

I. - INTRODUCTION

This study considered the feasibility of reestablishing a rail connection between the Port of Eastport and the active rail network in eastern Maine. Actions involving construction or changes affecting the environment require evaluation through various levels of review by the federal, state, and local government. Federal funding can similarly trigger review requirements through legislation such as the National Environmental Policy Act (NEPA). A fundamental premise of environmental policies and permits is to use good planning and design practices, consistent with best reasonable practices of environmental stewardship. These practices require and advocate open communication, interaction and consideration of all reasonable information during project planning, permitting and implementation to minimize environmental impacts.

The feasibility study identifies the anticipated planning and permitting requirements to reestablish the rail connection with the Port, based upon a planning level assessment of resources and conceptual design and also includes an overall project schedule.

II. - ENVIRONMENTAL PLANNING

The project will include improvements to facilitate the movement of goods along existing roads from the Port of Eastport to a proposed Trans-load facility served by rail service. The rail service from the Trans-load facility will connect with currently active lines to the north in the Calais, Baring and Baileyville area using portions of the non-active Eastport Branch, MEDOT Line, and Pan Am owned Calais Branch. One component of the study is to improve existing rail infrastructure (Pan Am Calais Industrial Track) to the two mills in Baileyville. The Calais Industrial Track enters New Brunswick, Canada, however, no federally-funded improvements associated with this Port improvement study are proposed in Canada.

For planning purposes, a Trans-load facility was anticipated to have a minimum area of approximately 22 acres, with the capacity for future expansion up to approximately 72 acres. Existing and former rail routes and paved roads would be used to the extent practicable, although some new alignment paved roads, driveways, and rail are anticipated to serve the facility. During project planning, Geographic Information System (GIS) level resource information was used to identify human and natural resource constraints to avoid and minimize potential impacts. Data layers include national wetland inventory wetlands, soils, rivers and streams, coastal zone, floodplains and flood hazard areas, aquifers, critical habitats, tribal, municipal, state and federal lands, cemeteries, wildlife refuges, property lines, wells and public water supplies, along with locations of developments, homes, and businesses.

III. - ENVIRONMENTAL DOCUMENTATION

A. Federal

1. National Environmental Policy Act (Federal Railroad Administration)

The National Environmental Policy Act requires Federal agencies to consider environmental effects on social, cultural, economic and natural resources.¹ NEPA's procedural requirements apply to a Federal agency's decisions for actions, including financing, assisting, conducting, or

approving projects or programs; agency rules, regulations, plans, policies, or procedures; and legislative proposals.²

In essence, NEPA reviews are required for any federal action or when federal funding is used for a project. NEPA requires to the fullest extent possible, that the policies, regulations, and laws of the Federal Government be interpreted and administered in accordance with its environmental protection goals. NEPA also requires Federal agencies to use an interdisciplinary approach in planning and decision-making for any action that adversely impacts the environment. Implementation of the Port connection would be funded in part by the Federal Railroad Administration, and has the potential to adversely affect the environment, thereby requires a NEPA environmental review.

The fundamentals of the NEPA decision-making process include: consideration of alternatives, examination of potential environmental impacts and mitigation, interagency coordination, public involvement and documentation.³ NEPA also requires agencies to include analysis of reasonably foreseeable trans-boundary (national) effects of proposed actions in their analysis of proposed actions in the United States.⁴

Documenting the NEPA process allows complete disclosure to the public and an opportunity to provide input and comment on proposals, alternatives, and environmental impacts. The process also provides information for the decision-maker to make an informed and reasonable choice among alternatives.⁵

There are three basic "classes of action" to determine how compliance with NEPA is carried out and documented:⁶

- An Environmental Impact Statement (EIS) is prepared for projects where it is known that the action will have a significant effect on the environment.
- An Environmental Assessment (EA) is prepared for actions in which the significance of the environmental impact is not clearly established. Should environmental analysis and interagency review during the EA process find a project to have no significant impacts on the quality of the environment, a Finding of No Significant Impact (FONSI) is issued.
- Categorical Exclusions (CEs) are issued for actions that do not individually or cumulatively have a significant effect on the environment.

