The National Hydropower Association, Inc.
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Mr. Stephen L. Hill
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U.S. Army Corps of Engineers
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Comments on the Draft Section 408 Non-Federal Hydropower Submittal Guidelines, Version 1.0, dated 10 July 2026

Dear Mr. Hill and Mr. Smith,

On behalf of the National Hydropower Association (NHA), thank you for the opportunity to comment on the draft Section 408 Non-Federal Hydropower Submittal Guidelines. The draft responds directly to the first recommendation in NHA's May 4, 2026 barriers analysis, which asked for uniform submission requirements and a defined milestone framework for non-federal hydropower reviews. It reflects real progress, and we are grateful to your staff for sharing it with industry early and for the constructive discussion at our August 13 meeting. The enclosed comments provide the detailed technical feedback agreed upon at that meeting.

We understand that the Army Corps of Engineers is hard at work to advance infrastructure projects more efficiently while ensuring the engineering behind every decision remains sound. These goals can and must coexist for all civil works, including those as complex and ambitious as non-federal hydropower developed under Section 408. When requirements are clear and focused on what matters to the dam and its authorized purposes, reviews move faster and the engineering itself is stronger. Similarly, when requirements are scoped and sequenced according to industry standard phases of design, developers can better coordinate the many external stakeholders that are needed for a project to succeed. This includes private contractors, state safety regulators, federal regulators, and regional transmission organizations (RTOs).

As Public Private Partnerships, Non-Federal Hydropower Should Be Governed by a Different Framework Than Facilities Owned and Operated by the Corps

NHA’s comments reflect a vision of a public-private partnership between industry and Corps Districts, where the mutual goal is to get megawatts on the grid without jeopardizing the Corps’ other missions. This is a shift away from the historic process which often appeared to developers to be more about removing “no’s” than getting to “yes.” We ask that reviews center on the features that affect the dam and its authorized purposes, and that standards written for projects the Corps designs, owns, and operates not

be applied to non-federal developers who are investing private capital and carry their own design responsibility. In other words, our proposed scope of submittal reflects the reality that a private developer is the engineer of record for a non-federal project, working alongside the Corps in a public private partnership. The comments, therefore, draw on design practices used across the dam and hydropower industries and were made with input from NHA member developers. Our item line comments below are written with this new framework in mind.

That said, we appreciate the structure of the draft Section 408 Non-Federal Hydropower Submittal Guidelines and its focus on the project-specific review plan. Our comments are intended to make the guidelines more predictable for the developers who use them and more practical for the District staff who apply them. We strived to propose a clear description of what a complete submittal looks like at each design phase, with the 90 percent design serving as the final submittal for the Section 408 decision.

To Be Successful, the USACE Process Needs to Support Grid Interconnection

Beyond the 30/60/90 framework, Attachment B provides a list of pre-design activities. This is especially important for grid interconnection, where RTOs require documented site control before a project can enter an interconnection queue. Interconnection requires years of studies, planning, and financial commitments. Projects are then accepted in fixed cycles. A developer who cannot show standing at a Corps site may wait years for the next opening. Yet demonstrating site control without formal documentation or an issued Section 408 is a major challenge. Early coordination with Corps Real Estate staff and written milestone responses, both addressed in the enclosed comments, would help close that gap. NHA and its members would welcome the opportunity to brief Corps staff on interconnection and facilitate a dialogue with the RTOs.

The Section 408 Process for Non-Federal Hydropower Needs an Engineer Regulation

From NHA's perspective, the draft Section 408 Non-Federal Hydropower Submittal Guidelines are necessary – but not sufficient – to unleash the vision of a meaningful public-private partnership between industry and Corps Districts. The draft guidelines are helpful as an informational tool written for an industry audience rather than for internal implementation of Section 408. However, submittal guidelines do not create the requirements or durability needed to ensure this work is formalized into practice now and far into the future. Furthermore, the draft guidelines are informed by an organized review of existing Engineering Regulations intended for federal hydropower projects the Corps designs and develops. This approach implicitly assumes that a single organization manages, reviews, or controls all aspects of the project design. In practice, non-federal hydropower developers are required to coordinate with many external stakeholders.

The Section 408 process for non-federal hydropower needs an Engineer Regulation, paired with an Engineer Pamphlet that contains the submittal guidelines. A formal internal policy guiding the Corps' work with developers from start to finish would be more durable than the current approach. It would give District staff a consistent standard to apply and give developers and investors a stable basis for preparing

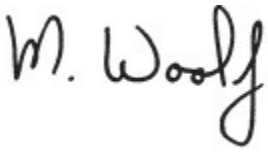
and financing projects. We believe this is the most important step the Corps can take to make recent progress last, and NHA stands ready to support that effort in any way that would be helpful.

