SCOMM

#22:12

Federal-State
Land Use Planning Commission
For Alaska

April 20, 1977

Honorable Mike Gravel
United States Senate
3121 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Gravel:

For your information and review, we are enclosing draft legislative language which concerns issues raised by Section 17(d)(2) of the Alaska Native Claims Settlement Act.

The draft was prepared by two members of the Commission staff. While the language is based on recommendations which have been considered by the Commission, we have not had the opportunity to review the draft language in any detail. In addition, the draft includes certain matters which have not been considered in depth by the Commission. These matters include the structure and composition of the proposed commission (Sec. 701), the property tax exemption (Sec. 806), the proposed executive coordination committee (Sec. 809), and the process for making Federal lands available for possible State selection (Sec. 814).

The purpose of the draft language is to assist the Commission in determining its policy and geographic recommendations respecting the (d)(2) lands. When this deliberative process has been completed, we will send you the final version of the report containing our recommendations.

Sincerely,

Walter B. Parker
State Co-Chairman

Enclosure (1)
1. Draft of legislative language respecting (d)(2) lands

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John W. Katz, Counsel
Richard J. Stenmark, Natural Systems Analyst
April 18, 1977

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DRAFT

To designate certain lands in the State of Alaska as units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and Alaska National Lands Systems, and for other purposes.

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TITLE I - SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

Sec. 101. This Act may be cited as the "Alaska National Interest Lands Act of 1977".

DECLARATION OF POLICY

Sec. 102. It is the purpose of this Act to -

(a) provide a high level of enduring protection for areas which possess scenic, wildlife, wilderness, and other natural or historic values of national significance;

(b) increase significantly the national opportunities for wilderness oriented recreational and other experiences; and

(c) establish land use planning and management institutions which provide full protection of nationally significant natural values, enable a flexible response to national energy and other commodity needs as they arise, and minimize conflicts among landowners and between competing land uses.

DEFINITIONS

Sec. 103. As used in this Act, the term -

(a) "Commission" means the Federal-State Land Commission established in Title VII of this Act.

(b) "Classification" means a determination that land is to be used for a specified purpose or purposes.

(c) "Land use plan" means a plan which has been developed through: (1) use of a systematic interdisciplinary approach involving an examination of physical, biological, ecological, economic, social, and other information; (2) consideration of present and potential uses of the land; (3) consideration of the relative scarcity of the values involved and the availability of alternative sources; (4) the weighing of short and long-term benefits and costs to the public; and (5) consultation and coordination of government agencies and private landowners which have proprietary and/or regulatory responsibility for affected areas.

(d) "Resource inventory" means the quantitative and qualitative study and compilation of lands and their resources and other values.

(e) "Secretary" means, unless specifically designated otherwise, the Secretary of the Interior.

(f) "Settlement Act" means the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.), as amended.

TITLE II - NATIONAL PARK SYSTEM

NEW UNITS AND ADDITIONS TO EXISTING UNITS

Sec. 201. Subject to valid existing rights, the following areas are hereby established as units of the National Park System or as additions to existing units of such system, and are withdrawn from entry, location, and patent under the public land laws of the United States, including from all forms of appropriation under the mining and mineral leasing laws, and from selection by the State of Alaska pursuant to the Alaska Statehood Act (72 Stat. 339), as amended.

NEW UNITS

(a) Aniakchak Calder National Monument of approximately 0.18 million acres;

(b) Cape Krusenstern National Monument of approximately 0.19 million acres;

(c) Gates of the Arctic National Park of approximately 5.22 million acres;

(d) Kobuk Sand Dunes National Monument of approximately 0.10 million acres;

(e) Wrangell-St. Elias National Park of approximately 9.72 million acres;

(f) Yukon National River of approximately 0.54 million acres;

ADDITIONS TO EXISTING UNITS

(g) Glacier Bay National Monument by the addition of approximately 0.03 million acres;

(h) Katmai tional Monument by the addition of approximately 1.08 million acres; furthermore, the Monument is hereby redesignated as "Katmai National Park;" and

(i) Mount McKinley National Park by the addition of approximately 2.69 million acres.

ADMINISTRATION

Sec. 202. The Secretary shall administer the lands, waters, and interests therein referred to in Section 201 as units of the National Park System in accordance with the provisions of the Act of August 25, 1916 (30 Stat. 535 et seq.), as amended and supplemented (16 U.S.C. 1 et seq.), and under the provisions of this Act: Provided, however, That hunting shall be permitted within the units referred to in Section 801(a) of this Act.

