

Options for Congressional Consideration

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Options for Congressional Consideration

INTRODUCTION

Congress, through the legislative decisions called for by section 17(d)(2) of the Alaska Native Claims Settlement Act (ANCSA), has a unique opportunity to influence Alaska's economic development while protecting its environmental values. The unprecedented land grants under ANCSA and under the Alaska Statehood Act, which many view as the foundation of Alaska's economic future, are creating major changes in its landownership patterns.

Following the conveyance of Native and State lands, approximately 60 percent of the State will remain in Federal ownership. Congressional decisions about the management of these Federal areas could affect mineral resource development on nearby non-Federal lands. The access policies of Federal land management agencies are thus of critical concern to non-Federal landholders. This is particularly true in remote sections of Alaska where topography, landownership patterns, and the lack of an extensive surface transportation system combine to isolate many areas from potential markets for their products.

Compared with the rest of the United States, Alaska has a limited surface trans-

portation system. Most of the settlements throughout the State are connected by air. However, the development of mineral resources—with the exception of certain precious metals—requires a transportation system able to move large quantities of bulk materials to market. In most of Alaska, a surface transportation system—a railroad or highway—would be the only mode capable of transporting bulk ore.¹ Resolution of uncertainties about the availability of possible routes crossing Federal lands and about the conditions of their use could facilitate State planning and decisionmaking on the development of specific transportation systems.

Congressional designation of vast areas of Alaskan lands for conservation purposes, for example as parks and wildlife refuges, immediately places a restriction on their availability for other purposes. This includes their use for transportation routes and for access

¹For a discussion of mineral transportation requirements see OTA working paper, John W. Whitney and Dennis Bryan, "Assessment of Transportation Access Requirements for Minerals Exploration and Mine Development and Operation in Alaska," in *Analysis of Laws Governing Access Across Federal Lands: Options for Access in Alaska, Volume II, Working Papers* (OTA-M-76),

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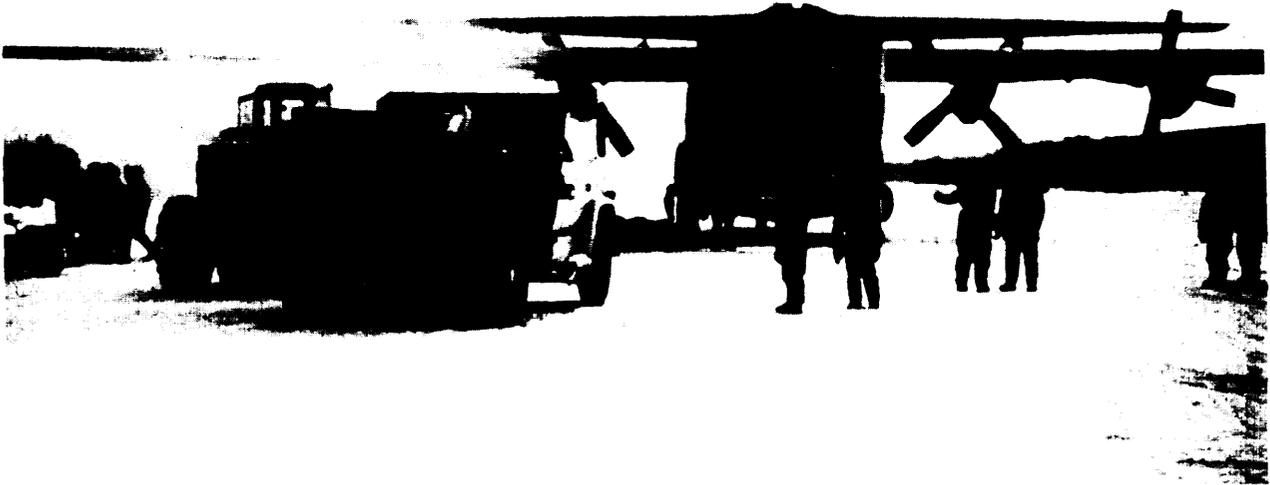


Photo Credit: The Alaska Coalition

The primary mode of transportation throughout most of Alaska is by air. Here, a Hercules air transport plane unloading heavy equipment for Trans-Alaska Pipeline construction

to non-Federal lands. Whether **or not Congress** specifically addresses future transportation demands and access needs in legislation **on the** proposed conservation areas, the d-2 decisions, either expressly **or by** implication, will have access policy aspects that could influence resource development **on** surrounding non-Federal lands.

Because of the importance of the congressional access policy decision to the development of mineral resources in Alaska, a range of possible congressional options that address the issue of the **use of** Federal lands for access have been identified. The access options, which **are** discussed in this chapter, range from the extension of the existing access policies of Federal land management systems, through special provisions for Alaskan right-of-way exceptions and Alaskan transportation system needs, to a restrictive access policy that would deny **most access uses of the** conservation system lands—the d-2 lands. (See table 5.) These options were examined using information obtained from case studies and interviews.

In addition to the access policy options discussed in this chapter, there are other alternatives that could aid access to mineral resources on non-Federal lands in Alaska. Some actions relate to Federal land management issues, such as the settlement of land selections and easement issues under ANCSA and the Alaska Statehood Act or providing assistance to those seeking access across Federal lands that are under new management systems. Other alternatives include planning and technical assistance to State and local governments and to Native Corporations for developing non-Federal natural resources and Alaskan transportation systems while balancing this development against the conservation systems' objectives of preservation and recreation.

The availability of possible transportation routes to serve non-Federal lands in Alaska will be influenced by the congressional decision about whether or not to allow surface access across Federal lands placed in conservation systems. If Congress allows access, it could be an incentive to Alaska's efforts to

Table 5—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 Transportation System Access Provisions	Option 5 Restriction of Access Across National Conservation System Lands
			A. Alaska Lands Right-of-Way	B. Boundary Shift and Land Exchanges To Exclude Access Routes		
ACCESS POLICY DECISION	Access through application of existing laws.	Specific deferral of access questions involving d-2 designations and remaining Federal lands in Alaska until a certain date, or some event in future, or indefinitely.	Special right-of-way provision for Alaskan lands for access through Federal lands to surrounded, adjacent, or otherwise isolated non-Federal lands or interests in land.	Local realignment of boundaries of conservation systems designations to exclude access routes. Land exchanges to provide access routes for non-Federal landowners, with exact locations included in d-2 designations, or by reference to maps filed later.	Use of Federal d-2 lands for Alaskan transportation system needs specifically accommodated through: (a) transportation system right-of-way provisions; or (b) designated corridors; or (c) new Federal-State review agency for Alaskan transportation 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.
TIMING OF ACCESS DECISION	Now	Deferral—now; Access decision—later.	Now	Now	Now	Now
LEGISLATIVE IMPLEMENTATION	Congress makes d-2 lands designations without any provision for nonrecreational access.	Specific deferral provision 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 authority.	Provision of d-2 lands legislation—new authority.	Provision of d-2 lands legislation, or new amendment of existing provisions—new authority.
IMPLEMENTING INSTITUTIONAL ARRANGEMENT	Existing Institutions	Existing institutions	Existing institutions	Existing institutions	a) & (b) Existing institutions and/or (c) a new reviewing body for Alaska transportation systems.	Existing institutions
TRANSPORTATION SYSTEM DECISION	Existing decision mechanism—Federal interstate transportation planning and Federal DOT 4(f) review. Later congressional review of specific systems via program approvals and appropriations.	Existing decision mechanism—transportation systems use of Federal d-2 lands delayed until policy decision.	Existing decision mechanism—this option provision does not authorize rights-of-way for development of major transportation systems.	Existing transportation decision mechanism—local boundary shifts would leave access routes as public lands (B-1 classification) with fewer use restrictions than parks, etc., and also available for later date selection. DOT (f) review of route not required in most cases; land exchange would put route in non-Federal ownership.	a) & (b) Existing decision mechanisms; or (c) existing transportation 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 restriction is for transportation system use and would not remove existing access guarantees for non-Federal landowners.)

