

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
Clean Water Act, Section 404	USACE and EPA 33 USC 1344 et seq.	<ul style="list-style-type: none"> The USACE requires a permit for discharge of dredged and fill material into waters of the U.S., including wetlands, at specified sites. Requires that the project demonstrate avoidance and minimization to waters of the U.S. to the maximum extent possible.
Clean Water Act, Section 401	EPA and ADEC 33 USC 1344, 18 AAC 15	<ul style="list-style-type: none"> 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.
Clean Water Act, Section 402	ADEC 33 USC 1251	<ul style="list-style-type: none"> 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.
Rivers and Harbors Act, Section 9	USCG 33 USC 403	<ul style="list-style-type: none"> 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).
Rivers and Harbors Act, Section 10	USACE 33 USC 1344	<ul style="list-style-type: none"> 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.

Applicable Law, Order or Regulation	Primary Agency(ies) and citation	Description and Requirements
Department of Transportation Act of 1966 (as amended), Section 4(f)	FHWA 49 USC 303	<ul style="list-style-type: none"> • 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.
National Historic Preservation Act, Section 106, Executive Order 11593	FHWA, USFS, USFWS, and SHPO 16 USC 470 et seq.	<ul style="list-style-type: none"> • Provides for the identification and protection of historic properties. • Requires Federal agencies to avoid and minimize impacts to properties in or eligible for the National Register of Historic Places.
Archeological Resources Protection Act (ARPA)	USFS, USFWS	<ul style="list-style-type: none"> • Applies to any additional cultural resources investigations on Federal lands.
Curation of Federally Owned and Administered Collections	USFS, USFWS 36 CFR Part 79	<ul style="list-style-type: none"> • Applies to any materials collected during investigations or for mitigation purposes.
Native American Graves Protection and Repatriation Act	USFS, USFWS	<ul style="list-style-type: none"> • Applies to human remains and funerary objects recovered.
Bald and Golden Eagle Protection Act	USFWS 16 USC 668-68d, as amended	<ul style="list-style-type: none"> • Provides protection of bald and golden eagles by prohibiting, except under specified conditions, the taking, possession, and commerce of such birds. • Provides for issuance of permits to take bald and golden eagles where the activity cannot practically be avoided.
Migratory Bird Treaty Act	USFWS 16 USC 703-12	<ul style="list-style-type: none"> • Prohibits taking of migratory birds unless specifically exempted or authorized. Taking can include loss of habitat. • 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.
National Wildlife Refuge System Administration Act	USFWS 16 USC 668	<ul style="list-style-type: none"> • Requires USFWS to conduct a compatibility determination for any proposed facilities located on a National Wildlife Refuge. • Requires a Special Use Permit to engage in activities deemed appropriate/compatible with the purpose for which the refuge was established.

Applicable Law, Order or Regulation	Primary Agency(ies) and citation	Description and Requirements
Fish and Wildlife Coordination Act	NMFS, USFWS, and FHWA 16 USC 662	<ul style="list-style-type: none"> Requires Federal agencies to consult with wildlife agencies on proposed project effects to fish and wildlife.
Endangered Species Act	USFWS and NMFS 16 USC 1531-44	<ul style="list-style-type: none"> 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.
Magnuson-Stevens Fishery Conservation and Management Act / Sustainable Fisheries Act	NMFS 16 USC 1801 et seq.	<ul style="list-style-type: none"> Establishes national standards for fisheries conservation and management, and provides for enforcement. Requires that Federal agencies assess the effects of their actions on essential fish habitat and consult with NMFS.
Alaska Fishway Act and Protection of Waterways for Anadromous Fish	ADF&G, Division of Habitat AS 16.05.841 and AS 16.05.871	<ul style="list-style-type: none"> Project must notify and obtain authorization and approval for all activities within or across streams used by resident fish and/or anadromous fish 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
USFS Special Use Permit	USFS 36 CFR 251	<ul style="list-style-type: none"> Outlines requirements and procedures for Special Use Permits on USFS lands.
Uniform Relocation and Real Property Acquisition Act	FHWA 42 USC 4601 et seq.	<ul style="list-style-type: none"> Requires agencies that must use private property to acquire it at fair market value and assist in any necessary relocation of residences or businesses.
Federal Aviation Regulations	FAA CFR 77.13-77.17	<ul style="list-style-type: none"> Requires submittal of FAA Form 7460-1, Notice of Proposed Construction or Alteration, for construction activity near Quartz Creek airport.
Alaska National Interest Lands Conservation Act, Title XI	Congress and all Federal Agencies 16 USC 3201	<ul style="list-style-type: none"> Provides process to allow transportation and utility systems access into Conservation System Units, including National Wildlife Refuges and designated Wilderness areas.

