

## Chapter 26: Permits, Reviews, and Approvals

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### 26.1 Introduction

This chapter discusses the permits, reviews, clearances, and approvals that would be required to construct any of the Mountain View Corridor (MVC) action alternatives.

## **26.2 Federal Permits, Reviews, and Approvals**

### **26.2.1 Section 404, Clean Water Act, Individual Permit (USACE)**

Project applicants are required to obtain a Clean Water Act Section 404 permit if a proposed action would result in the discharge of dredged or fill materials in waters of the United States, including wetlands. In general, an individual Section 404 permit is required if the project would place more than 25 cubic yards (19 cubic meters) of fill material below the level of ordinary high water (the highest level the water reaches on the bank during a normal year).

All of the MVC action alternatives would likely place more fill material in waters of the U.S. than what is allowed under these thresholds, and an individual permit would be required. The agency responsible for issuing a Section 404 permit is the U.S. Army Corps of Engineers (USACE). Before a Section 404 permit can be granted, the applicant must first obtain a Section 401 water quality certification, which is a finding by the state water quality agency that the project complies with the state's water quality standards.

The Utah Department of Transportation (UDOT) anticipates that USACE would issue a Section 404 permit or permits for the selected alternative at some point after the Record of Decision (ROD) is issued for the project. UDOT intends to implement the project in phases (see Chapter 36, Project Implementation [Phasing]). Section 404 permitting also could be phased. The contractor would be responsible for any required changes or additions to the Section 404 permit due to design changes or construction activities.

### **26.2.2 Section 401, Clean Water Act, Water Quality Certification (Utah Division of Water Quality)**

Section 401 of the Clean Water Act requires federal agencies to ensure that their proposed actions do not violate state water quality standards. The Utah Division of Water Quality is required to evaluate the Section 401 certification. All of the MVC action alternatives would likely require a Section 404 permit (as discussed above in Section 26.2.1) due to placing fill material in waters of the U.S. and therefore would require a water quality certification in accordance with Section 401 of the Clean Water Act from the Division of Water Quality.

### **26.2.3 Section 402, Clean Water Act, Utah Pollution Discharge Elimination System Permit (Utah Division of Water Quality)**

Section 402 of the Clean Water Act regulates discharges of pollutants to surface waters. Construction projects that disturb more than 1 acre of land must be covered under the statewide Utah Pollution Discharge Elimination System

(UPDES) stormwater permit. All of the MVC action alternatives would disturb more than 1 acre of land and would require coverage under the UPDES stormwater permit. Utah's UPDES stormwater permit regulations were most recently updated in December 2004. To obtain a UPDES permit, a notice of intent must be submitted to the Utah Division of Water Quality describing the construction activities. A Storm Water Pollution Prevention Plan that includes a Temporary Erosion and Sediment Control Plan must be developed prior to submitting the notice of intent for the UPDES permit. The Temporary Erosion and Sediment Control Plan identifies best management practices as well as site-specific measures to minimize erosion and prevent eroded sediment from leaving the construction zone.

#### **26.2.4 Approval of Addition or Modification of Access Points (FHWA)**

Changing access points to the interstate highway system requires approval from the Federal Highway Administration (FHWA). All of the MVC action alternatives would require access to Interstate 80 (I-80) and Interstate 15 (I-15). An interchange design/justification report would need to be prepared and approved by FHWA. UDOT anticipates that the required interstate access point approval would be issued after FHWA's Record of Decision for the project.

#### **26.2.5 Incidental Take Statement, Endangered Species Act (USFWS)**

Section 7 of the federal Endangered Species Act requires federal agencies to ensure that their actions neither jeopardize the continued existence of species listed as endangered or threatened nor result in destruction or adverse modification of the critical habitat of these species. Federal agencies must consult with the U.S. Fish and Wildlife Service (USFWS) if an action would result in take of a listed species, where *take* is defined as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [an individual of a species]" (16 United States Code [U.S.C.] 1531 et seq.). The consultation can result in an incidental take statement establishing conditions under which a project that results in take of listed species can go forward.

FHWA has consulted with USFWS regarding the MVC project and has determined that the Preferred Roadway Alternatives (5800 West Freeway Alternative and 2100 North Freeway Alternative) would not result in a take, and therefore an incidental take statement would not be required.