*For a complete discussion see text

†Existing institutions include: Department of the Interior—Bureau of Land Management, National Park Service, Fish and Wildlife Service; Department of Agriculture—Forest Service

‡Existing agencies involved in transportation decisionmaking include: Department of Transportation—Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, Interstate Commerce Commission; U.S. Coast Guard, Department of the Army, Corps of Engineers, and the Federal Power Commission

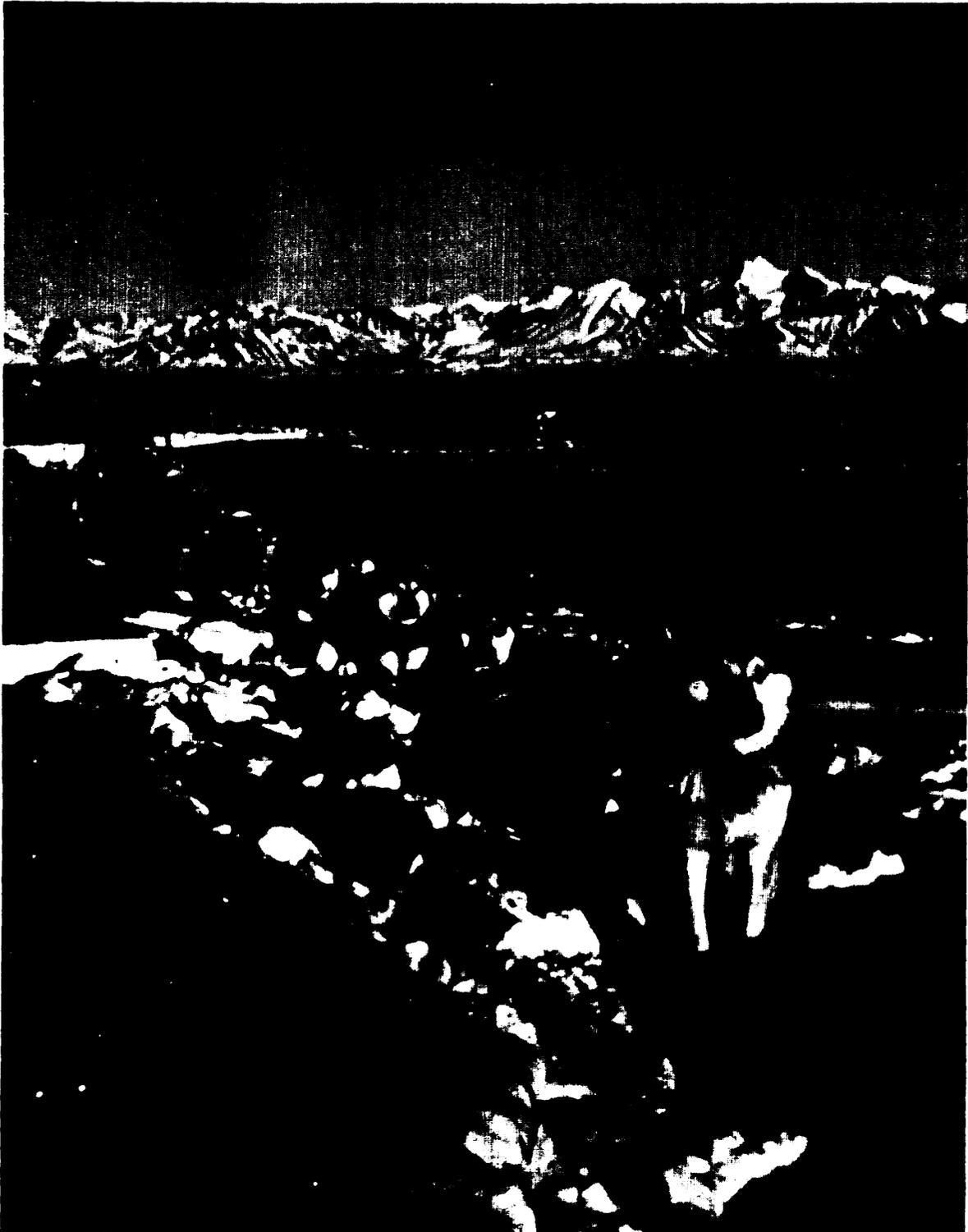


Photo Credit: The Alaska Coalition

Dog sled team—a traditional means of transportation in rural Alaska

generate a State transportation plan and priorities. Resolution of the uncertainty about the possible use of Federal d-2 lands for transportation purposes could facilitate the State's initial planning and evaluation of the transportation needs. This, in turn, could have the effect of encouraging mineral exploration and development.

Specific transportation projects must still be evaluated under established decisionmaking procedures. This evaluation process includes consideration of the economic, environmental, social, engineering, and transportation aspects of a proposed project. It also provides opportunities for the participation of State and local governments, Native Corporations, and other concerned interests. The approval of the Federal land manager is also necessary before a transportation system can be constructed over any Federal lands.

Should Congress decide to limit or prohibit the surface access use of conservation system lands, mineral exploration and development might be discouraged in those areas of

Alaska that have no existing means of transporting bulk materials. Placer mining, primarily for precious metals, however, would be expected to continue. As a possible alternative, Congress could decide to allow access in some areas and to deny it in others. It is conceivable that future technological innovations will make it possible to transport large quantities of minerals in new ways. These innovations might include dirigibles, or low-draft hover craft that would be able to move heavy loads in an arctic environment. This could allow exploration and development in those areas where surface access across Federal lands is not permitted. At present, no such innovative technologies are available.

The Federal land management laws that directly control physical and legal access across Federal lands to mineral deposits on non-Federal lands, are analyzed in chapter 4. Potential limitations are identified in the access provisions of the laws that govern the various land management systems as they might affect the emerging landownership situation in Alaska.

FEDERAL LAND MANAGEMENT SYSTEMS— EXISTING ACCESS PROVISIONS

The Federal land management systems include the public lands, which are managed by the Bureau of Land Management (BLM); and those lands which are referred to in this report as the national conservation system lands. These include: the National Park System, the National Wildlife Refuge System, the National Forest System, the National Wilderness Preservation System, and the National Wild and Scenic Rivers System.

The National Park System lacks any explicit right-of-way provision granting access through park areas to non-Federal lands. While the absence of a specific provision authorizing grants of rights-of-way across national parks does not bar such use; at the

same time, it does not provide assurance to non-Federal landholders who may need to cross park lands. This lack of any assurance of access and of the terms and conditions of rights-of-way could deter potential developers of non-Federal lands.

The Wilderness Act provides exceptions to its prohibition on roads and mechanized modes of travel through Federal wilderness areas for the holders of existing rights, and for the access needs of owners of private lands that are wholly surrounded by national forest wilderness areas. These exceptions do not extend to owners whose lands are surrounded by national park or refuge wilderness areas unless Congress expressly ex-

tends them to specific units. Even with such an extension, the exceptions for surrounded private lands and existing private access rights might not provide adequate assurance of access to isolated, but nonsurrounded, non-Federal lands. Construction of surface transportation systems through wilderness areas is prohibited without specific congressional approval. No statutory mechanism exists, however, to review the need for any such exceptions. In Alaska, where there are large areas of Federal lands proposed for wilderness status, a lack of extensive surface transportation, and topographic and engineering restrictions that limit the availability of possible access routes, express congressional approval will be required for any future surface transportation systems that cross wilderness areas.

Even after the passage of Alaska Lands legislation, uncertainty may still persist about the access use of the remaining public lands because of the wilderness study requirements of section 603 of the BLM Organic Act of 1976. All roadless areas of 5,000 acres or more, identified by the BLM as possessing wilderness characteristics, are to be classified for wilderness study as potential additions to the National Wilderness Preservation System. They must be managed so that their wilderness character is preserved until the final administrative and legislative reviews are completed. The interim management of these areas restricts any uses that might damage their wilderness value. Consequently, most surface access uses and transportation modes commonly used to move bulk minerals are prohibited. Interim restrictions on



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access across wilderness study areas could delay expansion of Alaska's surface transportation network.

The access provision of the Wild and Scenic Rivers Act distinguishes between the components of this system that are managed by the Secretary of the Interior and those that are managed by the Secretary of Agriculture. Rights-of-way across wild and scenic rivers areas that are under the jurisdiction of the Secretary of the Interior are governed by the access provisions applicable to the National Park System. Rights-of-way over components that are managed by the Secretary of Agriculture are governed by the access provisions applicable to the National Forest System.

The classification of a river as wild, scenic, or recreational is made according to certain characteristics, including its accessibility by road; wild rivers are the least accessible, scenic rivers are more accessible, and recreational rivers are the most accessible. Rivers are to be managed to preserve the values that led to their initial designation and classification. Therefore, any access use that might be detrimental to these values would be discouraged.

