

# OMAHA DISTRICT SECTION 408 & RELATED PROGRAMS

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# AGENDA

1. Introduction
2. Purpose
3. What is Section 408?
  - a. Policy & Guidance
  - b. What requires a 408 permission?
  - c. 408 Process Overview
4. HQ Section 408 User Guides
5. Pre-application Meetings
6. Other Related USACE Programs
  - a. Technical Review (Flood Risk Reduction Projects)
  - b. Real Estate (USACE real property)
  - c. Regulatory (Section 404 CWA and Section 10 RHA)



# PURPOSE

1. Omaha District 408 Workload and Federal Projects within AOR
  - a. 188 USACE Constructed, Public Sponsored O&M Levee Segments/Dry Dams/Channels across 8 States
  - b. Consequences: 600 Miles of Levees, 25.7 Billion in Property, 181 Thousand People living and working behind the levees
  
2. Challenges we heard:
  - a. Requesters and non-federal sponsors need more information about Section 408
  - b. The process takes a long time to complete, and timing isn't predictable
  - c. Delays are frequently encountered toward the end of the fiscal year (July -September)
  
3. Challenges we have experienced:
  - a. Incomplete request packages
  - b. Underestimated level of effort / scope / analysis required (Technical and Environmental)
  - c. Unpredictable receipt of resubmittals from applicant/requester

# WHAT IS SECTION 408?

- The Section 408 program provides permission for people, towns, or businesses to alter or impact an Army Corps project, like a levee.
- Section 408 ensures alterations won't harm the project or the public.
- Law: 33 USC 408
- Section 14, Rivers and Harbors Act 1899, as amended.
- Provides USACE authority to grant permission to alter a USACE Civil Works project if:
  1. Does not impact usefulness of the project
  2. Not injurious to the public interest

## §408. Taking possession of, use of, or injury to harbor or river improvements

### (a) Prohibitions and permissions

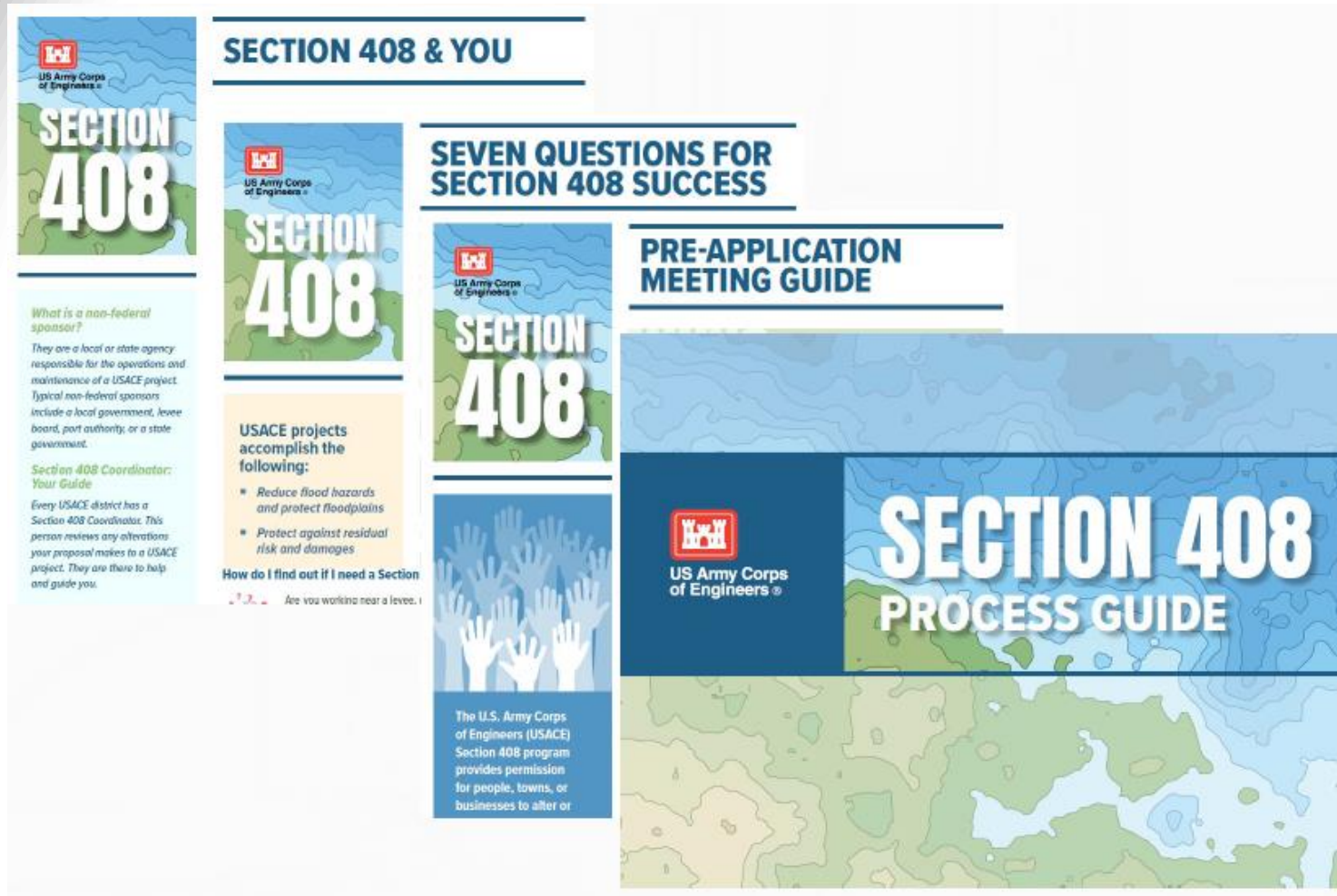
It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: *Provided*, That the Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest: *Provided further*, That the Secretary may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works 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.

