

APPENDIX AA

Additional Regulatory Framework Information

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1.1 Financial Assurance for Reclamation and Closure

The State of Alaska will require financial assurance to assure completion of reclamation and closure activities, including long-term post closure management requirements, and for management of wastes to prevent water pollution. The BLM will require financial assurance for reclamation of the portion of the natural gas pipeline that is on land managed by BLM. Additional detail on financial assurance is included in Appendix A – Financial Assurance.

Donlin would be required to fully bond the project upfront, and would meet financial assurance obligations as the trust is being funded to the amount approved by ADEC and ADNR (e.g., through a letter of credit or surety bond).

Donlin has proposed establishing a trust fund managed by a private equity (e.g., trust company, bank, or other qualified financial institution). Alaska statutes such as AS 46.03.100(f), 18 AAC 60.265, AS 27.19.040, 11 AAC 93.171 and other applicable statutes or/regulations that allow DEC and DNR to approve various forms of financial assurance mechanisms, which may include a privately managed trust fund. The final financial assurance amount will be based on the final approved Reclamation and Closure Plan, the final IWMP, and dam certificates of approval.

Financial assurance examples for other Alaska mines are shown in Table AA-1.

Table AA-1: Financial Assurances for Alaska Mines

Mine	Mechanism	Amount
Fort Knox Mine	Letter of Credit	\$96,164,867
Greens Creek Mine	USFS Surety Bond	\$68,918,907
Kensington Project	USFS Surety Bond	\$28,727,011
NiBlack Project	Surety Bond	\$1,409,959
Nixon Fork Mine	BLM Surety Bond	\$6,033,000
Pogo Mine and Road	Letter of Credit	\$57,104,000
Red Dog Mine	Letter of Credit	\$423,600,000 ¹
Rock Creek Mine	Letter of Credit	\$263,522

Notes:

1 Under Review

Source: ADNR 2014c.

1.2 Permits, Approvals, Compliance with Executive Orders and Regulatory Requirements

Key federal laws and Executive Orders¹ pertaining to this EIS are described below. Laws governing permits and authorizations required by the project or alternative, including state and local government permits are addressed below. The purpose of Appendix AA is not to be

¹ Executive memoranda and orders provide direction and guidance to agency personnel, but unlike statutes and published regulations generally are not binding or enforceable as to persons outside the agencies.

exhaustive, but to provide the reader with a sound sense of the regulatory framework governing Donlin Gold's project or any alternative, rules governing agency decision-making.

1.2.1 National Environmental Policy Act of 1969

The National Environmental Policy Act of 1969 (42 USC 4321 et seq.) applies to all federal agencies and their decisions that have the potential to affect the environment. It establishes the procedures that federal agencies follow to make major decisions in a public forum while disclosing the environmental implications of the potential decision.

The president's CEQ has issued NEPA regulations and guidance for all agencies. NEPA requires the implementation of the appropriate level of NEPA process (public involvement and document preparation) to be conducted with respect to a major federal action that has the potential to significantly affect the human environment.

This EIS was prepared according to the Corps' regulations implementing NEPA (33 CFR Part 230), which state that an EIS must provide detailed information regarding the proposed action and alternatives, the environmental impacts of the alternatives, potential mitigation measures, and any adverse environmental impacts that cannot be avoided if the proposal is implemented. The EIS includes analysis of measures to avoid and minimize impacts to fish, wildlife, habitats, and other resources and also addresses compensatory mitigation by the Corps and BLM for impacts which cannot be avoided or minimized. It must be demonstrated that these factors have been considered by decision makers prior to undertaking actions such as issuing permits.

1.2.2 Clean Water Act (1972)

Section 404 of the CWA requires that a Corps permit be obtained for the placement or discharge of dredged and/or fill material into waters of the U.S., including jurisdictional wetlands (33 USC 1344). The Corps defines wetlands as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. The Corps evaluates proposed actions for compliance with the Section 404(b)(1) Guidelines, which were developed by the EPA in conjunction with the Secretary of the Army. The EPA reviews and comments on permit applications for compliance with Section 404(b)(1) Guidelines and other statutes and authorities within their jurisdiction.

Under Section 402 of the CWA, discharges to surface waters from construction, operation, and reclamation of the Donlin Gold Project would require compliance with the National Pollutant Discharge Elimination System, administered by the ADEC as the Alaska Pollutant Discharge Elimination System (APDES). The EPA provides oversight of the state-issued wastewater permits subject to the requirements of the APDES. During construction, the Alaska Construction General Permit would require a Storm Water Pollution Prevention Plan (SWPPP). During operations, the discharges from advanced pit dewatering will also be subject to the APDES program and depending on the method of disposal domestic wastewater could require APDES coverage.

1.2.3 Rivers and Harbors Act (1890, 1899)

Section 10 of the RHA of 1899 requires that a Corps permit be obtained for structures or work in, or affecting, navigable waters of the U.S. (33 USC 403), which includes excavation or deposition of material in navigable waters, or other actions that could affect the course, location, condition, or capacity of these waters. Construction of docks and barge landings on the

Kuskokwim River, and if needed at the Beluga barge landing, would require approval under Section 10 from the Corps.

1.2.4 Alaska National Interest Lands Conservation Act (1980)

ANILCA, Public Law 96-487 (16 USC 3101-3233) added 106 million acres to federal conservation system units in Alaska. Title III of ANILCA combined three existing wildlife refuges: Nunivak Island Reservation, Hazen Bay Migratory Bird Waterfowl Refuge, and Clarence Rhode National Wildlife Range, and created the Yukon Delta National Wildlife Refuge, which falls within the EIS Analysis Area. ANILCA includes a number of provisions intended to allow for infrastructure and economic growth in general, travel and access in conservation system units, and pursuit of a subsistence lifestyle while protecting resource values. ANILCA helps provide context for evaluation of potential effects to the landscape, but ANILCA provisions do not apply beyond designated federally managed land boundaries and do not apply to the lands on which the Donlin Gold Project is proposed.