The remaining Federal land management systems—the public lands, the National Wildlife Refuge System, and the National Forest System—all have specific statutory authority to grant access across management areas.

TRANSPORTATION AND MINERAL RESOURCE DEVELOPMENT

Problems stemming from Alaska's limited transportation system are compounded by the lack of long-range transportation plans. Access constraints on mineral-related activities are greatest in those regions where there is no surface bulk transportation. Where some surface transportation already exists, the potential for mineral resource development could be expanded through the improvement of existing facilities to allow movement of minerals on a large scale.²

²There are, of course, many other factors that have deterred mineral resource development in Alaska and there are diverse opinions as to the likelihood of large-scale hard-rock mineral development in the future. See: Whitney, *supra*, note 1; Bradford H. Tuck, *Land Use Planning, the (D)(2) Lands, and Alaska Resources; Some Economic Considerations*, Federal-State Land Use Planning Commission for Alaska, August 1977; John V. Krutilla and Sterling Brubaker, *Alaska National Interest Land Withdrawals and their Opportunity Costs*, February 1976, reprinted in House Comm. on Interior and Insular Affairs, Subcomm. on General Oversight and Alaska Lands, *Background Information for Alaska Lands Designations*, 95th Cong., 1st sess., (Comm. Print No. 4, 1977) at 158; and Paul Engelman and Bradford Tuck with Jerry D. Kreitner and Dennis M. Dooley, *Transportation and Development of Alaska Natural Resources*, Federal-State Land Use Planning Commission for Alaska, March 1978.

Legislative designation of new additions to the national conservation systems will affect the availability of Federal lands for transportation systems. Rights-of-way across lands in conservation classifications are not available under the same conditions as rights-of-way across unreserved public lands.

Decisions about the size, costs, routes, and associated land use of major transportation systems cannot be made without appropriate governmental planning. Alaska is now in the process of assessing various proposals for meeting statewide transportation needs.

Legal, physiographic, and engineering considerations can dictate the choice of one route over another. Although proposed national conservation units may include some natural access routes, it is not presently possible to determine which routes will be needed to serve future community and resource development needs. The Federal-State Land Use Planning Commission for Alaska (FSLUPCA) was given a statutory mandate to identify transportation routes and necessary easements. It concluded that the State's economic and transportation needs were not suf-

ficiently defined to designate specific transportation corridors.³ Until the information necessary to formulate long-range planning is available, there can be little certainty about when and where future transportation facil-

ities should be built. The lack of such information will hamper decisionmaking by Congress and Federal land managers, as well as by non-Federal landowners and mineral resource developers.

ACCESS POLICY OPTIONS

Five general legislative access policy options (see table 5) were developed to present a range of approaches to the policy question of whether and for what purposes access should be permitted across Federal lands in Alaska. These access options deal only with Alaska lands.

The legislative access options are:

1. The application of existing access policies to Alaskan additions to national conservation systems.
2. A deferral of congressional action on an access policy for Alaskan conservation system lands.
3. Limited provisions for Alaskan access needs.
 - (A) An Alaska Lands right-of-way provision; and
 - (B) The exclusion of access routes from conservation system classifications by means of boundary adjustments and land exchanges.
4. Alaskan transportation system access provisions.
 - (A) An Alaskan transportation system right-of-way provision;
 - (B) The designation of specific transportation corridors to accommodate the development of the transportation system; and
 - (C) The establishment of a special commission to review and recommend

rights-of-way for transportation systems through conservation lands.

5. The restriction on the use of Alaskan conservation system lands for access.

In developing and selecting these access policy options, five common components of each option were identified. The five components are:

1. The access policy decision—whether or not to permit the use of Federal lands for access use.
2. The timing of the policy decision.
3. The legislative implementation of the policy decision.
4. The executive implementation of the legislative policy decision.
5. The relation between the access policy and how Alaskan transportation system decisions are to be made.

The central component of each option is whether or not to allow the use of Federal lands for access purposes. If allowed, access is authorized through the grant of a right-of-way or permit to cross Federal lands to reach non-Federal lands. Congress may choose to allow or to deny access, or it may adopt a combination approach which allows access in some instances and denies it in others. This could be done by imposing conditions on allowable access for a certain class of users, or purposes, or for particular geographic regions or conservation units.

³Federal-State Land Use Planning Commission for Alaska, "The D-2 Book," *Lands of National Interest in Alaska*, May 1977, at 129.

The second component is the timing of congressional action. Congress could decide now on an access policy as part of the d-2 legislation or it could pass legislation specifically deferring a decision on either the access issue alone or on the entire d-2 lands proposals. Congress could also decide not to take action on the d-2 lands proposals, an access policy, or a specific deferral of the access decision.

The third component is the selection of a legislative approach for implementing the access policy decision. There are three ways in which Congress can implement its access policy decision. The first is to take no specific legislative action on access. This would be done by making no provision in the d-2 lands legislation for access use of lands designated for conservation systems. The effect of this approach, in the absence of express legislative provisions, would be to extend by implication the existing laws and institutional mechanisms that control the access uses of designated lands. For example, the classification of some d-2 lands as wilderness would deny indefinitely most access uses in those areas by the operation of the Wilderness Act prohibitions. On the other hand, placing the same lands in a system with a broad purpose right-of-way provision would imply that access across these areas would be allowed, in the discretion of the managing agency, under existing laws.

The second legislative approach would be to enact a specific provision setting forth the conditions for the access use of Alaska lands. This could take the form either of a new separate provision of law or of an amendment to an existing law governing Federal land management systems. The specific additional access assurances or limitations would be in accordance with the basic access policy adopted by congress.

The third legislative approach would be to rely on existing laws and policies, but to increase legislative oversight to ensure that the congressional intent is carried out. Remedial legislation could be enacted if and when ex-

isting access provisions appeared to be inadequate.

The fourth component is the selection of an approach for executive implementation of the access policy decision. This entails first naming an agency or a department to carry out the legislative policy, and then adopting a decisionmaking process for implementation. [This designation of an agency and a procedure can be express or implied.] If there is no contrary legislative declaration, additions to existing national conservation systems—National Parks, Refuges, Forests, Wilderness, and Wild and Scenic Rivers Systems—are managed by the departments and agencies currently responsible for the management of each of these systems under existing laws and procedures.

Congress could also modify existing agencies and procedures or establish a new managing agency or decision process. An example would be the establishment of a joint Federal-State commission to review and coordinate the access uses of Alaskan conservation system lands. Such a joint commission would be a new executive body and its reviewing authority would be a modification of the existing decision process.

The fifth component is the relationship between the access policy and how Alaskan transportation system decisions are to be made. The need for transportation, the selection of mode and routes, and the method for financing the system are all determined under the existing decisionmaking apparatus of the Department of Transportation (DOT).⁴ Congress can continue the existing institutions and procedures, or it can modify the existing situation, for example, by adding a joint commission or advisory panel to the decision process, or by requiring congressional review and approval of transportation system proposals involving the use of d-2 lands. Congress can also expressly set a transportation

⁴See discussion of section 4(f) of the Department of Transportation Act in chapter 6 for a description of transportation decisionmaking procedure.

policy by banning the construction of surface transportation systems on conservation system lands. This ban would have the effect of restricting the choices of both the mode and the routes of potential transportation systems. Another possibility is that Congress could specifically encourage a mode or route. This could be done, for example, by including a right-of-way provision for the possible future expansion of the Alaska railroad through certain conservation system units.

There are a number of additional conditions that could be included in developing access policy options for Alaskan lands. Some of these are:

- **political-approval and review by local, State, and/or Federal bodies** could be required as a prerequisite to granting access.
- **Environmental—environmentally acceptable construction standards** could be required (both on and off Federal lands) to minimize damage to protected scenic, ecological, and wildlife areas.
- **Economic—the disclosure of financial and ownership information** could be required for right-of-way permits; transportation systems could be required to be wholly or partially financed by beneficiaries; Federal aid or direct grants could be provided for transportation projects to serve conservation systems and mineral development; loan guarantees or other financial incentives for Alaskan transportation systems could be provided.
- **Administrative—time limits** could be imposed for processing applications for access permits and rights-of-way, and agencies could be required to coordinate their review of all applications; segmented approvals of large-scale projects that cross several management systems could be limited.
- **Long-range planning—State and local governments and Native Regional and Village Corporations** could be required to submit long-range plans for access and other future resource development needs to minimize ad hoc decisionmaking on transportation systems and the proliferation of access routes.
- **National security—special access exceptions for emergencies** such as national defense needs or critical materials shortages could be provided.

