form of a “Statement of No Objection” prior to a written request being submitted to USACE.

**Request.** In order for a Section 408 review request to be determined complete, it is recommended the Requester submit the following information for all requests to alter



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USACE projects within the Norfolk District. Requests must be in writing, signed, and submitted to the Norfolk District Section 408 Team Lead preferably via email (with attachments under 15MB) to [Nao.Section408@usace.army.mil](mailto:Nao.Section408@usace.army.mil) or via regular mail to this address:

Section 408 Coordinator  
Norfolk District, Operations Branch  
803 Front Street  
Norfolk, VA 23510

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 additional data, analyses, and documentation may be subject to change as the Section 408 request is developed and reviewed. The determination of the required information for each Section 408 request is led by the District.

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**(SEE EC PARAGRAPH 11 FOR MORE DETAILS):**

- 1) Requester Information. Provide Requester's contact information: name, business name (if applicable), mailing address, phone number, and email.
- 2) Authorized Agent. Provide applicable authorized agent's contact information: name, business name (if applicable), mailing address, phone number, and email.
- 3) Project Location Information. Provide the project's physical address or identifying parcel information (parcel/tax ID, lot no., etc.), latitude and longitude center coordinates (in decimal degrees), and vicinity or parcel map (at an extent showing referenced location in relation to adjacent parcels or named roads).
- 4) Statement of No Objection. For USACE projects with a NFS, a written "Statement of No Objection" from the NFS is required if the Requester is not the NFS. The NFS typically has operation and maintenance responsibilities; a cost-share investment in the USACE project; and/or holds the real property for the USACE project. The purpose of the "Statement of No Objection" is to document that the NFS 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. Requesters can ask the District office to facilitate coordination with and seek to obtain the "Statement of No Objection" from the NFS. Attachment A provides an example of the NFS "Statement of No Objection" letter, but this format is not required. If you do not know the NFS for the Federal project, please contact the Section 408 Coordinator at [Nao.Section408@usace.army.mil](mailto:Nao.Section408@usace.army.mil).



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- 5) USACE Project and Alteration Description. Basic requirements for a complete Section 408 submittal include the identification of the USACE project and a complete detailed description of the proposed alteration(s), including necessary drawings, sketches, maps, and plans. A map of USACE projects can be viewed on the Norfolk District 408 webpage: <https://www.nao.usace.army.mil/408Review/>
- For Federal Navigation Projects: Provide plans including the Federal project channel framework in relation to the proposed project limits. The National Channel Framework can be downloaded to include on project plans: <https://navigation.usace.army.mil/Survey/Framework> .
- 6) Environmental and Cultural Resources Compliance. A decision on a Section 408 request is a federal action subject to the National Environmental Policy Act (NEPA) and other federal environmental and cultural resources compliance requirements, such as Section 7 of the Endangered Species Act (ESA), Section 106 of the National Historic Preservation Act (NHPA), essential fish habitat (EFH) consultation, tribal consultation, Section 401 Water Quality Certification, Coastal Zone Management Act (CZMA), government-to-government tribal consultation, etc. 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, cultural resource surveys, etc. Provide any surveys, assessments or correspondence that has already been conducted with this request to provide efficiency and to avoid duplication of coordination efforts.
- 7) Technical Analysis and Design.
- a) The Requester is responsible for ensuring a proposed alteration meets current USACE design and construction standards. 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 for USACE to make a decision for a particular alteration request.
  - b) The District 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. The District 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 EC Appendix H for more details regarding the requirements of a hydrologic and hydraulics system analysis.



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- c) For alterations involving professional design services, the Requester will be required to submit a certification that the design underwent a quality control process.
  - d) If the District determines a Safety Assurance Review (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. The District will work with Requester to coordinate the development of the SAR review plan. See EC Paragraph 12.c.(4) for more details.
- 8) Real Estate Requirements. A description of the real property required to support the proposed alteration must be provided. Maps depicting existing USACE real property can be viewed at: <https://www.nao.usace.army.mil/408Review/> . Alterations within Norfolk District real property will likely require additional coordination and real estate agreements from the Norfolk District Real Estate Office which may occur outside of the Section 408 review.
- 9) 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 EC 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 NFS, must provide written documentation that the NFS 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 final 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 Norfolk District with sufficient information to update the portion of the O&M manual related to the approved alteration.
- 10) Section 221 of the Flood Control Act of 1970 or Section 204 of WRDA 1986. 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.



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ATTACHMENT A

EXAMPLE  
Non-Federal Sponsor Statement of No Objection

**SUBJECT:** Non-Federal Sponsor Statement of No Objection for the Section 408 Request to Alter US Army Corps of Engineers Civil Works Project Pursuant to Engineer Circular (EC) No. 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*, Paragraph 11(a).

**TO:** Norfolk District Section 408 Coordinator at [Nao.Section408@usace.army.mil](mailto:Nao.Section408@usace.army.mil)

The **<Name of Non-Federal Sponsor>** (Sponsor) is the non-Federal sponsor to the U.S. Army Corps of Engineers Norfolk District for the **<Name of USACE Federal 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 USACE. 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.

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Non-Federal Sponsor Printed Name

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Non-Federal Sponsor Signed Name

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Date