# 408 POLICY & GUIDANCE

## Engineering Circular (EC) 1165-2-220: Policy and Procedural Guidance for Processing Requests to Alter USACE Civil Works Projects Pursuant to 33 USC 408

- Issued 10 September 2018
- Extended via 14-Nov-23 Memorandum (from Director of Civil Works)
- Extended until such a time EC 1165-2-220 is superseded by rulemaking. The process of transitioning the policy and procedures for implementing 33 U.S.C. 408 ("Section 408") from an EC to the Code of Federal Regulations will require extensive review and comment in order to inform any modifications and updates during the rulemaking process.

# THE SECTION 408 USER GUIDES



The Section 408 User Guide includes four documents:

1. Section 408 and You
2. Seven Questions for Section 408 Success
3. The Pre-Application Meeting Guide
4. The Section 408 Process Guide
5. 408 and DIPPs

Copies of these and other guides are available at: [www.usace.army.mil/Missions/Civil-Works/Section408/](http://www.usace.army.mil/Missions/Civil-Works/Section408/)



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# WHAT ACTIVITIES TRIGGER A 408 PERMISSION?

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Road or utility crossing of levees and channels

## Common 408's for Omaha District:

- HDD/boring/trenching utility lines and other pipelines
- Overhead utility lines
- Drainage structure repair / rehab
- Bridge replacement / road improvements
- Recreational trails & other features
- Bank stabilization
- New outfalls
- Docks in or near a navigation channel



Non-federal hydropower



Levee raises and improvements

# WHEN DO I NEED A 408 PERMISSION?

Is your proposed project near a levee, dam, seawall, or navigation channel?

If yes, look at these places to see if your activities may impact a federally authorized project:

- The National Levee Database <https://levees.sec.usace.army.mil>
  - Channel-only projects are not displayed in NLD.
- The National Inventory of Dams <https://nid.sec.usace.army.mil>
- Your District's Section 408 Coordinator.
- Your Local USACE Project Office (i.e. Gavins Point, Fort Peck, etc.)





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# THE SECTION 408 PROCESS



Requesters should...

- Contact the authorized project's non-federal sponsor
- Hold a pre-application meeting with USACE
- File request

USACE's Review process has three steps:

- Determine completeness
- Technical review
- Notify the permission seeker

Contact 408 coordinators when starting and ending construction

# PRE-APPLICATION MEETINGS

## What is a Pre-Application Meeting?

- A meeting with your Section 408 Coordinator to discuss your proposed alteration to a USACE Civil Works project
- May also include USACE Regulatory and Real Estate
- These meetings should take place once you have a clear idea of your proposed design or activities

## Who should attend a Pre-Application Meeting?

- The requestor (aka applicant for Regulatory permits)
- The non-federal sponsor (of USACE CW project)
- Any consultants or contractors supporting the project
- The district Section 408 Coordinator (invites other USACE disciplines)

## When should a Pre-Application Meeting take place?

- After you have a strong understanding of your project but before you start collecting data for your application

# PRE-APPLICATION MEETINGS

## What should happen at a Pre-Application Meeting?

- Discuss the basics of how the Section 408 process works
- Describe your project
- Identify steps to complete the request
- Opportunity to ask questions

## Example Pre-Application Questions:

- How will we communicate during reviews? Who is my USACE POC?
- How will I receive written comments on my submittal?
- What changes might I need to make to my alteration to receive permission?
- What kinds of analyses are typically needed for this proposed project?
- Can USACE provide the link to the most recent USACE design guidance and criteria needed?
- Can I confirm with you the most recent design criteria that is being used for the design?
- How can I find as-built drawings?
- Is there a 408 categorical permission document that may be used for this project?
- If I need clarification regarding a written comment, how do I do that?
- Is there a Regulatory POC I can work with?



