

# Chapter 24: Permits, Reviews, Clearances, and Approvals

This chapter lists the federal, state, and local permits, reviews, clearances, and approvals that would or could be required for the State Route (S.R.) 210 Project.

## 24.1 Federal Permits, Reviews, Clearances, and Approvals

### 24.1.1 Permit under Section 404 of the Clean Water Act (USACE)

Project applicants are required to obtain a Clean Water Act Section 404 permit if a proposed action would discharge dredged or fill materials in waters of the United States, including wetlands. Only the Cog Rail Alternative would impact a wetland—0.01 acre of a seep with the upper-canyon snow sheds.

All of the action alternatives would result in impacts to streams (ephemeral, intermittent, and perennial) of between 0.2 and 0.49 acre. The stream impacts would consist of the streams being piped and placed under trailhead or roadway improvements. The piping would require a U.S. Army Corps of Engineers (USACE) Nationwide Permit 14 for Linear Transportation Projects. The permit might be obtained to authorize a loss of waters of the United States less than or equal to 0.5 acre on a crossing-by-crossing basis and subject to a Preconstruction Notice threshold of 0.1 acre of loss provided those waters are not characterized as special aquatic sites. Any permit coverage related to special aquatic sites triggers a Preconstruction Notice regardless of the extent of loss. The Utah Department of Transportation (UDOT) will submit a permit application (as warranted) once funding has been identified to construct the Selected Alternative.

### 24.1.2 Endangered Species Act Compliance (USFWS)

Under Section 7 of the Endangered Species Act, federal agencies are required to consult with the U.S. Fish and Wildlife Service (USFWS) if their proposed actions or approvals could affect Endangered Species Act-listed species or designated critical habitat.

There are no federally listed threatened and endangered species or designated critical habitat in the area of potential impacts for the action alternatives. Therefore there would be no impacts, and no consultation with USFWS is required.

### **24.1.3 Bald and Golden Eagle Protection Act (USFWS and Utah Division of Wildlife Resources)**

The Bald and Golden Eagle Protection Act prohibits the take, sale, purchase, possession, barter, or transport, or offer to do any of the above, to either bald eagles (*Haliaeetus leucocephalus*) or golden eagles (*Aquila chrysaetos*) at any time or in any manner (16 United States Code [USC] Sections 668a–d). The Bald and Golden Eagle Protection Act could apply to the S.R. 210 Project if any individual bird or occupied nest of these two eagle species could be affected. The S.R. 210 area including Little Cottonwood Canyon is not considered suitable nesting habitat for bald eagles. Although potentially suitable breeding habitat for golden eagles exists in cliffs in the ecosystem resources impact analysis area, no individual eagles have been observed. UDOT does not expect that an eagle take permit will be required. If nesting eagles are discovered before or during construction, UDOT will coordinate with USFWS to ensure compliance with the Act.

### **24.1.4 Migratory Bird Treaty Act of 1918 (USFWS and Utah Division of Wildlife Resources)**

The action alternatives could affect nests of migratory birds during construction. If protected species are found nesting in the construction zone or buffer zone before or during construction, UDOT will coordinate with USFWS and the Utah Division of Wildlife Resources to ensure compliance with the Migratory Bird Treaty Act. See Chapter 13, Ecosystem Resources, for potential mitigation measures for impacts to migratory birds.

### **24.1.5 Section 106 of the National Historic Preservation Act (Utah SHPO and ACHP)**

For this Environmental Impact Statement (EIS), UDOT is the lead agency under the Section 106 process. Section 106 of the National Historic Preservation Act requires agencies to take into account the effects of their actions on historic properties and to give the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. Any property that is included in or is eligible for inclusion in the National Register of Historic Places is considered a historic property. For projects that could affect a historic property, the federal agency must consult with the relevant State Historic Preservation Officer (SHPO).

For the S.R. 210 Project, UDOT has consulted with the Utah SHPO, who has concurred with UDOT's Determinations of Eligibility and Findings of Effect for historic properties. UDOT has also consulted with the ACHP and coordinated with Native American tribes. No comments were received from the ACHP or Native American tribes regarding specific impacts from the project. UDOT and the Utah SHPO will enter into a Section 106 programmatic agreement or memorandum of agreement regarding the identification and treatment of cultural resources affected by the Preferred Alternative.