Applicable Law, Order or Regulation	Primary Agency(ies) and citation	Description and Requirements
Special Park Use Permits	DNR, Division of Parks and Outdoor Recreation 11 AAC 18	<ul style="list-style-type: none"> 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.
ADF&G-DOT&PF Memorandum of Agreement (2002)	ADF&G and DOT&PF	<ul style="list-style-type: none"> Identifies requirements for constructed fish stream conveyances. Requires that design of culvert crossings maintain natural stream conditions such as flow, substrate, and existing fish passage efficiency.
Noxious Weeds Management	DNR, Division of Agriculture 11 AAC 34	<ul style="list-style-type: none"> 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.
Borough Floodplain Management	Kenai Peninsula Borough Code 21.06	<ul style="list-style-type: none"> 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. Establishes Borough Floodplain Development Permit (Kenai River Center Multi-Agency Permit) required for development in floodplains and anadromous fish streams or lakes and wetlands.
Borough Habitat Ordinance	Kenai Peninsula Borough Code 21.18	<ul style="list-style-type: none"> Establishes measures for the protection of salmon spawning and rearing habitat in the Kenai River
Executive Order 11990 Protection of Wetlands	FHWA	<ul style="list-style-type: none"> 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 SEIS and CWA Section 404 permit process.
Executive Order 11988 Floodplain Management	FEMA	<ul style="list-style-type: none"> 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. Requires a specific finding of effects in the Final SEIS for significant encroachments.

Applicable Law, Order or Regulation	Primary Agency(ies) and citation	Description and Requirements
Executive Order 13112 Invasive Species	FHWA	<ul style="list-style-type: none"> 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.
Executive Order 13186 Responsibilities of Federal Agencies to Protect Migratory Birds	FHWA and USFWS	<ul style="list-style-type: none"> Directs executive departments and agencies to take certain actions that promote the conservation of migratory bird populations.
Executive Order 12898 Environmental Justice	FHWA	<ul style="list-style-type: none"> Promotes nondiscrimination in Federal programs affecting environment or human health conditions in minority and low-income communities. Provides access to public information and opportunity for public participation.

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; NMFS = National Marine Fisheries Service; SEIS = Supplemental Environmental Impact Statement; SHPO = Alaska State Historic Preservation Office; USACE = U.S. Army Corps of Engineers; USC = United States Code; USCG = U.S. Coast Guard; USFS = U.S. Forest Service; 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 Supplemental Environmental Impact Statement (SEIS).

Additional Kenai Peninsula Borough (Borough) and State 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), U.S. Forest Service (USFS), 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, Special Use Permit for construction within existing Sterling Highway rights-of-way traversing the Kenai National Wildlife Refuge (KNWR)
- USFWS, Eagle Take Permit for work in proximity to bald eagle nests, pending agency consultation
- USFS, Special Use Permit for staging areas, disposal sites for cleared vegetation and soils that cannot be used in the road construction, or borrow sites located within Chugach National Forest (CNF) lands
- FHWA, Section 4(f) Evaluation (see Chapter 4 of this SEIS)
- 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:

- USFS, Special Use Permit for temporary construction activities that would occur on its lands and for material extraction or disposal sites
- 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 USFS lands unless USFS 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 USFS and FHWA “Regarding the Appropriation and Transfer of National Forest System Lands for Highway Purposes” provides details about the land appropriation process. Typically, the USFS would issue a letter of consent that would include stipulations for road design and construction. This SEIS, prepared with USFS 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 information on interagency coordination.

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 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)
- USFS 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:

- USFS 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