

3. Existing Conditions and Environmental Consequences

3.18 Permits

Federal and State permits and certifications would be required for activities related to construction of either the Recommended Preferred Alternative (RPA) or the Refined RPA. The agencies that would issue these permits and certifications are either cooperating or participating agencies and have been involved during the project development process. The design-build contractor(s) and the South Carolina Department of Transportation (SCDOT) would be responsible for preparing and obtaining the necessary permits which would be submitted based on final design. Information related to each type of permit is listed below.

3.18.1 CHANGES TO THIS CHAPTER SINCE THE DEIS

Since the Draft Environmental Impact Statement (DEIS), this chapter has been revised to include the Refined RPA.

3.18.2 SECTION 404 OF THE CLEAN WATER ACT

A permit from the U.S. Army is required for impacts to Waters of the U.S., pursuant to Section 404 of the Clean Water Act. Section 404 is administered by the U.S. Army Corps of Engineers (USACE) and regulates the discharge of dredged or fill material into Waters of the U.S. Depending on the type and extent of impacts, Section 404 permitting requirements can range from activities that are considered exempt or preauthorized to those requiring pre-construction notification for a Nationwide Permit or an Individual Permit from the USACE. Based on the anticipated impacts (see Table 3.7-7) associated with the RPA and with the Refined RPA, an Individual Permit would be required. An Individual Permit application package would be completed and submitted to the Regulatory Division of the USACE Charleston District. A compensatory mitigation plan would also be included in the Individual Permit application package. Details regarding the proposed mitigation plan are included in Chapter 3.7.8.

3.18.3 SECTION 401 OF THE CLEAN WATER ACT

Section 401 of the Clean Water Act requires that an applicant requesting a federal permit for activities that would impact Waters of the U.S. (Section 404 permit) must also obtain a Water Quality Certification. This certification involves a review of the proposed project and analysis of its potential effects on water quality. In South Carolina, the Department of Health and Environmental Control (SCDHEC) is responsible for granting, denying, or waiving Section 401 Water Quality Certifications. Since the RPA and the Refined RPA would require a Section 404 Individual permit, a Section 401 Water Quality Certification would also be required. A Section 401 Water Quality Certification is required before the USACE will take action on the Section 404 Permit. Mitigation for potential water quality impacts would include measures to reduce sediment and stormwater runoff. Additional details can be found in Chapter 3.6.10.

3.18.4 SECTION 402 OF THE CLEAN WATER ACT

Section 402 of the Clean Water Act authorizes the U.S. Environmental Protection Agency (EPA) to regulate point sources that discharge pollutants, including surface runoff, into Waters of the U.S. through the National Pollutant Discharge Elimination System (NPDES) permit program. The USEPA has delegated this authority to the

3. Existing Conditions and Environmental Consequences

SCDHEC for projects located in South Carolina. The NPDES permit requires that measures be implemented to control stormwater runoff prior to discharging into receiving waters. A Stormwater Pollution Prevention Plan must also be developed for the project which will identify potential sources of stormwater pollution and describe measures to reduce or eliminate the pollutants.

Projects that disturb greater than one acre of land require an NPDES permit, also referred to as a Land Disturbance Permit. For projects that disturb greater than five acres of land, the development and approval of permanent best management practices is required, along with a signed maintenance agreement for continued water quality protection. Since the RPA and the Refined RPA would disturb greater than five acres of land, a NPDES Permit, stormwater pollution prevention plan, and permanent best management practices would be required.

3.18.5 CONSTRUCTION IN STATE NAVIGABLE WATERS

A permit for Construction in State Navigable Waters would also be required from SCDHEC for bridge construction over the Saluda River. State navigable waters are defined in South Carolina as “waters which are navigable, have been navigable, or can be made navigable by removal of incidental obstructions by rafts of lumber or timber by small pleasure or sport fishing boats.”¹

3.18.6 SECTION 9 OF THE RIVERS AND HARBORS ACT (USCG)

Pursuant to Section 9 of the Rivers and Harbors Act, construction of any dam, dike, bridge, or causeway across navigable waters of the U.S. is prohibited without approval from the U.S. Coast Guard (USCG). Navigable Waters of the U.S. are those waters that are presently used, have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. Navigable Waters of the U.S. are not necessarily the same as state navigable waters.

For bridge construction projects, the FHWA may determine that a USCG permit is not required. The RPA and the Refined RPA both include the replacement of bridges over the Saluda River. The FHWA concluded a USCG Permit was not necessary for these crossings due to navigational obstructions downstream of the proposed crossings of the Saluda River. The USCG concurred with the FHWA’s determination (Appendix B); therefore, a USCG permit would not be necessary for the project as proposed.

3.18.7 SECTION 10 OF THE RIVERS AND HARBORS ACT

Section 10 of the Rivers and Harbors Act requires a permit for any construction activities that may obstruct the navigability or modify the channel of a navigable Water of the U.S. Approval of these activities are administrated by USACE during the Section 404 permitting process. Since either the RPA or the Refined RPA would involve construction in the Saluda River, a Section 10 Permit would be required.

¹ SCDHEC. R. 19-450. Permits for Construction in Navigable Waters