## 24.1.6 Section 4(f) of the Department of Transportation Act (FHWA)

The Section 4(f) regulations (23 Code of Federal Regulations [CFR] Section 774.3) provide that the Federal Highway Administration (FHWA) may not approve the use of a Section 4(f) property unless:

- (a) FHWA determines that (1) there is no feasible and prudent avoidance alternative to the use of the property and (2) the action includes all possible planning to minimize harm to the property resulting from such use; or
- (b) FHWA 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, would have a *de minimis* impact on the property.

### What is Section 4(f)?

Section 4(f) of the Department of Transportation Act prohibits the approval of federal transportation projects that use publicly owned parks, recreation areas, wildlife and waterfowl refuges, or historic sites [Section 4(f) properties] unless there is no feasible and prudent alternative and the project includes all possible planning to minimize harm.

For historic sites, a *de minimis* impact means FHWA has determined that no historic property would be affected by the project or that the project would have no adverse effect on the historic property in question. For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact means that FHWA has determined that the project would not adversely affect the activities, features, or attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection.

Chapter 27, Section 4(f) and Section 6(f) Evaluation, provides a detailed analysis of the Section 4(f) requirements. This evaluation found that all of the action alternatives would require uses of Section 4(f) properties, but all such uses would have *de minimis* impacts and thus could be approved by UDOT acting pursuant to the authority assigned to it by FHWA under 23 USC Section 32. The U.S. Department of Agriculture (USDA) Forest Service, Cottonwood Heights City, and the Utah SHPO are the responsible officials for providing concurrence regarding the use of Section 4(f) properties.

## 24.1.7 Section 6(f) of the Land and Water Conservation Funds Act (FHWA)

No Section 6(f) properties would be affected by any of the action alternatives.

## 24.1.8 Conformity Requirements under the Clean Air Act (FHWA)

Chapter 10, Air Quality, provides a detailed analysis of air quality conformity requirements related to the S.R. 210 Project. In summary, the Clean Air Act requires that all regionally significant highway and transit projects in air quality nonattainment 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 the emission limits established in the state implementation plan. A transportation project is 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 S.R. 210 Project, the Wasatch Front Regional Council, which is the metropolitan planning organization for portions of S.R. 210, conducted the regional conformity analyses and submitted them to FHWA for a conformity determination. Based on the most recent regional conformity analyses, the S.R. 210 Project conforms to the state implementation plan for all pollutants in applicable nonattainment or maintenance areas. The project must receive a project-level conformity determination from FHWA.

Project-level conformity determinations for PM<sub>10</sub> and PM<sub>2.5</sub> were required for the S.R. 210 Project; therefore, UDOT conducted quantitative hot-spot analyses for PM<sub>10</sub> and PM<sub>2.5</sub> (see Chapter 10, Air Quality). The results of the quantitative hot-spot analyses demonstrated that the S.R. 210 Project would not contribute to any new local violations of the PM<sub>10</sub> or PM<sub>2.5</sub> NAAQS, increase the frequency or severity of any existing violation, or delay timely attainment of the PM<sub>10</sub> or PM<sub>2.5</sub> NAAQS.

UDOT conducted the PM<sub>10</sub> or PM<sub>2.5</sub> analysis according to 40 CFR Section 93.123, *Procedures for Determining Localized CO, PM<sub>10</sub>, or PM<sub>2.5</sub> Concentrations*. The project-level conformity determination process requires interagency consultation to develop a process to evaluate and choose models and associated methods and assumptions to be used in the hot-spot analysis. UDOT prepared and submitted a *Draft Air Quality Technical Report* (see Appendix 10A, Air Quality Technical Report, for Chapter 10, Air Quality) to the U.S. Environmental Protection Agency (EPA) for review and comment in November 2020. EPA responded in January 2021 that UDOT could proceed with the air quality modeling after making the model adjustments identified in EPA's response (EPA 2021). UDOT incorporated EPA's recommendations in the modeling conducted for the air quality hot-spot analysis (see Chapter 10, Air Quality). Approval of the final project-level conformity determination is made by FHWA.

#### What are nonattainment and maintenance areas?

A nonattainment area is an area that does not meet the NAAQS for a given air pollutant. A maintenance area is an area previously designated as a nonattainment area that has been redesignated to attainment status and is required to have a maintenance plan.

