



**US Army Corps  
of Engineers** ®  
Norfolk District

**CATEGORICAL PERMISSION FOR SECTION 408 REQUESTS**

**Section 408 Categorical Permission 2 (408-CP-02) - Low Impact Alterations  
Conducted By Nonfederal Sponsors or Independent Requestors to the  
Sandbridge Beach Erosion and Hurricane Protection Project  
in Virginia Beach, Virginia.**

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

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21 March 2023

Prepared by:

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## Norfolk District Section 408 Categorical Permission 2 (408-CP-02)

### **AUTHORITY:**

The authority to grant permission for temporary or permanent use, occupation, or alteration<sup>1</sup> 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.

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 to the USACE, Directorate of Civil Works, Division and District Commanders, and supervisory Division Chiefs depending upon the nature of the proposed activity. For the Norfolk District, Section 408 has been delegated to the District Commander and Chief of the Water Resources Division / District Section 408 Coordinator, depending on the complexity of the request.

### **INTRODUCTION:**

The purpose of this document is to establish a categorical permission (CP) to expedite and streamline the review and final decisions of Section 408 requests that are similar in nature and have similar impacts to the USACE project and environment. This CP requires approval by the Norfolk District Commander. There are numerous USACE federally authorized civil works projects within the boundaries of the Norfolk District. Each year the Norfolk District receives requests through the non-federal project sponsors and from private, public, tribal, and other federal entities (Requesters) to alter USACE Federal projects pursuant to Section 408. The majority of these requests are for relatively minor alterations.

When the Norfolk District receives a request to alter a USACE project, the district follows a review process outlined by *Engineer 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, 10 September 2018*. To streamline the review process, EC 1165-2-220, paragraph 10.a. states that USACE districts can develop categorical permissions to cover potential alterations that are similar in nature and that have similar impacts.

**Categorical Permission.** The district, division, and/or HQUSACE 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

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<sup>1</sup> "Alteration" refers to any action by any entity other than USACE that builds upon, alters, improves, moves, obstructs, or occupies an existing USACE project. Unless otherwise stated, for ease of reference, the use of the term "alteration" in this document also includes "occupation" and "use."

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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.

Pursuant to the Council on Environmental Quality Regulations (Title 40 of the Code of Federal Regulations Parts 1500-1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and Title 32 of the Code of Federal Regulations Part 989, a Programmatic Environmental Assessment (PEA) was prepared by the U.S. Army Corps of Engineers, Norfolk District, for low impact alterations conducted by nonfederal sponsors or independent requestors to Sandbridge Beach Erosion and Hurricane Protection Project in Virginia Beach, Virginia. The PEA is an evaluation addressing the potential environmental effects associated with the alterations and cumulative effects of the whole proposed action. Maintenance work or construction of other structural features at residential properties at Sandbridge with similar activities to those addressed in the PEA, will no longer require individual NEPA documentation of environmental impacts for minor and low impact activities. This PEA and Finding of No Significant Impact (FONSI) was finalized on 19 May 2021. As part of the final Section 408 categorical permission verification, a findings and final decision of the environmental and cultural resources effects associated with the alterations covered in this CP will be documented in a project specific Record of Environmental Consideration (REC).

### GEOGRAPHIC AND TEMPORAL SCOPE OF THE CATEGORICAL PERMISSION:

Geographic Scope: The Norfolk District's Civil Works area of responsibility covers a portion of Commonwealth of Virginia (Figure 1), but parts of the state are within four (4) other Corps Districts – Baltimore District for the Potomac River Basin, Wilmington District for the Roanoke River Basin, Nashville District for the Tennessee River Basin, and Huntington District for the New River Basin. Norfolk District has nearly all the coastal and tidal portions of the Commonwealth.

