

## 3.24 Permits

### 3.24.1 *Laws, Regulations, and Permits Related to the Project*

Federal and State laws authorize agencies to issue permits, review plans, and actively consult about potential project impacts. Table 3.24-1 identifies the most pertinent State and Federal laws and executive orders that govern permits, consultation, and review requirements for the Sterling Highway Milepost (MP) 45–60 Project.

**Table 3.24-1. Applicable laws and related permits for the project**

Applicable Law, Order or Regulation	Primary Agency(ies) and citation	Description and Requirements
<b>Clean Water Act, Section 402</b>	<b>ADEC</b> 33 USC 1251	<ul style="list-style-type: none"> <li>Requires that projects disturbing 1 or more acre of land during construction will require an Alaska Pollutant Discharge Elimination System permit, which will require that BMPs be in place during construction to avoid and minimize pollutant discharges that may affect water quality.</li> </ul>
<b>Alaska Fishway Act and Protection of Waterways for Anadromous Fish</b>	<b>ADF&amp;G, Division of Habitat</b> AS 16.05.841 and AS 16.05.871	<ul style="list-style-type: none"> <li>Project must notify and obtain authorization and approval for all activities within or across streams used by resident fish and/or anadromous fish</li> <li>Any dam or other obstruction built by an entity across a stream frequented by salmon or other fish shall be provided with an effective fishway and device for efficient passage downstream; any activity or project conducted below the ordinary high water mark of an anadromous stream requires a Title 16 Fish Habitat Permit</li> </ul>
<b>ADF&amp;G-DOT&amp;PF Memorandum of Agreement (2002)</b>	<b>ADF&amp;G and DOT&amp;PF</b>	<ul style="list-style-type: none"> <li>Identifies requirements for constructed fish stream conveyances.</li> <li>Requires that design of culvert crossings maintain natural stream conditions such as flow, substrate, and existing fish passage efficiency.</li> </ul>
<b>Alaska National Interest Lands Conservation Act, Title XI</b>	<b>Congress and all Federal Agencies</b> 16 USC 3201	<ul style="list-style-type: none"> <li>Provides process to allow transportation and utility systems access into Conservation System Units, including National Wildlife Refuges and designated Wilderness areas.</li> </ul>
<b>Special Park Use Permits</b>	<b>DNR, Division of Parks and Outdoor Recreation</b> 11 AAC 18	<ul style="list-style-type: none"> <li>State regulations require permits for a variety of activities and uses occurring within a State recreation area or State park, including the Kenai River Special Management Area.</li> </ul>

<b>Applicable Law, Order or Regulation</b>	<b>Primary Agency(ies) and citation</b>	<b>Description and Requirements</b>
<b>Noxious Weeds Management</b>	<b>DNR, Division of Agriculture</b> 11 AAC 34	<ul style="list-style-type: none"> <li>Required to prevent the importation and spread of pests, diseases, or toxic substances that are injurious to the public interest, and for protection of the agriculture industry.</li> </ul>
<b>Clean Water Act, Section 401</b>	<b>EPA and ADEC</b> 33 USC 1344, 18 AAC 15	<ul style="list-style-type: none"> <li>Section 401 requires State review and authorization for issuance of Certificate of Reasonable Assurance regarding protection of water quality when discharging dredged or fill material into waters of the U.S. Must accompany the Rivers and Harbors Act Sections 9 and 10, and CWA Section 404 permits.</li> </ul>
<b>Federal Aviation Regulations</b>	<b>FAA</b> CFR 77.13-77.17	<ul style="list-style-type: none"> <li>Requires submittal of FAA Form 7460-1, Notice of Proposed Construction or Alteration, for construction activity near Quartz Creek airport.</li> </ul>
<b>Executive Order 11988 Floodplain Management</b>	<b>FEMA</b>	<ul style="list-style-type: none"> <li>Requires Federal agencies to evaluate the potential effects of their actions on floodplains with the aim of reducing the risk of floodplain loss, and restoring and preserving the “natural and beneficial values” of floodplains.</li> <li>Requires a specific finding of effects in the EIS for significant encroachments.</li> </ul>
<b>Department of Transportation Act of 1966 (as amended), Section 4(f)</b>	<b>FHWA</b> 49 USC 303	<ul style="list-style-type: none"> <li>Forbids FHWA from using public parks, recreation areas, wildlife/waterfowl refuges, and historic sites, unless there is no feasible and prudent alternative and the agency employs all possible planning to minimize harm. See Chapter 4 for more details.</li> <li>Where all alternatives use Section 4(f) property, requires FHWA to select the alternative with the least overall harm.</li> </ul>
<b>Uniform Relocation and Real Property Acquisition Act</b>	<b>FHWA</b> 42 USC 4601 et seq.	<ul style="list-style-type: none"> <li>Requires agencies that must use private property to acquire it at fair market value and assist in any necessary relocation of residences or businesses.</li> </ul>
<b>Executive Order 11990 Protection of Wetlands</b>	<b>FHWA</b>	<ul style="list-style-type: none"> <li>Prohibits Federal agencies from participating in construction located in wetlands unless they find there is no practicable alternative and the action includes all practicable measures to minimize harm to wetlands. Compliance is demonstrated as part of the Final EIS and CWA Section 404 permit process.</li> </ul>

