

**U.S. Army Corps of Engineers  
Southwestern Division  
Fort Worth District**

**Fort Worth District Procedural Review Plan  
Pursuant to 33 USC § 408**

APPROVED BY:



PETE G. PEREZ, P.E.  
Director, Regional Business Directorate

DEC 10 2019



**US Army Corps  
of Engineers**



**DEPARTMENT OF THE ARMY**  
U.S.ARMY CORPS OF ENGINEERS, SOUTHWESTERN DIVISION  
1100 COMMERCE STREET  
DALLAS, TEXAS 75242-1317

CESWD-RBT

DEC 10 2019

MEMORANDUM FOR Commander, Fort Worth District

SUBJECT: Fort Worth District Procedural Review Plan Pursuant to 33 USC Section 408

1. References:
  - a. CESWF-PEC- CI memorandum, subject as above, 11 September 2019.
  - b. 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, 10 September 2018.
  - c. CESWD-RBT memorandum, subject: Delegation of Authority for Section 408 Requests that require Division Commander Approval, 4 March 2019.
2. In accordance with 1.b. and c, I hereby approve the enclosed Procedural Review Plan (RP) for applicable 408 projects.
3. Please post the final approved RP with a copy of this memorandum to the District's public internet website. Prior to posting to the District website, the names of USACE employees should be removed.
4. The SWD points of contact for this action are Mr. Paul Komoroske, CESWD-RBT, at 817-565-6241 and Michael Southern at 918-669-7148

1 Encl

  
PETE G. PEREZ  
Regional Business Directorate



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT  
P.O. BOX 17300  
FORT WORTH, TX 76102-0300

11 SEP 2019

CESWF-PEC-CI

MEMORANDUM FOR Chief, Business Technical Division, U.S. Army Corps of Engineers Southwestern Division, (CESWD-RBT/Mr. Zalesak), 1100 Commerce Street, Suite 831, Dallas, Texas 75242-1317

SUBJECT: Fort Worth District Procedural Review Plan Pursuant to 33 USC Section 408

1. Reference Engineer Circular 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408, 10 September 2018.
2. Enclosed for your review and approval is the Fort Worth District Procedural Review Plan pursuant to 33 USC Section 408. The Procedural Review Plan was developed by the Fort Worth District in accordance with Engineer Circular 1165-2-220. It has undergone a District Quality Control review and has been informally reviewed by the Southwestern Division.
3. The Procedural Review Plan establishes the Fort Worth District procedures used for the review of Section 408 requests that are similar in nature and have similar impacts, and which do not require an alteration-specific review plan.
4. Please contact Mr. Jason Story, Section 408 Coordinator at (817) 886-1852 if you have any questions.

Encl

A handwritten signature in black ink, appearing to read "Kenneth N. Reed".

KENNETH N. REED, PMP  
Colonel, EN  
Commanding



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## i. References

The following is a list of references that the Fort Worth District (SWF) will consider in the review of Section 408 requests covered by this Procedural Review Plan (PRP). Other references that are not listed may be considered, if applicable.

- EC 1110-2-6066 Design of I-Walls, 1 April 2011
- 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, 10 September 2018
- EM 1110-1-1005 Control and Topographic Surveying, 1 January 2007
- EM 1110-1-1804 Geotechnical Investigations, 1 January 2001
- EM 1110-1-1904 Settlement Analysis, 30 September 1990
- EM 1110-2-1418 Channel Stability Assessment for Flood Control Projects, 31 October 1994
- EM 1110-2-1601 Hydraulic Design of Flood Control Channels, 1 July 1991/30 June 1994
- EM 1110-2-1619 Risk-Based Analysis for Flood Damage Reduction Studies, 1 August 1996
- EM 1110-2-1902 Slope Stability, 31 October 2003
- EM 1110-2-1906 Laboratory Soils Testing, 20 August 1986
- EM 1110-2-1913 Design and Construction of Levees, 30 April 2000
- EM 1110-2-1914 Design, Construction, and Maintenance of Relief Wells, 29 May 1992
- EM 1110-2-2002 Evaluation and Repair of Concrete Structures, 30 June 1995
- EM 1110-2-2007 Structural Design of Concrete-Lined Flood Control Channels, 30 April 1995
- EM 1110-2-2100 Stability Analysis of Concrete Structures, 1 December 2005
- EM 1110-2-2104 Strength Design for Reinforced-Concrete Hydraulic Structures, 20 August 2003
- EM 1110-2-2502 Retaining and Flood Walls, 29 September 1989
- EM 1110-2-2504 Sheet Pile Walls, 31 March 1994
- EM 1110-2-2902 Conduits, Culverts, and Pipes, 31 March 1998
- EP 1130-2-550 Recreation Operations and Maintenance Guidance and Procedures, 15 November 1996
- ER 405-1-12 Real Estate Handbook, 20 November 1985
- ER 500-1-1 Civil Emergency Management Program, 30 September 2001
- ER 1105-2-101 Risk Analysis for Flood Damage Reduction Studies, 3 January 2006
- ER 1110-2-1156 Safety of Dams – Policy and Procedures, 31 March 2014
- ER 1110-1-1807 Drilling in Earth Embankment Dams and Levees, 31 December 2014
- ER 1110-2-1942 Inspection, Monitoring, and Maintenance of Relief Wells, 25 September 1988
- ER 1130-2-406 Shoreline Management at Civil Works Projects, 31 October 1990
- ER 1130-2-540 Environmental Stewardship Operations and Maintenance Policies, 15 November 1996
- ER 1130-2-550 Recreation Operations and Maintenance Policies, 15 November 1996
- ER 1165-2-132 Hazardous, Toxic and Radioactive Waste (HTRW) Guidance for Civil Works Projects, 26 June 1992
- ETL 1110-2-575 Evaluation of I-Walls, 1 September 2011

