

5. PERMITS AND APPROVALS REQUIRED

5.1 Overview

The proposed Meadowlands Railroad and Roadway Improvement Project is located within the boundaries of the Hackensack Meadowlands District, a land area encompassing portions of 14 different municipalities that is subject to specific state legislation that governs its development through the New Jersey Meadowlands Commission (NJMC), formerly known as the Hackensack Meadowlands Development Commission (HMDC). The Meadowlands Rail Project, however, is exempted from the Hackensack Meadowlands District legislation by the statute governing the creation and operation of the NJSEA (*N.J.S.A. 5:10-1 et seq.*). Under Section 5(x) of this statute, the NJSEA may determine the location, type and character of a Project or any part thereof and all other matters in connection with all or any part of the Project, notwithstanding any land use plan, zoning regulation, building code or similar regulation adopted by the State, any municipality, county, public body politic and corporate, including but not limited to the Meadowlands Commission, or any other political subdivision of the State.

The NJSEA's enabling legislation, however, does require it to consult with the NJMC as to the location, type and character of any project within its jurisdiction (*N.J.S.A. 5:10-5x*) and with the NJMC and the New Jersey Department of Environmental Protection (NJDEP) "with respect to the ecological factors constituting the environment of the Hackensack meadowlands to the end that the delicate environmental balance of the Hackensack meadowlands may be maintained and preserved" (*N.J.S.A. 5: 10-23*). This Environmental Impact Statement (EIS) has been prepared as a means to facilitate the goal of NJSEA's consultation process with the NJMC and NJDEP, and is intended to meet the scope and intent of the New Jersey Executive Order No. 215 EIS process.

As part of the consultation process, a Public Hearing is to be conducted by the NJMC and the NJDEP, where the Meadowlands Rail Project EIS will be presented by the NJSEA for public comment and review by both agencies, as provided for by the applicable statutory requirements. Topics being presented in this EIS in support of the consultation process include location, type and character; purpose and need; alternatives analysis; and a wide array of environmental, socioeconomic and cultural conditions and impacts, as well as proposed mitigation measures. More detail about NJSEA's consultation process is provided in Section 6.0. The Project also requires a number of Federal, State and regional permits, approvals and certifications, some of which also have public comment and hearing requirements.

A request for public comments on a scoping document for the EIS was issued on March 10, 2005. A public hearing was held on April 11, 2005 and the public comment period ended on April 25, 2005. The public comments were considered in preparing this EIS. A summary of comments received on the scoping document and responses to these comments can be found in Appendix C.

5.2 Required Regulatory Approvals

The requirement for NJSEA to consult with the NJMC and NJDEP concerning potential impacts to the ecological balance of the Hackensack Meadowlands, as well as the preparation of this EIS to facilitate this consultation process, was discussed previously in Section 5.1. Separate and apart from the NJSEA's consultation process, the proposed Project is also required to comply with a variety of other permit and approval processes. This section discusses each of the required regulatory approvals for the Meadowlands Rail Project, as well as the status of the applications. Well Permits and a Waterfront Development Permit have already been requested from NJDEP for purposes of conducting preconstruction investigation and evaluation activities (i.e., geotechnical and environmental sampling).

In addition to the permits listed and discussed below, other permits may be required for construction and operation of the Project. For instance, it is anticipated that a series of permits will be required to be obtained from the NJDOT for utility crossings of State roadways, construction of new traffic signals and placement of signs within the State roadway rights-of-way. These permits, if necessary, will be applied for in the future.

5.2.1 United States Coast Guard Bridge Permit

Pursuant to the General Bridge Act of 1946, a USCG bridge permit will be required for the proposed construction of the Project. The purpose of these Acts is to preserve the public right of navigation and to prevent interference with interstate and foreign commerce. The Acts require that the location and plans of bridges across navigable waters (i.e., waters subject to the ebb and flood of the tides) of the United States be submitted to and approved by the Secretary of Transportation prior to construction. These Acts placed the navigable waters of the United States under the exclusive control of the USCG to prevent interference with their navigability by bridges or other obstructions except by express permission of the United States Government. The USCG mission is to administer the Bridge Administration Program, approve the location and plans of bridges, and impose any necessary conditions relating to the construction, maintenance and operation of these bridges in the interest of public navigation. The USCG is also required by various environmental statutes and executive orders that environmental considerations are to be given careful attention and importance in each bridge permitting decision.

