

**U.S. Army Corps of Engineers
Northwestern Division
Kansas City District**

District Procedural Review Plan

Pursuant to 33 USC § 408

ENDORSED
BY:

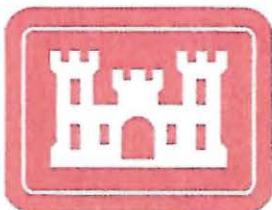

John D. Clarkson
USACE, Risk Management Center

29 JUN 2016
DATE

APPROVED
BY:


SCOTT A. SPELLMON
BG, EN
Commanding
CENWD-DE

13 July 2016
DATE



**US Army Corps
of Engineers®**

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1. Introduction

a. Purpose of This Procedural Review Plan

This Procedural Review Plan (RP) is intended to ensure quality of reviews by the Kansas City District (NWK) for requests to alter U.S. Army Corps of Engineers (USACE) Civil Works projects within the NWK area of responsibility (AOR). This Procedural Review Plan is prepared in accordance with Engineer Circular (EC) 1165-2-216, "Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408," and is for NWK's use while EC 1165-2-216 is effective. This RP provides the review guidelines associated with the alteration requests pursuant to 33 USC 408 (Section 408) that are similar in nature and are typically of small size, not complex, and have minimal or no impacts to the USACE civil works project (paragraph 7.c.(4)(a) of EC 1165-2-216).

b. Description and Information

i. General

This RP describes the process for determining if a request is applicable to be reviewed under this procedural RP or requires an alteration-specific RP, establishing categorical permissions, and how NWK will review both types of requests. Most requests to alter Civil Works projects received by NWK are expected to be subject to approval under this procedural RP. Typical work covered by this plan does not significantly alter the Civil Works project and does not generate a "yes" answer to any of the seven questions listed in paragraph 6.t of EC 1165-2-216. Any request received that involves a significant alteration to a Civil Works project will require an alteration-specific review plan to document the specific review process associated with that review.

The Review Management Organization (RMO) is responsible for managing the overall peer review effort described in this RP. The RMO for this RP is the Northwest Division (NWD). The Risk Management Center (RMC) Senior Reviewer endorsed this Review Plan, and the NWD Commander will approve the plan. Any significant changes to the Regional Procedural Review Plan (such as changes to the scope and/or level of review) shall be re-endorsed by the RMC and re-approved by the Division Commander.

ii. Establishing Usage of the Procedural Review Plan

This procedural RP has been established for activities that are similar in nature and have similar impacts. NWK will follow the required steps of paragraph 7 of EC 1165-2-216 for procedural permissions. This Procedural RP does not apply to any proposed alteration that poses a significant threat to public health and/or life safety associated with the federally authorized project as assessed by the District Chief of Engineering, as the Engineer-In-Responsible-Charge (reference paragraph 7.c.(3)(f) in EC 1165-2-216 and Appendix E paragraph 1.a in EC 1165-2-214).

iv. Alteration-Specific Requests

Upon determination that a request does not meet the criteria established in the review plan or if the NWK Chief of Engineering determines an alteration poses moderate to high risks, complex, environmentally sensitive, or controversial an alteration-specific review plan will be generated specific to the request received. The alteration-specific review plan will document the necessary level of reviews (including if Division and/or HQUSACE reviews are necessary), a Type II IEPR risk-based determination, review team members and experiences, review process details, review schedule, and a review budget. Each alteration-specific review plan will be endorsed by the appropriate RMO and approved by the Northwestern Division (NWD).

iii. References

A list of references that NWK will consider in the review of alteration requests is included in Attachment 4. Other references that are not listed may be considered if needed.

2. Review Requirements

a. Level of Review Required

The review of each request that meets the conditions and requirements of this procedural review plan will include a district-led Agency Technical Review (ATR), reference paragraph 7.c.(4) in EC 1165-2-216, at a minimum. The ATR will confirm that the request meets all applicable conditions and requirements and submit information for validation.

All drilling requests (including drilling for power poles, instrumentation, third party utilities, relief wells, and geotechnical drilling) are required to prepare a drilling plan in accordance with ER 1110-1-1807 and are subject to approval by the District Dam Safety Officer or Levee Safety Officer (Levees). If a technical review in accordance with ER 1110-1-1807 determines a review is required by the Geotechnical and Materials Community of Practice (G&M CoP) Standing Committee on Drilling and Instrumentation then the district will develop an alteration-specific review plan to be approved by the Division Commander.