- ETL 1110-2-583 Engineering and Design: Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures, 30 April 2014
- 33 CFR 208.10 Local flood protection works; maintenance and operation of structures and facilities
- 33 USC 408 Taking possession of, use of, or injury to harbor or river improvements
- 44 CFR 65.10 Mapping of areas protected by levee systems
- SWFP 1150-2-1 Criteria for Design and Construction within the Limits of Existing Federal projects, 1 October 2013
- Director's Policy Memorandum Civil Works Programs Number DPM CW 2018-10 Strategy for Synchronization of the Regulatory and 408 Programs, 17 August 2018
- SWF Regulatory Division Coordination Standard Operating Procedure (SOP) for Activities Involving 408 Review and/or Permits, 10 April 2019
- Memorandum CECW-HS, 29 November 2011, subject: US Army Corps of Engineers, Policy for Development and Implementation of System-Wide Improvement Frameworks (SWIFs)

## 1. Introduction

### a. Purpose of this Procedural Review Plan

This PRP is intended to ensure the quality of reviews by SWF for requests to alter U.S. Army Corps of Engineers (USACE) federally authorized Civil Works projects within the SWF area of responsibility. This PRP was prepared in accordance with Engineer Circular (EC) 1165-2-220, *Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408, 10 September 2018*. Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408, (referred to herein as "Section 408") authorizes the USACE to grant permission for the alteration, occupation, or use of a USACE Civil Works project if certain requirements are met. This PRP will be used to evaluate requests to alter USACE Civil Works projects.

EC 1165-2-220 paragraph 12.c. (2) gives Districts the option to develop PRPs. SWF has created this PRP consistent with this guidance. This SWF PRP has been approved by the U.S. Army Corps of Engineers Southwestern Division (SWD). SWF will review and update this PRP on an annual basis. If changes are made, SWF will send a memorandum to SWD identifying the proposed changes to the PRP. SWD will review and comment on these changes and ultimately send a concurrence back to SWF.

### b. Definition of Terms

Non-Federal Sponsor (NFS). Refers to a non-federal interest, as defined in the Flood Control Act of 1970, as amended (42 USC 1962d-5b(b)), that has provided assurances or executed a binding agreement for the provision of items of local cooperation for a USACE project, including, as applicable, operation and maintenance.

Requester. Entity (i.e. private, public, tribal, or federal) proposing the alteration to the USACE Civil Works project.

Fort Worth District Review Team. SWF Section 408 team of reviewers assigned to review Section 408 Requests.

### **c. Applicability of this Procedural Review Plan**

This PRP establishes SWF procedures used for the review of Section 408 requests that are similar in nature and have similar impacts and do not require a Safety Assurance Review (SAR). The SWF Review Team will consist of subject matter experts based on expertise, experience, and skills from multiple disciplines as necessary to ensure a comprehensive review. SWF will adhere to the policies and procedures described in EC 1165-2-220 in conducting Section 408 reviews. This PRP does not supersede the requirements in EC 1165-2-220.