TITLE III - NATIONAL WILDLIFE REFUGE SYSTEM

NEW UNITS AND ADDITIONS TO EXISTING UNITS

Sec. 301. Subject to valid existing rights, the following areas are hereby established as new units of the National Wildlife Refuge System or as additions to existing units of such system, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

NEW UNITS

(a) Copper River Delta National Wildlife Refuge of approximately 0.35 million acres;

(b) Innoko National Wildlife Range of approximately 1.99 million acres;

(c) Kaiyuh National Wildlife Refuge of approximately 0.19 million acres;

(d) Kanuti National Wildlife Refuge of approximately 0.43 million acres;

(e) Koyukuk National Wildlife Range of approximately 2.53 million acres;

(f) Selawik National Wildlife Range of approximately 1.48 million acres;

(g) Shishmaref National Wildlife Range of approximately 1.50 million acres;

(h) Yukon Flats National Wildlife Range of approximately 2.33 million acres;

(i) Chukchi National Wildlife Refuge of approximately 74,000 acres;

(j) Shumagin Islands National Wildlife Refuge of approximately 71,907 acres;

(k) Barren Islands National Wildlife Refuge of approximately 10,020 acres;

(l) Aialik National Wildlife Refuge of approximately 19,630 acres;

ADDITIONS TO EXISTING UNITS

(m) Arctic National Wildlife Range by the addition of approximately 1.89 million acres;

(n) Clarence Rhode National Wildlife Range by the addition of approximately 5.67 million acres; furthermore, the range is redesignated the "Yukon Delta National Wildlife Range" and the Hazen Bay National Wildlife Refuge is hereby redesignated a part of the Range;

(o) Cape Newenham National Wildlife Refuge by the addition of approximately 0.24 million acres;

(p) Kenai National Moose Range by the addition of approximately 0.04 million acres;

(q) Kodiak National Wildlife Refuge by the addition of approximately 440 acres; and

(r) Bering Sea National Wildlife Refuge by the addition of approximately 1,700 acres.

ADMINISTRATION

Sec. 302. The Secretary shall administer the lands, waters, and interests therein referred to in Section 301 as units of the National Wildlife Refuge System in accordance with the laws which generally apply to the units of such system and under the provisions of this Act.

TITLE IV - NATIONAL FOREST SYSTEM

ADDITIONS TO EXISTING UNITS

Sec. 401. Subject to valid existing rights, the following areas are hereby established as additions to existing units of the National Forest System, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

(a) Chugach National Forest

(1) College Fiord addition of approximately 0.72 million acres;

(2) Copper River addition of approximately 1.25 million acres;

(3) Kenai Fiords-Harding Icefield addition of approximately 0.52 million acres; and

(4) Nellie Juan addition of approximately 0.28 million acres.

(b) Tongass National Forest

(1) Alsek River addition of approximately 1.03 million acres;

(2) Juneau Icefield addition of approximately 0.48 million acres; and

(3) Kates Needle addition of approximately 0.47 million acres.

ADMINISTRATION

Sec. 402. The Secretary of Agriculture shall administer the lands, waters, and interests therein referred to in Section 401 in accordance with the laws which generally apply to the units of such system and under the provisions of this Act.

TITLE V - NATIONAL WILD AND SCENIC RIVERS SYSTEM

NEW COMPONENTS

Sec. 501. (a) Subject to valid existing rights, the following areas are hereby established as components of the National Wild and Scenic Rivers System, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, as modified by Section 1280(a)(iii) of the Wild and Scenic Rivers Act (82 Stat. 906), as amended (16 U.S.C. 1221 et seq.), and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

(1) The rivers listed immediately below are hereby classified and designated and shall be administered as wild river areas:

(A) Alatna (upper): 75-mile main stream on Federal lands;

(B) North Fork Koyukuk-Tinayguk: Entire main streams;

(C) Unalakleet River: About 60 miles of the main stream from 159°21'06.156" west longitude downstream to 160°19'15.031" west longitude;

(D) Kanektok: Main stream from Kagati Lake to west side of T 4 N, R 71 W, S.M.;

(E) Aniakchak River: The entire river and its major tributaries from Surprise Lake to Aniakchak Bay;

(F) Alagnak: Mair stream from Kukaklek Lake and the Nonvianuk River tributary from Nonvianuk Lake to the west side of T 13 S, R 43 W, S.M.; and

(G) Fortymile River System: 161 miles of main stream and forks--

(i) Champion Creek, entire;

(ii) Joseph Creek, entire;

(iii) Middlefork, downstream from Joseph;

(iv) Mosquito Fork, from the vicinity of Kechemstuk to Ingel Creek; and

(v) North Fork, entire.