<b>Applicable Law, Order or Regulation</b>	<b>Primary Agency(ies) and citation</b>	<b>Description and Requirements</b>
<b>Executive Order 13112 Invasive Species</b>	<b>FHWA</b>	<ul style="list-style-type: none"> <li>Directs Federal agencies to address actions that are likely to influence the presence of invasive species. Further directs agencies to develop programs and authorities to prevent the introduction of invasive species, monitor populations, and provide for restoration of native species and habitats that have been invaded.</li> </ul>
<b>Executive Order 12898 Environmental Justice</b>	<b>FHWA</b>	<ul style="list-style-type: none"> <li>Promotes nondiscrimination in Federal programs affecting environment or human health conditions in minority and low-income communities.</li> <li>Provides access to public information and opportunity for public participation.</li> </ul>
<b>National Historic Preservation Act, Section 106, Executive Order 11593</b>	<b>FHWA, Forest Service, USFWS, and SHPO</b> 16 USC 470 et seq.	<ul style="list-style-type: none"> <li>Provides for the identification and protection of historic properties.</li> <li>Requires Federal agencies to avoid and minimize impacts to properties in or eligible for the National Register of Historic Places.</li> </ul>
<b>Forest Service Special Use Permit</b>	<b>Forest Service</b> 36 CFR 251	<ul style="list-style-type: none"> <li>Outlines requirements and procedures for Special Use Permits on National Forest System lands.</li> </ul>
<b>Archeological Resources Protection Act (ARPA)</b>	<b>Forest Service and USFWS</b>	<ul style="list-style-type: none"> <li>Applies to any additional cultural resources investigations on Federal lands.</li> </ul>
<b>Curation of Federally Owned and Administered Collections</b>	<b>Forest Service and USFWS</b> 36 CFR Part 79	<ul style="list-style-type: none"> <li>Applies to any materials collected during investigations or for mitigation purposes.</li> </ul>
<b>Native American Graves Protection and Repatriation Act</b>	<b>Forest Service and USFWS</b>	<ul style="list-style-type: none"> <li>Applies to human remains and funerary objects recovered.</li> </ul>
<b>Borough Floodplain Management</b>	<b>Kenai Peninsula Borough</b> Code 21.06	<ul style="list-style-type: none"> <li>Establishes Borough Floodplain Management Program to ensure the natural and beneficial functions of floodplains and require building standards to reduce losses to life and property.</li> <li>Establishes Borough Floodplain Development Permit (Kenai River Center Multi-Agency Permit) required for development in floodplains and anadromous fish streams or lakes and wetlands.</li> </ul>
<b>Borough Habitat Ordinance</b>	<b>Kenai Peninsula Borough</b> Code 21.18	<ul style="list-style-type: none"> <li>Establishes measures for the protection of salmon spawning and rearing habitat in the Kenai River.</li> </ul>

