



Public Notice

U.S. Army Corps
of Engineers
Buffalo District
CELRB-TD-OT

**CATEGORICAL PERMISSION FOR
SECTION 408 REQUESTS**

**U.S. ARMY CORPS OF ENGINEERS,
BUFFALO DISTRICT**

Request No. 408-LRB-2020-0001
Published: August 3, 2020
Expires: August 24, 2020

Section: Operations & Technical Support

All written comments should reference the above Request No. and be addressed to:

Attn: Joseph B. Kasperski
U.S. Army Corps of Engineers, Buffalo District
Operations & Technical Support Section
1776 Niagara Street
Buffalo, NY 14207

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A CATEGORICAL PERMISSION WILL BE GRANTED AT THIS TIME.

AUTHORITY: The authority to grant permission for temporary or permanent use, occupation or alteration of any U.S. Army Corps of Engineers (USACE) civil works project is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 (“Section 408”). Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration or occupation or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project.

INTRODUCTION: There are numerous USACE civil works projects within the boundaries of the Great Lakes and Ohio River Division, Buffalo District. A number of these projects have been federally constructed and then turned over to a non-federal sponsor to operate and maintain. Projects include flood risk management (FRM) projects such as levees and channels located in both rural and urban areas. Each year the Buffalo District receives requests through the non-federal sponsors from private, public, tribal, and federal entities (requesters) to alter USACE federally authorized civil works projects (“USACE projects”) pursuant to Section 408.

When the Buffalo District receives a request to alter a USACE project, the district follows a review process outlined by Engineering 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*. To simplify the review process, EC 1165-2-220 states that USACE districts can develop a categorical permission (CP) to cover potential alterations that are similar in nature and that have similar impacts.

Within the State of Ohio, the Buffalo District has identified over 1,000 existing encroachments to federal FRM civil works projects that have not received Section 408 permission. The majority of these encroachments are for relatively minor levee alterations, such as installation of private recreational features including decks, docks, stairs, boat launches and hoists, walkways, fences, shoreline stabilization measures, and other private aesthetic improvements such as ornamental decorations, flag poles, and miscellaneous structures to include sheds, swimming pools, storage containers, and gazebos. Many of the descriptions of existing encroachments and potential future alterations are similar in nature and the effects tend to be minor or negligible. However, the current Section 408 request and permission process is time intensive and typically requires months of review. The goal of the proposed action is to gain efficiencies in the Section 408 request and permission process for minor alterations to USACE FRM civil works projects. Thus, the Buffalo District proposes to implement a CP for Section 408 reviews of existing encroachments and potential future alterations located within the civil works district boundaries of the Buffalo District in the State of Ohio.

ALTERNATIVES: The decision options are: 1) No Action Alternative: continue with the current process of reviewing and making decisions on Section 408 requests individually, as described in EC 1165-2-220, or 2) Preferred Alternative: approve a CP to cover existing encroachments / proposed alterations that are similar in nature and have similar impacts.

SCOPE OF THE DECISION: The geographic scope of the decision to be made is limited to federal FRM projects within the jurisdiction of the Buffalo District in the State of Ohio. These USACE projects consist of riverine or shoreline levee/floodwall systems that provide flood risk management for communities within their leveed areas. Refer to Table 1 for a list of USACE projects within the scope of this CP and their respective non-federal sponsors.

Table 1: USACE Projects & Non-Federal Sponsors

USACE Projects	Non-Federal Sponsor
Euclid Creek, Cleveland	City of Cleveland
Point Place, Toledo	City of Toledo
Reno Beach-Howard Farms	Reno Beach/Howard Farms Conservancy District
Sandusky River, Fremont	City of Fremont – Water Pollution Control Centre
Swan Creek, Toledo	City of Toledo
Whites Landing, Erie County	Erie County – Highway Department

The decision would only apply to the Buffalo District and would not apply to any other USACE districts. The temporal scope of the decision to be made is for five years; after five years the decision would be reevaluated and may be renewed or revised, if appropriate.

PROPOSED CATEGORICAL PERMISSION: The proposed CP would encompass a list of potential alteration types that are similar in nature and have similar impacts on the USACE project and the environment. The Buffalo District will complete all necessary environmental and public interest analysis for alterations included in the CP under the National Environmental Policy Act of 1969 (P.L. 91-190), as amended and codified at 42 U.S.C. § 4321-4347 (NEPA) and other relevant laws. If the Buffalo District receives a Section 408 request that is outside of the scope of the CP

such that a separate environmental assessment (EA) or environmental impact statement (EIS) is needed under NEPA, then the proposed CP would not apply and the Section 408 request would be reviewed and a decision made following the current process described in EC 1165-2-220.

In order for the CP to apply, the proposed design, construction, maintenance, replacement, or removal of the Section 408 alteration must fall under one of the predetermined alteration types and satisfy conditions established by the CP. These would include:

- Having no disqualifying circumstances (Section VIII.),
- Meeting applicable technical conditions (Section IX.),
- Meeting applicable environmental conditions (Section X.),
- Meeting applicable standard conditions (Section XI.),
- And adhering to alteration type-specific requirements (Enclosure B).

ENVIRONMENTAL IMPACTS OF PROPOSED ACTION: The Buffalo District proposes to implement a CP that, in accordance with EC 1165-2-220, would simplify the review process for Section 408 requests for minor alterations to USACE projects within the Buffalo District in the State of Ohio. The Buffalo District has determined that, in compliance with NEPA, a programmatic EA will be prepared. As the implementation of the CP would not involve any on-the-ground work, there are no anticipated direct effects to environmental resources resulting from the programmatic decision at hand. Although the CP would be for a variety of alteration types that individually could result in impacts to resources, it is important to note that the decision to be made on the CP would not authorize any specific Section 408 requests or any on-the-ground work. If the proposed CP is approved, existing and future Section 408 requests would be individually reviewed to determine if they fit under the CP.

Under the proposed CP, each individual Section 408 request would be evaluated on a case-by-case basis for compliance with all applicable environmental laws. Additionally, adequacy of the existing NEPA documentation (a programmatic EA for the CP) would be verified for each individual Section 408 request. If the existing NEPA documentation is not adequate, a separate NEPA analysis would be conducted. Section 408 requests for alterations that are not described in the CP (Enclosure B), or that do not adhere to the standard mitigation measures established by the CP, would be evaluated using the current review process for an individual request as described in EC 1165-2- 220.

Although the decision on whether or not to implement the proposed CP would not have direct impacts on resources, the types of alterations described under the proposed CP have the potential to impact a number of different resources. Resources that could potentially be affected by these types of alterations include aesthetics, air quality, cultural resources, fish and wildlife, floodplains, invasive species, noise, recreation, threatened and endangered species, transportation/traffic, vegetation, water quality, and wetlands. It is expected that the effects associated with the types of alterations covered by the CP described above would be minor or negligible. If a proposed alteration is determined to involve more than minor impacts or would not meet the parameters identified in the project description, the CP would not apply and a categorical exclusion, EA, or EIS would be prepared, as appropriate.

Under the proposed CP, the Buffalo District would continue to individually evaluate each Section 408 request on a case-by-case basis for potential effects to threatened and endangered species (and their designated critical habitat) listed under the federal Endangered Species Act (ESA) of 1973, as

amended (16 U.S.C. 1531 *et seq.*) and, as appropriate, conduct consultation pursuant to Section 7 of the ESA with the U.S. Fish and Wildlife Service (USFWS).

Under the proposed CP, the Buffalo District would continue to individually evaluate each Section 408 request on a case-by-case basis for the potential to affect cultural resources and, when there is the potential for effects, conduct consultation with the appropriate State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 306108 *et seq.*). When a proposed alteration has the potential to affect cultural resources, the Buffalo District would coordinate, and consult as appropriate, with potentially interested Native American tribes.

PUBLIC INVOLVEMENT: The purpose of this notice is to solicit comments from the public; federal, state, and local agencies and officials; tribes; and other interested parties regarding the draft Categorical Permission. Therefore, at this time, USACE is primarily requesting public feedback on the following:

- Concerns (Specific or General)
- Content of the Draft Categorical Permission
- Conditions for Alteration Eligibility
- Implementation Process

USACE also welcomes additional comments regarding public interest, impacts on the USACE projects, or general considerations. Comments received within 21 days of publication of this notice will be used in the evaluation of potential impacts of the proposed action on important resources.

SUBMITTING COMMENTS: Written comments, referencing “Section 408 Categorical Permission” must be submitted by email or mail to the office listed below on or before August 20, 2020.

Mail: Attn: Joseph B. Kasperski
U.S. Army Corps of Engineers, Buffalo District
Operations & Technical Support Section
1776 Niagara Street
Buffalo, NY 14207
Email: joseph.b.kasperski@usace.army.mil

Attachments:

- A. U.S. Army Corps of Engineers - Buffalo District - Categorical Permission for Section 408 Requests - Flood Risk Management Projects - Ohio
- B. Enclosure B - Alteration Types

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 21 days from the date of issuance.