ANILCA is a multifaceted law and two titles of particular note to this EIS include:

- Title VIII of ANILCA defines subsistence as customary and traditional uses of wild renewable resources by rural Alaska residents (Section 803), establishes a subsistence priority on federal public lands and waters (Section 804), and provides for a system of regional advisory councils to ensure the participation of rural residents in subsistence management (Section 805). Section 810 of ANILCA requires analysis of impacts to subsistence from federal land use decisions. Section 811 ensures reasonable access to subsistence resources on federal public lands, including the use of snowmobiles, motorboats, and other means of surface transportation traditionally employed for subsistence purposes, subject to reasonable regulation.
- Title IX of ANILCA clarifies the implementation of ANCSA and the Alaska Statehood Act Section 906(k) requires state concurrence on selected lands prior to granting a ROW.

1.2.5 Alaska Native Claims Settlement Act (1971)

Alaska Native regional and village corporations own lands and minerals in the Project Area under the provisions of ANCSA (43 USC 1601, et seq.). Calista and the Cook Inlet Region, Inc. are Alaska Native Regional Corporations, were formed pursuant to Section 7 of ANCSA. TKC is an Alaska Native Village Corporation, formed pursuant to Section 8 of ANCSA.

1.2.6 Mineral Leasing Act (1920)

Section 28 of the Mineral Leasing Act provides the authority to issue oil and gas pipeline ROWs across federal land. Donlin Gold's proposed pipeline would require a ROW to cross BLM managed land.

1.2.7 Federal Land Policy and Management Act (1976)

BLM's organic act, FLPMA, provides for multiple uses of public lands while protecting these lands from unnecessary or undue degradation. The Donlin Gold Project would occupy BLM lands managed under FLPMA.

1.2.8 National Trails System Act (1968)

The National Trails System Act as amended (16 USC 1241-1251) was enacted to promote public access to recreation, and scenic and historic trails through preservation. The INHT was established pursuant to the Act through Public Law 95-25 in 1978. The BLM, as the statutorily designated federal administrator for the INHT, manages portions of the INHT on BLM-managed “Public Lands” and is the federal point-of-contact for INHT matters. Donlin Gold’s proposed gas pipeline ROW intersects the INHT on lands managed by the State of Alaska.

1.2.9 Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011

The Pipeline Safety, Regulatory Certainty, and Job Creation Act was enacted to improve and examine the state of pipeline safety regulations. Enforcement falls under the jurisdiction of PHMSA, a USDOT agency that regulates and enforces the operations of pipeline transportation systems in the U.S. and oversees pipeline infrastructure. It is responsible for safe, reliable, and environmentally sound pipeline operations. Refer to EIS Section 1.5.3 for information on how the Donlin Gold Project would need a Special Permit from PHMSA for using Strain Based Design.

1.2.10 Clean Air Act (1970)

The Clean Air Act of 1970, with amendments in 1990, addresses standards for many categories of air pollutants and defines how the EPA implements its regulatory authority for air quality (42 USC 85). The requirements of this law encompass many pollution sources, provide health-based standards, and identify control methods to reduce the emission of common air pollutants. The potential construction and operation of a mine and power plant would introduce activities that are associated with particle pollution and ground-level ozone. Both of these forms of air pollution, and others, have known health effects and would be subject to further evaluation under federal- and state-implemented air quality management programs. Implementation of the Clean Air Act has been delegated to the State of Alaska, so ADEC would issue any air permits associated with this project. EPA provides oversight of the state-issued air permits.

1.2.11 Endangered Species Act (1973)

The ESA of 1973 was enacted to conserve species that have been found to be at risk of extinction in all or a substantial portion of their ranges, and to conserve the ecosystems and habitats upon which they rely. The FWS and NMFS have regulatory authority for implementing the ESA. In general, FWS is responsible for managing the terrestrial animal and plant species listed as endangered and threatened, and generally coordinates related issues for terrestrial and freshwater species, while NMFS is responsible for most marine mammals and anadromous fish species. Some marine mammals, including the Pacific walrus and northern sea otter, are managed by FWS. Donlin Gold Project barge traffic would traverse areas where threatened or endangered species occur.

1.2.12 Historic Preservation Laws

The NHPA of 1966 (as amended), the Archaeological Resources Protection Act of 1979, the Antiquities Act of 1906, and the Alaska Historic Preservation Act (1971) guide the management of cultural resources and historic properties. Under Section 106 of the NHPA (36 CFR Part 800), federal agencies are required to consider the effect of their actions on historic properties listed on, or eligible for, the National Register of Historic Places. The NHPA allows sites of traditional religious and cultural significance to Native Americans or Alaska Natives to be considered

eligible for the National Register. Section 106 requires a process of consultation with the Advisory Council on Historic Preservation, State Historic Preservation Officer, Indian (or Alaska Native) tribes, local governments, and other interested parties to identify historic properties and determine the effects of the action on those resources. If historic properties will be adversely affected by a project, the agency must, again in consultation, resolve the effects through appropriate mitigation. The Donlin Gold Project has the potential to affect cultural resources and historic properties. 36 CFR 800.14 allows for the resolution of adverse effects from complex projects through negotiation of a programmatic agreement between federal agencies and the Advisory Council on Historic Preservation. Inventory, documentation, and preservation of cultural resources and traditional cultural properties and mitigation of adverse impacts from the Donlin Gold Project would be based on a programmatic agreement that is currently under development with consultation among Donlin Gold, the Corps, BLM, the Advisory Council on Historic Preservation, Alaska State Historical Preservation Officer (SHPO), and tribal representatives. A draft of the programmatic agreement is provided in Appendix Y.