<b>Applicable Law, Order or Regulation</b>	<b>Primary Agency(ies) and citation</b>	<b>Description and Requirements</b>
<b>Magnuson-Stevens Fishery Conservation and Management Act / Sustainable Fisheries Act</b>	<b>NMFS</b> 16 USC 1801 et seq.	<ul style="list-style-type: none"> <li>Establishes national standards for fisheries conservation and management, and provides for enforcement.</li> <li>Requires that Federal agencies assess the effects of their actions on essential fish habitat and consult with NMFS.</li> </ul>
<b>Fish and Wildlife Coordination Act</b>	<b>NMFS, USFWS, and FHWA</b> 16 USC 662	<ul style="list-style-type: none"> <li>Requires Federal agencies to consult with wildlife agencies on proposed project effects to fish and wildlife.</li> </ul>
<b>Rivers and Harbors Act, Section 10</b>	<b>USACE</b> 33 USC 1344	<ul style="list-style-type: none"> <li>Prevents unauthorized obstruction or alteration of navigable waters of the U.S. (Section 10) by requiring authorization for construction of a structure that would cross navigable waters or result in the modifying of navigable waters.</li> </ul>
<b>Clean Water Act, Section 404</b>	<b>USACE and EPA</b> 33 USC 1344 et seq.	<ul style="list-style-type: none"> <li>The USACE requires a permit for discharge of dredged and fill material into waters of the U.S., including wetlands, at specified sites.</li> <li>Requires that the project demonstrate avoidance and minimization to waters of the U.S. to the maximum extent possible.</li> </ul>
<b>Rivers and Harbors Act, Section 9</b>	<b>USCG</b> 33 USC 403	<ul style="list-style-type: none"> <li>Authorizes the Secretary of Transportation, through the USCG, to issue permits for bridges or structures that cross or could otherwise affect navigation on waters of the U.S. (e.g., Kenai River).</li> </ul>
<b>Bald and Golden Eagle Protection Act</b>	<b>USFWS</b> 16 USC 668-68d, as amended	<ul style="list-style-type: none"> <li>Provides protection of bald and golden eagles by prohibiting, except under specified conditions, the taking, possession, and commerce of such birds.</li> <li>Provides for issuance of permits to take bald and golden eagles where the activity cannot practically be avoided.</li> </ul>
<b>Migratory Bird Treaty Act</b>	<b>USFWS</b> 16 USC 703-12	<ul style="list-style-type: none"> <li>Prohibits taking of migratory birds unless specifically exempted or authorized. Taking can include loss of habitat.</li> <li>No permit is required, but all Federal agencies must comply with the Act. Typically includes identifying and avoiding active nests if work is proposed during the breeding season and minimizing habitat loss through BMPs.</li> </ul>

Applicable Law, Order or Regulation	Primary Agency(ies) and citation	Description and Requirements
<b>National Wildlife Refuge System Administration Act</b>	<b>USFWS</b> 16 USC 668	<ul style="list-style-type: none"> <li>Requires USFWS to conduct a compatibility determination for any proposed facilities located on a National Wildlife Refuge.</li> <li>Requires a Special Use Permit to engage in activities deemed appropriate/compatible with the purpose for which the refuge was established.</li> </ul>
<b>Executive Order 13186 Responsibilities of Federal Agencies to Protect Migratory Birds</b>	<b>USFWS</b>	<ul style="list-style-type: none"> <li>Directs executive departments and agencies to take certain actions that promote the conservation of migratory bird populations.</li> </ul>
<b>Endangered Species Act</b>	<b>USFWS and NMFS</b> 16 USC 1531-44	<ul style="list-style-type: none"> <li>Provides for the conservation of species that could become extinct through all or a substantial portion of their range. Prohibits any action that results in “taking” a listed species or adversely affecting its habitat. Section 7 requires Federal agencies to consult (formally or informally) with USFWS and/or NMFS to determine if any effects to listed species will result from the project.</li> </ul>

Note: Rows reorganized alphabetically by primary agency.