#### What are PM<sub>10</sub> and PM<sub>2.5</sub>?

PM<sub>10</sub> is particulate matter 10 microns in diameter or less, and PM<sub>2.5</sub> is particulate matter 2.5 microns in diameter or less.

### 24.1.9 Federal Land Right-of-way Transfer (FHWA and USDA Forest Service)

In Little Cottonwood Canyon, segments of S.R. 210 cross National Forest System (NFS) land. Proposed improvements on NFS land not already part of the UDOT perfected easement or appropriated by FHWA would be subject to the conditions of 23 USC Section 317, *Appropriation for Highway Purposes of Lands or Interests in Lands Owned by the United States*. Through this appropriation process, the U.S. Secretary of Agriculture can certify that the appropriation of NFS land for transportation use is contrary to the public interest or inconsistent with the purposes for which the NFS land was originally reserved, or agree to the appropriation and transfer of the land to FHWA and UDOT, potentially with stipulated conditions to protect NFS land. If FHWA appropriates the NFS lands, the *Revised Forest Plan: Wasatch-Cache National Forest* (USDA Forest Service 2003) and its management prescription would no longer apply to those lands. However, with the appropriation, the USDA Forest Service might potentially need to amend the *Forest Plan*. The transfer of NFS land would be in the form of a noninclusive right of way that would preserve protected other uses that already exist that do not conflict with highway use.

#### **24.1.10 USDA Forest Service Easement or Special-use Authorization (USDA Forest Service)**

If FHWA determines that 23 USC Section 317 would not apply (see Section 24.1.9, Federal Land Right-of-way Transfer) to a specific alternative on NFS land, UDOT would seek an easement or special-use authorization for the Selected Alternative based on input from the USDA Forest Service to allow construction, operation, and maintenance of the Selected Alternative. With an easement or special-use permit, the USDA Forest Service would retain all ownership rights to the land, and UDOT would be authorized to own and operate the Selected Alternative. The easement or special-use authorization would preserve protected other uses that already exist. The easement or special-use authorization might require the USDA Forest Service to amend the *Revised Forest Plan: Wasatch-Cache National Forest* (USDA Forest Service 2003) for any nonconforming uses.

The USDA Forest Service requires special-use authorizations for occupancy or use of NFS lands, including commercial activities. The enhanced bus service, gondola service, or cog rail service could be operated by a public agency or a private vendor. If a commercial vendor is selected to operate the bus or gondola service, a special-use authorization from the USDA Forest Service might be required and would be based on the analysis in this EIS.

#### **24.1.11 Review of Gondola System (FAA)**

If a gondola alternative is selected, Form 7460-1, *Notice of Proposed Construction or Alteration*, would need to be submitted to the Federal Aviation Administration (FAA) before construction. FAA's review would occur during the design phase. The review is required for any construction or alteration that is more than 200 feet above the ground. Some of the gondola towers would be taller than 200 feet. The review would determine whether any aircraft warning systems would be required on the gondola towers. In the submission to FAA, UDOT would propose implementing an aircraft detection lighting system.

#### **24.1.12 Contract for Removal of Merchantable Timber (USDA Forest Service)**

This permit would be required from the USDA Forest Service for the removal of any timber on NFS lands by the action alternatives. The permit would be required even with the transfer of lands to FHWA.

#### **24.1.13 Permit Authorization for Removal of Forest Product (Rock, Gravel, and Other Resources) (USDA Forest Service)**

This permit would be required from the USDA Forest Service for the removal of mineral resources from NFS lands by the action alternatives. The permit would be required even with the transfer of lands to FHWA.

## 24.2 State Permits, Reviews, Clearances, and Approvals

### 24.2.1 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 by the project would alter the stream's bed and banks. Constructing any new drainage structures at a stream crossing would likely alter the stream's bed and banks as defined by the stream alteration permit program. UDOT anticipates that stream alteration permits would be required for this project.

### 24.2.2 Water Quality Certification under Section 401 of the Clean Water Act (Utah Division of Water Quality)

Section 401 of the Clean Water Act requires that, before a federal agency issues a permit authorizing a discharge into waters of the United States, it must obtain certification from the State that the discharge will not violate water quality standards. For Clean Water Act Section 404 Nationwide Permits (NWP), a State may issue a general certification that applies to all applicants who qualify for coverage under a given NWP. In 2017, the Utah Division of Water Quality (UDWQ) issued a Section 401 certification for the NWPs, including NWP 14, *Linear Transportation Facilities*. UDWQ retained the right to require individual certifications for projects that are likely to have a significant adverse effect on water quality or to degrade waters of the State despite following NWP conditions.