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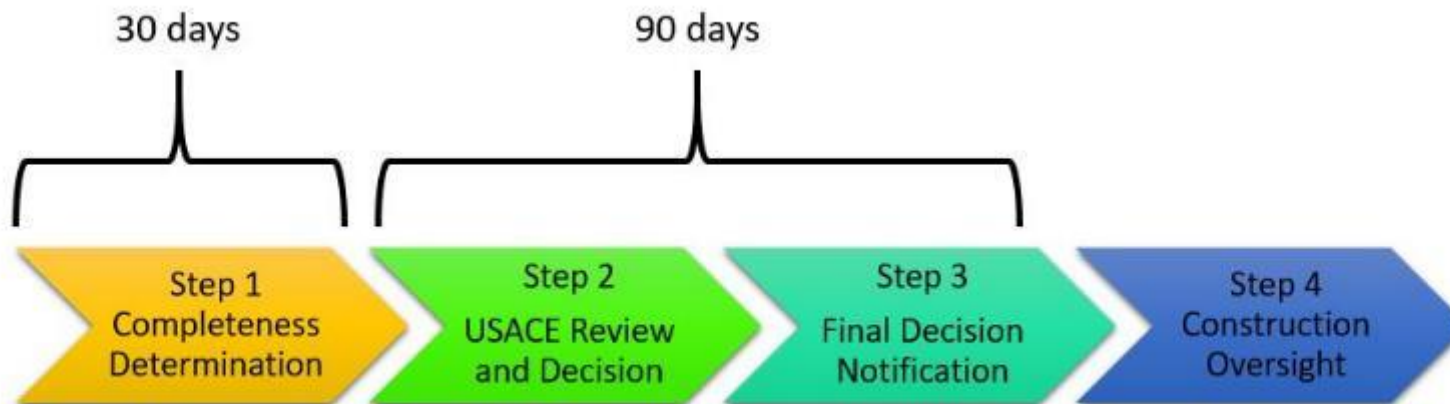


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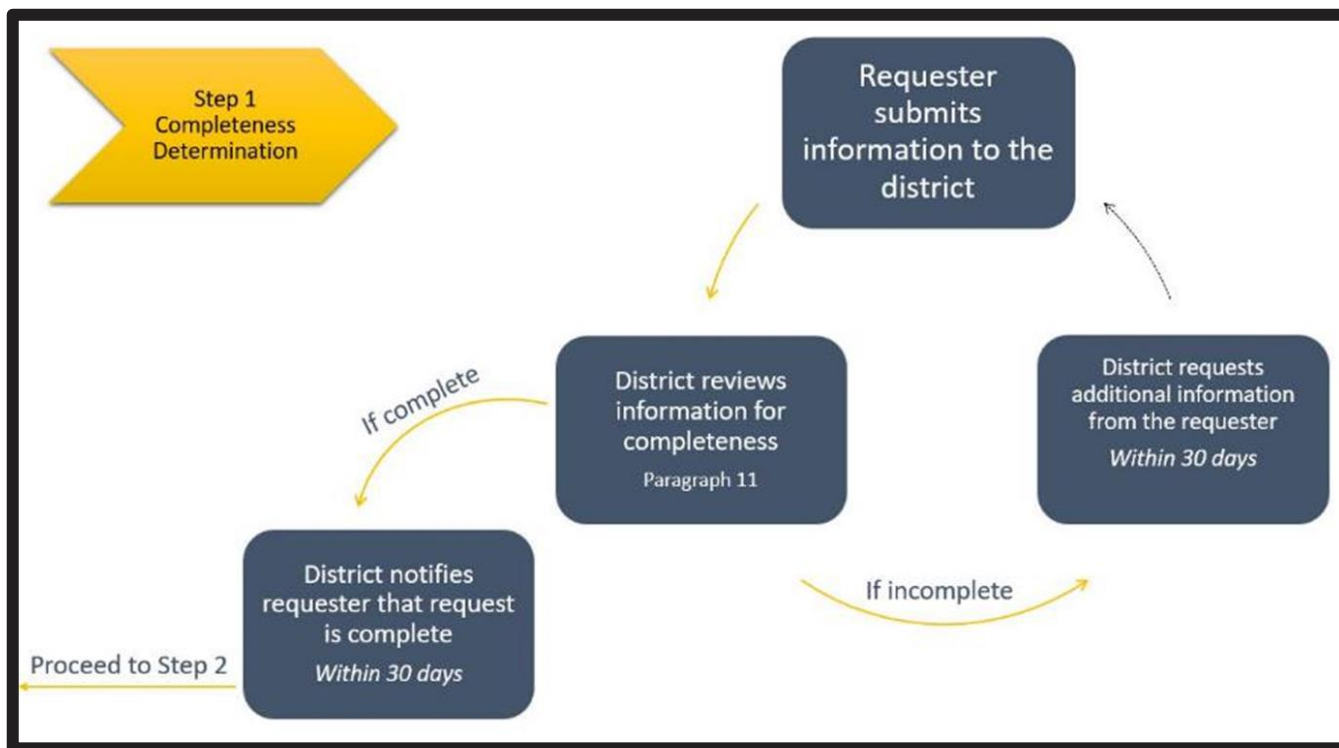