EC 1165-2-220, paragraph 9, describes when procedures in the EC 1165-2-220 apply, along with exceptions. This PRP applies to requests to alter USACE federally authorized Civil Works projects within the SWF area of responsibility. The decision to implement this PRP or require an alteration-specific review plan for a given request is made on a per-request basis by the SWF Section 408 Coordinator.

This PRP addresses Section 408 requests for proposed alterations within SWF that are similar in nature, routine, and have similar impacts that are proposed by a Requester within the lands and real property interests identified and acquired for a USACE project within the jurisdiction of SWF. Examples of (not all-inclusive) potential low impact alterations:

- Repair, replacement, or construction of utility lines: storm water, sewer, water supply, telecommunication, electric transmission, gas, etc. that do not penetrate the existing footprint or foundation of a USACE federally authorized Flood Risk Management Civil Works Project (e.g., dams, levees, and floodwalls)
- Horizontal directional drilling installation of utility projects that do not penetrate the existing footprint or foundation of a USACE federally authorized Flood Risk Management Civil Works Project (e.g., dams, levees, and floodwalls)
- Recreational features: trails, trailheads, parking facilities, access sites, boat ramps, etc.
- Repair, replacement, or construction of bridges, roads, and associated features
- Geotechnical drilling performed by a Requester

During a Section 408 review under this PRP, it may be determined that the procedures in EC 1165-2-220 regarding the issuance of a Section 408 permission do not apply, and at that point the SWF Review Team will refer the proposed activity to other SWF Divisions for review under different applicable procedures. The Operations Division, in conjunction with Engineering and Construction Division, makes jurisdictional determinations on whether proposed activities require a review under Section 408.

Examples of proposed activities requiring other processes within SWF, (EC 1165-2-220, paragraph 9):

- Emergency actions performed under Public Law 84-99 that meet certain criteria
- Operation and maintenance activities conducted by the NFS that meet certain criteria, in accordance with 33 CFR 208.10
- Geotechnical drilling conducted by the NFS that meet certain criteria
- Real estate outgrant reviews that occur on real property under control of the USACE that meet certain criteria
- NFS construction of a water resources development project that meet certain criteria

- Actions subject to SWF Regulatory Program authorities (Section 404 and/or Section 10)

This PRP does not cover the following types of Section 408 requests:

- Requests requiring a SAR
- Requests covered under a Categorical Permission, as described in EC 1165-2-220
- Requests using the multi-phased review approach, as described in EC 1165-2-220
- Requests that propose any activity or construction that would penetrate the existing footprint or foundation of a USACE federally authorized Flood Risk Management Civil Works Project (e.g., dams, levees, and floodwalls)

Possible issues that could trigger using an alteration-specific review plan include whether the proposed alteration has public safety concerns, is controversial, is precedent setting, has significant interagency interest, has significant environmental impacts, or significant impacts to the public interest review factors.

#### **d. Review Management Organization**

The Review Management Organization (RMO) is responsible for managing the overall review process effort as described in this PRP. The RMO for this PRP is the SWF.

## **2. Review Requirements**

### **a. Level of Review Required**

The review of each alteration request covered by this PRP shall include a SWF Review Team, (EC 1165-2-220 paragraph 12.c.). The SWF Review Team shall consist of subject matter experts based on expertise, experience, and skills, from multiple disciplines as necessary to ensure a comprehensive review. The level of review for each Section 408 review will be proportional to the complexity and scope of the proposed alteration. EC 1165-2-220 allows for a tailoring of reviews specific to proposed alterations. The SWF Review Team will use guidance in EC 1165-2-220, and the applicable references above, to determine the specific review guidance necessary for each Section 408 request.

### **b. Review Purpose**

The review of all work products will be in accordance with the guidelines established within this PRP. The purpose of this review is to ensure the proper application of established criteria, regulations, laws, codes, principles, and professional practices. For the purposes of Section 408, the SWF Review Team will make the following determinations:

- 1) Impair the Usefulness of the Project Determination. The objective of this determination is to ensure that the proposed alteration will not limit the ability of the project to function as authorized and will not compromise or change any authorized project conditions, purposes, or outputs.
- 2) Injurious to the Public Interest Determination. Proposed alterations will be reviewed to determine the probable impacts, including cumulative impacts, on the public interest. The decision whether to approve an alteration will be determined by the consideration of whether benefits are commensurate with risks.

- 3) Legal and Policy Compliance Determination. A determination will be made as to whether the proposed alteration meets all legal and policy requirements.