The level of review required for each alteration-specific alteration will be determined on a case-by-case basis and documented within the alteration-specific review plan.

b. Review Purpose

The review of all work products will be in accordance with the guidelines established within this RP. The purpose is to ensure the proper application of established criteria, regulations, laws, codes, principles and professional practices.

For the purposes of Section 408, the ATR 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 (QC)

Quality Control is the responsibility of the requester. All submitted documents (including supporting data, analyses, environmental compliance documents, etc.) shall undergo Quality Control (QC) prior to submission to NWK. QC is an internal review process of basic science and engineering work products focused on fulfilling the project quality requirements. QC is executed by reviewers with formal training and education in the applicable science and engineering discipline, at least five years relevant experience, and preferably registered or certified in their field. Basic quality control tools include seamless review, quality checks and reviews, supervisory reviews, Project Delivery Team (PDT) reviews, etc. NWK may request QC documentation from the requestor as necessary.

4. District-led Agency Technical Review Team

The review of each request covered by this Procedural RP shall include a District-led Agency Technical Review (ATR), reference paragraph 7.c.(4) in EC 1165-2-216. In accordance with Civil Works Review, EC 1165-2-214, ATR reviews shall be scalable according to the magnitude and complexity of the alteration as determined by the District-led Agency Technical Review. The Section 408 District-led Agency Technical Review Team (ATRT) is comprised of reviewers with the appropriate independence and expertise to conduct a comprehensive review in a manner commensurate with the types of proposed alterations described in paragraph 1b of this RP.

If lacking the appropriate expertise, the District shall supplement their staff through appropriate Communities of Practice, Centers of Expertise, or other Districts. Kansas City District ATRT team expertise is listed below:

ATRT Lead: This role will likely be filled by either a geotechnical engineer in the Geotechnical Design and Dam Safety Section (ED-GD), the supervisor of ED-GD, or the NWK Levee Safety Program Manager. For alterations free of geotechnical issues, the lead will be an appropriately matched engineer.

ATRT Members: disciplines for each team will be determined by the ATR Lead based on the nature of the request. ATRT members in Engineering will be selected from the Corps of Engineers Reviewer Certification and Access Program (CERCAP) when the review requires a listed CERCAP area of expertise. ATRT members in Planning will be selected from the EcoPCX list of certified environmental reviewers. ATRT members are expected to typically include a minimum of a geotechnical engineer (from ED-GD) and an environmental specialist (from PM-P).

Other potential areas of expertise may include, but are not limited to qualified staff in:

- Hydraulic Engineer: ED-HH
- Structural Engineer, ED-DS
- Geologist, ED-GG
- Dam Safety, ED
- Levee Safety, ED
- Real Estate: RE-C
- Regulatory: OD-R*
- Counsel: OC
- Operations: OD-TM
- Environmental (Chemist, Biologist)
- Flood Risk Management (expertise related to Executive Order 11988 "Floodplain Management" compliance)

*When there is a corresponding Section 10/404 permit action in conjunction with the Section 408 request.

5. Execution Plan

a. Review Procedures

i. General

Reviews will be conducted in a fashion which promotes dialogue regarding the quality and adequacy of the required documentation. This RP allows NWK to grant permission for alterations that comply with this procedural RP determined by the NWK Chief of Engineering. Requests that do not meet the criteria established for NWK in this RP, require an alteration-specific RP. When the Section 408 Coordinator, ATRT, of NWK Chief of Engineering determines that the request answers "yes" to at least one of the questions in paragraph 6.t of EC 1165-2-216, significantly alters the Civil Works project or environment, or requires a Type II IEPR, this review plan does not apply and the request requires an alteration-specific review.

Reviews make four primary determinations: 1) Impair the usefulness of the project determination; 2) Injurious to the public interest determination; 3) Legal and policy compliance determination; and 4) NEPA documentation verification.

(1) Impair the Usefulness of the Project Determination

This determination is executed by applying guidance posted on the NWK internet website. Per paragraph 7.c.(4)(b)(1) of EC 1165-2-216, the ATRT will review proposed alterations to ensure that the alteration does not limit the ability of the project to function as authorized and does not compromise or change any authorized project conditions, purposes or outputs. The ATRT evaluates all anticipated impacts to the project.

