

7.0 Permits

The purpose of this section is to provide preliminary identification of the major Federal, State, and local permits and clearances that would be required to carry this project into construction phase.

Permitting for this project would be coordinated through a Reimbursable Service Agreement with ADNR OPMP Large Projects. ARRC and MSB initiated the permitting process with agencies by having a project introduction meeting on September 18, 2007 and subsequent one-on-one or small group meetings in October and November 2007. Preliminary letters received from agencies are included in Appendix C and minutes from agency meetings are included in Appendix D. In addition, the ARRC has developed preliminary voluntary mitigation measures to streamline the permitting process (Appendix E).

7.1 Implications for Permitting

The USACE, USEPA, U.S. Coast Guard (USCG), ADEC, ADNR, and MSB would require permits or approvals to construct any of the Port MacKenzie Rail Extension project preliminary alignments. This project would require agency coordination to obtain the following permits and clearances:

- Coastal Consistency Determination – Coastal Project Questionnaire and Coastal Project Consistency Evaluation; ADNR DCOM, formerly OPMP; Note: As of December 2007, the ADNR branch of the OPMP that administered the coastal consistency determination is now housed in the new DCOM.
- Section 404/10 Permit; USACE
- Title 41 Fish Habitat Permit; ADNR OHMP
- Flood Plain Development Permit; MSB
- Section 401 Certification (Certificate of Reasonable Assurance); ADEC
- National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges from construction activities; USEPA

Depending on the alternative selected, the following permits may also be required:

- Section 9 Bridge Permit; USCG
- Land Use Permit; ADNR DMLW
- Temporary Water Use Permit; ADNR DMLW
- Special Area Permit; ADF&G
- Special Use Permit; ADNR DPOR (State Parks)

Coastal Consistency Review

Consistency review of the project under the ACMP helps to ensure that all aspects of a project within identified coastal boundaries are considered during a review and approval process. Permissible land and water uses within the coastal zone are identified in the statewide standards of the ACMP, the approved district coastal management plans and AMSA (Port Mackenzie District).

A coastal project questionnaire would need to be prepared. ADNR DCOM issues a Coastal Consistency Determination to certify compliance with these standards. The coastal consistency determination process generally runs concurrently with the USACE 404 permit process. The ADNR OPMP must perform a formal review of the project and make a finding of consistency before major resource agency permits are issued.

Section 404 Permit

Under the CWA, a Section 404 Permit from the USACE would be required for the discharge of dredged or fill material into waters of the United States, including wetlands.

Section 10 Permit

Under the Rivers and Harbors Act of 1899, a Section 10 permit would be required for work in, on, and over navigable waters of the U.S., including fill and structures placed below mean high water. Consultation with the USACE and other regulatory agencies is necessary to address as many concerns as possible in advance of application submittal. Once a complete package is accepted, the USACE would prepare a Public Notice (PN). The PN would give the public and agencies 30 days to comment on the project.

Title 41 Fish Habitat Permit

Alaska Statute 41.14.840 (Fishway Act) and Alaska Statute 41.14.870 (Anadromous Fish Act) require that an individual or government agency notify and obtain authorization (Title 41 Fish Habitat Permit) from the ADNOR OHMP for activities within or across a stream used by fish if the OHMP determines that such uses or activities could represent an impediment to the efficient passage of fish. For example, culvert installation; water withdrawals; stream realignment or diversion; dams; low-water crossings; and construction, placement, deposition, or removal of any material or structure below ordinary high water all require approval from the OHMP. All activities within or across a specified anadromous waterbody and all in-stream activities affecting a specified anadromous waterbody require approval from the OHMP.

Flood Plain Development Permit

A Flood Plain Development Permit is required before any development within a Federally Designated Flood Hazard Area. A Flood Plain Development Permit (issued by MSB) must include both the MSB Flood Hazard Development Permit and the Elevation Certificate. An Alaska registered Architect or Engineer must certify the Development Permit Application and either a Registered Engineer or Surveyor must complete the elevation certificate.

401 Certification – Pursuant to Section 401 of the CWA the State of Alaska certifies that the project complies with State water quality standards. This is commonly known as the 401 Certification. This review typically results in conditions placed on either or both the Section 404 permit and Coastal Consistency Determination. The 401 Certification is initiated by the USACE as part of the 404 permitting process. The ADEC issues the certification.

NPDES General Permit

The CWA prohibits anybody from discharging "pollutants" through a "point source" into a "water of the United States" unless they have an NPDES permit. As authorized by the CWA, the NPDES permit contains limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health. In essence, the permit translates general requirements of the Clean Water Act into specific provisions tailored to the operations of each person discharging pollutants.

Alaska falls under Region 10, where the USEPA is the permitting authority; a Construction General Permit (CGP) outlines a set of provisions construction operators must follow to comply with the requirements of the NPDES stormwater regulations. The NPDES Stormwater program requires operators of construction sites one acre or larger to obtain authorization under the CGP and develop and implement a stormwater pollution prevention plan.

Section 9 Bridge Permit

Under Section 9 of the Rivers and Harbors Act of 1899, a USCG Bridge Permit would be required to construct any bridge or causeway over any navigable river or navigable water of the U.S. The need for one or more Section 9 permit(s) would depend on the selected alternative.

Land Use Permit

Land use permits are authorizations issued to use state land, on a temporary basis, for a variety of purposes. The permits range in duration from one to five years. They are intended for temporary, non-permanent uses such as floating lodges, log storage, scientific research, guide camps, equipment storage and commercial recreation uses. Land use permits are also issued for most activities in navigable waters because the state owns land below the ordinary high water (OHW) line (i.e., bridge crossings of navigable waters where pier placement occurs below OHW).

Temporary Water Use Permit

Issued by ADNR DMLW, a temporary water use authorization may be needed if the amount of water to be used is a significant amount, the use continues for less than five consecutive years, and the water to be used is not appropriated. This authorization does not establish a water right but would avoid conflicts with fisheries and existing water right holders.

Special Area Permit

This permit should be used for any disturbance-producing or habitat altering activity that would occur in a designated state game refuge, critical habitat area, or game sanctuary.

Special Use Permit

Special Use Permits are issued by ADNR State Parks for a variety of activities and uses occurring within a state recreation area or state park. This permit may be necessary for alternatives affecting a state recreation area.