### 26.2.6 Section 106, National Historic Preservation Act Consultation (Utah SHPO and Advisory Council on Historic Preservation)

Section 106 of the National Historic Preservation Act of 1966 requires federal agencies to take into account the effects of their actions on historic properties and to give the Advisory Council on Historic Preservation a reasonable opportunity to comment. Any property that is listed on or is eligible for listing on the National Register of Historic Places is considered a historic property.

For the MVC project, FHWA and UDOT have consulted with the Utah State Historic Preservation Officer (SHPO), who has concurred with UDOT's Determination of Eligibility/Finding of Effect on historic architectural properties. FHWA and UDOT have also consulted with the Advisory Council and affected Native American tribes. FHWA, UDOT, and the Utah SHPO have entered into a Section 106 Programmatic Agreement (see Appendix 17B, Cultural Resources Correspondence).

### 26.2.7 Section 4(f) (FHWA)

Chapter 28, Section 4(f) Evaluation, provides a detailed analysis of Section 4(f) requirements related to the MVC project. This evaluation found that all of the MVC action alternatives would require a use of Section 4(f) properties. The Section 4(f) regulation (23 Code of Federal Regulations [CFR] 774.3) states that:

The [FHWA] may not approve the use of Section 4(f) property unless (a) the Administration determines that: (1) there is no feasible and prudent avoidance alternative to the use of the land, and (2) the action includes all possible planning to minimize harm to the property resulting from such use; or (b) the administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a *de minimis* impact on the property.

### 26.2.8 Section 6(f) (FHWA)

Section 6(f) of the Land and Water Conservation Funds Act (LWCFA) applies to transportation projects that propose impacts to or the permanent conversion of outdoor recreation property that was acquired or developed with the assistance of LWCFA grants. Section 6(f) stipulates that property acquired or developed with these grants can be converted to a non-recreational purpose only with the approval of the National Park Service. Section 6(f) directs the National Park Service to assure that replacement lands of equal value, location, and usefulness are provided before it approves any land conversions. Therefore, where a Section 6(f) land conversion is proposed for a highway project, replacement land

will be necessary and the National Park Service's position on the land transfer must be documented. No Section 6(f) properties would be affected by any of the MVC action alternatives.

### 26.2.9 Air Conformity Requirements under the Clean Air Act

Chapter 12, Air Quality, provides a detailed analysis of air conformity requirements related to the MVC project. In summary, the Clean Air Act requires that all regionally significant highway and transit projects in air quality non-attainment areas be included in a "conforming" transportation plan and transportation improvement program. A *conforming plan* is one that has been analyzed regionally for emissions of controlled air pollutants and is found to be within emission limits established in the State Implementation Plan. Transportation projects are said to conform if, both alone and in combination with other planned projects included in that transportation improvement program, the project would not result in any of the following:

- New violations of the National Ambient Air Quality Standards (NAAQS)
- Increases in the frequency or severity of existing violations of the NAAQS
- Delays in attainment of the NAAQS

For the MVC project, the Wasatch Front Regional Council and the Mountainland Association of Governments, the metropolitan planning organizations for the MVC study area, conduct the regional conformity analyses and submit them to FHWA for a conformity determination. Based on the most recent regional conformity analyses, the MVC project for the non-tolled alternatives conforms to the State Implementation Plan for all pollutants in applicable non-attainment or maintenance areas.

### 26.2.10 Certificate of Public Convenience and Necessity (Federal Energy Regulatory Commission)

If a transportation project changes the connections of major natural gas lines, the Federal Energy Regulatory Commission must be notified of and approve the change. Under the 5800 West Freeway Alternative, a portion of the Kern River natural gas pipeline would need to be relocated adjacent to the alternative. Under Section 7 of the Natural Gas Act, the Federal Energy Regulatory Commission reviews applications for the construction and operation of natural gas pipelines. In its application review, the Commission ensures that the applicant will comply with the Department of Transportation safety standards and other applicable requirements. This process would require Kern River Gas Transmission



Company to submit the application for a certificate of public convenience and necessity to the Federal Energy Regulatory Commission for relocating the gas pipeline. The process would require that the necessary environmental documents be prepared for the gas pipeline relocation. If the 5800 West Freeway Alternative is approved in the Record of Decision, the Kern River Gas Transmission Company along with UDOT would obtain the necessary approvals.