(2) The rivers listed immediately below are hereby classified and designated and shall be administered as scenic river areas:

(A) Fortymile River System: 205 miles of main streams and forks--

(i) Dennison Fork, downstream from West Fork Dennison Fork;

(ii) Fortymile River, in Alaska;

(iii) Franklin Creek, entire;

(iv) Hutchison Creek, entire;

(v) Logging Cabin Creek, entire;

(vi) Mosquito Creek, downstream from Ingle Creek;

(vii) Napolean Creek, entire;

(viii) O'Brien Creek, entire;

(ix) South Fork, entire;

(x) Uhler Creek, entire;

(xi) Walker Fork, downstream from Liberty Creek; and

(xii) West Fork of Dennison Fork, downstream from Logging Cabin Creek.

(3) The rivers listed immediately below are hereby classified and designated and shall be administered as recreational river areas:

(A) Fortymile River System: 9 miles of main stream--

(i) Wade Creek, entire.

(b) Notwithstanding any provisions to the contrary of the Wild and Scenic Rivers Act, the boundaries of the rivers referred to in subsection (a) of this section may include an area extending up to two miles from the ordinary high water mark on either side of any such river. Notwithstanding the provisions of Section 3(b) of the Wild and Scenic Rivers Act, the Secretary shall establish detailed boundaries for the rivers referred to in subsection (a) of this section within three years from the date of enactment of this Act.

ADMINISTRATION

Sec. 502. The Secretary shall administer the lands, waters, and interests therein referred to in Section 501 as components of the National Wild and Scenic Rivers System in accordance with the laws which generally apply to the components of such system and under the provisions of this Act: Provided, however, That the provisions of Section 6 of the Wild and Scenic Rivers Act shall not apply to the rivers referred to in subsection 501(a) of this section.

STUDY OF RIVERS

Sec. 503. (a) Section 5(a) of the Wild and Scenic Rivers Act is further amended by adding the following new rivers to the list which appears therein:

(1) Canning-Marsh Fork: Main streams from headwaters to Arctic Ocean within Federal lands;

(2) Ivishak: Headwaters and main stream to Sagavanirktok River confluence;

(3) Wind: Headwaters and main stream to East Fork Chandalar River confluence;

(4) Sheenjek: Headwaters and main stream to Porcupine River confluence (including State selected segment);

(5) Porcupine: Main stream from Yukon-Alaska border to south boundary of T 23 N, R 18 E, F.M.;

(6) Yukon (Rampart section): Segment of main stream in and between T 21 N, R 10 W, and T 5 N, R 19 W, F.M.; to include bordering lands not selected by Alaska Native corporations;

(7) Beaver Creek: Segment of the main stream from the vicinity of the confluence of Bear and Champion Creeks downstream 135 miles to north boundary of T 12 N, R 7 E, F.M.;

(8) Birch Creek: Segment of the main stream from the vicinity of the confluence of North Fork downstream 135 miles to the vicinity of Jumpoff Creek;

(9) Charley: Entire river including major tributaries;

(10) Ikpikpuk: Main stream from confluence of Kigalik River and Maybe Creek to Arctic Ocean (National Petroleum Reserve-Alaska);

(11) Utukok: Main stream and main stream of Caribou Creek (National Petroleum Reserve-Alaska);

(12) Anaktuvuk: Main stream from headwaters to Colville River (excluding scattered large tracts of Native corporation selected lands);

(13) Killik: Main stream and main stream of Easter Creek to Colville River (involves large block of Native corporation selected land);

(14) Noatak: Main stream from headwaters to Kelly River confluence;

(15) Wulik: Main stream and major tributaries from headwaters to west boundary of T 28 N, R 23 W, K.R.M.;

(16) Salmon: the entire main stream;

(17) Kobuk (upper): Main stream from Walker Lake and Walker Lake branch to the Selby River confluence;

(18) John: Main stream from Anaktuvuk Pass to Allen River confluence (Federal portion);

