

# Executive Summary



*PhotoCredit. OTA Staff*

**The Alaska Railroad and the highway connecting Fairbanks and Anchorage, Alaska, looking south from near Nenana, Alaska**

## Chapter 1.-EXECUTIVE SUMMARY

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# Executive Summary

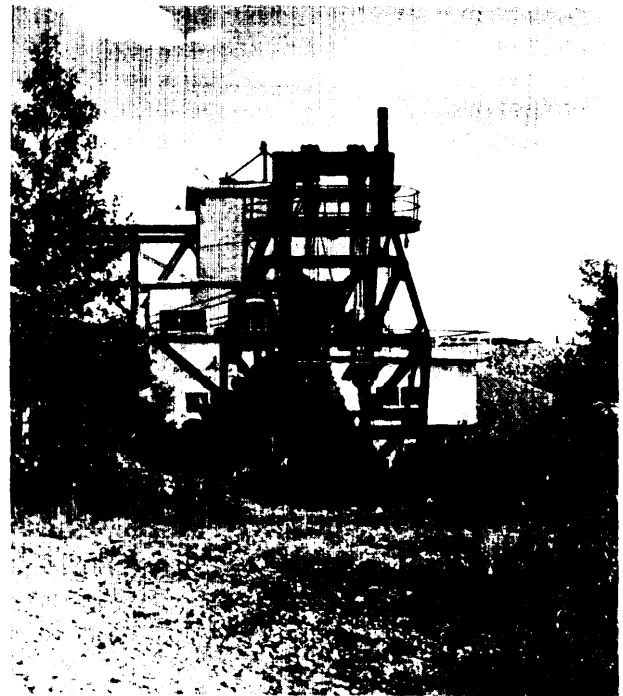
Rarely has the conflict between resource development and protection of the natural environment been more severe than in Alaska. The largest State is a treasury of natural beauty, wildlife, and wilderness on a scale that does not exist in the rest of the Nation. At the same time, it has an abundance of natural resources that may be needed in the future. For decades, distance, climate, and lack of development combined to enforce de facto preservation of Alaska's natural treasures. The barriers that have protected Alaska's environment have been lowered by technology, by local development, and by an increased demand for resources.

At one time nearly all of Alaska's 375 million acres were vacant and unappropriated Federal lands. Little attention was given to establishing management policies to govern land use. With the exception of Alaska Natives, few used these vast lands and resources. The waves of exploration and exploitation that accompanied the booms in furs, gold, and oil left most of the State untouched.

Now, for the first time, there is a reasonable prospect for natural resource development throughout the State, and plans are being made for many such projects. Economic development has been accompanied by a major restructuring of landownership and land management policy in Alaska that began in 1959 with the admission of Alaska as a State and may well continue into the 1990's. Each step of this process of change has been dogged with controversy. Often the debate

has turned on the resolution of the conflict between the use of land for its economic resources and the preservation and protection of land for its natural values.

The most recent development in this process of change has grown out of legislative actions taken in 1971 to resolve an earlier controversy—the assertion of claims to almost all of Alaska by native Indians, Eskimos, and



*Photo Credit: OTA Staff*

**Inactive gold dredge near Fairbanks, Alaska. Placer mining for gold is underway in some areas of Alaska and interest in hardrock mining is growing**

Aleuts. The Alaska Native Claims Settlement Act (ANCSA) extinguished all aboriginal land claims and, in compensation, gave Alaskan Natives \$962.5 million and the right to select 44 million acres of Federal lands in the State. Conflicts over the Native land claims had slowed State land selections under the Alas-

ka Statehood Act and threatened to impede construction of the Trans-Alaska Oil Pipeline. ANCSA removed a major obstacle to the pipeline and paved the way for conveyances to the State and to Native groups that will shift approximately 40 percent of Alaska's land to non-Federal ownership.

## ALASKA NATIONAL INTEREST LANDS

ANCSA also addressed the management of Federal lands in the State. A key provision, section 17(d)(2), directed the Secretary of the Interior to withdraw up to 80 million acres of land that he deemed suitable for potential inclusion in the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems. The Secretary was to study these lands and make recommendations to Congress. To protect the national interest in these lands, commonly called "d-2" lands, prior to congressional action, they were withdrawn from all forms of appropriation under the public land laws, the mining and mineral leasing laws, and from selection by the State or Native regional corporations. Statutory authority for these withdrawals expired on December 18, 1978.

Many proposals for Alaska National Interest Lands have been introduced in Congress since passage of ANCSA. During the 95th Congress, extensive hearings were held on Alaska Lands legislation before House and Senate committees. In May 1978, the House passed H.R. 39, which would have set aside over 100 million acres of Federal lands as national parks, forests, wildlife refuges, wild and scenic rivers, and wilderness areas. In October 1978, the Senate adjourned without acting on the Alaska Lands Bill.