Note: AAC = Alaska Administrative Code; ADEC = Alaska Department of Environmental Conservation; ADF&G = Alaska Department of Fish and Game; AS = Alaska Statute; BMPs = best management practices; CFR = Code of Federal Regulations; CWA = Clean Water Act; DNR = Alaska Department of Natural Resources; EPA = U.S. Environmental Protection Agency; FAA = Federal Aviation Administration; FEMA = Federal Emergency Management Agency; FHWA = Federal Highway Administration; Final EIS = Final Environmental Impact Statement; Forest Service = Forest Service, U.S. Department of Agriculture; NMFS = National Marine Fisheries Service; SHPO = Alaska State Historic Preservation Office; USACE = U.S. Army Corps of Engineers; USC = United States Code; USCG = U.S. Coast Guard; USFWS = U.S. Fish and Wildlife Service

Interagency coordination is an important component of the permitting process. To facilitate the coordination effort, the Federal Highway Administration (FHWA) and the Alaska Department of Transportation and Public Facilities (DOT&PF) have followed the guidance presented in the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* and *Applying the Section 404 Permit Process to Federal-Aid Highway Projects* (FHWA 1988) for the project. In addition, the U.S. Army Corps of Engineers (USACE), FHWA, and DOT&PF operate under a 1992 permit process accord to streamline the National Environmental Policy Act and permit review process (FHWA, USACE, and DOT&PF 1992). Based on the accord, DOT&PF will include a preliminary jurisdictional determination, draft 404(b)(1) analysis, and Section 10/404 permit application in the Final Environmental Impact Statement (FEIS).

Additional Kenai Peninsula Borough (Borough), State, and Federal permits may be required to address conditional land use, material extraction, temporary water use, and air quality permits associated with construction activities.

### **3.24.2 Implications for Permitting**

#### **3.24.2.1 No Build Alternative**

The No Build Alternative would not require any permits, certification, reviews, or consultation. Eventual replacement of bridges along the existing highway would require most of the same permits common to all build alternatives, described below.

#### **3.24.2.2 All Build Alternatives**

The USACE, U.S. Fish and Wildlife Service (USFWS), Forest Service, U.S. Department of Agriculture (Forest Service), National Marine Fisheries Service, Alaska Department of Environmental Conservation (ADEC), Alaska Department of Natural Resources (DNR), Alaska Department of Fish and Game (ADF&G), and Borough would require permits or approvals to implement any of the build alternatives. Permits and approvals for temporary construction activities would also be required.

Major Federal, State, and local permits, coordination efforts, and approvals common to all build alternatives include:

- USACE, Section 404 for fill in wetlands
- USACE, Section 10 for work in, on, and over the ordinary high water mark of the Kenai River
- USFWS, Eagle Take Permit for work in proximity to bald eagle nests, pending agency consultation
- Forest Service, Special Use Permit for staging areas, disposal sites (for cleared vegetation, organics, and soils that cannot be used in the road construction), or borrow sites located within Chugach National Forest (CNF) lands. The permit would contain conditions the Forest Service deems necessary for protection and use of National Forest System lands.
- State Historic Preservation Office, Section 106 coordination and Finding of Effect
- Federal Aviation Administration, submission of notice of proposed construction near Quartz Creek airport
- ADEC, 401 Certification of Reasonable Assurance for water quality
- ADEC, Alaska Pollutant Discharge Elimination System Construction Permit with a corresponding Storm Water Pollution Prevention Plan
- ADEC, letter of non-objection for storm water drainage design plans
- ADEC, Air Quality Permit for construction (potential)
- ADF&G, Title 16 Fish Habitat Permits for work within anadromous and resident fish streams
- DNR, Land Use Permit and/or right of entry for any staging areas located on State land
- DNR, Parks Permit for construction within the Kenai River Special Management Area