**US Army Corps
of Engineers®**

Buffalo District

BUILDING STRONG®

**CATEGORICAL PERMISSION FOR SECTION 408 REQUESTS
FLOOD RISK MANAGEMENT PROJECTS - OHIO
U.S. ARMY CORPS OF ENGINEERS - BUFFALO DISTRICT**

July 2020

Prepared by:

U.S. Army Corps of Engineers
Buffalo District
Operations and Technical Support Section
1776 Niagara Street
Buffalo, NY 14207

Table of Contents

I.	SECTION 408 AUTHORITY & GUIDANCE:	4
II.	INTRODUCTION:	4
III.	CATEGORICAL PERMISSION:	5
IV.	GEOGRAPHIC, TEMPORAL, & PROJECT-TYPE SCOPE:	5
A.	Geographic Scope:	6
B.	Temporal Scope:	7
C.	Project-Type Scope:	7
V.	PUBLIC INVOLVEMENT:	7
A.	Scoping Development Public Notice:	7
B.	Draft CP Public Notice:	8
VI.	COMMON TERM ILLUSTRATIONS:	8
VII.	ALTERATION TYPES:	9
VIII.	DISQUALIFYING CIRCUMSTANCES:	10
IX.	TECHNICAL CONDITIONS:	10
A.	Coastal, Geotechnical, Civil, & Structural Conditions:	10
B.	Hydrology & Hydraulic Conditions:	11
C.	Real Estate:	11
X.	ENVIRONMENTAL CONDITIONS:	11
A.	National Environmental Policy Act Conditions:	12
B.	USACE - Regulatory Branch Permits:	12
C.	Other Environmental Conditions:	12
XI.	STANDARD CONDITIONS:	12
A.	Limits of the Authorization:	13
B.	Indemnification and Hold Harmless:	13

C. Reevaluation of Permission:	13
D. Conduct of Work Under this Permission:	14
XII. ALTERATION REQUESTS THAT DO NOT QUALIFY:.....	15
XIII. IMPLEMENTATION PROCESS:	15
A. Submission:.....	15
B. Completeness Determination:	15
C. Qualification Review:	16
D. Validation:	16
E. Notification:	16
XIV. DISTRICT COMMANDER DECISION:.....	16

LIST OF FIGURES

Figure 1. Map of the USACE - Buffalo District Civil Works Boundary	6
Figure 2. Map of the USACE - Buffalo District Civil Works Boundary within the State of Ohio	7
Figure 3. Illustration of Common Terms for USACE Federal Levee Projects	8
Figure 4. Illustration of Common Terms for USACE Federal Channel Projects	8

ENCLOSURES

- A. USACE Flood Risk Management Projects within the Buffalo District in Ohio *(Not Included in this Draft Document)*
- B. Alteration Types
- C. Programmatic Environmental Assessment & Finding of No Significant Impact *(Not Included in this Draft Document)*

I. SECTION 408 AUTHORITY & GUIDANCE:

The authority to grant permission for temporary or permanent use, occupation or alteration of U.S. Army Corps of Engineers (USACE) federally-authorized civil works projects is contained in Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408 (“Section 408”). It states:

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, 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 civil 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 civil 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.

Section 408 authorizes the Secretary of the Army, on the recommendation of the Chief of Engineers, to grant permission for the alteration, occupation, or use of a USACE project if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project.

The Secretary of the Army’s authority under Section 408 has been delegated to the USACE, Chief of Engineers. The USACE Chief of Engineers has further delegated the authority based upon the nature of the proposed activity.

II. INTRODUCTION:

There are currently six federally-authorized civil works Flood Risk Management projects within the boundaries of the United States Army Corps of Engineers - Great Lakes and Ohio River Division - Buffalo District in Ohio (USACE federal projects). They are shown in Table 1 along with their associated non-federal project sponsors (Local Sponsors):

Table 1: USACE Federal Projects & Local Sponsors

USACE Federal Project	Local Sponsor
Euclid Creek, Cleveland	City of Cleveland
Point Place, Toledo	City of Toledo
Reno Beach-Howard Farms	Reno Beach/Howard Farms Conservancy District
Sandusky River, Fremont	City of Fremont – Water Pollution Control Centre
Swan Creek, Toledo	City of Toledo
Whites Landing, Erie County	Erie County – Highway Department

Additional information related to the above USACE federal projects, to include project maps, typical sections, and cross-sections are included in this categorical permission (CP) (ENCLOSURE A. - *not included in this draft document*).

The USACE - Buffalo District receives requests from Local Sponsors and from private, public, tribal, other

federal entities, or stakeholders (Requesters) to alter these USACE federal projects pursuant to Section 408. The majority of these requests are for relatively minor alterations to a levee, a channel, or elsewhere within project easements (such as installation of drainage pipes, placement of erosion protection, and private recreational boat docks). Even if minor in scale, alterations can negatively affect project functionality, the environment, public health and/or life safety, and the general public interest.

Particularly common impacts of concern are: increased erosion, increased seepage, decreased stability, obstruction of access, and reduced project feature visibility. These impacts may affect a Local Sponsor's project operation, maintenance activities, flood patrols, and flood fighting. Structures, posts, poles, and other alterations that penetrate a levee may increase potential for other adverse effects, such as piping of foundation or other material, cracking, or stability issues. However, if a proposed alteration is considered normal operations and maintenance, as described in the Operations and Maintenance Manual for the USACE federal project, Section 408 permission is not necessary.

The purpose of this document is to establish a CP in order to expedite and streamline the approval of alteration types that are similar in nature, have similar impacts on the USACE federal projects, and have similar impacts to the environment.

III. CATEGORICAL PERMISSION:

When the USACE - Buffalo District receives a request to alter a USACE federal project, the district follows a review process outlined by *Engineering 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*. To streamline the review process, EC 1165-2-220, paragraph 10.a. states that USACE districts can develop a CP to cover potential alterations that are similar in nature and that have similar impacts:

10.a. Categorical Permission. The district, division, and/or Headquarters have the ability to create a "categorical permission" in order to expedite and streamline the review and decisions of Section 408 requests that are similar in nature and that have similar impacts to the USACE project and environment. An assessment of impacts to the usefulness of the USACE project, environmental compliance, and a public interest determination is conducted ahead of time for a common category of activities. For those individual Section 408 requests that are consistent with the terms and conditions of an established categorical permission, the Section 408 request can be granted with a simplified validation process.

Alterations that qualify for a categorical permission will still require a USACE review per this CP's Section XI. IMPLEMENTATION PROCESS. However, the review time will generally be less than a full Section 408 alteration review, unless there are extenuating circumstances.

This CP satisfies the USACE Section 408 requirements only and Requester permissions from other applicable federal, state, or local authorities need to be secured before work can begin, including any applicable and required USACE Regulatory Program authorization (Clean Water Act Section 404 permit, etc.).

IV. GEOGRAPHIC, TEMPORAL, & PROJECT-TYPE SCOPE:

The USACE - Buffalo District's civil works boundary (Figure 1) covers a wide geographic range and includes portions of the states of New York, Pennsylvania, and Ohio.