Prior to the expiration of the "d-2" withdrawals, a series of executive actions dramatically altered the Federal land management pattern in Alaska. On November 16, 1978, the Secretary of the Interior used his emergency authority under section 204(e) of the Federal Land Policy and Management Act to withdraw all public lands in Alaska

covered by congressional or administration "d-2" proposals from mineral entry or selection by the State of Alaska. This emergency withdrawal of some 110 million acres is effective for 3 years.

On December 1, 1978, President Carter invoked the Antiquities Act of 1906 to create 17 new national monuments in Alaska. These monuments, totaling some 56 million acres, include 13 new national parks, 2 new national wildlife refuges, and 2 national forest areas previously proposed for wilderness designation. National monuments are closed to all disposition under the public land laws including the mining and mineral leasing laws. National monument status can be modified or revoked only by congressional action.

On December 1, the President also announced that the Secretary of the Interior would initiate further action under section 204(c) of the Federal Land Policy and Management Act to protect approximately 40 million acres of proposed wildlife refuges under 20-year withdrawals. Section 204(j) of the Act provides that the Secretary of the Interior may not modify or revoke any withdrawal made under the Act that adds lands to the National Wildlife Refuge System. An additional 11.2 million acres of proposed wilderness areas in the Tongass and Chugach National Forests would be protected under a 2-year withdrawal from location under the mining laws and from State selection. Application for this withdrawal to protect natural values and in aid of legislation was submitted to the Department of the Interior by the Secretary of Agriculture on November 28, 1978. In announcing these withdrawals, the President

declared his intention to seek legislation permanently setting aside these areas and an additional 10 million acres included in the November emergency withdrawals.

The outcome of congressional decisions on Alaska lands could have a particularly strong impact on the future course of mineral resource development in Alaska. Although Federal lands have most often played a major role in mineral resource development because they contain rich mineral deposits, they are also important as routes for access to areas of mineral potential, both on and off the Federal lands.

The conditions under which a given area of Federal land may be used for access are determined to a large extent by the land classification system into which the land has been placed. Each system—parks, forests, wildlife refuges, wild and scenic rivers, wilderness, and public lands—has its own rules. In the West and in Alaska, where much of the land is in Federal ownership, the use of Federal lands for access is an important element of land management policy. For understandable reasons, the mineral industry favors policies that encourage such use, while environmental and conservation interests oppose them.

## OTA ASSESSMENT

At the request of the Technology Assessment Board, OTA conducted an assessment of how Federal laws, policies, and practices related to the use of Federal lands for access purposes influence hardrock mining on non-Federal lands. The focus of the assessment is on access for non-Federal mineral resource development, that is, the ability to reach mineral-bearing lands and to remove the materials produced.

The assessment was national in scope and specifically examined Alaska and several

Western States with a high percentage of Federal land and an active mining industry. OTA selected study areas in Eastern and Western States as well as in Alaska. Because of the timeliness and relevance of the materials assembled during the assessment to current congressional consideration of Alaska National Interest Lands legislation, assessment results were made available for the use of Members of Congress, their legislative staffs, and various committees as the study progressed.

## ACCESS ACROSS FEDERAL LANDS

Access is the ability to reach certain lands. It includes the right to use lands for private rights-of-way and for transportation systems. Permission to cross Federal lands is generally obtained through a special use permit, a right-of-way, or an easement granted under the authority of the agency managing the land. This report is concerned with two types of access needs associated with hardrock mineral development:

- Private rights-of-way across Federal lands to reach non-Federal lands or to reach existing transportation systems; and
- Rights-of-way across Federal lands for transportation systems (roads, highways, railways, ports) to serve public needs in general and mineral transportation in particular.

## SERIOUSNESS OF ACCESS PROBLEMS IN ALASKA

An independent OTA analysis of five Alaskan study areas gives a perspective of the seriousness of the problems associated with access across Federal lands in Alaska. For each study area, OTA evaluated the need to use Federal lands for access to non-Federal lands. The evaluation was based on current information about State and Native land selections, transportation availability, and location of mineral deposits. As the final conveyances of State and Native selections proceed, non-Federal landownership patterns on which the evaluation was made could be altered. Information concerning the location of mineral deposits is also increasing. Thus, OTA's evaluation could be subject to some modification in response to shifts in landownership or mineral development activity. Generally, however, OTA found that:

- The need for rights-of-way across Federal lands to reach non-Federal minerals is a localized problem that is likely to occur in scattered instances. The need for rights-of-way across Federal lands to reach existing surface transportation is also likely to occur infrequently,
- In some regions of Alaska, mineral resource development will require the improvement of existing transportation in order to move the bulk mineral products to market. In those regions served by existing surface transportation, non-Federal lands are largely contiguous, and a minimal need exists for rights-of-way across Federal lands for transportation routes to serve non-Federal mineral areas.
- In regions that are not served by existing surface transportation systems and that are isolated from the rest of the State and each other by Federal lands, new transportation systems will have to be

constructed to transport hardrock minerals. In these areas, the development of surface transportation systems to accommodate mineral resource production or for other public purposes will involve long distances and rights-of-way over Federal, State, and Native lands. The need to cross Federal lands in some remote areas of Alaska is likely to arise regardless of whether a statewide or regional transportation system approach is adopted.

The surface transportation network in Alaska is not extensive compared with that in other States. The primary means of transportation between most areas of the State is by airplane. The existing combination of air and surface transportation is adequate to move people and goods for most present needs. It is technically and economically feasible to ship precious metals by air, but most other hardrock minerals require transportation systems that can move large volumes of bulky material over long distances at a relatively low cost.

The planning and development of surface transportation systems is normally a State function. There is, at present, no consensus on the appropriate transportation system or combination of systems to serve Alaska's community development and resource needs. Various interests have advanced arguments for building new surface transportation routes or improving existing routes at public expense, for extensions to the system financed by potential resource developers, and for little additional development. This assessment does not consider the relative merits of any of these positions, nor does it weigh the costs and benefits of alternative transportation strategies. Rather, it addresses how Federal policies on the use of Federal lands for access, including use for the development of transportation systems, affect hardrock mineral development on non-Federal land.

After conveyance of State and Native land selections, 60 percent of Alaska's lands will remain in Federal ownership. Because of the vast Federal areas involved, the patchwork distribution of non-Federal lands, and the limited extent of existing surface transporta-

tion, access across Federal lands may be required to reach non-Federal lands. The access policies of Federal land management agencies could exert substantial influence over the development of resources in isolated non-Federal areas.

## FEDERAL LAWS

Because Federal land management policies are likely to exert a strong influence over access across Federal lands in Alaska, this report reviews those Federal laws affecting access to minerals on non-Federal lands. The laws are divided into three categories:

1. **Federal Land Management Laws**—Laws and regulations providing for access across units of the six Federal land management systems: public lands, National Park System, National Wildlife Refuge System, National Forest System, National Wild and Scenic Rivers System, and National Wilderness Preservation System.
2. **Federal Laws Relating to Alaska Lands and Mineral Resources**—The Alaska Statehood Act, the Alaska Native Claims Settlement Act, the Trans-Alaska Pipeline Authorization Act, the Alaska Natural Gas Transportation Act of 1976, and the Naval Petroleum Reserves Production Act of 1976.
3. **Federal Land Planning and Environmental Laws**—These laws can affect the availability of access through various procedural and substantive requirements. The report analyzes the impact on access of the National Environmental Policy Act of 1969, section 4(f) of the Department of Transportation Act, the Endangered Species Act, the Clean Air Act, the Clean Water Act, and the Coastal Zone Management Act.

## FEDERAL LAND MANAGEMENT LAWS

Each Federal land management system has its own rules governing access for mineral development on non-Federal lands. Two factors determine the terms and conditions placed on access use of Federal lands: (1) the classification of the affected land, and (2) the proposed use for which access is needed. Land managers for every system, including the Wilderness System, have statutory authority to grant some rights-of-way. The availability of such grants and the nature of any conditions imposed reflect the general purposes for which the affected unit is managed.

### Public Lands

The Bureau of Land Management (BLM) administers the public lands under laws that require application of multiple use principles. The Secretary of the Interior has ample authority under the comprehensive provisions of Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) to issue rights-of-way across the public lands, except designated wilderness areas, for access to non-Federal lands, for roads, highways, railroads, and other transportation systems and facilities, and for other purposes. Section 603 of FLPMA requires that the BLM inventory for wilderness values all roadless areas of 5,000 acres or more and all roadless islands in the public lands. Potential wilderness areas are placed in a wilderness study classification and must be managed to protect

wilderness values until completion of administrative review and congressional action. The requirement for protective management limits the Secretary's discretion to approve any use of wilderness study areas, including rights-of-way, that might conflict with or impair wilderness values.

### **National Park System**

The National Park Service manages units of the park system to conserve scenic and natural values and preserve them for the enjoyment of future generations. There is no statutory provision expressly authorizing rights-of-way across lands in the National Park System for access to non-Federal lands or for transportation systems. The approval of rights-of-way and other access uses of national park lands is a matter left to the management discretion of the Secretary of the Interior and the local park superintendent. Access use of park lands must be in conformance with the purposes of the park system and of the individual unit to be crossed.