1.2.13 Native American Graves Protection and Repatriation Act

Native American Graves Protection and Repatriation Act (NAGPRA, 25 USC 3001) requires that discovery or disturbance of any human remains on federal or tribal lands in the Project Area must be accounted for and protected and/or properly returned to the tribe of origin. The potential for impacts from the Donlin Gold Project to resources protected under NAGPRA must be evaluated in the EIS.

1.2.14 American Indian Religious Freedom Act of 1978

The American Indian Religious Freedom Act of 1978 (42 USC 1996) requires federal agencies to consider Native American religious concerns when a federal management decision has the potential to impact an Indian religious practice or a spiritually significant site (on both federal and non-federal lands affected by the federal action). The potential for impacts from the Donlin Gold Project to activities protected under this Act is evaluated in the EIS.

1.2.15 Marine Mammal Protection Act (1972)

FWS and NMFS have regulatory authority for implementing the Marine Mammal Protection Act, which prohibits the harassment, hunting, capture, or killing of marine mammals, or the attempt to harass, hunt, capture, or kill marine mammals. The law provides exceptions for authorized scientific research and subsistence uses by Alaska Natives. Actions that have potential to take marine mammals must be reviewed and approved by the regulating agencies. Donlin Gold barge traffic would traverse areas where marine mammals occur.

1.2.16 Migratory Bird Treaty Act (1918)

The Migratory Bird Treaty Act (MBTA) of 1918 implements several international conventions to protect migratory birds. Following treaty amendments in 1997, regulations for subsistence bird harvests were established under the purview of the Alaska Migratory Bird Co-Management Council, operating under authority of the MBTA, as amended. Under the MBTA takings are prohibited unless expressly authorized or exempted. The EIS addresses potential impacts of the project and associated infrastructure on all birds protected under the MBTA including birds of conservation concern and areas of bird concentrations.

1.2.17 Bald and Golden Eagle Protection Act (1940, 1962)

The Bald and Golden Eagle Protection Act (16 USC 668, et seq.) provides for the protection of the bald eagle and the golden eagle by prohibiting, except under certain specified conditions, the take, possession, and commerce of such birds. Eagle take permits may be necessary for activities that result in removal of nests, loss of habitat, and disturbance of birds during construction, operations, and maintenance of the project. The EIS identifies the presence of eagles or their nests in the Project Area (along with associated infrastructure routes), and analyzes potential impacts of the project on both bald and golden eagles as protected under the Bald and Golden Eagle Protection Act. Alaska specific information can be found at: <http://alaska.fws.gov/eaglepermit/index.htm>.

1.2.18 Fish and Wildlife Coordination Act (1980)

The Fish and Wildlife Coordination Act (FWCA), as amended, (16 USC 661, et seq.), requires the agency that is authorized to permit or license changes in a water body to first consult with FWS and the appropriate state fish and game agency. The FWCA provides that wildlife conservation shall receive equal consideration, and be coordinated with other features, of the development project. The FWCA authorizes the FWS to conduct surveys and investigations to determine the possible damage of proposed developments on wildlife resources, to make recommendations for preventing their loss or damage. The FWS incorporates the concerns and findings of state and other federal agencies, including NMFS, into a report that addresses wildlife factors and provides recommendations for mitigating or enhancing impacts to wildlife affected by a federally constructed, permitted, or licensed water development project, such as the Donlin Gold Project. The term wildlife resources is explicitly defined to include “birds, fishes, mammals, and all other classes of wild animals and types of aquatic and land vegetation upon which wildlife is dependent” (16 U.S.C. 666 (b)). Further, the FWCA states that reports determining the possible damage to wildlife resources and an estimation of wildlife loss shall be made an integral part of any report prepared or submitted the agency with permitting authority (16 U.S.C.662 (b),(f)).

1.2.19 National Wildlife Refuge System Administration Act of 1966, as Amended

The National Wildlife Refuge System Administration Act (16 USC 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57), established a unified mission for the National Wildlife Refuge System and a compatibility standard for assessing proposed uses within a refuge. The refuge system is dedicated to the conservation of fish, wildlife, and plant resources and their habitats in the refuge. Although the proposed project would not install infrastructure on a refuge, the activities of the Donlin Gold Project have the potential to affect refuge land and resources.

1.2.20 Magnuson-Stevens Fishery Conservation and Management Act

To provide for the conservation and management of sustainable fisheries, the Magnuson-Stevens Fishery Conservation and Management Act sets forth a mandate for NMFS, regional fishery management councils, and other federal agencies to identify and protect important marine and anadromous fish habitats (16 USC 1801-1883). Federal agencies must consult with NOAA Fisheries/NMFS on actions or proposed actions authorized by the federal agency that may adversely affect Essential Fish Habitat (EFH). EFH includes habitats necessary to a species for spawning, breeding, feeding, or growth to maturity. The Donlin Gold Project has potential to affect EFH.

1.2.21 Resource Conservation and Recovery Act of 1976

Under this act, the EPA develops and implements regulatory programs to manage hazardous waste from generation until ultimate disposal, including issuing an identification number for any entity that generates hazardous wastes. Construction, operation, and reclamation of the proposed Donlin Gold Project would generate wastes subject to Resource Conservation and Recovery Act (RCRA) rules (40 CFR 239 through 282).

1.2.22 Toxic Substances Control Act of 1976

Under the Toxic Substances Control Act (TSCA) of 1976 (15 USC 2601), the EPA develops and implements regulatory requirements for the testing of new and existing chemical substances and regulates the treatment, storage, and disposal of certain toxic substances. Construction, operation, and reclamation of the Donlin Gold Project would involve chemical substances subject to TSCA rules.