Each of the access policy options is discussed below. The discussion includes the option, its modifications, its advantages and disadvantages, and the potential effects on mineral exploration and development activities. Each option was structured to present a particular approach to the access issue so that its advantages and disadvantages would become more apparent. No single option was designed to meet the needs of all interest groups. Consequently, a combination of several options may prove to be the most comprehensive approach to the dual characteristic of access—the access needs of non-Federal landowners to cross Federal areas to reach their lands and the potential broader need to construct major transportation systems across Federal areas to serve economic development and community needs.

It should be kept in mind, however, that the choice of an access policy for Alaska d-2 lands involves a balancing of many competing interests and values, not just the access needs for the development of hardrock mineral resources of non-Federal lands, which is the focus of this assessment.

OPTION I—THE APPLICATION OF EXISTING ACCESS POLICIES TO THE ALASKAN ADDITIONS TO NATIONAL CONSERVATION SYSTEMS (STATUS QUO)

ACCESS POLICY DECISION	TIMING OF ACCESS DECISION	LEGISLATIVE IMPLEMENTATION	IMPLEMENTING INSTITUTIONAL ARRANGEMENT	TRANSPORTATION SYSTEM DECISION
Access through application of existing laws.	Now	Congress makes d-2 lands designations without any provision for nonrecreational access.	Existing institutions	Existing decision mechanism—Federal-State transportation planning and Federal DOT 4(f) review. Later congressional review of specific systems via program approvals and appropriations.

Option 1, or the status quo approach, would extend the existing access policies of Federal land management systems to the conservation systems additions. Congress would designate specific areas as parks, wildlife refuges, forests, wild and scenic rivers, or wilderness areas. No express legislative access provision is needed to extend the existing land management system access policies to the new additions. Special access provisions that relate to management program, administrative, or recreational access purposes could be included without altering the basic thrust of this approach. An example of such a special provision would be an exception for the established use of snow machines or aircraft in wilderness areas for recreation, local travel, or subsistence purposes.

To implement this policy, the managing agency of each system would apply the right-of-way and access authorities, regulations, and procedures now in force. This option would continue the variations in access policies that currently exist among the different Federal land management systems.

Under Option 1, grants of access would continue to be made on a case-by-case basis, and the determination would depend on the specific circumstances of each application. Requests for the use of Federal lands for the development of transportation systems would

be evaluated under the existing decisionmaking processes. The most available Federal lands for access needs would be National Forest System and public (d-1) lands, except those in wilderness study or other limited-use classifications. Right-of-way approval is left to the discretion of the managing agency. The use of wilderness areas for transportation routes would require congressional approval in most cases. The use of park, refuge, or wild and scenic rivers systems lands for access must be consistent with the purposes of the system. The grant of access is left to the discretion of the agency. Furthermore, the use of park and refuge lands would be subject to a 4(f) review for DOT-funded projects.⁵ Planning, approval, and construction of transportation systems would continue to be the responsibility of existing State and Federal transportation agencies and departments.

The extension of existing access policies to Alaskan conservation units does not mean that those policies are fixed in their present

⁵See discussion of section 4(f) of the Department of Transportation Act in chapter 6. DOT 4(f) review is an independent review to determine whether there is a prudent and feasible alternative to a proposed use of park, refuge, or recreation lands, or a historic site for a transportation project. If not, then DOT funds can only be expended if every effort has been made to minimize damage.

form. Current laws could be modified in response to specific access problems, to new information generated from the ongoing Alaskan Mineral Resources Assessment Program (AMRAP), to wilderness and transportation planning studies, or to changes in congressional or public sentiment. Congress may enact legislation to review or to change the access provisions of Federal land management laws. Moreover, under the broad discretionary management authority vested in the Secretary of the Interior and the Secretary of Agriculture, some access policies and regulations may be changed administratively in response to specific problems.

Under this option, the shortcomings and uncertainties of the access provisions in the existing laws would continue. Consequently, mineral exploration and development activities on non-Federal lands in isolated areas, where it might be necessary to cross park or wilderness lands, might be deferred or abandoned. By settling the question of the management system classification for most of Alaska's remaining lands, the d-2 land designations would reduce some of the uncertainties about access.

Transportation system planning and development would continue at its current pace

under this option. There would also be improvements in existing transportation systems. Ad hoc decisions to allow the access use of Federal lands, such as the Trans-Alaska Oil Pipeline authorization, could occur in response to specific needs.

The effects of implementing Option 1 will vary according to the area and system involved. In some areas (such as nonsurrounded isolated lands in some wilderness areas and parks) access uses may be denied without any express congressional action. In other areas, access to non-Federal mineral lands will be unaffected or at least reasonably available, as long as the existing transportation systems can be improved, as necessary, for mineral resource development,⁶ and there are no blockages by tracts of Federal lands. As roadless BLM-public land areas are identified and placed in the protected wilderness review category, the availability of access across d-1 lands could become a future source of uncertainty for resource developers.

⁶Recognized rights-of-way, established by public use as roads or trails before the 1976 repeal of 43 U.S.C. 932, are existing access rights and thus should be unaffected by d-2 land designations.

OPTION 2—THE DEFERRAL OF CONGRESSIONAL CONSIDERATION OF AN ACCESS POLICY FOR ALASKAN CONSERVATION SYSTEM LANDS

ACCESS POLICY DECISION	TIMING OF ACCESS DECISION	LEGISLATIVE IMPLEMENTATION	IMPLEMENTING INSTITUTIONAL ARRANGEMENT	TRANSPORTATION SYSTEM DECISION
Specific deferral of access policy involving d-2 designations and remaining Federal lands in Alaska until a certain date, or some event in future, or indefinitely.	Deferral-now; Access decision--later.	Specific deferral provision in d-2 legislation.	Existing institutions.	Existing decision mechanism--transportation systems use of Federal d-2 lands delayed until policy decision.

Under Option 2, Congress would specifically defer the question of the access use of Alaskan conservation system lands. There are several means of deferral. In enacting the final d-2 designations, Congress could include a provision specifically deferring the adoption of an access and right-of-way policy for Alaskan conservation system units for future consideration. This delay could provide time for new and ongoing studies to be completed and for specific Alaskan transportation system project proposals to be prepared. (Alternatively, Congress could delay action on the d-2 proposals and extend the legislative "deadline" imposed by the expiration of d-2 withdrawals on December 18, 1978.) In addition, Congress may specify the procedure to be used in its future considerations of the access issue. In the interim, existing access policies could be applied to the d-2 additions to the conservation units, or alternatively, the deferral could be combined with a moratorium on agency approval of any nonessential access use of Alaska National Interest Lands.

If no moratorium on nonessential access uses is imposed, Option 2 is similar to Option 1 in that the access policies of existing land management systems are applied to Alaskan conservation system additions. However, by deferring the decision on the final access terms and conditions, Option 2 continues the period of uncertainty about access policies of some Federal lands. This uncertainty could discourage the expansion of mineral exploration and development in affected regions. This option also allows time for specific studies to be completed (such as AMRAP and wilderness reviews), for final Native and State landownership patterns to be determined, and for State transportation planning to proceed.

The advantage of this option is that it would assure future congressional review of the access issue and thus would provide an opportunity for the consideration of additional detailed information and for the emergence of clearly defined access needs. The time for such a reconsideration could be set at some future date, such as in 2 or 10 years;

or in a specific year, such as 1990. It could be based on some future event, such as the completion of ongoing and proposed studies dealing with Alaskan resources and transportation issues; completion of the AMRAP surveys; the final conveyance of the State and Native land selections; the completion of State or regional transportation plans; or the completion of the approved management plans for the new units added to conservation systems.

As part of the deferral, Congress could request new studies and recommendations about access policies from the land management agencies, from the State, or from a commission specifically established to deal with access questions in Alaska. The studies could include an examination and report on needs, on routes, on possible system modes, and on financing arrangements. The continuation of FSLUPCA or the establishment of a special administrative task force to conduct the studies could provide opportunities for the participation of interested groups.

Under Option 2, existing land management agencies would be responsible for both the interim policy implementation and for the management of the designated additions. If a special commission or a task force is established, it would operate in conjunction with existing State and Federal institutions responsible for land management and transportation system decisions.