5.2.2 Department of the Army Permit

The U.S. Army Corps of Engineers (USACOE) requires a permit for any structure or work in or affecting waters of the United States. Construction waterward of the mean high water line (MHW) or in wetlands at the Project site will require USACOE approval. Pursuant to 33 CFR Parts 320 through 330 of the Regulatory program of the USACOE, a Section 10 of the Rivers and Harbors Act (Section 10) permit is required for the placement of structures in navigable waters (i.e., waters subject to the ebb and flood of the tides) of the United States. In addition, authorization is required for the placement of fill in waters of the United States (i.e., wetlands)

pursuant to Section 404 of the Clean Water Act (Section 404). The USACOE Section 10/404 Individual Permit would be filed at the same time as the NJDEP LURP multi-permit application described in the next section.

The NJSEA has submitted to the USACOE an application for a Jurisdictional Determination (JD) that will delineate the extent of waters of the United States affected by the project that are subject to the jurisdiction of the USACOE.

The substantive criteria used in evaluating Section 404 filling activities have been promulgated by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 230, also known as the “404 (b)(1) Guidelines.” An extensive Alternatives Analysis that determines there are no practicable alternatives to placing fill in wetlands must be prepared to demonstrate compliance with the Guidelines. In evaluating a Section 404 permit application the USACOE evaluates, pursuant to the 404(b)(1) guidelines, all facets of information about the Project at the same time, including potential mitigation. Based upon the Applicant’s Alternatives Analysis, the USACOE makes the determination whether potential impacts have been avoided to the maximum extent practicable. Any remaining unavoidable impacts would then be reduced to the extent practicable and appropriate by requiring steps to minimize impacts. Once the above criteria are satisfied, the Applicant is required to compensate for the lost aquatic resource values by providing wetland mitigation.

During its review of the application, the USACOE will publish a notice requesting public comments on the application and may also hold a public hearing. The USACOE will also prepare an environmental assessment of the Project according to the Council on Environmental Quality’s regulations under the National Environmental Policy Act (NEPA). The USACOE can also require the preparation of a full EIS on the Project unless it finds that it is not required by the regulations.

In addition to the regulatory program managed by the USACOE, the National Marine Fisheries Service (NMFS) has recently implemented new regulatory review requirements pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, most recently amended in 1996. The Act has set forth a number of new mandates for NMFS, regional fishery management councils and other federal agencies to identify and protect important marine and anadromous fish habitat. The Councils, with assistance from NMFS, are required to delineate Essential Fish Habitat (EFH) for all managed species. Federal agencies that fund, permit (e.g., USACOE) or carry out activities that may adversely impact EFH are required to consult with NMFS regarding the potential effects of their actions on EFH and respond in writing to NMFS recommendations. As such, an EFH analysis for the Project site needs to be prepared to demonstrate that the proposed construction activities will not have an adverse impact upon the managed fish species that have been identified by NMFS. NMFS requires that the egg, larvae, juvenile and adult stages of development of the identified managed species be evaluated against the Project’s impacts.

5.2.3 NJDEP Multi-Permit Application

Using existing information provided in the E.O. 215 EIS, supplemental Project specific data to be developed and the NJSEA plans to the NJDEP's Land Use Regulation Program (LURP), a single multi-permit application will be filed with NJDEP that will include applications for a Waterfront Development and Stream Encroachment Permits; a Water Quality Certificate; and a Coastal Zone Management Consistency Determination will be prepared and submitted to NJDEP. A separate Stream Encroachment Permit will not be required, as the floodplains associated with the site are tidally influenced and will be reviewed as part of the application for a Waterfront Development Permit. However, the required supplemental Stream Encroachment information submittal will include the standard application materials required pursuant to N.J.A.C. 7:13-4.1, N.J.A.C. 7:13-4.2 and Stream Encroachment application checklists and data forms. The Waterfront Development permit application will include the information required pursuant to the Coastal Permit Program Rules (N.J.A.C. 7:7-4.2) and Waterfront Development permit application checklists. It is anticipated that a detailed Statement of Compliance with the Rules on Coastal Zone Management will serve as the appropriate environmental documentation, in addition to information that will be part of the E.O. 215 EIS.

5.2.4 Tidelands Conveyance

A tidelands, or riparian, conveyance instrument will not be required for a majority of the Project since the NJSEA was issued a tidelands grant in 1982 from the State of New Jersey for the entire Meadowlands Sports Complex. The grant was confirmed by a determination letter dated June 7, 2004 issued by the NJDEP's Bureau of Tidelands Management (see Appendix A). The parcels associated with Honeywell Site have also been conveyed. However, a tidelands instrument will be required for proposed viaduct structures being placed in Berry's Creek. A NJDEP Tidelands Application will be submitted in conjunction with the NJDEP Waterfront Development Permit application associated with the Project.