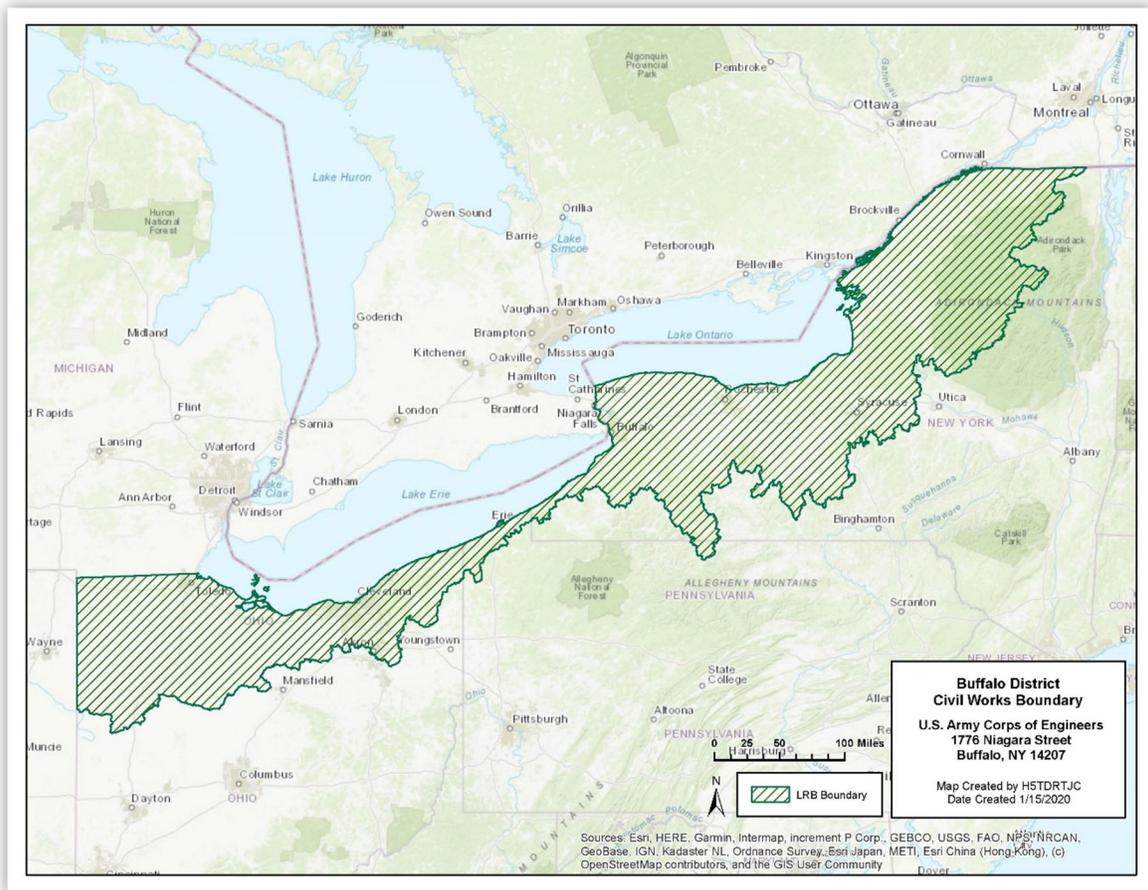


Figure 1. Map of the USACE - Buffalo District Civil Works Boundary

A. Geographic Scope:

The geographic scope of this CP only applies to the USACE - Buffalo District area of responsibility within the state of Ohio (Figure 2) to include existing and future USACE federal projects. It does not apply to other USACE districts within Ohio.

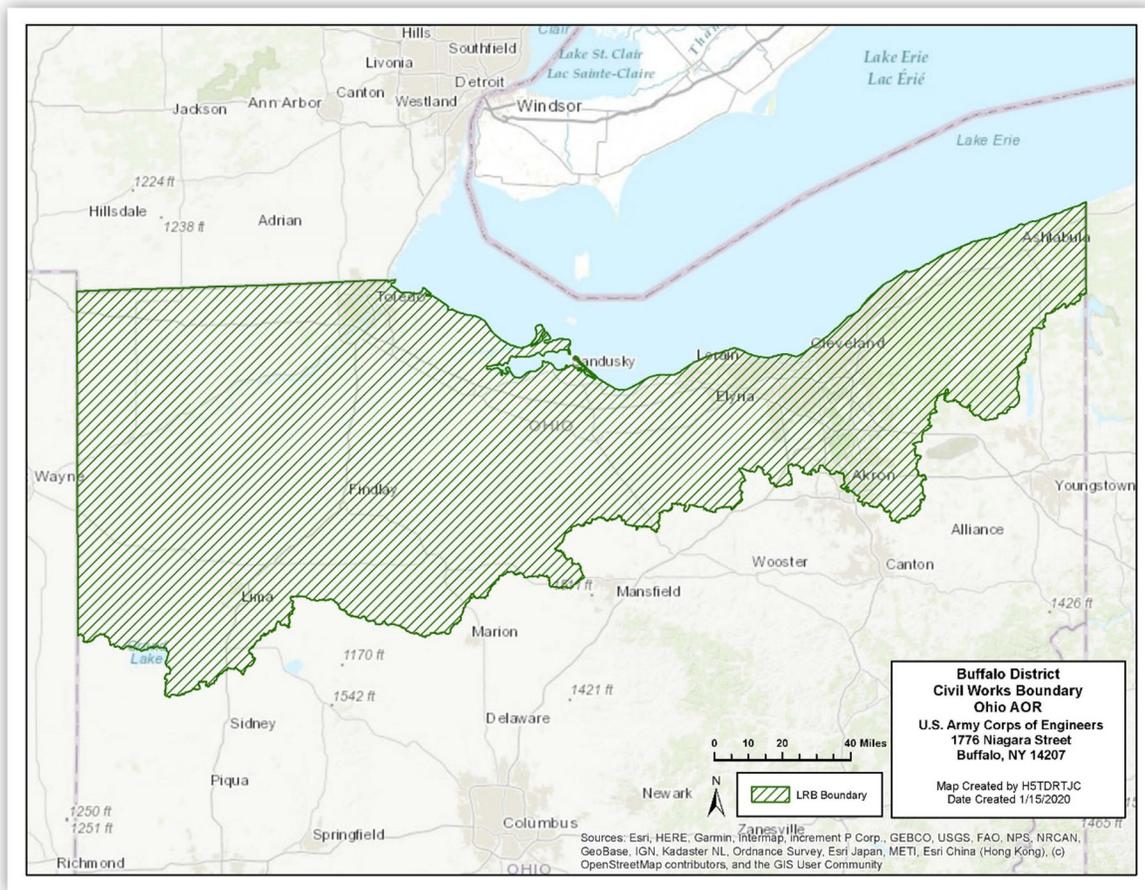


Figure 2. Map of the USACE - Buffalo District Civil Works Boundary within the State of Ohio

B. Temporal Scope:

The temporal scope of this CP is five years; after five years the CP will be re-evaluated and may be renewed or revised, if appropriate. While there is a definite plan for a comprehensive review of the CP at five years, nothing precludes USACE from re-evaluation after a shorter time period if conditions so warrant.

C. Project-Type Scope:

The project-type scope of this CP is limited to federally-constructed, locally operated and maintained USACE Flood Risk Management projects only (e.g. levees, floodwalls, channels, or control structures) within the Buffalo District civil works boundary in Ohio and does not apply to navigation, streambank protection, erosion protection, or other federal projects.

V. PUBLIC INVOLVEMENT:

A. Scoping Development Public Notice:

In order to ensure reasonable involvement of organizations and agencies potentially impacted by this CP, a Public Notice was issued during scoping development. The Public Notice was distributed to the following:

1. U.S. Representatives, U.S. Senators, Federal & State Agencies, County Clerks, Postmasters, Tribal Representatives, and Other Stakeholders.

2. Local Sponsors (Table 1).
3. Community Groups Identified by Local Sponsors (Commercial or Residential).

B. Draft CP Public Notice:

In order to ensure reasonable involvement of organizations, agencies, and local property owners potentially impacted by this CP, a Public Notice was issued during development of the draft document. The Public Notice was distributed to the following:

1. U.S. Representatives, U.S. Senators, Federal & State Agencies, County Clerks, Postmasters, Tribal Representatives, and Other Stakeholders.
2. Local Sponsors (Table 1).
3. Community Groups Identified by Local Sponsors (Commercial or Residential).
4. Adjacent Property Owners

A complete listing of Public Notice recipients is on file at the USACE - Buffalo District.

VI. COMMON TERM ILLUSTRATIONS:

The following illustrations (Figure 3 & Figure 4) provide clarity on common terms mentioned throughout this CP and its enclosures. For the purposes of this CP, the term “levee” seen throughout this document and its enclosures could be in reference to a levee prism, a floodwall, or both.

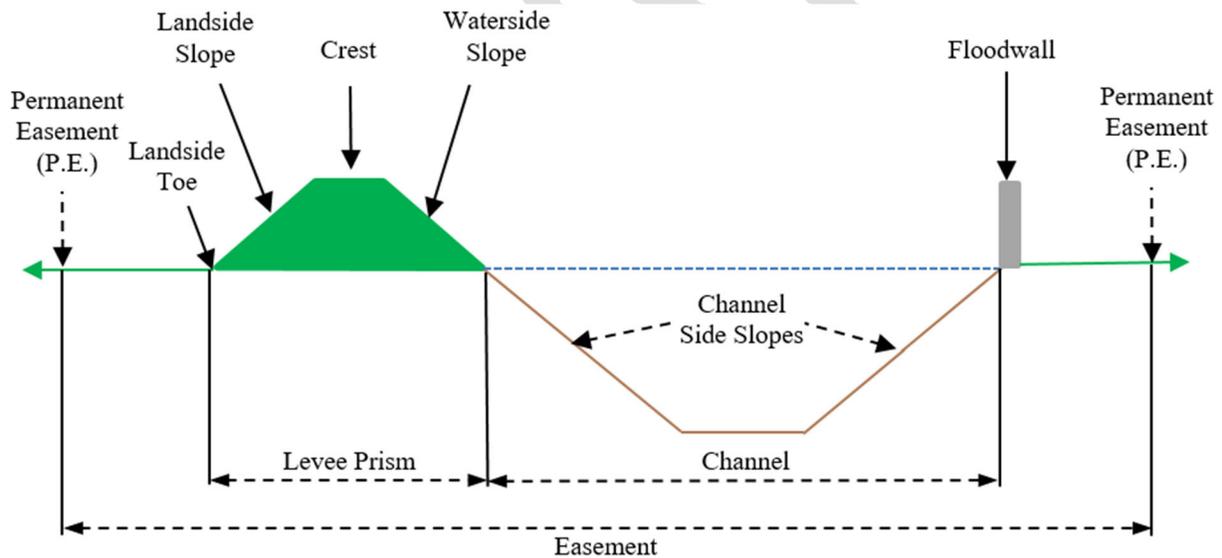


Figure 3. Illustration of Common Terms for Features of Levee or Floodwall Projects