Congress could also include in this option the institutional mechanisms under which future legislative review would be conducted. Two examples of such mechanisms are the "legislative deadline" for action on the d-Z land withdrawals in ANCSA and the review mechanisms in the Trans-Alaska Pipeline Authorization Act and the Alaska Natural Gas Transportation Act.⁷

The chief advantage of this option is that deferring consideration of the access issues associated with the d-2 land additions provides more time for resolving a number of the

⁷See discussion of these Acts in chapter 5.

uncertainties that have troubled the debates over Alaska's future. These uncertainties arise from a lack of information about such factors as final landownership patterns, mineral resources, and transportation needs and routes, as well as from a lack of a clear commitment, either governmental or private, to the economic development of Alaska's hard-rock mineral resources in the near term (pre-1990). The potential active mining operations have not as yet been identified, and consequently, the associated transportation and other needs also have not as yet been determined. Additional time could permit a more specific legislative response. In the interim, national resource lands would be protected, and the management classifications of approximately half of the Federal land in Alaska would be settled. Even though d-2 land designations will answer the question concerning which of the land management systems will control certain areas of Federal land in Alaska, there will still be uncertainties over Federal land management policies.

Management plans must be prepared for the d-Z conservation system additions. These plans might include proposed facilities that could be coordinated with the transportation needs of surrounding regions. Areas with special environmental, wildlife habitat, archeological, and historic values could be identified so that adequate measures to protect these areas could be incorporated into the access policy for each management unit.

It is probable that, under section 603 of the BLM Organic Act, large areas of wilderness on the remaining d-1 public lands will be inventoried and studied for inclusion in the National Wilderness Preservation System. Interim protective management of these lands will limit their availability for access purposes.

There is very little detailed information about the mineral resources potential of many areas of Alaska on which to base transportation planning. It is now anticipated that AMRAP surveys will not be completed until after 1990. Private mineral exploration ef-

forts, to date, have been substantial, but uncertainty remains about which areas, if any, will be developed. Alaska has established a Department of Transportation and is working toward developing a State transportation plan and a set of priorities. Deferral would allow time for both State and private efforts to proceed. This would improve the effectiveness of the information on which the final decision is based.

If extensive park and wilderness designations are made, the deferral of a final access policy decision for Alaska lands could provide the mechanism under which the adequacy of existing access policies could be evaluated and specific needs to cross these lands could be addressed. In the meantime, the lands would be protectively managed and the existing access policies would be continued.

Option 2 also has several disadvantages. One of these is caused by the continued uncertainty about whether and under what conditions Federal conservation systems lands can be crossed to reach non-Federal lands, or can be used for transportation systems. The continued uncertainty about the availability of Federal lands will delay the commitment of resources for the planning and evaluation of proposed transportation systems that would require the use of Federal lands.

Many of the ongoing and projected studies previously mentioned could proceed independently of any access decision deferral. Consequently, the information base will continue to expand. But even after completion of these studies the amount of additional information that might have an influence on the access policy decision may not be substantially increased over what is presently known. For example, AMRAP surveys are, at best, only superficial inventories because their expenditures and focus are not sufficient to ascertain the exact economic mineral potential of an area or its likelihood of development.

Uncertainty about the availability of future transportation routes could deter the expan-

sion of some mineral exploration and development in those areas where no alternative transport system has been proposed. Even if during the period of deferral no moratorium were to be placed on access uses, many such uses would be limited because an agency might be reluctant to approve any nonessential rights-of-way or easements for transportation systems, which might be contrary to an eventual congressional policy.

Another means of delaying an access policy decision is to defer passage of Alaska Lands legislation. (As discussed previously, an access policy is inherent in the d-Z lands designations.) However, in the judgment of those familiar with the mining industry, continued uncertainty about the access policy

and management classification of adjacent Federal lands would discourage mine planning and add to the long leadtimes involved in planning, developing, and constructing large mines (as long as 10 to 20 years according to industry sources).⁸

This view was confirmed during interviews conducted by Dr. F. J. Wobber, OTA project director, in January 1977. Meetings were held with the staff of the College of Mineral Industries, and Minerals Industry Research Laboratory, University of Alaska, with Dr. C. Hawley, Alaska Miners Association; and with others familiar with mining. Additionally, interviews conducted in Arizona, Colorado, and Wyoming in May 1977, suggested that similar views were widely held by mining groups outside of Alaska. A list of persons and groups interviewed during the course of this assessment is included in appendix C.

OPTION 3—LIMITED PROVISIONS FOR ALASKAN ACCESS NEEDS

Congress could provide some relief from the anticipated effects of the application to Alaska lands of the existing access and right-of-way policies of Federal land management systems. This would ease the impact on those non-Federal landholders who could be affected by the establishment of large areas of protectively managed Federal lands. Two approaches are considered here: The first, Op-

tion 3A, provides for a special right-of-way provision for Alaska natural resource lands that would be applicable to all Federal conservation systems in Alaska; and the second, Option 3B, provides for the exclusion of transportation system routes from conservation systems classification by making minor boundary adjustments and land exchanges.

OPTION 3A—ALASKA LANDS RIGHT- OF- WAY PROVISION

ACCESS POLICY DECISION	TIMING OF ACCESS DECISION	LEGISLATIVE IMPLEMENTATION	IMPLEMENTING INSTITUTIONAL ARRANGEMENT
Special right-of-way provision for Alaskan lands for access through Federal lands to surrounded, adjacent, or otherwise isolated non-Federal lands or interests in land.	Now	Provision of d-Z lands legislation—or as new authority or amendment of existing right-of-way provisions.	Existing institutions tion does not authorize rights-of-way for development of major transportation systems.

Option 3A provides for a special right-of-way authority that would modify the existing access policies as they apply to Alaska, thus giving a legal assurance of access to non-Federal landowners who might need to cross conservation system lands. A major purpose of this option is to provide land management agencies with the clear authority to grant rights-of-way across Federal lands to reach mineral resources on non-Federal lands. This provision would partially address the shortcomings identified in the access authorities of certain systems (such as parks, wilderness, and some wild and scenic river components) and with those systems (such as refuges and national forests) that have an adequate, but discretionary, right-of-way authority, which requires the satisfaction of certain standards of compatibility.

This special right-of-way authority would assist those landowners requiring access across Federal lands to non-Federal lands. It would remedy the shortcomings of some existing right-of-way provisions, such as the lack of any clear statutory permission to grant rights-of-way over National Park System lands for access to non-Federal lands. This option also addresses those instances where Federal landownership patterns, topography, transportation, and other local site-specific circumstances might combine to isolate non-Federal lands. If these lands are not “wholly surrounded” by a single Federal system, or subject to existing rights, the access guarantees written into the Wilderness Act may not apply because the situations are not within the exact letter of the law. In such circumstances, this special right-of-way provision could be invoked to permit the necessary access.

As part of the implementation of the Native claims settlement and statehood land grants, this special right-of-way provision would ensure that there would be adequate access to non-Federal lands and to the transportation routes needed for their development. This provision would allow access through adjacent Federal lands to the owners of lands that abut on several Federal land systems, but

which are not surrounded by any single one of them. The Federal land manager would be able to require specific terms and conditions to protect Federal land values. The implementation of this provision should be carried out in the spirit of the land grants. In the same spirit, the provision would allow for the waiver of right-of-way rental payments, for reciprocal access agreements, and for the use of program facilities for access, such as Federal agency docks, roads, and airstrips.

The unprecedented Alaska Native and State land grants were made by Congress with the intent that the future development of the resources of these lands would form the basis for the economic independence of the State and of the Native Corporations. To convey these lands without reasonable assurance of the continued ability to reach and develop the resource potential would conflict with the promise of the original grants.

Both the State of Alaska and the Native Corporations have reasonable and understandable demands that the management of the remaining Federal lands in the State not constrain development activities on non-Federal lands. At the same time, other groups contend that activities on non-Federal lands should not be allowed to threaten the present and future value of Alaska’s wildlife, primitive wilderness, and other natural resources, which would be preserved and protected under proposed d-2 legislation. Congress is faced with balancing these potentially conflicting demands.

Option 3A is an example of an approach that is intended to balance the demands for development and conservation. This could be accomplished as follows:

- Through a right-of-way provision, exclusively applicable to Alaska, that would ensure adequate access to non-Federal lands isolated by Federal holdings, topography, or transportation system patterns; and
- By requiring that any access grants would ensure that the natural resources,

esthetic, and other values of the Federal lands would be protected.