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# THE SECTION 408 PROCESS



## Single Phase Review



# SECTION 408 – BASIC ITEMS

## Paragraph 11 of EC 1165-2-220, Basic requirements for a complete request.

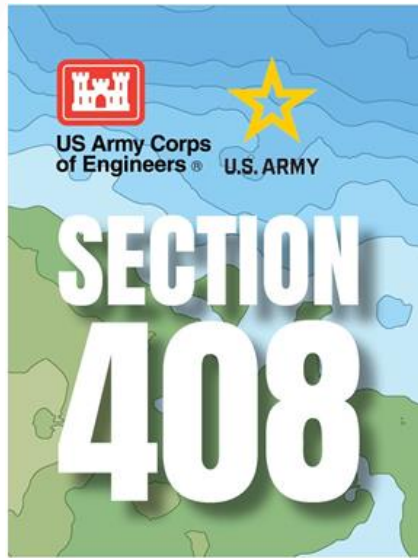
1. Statement of No Objection (from non-federal sponsor)
2. USACE Project and Alteration Description
3. Technical Analysis and Design
4. Environmental and Cultural Resources Compliance
5. Real Estate Requirements
6. OMRR&R
7. (If applicable) statement if crediting under Section 221 of the Flood Control Act of 1970 or approval under Section 204 of WRDA 1986 is being requested

# SECTION 408 – TECHNICAL ANALYSIS AND DESIGN

- Applicants need to provide adequate technical analysis and design.
- Meets current USACE design and construction standards
- Applicable USACE standards depend on the project, Some Examples:
  - Excavations near the levee would require seepage and stability analysis (EM 1110-2-1913 Design and Construction of Levees).
  - Work completed on the riverward side would require a hydrologic and hydraulic system analysis.
  - New pipes through the levee (EM 1110-2-2902 Conduits, Pipes, and Culverts Associated with Dams and Levee Systems).
  - Horizontal directional drilling of utilities require to follow the standards in (ER 1110-1-1807 Drilling and Invasive Activities at Dams and Levees).
- Technical packages do not need a PE stamped statement indicating no adverse impact from the proposed project. Engineering analysis and plans may need to be stamped consistent with state PE requirements. They will require a certification that the design and analysis went through a quality control process.



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### What is a DIPP?

A drilling and invasive program plan, or DIPP, is a document required prior to any drilling or invasive activities located in, on, or under all USACE dams or levees, or if owned and operated by non-federal sponsors, within the real property identified and acquired for USACE dams and levees, and near enough to potentially cause damage.

### Questions?

Questions on Section 408 DIPP

# 408 USER GUIDES: DIPPS

## SECTION 408 & DIPPS

### REQUESTER'S GUIDE TO DEVELOPING A DRILLING & INVASIVE PROGRAM PLAN

#### Purpose

This guide provides an overview of when and how to prepare a **drilling and invasive program plan (DIPP)** for drilling and invasive activities at a dam or levee in accordance with U.S. Army Corps of Engineers (USACE) Engineer Regulation 1110-1-1807. This includes **horizontal direction drilling (HDD)**. This guide is not all inclusive and is a summary of the references listed below. These references should be consulted for full requirements and considerations.