#### **26.2.11 Easement for Right-of-Way (USACE)**

Some of the MVC alternatives would cross the Camp Williams National Guard Training Site. Of the roughly 137 acres of Camp Williams property that would be affected by the alternatives, 47 acres are managed by USACE. The Commander of Camp Williams would need to submit a report to National Guard Headquarters requesting approval of the land transfer to the State of Utah for highway use. If approved by National Guard Headquarters, the request for an easement would be provided to USACE in Sacramento. USACE would then issue an easement for a transportation right-of-way to the State of Utah. The remaining 90 acres of land that would be affected on Camp Williams are owned by the State of Utah. An agreement between UDOT and the National Guard at the state level would be developed to transfer the property to UDOT for highway use.

#### **26.2.12 Material Site Right-of-Way Permit (BLM)**

Use of minerals (for example, gravel for fill material) under the jurisdiction of the Bureau of Land Management (BLM) requires a Material Site Right-of-Way Permit from BLM. The permit must be issued directly to UDOT, not to a private contractor. If the land is purchased, the minerals would remain under BLM administration and jurisdiction.

### **26.3 State Permits, Reviews, and Clearances**

#### **26.3.1 Utah State Stream Alteration Permit (Utah Division of Water Rights)**

The Utah Division of Water Rights requires project applicants to obtain a stream alteration permit if a stream crossing would result in a major stream alteration or modification. Constructing any new drainage structures at a stream crossing would constitute a major stream alteration or modification. UDOT and FHWA anticipate that stream alteration permits would be required in Salt Lake and Utah Counties for the action alternatives.



### **26.3.2 Air Quality Approval Order (Utah Division of Air Quality)**

An air quality approval order is required to build, own, or operate a facility that pollutes the air, including any of the MVC action alternatives. To obtain an air quality approval order, a notice of intent must be submitted to the Utah Division of Air Quality describing the construction activities and emissions that would be associated with operating construction equipment. The permit applicant must include provisions for controlling dust and emission sources, and the permit might require other construction approvals depending on the source and location of aggregate, asphalt, combustion, and/or fuel storage facilities. This permit would be obtained by the contractor before construction.

### **26.3.3 Water Rights (Utah Division of Water Rights)**

Existing groundwater wells within the right-of-way inventoried by the Utah Division of Water Rights are referred to as *points of diversion*. If a point of diversion is changed as a result of constructing an MVC alternative (that is, if the well is relocated outside the right-of-way), the owner of the well must file an application to change the location of the well. If UDOT purchases the water right associated with a well in the right-of-way, the deed record with the Division of Water Rights would have to be changed.

### **26.3.4 Certificate of Registration (Utah Division of Wildlife Resources)**

A certificate of registration is required by the Utah Division of Wildlife Resources if a proposed action could affect raptor nests. Although UDOT does not anticipate that any raptor nests would be affected by the MVC project, nests could be established before construction.

### **26.3.5 Approval of Remediation Work Plan (UDEQ and EPA)**

A remediation work plan must be submitted and approved by the regulatory agency (either the Utah Department of Environmental Quality [UDEQ] or the U.S. Environmental Protection Agency [EPA]) if construction activities would occur on existing hazardous waste sites. All of the MVC action alternatives could affect an area with contaminated soils. The remediation work plan would define clean-up levels and protective measures for construction workers.

## 26.4 Local Permits and Clearances

### 26.4.1 Floodplain Development Permit (Local Jurisdictions)

Floodplain development permits would be required from local jurisdictions if construction is required within the Federal Emergency Management Agency (FEMA) 100-year floodplain boundary, including placement of highway fill and drainage structures at stream crossings.

The cities and counties in the MVC study area have adopted FEMA's National Flood Insurance Program. This program includes the preparation of flood insurance rate maps that depict the 100-year floodplain boundaries for each of the streams crossed by the roadway alignment.

The MVC would cross several floodplains, washes, rivers, and creeks as described in Chapter 16, Floodplains. All of the MVC action alternatives would overlap several 100-year floodplains. In accordance with Executive Order 11988, Floodplain Management, coordination with FEMA would be required during the construction phase to ensure that the flood design standards are met and to obtain the Floodplain Development Permit from the local community.