### **National Wildlife Refuge System**

The Fish and Wildlife Service manages the wildlife refuge system as part of a national program of wildlife conservation and rehabilitation. Rights-of-way across lands in the National Wildlife Refuge System may be allowed if the proposed use is compatible with the purposes of the refuge, and the applicant agrees to pay the fair market value for such use.

### **National Forest System**

The Forest Service manages the national forests on a multiple-use sustained-yield basis. The Secretary of Agriculture has ample authority to grant rights-of-way across national forest lands, except designated wilderness areas, under the comprehensive provisions of Title V of the Federal Land Policy and Management Act of 1976. Rights-of-way for roads and trails may also be granted under provisions that authorize the development of the National Forest Transportation System.

### **National Wild and Scenic Rivers System**

Wild and scenic rivers are managed by the Federal or State agency that had managerial responsibility for these areas prior to their designation. These rivers are managed to preserve and protect them in a free-flowing condition for present and future generations. Rights-of-way across units of the National Wild and Scenic Rivers System administered by the Department of the Interior are granted under laws applicable to the National Park System regardless of the managing agency. Rights-of-way over units managed by the Department of Agriculture are governed by laws applicable to the National Forest System. Any conditions placed on the issuance of any such right-of-way must be related to the purposes of the Wild and Scenic Rivers Act.

### **National Wilderness Preservation System**

Units of the wilderness system are administered by the Federal agency that had managerial responsibility for these areas prior to their designation. Wilderness areas are managed under protective rules to conserve their wilderness character. The Wilderness Act of 1964 forbids any temporary or permanent roads or the use of mechanized modes of transportation in designated wilderness areas—except as specifically provided by Congress. The use of lands in the National Wilderness Preservation System for access purposes is limited to the specific exceptions recognized in the Wilderness Act. These include: existing private rights; management and emergency purposes; access to private or State lands completely surrounded by a national forest or public lands wilderness area; use of airplanes and motorboats in areas where such use predates wilderness designation; ingress and egress to valid mining claims and other valid occupancies wholly within a national forest or public lands wilderness area; facilities authorized by the President in the national interest within a national forest or public lands wilderness area; and other exceptions specifically approved by Congress. The exceptions applicable to national forest and public lands wilderness



areas do not apply to park or refuge wilderness areas. The exceptions for completely surrounded non-Federal lands or other lands wholly within a wilderness area may not provide adequate assurance of access to some isolated but nonsurrounded non-Federal areas in Alaska. Construction of surface transportation systems through wilderness areas requires specific congressional approval.

### Access Across Federal Lands in Alaska

Congressional designation of Alaska National Interest Lands will reduce many of the uncertainties about the potential use for access of Federal lands in Alaska. It is impossible to predict what response a land management agency will make to a given request for



*Photo Credit: Boyd Norton (C), courtesy of Alaska Coalition*  
**Mount Drum in the Wrangell-St. Elias area exemplifies Alaska's spectacular scenery**

access. However, when land classifications are established, reasonable assumptions concerning the availability or nonavailability of Federal lands for access uses will be possible.

Given existing laws and policies, access should be available across most units of the public lands and the forest system, except designated wilderness areas and wilderness study areas. Access across units of the National Wildlife Refuge System is allowed if it does not pose a threat to protected wildlife. Because of the high degree of protective management afforded parks, wild and scenic rivers, and wilderness areas, use of these lands for access to non-Federal areas or for transportation routes is strictly limited. On park and refuge wilderness areas, an act of Congress would be required to allow any significant access.

In all systems, but particularly the more protected, the availability of access may well turn on the factual issue of whether alternative routes or means of access exist. Each system makes some provision for special consideration of requests from non-Federal landowners whose property is wholly surrounded by Federal lands. The question of alternative routes is also critical in considering the extension of any federally funded public transportation network across lands used for parks or wildlife refuges. Such projects may be approved only if there is no feasible alternative.

Enactment of d-2 legislation will not end all the uncertainties about which land management policies will be applied to Federal lands. As a result of the BLM wilderness review, additional Federal lands could be placed under wilderness protection in the future. This possibility creates some uncertainty about the future availability of access across the public lands. BLM wilderness areas are to be managed according to provisions of the Wilderness Act that are applicable to the national forest wilderness areas. The BLM will give priority to review of wilderness potential of public land roadless areas in the lower 48

States. Wilderness inventory of Alaska public lands will be deferred until after congressional action on d-2 proposals and conveyance of Native selections. This delay will provide an opportunity for non-Federal land-ownership patterns and access needs to emerge.