(2) Injurious to the Public Interest Determination

This determination is executed by NWK Engineering and Planning members of the ATRT. Assessment of the request is composed of two parts: 1) an Engineering and Planning led evaluation of the impacts of the request and determination if those impacts are injurious to the public interest, and 2) a comparison of the request and the determination that request impacts have been assessed in the PEA.

(3) Legal and Policy Compliance Determination

Each reviewed request will include a certification of legal and policy compliance signed by representatives from the ATRT and NWK Office of Counsel. Each review will also include a certification by the Chief of NWK Real Estate Division that the real estate documentation is adequate.

(4) NEPA Documentation

Section 408 permission is a federal action, requiring NEPA compliance. EC 1165-2-216 paragraph 6.s create a categorical permission for Section 408 that would cover potential alterations that are similar in nature and that have similar impacts. Each request considered to be a possible categorical permission is reviewed for scope, compliance with environmental conditions provided in the PEA, and confirmation that the proposed alterations do not result in more than minor environmental impacts. If these conditions are met, then a tiered environmental assessment is prepared as described in 40 CFR Part 1508.28. The tiered environmental assessments document compliance with the National Environmental Policy Act and other pertinent requirements (e.g., Endangered Species Act, National Historic Preservation Act). Consistent with 2003 NEPA Task Force Recommendations to the Council on Environmental Quality, "Programmatic NEPA analyses and tiering can reduce or eliminate redundant and duplicative analyses and effectively address cumulative effects." Proposed alterations not consistent with NWK's established environmental conditions and PEA are evaluated in a site-specific NEPA document.

As categorical permissions are established, NWK will evaluate each individual site specific request against the appropriate engineering requirements and environmental conditions in the PEA. If the district-led agency technical review finds that the specific request is compliant with the applicable criteria, a tiered environmental assessment and FONSI will be prepared as described in 40 CFR Part 1508.28. Following this, the NWK Chief of Planning Branch (PM-P) and the NWK Chief of Geotechnical Branch (ED-G) will validate compliance with the requirements and conditions of the alteration and recommend Commander's approval.

The PEA for categorical permissions will be reevaluated at least every five years. During this reevaluation, categorical permissions will also be reviewed, updated as needed, and renewed if appropriate. Additional categorical permissions may be added any time the PEA is updated. This five year review will include a review of both the engineering requirements and environmental conditions, an assessment of cumulative impacts, and a 30-day public review period if changes are proposed to the PEA.

ii. ATRT Review

The ATRT utilizes established engineering and environmental criteria from current engineering guidance and policy and the PEA and FONSI to complete the project specific review of individual projects. Each request, regardless if it conforms to the requirements of this RP or requires an alteration-specific review plan, will be reviewed with similar criteria by the ATRT.

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 district's ability 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 ATRT documentation must include the text of each ATRT concern, a brief summary of the pertinent points in any discussion, including any vertical coordination, and the agreed upon resolution. The Section 408 Coordinator or Project Manager will coordinate requests for additional information with the requestor.

The ATRT Lead is responsible for coordination with the Section 408 Coordinator, ATRT, and NWK staff as needed to complete the review and preparation of the Summary of Findings.

Following ATR, the District Section 408 Coordinator will compile a Summary of Findings in accordance with Step 5 from EC 1165-2-216 before recommending to the District Commander that the proposed alteration be approved or denied. The NWK ATRT completion of Agency Technical Review and Summary of Findings signature sheet is included in Attachment 2.

iii. Official Review Start

An official review is not considered to be started until the Section 408 Coordinator receives a complete submittal. The Section 408 Coordinator and ATRT Lead determines when a submittal is considered complete. The requester will be notified in writing if their proposal is missing any documentation.

iv. Requesters

Proposed alteration review packages can be submitted by either the local sponsor or a third party. In cases where the third party submits a request, it shall be accompanied by a written endorsement by the local sponsor. In situations where the requestor and local sponsor do not agree, NWK will communicate with all parties to understand the disagreement and ensure potential ramifications of NWK's decision. Submittals can be submitted by either hard copy or electronically via e-mail. The proposal must address all submittal requirements outlined in paragraph 7 parts (2) and (3) and the appropriate appendix of EC 1165-2-216.

v. Public Notice

Procedural RP - upon approval by the NWD Division Commander, this plan will be posted on the NWK internet site at: <http://www.nwk.usace.army.mil/Media/PublicNotices.aspx>. No formal comment period is established. However, NWK may revise this document based on comments received.