² Ibid

³ Federal Highway Administration (<http://www.environment.fhwa.dot.gov>)

⁴ US Council on Environmental Quality. 1997. (<http://www.nepa.gov/nepa/regs/transguide.html>)

⁵ Federal Highway Administration (<http://www.environment.fhwa.dot.gov>)

⁶ Federal Highway Administration (<http://www.environment.fhwa.dot.gov>)

¹ A Citizens Guide to the NEPA – Having Your Voice Heard. Executive Office of the President of the United States. 2007

Council on Environmental Quality (CEQ) regulations require public involvement for EAs and FONSI to include, at a minimum, reasonable public notice of the availability of the EA and FONSI. Most EAs are made available for 30 days for public review of the draft EA and subsequent FONSI.

The lead federal agency for the project is the Federal Railroad Administration. The FRA has established guidelines and procedures for NEPA documents. Based upon the extent of work to implement the proposal, it is likely to require an EA, primarily due to the need for additional ROW acquisition for the Trans-load facility. The majority of the proposal involves rail restoration, improvements, and repairs within existing transportation corridors, and those improvements alone would likely be minimal impacts and could be reviewed as a CE. However, the rail improvements and the Trans-load facility are necessary components of the overall project, therefore, must be considered in unison through the NEPA and environmental permitting processes. The conclusion of the assessment will likely result in a Finding of no Significant Impact (FONSI), which would be made by the FRA after public review and comment on the EA.

2. National Historic Preservation Act (Section 106)

The Act requires Federal agencies to evaluate the effects of Federally funded or permitted projects on historic properties, including archaeological sites. Section 106 of the National Historic Preservation Act establishes the review process to determine the effects. The review is based upon an action and the effect to structure's (or archaeological sites) listed on, or eligible for listing on, the National Register of Historic Places. The process includes an opportunity for public review and comment. Coordination of the Section 106 process is made through the Maine State Historic Preservation Commission. Maine DOT has a Programmatic Agreement between Federal Highway Administration, Federal Transit Administration, Advisory Council on Historic Preservation, and Maine State Historic Preservation Officer for implementation of Federal highway and transit programs. It is likely that the established protocols in that agreement will be applicable to this project. Some actions, such as replacement of track and ties are exempted, however, more detailed reviews are needed for the railroad bridges and culverts. The agreement establishes methods for review, documentation and coordination of the potential historic elements. Initial historic review would likely occur during the NEPA documentation phase of the project. Depending upon the findings, the historic review, documentation, and coordination could be expanded through a formal Section 106 process. Although not anticipated, it should be noted that if any of the bridges or structures are historic, and replacement of those structures is needed, further review and documentation through Section 4(f) of the Department of Transportation Act of 1966 will be needed.

IV. PERMITS

A. State of Maine

1. Natural Resources Protection Act (Maine DEP Permit)

The State of Maine Natural Resources Protection Act (NRPA) was established to assure that resources of state importance are protected. Resources include coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds and rivers, streams or brooks.⁷

A further distinction and protection of particular wetlands is also afforded by the regulations. Those wetland areas are considered Wetlands of Special Significance and include coastal wetlands, great ponds, wetlands containing floodplains, significant wildlife habitat, wetlands occurring within 25 feet of a perennial stream, wetlands containing 20,000 square feet of aquatic vegetation, emergent marsh or open water, and wetlands identified as a peatland dominated by shrubs, sedges and sphagnum moss.

The proposed project will involve activities near or within coastal wetlands, freshwater wetlands, significant wildlife habitat, rivers, streams and brooks. Therefore, a NRPA permit is needed. The mostly likely permit will be a Tier 3 wetlands permit since wetland impacts are likely to exceed one acre (43,560 square feet) and could include Wetlands of Special Significance.

The processing time for a NRPA Tier 3 permit is approximately 90 to 120 days after acceptance of a complete application. It is likely that compensation for unavoidable impacts will be necessary. Compensation could include restoration of degraded wetlands, enhancement of wetlands, creation of new wetlands, purchase of In-lieu fee compensation, or purchase of credits from an approved wetland mitigation bank.

Water Quality Certification under Section 401 of the Clean Water Act is administered by the Maine DEP. Review and issuance of the NRPA permit by DEP includes an evaluation of the water quality protection measures. The 401 certification would be included with the approved NRPA permit.

