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6.0 ENVIRONMENTAL PERMITS, REVIEWS AND APPROVALS

The purpose of permits, reviews, and approvals is to meet state and federal requirements intended to protect the environment. Environmental documents include a specific section describing the permits and approvals needed prior to construction. Project permits are generally obtained during the design stage after the environmental document is approved. This effort is led by the UDOT Region environmental staff.

Approved permits are included as part of project contract documents (construction plans, specifications, and estimate). This chapter describes the types of permits and clearances that may be required (also listed in Table 6-1).

6.1 Federal Permits

A. Section 404, Clean Water Act (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 (U.S.), including wetlands. The legal reference is Section 404 of the Water Pollution Control Act of 1972, as amended by the Clean Water Act (1977 and 1987). The purpose of the regulation is to restore and maintain the chemical, physical, and biological integrity of the nation's waters through preventing, reducing, and eliminating pollution. The agency responsible for issuing a Section 404 permit is USACE. The permit application allows the USACE to review the project plans and potential impacts to waters of the U.S. and to ensure that the project is designed to prevent or reduce harm to waters of the U.S.

Before a Section 404 permit can be issued, the permit applicant must first obtain a Section 401 water quality certification as discussed in Section 6.1.B below.

The two types of Section 404 permits are:

1. **Nationwide Permit** – for temporary, minor, or moderate impacts. There are several types of nationwide permits, and the particular activity must meet all terms and conditions of the specific nationwide permit.
2. **Individual Permit** – for impacts equal to or greater than 0.5 acre. This permit requires a 30-day public notice period. An Individual Permit requires substantially more time to obtain than a nationwide permit.

B. 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. A certification must be obtained from the State before any activity that could result in a pollution discharge into waters of the U.S. can be permitted by a federal agency. This certification is issued by the Utah Division of Water Quality as part of the Section 404 Permit review process and states that the permitted activity will comply with the applicable effluent limitations and water quality standards.

C. Section 402, Clean Water Act, Utah Pollutant Discharge Elimination System (UPDES) 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 one acre of land must be covered under the statewide Utah Pollutant Discharge Elimination System (UPDES) Storm Water General Permit for Construction Activities. To obtain a UPDES permit, a SWPPP must be developed and a NOI must be submitted to the Utah Division of Water Quality. The SWPPP is a separate document that includes temporary erosion- and sediment-control measures and other site-specific measures to minimize the discharge of pollutants from a construction project.

D. Approval of Addition or Modification of Interstate Highway Access Points (FHWA)

Changing access points to the interstate highway system requires approval from the FHWA. An interchange design/justification report would need to be prepared and approved by FHWA. Typically, the required interstate access point approval would be issued after approval of the environmental document for a project.

E. Incidental Take Statement, Endangered Species Act (USFWS)

Section 7 of the federal Endangered Species Act (1973) 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. UDOT assumes FHWA's responsibilities under the 326 CE MOU and the 327 NEPA Assignment MOU and 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 USC 1531 *et seq.*). The consultation can result in an

incidental take permit establishing conditions under which a project that results in take of listed species can go forward.

F. Air Quality Fugitive-Dust-Control Plan

The Fugitive Emissions and Fugitive-Dust Rule (UAC R307-309) requires a fugitive-dust-control plan from all sources of air pollution whose activities or equipment have the potential to produce fugitive dust (that is, airborne dust) in Davis, Salt Lake, and Utah Counties.

Fugitive-dust-control plans minimize fugitive dust on-site from pits, yards, storage areas, and areas of operation and prevent the degree of opacity from exceeding 20% on-site and 10% at the property boundary. The fugitive-dust rule addresses storage and handling of aggregate materials and construction/demolition activities on sites greater than 0.25 acre including roads, mines, and tailings piles and ponds. Sources of air pollution must develop their dust-control plans and submit them to the Executive Secretary of the Utah Division of Air Quality no later than 30 days after the source becomes subject to the rule.

G. Certificate of Public Convenience and Necessity (FERC)

If a transportation project changes the connections of major natural gas lines, the Federal Energy Regulatory Commission (FERC) must be notified of and approve the change. Under Section 7 of the Natural Gas Act, FERC reviews applications for the construction and operation of natural gas pipelines.

H. Material Site Right-of-Way Permit (BLM)

Use of minerals (for example, borrow 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.

I. Navigable Waterways Permit (U.S. Coast Guard and/or USACE)

A Section 9 permit is required by the U.S. Coast Guard for constructing, modifying, replacing, or removing any bridge or causeway over a navigable waterway. The legal reference is Section 9 of the Rivers and Harbors Act of 1899, as amended. Its purpose is to ensure that a project will not interfere with navigation on the U.S.'s navigable waterways.