Programmatic Environmental Assessment - NWK will post for 30 days a draft Programmatic Environmental Assessment and draft FONSI that will be used to establish Categorical Permissions. Environmental Assessments and FONSIs for specific requests for alterations subject to Categorical Permissions will not be posted for public notice.

b. Review Schedule

The requester is to allow 60 days for NWK coordination, scheduling, comment development and consolidation, and communication of comments for requester resolution and/or validation of usage of this procedural review plan's applicability for each submittal review. Submittal packages that are complete and include a completed checklist will be given higher priority than incomplete submittals.

Review duration should be considered by the requester within the construction documents when design and/or submittals are required as part of the construction contract. If the requester or sponsor believe an expedited review is warranted, a letter requesting an expedited review including a suspense date and justification should be provided to the Section 408 Coordinator.

c. Review Cost

Total review cost for alterations to federally funded NWK civil works projects is estimated to be between \$4,000 and \$7,000 per review. Based on a review of similar work, it is estimated that NWK will receive approximately 30 requests per year.

Funding for reviews will be based on HQUSACE programmatic guidance and the availability of funds. The Section 408 Coordinator will discuss the potential for the requestor to fund the review via Section 214 on a case-by-case basis.

6. Review Plan Points of Contact

| Name/Title | Organization | Email/Phone |
|--|--------------|--|
| Jeremy Weber NWD Section 408 Coordinator | CENWD | jeremy.j.weber@usace.army.mil (503) 808-3858 |
| RMC Review Manager | CEIWR-RMC | rmc.review@usace.army.mil |
| Scott Mensing, P.E. NWK Section 408 Coordinator | CENWK-ED-GD | scott.p.mensing@usace.army.mil (816) 389-2321 |

**ATTACHMENT 1
DECISION LETTER FOR NWK SECTION 408 PERMISSION**



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, KANSAS CITY DISTRICT
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

Dear Requester:

The Kansas City District of the U.S. Army Corps of Engineers (USACE) has performed an evaluation of requests to alter Federally Funded Civil Works Projects in its Area of Responsibility. This evaluation has been completed pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408 (Section 408). This evaluation was performed in accordance with Engineer Circular (EC) 1165-2-216. Based on this evaluation, the Kansas City District grants this request to alter the Federally funded Civil Works Projects in the NWK area of responsibility, provided that a request-specific Validation Memorandum has been signed by the appropriate branch chiefs.

Individual requesters are solely responsible for any remedial action needed to correct any deficiency in the design or construction of the requested alteration. As a condition of this approval, individual requesters are required to submit as-built drawings showing the alteration and appurtenant features with all pertinent dimensions all elevations in appropriate plan, profile, and detail views. Construction for this alteration must begin within one year of the date of the Validation Memo, otherwise permission must be requested again. This permission is not transferrable.

For any questions regarding this evaluation, please contact John Benson, Kansas City District Section 408 Coordinator, at (816) 389-3215.

Sincerely,

Andrew D. Sexton
Colonel, Corps of Engineers
District Commander

ATTACHMENT 2

COMPLETION OF AGENCY TECHNICAL REVIEW

and

SUMMARY OF FINDINGS

Reference: Section 408 Alteration Request Number _____

The Agency Technical Review (ATR) has been completed for the _____ civil works projects within Kansas City District's AOR. The ATR was conducted as defined in the Procedural Review Plan to comply with the requirements of EC 1165-2-216. During the ATR, compliance with established policy principles and procedures and legal requirements was verified. This included the determination whether the proposed alteration would impair the usefulness of the federal project or was injurious to the public interest. All comments resulting from the ATR have been resolved.

The District recommends [granting permission or denying permission] based on the rationale below:

- the request does [not] meet the engineering criteria appropriate for this type of modification
- the request does [not] meet the criteria of the Programmatic Environmental Assessment and the accompanying Finding of No Significant Impact
- the applicable information from EC 1165-2-216 paragraph 7(c)(5) is [not] provided

NAME
ATR Team Leader
CENWK-ED

Date

Scott Mensing, P.E.
District Section 408 Coordinator
CENWK-ED-GD

Date

ATTACHMENT 3

Validation Memorandum

CENWK-ED-G/PM-P

DATE

MEMORANDUM FOR RECORD

SUBJECT: Section 408 Alteration Request Number 201X-408-XXX, XXXX Alteration at XXXXX Project in/near *City, State, County*.