In balancing the conflicting interests, Congress might choose to limit this access provision by imposing various other conditions, such as:

- Limiting the application of the provision either to certain systems or to geographical areas, e.g., to refuges, to forests, to nonwilderness areas, or to specific units or regions;
- Limiting the use of the special access provision, e.g., only to State and/or Native Corporations, or only to owners of surrounded and adjacent lands, or only to owners of all isolated lands (lands wholly surrounded by Federal lands or constrained by other legal, topographical, or transportation-imposed conditions); or
- Limiting the purposes of access, e.g., for public access use, for the development of certain resources, or for the development and requirements of a transportation system.

For the purposes of discussion, the following right-of-way provision was selected as an example of this type of approach. Legislation designating additions to conservation systems in Alaska would include a provision that authorizes the Secretary of the Interior or the Secretary of Agriculture to grant rights-of-way to owners of surrounded or otherwise isolated non-Federal lands where access is not otherwise reasonably available; or to the holders of valid resource development rights for such lands. The factors to be considered in an agency's determination of whether this provision can be applied include, but are not limited to: local landownership patterns; the purposes of the management systems involved; geography; the direction of and the distances from the closest adequate transportation network; topography, seasonal constraints, transportation, and population characteristics of the region; the purpose of the right-of-way; and whether alternative means

of access are available under the circumstances.

If, for example, a Native Corporation, or its assignee, seeks access across Federal lands, and there are alternative routes over State or Native lands, it would be proper under this option to inquire whether any effort was made to obtain the right to cross these other lands. The environmental impacts of the decision would be evaluated, and the applicant would bear the costs related both to construction and to environmental protection. The requirement for payment of a fair rental value for the right-of-way might be waived if the public interest is served.

This provision, as a part of the d-2 lands legislation, would apply to conservation system lands (national parks, refuges, forests, wilderness, and wild and scenic rivers systems). Rights-of-way across the remaining public lands would be evaluated under the BLM Organic Act, or dealt with in separate legislation. Access would be available to reach isolated lands or to reach the nearest reasonable transportation network. In considering reasonable alternatives, rights-of-way in common could be required. The identification of potential access needs would be included in the management plan for the units in each of the land management systems. The existing Federal land management agencies would implement the provision. Applications for a right-of-way would be filed with the agency managing the unit to be crossed. Where multiple units were involved, the applicant would have to obtain a right-of-way for each. However, departmental regulations could provide for coordinated review of applications involving more than one management agency.

Applications and decisions on the availability of conservation system lands for the development of major transportation systems would not be covered by this special right-of-way provision. Approval for the construction of transportation systems across Federal lands either for use by the general public or for regional mineral development, would be

made under existing State and Federal laws. Routes through wilderness areas would require specific congressional exemption. This option provides non-Federal landowners with an assurance of necessary access through

Federal lands. It should be interpreted broadly to assure Alaska landholders of reasonable access to their non-Federal lands for resource development.

**OPTION 3B—THE EXCLUSION OF ACCESS ROUTES FROM
FEDERAL CONSERVATION SYSTEMS BY MEANS OF BOUNDARY
ADJUSTMENTS AND LAND EXCHANGES**

ACCESS POLICY DECISION	TIMING OF ACCESS DECISION	LEGISLATIVE IMPLEMENTATION	IMPLEMENTING INSTITUTIONAL ARRANGEMENT	TRANSPORTATION SYSTEM DECISION
Local realignment of conservation systems boundaries to exclude access routes. Land exchanges to provide access routes for non-Federal landowners, with exact locations included in d-2 designations, or by reference to maps filed later.	Now	Provisions of d-2 legislation; or new land exchange authority.	Existing institutions	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 ownership.

Another approach to dealing with access is to exclude those lands that encompass natural, historic, or proposed access routes from Federal conservation systems. There are two primary means of accomplishing this. The first approach is to adjust the boundaries of particular conservation units so that the route is left out of the restrictive classification and is continued in public land status. This would make the route available for State selection or for application for a transportation system right-of-way under existing laws. The second approach is to allow non-Federal landowners to acquire the necessary access routes from the Federal Government by exchanging some of their lands for Federal lands. This would place access routes under non-Federal control. Since both Native Corpo-

rations and the State have existing rights to select Federal lands, a provision allowing the exchange of selected lands for necessary access routes to serve non-Federal lands would be one reasonable mechanism of conveyance.

The access route exclusion would be accomplished by specifically designating routes in the d-2 lands legislation. The excluded routes would be identified by specific legal descriptions contained in the legislation or incorporated by reference to the final conservation system unit maps that would be compiled by the departments involved and filed with Congress within a reasonable period of time subsequent to the legislation. Under the proposals currently before Congress, Federal land management departments would file



Photo Credit: The Alaska Coalition

The Kobuk Sand Dunes north of the Arctic Circle, an unusual and fragile Arctic ecosystem proposed for preservation as part of the National Park System

maps and legal descriptions of final boundaries after the State and Native conveyances are completed.

The implementation of the option to exclude access routes from conservation systems would be part of the general responsibilities of existing agencies under ANCSA and the Federal land management laws. The State, Natives, and other interested parties would have an opportunity to comment on proposed exclusions before the final boundaries were submitted to Congress. The final maps and reports would be subject to congressional disapproval. Transportation system decisions involving the excluded routes would be made under existing laws, and applications for rights-of-way over lands that are not excluded would be evaluated under existing laws. The provision would set forth

the express criteria and the specific findings of fact that would be required to support each boundary adjustment.

These findings could include that:

1. The area to be excluded is a natural, historic, or proposed access route (should a proposed transportation system not be constructed within a certain number of years, the land would revert to the original land conservation system);
2. No other route is reasonably available (reasonableness would be determined by considering such factors as those described in the option for the Alaska Lands right-of-way, Option 3A);
3. The proposed exclusion and its proposed uses do not threaten the protected values of the conservation unit involved;

4. Adequate provisions exist to protect environmental values and conservation units from the detrimental effects of transportation system development; and
5. The national interest would be served by the exclusion.

There is an inherent conflict in this approach. Some areas that contain natural access routes also possess considerable scenic, esthetic, wildlife, historic, and archeologic values that should be preserved. But this same land may also be the most reasonable location for a future surface transport route. In such a case, because of the land's unique value, the route would not meet the proposed test for administrative exclusion. For example, in Alaska, the proposed Kobuk Valley National Monument, Gates of the Arctic Park, and Selawik Wildlife Refuge contain major conservation values, yet they abut on or are crossed by the Kobuk River and other natural access routes. Excluding these access routes could weaken the degree of protection of the remaining lands; therefore any exclusion of a transportation corridor in these areas would require express congressional action.

Another complicating factor in the evaluation of particular routes is the uncertain availability of the remaining public lands. Under section 603 of the BLM Organic Act, all roadless areas of 5,000 acres or more that are identified in the inventory of public lands are to be placed in a wilderness study classification, which would be managed to preserve those values, pending administrative and legislative review of their inclusion in the National Wilderness Preservation System. Wilderness review and potential wilderness designation may restrict the use of these lands in the future. Thus, their availability as access routes is not guaranteed. The exclusion of access routes to maintain their public land status would not absolutely guarantee their availability. But, a prior congressional exclusion would be a factor to consider during any future wilderness review.

Boundary adjustments could accommodate both Alaska's transportation needs and the

establishment of new conservation system units, by drawing the boundary lines for conservation systems, such as parks and refuges, so that natural, historic, and proposed transportation corridors (key mountain passes and river valleys) would be excluded. This exclusion leaves these routes classified as public lands. Such classification reduces the review and authorizations required for using these lands for transportation systems, if a demand should arise for a specific route. Proposed transportation projects on Federal lands that are classified as parks or refuges would require a DOT 4(f) review by the Secretary of Transportation.

At present, the problem with a boundary adjustment alternative is that the locations of many future transportation routes are speculative and controversial. This is because the needs and the timing of Alaska's resource development are not yet clearly defined and future transportation plans and priorities have not been adopted. There is currently no statewide consensus on the goals and priorities of expanded surface transportation. Many Native groups would oppose the development of a surface transport network because of the possibility of increased pressures on subsistence resources and rural lifestyles. However, some of these same groups may eventually need access to develop the resources on Native-owned lands.

Another method of excluding access routes from conservation classification is to authorize land exchanges in order to provide access corridors to surrounded or isolated landholders. If mineral-bearing lands were involved, a simple exchange might not be adequate because some of the lands that might be exchanged were selected specifically for their resource potential. If lands of similar value were exchanged for an access corridor the non-Federal landowner could increase the land's mineral development potential.