(19) Koyuk: Main stream from headwaters to Dime Landing;

(20) Nowitna: Main stream from southwest corner of T 17 S, R 22 E, K.R.M. to Yukon River;

(21) Andreafsky: Main stream of Andreafsky to south side of T 26 S, R 74 W, S.M.; main stream of East Fork to south side of T 25 N, R 73 W, S.M.;

(22) Kuskokwim (middle): Segment of main stream within and between T 28 N, R 35 W, and T 23 N, R 38 W, S.M.;

(23) Copper: Main stream from upper Copper Lake to Iliamna Lake (intermittent Native lands);

(24) Togiak: Main stream from Togiak Lake to south side of T 10 S, R 65 W, S.M.;

(25) Mulchatna-Chilikadrotna: Main stream segments from Turquoise and Twin Lakes downstream to the west side of R 28 W, S.M. on Federal lands;

(26) Nuyakuk: Main stream from Tikchik Lake to the Nushagak River (State lands involved);

(27) Tlikakila: Main stream from Summit Lake to Lake Clark;

(28) Karluk: Main stream from Karluk Lake to mouth (Native lands involved);

(29) Nabesna: Main stream from Jacksina Creek to north side T 13 N, R 18 E, C.R.M.;

(30) Delta: From Round Tangle Lake to confluence with Phelan Creek;

(31) Gulkana: Main stream of main fork and West Fork to Sourdough Campground;

(32) Chitina: Main stream from Chitina Glacier to the Copper River;

(33) Copper: Main stream from Chitina River confluence to the mouth (scattered Native lands involved);

(34) Kenai-Russian: Main streams from Upper Russian Lake and Kenai Lake to Skilak Lake (Chugach National Forest and Kenai National Moose Range);

(35) Nellie Juan: Main stream from Nellie Juan Lake to mouth;

(36) Alsek: Main stream from Canada border to Pacific Ocean (lower part in Tongass National Forest);

(37) Situk: Main stream from Situk Lake to Pacific Ocean (Tongass National Forest);

(38) Hasselborg Creek: Main stream from Hasselborg Lake to Mitchell Bay (Tongass National Forest); and

(39) Stikine: Main stream from Canada border to mouth (Tongass National Forest).

(b) The Secretary or the Secretary of Agriculture, as appropriate, shall complete the study of rivers listed in subsection (a) of this section within five years of the date of enactment of this Act. With respect to rivers which they recommend for inclusion in the National Wild and Scenic Rivers System, said Secretaries shall make recommendations concerning the need to acquire lands or interests therein owned by the State of Alaska or private parties.

TITLE VI - ALASKA NATIONAL LANDS SYSTEM

NEW UNITS

Sec. 601. Subject to valid existing rights, the following areas are hereby established as units of the Alaska National Lands System, and are withdrawn from entry, location, and patent under the public land laws of the United States, except those laws referred to in Section 803(a) of this Act, and from selection by the State of Alaska pursuant to the Alaska Statehood Act:

Unit	Manager
(a) Andreafsky National Lands of approximately 3.54 million acres;	Fish and Wildlife Service
(b) Becharof National Lands of approximately 0.88 million acres;	Fish and Wildlife Service
(c) Cathedral Spires National Lands of approximately 0.40 million acres;	National Park Service
(d) Chandalar National Lands of approximately 5.56 million acres;	Fish and Wildlife Service
(e) Chitina National Lands of approximately 1.05 million acres;	National Park Service
(f) Lake Clark National Lands of approximately 3.49 million acres;	National Park Service
(g) Nabesna National Lands of approximately 2.87 million acres;	National Park Service
(h) Noatak National Lands of approximately 11.87 million acres;	Fish and Wildlife Service
(i) Nowitna National Lands of approximately 3.52 million acres;	Forest Service
(j) Nunamiut National Lands of approximately 1.98 million acres;	National Park Service
(k) Porcupine National Lands of approximately 5.49 million acres; and	Forest Service
(l) Yukon Mountains National Lands of approximately 6.05 million acres.	Bureau of Land Management

ADMINISTRATION

Sec. 602. (a) The Commission shall classify the lands, waters, and interests therein referred to in Section 601 in accordance with the requirements specified in this subsection and in Section 701 of this Act. Prior to classification for a particular use, that use shall be prohibited: Provided, however, That hunting, fishing, other wildland recreational activities, trapping, information gathering activities conducted or sponsored by Federal agencies or the State Department of Fish and Game, and snow machine use shall be permitted unless specifically prohibited by the Commission or by then existing regulations of the appropriate managing agency: Provided further, That nothing herein shall be construed to abrogate or otherwise adversely affect valid existing rights of access. In making planning and classification decisions, the Commission shall provide the high level of environmental protection necessary to maintain the natural values and characteristics of affected lands. The

Commission shall permit such uses as it finds to be in the national interest or to be consistent with the level of environmental protection specified in the preceding sentence.