The request has been reviewed per the requirements of EC 1165-2-216 and the NWK Procedural Review Plan for *types of civil works project* and *type of activity*. See the attached Completion of Agency Technical Review and Summary of Findings

This request complies with the review requirements of the NWK Procedural Review Plan signed by the Commander on [insert date decision letter was signed].

Jacob Owen, P.E.
Chief, Geotechnical Branch

Jennifer Switzer
Chief, Planning Branch

ATTACHMENT 4

References

- a) P.L. 84-99, as amended, flood emergencies; extraordinary wind, wave, or water damage to federally authorized hurricane or shore protective structures; emergency supplies of water; drought; well construction and water transportation
- b) 33 CFR 208.10, Local flood protection works; maintenance and operation of structures and facilities
- c) 44 CFR 65.10, Mapping of areas protected by levee systems
- d) ER 500-1-1, Civil Emergency Management Program, 30 September 2001
- e) EC 1110-2-6072, Draft Levee Safety Policy and Procedures, 19 November 2014
- f) ER 1110-1-1807, Drilling in Earthen Embankment Dams and Levees, 31 December 2014
- g) ER 200-2-2, Procedures for Implementing NEPA, 4 March 1988
- h) ER 1110-2-1806, Earthquake Design and Evaluation of Civil Works Projects, 31 July 1995
- i) ER 1110-2-1942, Inspection, Monitoring, and Maintenance of Relief Wells, 29 February 1988
- j) EM 1110-1-1005, Control and Topographic Surveying, 1 January 2007
- k) EM 1110-1-1804, Geotechnical Investigations, 1 January 2001
- l) EM 1110-1-1904, Settlement Analysis, 30 September 1990
- m) EM 1110-2-1418, Channel Stability Assessment for Flood Control Projects, 31 October 1994
- n) EM 1110-2-1601, Hydraulic Design of Flood Control Channels, 1 July 1991
- o) ER 1105-2-101, Risk Analysis for Flood Damage Reduction Studies, 3 January 2006
- p) EM 1110-2-1619, Risk-Based Analysis for Flood Damage Reduction Studies, 1 August 1996
- q) EM 1110-2-1902, Slope Stability, 31 October 2003
- r) EM 1110-2-1906, Laboratory Soils Testing, 20 August 1986
- s) EM 1110-2-1913, Design and Construction of Levees, 30 April 2000
- t) EM 1110-2-1914, Design, Construction, and Maintenance of Relief Wells, 29

May 1992

- u) EM 1110-2-2002, Evaluation and Repair of Concrete Structures, 30 June 1995
- v) EM 1110-2-2007, Structural Design of Concrete-Lined Flood Control Channels, 30 April 1995
- w) EM 1110-2-2100, Stability Analysis of Concrete Structures, 1 December 2005
- x) EM 1110-2-2104, Strength Design for Reinforced-Concrete Hydraulic Structures, 20 August 2003
- y) EM 1110-2-2502, Retaining and Flood Walls, 29 September 1989
- z) EM 1110-2-2504, Sheet Pile Walls, 31 March 1994
- aa) EM 1110-2-2902, Conduits, Culverts, and Pipes, 31 March 1988
- bb) EC 1110-2-6066, Design of I-Walls, 1 April 2011
- cc) 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
- dd) ETL 1110-2-575, Evaluation of I-Walls, 1 September 2011
- ee) U.S. Army Corps of Engineers, Policy for Development and Implementation of System-Wide Improvement Frameworks (SWIFs), CECW-HS memorandum, 29 November 2011
- ff) EC 1165-2-216, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers CW Projects Pursuant to 33 USC 408, 31 July 2014
- gg) EC 1165-2-214, Civil Works Review, 15 December 2012
- hh) ER 110-2-1156, Safety of Dams, Policy and Procedures, 31 March 2015
- ii) NWD Regulation 1110-1-1, Pressurized Water Lines in Existing Embankments, 15 May 1999
- jj) NWD Regulation 1110-1-3, Modifications of Existing Corps-Owned Civil Works Projects, 31 March 2003
- kk) NWD Regulation 1110-1-2, Construction and/or Development in Spillways, 31 March 2003