2. Site Location of Development Permit (Maine DEP Permit)

This state law requires review of developments that may have a substantial effect upon the environment. Developments regulated under the law have been identified by the Legislature, and include projects occupying more than 20 acres, metallic mineral and advanced exploration projects, large structures and subdivisions, and oil terminal facilities. A structure is defined as buildings, parking lots, roads, paved areas, wharves or areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of three acres. Stripped or graded areas that are not revegetated within a calendar year are included in calculating the 3-acre threshold⁸.

A permit is issued if the project meets applicable standards addressing areas such as stormwater management, groundwater protection, infrastructure, wildlife and fisheries, noise, and unusual

⁷ Maine DEP Bureau of Land and Water Quality. (www.maine.gov/dep/blwq/docstand/nrpapage.htm)

⁸ Maine DEP Bureau of Land and Water Quality

natural areas, among others. Processing time for a Site Location of Development Law (Site Law) permit is 185 days after acceptance of a complete application.

The proposed Trans-load facility would be subject to review under the Site Location of Development Law, since it would contain buildings and paved areas over three acres and would be a development occupying over 20 acres. The NRPA and Site Law permits would be reviewed and processed concurrently by the Maine DEP.

3. State of Maine Stormwater Management Act (Chapter 500)

The Maine Stormwater Management Law applies to construction that includes one acre or more of disturbed area. Any project that requires review through the Site Location of Development Law also must meet the stormwater rules. There are different standards of performance covered by the Stormwater Management Act including best management practices relating to infiltration, drainage patterns, flow rates, flooding, and water quality protection. In some settings, additional standards may be applicable, mostly relating to developed areas and lakes or streams with water quality degradation. The stormwater management design and calculations are reviewed as a component of the Site Law permit application.

4. Entrance Permit (Maine Department of Transportation)

The State of Maine requires permits for new road/drive access to state roadways. The purpose of the permit is to increase safety, support economic productivity, control public costs, promote community and environmental quality, all through access management⁹. The proposed Trans-load facility would include a new driveway connection with Route 1, therefore, requires a Maine DOT Entrance Permit. The permit processing is approximately 30 days after the Department receives the application. In some circumstances, the Department may require additional safety mitigation features to be incorporated into the design.

B. Permits Federal

1. Section 404 of the Clean Water Act (US Army Corps Permit)

The Federal Clean Water Act of 1972 regulates activities affecting water. Various sections of the Act control different actions ranging from discharge of industrial waters, to dredging and filling in waters or wetlands. Section 404 of the Clean Water Act authorizes the Army Corps to regulate the discharge of dredged or fill material into all waters of the United States. The definition of waters of the United States includes wetlands.¹⁰

Any action involving dredging or filling in waters or wetlands would require a permit from the Corps. In New England, the Corps has established three levels of permit depending upon the nature and extent of impacts. Programmatic General Permits (PGP) include two categories and generally

are applicable to projects with impacts less than three acres when performance standards are achievable. Examples of performance standards include work in watercourses during the low flow period (July 15-October 1), no presence of federally listed species, and the amount of wetland impact among other criteria. For larger impacts and projects that cannot satisfy the performance standards, the Corps has an Individual Permit.

Based upon the nature of the anticipated work, much of the routine maintenance of track in areas of watercourses or wetlands would be minimal disturbance and likely covered under a General Permit. However, the Trans-load facility is likely to encroach upon wetlands in undeveloped parcels that are not existing transportation infrastructure. Based upon the conceptual design, impacts to wetlands are likely to be more than one acre, and possibly up to three acres. The project might be permitted under a Programmatic General Permit, Category 2 (impacts less than three acres). Exact impacts would be determined after a field-delineation of wetland boundaries and an advancement of the site design. If impacts to wetlands were to total three acres or more, an Individual Permit is necessary. Data collection, permit application, and Corps processing times would be similar between the two options, except for a PGP, when the Corps could use the State NRPA application materials rather than a Corps application.