### FEDERAL LAWS RELATING TO ALASKA'S LANDS AND MINERAL RESOURCES

The Alaska Statehood Act and the Alaska Native Claims Settlement Act provide for the transfer of approximately 40 percent of Alaska's land to non-Federal ownership. The development of land-based resources, including minerals, was a major intent behind these grants of Federal lands to the State and Alaska Natives.

The Alaska Statehood Act endowed the new State with grants of Federal lands and revenues. These grants were intended to provide a stable economic base for the State. Alaska received the right to select 103,350,000 acres of Federal lands, plus over 1 million acres of territorial grants of university, mental health, and school lands that were confirmed by the Statehood Act, and from 35 million to 40 million acres of submerged lands. All statehood land grants must be selected by January 3, 1984, from Federal lands that are vacant, unappropriated and, except for certain national forest lands, unreversed at the time of their selection.

The State also received a share of Federal revenues derived from natural resources within the State. Alaska is entitled to 52 percent of the annual net profits of Federal mineral leases in Alaska in lieu of State participation in the reclamation fund. (This grant is in addition to the 37%-percent revenue entitlement previously granted to the territory, thus bringing Alaska's share of Federal mineral leasing revenues to 90 percent.) The Statehood Act also gives the State the right to receive 90 percent of the net proceeds from Federal coal lands in Alaska.

The Alaska Native Claims Settlement Act (ANCSA) extinguished all Native claims to lands and hunting and fishing rights based on aboriginal title or use. In exchange, Alaska Natives were given the right to select some 44 million acres of Federal lands and to share in an Alaska Native Fund of \$962.5 million. Thirteen profit-making Native Regional Corporations were established to administer land selections and fund distributions. Native Village Corporations were also established to administer local village selections. The mineral or subsurface rights to all Native selections are vested in the Regional Corporations. Village Corporations receive surface title only. The Alaska Native Fund is dependent, in part, on contributions of \$500 million from Federal and State mineral leasing revenues.

ANCSA also established the Federal-State Land Use Planning Commission for Alaska. The Commission was to identify necessary public easements across Native lands. The Secretary of the Interior was authorized to reserve specific easements across Native lands. No provision was made for easements across Federal lands to assure access to lands conveyed to Alaska Natives. Secretarial orders reserving extensive easements across Native lands have been the subject of complex litigation delaying Native land conveyances.

Three other laws relating to the role of Federal land management in the development of natural resources in Alaska were also reviewed. The Trans-Alaska Pipeline Authorization Act authorized an expedited procedure for granting a right-of-way for the Trans-Alaska Oil Pipeline. Judicial and administrative reviews of licensing and environmental proceedings were limited. The Act also authorized a reservation for additional rights-of-way for compatible uses on or adjacent to the pipeline right-of-way.

The Alaska Natural Gas Transportation Act of 1976 provided an expedited procedure for the consideration of several pending proposals to construct a natural gas pipeline from the North Slope to the lower 48 States.

This expedited procedure provided for coordinated review of right-of-way applications covering several different management systems. Final approval of the Presidential recommendation for a natural gas pipeline was provided by a congressional joint resolution.

The Naval Petroleum Reserve Production Act of 1976 transferred jurisdiction over and management of the Naval Petroleum Reserve in Alaska to the Department of the Interior. No provision is made for granting any right-of-way over the Reserve for access to non-Federal lands. The Secretary of the Interior must submit a report on the nonpetroleum values of the Reserve within 3 years.

### **FEDERAL LAND PLANNING AND ENVIRONMENTAL LAWS**

Federal land planning and environmental laws can also influence the availability of access to non-Federal mineral areas. Some of these laws impose procedural requirements or substantive restraints on the actions of Federal land managers in reviewing and issuing rights-of-way and access permits. Other laws set environmental standards for transportation and mining activities on both Federal and non-Federal lands. Compliance with these standards is often made an express condition of rights-of-way across Federal areas.

The National Environmental Policy Act of 1969 (NEPA) requires that an environmental impact statement (EIS) be prepared for major Federal actions that significantly affect the quality of the human environment. NEPA imposes no specific environmental standards or direct restraints on access to minerals on non-Federal lands. It does, however, exert substantial indirect influence, since Federal land management agencies must comply with NEPA in their review of requests for rights-of-way across Federal lands. EIS preparation and review may lengthen the time required for approval of some rights-of-way and other permits. Applicants may be required to pay the costs of EIS preparation.

Section 4(f) of the Department of Transportation Act of 1966 bars the expenditure of Federal funds for the construction of transportation projects that require the use of lands from any public park, recreation area, wildlife refuge, or historic site of National, State, or local significance, unless there is no feasible and prudent alternative to such use and the project includes all possible planning to minimize harm to the protected lands. The Secretary of Transportation must conduct an independent review of possible alternatives before approving any federally aided transportation project using protected lands.