1.2.23 The Federal Mine Safety and Health Act of 1977

The Mine Safety and Health Administration (MSHA) administers the provisions of the Mine Act (30 USC. 22) to enforce compliance with mandatory safety and health standards as a means to eliminate fatal accidents, to reduce the frequency and severity of nonfatal accidents, to minimize health hazards, and to promote improved safety and health conditions in the nation's mines. Operation of the Donlin Gold Project would require compliance with MSHA standards.

1.2.24 Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), sometimes referred to as Superfund, provides federal funding to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through CERCLA, EPA has authority to assure cooperation in the cleanup from responsible parties.

EPA cleans up orphan sites when potentially responsible parties cannot be identified or located, or when they fail to act. Through various enforcement tools, EPA obtains private party cleanup through orders, consent decrees, and other small party settlements. EPA also recovers costs from financially viable individuals and companies once a response action has been completed (EPA 2017).

1.2.25 Emergency Planning and Community-Right-to-Know Act of 1986

Authorized by Title III of the Superfund Amendments and Reauthorization Act (SARA), the Emergency Planning & Community Right-to-Know Act (EPCRA) was enacted by Congress as the national legislation on community safety. This law is designed to help local communities protect public health, safety, and the environment from chemical hazards.

To implement EPCRA, Congress requires each state to appoint a State Emergency Response Commission (SERC). The SERCs are required to divide their states into Emergency Planning Districts and to name a Local Emergency Planning Committee (LEPC) for each district.

Broad representation by firefighters, health officials, government and media representatives, community groups, industrial facilities, and emergency managers ensures that all necessary elements of the planning process are represented (EPA 2017).

1.2.26 Safe Water Drinking Act of 1974

The Safe Drinking Water Act (42 USC. 300 (f) et seq.) was established to protect drinking water in the U.S. This law focuses on all waters actually or potentially designed for drinking use, whether from above ground or underground sources. This Act authorizes the EPA to establish minimum standards to protect tap water and requires all owners or operators of public water systems to comply with these primary (health-related) standards. State governments, which can be approved to implement these rules for the EPA, also encourage attainment of secondary standards (nuisance-related). Under the Act, the EPA also establishes minimum standards for state programs to protect underground sources of drinking water from endangerment by underground injection of fluids.

1.2.27 Oil Pollution Act of 1990

The Oil Pollution Act (OPA) of 1990 streamlined and strengthened the EPA's ability to prevent and respond to catastrophic oil spills. The OPA requires oil storage facilities and vessels to submit to the federal government plans detailing how they will respond to large discharges. The OPA also requires the development of area contingency plans to prepare and plan for oil spill response on a regional scale.

1.2.28 Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments, and Executive Order 13175 – Consultation and Coordination with Indian Tribal Government

Federal agencies are instructed to operate within a government-to-government relationship with federally recognized tribes; tasked with consulting with potentially affected tribal governments prior to taking actions that affect federally recognized tribal governments; and must also evaluate the impact of federal government plans, projects, programs, and activities on tribal trust resources; and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities. The Corps, as the lead federal agency for this EIS, is required to consult with federally recognized tribes potentially affected by the Donlin Gold Project.

1.2.29 Executive Order 11514 – Protection and Enhancement of Environmental Quality

This order requires the EPA to review and evaluate the Draft and Final EIS for compliance with CEQ Guidelines.

1.2.30 Executive Order 11988 – Floodplain Management

This order requires federal agencies to establish procedures ensuring that the potential effects of flood hazards and floodplain management are considered for actions undertaken in a floodplain. Impacts to floodplains are to be avoided to the extent practicable. The Donlin Gold Project has potential to impact floodplains.

1.2.31 Executive Order 11990 – Protection of Wetlands

This order requires federal agencies to avoid short- and long-term adverse impacts to wetlands whenever a practicable alternative exists. This EIS analyzes impacts to wetlands.

1.2.32 Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This order instructs federal agencies to develop environmental justice (EJ) strategies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations (including Native American and Alaskan tribes).

1.2.33 Executive Order 12962 – Recreational Fisheries

This order instructs federal agencies to evaluate proposed federal actions for potential effects to aquatic systems and recreational fisheries. The quantity, function, sustainable productivity, and distribution of aquatic resources are to be improved to the extent permitted by law and where practical. This EIS analyzes potential impacts to aquatic systems and recreational fishing opportunities.

1.2.34 Executive Order 13007 – Indian Sacred Sites

This order requires federal agencies to accommodate access to and ceremonial uses of Indian sacred sites located on federal property by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. This EIS analyzes the potential for impacts to Indian sacred sites.

1.2.35 Executive Order 13045 – Protection of Children from Environmental Health Risks and Safety Risks

The order applies to economically significant rules under Executive Order (E.O.) 12866 (Regulatory Planning and Review) that concern an environmental health or safety risk that EPA has reason to believe may disproportionately affect children. This EIS analyzes potential impacts to human health, including children.

1.2.36 Executive Order 13112 – Invasive Species

This order instructs federal agencies to prevent the introduction of invasive species, control those that are introduced, and provide for the restoration of native species.

1.2.37 Executive Order 13186 – Responsibilities of Federal Agencies to Protect Migratory Birds

This order requires federal agencies to avoid or minimize the impacts of their actions on migratory birds and take active steps to protect birds and their habitats.

1.3 Summary of Permits, Approvals, and Consultations Required

The Donlin Gold Project would require over 100 permits from federal, state, and local governments. For a summary listing of the permits, the action agencies, and the underlying authorities, Table AA -2 provides the key permits and authorizations necessary for approval of a project that would meet the “purposes and needs” described within Chapter 1.