Almost certainly, compensation for unavoidable wetland impacts will be needed. Similar to the DEP NRPA permit requirements, wetland impacts must be mitigated, and the Corps has its own set of guidance for appropriate compensation. Compensation requirements are not identical between the DEP and Corps, although typically a compensation package would be designed to meet the requirements of both agencies. Costs for compensation through the State In-lieu fee program are approximately \$120,000 per acre in Washington County.

C. Permits Local

1. Town of Perry Planning and Zoning

The Town of Perry has a Land Use and Development Ordinance that would be applicable to the proposed Trans-load site development. The Ordinance applies to all proposals for new buildings over 100 square feet in area, and to proposals for substantial enlargement of existing buildings and to all new uses of the land, except agricultural and forest management activities.¹¹

An application must be made to the Planning Board for the Trans-load development. After receipt of the application, the Town will review the proposal, and if the application is complete, schedule a meeting on the application. The Town may hold a public hearing on the development. The public hearing would be held within 30 days of the receipt of the application and a decision would be made within 30 days of the hearing. The performance standards reviewed by the Planning Board consider neighborhood impacts, vehicular access, parking, surface water drainage,

⁹ Maine Department of Transportation

¹⁰ US Army Corps of Engineers, New England District (<http://www.nae.usace.army.mil/reg/wtrwywt.pdf>)

¹¹ Town of Perry Maine. Land Use and Development Ordinance (<http://www.perrymaine.org/htmlfiles/Ordinances/landuse.pdf>)

lighting, signs, town services and the natural environment. Additional standards evaluate building dimensions and offsets, parking and roads.

2. Shoreland Protection Zoning

The State of Maine Shoreland Zoning law requires that municipalities protect shoreland areas through adopting shoreland zoning maps and ordinances.¹² Shoreland areas include areas within 250 of the normal high-water line of any great pond, river or saltwater body, areas within 250 feet of the upland edge of a coastal wetland, areas within 250 feet of the upland edge of a freshwater wetland except in certain situations, and areas within 75 feet of the high-water line of a stream.

The existing active and inactive rail routes pass through areas subject to Shoreland Zoning. However, the applicability of the zoning ordinance to established transportation corridors and improvements is limited. Ordinances may allow established roads to expand within the existing right of way as long as proper best management practices are utilized. Further review of each municipal ordinance and the specific details of the proposed improvements in each municipality is needed. Coordination with each municipality will be undertaken as the proposed improvements proceed.

The proposed Trans-load facility is new construction and includes development of roads and structures, thereby subject to shoreland zoning ordinances. Based upon a review of the Town of Perry shoreland zoning map, it appears that the preferred Trans-load site does not encroach upon any shoreland zones. Further review of the ordinance and coordination with the Town will be undertaken as the proposed improvements proceed.