#### References

1. Engineer Regulation (ER) 1110-1-1807, Drilling and Invasive Activities at Dams and Levees, U.S. Army Corps of Engineers, 1 June 2023.
2. Engineer Manual (EM) 1110-2-2902, Conduits, Pipes, and Culverts Associated with Dams and Levee Systems, U.S. Army Corps of Engineers, 31 December 2020.
3. Engineer Manual (EM) 1110,1-1804, Geotechnical Investigations, U.S. Army Corps of Engineers, 1 January 2001.
4. Engineer Manual (EM) 1110-1-1913, Design and Construction of Levees, U.S. Army Corps of Engineers, 30 April 2000.
5. Engineer Manual (EM) 1110-1-1902, Slope Stability, U.S. Army Corps of Engineers, 31 April 2003.

#### Overview

A DIPP is a document required prior to any drilling or invasive activities located in, on, or under all USACE dams or levees, or if owned and operated by non-federal sponsors, within the real property identified and acquired for USACE dams and levees, and near enough to potentially cause damage. DIPPs submitted as part of a Section 408 request are reviewed by the local USACE district that has jurisdiction over the dam or levee.

- Overview of when and how to prepare a drilling and invasive program plan (DIPP) for drilling and invasive activities at a dam or levee in accordance with **ER 1110-1-1807**.
- Includes: drillings, excavations, borings, and horizontal direction drilling (HDD).





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# OTHER RELATED USACE PROGRAMS

- Technical Review (Flood Risk Reduction Projects)
- Real Estate (USACE real property)
- Regulatory (Section 404 CWA and Section 10 RHA)

# TECHNICAL REVIEWS

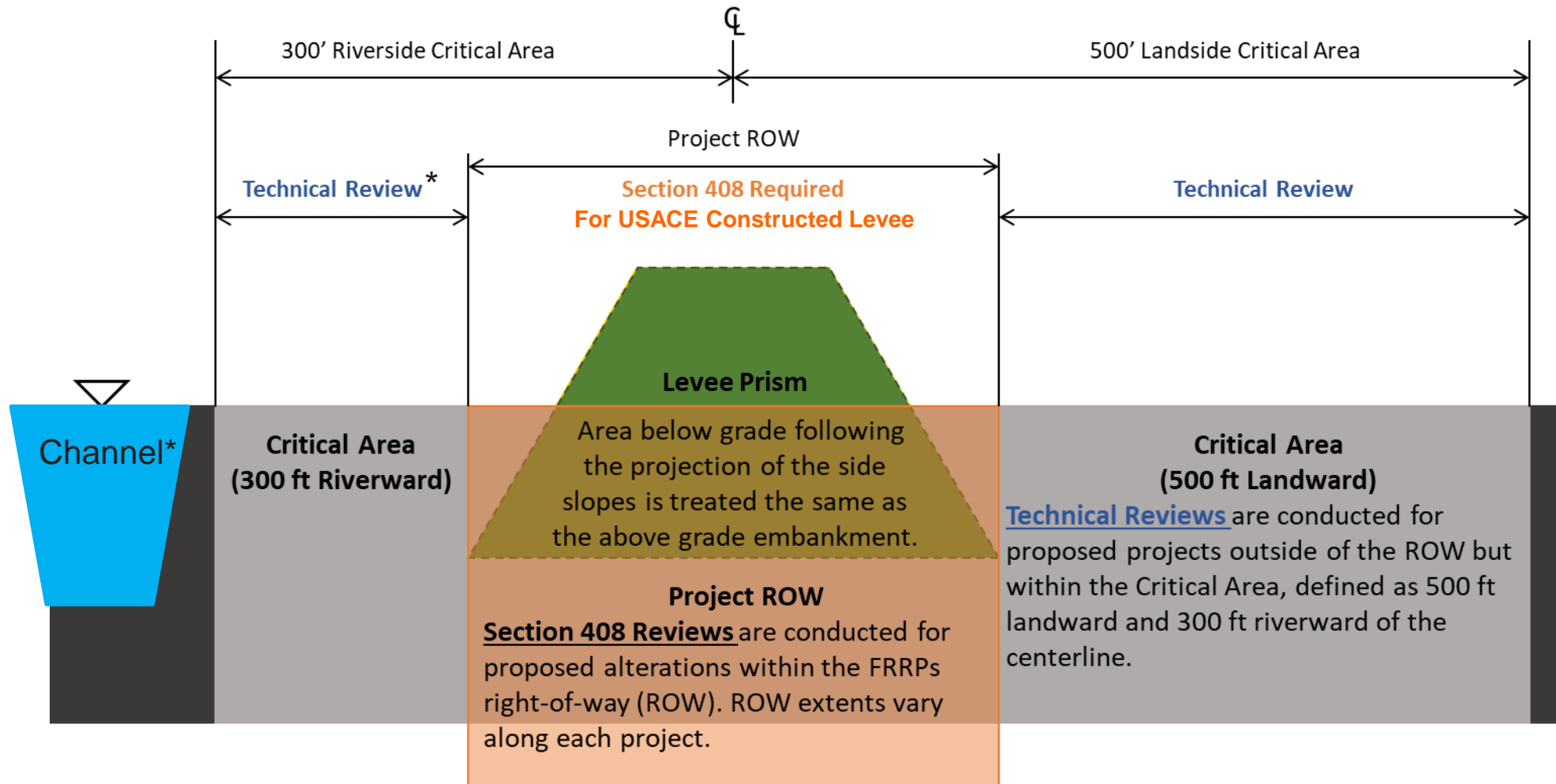
## **USACE Omaha District conducts “Technical Reviews” on activities proposed:**

