



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
7400 LEAKE AVENUE
NEW ORLEANS, LOUISIANA 70160-0267

MAY 26, 2017

Regional Planning and
Environmental Division South
Environmental Studies Branch

TO INTERESTED PARTIES
PUBLIC NOTICE PURSUANT TO 33 USC 408
PERMISSIONS TO ALTER US ARMY CORPS OF ENGINEERS PROJECTS
AND THE NATIONAL HISTORIC PRESERVATION ACT

DEVELOPMENT OF A PROGRAMMATIC AGREEMENT TO MANAGE THE SECTION 106
PROCESS FOR "SECTION 408 PERMISSIONS" IN THE NEW ORLEANS DISTRICT

The United States Army Corps of Engineers (USACE), New Orleans District (CEMVN), is initiating the process to develop a Programmatic Agreement for the "Section 408 Permissions" pursuant to section 106 of the National Historic Preservation Act 1966, as amended (NHPA)¹. This notice is intended to notify the public in accordance with 36 CFR 800.2(d) that USACE proposes to develop a Programmatic Agreement that establishes procedures to satisfy the CEMVN's Section 106 responsibilities with regard to the programmatic review of these small-scale federal permissions, pursuant to 36 CFR Part 800.14(b). USACE is seeking public comment on the development of a Section 106 Programmatic Agreement.

NHPA and the Section 106 regulations² require Federal agencies to take into account the effect of their undertakings on historic properties during the planning process and consult with the State Historic Preservation Officer (SHPO) and other stakeholders regarding these effects. The Programmatic Agreement will address the effects of its actions on properties that are eligible for or listed on the National Register of Historic Places, including districts, archaeological sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture. The Programmatic Agreement will allow CEMVN to coordinate Section 106 reviews with its evaluation of the proposed action's potential for significant impacts to the human and natural environment required by the National Environmental Policy Act 1969, as amended (NEPA)³.

¹ Pub. 54 U.S.C. § 306108, [http://uscode.house.gov/view.xhtml?req=\(title:54%20section:306108%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:54%20section:306108%20edition:prelim)).

² 36 C.F.R. Part 800, <http://www.achp.gov/regs-rev04.pdf>. See also: <http://www.achp.gov/docs/citizens-guide-2015.pdf>.

³ Pub. 42 U.S.C § 4321 et seq. <https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>

“Section 408 Permissions”

In accordance with Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 USC 408 (“Section 408”), it is generally unlawful for entities to occupy, alter, obstruct, or impair the usefulness of USACE civil works projects, such as levees, floodwalls, floodways, or other navigation channels or aids. However, the Secretary of the Army may grant *permission* for temporary or permanent use, occupation or alteration of any USACE civil works 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, while at the same time reviewing it for National Environmental Policy Act (NEPA) compliance. To implement this portion of the law, USACE developed an Engineering Circular (EC), entitled, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects (EC 1165-2-216), which more specifically delineates the process for reviewing these “Section 408 Permissions”. The EC allows each USACE District office to develop a Procedural Review Plan to be used for Section 408 requests that are similar in nature and have similar impacts, which MVN accomplished on June, 27 2016.

Starting in April 2016, CEMVN began providing to the public NEPA compliance documentation related to the “Section 408 Permissions” on our website at <http://www.mvn.usace.army.mil/Missions/Section-408/>. The web page includes background information, frequently asked questions, review plans for large-scale permission requests, a general public notice regarding the manner of the NEPA review program (date April 27, 2016), and project specific public notices. CEMVN intends to continue to use this website as a single source for public input for the “Section 408 Permissions” and to post any completed Programmatic Agreement and other supporting documents.

Typical Actions Requiring Section 408 Permission

Within the CEMVN’s area of operation, typical requests for alterations to existing civil works projects include, but are not limited to the following examples:

- Pipeline crossings of levees, floodwalls, and navigation channels including horizontal directional drills, open cuts, ramp-overs, and floodwall penetrations
- Utility lines including fiber optic, water, natural gas, and electricity, both aerial and underground, including associated structures and support poles
- Bulk material conveyor systems
- Culverts, drainage pipes, and drainage ditches
- Vehicle and pedestrian bridges
- Bank stabilization and erosion control features
- Bulkheads, docks, wharfs, mooring pilings and dolphins
- Barge fleeting operations in channels with existing barge fleeting operations
- Cattle guards and fences
- Trails, signage, lighting, and other similar operational, recreational, and decorative features

- Soil investigations, including borings, piezometers, and inclinometers.
- Levee ramps and crossings

From CEMVN's perspective the actions that require *permissions* are similar in nature and are typically of small size undertakings, not very complex, and have minimal to no impacts (similar impacts) to existing civil works projects (e.g. the proposed permission request, if approved, would have little impact on the effectiveness of the Mississippi River Levee from functioning as a flood risk reduction measure). The proposed Programmatic Agreement would provide NHPA review for these types of actions and any others that are associated with a "Section 408 Permission" request, and would be scalable to the potential effects of the specific undertaking.

Development of Streamlined Consultation Procedures

Simultaneous to the development of the proposed Programmatic Agreement, CEMVN is also seeking to develop a Programmatic Environmental Assessment, which address Programmatic Permissions. Therefore, as much as may be feasible, CEMVN will attempt to address the same types of activities as those addressed in the Programmatic Permissions. The proposed Programmatic Agreement would establish Section 106 consultation procedures specifically tailored to the "Section 408 Permissions." The goal of this Section 106 consultation is to seek ways to streamline the review of small-scale actions that have little chance of affecting historic properties and provide a program specific framework for addressing the more complex "Section 408 Permission" requests. These procedures would involve consultation with the Louisiana State Historic Preservation Officer, Tribal Governments and other interested parties to develop programmatic allowances; treatment approaches; and resolution of adverse effects.

Please provide comments within 30 days of the date of this notice. Comments and questions may be addressed to Mr. Jason Emery at the above address or by phone at (504) 862-2364 or by e-mail at jason.a.emery@usace.army.mil.

Sincerely,


for MARSHALL K. HARPER

Chief, Environmental Planning Branch