



**Ashley Peck**

Partner  
801.799.5913  
Salt Lake City  
aapec@hollandhart.com

## Corps of Engineers to Streamline Section 408 Permitting Process

**Insight — 03/14/2018**

In February 2018, the U.S. Army Corps of Engineers (“Corps”) issued a draft Engineering Circular (“EC”) outlining proposed policies and procedures regarding how it will address third-party requests to alter civil works projects pursuant to Section 14 of the Rivers and Harbors Act (33 U.S.C. § 408), more commonly referred to as “Section 408.” The draft EC can be viewed by following this link. In general, the draft EC aims to streamline the Section 408 permitting process for alteration or occupation of a Corps facility by improving coordination between the Section 408 review process and overall project review, improving both internal and external communication regarding Section 408 requests, as well as identifying funding sources to support the processing of Section 408 requests. EC at 3-4.

Under Section 408, the Corps must grant permission for parties other than the Corps to alter or occupy civil works projects previously constructed by the Corps such as dams, levees, or flood channels. Such alterations may take the form of improvements to those civil works projects associated with the development of adjacent property, the relocation of parts of the existing projects, or the installation of utilities. Examples include modifications to existing flood control or storm water management facilities required for large-scale commercial development, the construction of pipelines, or the construction or modification of hydropower projects that necessitate modifications to existing Corps' facilities.

Section 408 review usually occurs at the end of a broader project permitting process and requires the Corps to review engineering, environmental, legal, and safety issues associated with the requested modification. This review has the potential to delay projects, as well as provide opportunities for project opponents to concentrate challenges as part of the Section 408 approval process. A broader overview of the Corps' administration of civil works projects and proposals to alter or use such projects, including the existing guidance documents issued by the Corps, can be viewed on the Corps' Section 408 website.

When the Corps first issued its EC, it originally proposed a 30-day public comment period. That comment period has now been extended for an additional 30 days, and will expire on **April 6, 2018**. Public comments may be submitted by mail, by email, or by utilizing the comment form linked to this announcement. Any clients or others needing more information or who would like to make public comments on the EC should contact Steve Jones or Ashley Peck.

---

*This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.*