5.2.5 Treatment Works Approval

Under Section 404 of the Federal Clean Water Act, a permit is required for discharges to surface waters of the State. Presently, wastewaters from the Meadowlands Sports Complex utilize existing approved infrastructure components, such as sewer lines and a pumping station, that discharge to the Bergen County Utilities Authority (BCUA) wastewater plant in Little Ferry, New Jersey. Although existing site facilities are authorized to serve the proposed station, improvements are being provided as part of the proposed station development. The NJSEA plans to apply to the NJDEP for Treatment Works Approval (TWA) permits for the infrastructure improvements.

The NJDEP regulations specifically address sanitary sewer systems and their associated discharges. Pursuant to these requirements, the Project will seek approval from the BCUA for acceptance of wastewaters from the proposed station for treatment at its Little Ferry facility.

Sewerage infrastructure improvements will be required for the Project to accommodate the flows from the station.

The proposed Project is situated within a designated service area for the BCUA Little Ferry facility. Therefore, the Project is within the acceptable service area, and no amendment will be required to the existing Area-wide Water Quality Management Plan.

5.2.6 Water Main Extension Certification

Under the State's water supply laws, certification of plans for the construction of new water main extensions is required. A Water Main Extension Certification application will be submitted to the NJDEP for improvements, modifications and/or additions to the existing potable water infrastructure for the proposed station.

5.2.7 National Pollutant Discharge Elimination System Permit

Under the New Jersey Water Pollution Control Act, a New Jersey Pollutant Discharge Elimination System Permit (NJPDES) is required for discharges into surface waters of the State. The NJSEA already has a NJPDES permit in place from NJDEP (Permit No. NJ0023345) for the discharge of stormwater from the Sports Complex lagoon system into Berry's Creek. As necessary, an amendment or modification will be made to the existing NJPDES permit or pending renewal permit application for the Meadowlands Rail Project.

5.2.8 Approval of Remedial Action Workplan

Based on the results of recent investigations, including the Preliminary Assessment Report (*PMK, 2005*), Site Investigation Report / Remedial Action Workplan for this Project (*PMK, 2005*), and several reports for the Route 120 Relocation Project (*LEA 1996b; LEA 1996g; LEA 1996h; LEA 1996i*), some soil, groundwater, and sediments within the Project site have contaminant concentrations above certain defined regulatory levels. Since the construction of the Meadowlands Rail Project will include the disturbance of contaminated media on the existing Honeywell property (former UOP/Allied Signal site) to the west of Berry's Creek, a Memorandum of Agreement (MOA) will be required with the NJDEP to facilitate the review and approval of reports and plans. The Preliminary Assessment Report and Site Investigation Report / Remedial Action Workplan will be submitted to the NJDEP for its review. The Remedial Action Workplan (RAW), including a Soil Reuse Plan (SRP), will be approved before the Developer commences any construction or remediation work.

5.2.9 Notice of Proposed Construction or Alteration Affecting Navigable Airspace

Under Part 77 of the Federal Aviation Administration (FAA) regulations, height limitations for buildings and construction equipment have been promulgated for objects which might affect navigable airspace for areas in proximity to airports. The FAA is required to be notified of proposed construction when a Project entails tall structures or requires the use of tall construction equipment. While the proposed station will only attain a height of approximately 52 feet and will be below the height of surrounding existing structures, a notification application (Form 7460-1, Notice of Proposed Construction or Alteration) for height limitations will be submitted to the FAA for cranes and any other tall, temporary construction equipment exceeding the height limitation.

5.2.10 Soil Erosion and Sediment Control Plan Certification

In conformance with the Soil Erosion and Control Act of 1975, an application for Soil Erosion and Sediment Control Plan Certification will be submitted to the Bergen County Soil Conservation District. As part of this certification package, notification of the use of the NJPDES General Permit for Construction Activity Stormwater (NJO088323) will also be submitted to the Soil Conservation District.

5.2.11 New Jersey Uniform Construction Code Plan Approval

The design of Meadowlands Rail Project will have to conform to the New Jersey Uniform Construction Code, including the barrier free sub-code, and receive approval from the Department of Community Affairs (DCA). The NJSEA will submit the necessary plans and specifications to the DCA as required for a plan review under the New Jersey Uniform Construction Code.