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
Federal		
Federal Laws and Executive Orders Common To Multiple Federal Agencies		
National Environmental Policy Act (NEPA) (42 USC 4321)	NEPA (1969) requires all federal agencies to prepare a detailed statement of the environmental effects of proposed major federal actions that may significantly affect the quality of the human environment.	<ul style="list-style-type: none"> • Environmental Impact Statement
National Historic Preservation Act (NHPA) of 1966 (54 USC 300101 et seq.).	Prior to the issuance of a federal permit, federal agencies are responsible for taking into account the effect of the undertaking on historical, cultural, and archaeological sites and resources.	<ul style="list-style-type: none"> • NHPA Consultation, Section 106 Programmatic Agreement
U.S. Army Corps of Engineers (Corps)		
Clean Water Act (CWA) of 1972 (33 USC 1344)	Discharge of dredged or fill material into waters of the U.S., including wetlands.	<ul style="list-style-type: none"> • Department of the Army Permit
Rivers and Harbors Act (RHA) of 1899 (33 USC 403)	Work and/or structures in, over, or under navigable waters of the U.S., or which affects the course, location, condition or capacity of such waters.	<ul style="list-style-type: none"> • Department of the Army Permit
Bureau of Land Management (BLM)		
Federal Land Policy and Management Act (FLPMA) (43 USC 1732) and (43 CFR 2800)	The BLM has the authority to grant permits and regulate the use, occupancy, and development of public lands and to take whatever action is required to prevent unnecessary or undue degradation of public lands.	<ul style="list-style-type: none"> • Land Use Permits (borrow pit activities) • Surface Estate Lease (facilities) • Approval of mining and reclamation plans
Rights of Way, under the Mineral Leasing Act (43 CFR 2880) Mineral Leasing Act of 1920	The BLM has the authority to approve a Federal Pipeline Grant of ROW and associated Temporary Use Permits across federal lands.	<ul style="list-style-type: none"> • Casual and Temporary Use permits associated with the ROW • Material Sales contract

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
U.S. Environmental Protection Agency (EPA)		
Clean Air Act (CAA) of 1967, Amended 1977 (42 USC 7401 et seq.)	The EPA conducts a review and evaluation on the environmental impact and adequacy of the Draft and Final EIS as authorized by Section 309 of the CAA. The EPA has oversight responsibilities of state-issued air permits.	<ul style="list-style-type: none"> Section 309 evaluation
Clean Water Act of 1972, Amended 1977 (33 USC 1251 et seq.) (40 CFR Parts 110 and 112)	<p>Section 311 – The EPA requires owners/operators to prepare and implement spill prevention, control, and countermeasure (SPCC) plans for facilities that store more than 1,320 gallons in aggregate in above-ground tanks with capacity of 55 gallons or more.</p> <p>Section 402 - The EPA oversees draft APDES permits and can object to proposed permit decisions.</p> <p>Section 404 – The EPA reviews and comments on permit applications for compliance with Section 404(b)(1) Guidelines and other statutes and authorities within their jurisdiction.</p>	<ul style="list-style-type: none"> Oversight of SPCC Rule Requirements Review of APDES permit applications Review of DA permit applications pursuant to Section 404
Comprehensive Environmental Response, Compensation, and Liability Act.	Provides federal funding to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment.	<ul style="list-style-type: none"> Authority to assure cooperation in the cleanup from responsible parties.
Oil Pollution Act (OPA) of 1990 (40 CFR Part 112.20)	Section 4202 of the Oil Pollution Act amended CWA Section 311(j) by requiring owners or operators of tank vessels, offshore facilities, and certain onshore facilities to prepare and submit FRPs.	<ul style="list-style-type: none"> Review of FRPs
Resource Conservation and Recovery Act (RCRA)	Establishes criteria governing the management of hazardous waste. Any hazardous waste generated at a facility associated with the proposed project is subject to the hazardous waste regulations administered by the EPA.	<ul style="list-style-type: none"> Permits for the transportation and storage of hazardous waste material
Safe Drinking Water Act of 1974 (42 USC 300 (f) et seq.)	Requires EPA to set limits for maximum allowable levels of contaminants in public drinking water systems.	<ul style="list-style-type: none"> Sets standard for public drinking water quality
Toxic Substances Control Act (TSCA) of 1976 (15 USC 2601),	Develops and implements regulatory requirements for the testing of new and existing chemical substances and regulates the treatment, storage, and disposal of certain toxic substances.	<ul style="list-style-type: none"> Reporting requirements

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
U.S. Coast Guard (USCG)		
Title 33 Navigation and Navigable Waters (33 CFR 160 through 169) Subchapter P, Ports and Waterways Safety	USCG and Department of Homeland Security approve safety features in ports and waterways. USCG approves bridge designs in navigable waters.	<ul style="list-style-type: none"> • Application for Cargo Transfer Operations • Port Operations Manual Approval • FRPs • Private Aids to Navigation Authorization • Tug and Barge Vessel Inspections • Notice to Mariners • Bridge permits
U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (USDOT, PHMSA)		
Pipeline Safety Regulations (49 CFR Parts 190-199) Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 Public Law 109-468 The Pipeline Safety Statute (49 USC 60101-60301)	Pipeline transportation and pipeline facilities must meet the minimum safety standards as regulated and enforced by the USDOT PHMSA. A Special Permit is required for any exceptions to the PHMSA regulations.	<ul style="list-style-type: none"> • Special Permit approvals
Hazardous Materials Transportation Act (49 USC 1801-1819)	Hazardous materials must be transported according to USDOT regulations.	<ul style="list-style-type: none"> • Hazardous materials registration
U.S. Federal Aviation Act (14 CFR 61, 91, 119)	Federal Aviation Administration regulates air navigation facilities and air traffic control.	<ul style="list-style-type: none"> • Notice of Landing Area Proposal (existing airstrip) • Notice of Controlled Firing Area for Blasting • Notice of construction, activation, and deactivation of airports
U.S. Fish and Wildlife Service (FWS)		
Bald and Golden Eagle Protection Act (16 USC 668)	FWS permits relocation of bald and golden eagle nests that interfere with resource development or recovery operations.	<ul style="list-style-type: none"> • Permits to take, haze, relocate or destroy birds or their nests, for public safety purposes

