



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

Public Notice

**CATEGORICAL PERMISSION
FOR SECTION 408 REQUESTS
U.S. ARMY CORPS OF
ENGINEERS, BUFFALO
DISTRICT**

**Request No. 408-LRB-2020-0001
Published: April 2, 2020
Expires: May 2, 2020**

Section: Operations & Technical Support

All written comments should reference the above Request No. and be addressed to:
**US Army Corps of Engineers, Buffalo District
Regulatory Branch (Attn:) Keith C. Sendziak
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 (Attachment A). 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 (Attachment B). 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, or replacement of the Section 408 alteration must meet conditions established by the CP. These would include meeting predetermined alteration descriptions as proposed below, having no disqualifying circumstances, and adhering to applicable standard engineering and environmental conditions established by the CP.

ALTERATION TYPES: The proposed CP would cover construction, modification, replacement, or removal of the following alteration types within the easement of the USACE project:

1. Boat, Vehicle, & Trailer Storage

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

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.

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, other means of geotechnical or scientific exploration, and horizontal directional drilling (HDD). 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.

4. Bridges (Simple)

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

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.

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.

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.

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.

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, clay core, or erosion protection.

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 the wall and typically used for boat moorage. This alteration type only applies to flood or retaining walls or wall caps that were constructed as part of or incorporated into 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.

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.

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 11. Floodwall/Retaining Wall Attachments).

14. Recreational Features

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

15. Recreational Trails

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

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.

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.

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.

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.

20. Structures (Simple)

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

21. Swimming Pools

For the purposes of this CP, swimming pools refers to both above or below ground recreational pools.

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 private or commercial utility poles.

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)).

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 federal civil works 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 (see descriptions above), 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 scope of the proposed Section 408 CP. Therefore, at this time, USACE is primarily requesting public feedback on the following:

- Concerns (Specific or General)
- Potential Impacts
- Relevant Effects of Past Actions
- Possible Alternatives or Conditions

USACE also welcomes additional comments regarding public interest, impacts on the USACE projects, or general considerations. Comments received within 30 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 May 2, 2020.

Mail: US Army Corps of Engineers, Buffalo District
Regulatory Branch (Attn:) Keith C. Sendziak
1776 Niagara Street
Buffalo, New York 14207

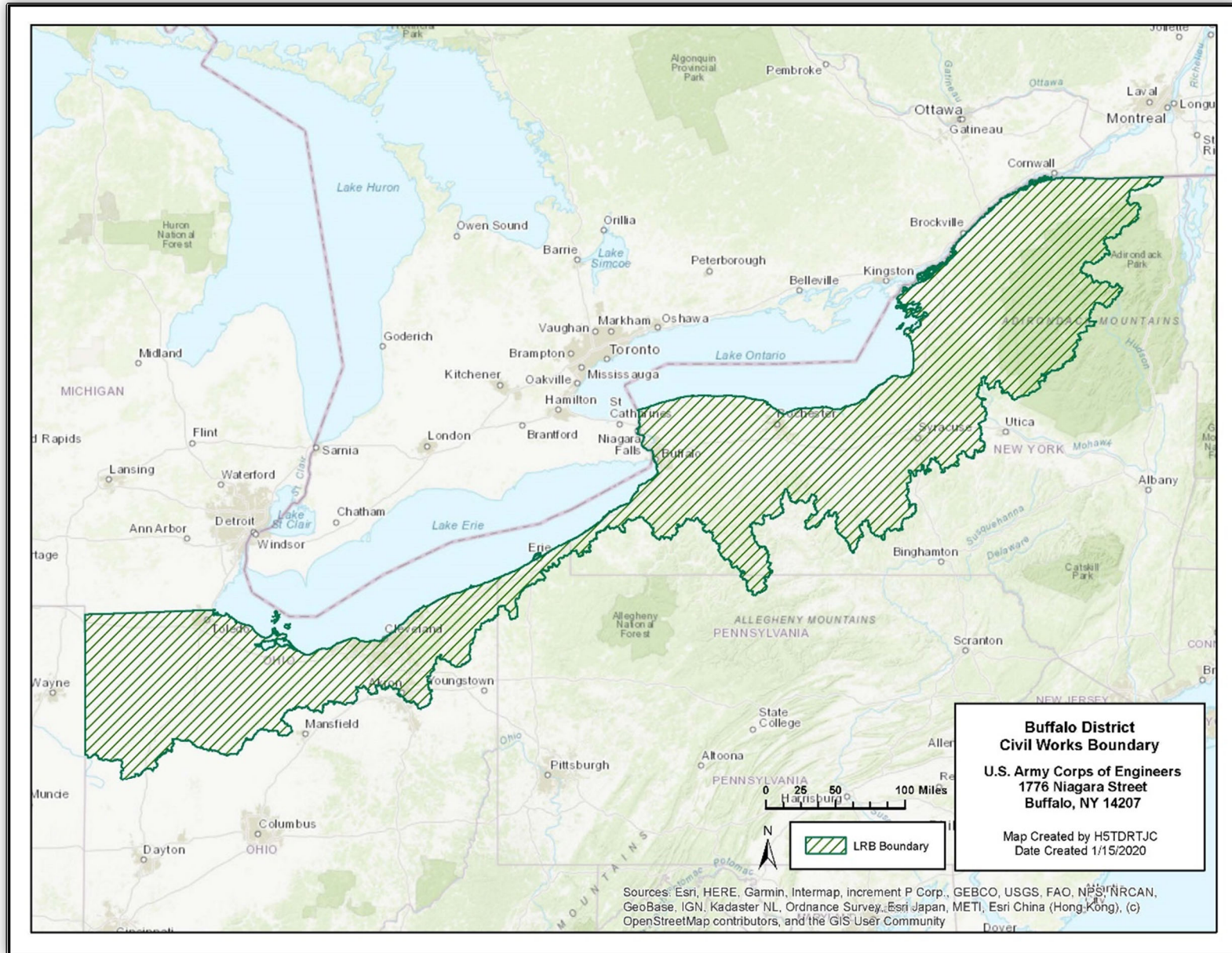
Email: keith.c.sendziak@usace.army.mil

Attachments:

- A. Map of Army Corps of Engineers, Buffalo District Civil Works Boundary
- B. Location of Army Corps of Engineers, Buffalo District Civil Works Projects Subject to the Proposed Categorical Permission

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.

Attachment A – Map of Army Corps of Engineers, Buffalo District Civil Works Boundary



Attachment B - Location of Army Corps of Engineers, Buffalo District Civil Works Projects Subject to the Proposed Categorical Permission