- Outside the USACE CW project right-of-way (ROW), but within the “Critical Area” of the Federal Flood Risk Reduction Project, generally defined as 500-ft landward and 300-ft riverward of the centerline.
- Within non-federal levee sponsor ROW and “Critical Area” (generally defined as 500-ft landward and 300-ft riverward of the centerline) that are enrolled in the PL 84-99 Program.

## **The Purpose of a Technical Review:**

- Ensure the activities does not impact the project.

# TECHNICAL REVIEWS



\*Assumption in this diagram is that the channel is not part of the Federal Flood Risk Reduction Project (FRRP). If the USACE FRRP includes channels or other non-levee features, those features are included in the ROW; alterations within the ROW require Section 408.



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# REAL ESTATE REVIEWS

## Types of USACE Real Estate Reviews / Instruments:

- Shoreline use permit (on USACE reservoirs)
- Outgrant (on USACE Fee Title)
- Consent (on USACE Easements)

Paragraph 9.e.(3) of EC 1165-2-220 states (emphasis added):

*(3) In cases in which a USACE real estate decision and Section 408 decision are both needed, the **district will conduct these evaluations in a coordinated and concurrent manner** to the maximum extent practicable.*

...

*The required shoreline use permit, outgrant, or consent must still be issued before the alteration can be carried out on real property of the United States.*

# REAL ESTATE REVIEWS

Paragraph 9.e. of EC 1165-2-220 states (emphasis added):

*When a proposed alteration will be carried out entirely within the boundaries of real property of the United States or reservoirs managed by USACE, **a separate evaluation under the procedures in this EC is not required**, so long as the alteration is either consistent with an approved project master plan developed according to references A.34 and A.39, or subject to a Report and Determination of Availability under chapter 8 of reference A.28. **In such cases, the project master planning process or the procedure for preparing the Report and Determination of Availability satisfies the requirements for Section 408 for the proposed alteration.***

- Real Estate Reviews are initiated at the USACE Project Offices (i.e. Gavins Point, Fort Peck, Missouri River, Tri Lakes, etc.)
- If the proposed alteration requiring a Real Estate review crosses off USACE Fee Title onto non-USACE lands, a concurrent Section 408 review will be required.