### 3. Quality Control

Quality Control (QC) is the responsibility of the Requester and/or the NFS. All submittal documents (including data, reports, analyses, environmental documents, etc.) shall undergo Quality Control. Quality Control is an internal review process of basic science and engineering work products focused on fulfilling the project quality requirements.

### 4. SWF Review Team

The SWF Review Team is comprised of reviewers with the appropriate expertise to conduct a comprehensive review in a manner commensurate with the types of proposed alterations described in Section 1.c of this PRP.

The SWF Review Team expertise required for use of this PRP are listed below:

SWF Review Team Lead: The SWF Review Team Lead member will be an engineer in the Operations Division Maintenance Branch (CESWF-OD-TM). For proposed Section 408 requests that have potential impacts to federally authorized projects within the levee safety program, it is optional for the Levee Safety Program Manager (LSPM) to be the lead. For proposed Section 408 requests that have potential impacts to USACE owned and maintained projects within the dam safety program, it is optional for the Dam Safety Program Manager (DSPM) to be the lead. The SWF Review Team Lead will work together with the SWF Section 408 Coordinator to identify and assemble the appropriate disciplines necessary for the review. At a minimum, the SWF Review Team may include: a review by a licensed Professional Engineer for the technical portion of the review, a qualified biologist for the environmental and National Environmental Policy Act (NEPA) compliance, a qualified archeologist or cultural resources professional for compliance with applicable cultural resources laws, and an attorney with the District Office of Counsel for legal and policy compliance.

SWF Section 408 Coordinator: The SWF Section 408 Coordinator is the program manager for the SWF 408 program. The SWF Section 408 Coordinator will assist the SWF Review Team Lead on identifying and assembling the team for specific 408 request reviews. The SWF Section 408 Coordinator is generally responsible for communication between the SWF Review Team and other disciplines within the SWF. The SWF Section 408 Coordinator will lead in the preparation of SWF Review Team documents, routing of decision letters, memoranda, and other documents, and is responsible for communication with SWD, HQUSACE, and the Requester.

SWF Review Team disciplines and areas of expertise may include, but are not limited to:

- SWF Levee Safety Program Manager
- SWF Dam Safety Program Manager
- SWF Levee Safety Officer
- SWF Dam Safety Officer
- Geotechnical
- Hydrology and Hydraulics
- Environmental and Cultural Resources/Regional Planning and Environmental Center

- Office of Counsel
- Operations
- Regulatory<sup>1</sup>
- Real Estate<sup>2</sup>

Additionally, the SWF Review Team Lead and the SWF Section 408 Coordinator may determine that assistance or reviewers outside of SWF may be necessary. These may include, but are not limited to:

- SWD Levee Safety Program Manager
- SWD Dam Safety Program Manager
- SWD Section 408 Coordinator
- USACE Risk Management Center

<sup>1</sup>The SWF Regulatory Division is responsible for executing Regulatory authorities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The SWF Regulatory Division has developed a document titled, *Regulatory Division Coordination Standard Operating Procedure (SOP) for Activities Involving 408 Review and/or Permits*, approved 10 April 2019. This SOP outlines work flow and coordination procedures between the SWF Regulatory Division and the SWF Section 408 Coordinator. This SOP was developed pursuant to requirements in the *Director's Policy Memorandum, Civil Works Programs, Number DPM CW 2018-10, Strategy for Synchronization of the Regulatory and 408 Program*, dated 17 August 2018.

<sup>2</sup>The SWF Real Estate Division Chief will review the Summary of Findings for each Section 408 decision, and certify that the alteration meets the requirements in EC 1165-2-220, paragraph 15.b. For alterations which occur on real property of the United States or USACE reservoirs, different review processes may be required (EC 1165-2-220, paragraph 9.)

## 5. Execution Plan

### a. Review Procedures

Reviews will be conducted in a manner which promotes communication regarding the quality and adequacy of the required documentation. The SWF Review Team will review the documents provided by the Requester. The Design Review Checking System (DrChecks) may be used as a review and comment tool, but is not required.

The four key parts of a review comment will normally include:

- 1) The review concern. Identify the deficiency or incorrect application of policy, guidance, or procedures.
- 2) The basis for the concern. Cite the appropriate law, policy, guidance, or procedure that has not been properly followed.
- 3) The significance of the concern. Indicate the importance of the concern with regard to its potential impact on the ability of SWF to make a decision as to whether to approve or deny the Section 408 request.
- 4) The probable specific action needed to resolve the concern. Identify the action(s) that the Requester must take to resolve the concern.