UDOT plans to use coverage under NWP 14 to permit discharges for the S.R. 210 Project. UDOT does not expect UDWQ to require an individual certification given the analysis in this EIS that the action alternatives would not cause significant adverse effects on water quality or degrade any beneficial uses of water bodies.

### 24.2.3 Permit under Section 402 of the Clean Water Act, Utah Pollutant Discharge Elimination System (Utah Division of Water Quality)

Construction projects that disturb 1 or more acres of land, including projects less than 1 acre that are part of a larger common plan of development or sale, must be covered under the statewide Utah Pollutant Discharge Elimination System (UPDES) construction stormwater permit.

To obtain a UPDES permit, UDOT must submit a notice of intent and fee to UDWQ with operator information, facility location, type of construction, total acres to be disturbed, identification of applicable best management practices (BMPs), and the certification of the responsible party. In addition, the general permit requires UDOT to develop and implement a stormwater pollution prevention plan that includes identification of erosion-control, sediment-control, and good-housekeeping BMPs as well as site-specific measures to protect slopes and natural features, minimize erosion, and prevent eroded sediment from leaving the construction zone.

#### **24.2.4 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, and an air quality approval order would be required for any of the action alternatives. To obtain an air quality approval order, UDOT must submit a notice of intent to the Utah Division of Air Quality describing the construction activities and emissions that would be associated with operating construction equipment. UDOT 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.

#### **24.2.5 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 action alternatives, nests could be established before construction. UDOT will obtain a certificate of registration if needed based on consultation with the Division of Wildlife Resources.

#### **24.2.6 Approval of Remediation Work Plan (UDEQ or EPA)**

If a hazardous waste site is found during construction, UDOT would submit a remediation work plan to 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. The work plan would also be coordinated with the USDA Forest Service for approval.

## 24.3 Local Permits and Clearances

### 24.3.1 Flood-control Permit and Floodplain Development Permit (Local Jurisdictions)

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

The Town of Alta, Cottonwood Heights City, and Salt Lake County have adopted FEMA's National Flood Insurance Program. This program includes the preparation of Flood Insurance Rate Maps that show the 100-year floodplain boundaries within a community.

The action alternatives would cross several 100-year floodplains, as described in Chapter 14, Floodplains. In accordance with Executive Order 11988, *Floodplain Management*, UDOT must coordinate with FEMA during the construction phase to ensure that local jurisdictions' flood design standards are met and to obtain floodplain development permits from the local jurisdictions.

#### What is a 100-year floodplain?

A 100-year floodplain is the area around a water body that would be inundated by a 100-year flood. A 100-year flood is a flood with a 1% chance of occurring each year, or one that occurs on average every 100 years.

### 24.3.2 Salt Lake County and Salt Lake City Permits and Approvals

Portions of the action alternatives would be constructed in a watershed. Potential permits and approvals from Salt Lake County and Salt Lake City are listed in Table 24.4-1.

### 24.3.3 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.

## 24.4 Summary of Permits, Reviews, Clearances, and Approvals

Table 24.4-1 lists the permits, reviews, clearances, and approvals that would or could be required for the S.R. 210 Project. These permits, reviews, clearances, and approvals would apply to all of the action alternatives.

Table 24.4-1. Permits, Reviews, Clearances, and Approvals Likely To Be Required for the S.R. 210 Project

Permit	Granting Agency(ies)	Applicant	Application Time	Granting Time	Applicable Portion of Project
<b>Federal Permits, Reviews, Clearances, and Approvals</b>					
Nationwide 14 for Linear Transportation Projects	USACE	UDOT	After the Final EIS	Before construction	Piping of intermittent and ephemeral streams along S.R. 210
Compliance with Section 106 of the National Historic Preservation Act	Utah SHPO and ACHP	UDOT	Concurrent with EIS	Final EIS	Considerations of impacts to historic properties; includes consultation between agencies and interested parties
Federal land right-of-way transfer, easement, or special-use authorization	USDA Forest Service and FHWA	FHWA or UDOT	After the Final EIS	Before construction	Portion of the action alternatives that cross USDA Forest Service land
Forest Service plan amendment	USDA Forest Service	UDOT	After the Final EIS	Before construction	Portion of the action alternatives that cross USDA Forest Service land not appropriated and result in a nonconforming use
Project-level air quality conformity determination	FHWA	UDOT	Final EIS	Final EIS	Operation of mobility hubs, bus service, and cog rail and gondola base stations
Form 7460-1, <i>Notice of Proposed Construction or Alteration</i>	FAA	UDOT	Before final design	Final design	FAA warning lights on gondola towers
Contract for removal of merchantable timber	USDA Forest Service	UDOT	Final EIS	Before construction	Portion of the alternatives on NFS lands
Permit/authorization for removal of forest products (rock, gravel, and so on)	USDA Forest Service	UDOT	Final EIS	Before construction	Portion of the alternatives on NFS lands