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
Marine Mammal Protection Act (MMPA) (16 USC 1361 et seq.)	FWS has regulatory authority for implementing the Marine Mammal Protection Act (MMPA) which prohibits the harassment, hunting, capture, or killing of marine mammals, or the attempt to harass, hunt, capture, or kill marine mammals. Requires Incidental Take Authorizations (ITAs) under Section 101(a)(5)(A) or (D) of the MMPA. ITAs may be issued as either (1) regulations and associated Letters of Authorizations or (2) Incidental Harassment Authorizations. (NOAA also administers the MMPA.)	<ul style="list-style-type: none"> Incidental Take Authorization (as necessary); Letters of Authorization or Incidental Harassment Authorizations.
Migratory Bird Treaty Act (MBTA) (16 USC 703)	FWS implements provisions of the Migratory Bird Treaty Act.	<ul style="list-style-type: none"> Migratory Bird Treaty Act consultation
Endangered Species Act of 1973 (ESA) (16 USC 1531)	FWS provides consultation on effects to threatened or endangered species, and to designated critical habitat, and issues incidental take authorizations. Species include terrestrial mammals, plants, birds, and several marine mammals (NOAA also administers the ESA.)	<ul style="list-style-type: none"> ESA consultation, Corps Issuance of Biological Assessment, FWS issuance of concurrence or Biological Opinion.
National Oceanic and Atmospheric Administration (NOAA) Fisheries		
Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801-1883)	NOAA Fisheries provides consultation on the effects on EFH. EFH includes habitats necessary to a species for spawning, breeding, feeding, or growth to maturity.	<ul style="list-style-type: none"> EFH consultation
Marine Mammal Protection Act (MMPA) (16 USC 1361 et seq.)	NOAA Fisheries has regulatory authority for implementing the MMPA, which prohibits the harassment, hunting, capture, or killing of marine mammals, or the attempt to harass, hunt, capture, or kill marine mammals. Requires ITA under Section 101(a)(5)(A) or (D) of the MMPA. ITAs may be issued as either (1) regulations and associated Letters of Authorizations or (2) Incidental Harassment Authorizations. (FWS also administers the MMPA.)	<ul style="list-style-type: none"> Incidental Take Authorization; Letters of Authorization or Incidental Harassment Authorizations.
Endangered Species Act of 1973 (ESA) (16 USC 1531)	NOAA Fisheries provides consultation on effects to threatened or endangered species, and to designated critical habitat, and issues incidental take authorizations. Species include most marine mammals (see FWS species exceptions), and anadromous fish species. (FWS also administers the ESA.)	<ul style="list-style-type: none"> ESA Consultation, Corps Issuance of Biological Assessment, NOAA issuance of concurrence or Biological Opinion
U.S. Department of the Treasury		
Treasury Department Order No. 120-1	U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives requires that applicants obtain a Permit to Purchase Explosives for Blasting prior to the purchase, storage, and use of explosives for conducting blasting activities.	<ul style="list-style-type: none"> License to transport explosives Permit and license for use of explosives

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
Federal Communications Commission (FCC)		
Communications Act of 1934 (47 USC 151 et seq.)	FCC regulates interstate and international communications by radio, television, wire, satellite and cable, including radio licensing.	<ul style="list-style-type: none"> • Radio license
U.S. Department of Homeland Security		
Aviation and Transportation Security Act	Transportation Security Administration oversees security for airports.	<ul style="list-style-type: none"> • TSA Inspection Program at Airport • Chemical Facility Anti-Terrorism Standards
State		
Alaska Department of Environmental Conservation (ADEC)		
Clean Air Act of 1967, Amended 1977 (42 USC 7401 et seq.) Air Quality Control (18 AAC 50 et seq.)	ADEC issues Air Quality Control permits to construct and to operate. ADEC issues Title V Operating permits and prevention of significant deterioration (PSD) permits for air pollutant emissions under the CAA Amendments (Title V).	<ul style="list-style-type: none"> • Air Quality PSD Permit • Title V Operating Permit • Air quality construction permit
Clean Water Act of 1972, Amended 1977 (33 USC 1251 et seq.)	Section 401 requires (for the Corps permit pursuant to Section 404) that ADEC certify that discharges into waters of the U.S. will comply with the CWA, the Alaska Water Quality Standards (18 AAC 70), and other applicable state laws.	<ul style="list-style-type: none"> • Section 401 Water Quality Certification
Clean Water Act of 1972, Amended 1977 (33 USC 1251 et seq.) Wastewater Disposal (18 AAC 72) Alaska Pollutant Discharge Elimination System (18 AAC 83) Water Quality Standards (18 AAC 70) Drinking Water Standards (18 AAC 80)	ADEC provides approval for domestic wastewater collection, treatment, and disposal plans for domestic wastewaters. ADEC requires a permit for disposal of domestic and non-domestic wastewater. ADEC is fully authorized to administer the EPA's NPDES program through the APDES overseen by EPA. Existing regulations at 18 AAC 15 (Administrative Procedures) and 18 AAC 72 were amended to comply with the CWA. New regulations, 18 AAC 83, were also promulgated in addition to amending the existing regulations. ADEC provides approval for treatment and disposal plans for industrial wastewaters.	<ul style="list-style-type: none"> • APDES permits • Review Storm Water Discharge Pollution Prevention Plans • Plans review of treatment systems • Domestic wastewater disposal permit • Non-domestic wastewater disposal permit
Solid Waste Management (18 AAC Chapter 60) (AS 46.03.100)	ADEC reviews and approves solid waste processing and temporary storage facilities plans for handling and temporary storage of solid waste and landfills.	<ul style="list-style-type: none"> • Integrated Waste Management Permit/Plan Approval
Food Permit and Registration Requirements (18 AAC 31.020)	ADEC may issue permits for persons seeking to operate a food establishment.	<ul style="list-style-type: none"> • Food Establishment Permit