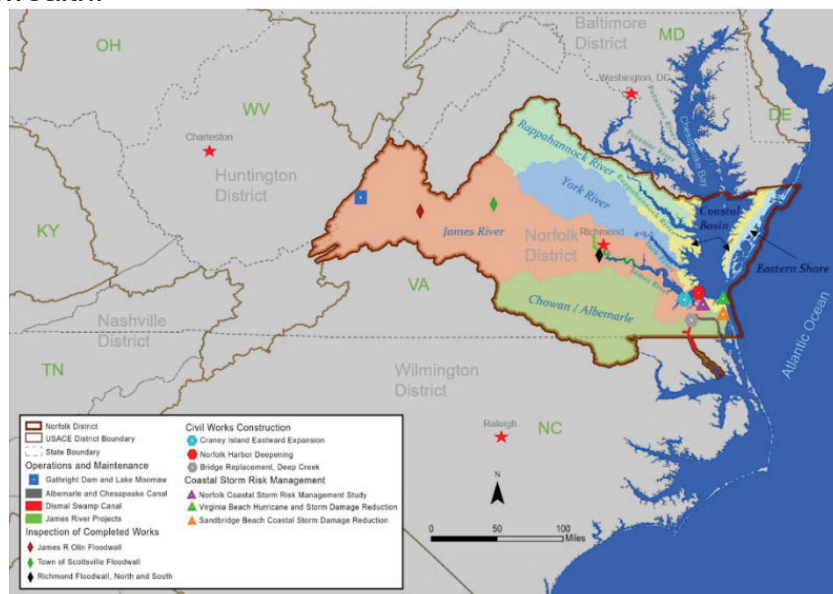


Figure 1: Norfolk District Civil Works Boundaries

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The geographic scope of this CP is limited to projects located within the Sandbridge Beach Erosion and Hurricane Protection Project along Sandbridge Beach in Virginia Beach, Virginia under the responsibility of the Norfolk District (Figure 2). Sandbridge Beach is located on a barrier island along coastal southeast Virginia that separates the Atlantic Ocean on the east from Back Bay, a shallow freshwater sound, to the west. It is a residential community of mostly year-round residents, rental properties, and summer homes located approximately 5 miles south of Virginia Beach's "resort strip." Several major storms, nor'easters, and hurricanes have struck the area in past years, causing severe losses of sand and coastal flooding; the oceanfront is susceptible to wave attack on the beach berm and dunes. Sandbridge Beach extends from the U.S. Naval Fleet Anti-Air Warfare Training Center at Dam Neck to the north to Back Bay National Wildlife Refuge to the south.

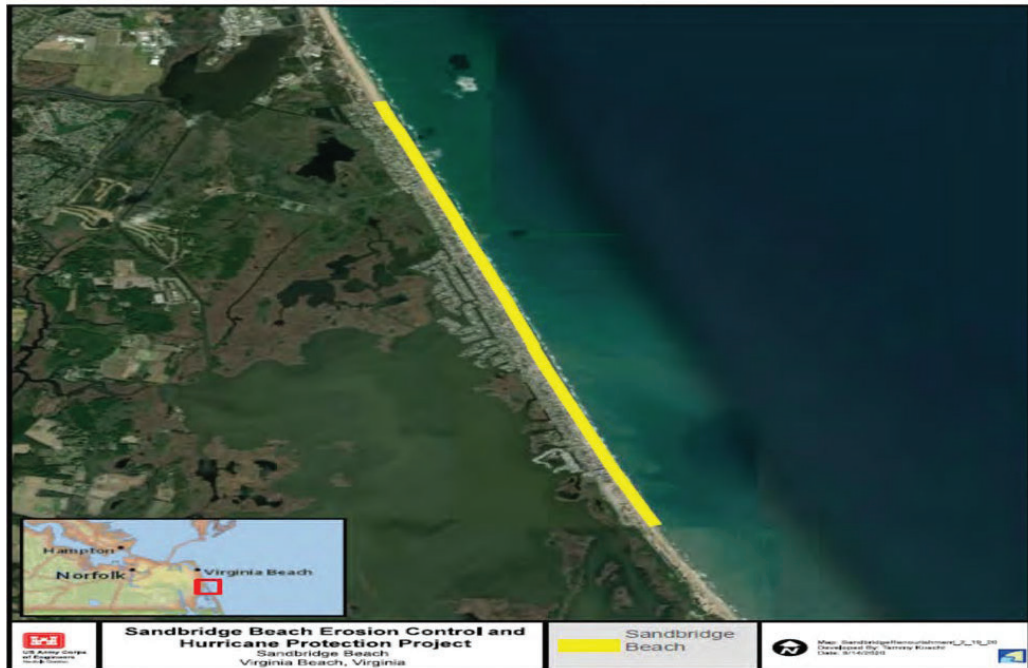


Figure 2. Sandbridge Beach Erosion Control and Hurricane Protection Project

**Temporal Scope:** The temporal scope of the CP is five (5) years. Approximately every five years the CP will be reevaluated 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 reevaluation after a shorter period of time, if conditions so warrant.