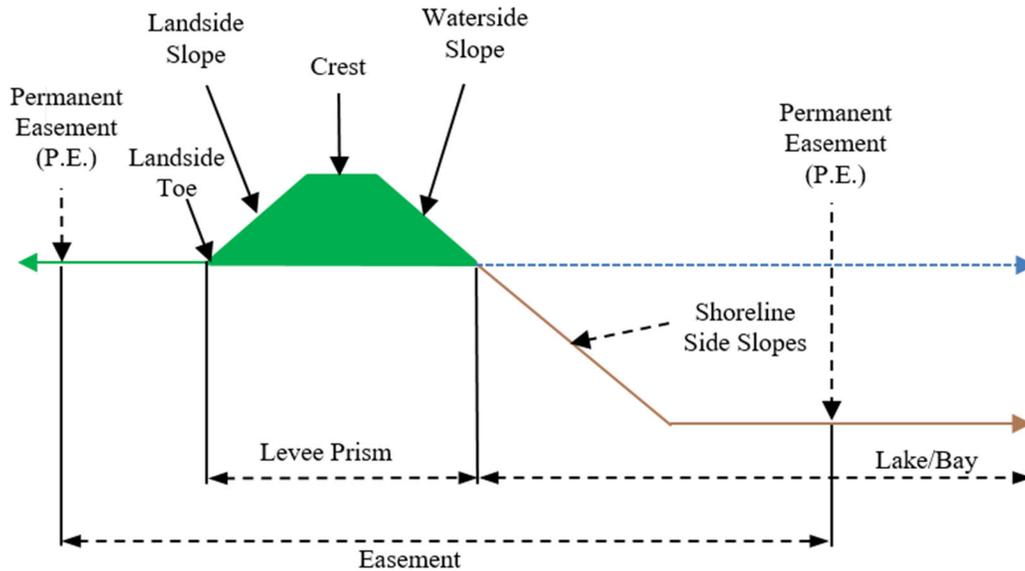


Figure 4. Illustration of Common Terms for Features of Levee Shoreline Projects

To clarify, USACE review and permission decision is not required for encroachments or modifications located outside of the easement. Requesters may contact the USACE - Buffalo District or the appropriate Local Sponsor (Table 1) for more information regarding easements.

VII. ALTERATION TYPES:

In order to clarify applicability of this CP, alterations have been categorized into types. Their installation, addition, modification, or removal impacts are similar in nature, are eligible for permission consideration under this CP, and are further described in ENCLOSURE B.:

1. Boat, Vehicle, & Trailer Storage
2. Boat Hoists, Boat Launches & Equipment
3. Borings, Levee Explorations, Instrumentation
4. Bridges (Simple)
5. Decks
6. Docks
7. Erosion Control
8. Fences & Gates
9. Fill
10. Floodwall/Retaining Wall Attachments
11. Landscaping
12. Parking Areas
13. Poles & Posts
14. Recreational Features
15. Recreational Trails
16. Retaining Walls (Simple)
17. Signage
18. Stairs, Ramps, Walkways, Gangways, & Pads
19. Storage & Storage Containers
20. Structures (Simple)

21. Swimming Pools
22. Utilities & Pipes (Simple)
23. Utility Poles & Guy Wires

If USACE determines that a proposed alteration does not fit within the definitions of the above alteration types, it is not eligible for permission consideration under this CP. However, the proposed alteration can still be requested by the Requester as defined in Section XII. ALTERATION REQUESTS THAT DO NOT QUALIFY.

A single Section 408 Request may contain multiple alteration types eligible for permission consideration under this CP. That is to say, a single proposed project could combine multiple types of alterations. For example, if a Requester is seeking permission to construct a garage with a driveway and parking sign, multiple alteration types could be implemented: Structures (Simple), Parking Areas, & Signage.

VIII. DISQUALIFYING CIRCUMSTANCES:

The following conditions would disqualify an otherwise in-scope alteration from being eligible for consideration under this CP:

1. USACE decides that the alteration does not qualify. USACE has the decision authority to determine qualification; satisfaction of the CP requirements does not guarantee eligibility.
2. The alteration does not fit within the definitions of this CP's alteration types (ENCLOSURE B).
3. The alteration will negatively impact the USACE federal project's ability to function as designed and constructed.
4. The alteration will obstruct USACE or Local Sponsor access for operations, maintenance, inspection, or flood fighting activities.
5. The alteration would result in a loss of sensitive habitat or a net loss in riparian habitat.
6. The alteration would exceed federal *de minimis* air quality standards or other applicable environmental standards.
7. The alteration would construct a new structure for human habitation.
8. The alteration would adversely impact public use of the USACE federal project.
9. The alteration would induce development in the floodplain.
10. The alteration could not be decided at the USACE District level (requires elevation to a Division or Headquarters review).

IX. TECHNICAL CONDITIONS:

Formal permission of a Section 408 Request granted to a Requester under this CP is subject to the following technical conditions:

A. Coastal, Geotechnical, Civil, & Structural Conditions:

1. Depending upon the alteration type and location, the Requester may be required to submit a seepage analysis, slope stability analysis, geotechnical analysis, scour analysis, or other technical analysis to USACE. USACE will consider these analyses during Qualification Review.
2. Alterations with surface penetrations (e.g. dock supports, poles, posts, etc.) must not create seepage paths beneath or through a levee, reduce a project feature's seepage performance, or increase seepage potential.

3. The alteration does not subject the USACE federal project or appurtenance features to undue forces or loads.
4. The alteration does not remove, displace, cover, or negatively impact the performance of erosion protection, such as riprap, on the levee prism or channel side slopes.
7. Any removal, excavation, or backfill permitted within the easement, but not within the levee prism, shall be replaced in-kind. All disturbed areas shall be returned to their original surface conditions and match surrounding grade. Additional requirements may be specified by USACE at the time of review in accordance with USACE standards.
8. Heavy equipment is not allowed on the levee prism during or following rainfall while the levee is saturated.

B. Hydrology & Hydraulic Conditions:

1. The alteration must not negatively impact the USACE federal project's capacity or properties, such as the cross-sectional area or coefficient of friction of channel side slopes, in a way that would significantly detract from the USACE federal project's ability to convey design flows.
2. If the alteration would potentially impact the hydraulic capacity of the floodway, USACE may conduct a blockage calculation or hydraulic analysis in accordance with current USACE guidance. The Requester may be responsible for providing additional information to the USACE - Buffalo District to conduct this assessment.
3. USACE may determine not to grant permission for construction or other work in the floodway during the flood season, unless approved in writing by the Local Sponsor.
4. Temporary staging, stockpiles of materials, temporary buildings, or equipment must not remain stored on the levee prism or in the channel during flood season, unless approved in writing by the Local Sponsor.
5. The alteration must not have a negative impact the USACE federal project's elevation profile.
6. The alteration must not obstruct or negatively impact the performance of USACE federal project interior drainage features.

C. Real Estate:

1. Work to be done in conjunction with the alteration must have all necessary and applicable real estate permissions and easements in place prior to construction.

X. ENVIRONMENTAL CONDITIONS:

Environmental effects associated with implementation of this CP have been analyzed and documented in the Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI), Categorical Permission for Section 408 Requests, USACE - Buffalo District (ENCLOSURE C. - *not included in this draft document*). Formal permission of a Section 408 Request granted to a Requester under this CP is subject to the

following environmental conditions:

A. National Environmental Policy Act (NEPA) Conditions:

1. Decisions on Section 408 Requests, including those that qualify for a CP, are federal actions subject to NEPA and other federal environmental and cultural resources compliance requirements. This CP analyzes those potential effects in advance as part of the PEA & FONSI (*ENCLOSURE C - not included in this draft document*). Therefore, for those individual Section 408 Requests that are consistent with the terms and conditions of this CP, permission can be granted with an abbreviated validation process that avoids the need for a separate NEPA document.