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
Drinking Water System Classification and Plan Approval (18 AAC 80.200)	ADEC may issue approval of public drinking water plans.	<ul style="list-style-type: none"> • Potable water well logs • Approval to Construct and Operate a Public Water Supply System • Public Water System Identification Number
Open Burning (18 AAC 50.065)	ADEC enforces air quality requirements for open burning, and requires a permit for controlled open burning of forest land, vegetative cover, fisheries, or wildlife habitat in excess of 40 acres annually.	<ul style="list-style-type: none"> • Air Quality Permit to Open Burn
Oil and Hazardous Substances Pollution Control Regulations (18 AAC 75) (AS 46.04.040, 050)	ADEC requires production and terminal facilities having an effective above-ground or below-ground storage capacity of greater than 10,000 barrels (420,000 gallons) of refined petroleum products to prepare an Oil Discharge Prevention and Contingency Plan and provide Proof of Financial Responsibility.	<ul style="list-style-type: none"> • Oil Discharge Prevention and Contingency Plan • Operation of vessels and petroleum product barges on state waters • Oil terminal/storage facility capable of storing 10,000 barrels or more • Above-ground Storage Tank Program (>420,000 gallons)
Alaska Department of Fish and Game (ADF&G)		
The Fish and Wildlife Conservation Act (FWCA) of 1980 (16 USC 2901) The Fish and Wildlife Conservation Act of 1980 (16 USC 661 et seq.)	ADF&G consults with FWS about fish and wildlife resources to conserve or improve wildlife resources. ADF&G provides comments and recommendations to federal agencies pursuant to the FWCA.	<ul style="list-style-type: none"> • Wildlife consultation • Fish habitat permits
Anadromous Fish Act (AS 16.05.871)	An individual or governmental agency notifies and obtains authorization from ADF&G for activities that could use, divert, obstruct, pollute, or change natural flow of specified anadromous fish streams.	<ul style="list-style-type: none"> • Fish passage permits
Fishway Act (AS 16.05.841)	The Fishway Act requires that an individual or government agency notify and obtain authorization from the ADF&G for activities within or across a stream used by fish if it is determined that such uses or activities could represent an impediment to the efficient passage of resident or anadromous fish.	<ul style="list-style-type: none"> • Fish passage sufficiency determination
Activities Requiring a Special Area Permit (5 AAC 95.420)	A special area permit must be obtained from ADF&G for activities (except for lawful hunting, trapping, fishing, viewing, and photography) occurring in state game refuges, state recreation areas, across designated wild and scenic rivers, or through state parks.	<ul style="list-style-type: none"> • Special area permits for designated areas

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
License, Permit, and Tag Fees; Surcharge; Miscellaneous Permits to Take Fish and Game (AS 16.05.340)	ADF&G may issue a permit to collect fish and game, subject to limitations and provisions that are appropriate, for a scientific, propagative, or educational purpose.	<ul style="list-style-type: none"> • Permit to collect fish and game
Permit for Scientific, Educational, Propagative, or Public Safety Purposes (5 AAC 92.033)	ADF&G may issue a permit for the taking, possessing, importing, or exporting of game for scientific, educational, propagative, or public safety purposes.	<ul style="list-style-type: none"> • Fish collection permits for field studies
Alaska Department of Natural Resources (ADNR)		
Alaska Historic Preservation Act (AS 41.35.010-.240) NHPA of 1966 (16 USC 470 et seq.) (36 CFR 800.106-.110) Archaeological Resources Protection Act of 1979 (16 USC 470)	Section 106 of the NHPA requires consultation with the SHPO and, when there are effects on cultural resources listed on or eligible for inclusion in the National Register of Historic Places (NRHP), with the President’s Advisory Council on Historic Preservation. SHPO issues a Field Archaeology Permit for archaeological fieldwork on state lands. The SHPO would also be consulted by the Corps. ADNR Office of History and Archaeology (OHA) issues a Cultural Resources Concurrence for developments that may affect historic or archaeological sites.	<ul style="list-style-type: none"> • Section 106 Programmatic Agreement • Archaeology collection permit • Field archaeology permit
Material Sales (AS 38.05.550-565) Permits (AS 38.05.850) Mining Sites Reclamation Plan Approvals (AS 27.19)	ADNR issues a Material Sales Contract for mining and purchase of gravel from state lands. ADNR issues ROW and Land Use permits for use of state land, ice road construction on state land, and state waters. ADNR approves mining reclamation plans on state, federal, municipal, and private land and water.	<ul style="list-style-type: none"> • Material Sales Contract • Mining License • Reclamation Plan approval • Land Use Permits and leases • Bonding and Financial Assurance approval (see Appendix A for Donlin Gold's Financial Assurance Memo).
Right-of-Way Leasing Act (AS 38.35.020)	The ADNR State Pipeline Coordinator’s Office issues pipeline ROW leases for new pipeline and pipeline related construction and operation across state lands. The ADNR Commissioner signs the leases and the State Pipeline Coordinator manages the leases.	<ul style="list-style-type: none"> • Rights-of-Way
Water Use (AS 46.15)	ADNR issues a Temporary Water Use Permit for water use necessary for construction and operations. ADNR issues a Water Rights Permit for appropriation of a significant amount of water on other than a temporary basis.	<ul style="list-style-type: none"> • Temporary Water Use permits • Appropriation of Water Permit/ Certificate to Appropriate Water