With the exception of large-scale land exchanges by the State, the exchange provision would probably leave most problems associated with access across Federal lands for

regional transportation systems unresolved. In regions, such as northwest Alaska, a regional surface transportation system with its supporting feeder routes is likely to cross multiple land management systems and be tens, if not hundreds, of miles long. Exchanges of such magnitude, as a means of securing a needed transportation corridor, would probably be both ineffective and unreasonably complicated. This approach, however, does offer some relief for local access problems, and might facilitate mineral exploration and development of non-Federal lands in some areas.

Non-Federal landowners seeking to exchange selected lands would request such an exchange from the Secretary of the Interior (in the case of public lands, refuges, and parks) and from the Secretary of Agriculture (for national forests). Approvals would be required to be supported by findings such as the following:

1. The non-Federal lands had been selected and approved or conveyed under either the Alaska Statehood Act or ANCSA;
2. The State or Native owner requests the exchange of lands to provide access routes to other non-Federal lands;

- 3* The lands to be exchanged are approximately equal in value; if not, a payment of the difference in cash may be required or waived at the discretion of the Secretary;
4. The area to be exchanged is a natural, historic, or projected transportation route to non-Federal lands;
5. No other route is reasonably available;
6. The proposed exchange poses no threat to the protected values of any conservation unit;
7. Adequate measures exist to protect environmental values and conservation units from the effects of access use; and
8. The national interest would be better served by the exchange.

The national interest includes the implementation of policies for the development of the lands granted to the State and to the Natives. These policies are reflected in the State and Native land grants which are to serve as a basis for the economic independence of the State and of the Native Corporations.

OPTION 4—ALASKAN TRANSPORTATION SYSTEM ACCESS PROVISIONS

ACCESS POLICY DECISION	TIMING OF ACCESS DECISION	LEGISLATIVE IMPLEMENTATION	IMPLEMENTING INSTITUTIONAL ARRANGEMENT	TRANSPORTATION SYSTEM DECISION
Use of Federal conservation lands for Alaskan transportation system needs specifically appropriated through: (a) transportation system right-of-way provisions; or (b) designated corridors; or (c) non-Federal State review agency for Alaskan transportation systems.	Now	Provision of a-2 lands legislation—new authority.	(a) & (b) Existing institutions; or (c) a new reviewing body for Alaskan transportation systems.	(a) & (b) Existing decision mechanisms; or (c) existing transportation decisionmaking institutions plus new review body.

Under Option 4, congressional authorization is specifically provided for the use of conservation system lands where needed for the development of statewide or regional surface transportation systems. An access provision for Alaskan transportation systems would minimize some of the problems associated with traversing lands managed by different agencies under several land management systems and access policies. This would be done by establishing a single standard for the approval of transportation system rights-of-way for all conservation system lands.

Congress might choose to provide for the use of Alaska National Interest Lands so that transportation network systems can be developed to serve the economic needs of non-Federal interests in Alaska. Several approaches are examined here: first, the enactment of a right-of-way provision for an Alaskan transportation system that would be applicable to all Alaska conservation system lands; second, the reservation of specific transportation corridors through d-2 lands; and third, the establishment of a new institutional mechanism for decisionmaking on proposals for crossing conservation system lands.

OPTION 4A—AN ALASKAN TRANSPORTATION SYSTEM RIGHT-OF-WAY PROVISION

This option would enact a single transportation system right-of-way provision that would be applicable to all Alaskan conservation system units including those classified as wilderness. This provision would authorize the Secretary of the Interior (for park and refuge lands) and the Secretary of Agriculture (for forest system lands) to grant rights-of-way for transportation system purposes over lands in the national conservation systems. Specific conditions would require a finding that no other route is reasonably available, and an assurance that appropriate precautions will be taken to protect the environmental, wildlife, and historic values of the lands. These conditions would have to be sat-

isfied before any right-of-way could be approved. Payment of the fair market value for the right-of-way as well as for the administrative costs of reviewing the application and monitoring construction and use of the right-of-way would be required. Where appropriate, the requirements to pay rental and costs could be waived in the public interest. Transportation system rights-of-way would be available to State and local governments, to Native Corporations, and to private applicants.

The Secretaries of the Interior and of Agriculture would be responsible for implementing this policy through the Federal land management agencies. In addition to the approval of a right-of-way, each proposed transportation system project would be independently evaluated by appropriate Federal, State, and local agencies. Opportunities would continue for public participation during the planning and review processes as provided by existing law. The Secretary of Transportation would conduct an independent review of federally aided transportation projects that cross parks, refuges, or other protected lands (both State and Federal). This right-of-way provision in no way diminishes the independent responsibilities of the Secretary of Transportation for the preservation of parks, refuges, and historic sites, under section 4(f) of the DOT Act.

As a further condition of this option, approval of a right-of-way could be made dependent on the completion of a comprehensive State or regional transportation plan. This option makes Federal conservation system lands available as needed under a “floating” or “blanket” easement right-of-way provision. The Federal lands involved would remain within the designated land management systems in contrast to approaches under Option 3B that would exclude access routes from conservation systems classification.

By providing a congressional authorization for transportation system rights-of-way, specific routes and modes can be identified and approved as actual needs arise. This option

permits State, Native, and private interests to plan for transportation and, where economic conditions permit, for resource development. Existing review procedures in the Departments of Agriculture, Interior, and Transportation, and other agencies for transportation system needs, routes, modes, and rate regulations would be continued. Since federally aided transportation projects are expected to be a major component of any Alaskan resource development, Congress would continue oversight and project authorization approval, as well as approval over funds, expenditures, and appropriations.

OPTION 4B—THE DESIGNATION OF TRANSPORTATION CORRIDORS THROUGH ALASKAN CONSERVATION SYSTEM LANDS

The second approach would be to designate specific easements or corridors through Federal conservation lands and to permit the Secretaries of Agriculture and of the Interior to authorize the development of transportation systems only within these corridors. Approval of rights-of-way over other conservation unit areas with no designated corridors would be granted only under the standards in existing laws. This approach differs from the boundary adjustment of Option 3B in that a corridor remains part of the system and would include areas where the simple realignment of a boundary would be insufficient to exclude an access route. Instead of making specific reservations in d-2 legislation, the final designation of corridors could be left open for specific legal description in the process of preparing management plans and maps of the final boundaries. There would be opportunities for participation and review by State, local, Native, conservation, mineral, and other interests. A reasonable period of time would be allotted for the preparation and review of corridor descriptions, maps, and management plans. They would be incorporated by reference in the d-2 lands legislation.

Implementation of this option would be by existing land management agencies. Applications for use of the corridor would be made to the Secretary of the department having land management jurisdiction over the proposed route. Decisions about requirements, modes, and financing would be made under existing transportation laws, but the allowable routes through Federal lands would be pre-designated. If any variation of the route from the designated corridor were needed, the approval of the variation would be made under existing law. Use of the corridor would be available to State, Native, and private applicants who demonstrate that they have a need for constructing a transportation system and that an alternative route that does not use conservation system lands is unavailable. Independent 4(f) review by the Secretary of Transportation would be required for federally aided transportation system projects that use corridors through State or Federal park or refuge lands. The adoption of all practicable measures to minimize environmental damage from the construction and operation of the transportation system would be required as a condition of right-of-way approval.

Specific fixed transportation easements (public need corridors) through d-2 lands that encompass historic, natural, or projected access routes to non-Federal areas would limit access uses to selected corridors. These corridor lands would be included in the conservation systems, but would be made subject to a right-of-way or easement for existing or future transportation uses. The specific corridors could be defined in the legislation or included by reference by filing maps and reports within a reasonable time period after passage.

One problem with the designated or fixed corridor approach is that designated corridors might not be adequate for future mineral transportation needs because of the limited information currently available about the locations of future transport routes and the timing of resource and transportation devel-

opment. This could give rise to demands for additional access routes over Federal lands.

Under Option 4B, existing decisionmaking mechanisms for specific transportation projects would be utilized and existing authorities for land management systems would not be altered. These would remain in effect for rights-of-way for feeder lines and for transportation systems outside of the fixed corridors. (For example, under the fixed-corridor provision, a railroad might be constructed in a predesignated corridor, but a right-of-way for a feeder road from a mine of an adjoining Native Corporation to an ore-loading facility on that railroad would be granted under existing access authority.)