V. PERMITTING AND PROJECT SCHEDULE

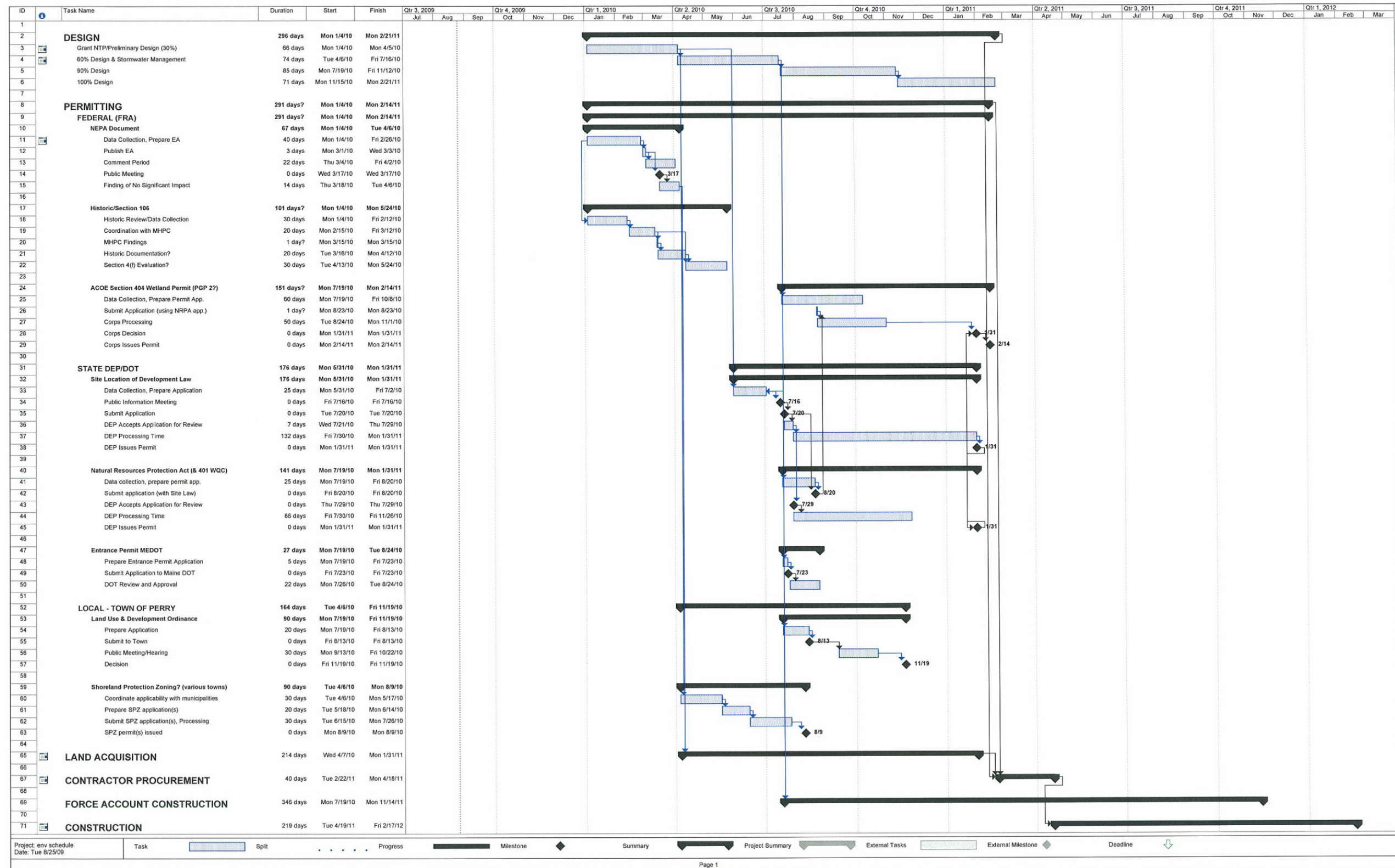
Implementation of the proposed rail improvements would require permit and documentation approvals at the federal, state, and local level. Some permits/approvals are contingent upon approval by another, and each approval has procedural and/or statutory requirements that can be approximated. To understand the interrelationships, durations and critical path through the environmental documentation and permitting phase, a summary schedule of the environmental components were integrated into an overall project schedule including design and construction. A construction completion target of February 2012 is a critical criterion for the targeted funding grant. Based on the timing of the notice of project funding, anticipated permitting schedule and supporting design efforts, the construction will need to be accomplished over one construction season which is reasonable. Long lead materials may need to be acquired prior to contractor procurement.

Some of the reviews/permits can be conducted concurrently and independently. For example, local zoning review can proceed separately from a State of Maine Natural Resources Protection Act Permit. Others, such as a State of Maine Site Location of Development Permit must be concurrent with the NRPA permit.

The NEPA evaluation can proceed independently from the permits, and can be based upon conceptual design information. The NEPA Environmental Assessment would be expected to take approximately 90 days from start to completion. For this project, the conclusion would likely be a Finding of no Significant Impact. One component of the NEPA evaluation is the Historic/106 review which includes archaeological and historic investigations. The pre-historic archaeological work would focus on 'undisturbed' ground, such as the Trans-load facility, the access drive and new rail service to the site. That work requires soil samples during non-frozen ground conditions. To ensure that the frozen ground restriction does not impact the proposed schedule, MEDOT will complete this investigation this fall prior to ground freeze.

Based upon the project understanding developed in conceptual design, the duration of anticipated documentation, permits and approvals is estimated to be seven months after the 60% design is completed. The longest duration permit is the Site Location of Development, which generally takes six months after the application is accepted by the DEP.

¹² Maine DEP Bureau of Land and Water Quality. (www.maine.gov/dep/blwq/docstand/szpage.htm)



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