The Endangered Species Act of 1973 requires that all Federal agencies consider the potential impact a proposed action may have on an endangered or threatened species or a critical habitat. Agencies must consult with the Secretary of the Interior on means to eliminate or minimize any risk to a protected species or habitat. In areas that are home to unique and endangered species, compliance with the Endangered Species Act could impose additional constraints on Federal land management agencies in issuance of rights-of-way across Federal areas.

The Clean Air Act and the Clean Water Act set national standards for air and water quality. Primary responsibility for enforcement of these standards is vested in the States. Compliance with State and Federal air and water quality standards is an express condition of Federal land management system right-of-way permits. Noncompliance could lead to revocation of the right-of-way.

The Clean Air Act Amendments of 1977 imposed strict controls on increases in the levels of certain pollutants in areas where the air quality is better than the national ambient air quality standards. These amendments divide existing clean air regions into three classes according to allowable annual increments in air pollution: Class I areas where minimal additional pollution is allowed; Class II areas where moderate amounts of new pollution are allowed; and Class III areas where pollution levels can increase to the national

standards. Some existing national park and wilderness areas, including one park and three refuge wilderness areas in Alaska, were statutorily designated as Class I areas. No d-2 lands are in this category. Certain other existing large national parks, monuments, and refuges are Class II areas and cannot be redesignated to Class III. There are two such areas in Alaska. The only new conservation units that cannot be redesignated to Class III status are new national parks and wilderness areas that are over 10,000 acres in size. The authority to redesignate the classification of clean air areas, with the exceptions noted above, is vested in State governments. Federal land managers have only an advisory role in the redesignation process.

The Coastal Zone Management Act (CZMA) provides participating States with Federal grants to develop and administer comprehensive land management programs for their coastal zones. In addition, by requiring that Federal activities in the coastal zone must “be consistent to the maximum extent possible,” with the State plan, it offers States an opportunity to influence activities on Federal lands. Federal land management agencies are subject to the consistency requirements of the CZMA. Applications for rights-of-way or other uses of Federal lands in or affecting coastal zone areas must be consistent with any approved State management program. The effect of CZMA in Alaska is unclear, because planning is incomplete.

## OPTIONS FOR CONGRESSIONAL CONSIDERATION

An array of options for congressional consideration was developed in response to the assessment request to consider possible modifications of Federal access policies (table 1). These legislative policy options present a range of approaches to the policy questions of whether and for what purposes access should be permitted across Federal lands in Alaska. The options deal only with Alaska lands.

The choice of an access policy for Alaska’s d-2 lands involves the balancing of many competing interests and values, not only access for the development of hardrock mineral resources on non-Federal lands. No single option was designed to meet the needs of all interest groups. Accordingly, a combination of several options may provide a more comprehensive approach to the access needs of non-Federal landowners to cross Federal areas to reach their lands and the potential need to construct major transportation systems across Federal areas to serve economic development or community needs.

The five options are:

### **OPTION I—THE APPLICATION OF EXISTING ACCESS POLICIES TO ALASKA ADDITIONS TO NATIONAL CONSERVATION SYSTEMS—THE STATUS QUO**

Under this option, the availability of access over Federal lands would vary depending on the land management system and the geographic area involved. Access policies for Alaska conservation units and public lands would be the same as those found in other sections of the Nation, and the protections afforded Alaska lands would be consistent with the levels provided elsewhere. Any shortcomings or uncertainties in existing laws would remain. Mineral activities requiring access through parks and wilderness areas could be discouraged in areas where alternative access was not available. Some landowners might not have adequate assurance of access and of the terms and conditions under which rights-of-way may be granted.