Next Steps

The enclosed comment matrix provides specific recommendations for each section of the draft. Attachment A proposes language describing each design phase, and Attachment B lists pre-design activities offered for the Corps' use in developing its own guidance. We would welcome a working session with your technical staff to walk through the comments, and we look forward to continuing this work together. For follow-up, please contact Connor Nelson, Senior Manager of Regulatory Policy and Analytics, at connor@hydro.org or (301) 821-1405.

Sincerely,

Malcolm Woolf
President and CEO



Enclosures:
Attachment A, Proposed Phase Definitions
Attachment B, Pre-Design Activities
Comment Matrix, Draft Section 408 Non-Federal Hydropower Submittal Guidelines

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Attachment A. Proposed Phase Definitions

The language below is proposed to replace the introductory text of Section 3 and the phase descriptions in paragraphs 3.a through 3.e. Each phase is defined by what the submittal must accomplish for the Section 408 determination, so the District and the requester apply the same standard when the review plan is prepared. The tables of submittals and references in the draft remain, organized under these definitions.

These definitions follow the design stage-gates used across the dam and hydropower industries. In that practice, 30, 60, and 90 percent design correspond to AACE International estimate Classes 3, 2, and 1 under Recommended Practice 69R-12, and developers commission and finance design work to those gates.

Proposed introductory text for Section 3

> Submittals are grouped by design phase into 30 percent, 60 percent, and 90 percent design. Each is a milestone submittal under EC 1165-2-220, paragraph 10.c, and receives a completeness determination under paragraph 14.b. The 90 percent submittal is the final submittal and supports the Section 408 decision. Pre-design activities and 100 percent design are described for information and are not milestone submittals.
>
> The completeness standard for each phase describes the level of development the submittal must reach for features within the review scope. Features within the review scope are those that retain water, connect to or modify USACE project structures, or affect authorized purposes or project operations, as identified in the review plan. A submittal is complete when it meets the standard for its phase. Content identified as not expected at a phase is not a basis for finding a submittal incomplete, and review comments at each phase address the content that phase is expected to contain. Content designated "For information" is submitted for USACE awareness. Compliance is governed by the authority that administers the requirement, and USACE comments on it only where it identifies an effect on the USACE project.
>
> The alteration-specific review plan identifies which submittals and references apply to the project. Consistent with EC 1165-2-220, paragraph 11.c.(1), the level of detail is risk-informed, determined with the requester, and documented in the review plan.

Pre-Design (informational)

Purpose. Establish the access, data, real estate, and review arrangements needed before field investigations and design begin.

Description. Pre-design produces no milestone submittal. The activities in this phase are listed in Attachment B. The phase concludes when the review plan is agreed and the requester holds the access and approvals needed for 30 percent field work.

30 Percent Design (Preliminary Design)

Purpose. Establish the project concept, the general arrangement, and every interface with the USACE project, and confirm the design criteria and analyses the review plan will require.

Completeness standard.

- General arrangement of permanent features fixed, including location, footprint, and connections to USACE project structures.
- Proposed design criteria and load cases for features within the review scope.
- Site investigations sufficient to characterize foundation conditions at critical sections, with remaining data gaps and the plan to close them identified.
- Preliminary stability, seepage, and bearing capacity analyses for critical sections.
- Hydrologic and hydraulic effects identified, with the scope of H&H studies and any proposed modeling defined and justified.
- Effects of the completed project on USACE project operations identified.
- Proposed scope and level of the risk assessment, focused on the potential failure modes the alteration could create or worsen.
- Fire protection and life safety concept for areas that could affect the USACE project or shared areas.
- Concept for construction sequence, diversion, and temporary works, including effects on project operations.
- Draft Design Documentation Report and concept drawings.

USACE action. Written milestone response confirming the design criteria, the scope of analyses, and the scope and level of the risk assessment, and identifying any issue that would prevent approval. After 30 percent, new requirements arise only from new information or a change in scope.

Not expected at this phase. Design of powerhouse interior systems, mechanical and electrical balance of plant, or building systems. Specifications, the final geotechnical baseline, and completed modeling studies are also not expected.

60 Percent Design (Detailed Design)

Purpose. Complete the analyses that show the alteration will not impair the usefulness of the USACE project, so that substantive technical review can take place.

Completeness standard.

- Site investigations complete and Geotechnical Baseline Report submitted.
- Stability, seepage, settlement, and seismic analyses complete for features within the review scope.
- H&H and sediment analyses complete, including any modeling identified in the review plan.
- Temporary works and cofferdam design developed, with construction sequence and effects on project operations.
- Drawings and outline specifications developed for features within the review scope. Powerhouse and equipment arrangement developed to the extent needed to establish structure dimensions and loads.