B. USACE - Regulatory Branch Permits:

1. The Requester is responsible for obtaining required USACE - Regulatory Branch permits necessary for the alteration, if any, prior to validation under this CP. USACE - Regulatory Branch Permit information is obtained by referring to the following link:
<https://www.lrb.usace.army.mil/Missions/Regulatory/OH-PERMIT-INFO/>

C. Other Environmental Conditions:

1. Access to the proposed alteration construction site must occur in previously disturbed areas, such as existing roads, access ramps, driveways, or the levee crest.
2. Upland areas may be temporarily cleared for staging of equipment and materials during construction.
3. Alterations must minimize the amount of woody vegetation removal, however, minor non-woody vegetation removal is permissible during construction.
4. The Requester is responsible for removing excess construction materials, debris, and disturbed vegetation from the easement upon completion of work and disposing of them in an area outside the easement.
5. Alterations must be designed to minimize introduction of exotic or invasive species (both plant and animal) and seed mixes used in site restoration must consist of only native species.
6. Proposed alterations, and their associated construction activities, must incorporate Best Management Practices (BMPs) to control storm water runoff, erosion, and contaminant spills (e.g., diesel fuel spills).
7. In the event of an environmental spill, cleanup and repair is the Requester's responsibility. The Requester must also notify the USACE - Buffalo District, the Local Sponsor, and the United States Coast Guard National Response Center immediately.
8. If artifacts or other culturally sensitive materials are found during excavation, work must stop and the USACE – Buffalo District must be notified immediately.

XI. STANDARD CONDITIONS:

Formal permission of a Section 408 Request granted to a Requester under this CP is subject to the following standard conditions:

A. Limits of the Authorization:

1. This permission only authorizes you, the Requester, to undertake the activity described herein under the authority provided in Section 14 of the Rivers and Harbors Act of 1899, as amended (33 USC 408). This permission does not obviate the need to obtain other federal, state, or local authorizations required by law. This permission does not grant any property rights or exclusive privileges, and you must have appropriate real estate instruments in place prior to construction and/or installation.
2. The time limit for completing the work authorized ends on the dates specified in the permission notification. If you find that you need more time to complete the authorized activity, submit your request for a time extension to the USACE - Buffalo District for consideration at least one month before the above date is reached.
3. Without prior written approval of the USACE, you must neither transfer nor assign this permission nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this permission. Failure to comply with this condition will constitute noncompliance for which the permission may be revoked immediately by USACE.
4. You understand and agree that, if future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or an authorized representative, said work will cause unreasonable conditions and/or obstruction of USACE project authorized design, the Requester will be required upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim can be made against the United States on account of any such removal or alteration.

B. Indemnification and Hold Harmless:

5. The United States will in no case be liable for:
 - a. any damage or injury to the structures or work authorized by this permission that may be caused or result from future operations undertaken by the United States, and no claim or right to compensation will accrue from any damage; or
 - b. damage claims associated with any future modification, suspension, or revocation of this permission.
6. The United States will not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of the project requested by you, nor for damages to the property or injuries to your officers, agents, servants, or employees, or others who may be on your premises or project work areas or the federal project(s) rights-of-way. By accepting this permission, you hereby agree to fully defend, **indemnify**, and **hold harmless** the United States and USACE from any and all such claims, subject to any limitations in law.
7. Any damage to the water resources development project or other portions of any federal project(s) resulting from your activities must be repaired at your expense.

C. Reevaluation of Permission:

8. The determination that the activity authorized by this permission would not impair the usefulness of the federal project and would not be injurious to the public interest was made in reliance on the information you provided.

9. The USACE - Buffalo District, at its sole discretion, may reevaluate its decision to issue this permission at any time circumstances warrant, which may result in a determination that it is appropriate or necessary to modify or revoke this permission. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. you fail to comply with the terms and conditions of this permission;
 - b. the information provided in support of your application for permission proves to have been inaccurate or incomplete; or
 - c. significant new information surfaces which the USACE - Buffalo District did not consider in reaching the original decision that the activity would not impair the usefulness of the water resources development project and would not be injurious to the public interest.

D. Conduct of Work Under this Permission:

10. You are responsible for implementing any requirements for mitigation, reasonable and prudent alternatives, or other conditions or requirements imposed as a result of environmental compliance.
11. Work/usage allowed under this permission must proceed in a manner that avoids interference with the inspection, operation, and maintenance of the federal project.
12. In the event of a deficiency in the design or construction of the requested activity, you are solely responsible for taking remedial action to correct the deficiency.
13. The right is reserved to the USACE to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to operate and/or to make any other use of the lands as may be necessary in connection with government purposes, and you will have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.
14. You must provide copies of pertinent design, construction, and/or usage submittals/documents. USACE may request that survey and photographic documentation of the alteration work and the impacted project area be provided before, during, and after construction and/or installation.
15. You may be required to perform an inspection of the federal project with USACE, prior to your use of the structure, to document existing conditions.
16. USACE shall not be responsible for the technical sufficiency of the alteration design nor for the construction and/or installation work.
17. Upon USACE request, you must schedule a final inspection with the USACE - Buffalo District within thirty (30) days after completion of the work/usage.
18. Upon USACE request, you must submit a copy of "as-built" drawings within sixty (60) days of completion of work showing the new work as it relates to identifiable features of the federal project.

E. Special Conditions:

19. You must obtain a written Statement of No Objection from the USACE federal project's Local Sponsor (refer to Table 1 in **II. INTRODUCTION**). The Non-Federal Sponsor signature block on the *Buffalo District Request for Section 408 Permission* does not satisfy this requirement.

20. You are responsible for repairing erosion that occurs at or adjacent to the alteration. Installation of adequate erosion protection is permitted in conjunction with the alteration, so long as it is compliant with the requirements under alteration type 7. Erosion Control.
21. You are responsible for repairing damages to the USACE federal project resulting from intentional or inadvertent activities by yourself or others related to the alteration.
22. You are required to regularly inspect and maintain the completed alteration in satisfactory condition. If the alteration is damaged due to flood or otherwise, or if USACE determines that the alteration is not being adequately maintained, you must remove it to the satisfaction of USACE and return the USACE federal project to pre-alteration conditions at the Requester's expense.
23. If removal of the alteration causes damage to the USACE federal project, the Requester will repair it to pre-alteration condition. If the Requester is unable to repair the USACE federal project, then USACE may perform the repair and bill the Requester.

In addition to the conditions listed above, USACE may impose project and project feature specific conditions. The descriptions and criteria used to determine validation under this CP have been coordinated with the USACE – Buffalo District Regulatory Branch to ensure consistency between similar permitting actions.

XII. ALTERATION REQUESTS THAT DO NOT QUALIFY:

Alteration requests that do not qualify for consideration under this CP may still pursue Section 408 review and decision by submitting a *Buffalo District Request for Section 408 Permission* (available online at <https://www.lrb.usace.army.mil/Missions/Regulatory/Section-408-Requests-Section-404-10-Applications/>) to the USACE – Buffalo District Section 408 Mailbox (LRB-408-404Submittals@usace.army.mil). Such alteration requests will then follow protocols described by the *USACE – Great Lakes and Ohio River Division Regional Procedural Review Plan for Low-Impact Alteration Requests Pursuant to 33 USC 408* and the *USACE – Buffalo District Synchronization of the Regulatory and Section 408 Program Standard Operation Procedures (SOP)*.

XIII. IMPLEMENTATION PROCESS:

The following process will be used to implement this CP for Section 408 alteration request reviews:

A. Submission:

Requester provides completed *Buffalo District Request for Section 408 Permission* by emailing to the *USACE – Buffalo District Section 408 Mailbox*, refer to the links below:

Buffalo District Request for Section 408 Permission:

<https://www.lrb.usace.army.mil/Missions/Regulatory/Section-408-Requests-Section-404-10-Applications/>

USACE – Buffalo District Section 408 Mailbox:

LRB-408-404Submittals@usace.army.mil

B. Completeness Determination:

The USACE - Buffalo District will review the information submitted by the Requester to determine if it demonstrates that the proposed alteration meets the qualifying conditions of the CP. Then, the following

alternatives will be implemented:

1. If USACE can conduct a Qualification Review and complete Validation under this CP within 30 days of receipt, then USACE can proceed and grant permission under the CP and notify the Requester in lieu of proving a completeness determination letter.
2. If USACE can't conduct a Qualification Review and complete Validation under this CP within 30 days of receipt but the submittal content is sufficient, then USACE will send a completeness determination letter to the Requester notifying them that their submittal under this CP is complete and initiate a 90-day review and decision process.
3. If USACE determines the submittal content to be insufficient, then USACE will provide a written notification that the submittal seeking authorization under this CP is incomplete.

C. Qualification Review:

USACE will complete a review to determine qualification under this CP following the Review and Decision Process. Through this process, USACE will evaluate each request for compliance with Technical, Environmental Considerations, Standard Conditions, Alteration-Type Specific Conditions, and other additional requirements to be determined by USACE.

D. Validation:

If it is determined that the request is permissible under this CP, USACE will develop an internal Section 408 Validation of Categorical Permission Memorandum with any additional supporting technical review memoranda as required.

E. Notification:

USACE will send a Transmittal Letter to notify the Requester of the decision: permission granted or permission denied under this CP.