**Table 1.—Summary of Selected Congressional Action Options\***

Option  Components	Option 1 Adopt Existing Access Policies	Option 2 Defer Access Decision	Option 3A & B—Limited Provisions for Alaskan Access Needs		Option 4A, B, & C Alaskan Trans- portation System Access Provisions	Option 5 Restriction of Access Across National Con- servation System Lands
			A. Alaska Lands Right-of-Way	B. Boundary Shift and Land Exchanges To Exclude Access Routes		
<b>ACCESS POLICY DECISION</b>	Access through ap- plication of existing laws	Specific deferral of ac- cess questions involv- ing d-2 designations and remaining Federal lands in Alaska until a certain date, or some event in future, or in definitely	Special right-of-way provision for Alaskan lands for access through Federal lands to surrounded, adja- cent, or otherwise Isolated non-Federal lands or interests in land	Local realignment of boundaries of conservation sys- tems designations to exclude access routes Land ex- changes to provide access routes for non-Federal land- owners, with exact locations Included in d-2 designations, or by reference to maps filed later	Use of Federal d-2 lands for Alaskan transportation sys- tem needs specifi- cally accommo- dated through (a) transportation sys- tem right-of-way provisions, or (b) designated <i>corri- dors</i> , or (c) new Federal-State re- view agency for Alaskan transport tion systems	Access use of Federal d-2 lands restricted beyond existing statutory limitations. Existing private rights access to surrounded lands, and existing rights-of-way would be recognized
<b>TIMING OF ACCESS DECISION</b>	Now	Deferral—now, Access decision — later	Now	Now	Now	Now
<b>LEGISLATIVE IMPLEMEN- TATION</b>	Congress makes d-2 lands designations without any provision for nonrecreational access	Specific deferral provi- sion in d-2 lands legislation	Provision of d-2 lands legislation —or as new authority amendment of existing right-of-way provisions	Provisions of d-2 lands legislation, or new and exchange author- ity	Provision of d-2 lands legislation—new authority	Provision of d-2 lands legislation, or new amendment of existing provisions— new authority
<b>IMPLEMENTING INSTITUTIONAL ARRANGEMENT<sup>1</sup></b>	Existing Institutions	Existing Institutions	Existing Institutions	Existing Institutions	(a) & (b) Existing in- stitutions and/or (c) a new reviewing body for Alaska transportation systems.	Existing Institutions
<b>TRANSPORTA- TION SYSTEM DECISION<sup>2</sup></b>	Existing decision mechanism— Federal- State transportation planning and Federal DOT 4(f) review. Later congressional review of specific systems via program approvals and appropriations	Existing decision mechanism—transport ation systems use of Federal d-2 lands delayed until policy decision	Existing decision mechanism—this op- tion provision does not authorize rights-of- way for development of major transporta- tion systems	Existing transportation decision mechanism— local boundary shifts would leave access routes as public lands (d-1 classification) with fewer use restrictions than parks, etc., and also available for later State selection DOT 4(f) review of route not required in most cases, land exchange would put route in non-Federal owner- ship	(a) & (b) Existing deci- sion mechanisms, or (c) existing transporta- tion decisionmaking Institutions plus new review body	Existing decision mechanism. Use of Federal conservation system lands for Alaskan transportation system not permitted without congressional approval. (The restric- tion is for transporta- tion system use and would not remove ex- isting access guarantees for non- federal landowners.)

<sup>1</sup>For a complete discussion see text

<sup>2</sup>Existing institutions include. Department of the Interior—Bureau of Land Management. National Park Service. Fish and Wildlife Service; Department of Agriculture— Forest Service

<sup>3</sup>Existing agencies involved in transportation decisionmaking include. Department of Transportation—federal Highway Administration, Federal Aviation Administration, Federal Rail road Administration, Interstate Commerce Commission; U. S. Coast Guard; Department of the Army, Corps of Engineers, and the Federal Power Commission.

### **OPTION 2—DEFERRAL OF CONGRESSIONAL ACTION ON AN ACCESS POLICY**

This option calls for a specific deferral of access questions involving d-2 designations and remaining Federal lands in Alaska. This option would assure future congressional review of access decisions, would allow for specific studies now underway to be completed, for new studies to be initiated if needed, for final landownership patterns to be determined, and for State transportation planning to proceed. National interest lands would be protected while the access policy decisions were being made. The uncertainties about the availability of land for access purposes would continue, with delay or abandonment of mineral exploration and development activities in areas without alternative transportation. Executive agencies might be reluctant to grant access across Federal lands until the final congressional policy decision has been made.

### **OPTION 3—LIMITED PROVISIONS FOR ALASKAN ACCESS NEEDS**

This option has two approaches: Option 3A would provide for a special right-of-way provision for Alaska conservation systems; Option 3B would provide for the exclusion of transportation system routes from conservation system classification by making minor boundary adjustments and land exchanges.

Option 3A does not authorize approval of transportation system rights-of-way through Federal conservation systems. This approach would provide non-Federal landowners with an assurance of necessary access through Federal lands for resource development subject to regulation by the land managing agencies. It would allow access for non-Federal owners requiring passage through d-2 lands, especially those whose access needs are not now covered by existing laws. This option could compromise the protective intent of conservation systems, particularly parks and wilderness designations that strictly limit conflicting use.