In some situations, especially addressing incomplete or unclear information, comments may seek clarification in order to then assess whether further specific concerns may exist. The SWF Review Team documentation must include the text of each SWF Review Team concern, a brief summary of the pertinent points in any discussion, including any vertical coordination, and the agreed upon resolution.

## **b. Final Review and Decision Procedures**

These procedures will be followed to satisfy EC 1165-2-220 paragraph 15:

- Review findings will be documented in the Summary of Findings for the Section 408 request
- SWF Review Team will add statements summarizing their review in the applicable Summary of Findings paragraphs
- Lead for preparing the Summary of Findings will be the SWF Section 408 Coordinator
- Summary of findings will be circulated informally within the SWF Review Team for input and documentation of the review findings
- SWF Review Team will add and modify the Standard Terms and Conditions, Appendix K, for the Section 408 request
- SWF Review Team will determine if any Special Conditions are required, and add these to the Summary of Findings and Section 408 Decision Letter
- SWF Section 408 Coordinator will prepare the Section 408 Decision Package to include the Summary of Findings, Section 408 Decision Letter, Standard Terms and Conditions, any Special Conditions, and internal Staff Coordination and Router Sheet
- Staff Coordination and Router Sheet will list District Division Chiefs at a minimum including: Operations, Engineering and Construction, Regulatory, Regional Planning and Environmental Center, Real Estate, and Office of Counsel
- Section 408 Decision Package will be routed to each of the District Divisions for review and approval
- After approval of each Division within the District, the Section 408 Decision Package will be presented to the Section 408 Deciding Official<sup>3</sup>
- SWF Section 408 Coordinator will scan and save the Section 408 Decision Package for the administrative record
- SWF Section 408 Coordinator will obtain a copy of any Regulatory Division permit decision letters, and send these, along with the Section 408 decision letter, and a transmittal letter, to the Requester/Applicant
- SWF Section 408 Coordinator will fulfill requirements for tracking Section 408 requests throughout the process in the USACE enterprise Section 408 Tracking Database

<sup>3</sup> The District Commander is the Deciding Official for Section 408 decisions made at the District level. EC 1165-2-220 allows for the delegation of Section 408 decisions, with certain documentation requirements. District Commanders may not delegate Section 408 decisions below a supervisory Division Chief level.

## **c. Review Schedule**

Review timelines are generally governed by the statutory timelines as described in EC 1165-2-220, paragraphs 14 and 15. Each submittal of information to the SWF Review Team from the

Requester will be evaluated to determine if the information and documents received comprise a complete submittal. The Requester will be notified in writing if the submittal is complete, or not complete, within 30 days of receipt. The 30 day timeline for a completeness determination is then restarted upon any subsequent submittals of information. Upon determination by SWF that the request submittal is complete, the SWF Review Team 90 day review process is initiated. The Section 408 review will be completed within 90 days, with exceptions and procedures described in EC 1165-2-220, paragraph 15.a.

#### **d. Review Cost**

The SWF Section 408 Coordinator is responsible for budgetary requirements in accordance with EC 1165-2-220. The SWF Section 408 Coordinator will request, receive, track, and report funding and budgetary data as required by SWD and HQUSACE. The SWF Review Team will primarily use congressionally appropriated funds available from HQUSACE. A secondary source of funds would be those contributed under Section 1156(a)(2), Water Resources Development Act (WRDA) 2016 (Section 1156(a)(2)) agreements. Funds received under Section 1156(a)(2) agreements require a scope of work and itemized budget estimate. This scope of work will include a breakdown of costs for each discipline and organization code for the review, with additional details in the standard Section 1156(a)(2) templates.

#### **e. Non-Federal Sponsor Coordination**

The SWF Review Team will ensure that NFSs are involved early in the review process, if the Requester is different than the NFS. EC 1165-2-220 paragraph 11.a. requires a Statement of No Objection from the NFS as a component of a complete Section 408 request, with some exceptions. 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 SWF for initiation of the Section 408 evaluation. The SWF Review Team will coordinate with the NFS throughout the Section 408 review process. The Requester has the option to work directly with the NFS early in the process, prior to the submission of a Section 408 request, in order to develop the scope of the proposed alteration.

#### **f. Public Involvement**

The SWF Review Team will ensure that public input is solicited as part of the decision making process for each Section 408 request (EC 1165-2-220 paragraph 12.b.).