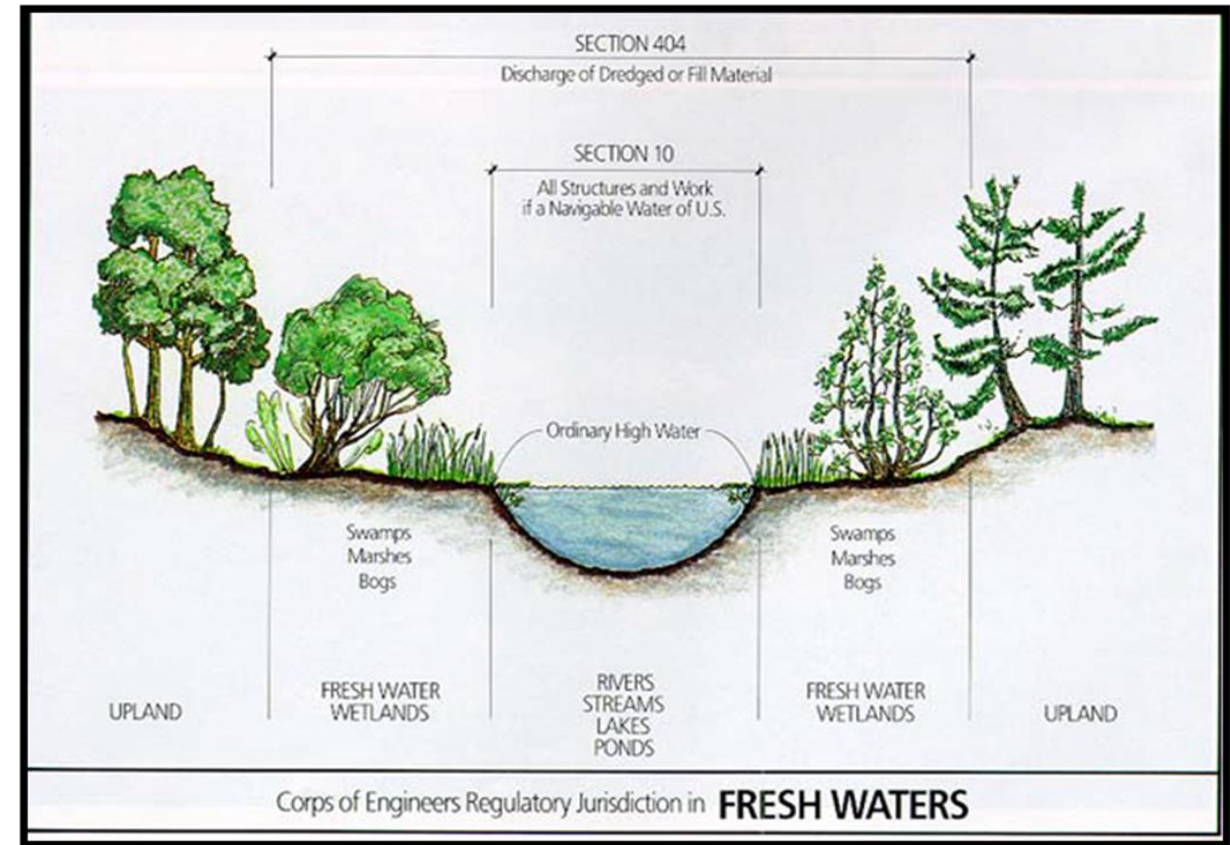
# REGULATORY

**Regulatory Mission:** To protect the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced decisions.

## **Authorities:**

- **Section 404 Clean Water Act (1972)**  
Discharge of dredged or fill material into waters of the United States
- **Section 10 Rivers and Harbors Act of 1899**  
Activities that affect location and navigable capacity, and all structures/work over, under or through navigable waters of the U.S.
- Section 9 Rivers and Harbors Act of 1899
- Section 103 Marine Protection Research, Sanctuaries Act of 1972