(b) The agencies listed in Section 601 shall manage the units placed under their jurisdiction, and shall regulate uses within such units, in accordance with classifications made by the Commission. Except to the extent that they would be inconsistent with a Commission classification or the provisions of this Act, land use and management decisions made by an agency referred to in Section 601 shall be in accordance with the laws and regulations which generally govern the functions of such agency.

TITLE VII - THE FEDERAL-STATE LAND COMMISSION

ESTABLISHMENT AND AUTHORITY

Sec. 701. (a) There is hereby established the Federal-State Land Commission (hereinafter referred to as the "Commission"), which shall be composed of six members as follows:

(1) Three members appointed by the President with the advice and consent of the Senate, of whom one will be designated by the President, at the time of appointment, as Federal Co-Chairman; and

(2) three members appointed by the Governor of the State of Alaska, of whom one shall be designated by the Governor, at the time of appointment, as State Co-Chairman, and one of whom shall be a Native as that term is defined in Section 3(b) of the Settlement Act.

(b) (1) The Federal Co-Chairman shall be compensated at a rate to be determined by the President not to exceed the rate provided for GS-18 of the General Schedule under Section 5332 of Title V, United States Code.

(2) The other Federal members of the Commission shall be compensated at a rate to be determined by the President not to exceed the rate provided for GS-16 of the General Schedule under Section 5332 of Title V, United States Code.

(3) The State Co-Chairman and the State members of the Commission shall be compensated in accordance with applicable State law.

(c) Members shall serve at the pleasure of the appointing authority. A vacancy in the membership of the Commission shall not affect its powers but shall be filled in the same manner as the original appointment was made.

(d) Four members of the Commission shall constitute a quorum.

(e) With respect to all Federal lands subject to the jurisdiction of the Commission, the Secretary may veto a decision of the Commission. With respect to all State lands subject to the jurisdiction of the Commission, the Governor of the State of Alaska may veto a decision of the Commission.

(f) All Commission meetings shall be public and shall be duly noticed at least fifteen days prior to the date when the meeting is to take place.

(g) The Commission, or on its authorization, any subcommittee or member thereof, may hold such hearings, take such testimony, receive such evidence, and print such reports as are deemed necessary to carry out the functions specified in this title.

(h) The Co-Chairmen, acting jointly, shall have the authority, in accordance with regulations prescribed by the Commission, to create and abolish employments and positions, including temporary and intermittent employments; to fix and provide for the qualification, appointment, removal, compensation, pension, and retirement rights of Commission employees; and to procure needed office space, supplies, and equipment.

(i) The principal office of the Commission shall be located in the State of Alaska.

(j) Within any one fiscal year, the Federal government shall pay only 50 percent of the costs and other expenses incurred by the Commission in carrying out its duties under this Act.

(k) The Commission is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement. Each department and agency of the Federal government is authorized to cooperate fully in making its services, equipment, personnel, and facilities available to the Commission.

(l) The Commission is authorized to accept donations, gifts, and other contributions and to utilize such donations, gifts, and contributions in carrying out its functions under this Act.

(m) The Commission shall keep and maintain complete accounts and records of its activities and transactions, and such accounts and records shall be available for public inspection.

(n) The Commission shall prepare an annual report in accordance with Section 902 of this Act.

