Requests to Alter USACE Projects
(33 USC 408)

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Outline

- Background
- Guidance
- Applicability
- Exceptions
- Process
- Recommendations
- Key Points
Background

- Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408 or “Section 408”)

“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...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.”
Background

- Provides the Secretary of the Army authority to grant permission to alter a USACE civil works project if

1. *Does not impair usefulness of the project*
2. *Not injurious to the public interest*
Guidance

- Engineering Circular 1165-2-216
  - Improve consistency in the way USACE considers, processes, and documents decisions for requests for alterations to Civil Works projects.
  - Create a process that is applicable to all types of Civil Works projects.
  - Be transparent on what information is required.
  - Create a process that can be tailored by Districts to the appropriate scope, scale, and complexity of a proposed alteration.
Section 408 Applicability

- All USACE Civil Works projects
- Alterations within real estate interests of the USACE project
- Actions that build upon, alter, improve, move, occupy, or otherwise could affect the USACE project
Exceptions

- Alterations:
  - Performed as routine O&M activities
  - Performed as part of the federally authorized project purpose
  - Performed by the non-federal sponsor defined in the OMRR&R Manual
  - Compliant with a Shoreline Management, Master Plan, and Operational Management Plan
  - Included with Real Estate Outgrants issued pursuant to ER/EP 1130-2-550 (i.e. renewal of leases)
  - By a non-federal sponsor as in kind contribution pursuant to a partnership agreement
Basic Steps

- Step 1: Pre-Coordination
- Step 2: Written Request
- Step 3: Required Documentation
- Step 4: District Agency Technical Review
- Step 5: Summary of Findings
- Step 6: Division Review, if required
- Step 7: HQ Review, if required
- Step 8: Notification
- Step 9: Post-Permission Oversight
Recommendations

- Ask the Question
- Pre-coordination is critical
  - Starts the dialogue
  - Creates an understanding
  - Provides a POC
  - Ultimately determines applicability
- A complete written request is invaluable
Key Points

- Process is intended to be scalable, based on the scope and scale of the proposed alteration
- Process is District led
- Coordination throughout the process is encouraged
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Questions?

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