Under Option 3B land exchanges and realignment of exterior boundaries of conservation system units could accommodate access needs by leaving the access routes in public land classification. Natural transportation routes and historically used access would be excluded from d-2 designations by this approach. Land exchanges could permit the use of Federal lands for necessary access routes to non-Federal areas. In some areas, realignment or exchange could conflict with the purposes of conservation system designation, and might impair the ability of the managing agencies to protect the natural values of the units. Boundary adjustments to accommodate anticipated transportation routes would have to be based on potential transport needs, and could lead to the selection of speculative or controversial routes. Possible consequences could be the selection of inadequate routes for mineral production and the failure to provide some areas with routes to meet future public needs.

### **OPTION 4—ALASKAN TRANSPORTATION SYSTEM ACCESS PROVISIONS**

Under this option, congressional authorization would be specifically provided for the development of transportation systems. Three approaches are examined: Option 4A, the enactment of a right-of-way provision for transportation systems that would be applicable to all Alaska conservation system lands; Option 4B, the reservation of specific transportation corridors through d-2 lands; and Option 4C, the establishment of a new institutional decisionmaking mechanism to review proposals for crossing conservation system lands.

Under Option 4A an Alaskan transportation system right-of-way provision would provide for approval of transportation routes in the future based on demonstrated need and specific proposals for transport systems. The Secretary of the managing department would be authorized to approve rights-of-way for major transportation systems through conser-

vation systems, which would facilitate the movement of mine products to markets, but such approval could compromise the protective purpose of conservation system designations.

Under Option 4B future routes through d-2 lands would be limited to the specific corridors designated by Congress. Other transportation routes would require approval under existing access processes. The limited data now available on future transportation needs make corridor designation difficult. This option could lead to the selection of routes that might be inadequate for future needs and to later demands for additional corridors. It could reduce the ability of the managing agency to control the harmful effects of access uses.

Under Option 4C special legislation would establish a new decisionmaking mechanism to review transportation system rights-of-way applications. The participation of interested parties (Federal and State agencies, local governments, Native Corporations, environmental groups, etc. ) in the review of transportation routes across Federal lands would provide the benefit of many views to the Secre-

tary of the managing agency when making the final access decision. This option would also assure the consideration of transportation needs in land management planning and decisionmaking.

### **OPTION 5—RESTRICTION OF ACCESS ACROSS NATIONAL CONSERVATION SYSTEM LANDS**

This option would limit nonessential access uses of conservation lands to add a further measure of protection and preservation for their natural values. No transportation systems could be built across Federal conservation systems lands without express congressional approval. The option would not impose a complete ban on crossing Federal lands to reach non-Federal holdings. Existing access rights and the needs of non-Federal landowners to reach surrounded or other lands that have no reasonably available means of access could be accommodated. Existing access rights, Wilderness Act access exceptions, and established public use rights-of-way would be recognized. The discretion of land managers to approve the use of Federal lands for access purposes would be limited.

## **ACCESS TO NON-FEDERAL MINERAL LANDS IN OTHER STATES**

The range of access options developed for this report apply to Alaska where access across Federal lands is an issue of widespread concern. The absence of access options for Federal lands in other States should not be interpreted as meaning that no problems exist outside Alaska. However, based on OTA interviews and contractor studies, it appears that there are few, if any, non-Federal minerals access problems in other States because of landownership or transportation

patterns. OTA conducted interviews in several States with representatives of the mining industry, of local governments, of environmental groups, and of other interests. These interviews disclosed no instances where mineral development on non-Federal land was prevented by the denial of access across Federal lands. Most non-Federal mineral areas outside of Alaska are adequately served by existing transportation networks.

## **UPDATE—ALASKA LANDS LEGISLATION IN THE 96TH CONGRESS**

As this report was being prepared for final publication, the Carter Administration funda-

mentally altered the context in which the Alaska Lands debate will proceed in the 96th

Congress. By Presidential action under the Antiquities Act, the management classification of **56** million acres of Federal lands was determined by the creation of 13 new national parks, 2 new national wildlife refuges, and 2 national forest monuments. An additional **40** million acres will be added to the National Wildlife Refuge System by Secretarial action under the Federal Land Policy and Management Act. These new parks, refuges, and national forest monuments will now be managed under the existing laws governing these systems. The current situation for access across these lands is similar to OTA Option 1 in this report. Thus, for about 96 million acres of public land in Alaska, the issue before Congress will be whether these lands should continue to be protected under

conservation system classifications and, not as in previous debates, whether they should be protected at all.

While Executive actions creating new national monuments and wildlife refuge withdrawals have determined the management classification of most of the lands covered by the “d-2” proposals in the 95th Congress, other land management issues remain. The task of establishing a land management framework for Federal land in Alaska is not yet complete. Many policy issues such as access, additional wilderness and wild and scenic rivers protection, subsistence hunting, wildlife management, mineral resources availability, and State and Native conveyances remain to be settled.