XIV. DISTRICT COMMANDER DECISION:

I have reviewed this categorical permission and determined that the proposed alterations, delegation and verification of the technical and environmental reviews, and the validation and decision process is consistent with USACE guidance. This categorical permission is effective immediately for all current and future qualifying alterations.

LTC Eli S. Adams
Lieutenant Colonel, Corps of Engineers
District Commander



**US Army Corps
of Engineers®**

Buffalo District

BUILDING STRONG®

ENCLOSURE B
ALTERATION TYPES

CATEGORICAL PERMISSION FOR SECTION 408 REQUESTS
FLOOD RISK MANAGEMENT PROJECTS - OHIO
U.S. ARMY CORPS OF ENGINEERS - BUFFALO DISTRICT

July 2020

Prepared by:

U.S. Army Corps of Engineers
Buffalo District
Operations and Technical Support Section
1776 Niagara Street
Buffalo, NY 14207

Table of Contents

1.	Boat, Vehicle, & Trailer Storage.....	3
2.	Boat Hoists, Boat Launches, & Equipment.....	3
3.	Borings, Levee Explorations, & Instrumentation.....	3
4.	Bridges (Simple).....	4
5.	Decks.....	4
6.	Docks.....	5
7.	Erosion Control.....	5
8.	Fences & Gates.....	6
9.	Fill.....	6
10.	Floodwall/Retaining Wall Attachments.....	6
11.	Landscaping.....	7
12.	Parking Areas.....	7
13.	Poles & Posts.....	7
14.	Recreational Features.....	7
15.	Recreational Trails.....	8
16.	Retaining Walls (Simple).....	8
17.	Signage.....	9
18.	Stairs, Ramps, Walkways, Gangways, & Pads.....	9
19.	Storage & Storage Containers.....	9
20.	Structures (Simple).....	9
21.	Swimming Pools.....	10
22.	Utilities & Pipes (Simple).....	10
23.	Utility Poles & Guy Wires.....	11

ALTERATION TYPES: In order to be eligible for consideration under this Categorical Permission (CP), a Section 408 Alteration Request's components must adhere to the conditions established in the CP, fall under one or more of the below alteration types, and satisfy the alteration-type specific requirements contained herein. Eligibility for consideration does not guarantee permission from USACE. As mentioned in the CP, the term "levee" seen throughout the CP and its enclosures could be in reference to a levee prism, a floodwall, or both.

1. Boat, Vehicle, & Trailer Storage

For the purposes of this CP, boat storage refers to seasonal or temporary parking of small recreational watercraft on dry land. Vehicle and trailer storage includes small non-marine wheeled equipment used to transport people, equipment, or materials.

Alteration-Type Specific Requirements:

- A. Requester is responsible for ensuring that equipment, tools, and resources are readily available to immediately remove boats, vehicles, or trailers if requested by the Local Sponsor or USACE.

2. Boat Hoists, Boat Launches, & Equipment

For the purposes of this CP, boat hoists, including boat davits, are apparatuses and related equipment used for supporting, raising, lowering, or launching small watercraft into water, out of water, or onto a trailer.

Alteration-Type Specific Requirements:

- A. Structural supports are sufficiently reinforced to eliminate potential for unpermitted contact with the levee due to fatigue or failure.
- B. Requester agrees to perform routine maintenance and repairs to keep boat hoists, boat launches, and equipment in functional condition.
- C. Requester agrees to remove boat hoists, boat launches, and equipment if permanently out of service.

3. Borings, Levee Explorations, & Instrumentation

For the purposes of this CP, borings and levee explorations refers to geotechnical borings, cone penetration testing, hydrovac excavation, potholing, trenching, cultural inventories, sonar and other acoustic surveys, horizontal directional drilling (HDD), other means of geotechnical or scientific exploration. Instrumentation includes piezometers or inclinometers, staff gauges, tide and current gauges, meteorological stations, water quality devices, chemical and biological devices, sonar instrumentation, floating measuring devices, or other means of geotechnical or scientific data collection.

Alteration-Type Specific Requirements:

- A. A Contingency Plan is required that details how to contain and clean-up hazardous material spills and the process for contacting the Local Sponsor and USACE in the event of damage or impending damage to the USACE federal project. This is in addition to Categorical Permission condition X.C.5. pertaining to spills.
- B. Work may not initiate if the water body is at or approaching flood-stage.
- C. If the water body approaches flood-stage while work is underway, the Requester must discontinue drilling and place grout or bentonite seals in open borings, trenches, or other excavations.
- D. Requester is required to have sufficient sealing materials and equipment on-site prior to and through the duration of work.
- E. Open holes and excavations are required to be sealed when crews are not on site and cannot be left unattended for more than 24 hours.
- F. Requester is responsible for ensuring drilling equipment will not obstruct or contact overhead utilities.

- G. Requester is responsible for the restoration of a levee damaged by hydrofracture or other aspect of the drilling operations. Plans for restoration or repair work must be approved by USACE prior to repair work begins.
- H. Positive closure devices are required for pipes that penetrate or pass under the levee prism and carry liquids or gasses.
- I. Boreholes drilling requires a Drilling Program Plan in accordance with ER 1110-1-1807 *Drilling in Embankments* as part of the technical review of the proposed alteration.
- J. Borehole drilling is required to be designed to minimize the need for drilling fluid within the levee prism.
- K. Boreholes awaiting backfill are required to be covered during the interval.
- L. HDD requires submission of the following information for USACE review prior to work:
 - i. Detailed subsurface investigations along the proposed directional drilling alignment to determine soil stratigraphy.
 - ii. Pipe characteristics: material, length, diameter, wall thickness, etc.
 - iii. Monitoring Plan for drilling fluids, ground surface movement, pumping rate, pressure at the drill rig, pressure in the annular space behind the drill bit, viscosity of drilling fluid, density during the pilot bore, back reaming, and pipe installation stages.
- M. HDD entry and exit points of the pipe are required to be no less than 300 feet from the landside toe of the levee. The pipeline must pass no less than 50' beneath the levee landside toe. If the top of the pipe is less than 50 feet beneath the current channel invert, a scour analysis is required. This analysis must determine that the scour depth will not expose the buried pipe.
- N. Instrumentation is required to have a device inspection schedule to ensure serviceable condition and continuous operation.
- O. Instrumentation must be removed if no longer in operation. If removed, associated structures and equipment (foundations, anchors, buoys, lines, etc.) must also be removed and the project restored to pre-installation conditions.
- P. Floating instrumentation is required to be securely anchored or tethered.

4. Bridges (Simple)

For the purposes of this CP, simple bridges refers to bridges for pedestrian access, utilities, and minor vehicular traffic, typically including abutments and erosion protection.

Alteration-Type Specific Requirements:

- A. Single-span bridge without piers.
- B. Two total, 12 feet wide vehicular travel lanes, or less.
- C. Bridge and bridge supports, foundations, and abutments must not reduce channel capacity.
- D. Adequate fall protection or guard rails must be included in the bridge to prevent pedestrians, large objects, or vehicles from falling into the channel.

5. Decks

For the purposes of this CP, decks refers to elevated landings and platforms used for recreation, leisure, and small commercial business purposes, typically including associated handrails and supports.

Alteration-Type Specific Requirements:

- A. The deck and associated supports must not penetrate the levee.
- B. USACE or the Local Sponsor must verify the condition of the USACE federal project below where the deck is to be located.
- C. The deck must not completely obstruct visual inspection of the USACE federal project beneath it. Compliance with this requirement can be achieved with lattice fencing, windows, etc. and adequacy is the

sole discretion of USACE.

- D. For waterside slope decks and associated features, anchoring must be sufficiently resilient to prevent floating migration during high water. If the decks have pilings, the pilings must be taller than the height of the levee elevation to prevent the deck from floating off its pilings.
- E. Pilings must be made of inert, non-reactive material. Materials coated with creosote are prohibited and any chemically treated material must be coated with an impact-resistant, biologically inert substance.

6. Docks

For the purposes of this CP, docks refers to platforms over water used for access to water vessels or for recreation. This includes fixed structures, floating docks, and pilings, typically including associated handrails and supports.

Alteration-Type Specific Requirements:

- A. Anchoring must be sufficiently resilient to prevent floating migration during high water. If the docks have pilings, the pilings must be taller than the height of the levee elevation to prevent the dock from floating off its pilings.
- B. Pilings must be made of inert, non-reactive material. Materials coated with creosote are prohibited and any chemically treated material must be coated with an impact-resistant, biologically inert substance.
- C. Docking material must be made of metal grating, plastic, or other non-reactive (e.g., epoxy, wood) product; flotation devices must be of materials that will not disintegrate, such as plastic or closed cell foam encapsulated sun-resistant polyethylene.
- D. USACE or the Local Sponsor must verify the condition of the USACE federal project below where the dock is to be located.
- E. The dock must not obstruct visual inspection of the USACE federal project beneath it. Compliance with this requirement can be achieved with lattice fencing, windows, etc. and adequacy is the sole discretion of USACE.
- F. Requester agrees to remove debris that accumulates as a result of the dock. Debris must be disposed of outside of the easement of the USACE federal project.