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
Duties and Powers of Department of Natural Resources, Limitations (AS 41.21.020) Section 6(f) of the Land and Water Conservation Fund (LWCF) (16 USC 4601 et seq.)	ADNR has the responsibility for outdoor recreation planning and administering the Land and Water Conservation Fund program within Alaska.	
Water Management, Article 3 (Dam Safety) (11 AAC 93.150 - 201)	ADNR Dam Safety and Construction Unit issues certificates to construct and operate dams in Alaska	<ul style="list-style-type: none"> • Certificate of Approval to Construct, Modify, Remove or Abandon a Dam • Certificate of Approval to Operate a Dam
Alaska Department of Public Safety (ADPS), Division of Fire and Life Safety		
General function of the Department of Public Safety with respect to fire protection (AS 18.70.010) Alaska Fire and Life Safety Regulations (13 AAC 50-55)	The Division of Fire and Life Safety has statewide jurisdiction for fire code enforcement and plan review authority, except in communities which have received deferrals—including the Municipality of Anchorage, Fairbanks, University of Alaska Fairbanks, and Wasilla/Lakes.	<ul style="list-style-type: none"> • Approval to transport hazardous materials • Life and Fire Safety Plan checks • Plan Review Certificate of Approval for each building • Fire Marshal permits
2009 International Fire Code (IFC)	All fuel systems being developed to support port and airport operations during pipeline construction and operations must be reviewed and found to conform to the 2009 IFC requirements. Although explosive blasting is not anticipated to be used in the project, if used, the storage magazine type, location, and any barricade requirements must meet IFC requirements.	<ul style="list-style-type: none"> • 2009 IFC requirements
Alaska Department of Transportation and Public Facilities (ADOT&PF)		
Chapter 25 Operations, Wheeled Vehicles: Oversize and Overweight Vehicles (17 AAC 25.300)	ADOT&PF issues permits for oversize or overweight vehicles.	<ul style="list-style-type: none"> • Oversize or overweight vehicle permits
Chapter 25 Operations, Wheeled Vehicles: Transportation of Hazardous Materials, Hazardous Substances, or Hazardous Waste (17 AAC 25.200)	ADOT&PF regulates the transportation of hazardous materials, hazardous substances, or hazardous waste by vehicles.	<ul style="list-style-type: none"> • Compliance with the transportation of hazardous materials, hazardous substances, or hazardous waste regulations.
Utility Permits (17 AAC 15.011)	ADOT&PF issues permits authorizing applicants to construct or install utility facilities within a department ROW.	<ul style="list-style-type: none"> • Utility permits
Alaska Omnibus Act (P.L. 86-70; 73, Stat. 141)	ADOT&PF manages the lands covered by the Alaska Omnibus Act, including State-Owned FAS Route 231 Crooked Creek to Flat	<ul style="list-style-type: none"> • ROW relocation

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
Alaska Department of Labor, Standards and Safety		
Health Safety and Housing (AS 18.60.180), (8 AAC)	The Alaska Division of Labor Standards and Safety enforces Occupational Safety and Health Administration regulations (OSHA), and assures that project related activities meet standards and regulations for occupational health and safety.	<ul style="list-style-type: none"> • Certificates of Inspection for Fired and Unfired Pressure Vessels • Occupational Safety and Health (inspections and certificates) • Employer Identification Number
Alaska Department of Health and Social Services		
Alaska Best Management Practices, Alaska Health Impact Assessment (HIA) Program	The HIA Program evaluates the potential human health effects of new policies, programs, or development projects in Alaska through the use of existing public health surveillance data, medical literature reviews, and field studies.	<ul style="list-style-type: none"> • Health Impact Assessment (HIA)
Alaska Department of Military Affairs		
Emergency Planning Districts and Committees, Plan Review (AS 26.23.073, .077)	Planning and reporting requirements for facilities that handle, store, and/or manufacture hazardous materials.	<ul style="list-style-type: none"> • Hazardous chemical inventories
Alaska Division of Homeland Security & Emergency Management (DHS&EM)		
Hazardous Chemicals, Materials, and Wastes (AS 29.35.500)	The State Emergency Response Commission (SERC) enforces reporting and planning requirements for facilities that handle, store, and/or manufacture hazardous materials.	<ul style="list-style-type: none"> • Hazardous chemical inventories
Local		
Matanuska-Susitna (Mat-Su) Borough		
Mat-Su Borough Title 17 Zoning (17.01-17.125)	The Mat-Su Borough requires compliance with its zoning code. All land development in the Borough is subject to MSB Title 17.02, Mandatory Land Use Permit.	<ul style="list-style-type: none"> • Zoning • Plan review and construction permits • Solid waste

Table AA -2 : Permits, Approvals, and Consultations Required

Legal Authority	Agency	Role
Kenai Peninsula Borough (KPB)		
Kenai Peninsula Borough Title 17 (17.10.185, 17.08-50)	The KPB Land Management Division requires compliance with its code for utility or pipeline easements.	<ul style="list-style-type: none"> Easements for utilities, pipelines, barge landings and travel ways

Abbreviations:

AAC = Alaska Administrative Code
 APDES = Alaska Pollutant Discharge Elimination System
 AS = Alaska Statute
 CEA = Chugach Electric Association, Inc.
 CFR = Code of Federal Regulations
 FRP = Facility Response Plan

GCI = General Communications, Inc.
 HIA = Health Impact Assessment
 MSB = Matanuska-Susitna Borough
 NPDES = National Pollutant Discharge Elimination System
 NRHP = National Register of Historic Places
 OHA = Office of History and Archaeology

PSD = prevention of significant deterioration
 ROW = right-of-way
 SERC = State Emergency Response Commission
 SHPO = State Historic Preservation Office
 SPCC = spill prevention, control, and countermeasure
 TSA = Transportation Security Administration
 USC = United States Code