OPTION 4C—A NEW INSTITUTIONAL MECHANISM FOR THE REVIEW OF RIGHTS-OF-WAY FOR ALASKAN TRANSPORTATION SYSTEMS

Under this approach, Congress would establish a new decisionmaking mechanism and a new authorization for rights-of-way for major Alaskan transportation systems. Major transportation systems are those systems that would have a substantial impact on environmental values and would be incompatible with the purposes of any national conservation system units to be crossed. The responsibility for this review and recommendation could be delegated to existing agencies, to the State, or to a joint commission. The decision-making process would include consultation and coordination between the primary land management agency and the new review organization. Final approval for rights-of-way would rest with the Secretary of the department involved, with the President, or with Congress. This new mechanism would include both a new right-of-way authorization and implementation provisions.

For the purposes of evaluation and comparison with other options, a joint Federal-State commission was selected as illustrative of the new decisionmaking mechanism. This

commission would have as part of its institutional mandate the responsibility for reviewing and recommending proposals for major Alaskan transportation systems. The commission would review applications for rights-of-way across Alaskan conservation system lands for major transportation systems. The Secretary of the Interior (for national park and refuge units) and the Secretary of Agriculture (for national forest units) would be authorized to grant final approval of the rights-of-way.

Approval of the rights-of-way would only be issued after the application had been favorably reviewed and recommended by the new Federal-State commission. The commission would conduct reviews as part of its overall institutional responsibilities, which could also include land management and transportation planning. As part of its planning responsibility, the commission would identify those areas where major transportation systems would have to cross conservation units or other Federal land.

The composition of the commission would include a broad representation of interests: Federal and State governments, officials of land management and transportation agencies, and private and Native groups. After a public hearing, or other similar opportunity for participation by interested parties, the commission's recommendations together with studies and dissenting views would be forwarded to the appropriate Secretary, who would then make a final decision.

Representatives of the affected Federal land management agency would participate during the commission review. In making a final decision, the Secretary would have the benefit of diverse views from competing interests and could give attention to the managing agency's recommendations in balancing any conflicting demands. The final decision to approve transportation system rights-of-way would remain with the Secretary of the managing department or with the State and private owners for jointly managed non-Federal lands.

The applications for major transportation system rights-of-way would be filed with the appropriate Secretaries and forwarded for review to the joint commission. The management of conservation system lands and the final approval of the right-of-way would rest with the Secretary who has jurisdiction over the unit crossed. The requirements for the preparation of environmental impact statements and other reports mandated by existing laws would continue. However, by inter-agency agreement, the joint commission could participate in the studies.

The final approval of specific projects, including decisions about routes and modes, would still be made by existing Federal and State transportation agencies. The modification of the transportation system decision-making process would not alter existing requirements for an independent 4(f) review before federally aided transportation projects using State or Federal park or refuge lands may be approved by the Secretary of Transportation.

There is a potential problem with delegating part of the responsibility for the review of transportation system decisions involving Federal lands in Alaska to a commission. This split responsibility might undermine the authority of the Federal land manager to control the adverse environmental and other effects that could result from using Federal conservation system lands for access and thus defeat the legislative purpose of protecting these lands,

Like Options 4B and 4A, Option 4C sets forth a policy choice for authorizing the approval of transportation system rights-of-way across conservation units. The availability of specific routes would, however, depend on their identification during the planning process. The approval of actual requests for transportation rights-of-way for specific transportation projects could then follow. This option, however, provides a means of assuring that the future transportation needs of the State and of Native Corporations are accommodated in the management of the land added to conservation systems.

OPTION 5—RESTRICTION ON ACCESS ACROSS ALASKAN CONSERVATION SYSTEM LANDS

ACCESS POLICY DECISION	TIMING OF ACCESS DECISION	LEGISLATIVE IMPLEMENTATION	IMPLEMENTING INSTITUTIONAL ARRANGEMENT	TRANSPORTATION SYSTEM DECISION
Access use of conservation system lands restricted beyond existing statutory limitations. Existing access rights to surrounded private lands, and existing rights-of-way would be recognized.	Now	Provision of 0-2 lands legislation, or new amendment of existing provisions--new authority.	Existing Institutions	Existing decision mechanism. Use of Federal conservation system lands for Alaskan transportation system not permitted without congressional approval. (The restriction is for transportation system use and would not remove existing access guarantees for non-Federal landowners.)

In contrast to the previous four options, which deal with policies that would facilitate access through conservation units, Option 5

limits the nonessential access use of Alaskan conservation lands. This option adds a further measure of protection and preservation

to the scenic, wildlife, recreational, and historic value of these lands. This option does 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 isolated lands that have no other available means of access would be accommodated. However, those landowners who do not fall under existing access rights, and who would be adversely affected by not being able to reach their property, would not be able to obtain rights-of-way to use Federal conservation systems without express congressional authorization. The authority, under present law, of Federal agencies to grant rights-of-way and transportation system easements across conservation system lands would be limited. This approach is consistent with a policy decision that Alaska lands have such high value as primitive wilderness, for their scenic beauty, for their wildlife, and for their future enjoyment, that they should be protected against any use that might be detrimental to these values.

This option would deny indefinitely most access use of Federal lands in Alaska without specific congressional action, and thus would limit the discretionary access authority of existing agencies (i.e., the power to grant rights-of-way and transportation system easements). It would not, however, deny reasonable assurances of access to owners of surrounded lands or to holders of existing access rights (such as those recognized in the Wilderness Act and in the current policies of various land management systems). Other access uses would be severely restricted in order to preserve Federal lands. The restriction could apply to all or part of the d-2 conservation unit designations. Federal land management agencies and the Department of Transportation would be responsible for the implementation of the policy, and would be bound by the restrictions.

Transportation decisions would be made under existing institutions, but the additional requirement of congressional authorization would be added. Congressional approval

would be required before any nonexempt access use would be granted for these lands, such as a nonexempt right-of-way or a transportation system easement. Some existing private rights, such as traditional uses and snow machine use where currently established would be permitted, provided there was no undue harm to protected conservation unit land. Rights-of-way that have been established by the public use of roads and trails over public land (under Title 43 of the U. S. C., section 932, prior to its repeal in 1976 by the passage of the BLM Organic Act) would be recognized; and their continued use, even over conservation units, would be permitted.

In addition to the restriction on the access use of Federal lands to reach non-Federal areas, rights of access to mining claims within Federal lands would also be regulated. In some instances, in order to preserve Federal lands, either a land exchange or compensation would be offered to an owner who relinquished such rights where continued or proposed access use posed a threat to protected values of the surrounding Federal area and adequate environmental safeguards could not reasonably be adopted.

By limiting the existing right-of-way authority of Federal land management agencies, Option 5 creates a special category of protected conservation system lands in Alaska with access restrictions similar in purpose to those defined in the Wilderness Act. Land management program-related activities and uses would not be restricted. Where existing rights-of-way have been granted, Congress might direct their cancellation on the expiration of the term of the right-of-way, unless unreasonable hardship would result. By limiting the authority of the managing agencies to grant rights-of-way and transportation system easements under existing laws, Option 5 imposes a greater restriction than Option 1 since it would modify present access authority.

As an additional protection or restriction on the use of Federal lands, Congress could prohibit the expenditure of funds without

prior notice to and approval by Congress for projects that would require the use of or adversely affect conservation lands. This requirement would be similar to Wild and Scenic Rivers System protections. Foreclosing most access routes across Federal lands in Alaska would impose greater restrictions on surface mobility and development than at present, and would discourage planning for federally aided transportation projects. Consequently, it would further deter the mineral exploration and development that is dependent on the availability of adequate bulk transportation to markets.

Non-Federal landowners who did not fall within the narrow exemption would not be permitted to use Federal conservation lands for access purposes. This policy could, in some circumstances, impose hardship, such

as requiring potential developers to go around large protected Federal areas at substantially greater expense. The unavailability of some Federal conservation system lands might increase the demands for the use of State and Native lands for access routes and transportation system development; and might also limit future mineral exploration and development activities to those regions that are already served by adequate transport or that do not require crossing Federal conservation system lands.

Congress could be subjected to pressure for ad hoc or crisis approvals of transportation routes and systems. This could lead to the construction of environmentally damaging or inefficient routes, while more desirable alternative routes are either foreclosed or not developed because of land use restrictions.