### **CATEGORICAL PERMISSION ALTERATIONS:**

This CP encompasses alterations that are similar in nature and have similar impacts and are representative of the types of alterations and associated impacts that have been approved under Section 408 since issuance of EC 1165-2-220.

Proposed alteration requests that do not qualify under this CP would be reviewed individually and a decision made that follows one of the other options for seeking Section 408 permission described in EC 1165-2-220 (i.e., via as a single-phase or multi-phased review).

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For an alteration to be approved under this CP, the proposed design and construction must meet the alteration description, have no disqualifying circumstances, and adhere to applicable environmental requirements and terms and conditions (see Categorical Permission Conditions Section below).

This Categorical Permission, 408-CP-02, satisfies the Section 408 requirements only. Any other applicable federal, state, or local permits need to be secured by the Requester before work can begin.

### **CATEGORICAL PERMISSION 2 (408-CP-02) ALTERATION DESCRIPTION:**

This Categorical Permission, 408-CP-02, grants permission to alter the Sandbridge Beach Erosion Control and Hurricane Protection Project (Federal project), a USACE Civil Works project, via a variety of requests from property owners for minor and low impact activities such as sand maintenance and construction of structures on residential properties located within the Federal project easement. Property owners at the Federal project have requested and are expected to continue to request authorization to have sand and debris removed or to construct and maintain a variety of surface or subsurface structures on private property that require Section 408 coordination. All proposed activities will take place landward of mean high water (MHW) line.

- Sand Maintenance - Sand from Sandbridge Beach is continuously migrating through natural processes onto residents' properties such as yards, decks, and pools. Residents frequently propose to remove excess sand that has migrated onto private property and place the sand back onto Sandbridge Beach and within the Federal project limits to maintain their properties. Maintenance may also be required for non-sand marine debris that migrates through natural processes onto private property and may requires disposal.
- Structures - Property owners at the Federal project have requested and are expected to continue to request authorization to construct and maintain a variety of surface or subsurface structures on private property but within the Federal project easement. Structures may include but are not limited to bulkheads (or low-profile retaining walls), piles, decks, pools, storage sheds, landscaping, or other residential structural features. Structures may be constructed and maintained for various purposes including protection of property, safety, improvements to meet local or state codes, aesthetics, and recreation.

### **DISQUALIFYING CIRCUMSTANCES:**

The following circumstances would disqualify the use of this CP:

1. The alteration could not be decided at the District level.
2. The alteration would remove riparian or sensitive habitat.

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3. The alteration would adversely impact a public use facility.
4. The alteration would not be authorized by a concurrent City of Virginia Beach Sandbridge General Permit or Coastal Primary Sand Dune Permit issued by the City of Virginia Beach Wetlands Board.
5. The alteration would adversely impact a historic resource pursuant to Section 106 the National Historic Preservation Act (NHPA).
6. The alteration would require an individual Environmental Assessment (EA) or Environmental Impact Statement (EIS) outside the scope already addressed in this CP and in the associated Programmatic EA.

### **CATEGORICAL PERMISSION CONDITIONS:**

The following standard and special terms and conditions will be included as part of the final 408-CP-02 verification. To initiate a 408-CP-02 verification review request, the Requester must provide a complete and signed current version of the *Section 408 Categorical Permission 2 (408-CP-02) Review Request Form* certifying compliance with the following terms and conditions.

#### **A. STANDARD TERMS AND CONDITIONS**

Pursuant to EC 1165-2-220 (10 September 2018), Appendix K, the following standard terms and conditions must be included in all Section 408 approval notifications. The Requester is responsible for compliance with these standards terms and conditions in addition to any special conditions specified in the subject Section 408 permission letter or be subject to potential enforcement action.