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Table 24.4-1. Permits, Reviews, Clearances, and Approvals Likely To Be Required for the S.R. 210 Project

Permit	Granting Agency(ies)	Applicant	Application Time	Granting Time	Applicable Portion of Project
<b>State Permits, Reviews, Clearances, and Approvals</b>					
Stream alteration permit	Utah Division of Water Rights	UDOT	Final design phase	Before construction	Required for new or modified stream crossings proposed as part of the Selected Alternative
UPDES permit under Section 402 of the Clean Water Act	Utah Division of Water Quality	Contractor	Construction phase	Before construction	Stormwater quality during construction phase
Air quality approval order	Utah Division of Air Quality	Contractor	Construction phase	Before construction	Air quality during construction phase (emissions from equipment)
Certificate of registration	Utah Division of Wildlife Resources	Contractor	Construction phase	Before construction	Impacts to raptor nests from construction
<b>Local Permits, Clearances, and Approvals</b>					
Flood-control permit and floodplain development permit	Local jurisdictions	UDOT	Final design phase	Final design phase	Portion of roadway or structure in FEMA floodplain
Construction-related permits	Various agencies	Contractor	Contractor	Before construction	Impacts associated with off-site activities such as activities in construction staging areas, borrow areas, batch plant sites, and so on
Salt Lake City's Watershed Ordinance, Section 17.040, and Salt Lake City surplus water permits	Salt Lake City	UDOT	Final design phase	Final design phase	Approval where water resources are desired for connection to the proposed snow sheds
Salt Lake County Health Regulation 13	Salt Lake County	UDOT	Final design phase	Final design phase	Approval for connection if sanitary facilities are required to connect to sewer system for trailhead restrooms
Salt Lake County Health Regulation 14	Salt Lake County	UDOT	Final design phase	Final design phase	Approval for the use and occupancy of facilities in watersheds in Salt Lake County
Salt Lake County Foothills and Canyons Overlay Zone (Salt Lake County Ordinance, Chapter 19.72), and Mountain Resort Zone (Chapter 19.13)	Salt Lake County	UDOT	Final design phase	Final design phase	Land use approvals would be needed for alternatives in the unincorporated areas of Little Cottonwood Canyon

AHCP = Advisory Council on Historic Preservation, FAA = Federal Aviation Administration, FEMA = Federal Emergency Management Agency, NFS = National Forest System, S.R. = State Route, SHPO = State Historic Preservation Officer, UDOT = Utah Department of Transportation, UPDES = Utah Pollutant Discharge Elimination System, USACE = U.S. Army Corps of Engineers, USDA = U.S. Department of Agriculture

## 24.5 Limitations 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.

An agency of the U.S. Department of Transportation can publish a notice in the Federal Register, in accordance with 23 USC Section 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 lawsuits 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.

## 24.6 References

[EPA] U.S. Environmental Protection Agency

- 2021 Email from Tim Russ, EPA, to Naomi Kisen, UDOT, regarding review of the Little Cottonwood Canyon Draft Air Quality Technical Report. January 22.

[USDA Forest Service] U.S. Department of Agriculture Forest Service

- 2003 Revised Forest Plan: Wasatch-Cache National Forest. South Jordan, Utah: U.S. Department of Agriculture, Forest Service, Intermountain Region, Uinta-Wasatch-Cache National Forest. [https://www.fs.usda.gov/detailfull/uwcnf/landmanagement/planning/?cid=stelprdb5076923& width=full](https://www.fs.usda.gov/detailfull/uwcnf/landmanagement/planning/?cid=stelprdb5076923&width=full).

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