A Section 10 permit is required by USACE under the Rivers and Harbors Act of 1899, as amended. Its purpose is to ensure that projects do not degrade the water quality of the navigable waterways of the U.S., as defined by USACE.

6.2 State Permits, Reviews, and Clearances

A. 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 project crosses or impacts a natural stream channel or the adjacent riparian area.

B. Air Quality Approval Order (Utah Division of Air Quality)

An air quality approval order is required to operate a facility that could result in air pollution. To obtain an air quality approval order, an NOI 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 may 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 prior to construction.

C. 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 a project (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.

D. 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.

E. 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 EPA) if construction activities would occur on existing hazardous waste sites. The remediation work plan would define clean-up levels and protective measures for construction workers.

F. Archaeological and Paleontological Excavation Permits

A permit granted to UDOT or its consultant is required by the Utah Public Lands Policy Coordination Office to perform data recovery (mitigation) on archaeological sites affected by a project.

A permit granted to UDOT or its consultant is required by the Utah Geological Survey, Office of the State Paleontologist, for investigations or excavations of fossil resources as required by the project.

G. Easement for Right-of-Way (UDOT)

Whenever any work (including surveys conducted for environmental resources) is done in the right-of-way of a state highway, an Encroachment Permit is required from the UDOT Region Permits Officer.

6.3 Local Permits and Clearances

A. Floodplain Development Permit (Local Jurisdictions)

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

B. Salt Lake County Flood-Control Permit

UDOT would be required to obtain a Flood-Control Permit from Salt Lake County if the project would require installation of structures or bridges, stormwater discharge, utility line crossings, bank stabilization, or any other activity that occurs within 20 feet of the top of the channel bank of any countywide flood-control facility. If a project involves a canal or natural stream that is listed in the Salt Lake County Flood-Control Ordinance, a flood-control permit from Salt Lake County would be required.

C. Environmental Clearances for Off-Site Work (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, spoil areas, and batch plant sites.

6.4 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 listed above.

An agency of the USDOT can publish a notice in the Federal Register, in accordance with 23 United States Code 391(l), 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 150 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.

Table 6-1. Required Permits and Clearances

Permit	Granting Agency(ies)	Applicant	Application Time	Approval Time	Applicable Portion of Project
<i>Federal Permits, Reviews, and Approvals</i>					
Section 404 Permit (Clean Water Act)	USACE	UDOT	Design phase	Before the project is advertised for construction	Impacts to wetlands and other waters of the U.S.
Section 404 Permit (Clean Water Act) (modifications)	USACE	UDOT (prepared by contractor)	Design-build phase	Before construction	Required if design-build contractor proposes changes to Section 404 permit
Section 401 of the Clean Water Act Certification	Utah Division of Water Quality	UDOT	Design phase	Before the project is advertised for construction	Required if the project could result in any discharge into navigable waters
Section 402 Permit (UPDES)	Utah Division of Water Quality	UDOT and contractor	After the construction contract has been awarded	Before construction begins	Areas of ground disturbance during construction
Approval of Addition or Modification of Access Points	FHWA	UDOT	After NEPA approval	Final design phase	Interstate access changes
Incidental Take Statement	USFWS	UDOT	Design phase	Before the project is advertised for construction	Impacts to threatened and endangered animal species
Certificate of Public Convenience and Necessity	FERC	Gas company	Before construction	Before construction	Major gas line relocations
Material Site Right-of-Way Permit	BLM	UDOT (prepared by contractor)	Before use	Before use	Required if fill will be taken from areas with BLM mineral reservations

Table 6-1. Required Permits and Clearances

Permit	Granting Agency(ies)	Applicant	Application Time	Approval Time	Applicable Portion of Project
<i>State Permits, Reviews, and Clearances</i>					
Stream Alteration Permit (USACE General Permit 40)	Utah Division of Water Rights	UDOT	Design phase	Before the project is advertised for construction	Impacts to natural stream channels and riparian areas
Air Quality Approval Order	Utah Division of Air Quality	Contractor	Before construction	Before construction	Air quality during construction phase (emissions from operations and equipment)
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	Design phase	Before construction	Hazardous waste; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and National Priorities List (NPL) sites
Environmental clearances for off-site work	Various agencies	Contractor	Before off-site construction	Before off-site construction	Off-site construction-related activities such as staging sites, borrow areas, spoil sites, batch plant sites, etc.
<i>Local Permits and Clearances</i>					
Floodplain Development Permit	Local jurisdictions	UDOT	Construction phase	Construction phase	Construction in FEMA floodplain

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