#### ***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 expiration date of the most current City of Virginia Beach Sandbridge General Permit or Coastal Primary Sand Dune Permit for the same property. Following expiration, a new Section 408 request and approval under this CP will be required. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

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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. The Requester understands and agrees 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.

### *INDEMNIFICATION AND HOLD HARMLESS*

1. 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.
2. 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.
3. 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.

### *REEVALUATION OF PERMISSION*

1. 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.
2. This office, at its sole discretion, may reevaluate its decision to issue this permission

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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 this office 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.

### *CONDUCT OF WORK UNDER THIS PERMISSION*

1. 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.
2. Work/usage allowed under this permission must proceed in a manner that avoids interference with the inspection, operation, and maintenance of the Federal project.
3. In the event of any deficiency in the design or construction of the requested activity, you are solely responsible for taking remedial action to correct the deficiency.
4. 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.
5. 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.
6. You may be required to perform an inspection of the Federal project with the USACE, prior to your use of the structure, to document existing conditions.
7. USACE shall not be responsible for the technical sufficiency of the alteration design nor for the construction and/or installation work.



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### B. SPECIAL CONDITIONS

The following special conditions must be met to qualify for the 408-CP-02. A proposed alteration that does not meet these conditions will be evaluated under the individual alteration review process. USACE reserves the right to impose project specific conditions in addition to the conditions below.

1. You shall ensure all authorized work is completed in compliance with a City of Virginia Beach Sandbridge General Permit or Coastal Primary Sand Dune Permit issued by the City of Virginia Beach Wetlands Board. This Section 408 permission expires the same date of the most current City of Virginia Beach permit authorization(s) for the same property. Following expiration, a new Section 408 request will be required under this CP.
2. You are not authorized, under any circumstances, to place sand seaward of any sea turtle nest(s), regardless of distance.
3. From May 15 through November 15 of any given year, you must confirm that no sea turtle nesting has occurred within 500 feet of the sand placement site prior to beginning work each day. This must be done by visual inspection of the beach to check for presence of a marked nest or new nests.
4. If a structure includes lighting, you must contact the U.S. Fish and Wildlife Service at [virginiafieldoffice@fws.gov](mailto:virginiafieldoffice@fws.gov) to ensure compliance with the Endangered Species Act.
5. From May 15 through November 15 of any given year, sand maintenance and activities associated with construction of structure(s) (decks, gazebos, walkways, pools, etc.) shall be prohibited from dusk until 8:00 AM.
6. From May 15 through November 15 of any given year, you must ensure that construction lights remain off from dusk until 8:00 AM daily to prevent lighting impacts from skid steer loaders, temporary construction lights, and other equipment lighting to nesting females and hatchlings.
7. If a sea turtle nest is sectioned off in the area where sand maintenance activities will occur, you shall ensure that no sand is placed on the beach within a 500-foot buffer of the nest and no equipment shall be driven on the beach within a 50-foot buffer around the perimeter of the nest.
8. From May 15 through November 15 of any given year, any sand you place on the beach during sea turtle nesting season shall be graded so that it is level with existing gradient and ruts from equipment shall be smoothed to eliminate the risk of trapping a turtle in the ruts.
9. You shall not disturb or touch a sea turtle, sea turtle nest, or sea turtle hatchling.

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10. You shall notify USACE of the presence of any architectural structures which are 45 years or older and of the presence of any known archeological historic resources in your CP request. USACE must confirm that the proposed activities will not cause an adverse effect on historic properties and/or resources in compliance with Section 106 of the National Historic Preservation Act (NHPA) prior to verification of this CP.
11. You and any subsequent property owner understand that normal or emergency operation and maintenance of the Federal project may require access to developed areas (e.g., excavation to underlying stormwater lines). In this event, the City of Virginia Beach and U.S. Army Corps of Engineers may need to remove or cause damage to the approved encroachments without advance notice. Any costs to repair or restore the approved encroachments shall be at the expense of the current property owner.
12. You and any subsequent property owner understand that when the work or structures authorized by the 408-CP-02 are still in existence at the time the property is transferred, the terms and conditions of the most current 408-CP-02 approval will continue to be binding on the new owner(s) of the property. To validate the transfer of the current 408-CP-02 approval and the associated responsibilities associated with compliance with its terms and conditions, the new property owner(s) shall submit a *Section 408 Categorical Permission 2 Transfer Request Form* enclosed with the original 408-CP-02 verification letter or provided upon request to the Section 408 Coordinator at [nao.section408@usace.army.mil](mailto:nao.section408@usace.army.mil).