7. Erosion Control

For the purposes of this CP, erosion control refers to physical features intended to protect a levee or channel slope from erosion such as bank stabilization, armor stone, riprap (including grouted riprap), gabion baskets, concrete lining, etc. This alteration type does not apply toward erosion control for individual encroachments, such as decks and stairs.

Alteration-Type Specific Requirements:

- A. Designed to adequately protect against anticipated flows or wave action. For river situations, protection must not significantly alter the hydraulic properties of channels.
- B. Erosion control must have geotextiles, filter fabric layers, bedding stone, and/or aggregate subgrades in accordance with USACE standards.
- C. Made of concrete, stone, or other suitable material (not asphalt, petroleum-based, left-over construction materials, refuse, etc.).
- D. Sufficiently sound and durable material free from cracks, seams, shale parting, and soil.
- E. Material composition must be consistent throughout so that variable stone sizes are evenly distributed and not segregated.
- F. Match the profile and slope gradient of adjacent USACE federal project waterside slopes.
- G. Requester is responsible for recharging erosion protection as needed.
- H. Requester is responsible for maintaining the erosion protection in vegetation-free condition.
- I. Prior to placement, USACE or the Local Sponsor must verify the condition of the USACE federal project

below where the erosion protection is to be located.

8. Fences & Gates

For the purposes of this CP, fences refers to a barriers, railings, or other upright structures enclosing an area of ground to mark a boundary and/or control access. Gates are hinged barriers used to open/close access points in fences.

Alteration-Type Specific Requirements:

- A. If located on a levee, a fence must be commercial or public in nature and maintained by a commercial or public stakeholder. Private residential fences on the levee are not eligible for consideration under this CP.
- B. If located within the easement, but not directly on a levee, fences are eligible for consideration. This requirements applies to private residential fences, as well as fences commercial or public in nature.
- C. No fence, regardless of nature, may obstruct USACE or Local Sponsor operations and maintenance access. Gates may be included in the fence to provide such access, but they are required to be permanently accessible. Locked gates, or gates capable of being locked, do not qualify under this CP.
- D. Requester is required to immediately open gates upon request by USACE or Local Sponsor for access.
- E. Gates must be sufficiently wide to allow access to personnel, equipment, or vehicles where appropriate.
- F. Requester agrees to maintain gates in functional working order. If gates do not function properly, the Requester is responsible from removal.
- G. The fence must not obstruct visibility of the USACE federal project. Compliance with this requirement can be achieved with lattice fencing, chain-link fencing, transparent materials, etc. and adequacy is the sole discretion of USACE.
- H. Requester agrees to remove debris or obstructions that accumulate as a result of the fence. Debris must be disposed of outside of the easement of the USACE federal project.

9. Fill

For the purposes of this CP, fill refers to soil placed on a levee's landside slope or crest. Fill will typically cover a levee's sod cover or clay core.

Alteration-Type Specific Requirements:

- A. May not be placed on a levee waterside slope, channel side slopes, or in a channel.
- B. May not be placed on erosion protection.
- C. Sod cover is required and is to be seeded to the USACE federal project's sod cover specifications with native grasses. Seed mixes must be of a non-invasive native species.
- D. Requester is required to regularly maintain sod cover created as a result of fill at 12" height.
- E. Requester is required to remove growth of vegetation not meeting sod cover specifications, such as bushes, woody vegetation, etc.
- F. Prior to placement, USACE or the Local Sponsor must verify the condition of the USACE federal project below where the sod is to be located.
- G. Loading from fill shall not adversely impact the stability of the levee.

10. Floodwall/Retaining Wall Attachments

For the purposes of this CP, floodwall or retaining wall attachments refers to cleats and whips, eyebolts, brackets, poles and posts, and other miscellaneous items that are connected to a wall and typically used for boat moorage. This alteration type only applies to floodwalls, retaining walls, or wall caps that were constructed as part of or incorporated into the USACE federal project.

Alteration-Type Specific Requirements:

- A. Requester is required to routinely inspect USACE federal project in the vicinity of the attachment for indications of detrimental impacts: cracking, scaling, deflection, settlement, etc.
- B. If indications of detrimental impacts are identified, Requester is responsible for repairs. Requester is also required to notifying USACE and the Local Sponsor of the impacts.
- C. Requester agrees to remove debris or obstructions that accumulate as a result of the attachment. Debris must be disposed of outside of the easement of the USACE federal project.

11. Landscaping

For the purposes of this CP, landscaping refers to timbers, plantings, flowers, gardening, blocks, fire pits, ponds, mulch, stone cover, and other decorative items.

Alteration-Type Specific Requirements:

- A. May not be placed on a levee prism, channel side slopes, or in a channel.
- B. May not be placed on erosion protection.
- C. Installation of temporary or permanent irrigation lines, ditches, or runoff redirection is not eligible for consideration under this CP.
- E. Landscaping activities must not convert native habitat to man-made landscaping in previously undisturbed areas.
- F. If installing vegetation within the easement in conjunction with landscaping, the Requester is required to provide details of species, quantity, and location to USACE for review. Vegetation species installed within the levee prism must be not be invasive nor have potential for extensive root penetrations or roots that may grow to a greater than ½” diameter.

12. Parking Areas

For the purposes of this CP, parking areas refers to designated surfaces such as asphalt, concrete, gravel, or other material for parking vehicles, including driveways.

Alteration-Type Specific Requirements:

- A. Parking areas placed within an easement, but not on a levee prism, are eligible for consideration under this CP.
- B. Prior to placement, USACE or the Local Sponsor must verify the condition of the USACE federal project below where the parking area is to be located.

13. Poles & Posts

For the purposes of this CP, poles and posts refers to stand-alone vertical members, typically used to support or display an item. This alteration type does not include poles or posts that are attached to a wall or wall cap (refer to 10. Floodwall/Retaining Wall Attachments).

Alteration-Type Specific Requirements:

- A. May be embedded within erosion protection, but not significantly displace or replace riprap.
- B. In order to avoid vibration induced cracking potential, new poles within the levee prism and within 15 feet of the levee landside toe must be installed in pre-drilled holes.

14. Recreational Features

For the purposes of this CP, recreational features refers to benches, tables, swing sets, playgrounds, etc.

Alteration-Type Specific Requirements:

- A. Recreational features must not be embedded or anchored into the levee or within the USACE federal project easement.
- B. Requester may be required to and must be prepared to relocate recreational features at the request of USACE or the Local Sponsor.

15. Recreational Trails

For the purposes of this CP, recreational trails refers to paths for the purposes of providing access for pedestrians or small non-motorized recreational vehicles.

Alteration-Type Specific Requirements:

- A. Constructed to be flush at grade with the levee prism or USACE federal project easement surface area.
- B. During installation, excavation and stripping is limited to sod cover on the levee crest and side slopes. No penetrations or cuts into the levee prism are permissible.
- C. Stripped levees are required to be proof-rolled to check for imperfections prior placement of aggregate or subbase. If imperfections are identified, Requester is required to repair with suitable material prior to placing the recreational trail.
- D. For placement of a paved trail on a levee prism, the structural section must consist of at least 2 inches of asphalt pavement with a minimum of 6 inches of aggregate subbase.
- E. For placement on a levee crest, the trail must have a minimum of 2% transverse slope to drain surface water away from the crest. Runoff must also not be allowed to pond on or near the levee prism.
- F. Recreational trails may also be used by Local Sponsors for maintenance access, therefore, it is not permissible for them to have closure devices (swing-arms, gates, ropes, etc.). Additionally, trails must be maintained in good repair and USACE, the Local Sponsor, and/or associated contractors will not be held liable for fixing damage caused to them from inspection or maintenance activities.
- G. If rutting occurs along the recreational trail, the Requester must repair that part of the trail with suitable material.
- H. Trails must not cover or conceal features necessary for operations and maintenance of the USACE federal project (survey monument, gauges, relief wells, etc.).

16. Retaining Walls (Simple)

For the purposes of this CP, simple retaining walls refers to rigid walls for supporting soil laterally so that it can be retained at different levels.

Alteration-Type Specific Requirements:

- A. Designed by a licensed Professional Engineer, if required by USACE.
- B. Meet USACE requirements for stability (including overturning, sliding, shear failure, global slope stability failure, soil bearing capacity, etc.).
- C. A geotechnical investigation may be required to be submitted to USACE for review. It may be required to include slope stability and seepage analysis to ensure the proposed wall does not pose a risk to the levee.
- D. Must incorporate adequate drainage from behind the wall, if necessary.
- E. Foundation is required to be structurally adequate to prevent settlement.
- F. Excavation of the levee for installation of the retaining wall must be backfilled with material similar to the adjacent levee in 4 to 6-inch lifts and compacted to at least the same density as the adjacent undisturbed embankment or underlying foundation.
- G. If the wall becomes unstable, the Requester is required to make repairs to immediately prevent a failure and contact USACE or the Local Sponsor.