- Borough, Kenai River Center, Multi-Agency Permit for construction, major vegetation clearing, and other development in the 50-foot Habitat Protection Area and any in-water use of anadromous fish streams or lakes, or activities that occur in wetlands and floodplains

Additional contractor-specific permits may be required for temporary construction activities. Likely permits include:

- Forest Service, Special Use Permit for temporary construction activities that would occur on its lands such as disposal of vegetation or organics on Forest lands and disposal of National Forest soils and vegetation onto lands owned by others.
- Forest Service, contract for mineral materials extraction from Forest lands (36 CFR 228 subpart C)
- ADEC, Dewatering Permit
- DNR, Material Sale Permit and Material Site Reclamation Plan if materials were to be acquired from State lands
- DNR, Temporary Water Use Permit for diversion of streams and water usage during construction
- Borough, Conditional Land Use Permit for proposed material extraction or disposal sites that enter the water table and/or disturb more than 2.5 cumulative acres

In addition to the permits above, additional interagency coordination would be required since any of the build alternatives would cross CNF lands. FHWA is authorized under 23 USC § 317 to appropriate National Forest System lands unless the Forest Service certifies that the action “is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved.” A 1998 Memorandum of Understanding between the Forest Service and FHWA “Regarding the Appropriation and Transfer of National Forest System Lands for Highway Purposes” provides details about the land appropriation process. Typically, the Forest Service would issue a letter of consent that would include stipulations for road design and construction. This Final EIS, prepared with the Forest Service as a cooperating agency, is meant to present the environmental consequences and identify mitigation measures that would be listed as stipulations in the letter of consent. See Chapter 5 for additional general information on interagency coordination to date.

### **3.24.2.3 Cooper Creek Alternative**

The Cooper Creek Alternative would require permits common to all build alternatives described above.

Additional permits required for the Cooper Creek Alternative include the following:

- U.S. Coast Guard (USCG), Bridge Permit (Section 9) for bridge replacements over the Kenai River at Cooper Landing and Schooner Bend
- DNR, Land Use Permit for Submerged Lands for the crossings of the Kenai River at Cooper Landing and Schooner Bend

#### **3.24.2.4 G South Alternative**

The G South Alternative would require permits common to all build alternatives described above.

Additional permits required for the G South Alternative include the following:

- USCG, Bridge Permit (Section 9) for bridge construction and replacement over the Kenai River at Schooner Bend and at the new proposed crossing near MP 51

#### **3.24.2.5 Juneau Creek Alternative**

The Juneau Creek Alternative (preferred alternative) would require permits common to all build alternatives described above.

Additional permits or approvals required for the Juneau Creek Alternative include the following:

- USFWS Compatibility Determination for any proposed facilities on lands within the KNWR (see Section 3.8, Park and Recreation Resources, and Section 4(f), and Chapter 4 for more detail)
- Congressional approval, as required by the Alaska National Interest Lands Conservation Act (ANILCA) Title XI, for road construction across KNWR lands (see discussion in Section 2.6.5 of the Alternatives chapter for more detail)
- Forest Service approval, as required by ANILCA Title XI, for crossing the Resurrection Pass Trail
- DNR, right-of-way permit for proposed access road to a proposed cleared vegetation and soils disposal area on State lands, west of Cooper Landing (see Map 2.6-7 in the Alternatives chapter)

#### **3.24.2.6 Juneau Creek Variant Alternative**

The Juneau Creek Variant Alternative would require permits common to all build alternatives described above.

Additional permits or approvals required for the Juneau Creek Variant Alternative include the following:

- Forest Service approval, as required by ANILCA Title XI, for crossing the Resurrection Pass Trail
- DNR, right-of-way permit for proposed access road to a proposed cleared vegetation and soils disposal area on State lands, west of Cooper Landing (see Map 2.6-7 in the Alternatives chapter)
- USFWS, Eagle Nest Take Permit to remove the inactive nest along the alignment, pending agency consultation