### 26.4.2 Construction-Related Permits and Clearances (Various Agencies)

The contractor would be responsible for obtaining all construction-related permits and other environmental clearances for activities occurring outside the right-of-way, such as construction staging areas, borrow areas, and batch plant sites.

[Table 26.4-1](#) below shows the permits and clearances that would be required for the MVC. These permits and clearances would apply to all action alternatives.



**Table 26.4-1. Required Permits and Clearances**

Permit	Granting Agency(ies)	Applicant	Application Time	Granting Time	Applicable Portion of Project
<i>Federal Permits, Reviews, and Approvals</i>					
Section 404 Permit (Clean Water Act) and Stream Alteration Permit	USACE, Utah Division of Water Rights	UDOT	Concurrent with Final Environmental Impact Statement (EIS)	Concurrent with ROD	Portions of roadway in wetlands, structures at stream crossings
Section 404 Permit (Clean Water Act) (modifications)	USACE	UDOT (prepared by contractor)	Design-build phase	Prior to construction	Required if design-build contractor proposed changes to Section 404 permit
Section 401 of the Clean Water Act Certification	Utah Division of Water Quality	UDOT	Concurrent with Final EIS	Concurrent with ROD	Required if the project could result in any discharge into navigable waters
Section 402 Permit (UPDES)	Utah Division of Water Quality	UDOT/ Contractor	Construction phase	Before construction	Stormwater quality during construction phase
Approval of Addition or Modification of Access Points	FHWA	UDOT	EIS phase	Concurrent with ROD	Interstate access changes
Incidental Take Statement	USFWS	UDOT	EIS phase	Final EIS	Impacts on threatened and endangered animal species; not required for the Preferred Alternatives
Section 106 of the National Historic Preservation Act	Utah SHPO and Advisory Council on Historic Preservation	UDOT	Concurrent with EIS	Final EIS	Mitigation of historic and archaeological resources; includes a Programmatic Agreement between consulting agencies
Certificate of Public Convenience and Necessity	Federal Energy Regulatory Commission	Gas company	Construction phase	Before construction	Major gas line relocations
Material Site Right-of-Way Permit	BLM	UDOT (prepared by contractor)	Prior to use	Before use	Required if fill will be taken from areas with BLM mineral reservations
<i>State Permits, Reviews, and Clearances</i>					
Stream Alteration Permit	Utah Division of Water Rights	UDOT (prepared by contractor)	Construction phase	Prior to construction	Required if contractor proposes changes to stream crossing designs
Air Quality Approval Order	Utah Division of Air Quality	Contractor	Construction phase	Before construction	Air quality during construction phase (emissions from equipment)

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Permit	Granting Agency(ies)	Applicant	Application Time	Granting Time	Applicable Portion of Project
Water Rights (change deed record or apply for change in point of diversion)	Utah Division of Water Rights	UDOT	Right-of-way acquisition phase	Right-of-way acquisition phase	Changes in point of diversion or change of use associated with wells in the right-of-way or water required for wetland mitigation
Certificate of Registration	Utah Division of Wildlife Resources	Contractor	Construction phase	Before construction	Impacts to raptors from construction
Approval of Remediation Work Plan	UDEQ or EPA	UDOT	EIS phase	Before construction	Hazardous waste; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and National Priorities List (NPL) sites
Construction-related permits for all of the above	Various agencies	Contractor	Contractor	Before construction	Impacts associated with offsite activities such as construction staging, borrow areas, batch plant sites, and so on
<i>Local Permits and Clearances</i>					
Floodplain Development Permit	Local jurisdictions	UDOT (prepared by contractor)	Construction phase	Construction phase	Portions of roadway or structure in FEMA floodplain

### 26.4.3 Limitation on Claims

This section explains how citizens can file claims to ask a court to review agency actions involving permits, licenses, or approvals for a transportation project.

A agency of the U.S. Department of Transportation can publish a notice in the *Federal Register*, in accordance with 23 U.S.C. 391(I), stating that one or more federal agencies have taken final actions on permits, licenses, or approvals for a transportation project. If such a notice is published, citizens can file claims to ask a court to review those federal agency actions. These claims must be filed within 180 days after the date of publication of the notice, or within a shorter period of time if one is specified in the federal laws that apply to the specific judicial review that is allowed for the federal agency action. If no notice is published, then the periods of time that are provided by the federal laws governing such claims apply.

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