17. Signage

For the purposes of this CP, signage refers to private or public notifications for the purposes of displaying directions, warnings, or other information, including support posts.

Alteration-Type Specific Requirements:

- A. Private resident signs may not be placed on USACE federal project features.
- B. Requests for signage must include the content of the message to be displayed on the sign. USACE reserves the right to not permit a sign if the content is injurious to the public interest or impairs the usefulness of the USACE federal project.
- C. In order to avoid vibration induced cracking potential, new poles within the levee prism and within 15 feet of the levee landside toe must be installed in pre-drilled holes.

18. Stairs, Ramps, Walkways, Gangways, & Pads

For the purposes of this CP, stairs, ramps, walkways, gangways, and pads refers to constructed platforms that provide pedestrian access, typically including associated handrails and supports.

Alteration-Type Specific Requirements:

- A. If extending from and supported by the levee crest, alteration must be keyed into the levee to create a continuous well-integrated soil mass.
- B. All areas that are keyed in should match the slope of the embankment and consist of approved material.
- C. The alteration must not cause runoff ponding on or near the levee prism.
- D. Requester agrees to remove debris or obstructions that accumulate as a result of the alteration. Debris must be disposed of outside of the easement of the USACE federal project.
- E. Prior to placement, USACE or the Local Sponsor must verify the condition of the USACE federal project below where the alteration is to be located.
- F. For waterside slope alterations and associated features, anchoring must be sufficiently resilient to prevent floating migration during high water. If the alteration has pilings, the pilings must be taller than the height of the levee elevation to prevent it from floating off its pilings.
- G. Pilings must be made of inert, non-reactive material. Materials coated with creosote are prohibited and any chemically treated material must be coated with an impact-resistant, biologically inert substance.

19. Storage & Storage Containers

For the purposes of this CP, storage and storage containers refers to loose storage of materials, equipment, supplies, personal items, etc. as well as crates, boxes, bins, dumpsters, or other containers. This alteration type also includes temporary construction staging areas.

Alteration-Type Specific Requirements:

- A. Request must include a specific purpose for the material to be stored: fire wood, lawn care, landscaping supplies, etc. Permission will not be granted to store materials with no apparent functional application.
- B. Staging areas or working pads may be setup for materials and/or equipment within USACE federal project easement, but not on the levee prism or near a floodwall.

20. Structures (Simple)

For the purposes of this CP, simple structures refers to minor buildings such as sheds, garages, and gazebos.

Alteration-Type Specific Requirements:

- A. No structures with a below grade foundation or excavation.
- B. Single story, generally a maximum height of 12 feet.
- C. Not used for human habitation.
- D. Modifications of existing habitable structures are allowed, so long as habitable footprint is not increased.
- E. Constructed in previously disturbed areas (by USACE or others), so as to not convert wildlife habitat.

21. Swimming Pools

For the purposes of this CP, swimming pools refers to both in-ground and above-ground recreational pools.

Alteration-Type Specific Requirements:

- A. Pools are not permissible on the levee prism.
- B. Pools within the easement, but not on the levee prism, may require the Requester to submit a geotechnical analysis, slope stability analysis, and seepage analysis that demonstrate that the pool would not pose a risk to the USACE federal project.
- C. Pools must be designed and constructed so that they do not result in buckling or slope failure.
- D. Requester is required to take every precaution during construction to avoid puncturing the impervious layer which could facilitate seepage and lead to sand boils and potential levee instability.

22. Utilities & Pipes (Simple)

For the purposes of this CP, simple utilities and pipes refers to gravity pipes, small diameter pressurized pipes, underground or buried utilities, overhead electrical lines, and small private or commercial utility poles.

Alteration-Type Specific Requirements:

- A. Utilities and pipes must be designed and installed in accordance with current USACE standards.
- B. Requester agrees to remove debris or obstructions that accumulate as a result of the pipe and its associated structures. Debris must be disposed of outside of the easement of the USACE federal project.
- C. Pressurized pipes must be designed to prevent flotation from uplift, scour or erosion, damage from channel debris, leakage, seepage along the pipe, corrosion, and damage from vehicular/pedestrian surface loads.
- D. Pressurized pipes passing over or within the freeboard zone must be made of metal, preferable ductile iron or coated steel, with suitable flexible couplings.
- E. Pressurized pipes are limited to a maximum diameter of 4 inches.
- F. Pressurized pipes transporting product completely across or through the USACE federal project easement require a positive closure device.
- G. Pressurized pipelines running parallel to USACE federal project levees should be located at least 15 feet beyond the levee toes.
- H. Pressurized pipes must be tested to industry standards after installation and demonstrate 0% pipe leakage.
- I. Pipes terminating on the waterside slope or in the channel are required to have a flapgate or elastomeric check-valve at the outfall and a positive closure device (sluice gate, slide gate, etc.) on the waterside of the levee crest that is accessible from the levee. Typically, closure devices are housed in gate-wells at the waterside edge of the levee crest.
- J. Plastic pipes (HDPE, PVC, etc.) are not allowed within or beneath the levee prism unless they are embedded in concrete.
- K. Pipes located within or beneath a levee prism must have watertight joints that can accommodate movement.
- M. Pipes located within, above, or beneath a levee prism must be routinely visually inspected and periodically video inspected every 5-years by the Local Sponsor or Requester.
- N. If an inspection identifies issues with the pipe (corrosion, alignment sag or heave, separation at joints,

- etc.), corrective action must be taken immediately by the Requester. In most cases, once a pipe begins to oval or flatten at the crown or has lost more than 5% of its original interior height, it should be replaced.
- O. If pipe replacement is necessary, all replacement parts must be of equivalent or better quality than those to be replaced. All repairs must restore pipes and associated equipment to the standards of the original design, or better.
 - P. Buried pipes above the design water surface elevation require 2 feet of low permeability or controlled low-strength material (CLSM) cover. CLSM mix design is required to be submitted to USACE for review.
 - Q. Buried pipes on the sides of the levee should be covered with a minimum of 1 foot of low permeability material to protect them from debris during high water (waterside) or to keep them from interfering with or being damaged by operations or maintenance of the levee (landside).
 - R. Pipes installed through the levee prism should be as close to right angles to the levee centerline as practicable.
 - S. Dry utility pipes (fiber optic, electrical, etc.) installed by open trench methods must go up and over, instead of through, the levee design water surface elevation (DWSE).
 - T. Dry utility pipes that cross the levee foundation at a depth less than or equal to two times the height of the levee should be analyzed for uplift; dry utility pipes crossing the levee surface must be designed to counteract buoyant forces at the DWSE.
 - U. Pipe location and orientation must be clearly marked in the field so they can be easily identified for flood fighting crews.
 - V. Backfill around and beneath the pipe must be CLSM. CLSM mix design is required to be submitted to USACE for review.
 - W. If a chemical or electrochemical reaction is expected, the pipe and pipe couplings must be protected.
 - X. If it is determined to be necessary by USACE, the Requester must prepare an excavation plan demonstrating the effects of pipe installation excavation on the stability of the embankments.
 - Y. Abandoned pipes or conduits within the levee prism must be either completely removed and the levee restored to pre-alteration conditions or they must be abandoned by grouting with flowable fill. The grout needs to be sufficiently fluid so that it can be pumped to completely fill the pipe, leaving no voids.

23. Utility Poles & Guy Wires

For the purposes of this CP, utility poles and guy wires refers to municipality or utility company owned and operated poles used primarily to support transmission of utility services to include stabilizing guy wires and associated anchors. This alteration type does not include private or commercial utility poles (refer to 22. Utilities and Pipes (Simple)).

Alteration-Type Specific Requirements:

- A. Minimize disturbance during construction within the USACE federal project easement to 1 acre.
- B. In order to avoid vibration induced cracking potential, new poles within the levee prism and within 15 feet of the levee landside toe must be installed in pre-drilled holes.
- C. After installation, the entire hole is required to be filled with a cement grout slurry (or a suitable alternative). This slurry must fill up to the grade of the surrounding ground surface or the upper 2 feet of fill may be compacted soil.
- D. Guy wires must be anchored by concrete (or suitable alternative).
- E. Alternative techniques for utility pole and guy wire installations are required to be submitted to USACE for review.
- F. In general, utility line crossings must be a minimum of 25 feet above the elevation of the levee crest.
- G. Requester is required to routinely inspect USACE federal project in the vicinity of the utility pole and guy wires for indications of detrimental impacts: cracking, scaling, deflection, settlement, etc. and repair if necessary.
- H. Requester is required to routinely inspect utility poles and guy wires during routine maintenance for

indications of deflection, settlement, deterioration, etc. and repair if necessary.

- I. Utility poles and guy wires must be removed if no longer in operation and the USACE federal project restored to pre-installation conditions.

DRAFT