### **IMPLEMENTATION OF THE CATEGORICAL PERMISSION:**

When implementing this CP to review individual alteration proposals, the following process will be used:

**ALTERATION REQUEST:** The Requester must provide a complete and signed current version of the *Section 408 Categorical Permission 2 (408-CP-02) Review Request Form* along with project plans submitted to the Section 408 Coordinator at [nao.section408@usace.army.mil](mailto:nao.section408@usace.army.mil). The Section 408 Coordinator, or assigned Section 408 reviewer, will review, and verify the proposed alteration is covered under this CP and identify any additional information required to process the request.

**TECHNICAL, ENVIRONMENTAL, AND CULTURAL REVIEWS:** The Section 408 reviewer will complete required engineering, environmental, and cultural resources reviews, including initiation of any necessary consultation or coordination, as deemed appropriate. An individual Record of Environmental Consideration (REC) will be prepared to document compliance pursuant to the National Environmental Policy Act (NEPA) and other federal environmental and cultural resources requirements after review of the project specific details.

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VERIFICATION: A Section 408 Categorical Permission 2 (408-CP-02) Verification Memorandum for the Record (MFR), project specific REC, and subsequent Section 408 CP verification letter will be completed by the Section 408 reviewer. If approved, the decision-making authority, as noted in the Delegation of Authority section below, will sign the project specific CP MFR, REC, and final permission letter for the alteration request. A copy of the final CP verification letter will be provided to the Requester.

If the proposed alteration does not meet the terms and conditions of this CP, use of this CP to grant a 408 permission will be denied and the alteration will have to be reviewed under a separate individual 408 review process. The Section 408 reviewer will document the MFR accordingly and notify the Requester of such a denial with rationale and information regarding how to proceed with an individual review for a final Section 408 alteration determination.

DELEGATION OF AUTHORITY: Pursuant to EC 1165-2-220, Appendix C (C-3 Policy(b.)), a categorical permission may be created at the district, division, or HQUSACE level, but must be approved by a District Commander, Division Commander, or the Director of Civil Works depending upon the region in which it is applicable. Validation that a Section 408 request is consistent with the terms and conditions of a categorical permission and subsequent authorization of the activity under the categorical permission may be delegated. The delegation should be established through the process used to create the categorical permission. Therefore, to maintain the efficiency intent of the 408-CP-02, signature of the final categorical permission verification MFR and associated REC and subsequent Section 408 verification letter will be delegated to Michelle L. Hamor, Chief of the Planning and Policy Branch or to any person officially designated to act on her behalf in the event of extended leave, if applicable. Delegation can be elevated as deemed appropriate.

NON-FEDERAL SPONSOR STATEMENT OF NO OBJECTION: The City of Virginia Beach is the non-federal sponsor (NFS) for the Sandbridge Beach Erosion Control and Hurricane Protection Project. Pursuant to EC 1165-2-220, Paragraph 11(a), the NFS provided a written statement dated 08 February 2022 that as the NFS they were aware of the scope of the 408-CP-02 and did not object to the implementation of this CP to initiate evaluations of associated Section 408 review requests.

PERIOD OF VALIDITY: This categorical permission, 408-CP-02, will be valid for five (5) years from the date of issuance. A review and audit will be conducted prior to the expiration date to ensure that its use continues to meet its intended purpose to not impair the usefulness of the applicable USACE project(s) and not be injurious to the public interest. Should the review or audit demonstrate that the categorical permission is not meeting its intended purpose, the District Commander, Division Commander, or Director of Civil Works, as appropriate, has the authority to suspend or revoke the categorical permission.

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**DISTRICT COMMANDER DECISION:**

I have reviewed this categorical permission and determined that the proposed alterations, delegation and verification of the technical 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.

 Digitally signed by Brian P. Hallberg  
Date: 2023.03.21 12:48:05 -04'00'

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Brian P. Hallberg, PMP  
Colonel, U.S. Army  
Commanding

21 March 2023

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Date Approved