- Fire protection and life safety design developed for areas that could affect the USACE project or shared areas.
- Draft Temporary Construction Emergency Action Plan, Temporary Construction Surveillance and Monitoring Plan, Instrumentation Monitoring Plan, Demolition Plan, Risk Assessment at the scope and level identified in the review plan, and Operation and Mission Impacts Report.

USACE action. Substantive technical review, including agency technical review where the review plan requires it, and a written milestone response. Comments that could change the design are issued at this phase.

Not expected at this phase. Final specifications, detailed design of building systems outside the review scope, and equipment procurement documents.

90 Percent Design (Final Submittal)

Purpose. Provide the complete design on which USACE bases the Section 408 decision.

Completeness standard.

- Final Design Documentation Report, drawings, and specifications for features within the review scope, signed and sealed by the engineer of record and considered by the engineer of record to be complete for regulatory review.
- All prior review comments resolved, with dispositions documented.
- Final Temporary Construction Emergency Action Plan, Temporary Construction Surveillance and Monitoring Plan, Instrumentation Monitoring Plan, Demolition Plan, Risk Assessment at the scope and level identified in the review plan, and Operation and Mission Impacts Report.
- Final construction sequence, including schedule constraints that affect USACE project operations.
- Dam Design Standards Compliance Statement, Dam Safety Policy Compliance Statement, and certification that the design underwent a quality control process, consistent with EC 1165-2-220, paragraph 11.c.(3).

USACE action. Completeness determination and Section 408 decision within the timeframes in EC 1165-2-220, paragraphs 14 and 15.

Not expected at this phase. Construction contractor submittals, shop drawings, and other documents produced after construction award.

100 Percent Design / Issued for Construction (informational)

Description. The 90 percent design with final review comments incorporated and issued for construction. It is not a new review or a request for information. USACE confirms that the issued documents conform to the design on which permission was based. Changes during construction that affect features within the review scope follow a change notification process identified in the permission. Construction-phase submittals required by the permission, including those produced by the construction contractor, are provided before the related work begins.

Attachment B. Pre-Design Activities

Each activity below must be completed before the field work required at 30 percent can begin, and none carries a timeline in current guidance. The list is offered for USACE use in developing pre-design guidance. It is not proposed as a submittal, a milestone, or a request for information.

No.	Activity	Requester provides	USACE action or resulting document	Needed for
1	Initial meeting	Project concept, location, FERC status, and proposed schedule	Designation of the District Section 408 coordinator and points of contact for dam safety, operations, real estate, and regulatory	All later activities
2	Existing data request	List of records needed	As-built drawings, original construction geotechnical data and boring logs, design memoranda, periodic inspection reports, instrumentation data, and the water control manual. Records that are not publicly available are released under item 3.	Concept development and the 30 percent investigation plan
3	Non-disclosure agreement for non-public records	Non-disclosure agreement and list of personnel who will receive the records	Release of records that are not publicly available, including security-restricted references	Items 2 and 10, and security and access design
4	Site access	Scope of survey and exploration work, proof of insurance	Right-of-entry for survey and exploration	All field work
5	Unmanned aircraft flight approval	Flight plan	Flight approval	Topographic survey and photogrammetry
6	Drilling and invasive activities plan	Plan prepared under ER 1110-1-1807	Plan approval	30 percent geotechnical investigation
7	Early real estate consultation	Proposed footprint and the estates needed	Preliminary view of the Federal interest, any outgrant conflicts, and the type of real estate instrument expected	Site control documentation for interconnection and financing
8	Regulatory pre-application meeting	Description of work in waters of the United States	Identification of the permit type and information needed	Appendix B regulatory submittals
9	Alignment with FERC licensing	Licensing schedule	Identification of the points where the Section 408 and FERC processes must coordinate	Schedule for the review plan
10	Review plan development	Concept, proposed design criteria, and proposed scope of analyses	Alteration-specific review plan identifying submittals, references, review level, and schedule	30 percent design scope

Items 3 through 6 can proceed at the same time once item 1 is complete. Item 7 bears directly on schedule outside the Section 408 process. ISOs, RTOs, and other transmission providers require documented site control for interconnection queue entry, and interconnection cycles do not reopen on request. Early consultation is consistent with EC 1165-2-220, paragraph 9.e.(3), which governs the timing of the real

estate decision, not the timing of consultation. Comment 46 proposes a standard USACE document for this purpose, with its content developed together with key stakeholders and SMEs.

Two additions would give this phase the predictability the later phases already have. The first is a target timeframe for the District actions in items 3 through 7. The second is a written confirmation at the end of pre-design that the review plan is agreed and the access approvals are in place, which can also serve as the standard status document described in Comment 46.