\*USACE Regulations for Regulatory Program  
at 33 C.F.R. 320-332



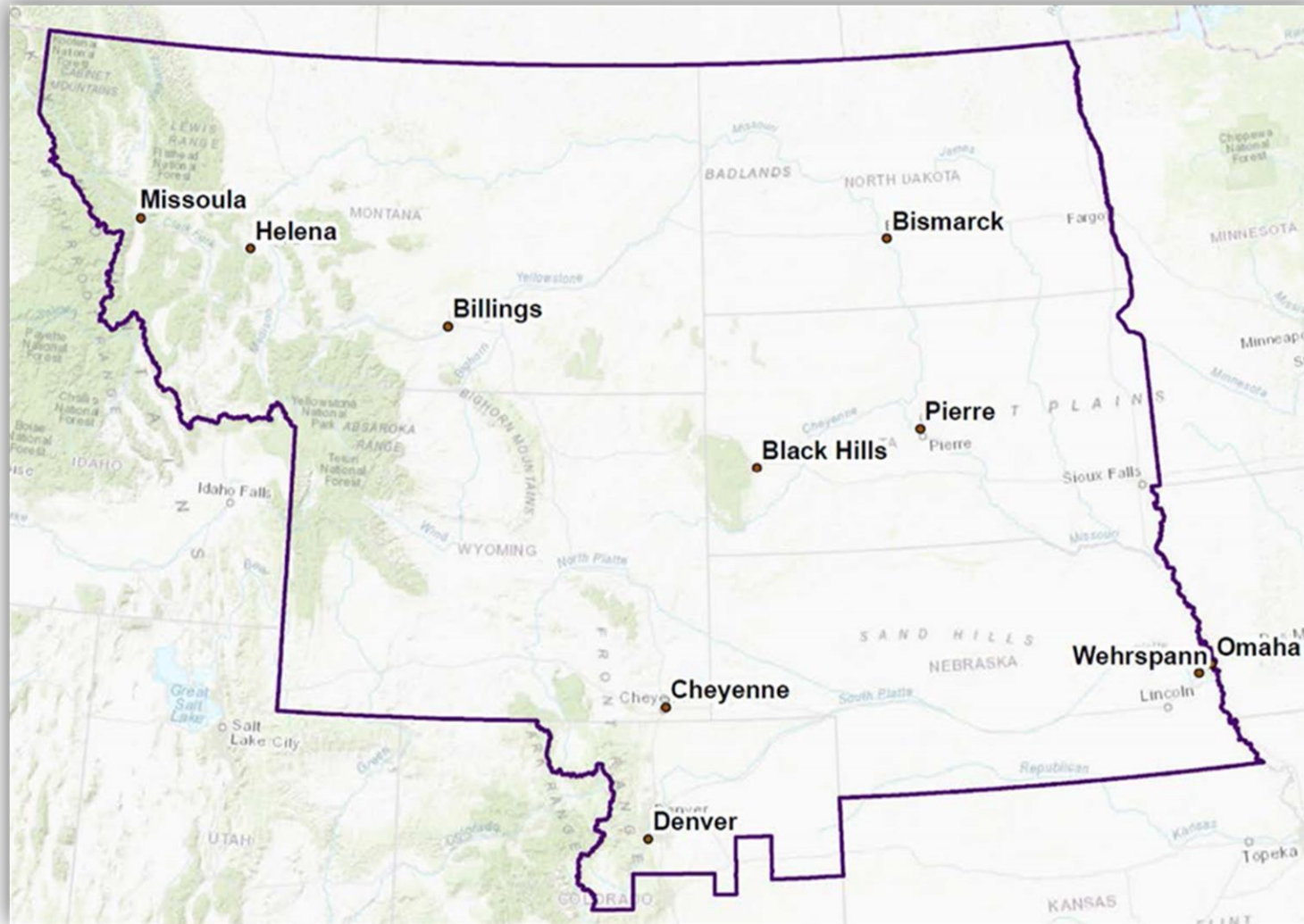


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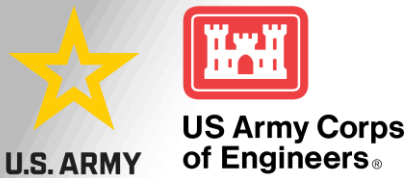
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# REGULATORY – OMAHA DISTRICT



## Section 10 Jurisdictional Waterways include:

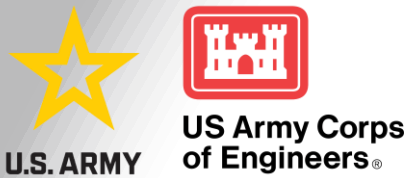
- Big Sioux River** (segment in SD/IA)
- Big Stone Lake** (State of SD)
- Bois de Sioux River** (segment in SD/ND)
- Flaming Gorge Reservoir** (WY/UT / Green River)
- James River** (segment in ND/SD)
- Kootenai River** (segment in MT)
- Lake Traverse** (SD)
- Missouri River** (MT/ND/SD/NE/IA/MO)
- Red River of the North** (segment in ND)
- Upper Des Lacs Lake** (ND)
- Yellowstone River** (segment in MT/ND)



# 408 FUNDING

- USACE remains committed to providing civil works solutions to state and local partners. USACE will continue to assess current available funding for the remainder of the fiscal year, and if necessary, prioritize Section 408 reviews that reduce risk, protect public safety, are necessary to comply with environmental laws, or pose a significant fiscal or contractual implication to USACE Civil Works projects.
- Nationally, the USACE 408 Program Funding is limited for the remainder of the federal fiscal year 2024 (FY24). Therefore, the District will have to slow down progress with existing Section 408 requests and will not be able to coordinate or process any new requests until funding is received. Funding may be received through a reprogramming action, a funding agreement (reference Appendix I, Engineer Circular (EC) 1165-2-220), or new appropriations in fiscal year 2025. Section 408 requests that are currently funded with a funding agreement will not be impacted.
- Section 408 requesters may consider the use of funding agreements, if appropriate, to reduce potential disruptions or delays in Section 408 reviews. Information regarding Contributed Fund Agreements can be found in EC 1165-2-220 Appendix I, and at the following webpage: [https://www.usace.army.mil/Missions/Civil-Works/Project-Partnership-Agreements/templates\\_ACF\\_sec408/](https://www.usace.army.mil/Missions/Civil-Works/Project-Partnership-Agreements/templates_ACF_sec408/).





# RESOURCES AND CONTACTS

NWO Section 408 Website: <https://www.nwo.usace.army.mil/Missions/Civil-Works/Section-408/>

HQ 408 Website: <https://www.usace.army.mil/Missions/Civil-Works/Section408/>

National Levee Database: <https://levees.sec.usace.army.mil/#/>

National Inventory of Dams: <https://nid.sec.usace.army.mil/#/>

USACE District Office Locations: <https://www.usace.army.mil/Missions/Locations/>

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# QUESTIONS?