(o) It shall be the function of the Commission -

(1) to review resource inventories prepared by the managing agencies of lands referred to in Sections 601 and 806 and by the U.S. Geological Survey and the Bureau of Mines, as provided in Section 803(c) of this Act; to develop comprehensive land use plans with respect to such lands; and to make land classifications based on the plans;

(2) to carry out the duties required by Sections 802(b), 803(c), 805(b) and (c), 806, 807(a), and 810(c) and (d) of this Act;

(3) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to ways to improve coordination and consultation between

said governments in wildlife management, transportation planning, wilderness review, and other governmental activities which appear to require regional or statewide coordination;

(4) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to ways to insure that economic development is orderly and planned and is compatible with State and national economic, social, and environmental objectives;

(5) to make recommendations to appropriate officials of the United States and the State of Alaska with respect to those changes in laws, policies, and programs relating to public lands and resources which the Commission deems necessary;

(6) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to the inventory, planning, classification, management, and use of Federal and State lands, respectively, and to provide such assistance to Native corporations upon their request;

(7) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to needed modifications in existing withdrawals of Federal and State public lands; and

(8) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to the programs and budgets of Federal and State agencies responsible for the administration of public lands in Alaska, emphasizing the programs and budgets of the managing agencies referred to in Section 601 of this Act.

(p) Notwithstanding any other provision of law, Federal participation in the Joint Federal-State Land Use Planning Commission for Alaska, established in Section 17(a) of the Settlement Act, shall cease upon the expiration of the 90-day period following the date of enactment of this Act. Immediately upon the expiration of such period, all unexpended funds appropriated to the Joint Commission shall be returned, as appropriate, to the United States and the State of Alaska, and all Federal property of said Commission, at the discretion of the Commission established in this section, shall either be transferred to said new Commission or disposed of pursuant to applicable law.

TITLE VIII - MANAGEMENT AND ADMINISTRATION

REGULATION OF HUNTING AND FISHING

Sec. 801. (a) Except with respect to the units referred to in Sections 201(b), (d), and (f), hunting shall be prohibited within the new and expanded units of the National Park System referred to in Section 201 of this Act. Subject to the management and regulation of resident game species by the State of Alaska, hunting shall be permitted in accordance with the

laws of general applicability to such units within the three units of the National Park System referred to in the preceding sentence and within the new and expanded units of the systems referred to in Titles III, IV, V, and VI. Subject to the management and regulation of the State of Alaska, fishing shall be permitted in accordance with the laws of general applicability to such units within the new and expanded units of the systems referred to in Titles II, III, IV, V, and VI. Prior to the finalization of plans and regulations governing the taking of fish and game on Federal lands subject to this Act, the State shall consult with the Federal agency which has land management responsibility for the affected area.

(b) Where there is a conflict caused by depletion, the taking of fish and game for subsistence purposes within the units of the systems referred to in Titles II, III, IV, V, and VI shall be given preference over the taking of fish and game for other purposes. Such preference shall be granted to the local residents of the area affected by a conflict between consumptive uses. Nothing in this section shall be construed to require that hunting or fishing be permitted where depletion of the resource would dictate a complete prohibition of such activities.

(c) Every ten years after the date of enactment of this Act, the Secretary shall make a report to Congress on the impact of hunting on the wildlife resources found in the units of the Park System where such activity is permitted pursuant to subsection (a) of this section. Such report shall also include the Secretary's recommendations respecting the need to continue hunting in said units.

(d) Nothing in this section shall be construed to amend the Marine Mammal Protection Act of 1972 (82 Stat. 1027), as amended (87 Stat. 902), the Endangered Species Act of 1973 (87 Stat. 884), the Migratory Bird Treaty Act (85 Stat. 777), as amended (16 U.S.C. 703 et seq.), the Act of September 15, 1960 (74 Stat. 1052), as amended (16 U.S.C. 607(a) et seq.), or other existing Federal law relating to the management and protection of fish and game.

ACCESS FOR TRANSPORTATION AND UTILITY PURPOSES

Sec. 802. (a) Existing law shall govern the establishment of corridors and the issuance of rights-of-way and easements for transportation and utility purposes across the units of the systems referred to in Titles II, III, IV, and V of this Act: Provided, however, That the classification as wild river areas of certain segments of the Fortymile River System shall not preclude such access across those river segments as the Secretary determines to be necessary to permit commercial development of asbestos deposits in the North Fork drainage. The Secretary or the Secretary of Agriculture, as the case may be, shall consult with the Commission prior to making a final decision pursuant to this subsection.

(b) The Commission, in the exercise of its discretion, may establish corridors and routes for transportation and/or utility purposes across the units and areas referred to respectively in Sections 601 and 806 of this Act. A Commission decision to classify lands for access or utility purposes shall be made in accordance with comprehensive land use plans developed pursuant to Sections 602 and 701(a)(1) of this Act. In developing

such plans, the Commission shall consider, among other things, statewide and regional transportation plans; the need for access; alternative routes and modes of access; the feasibility of including different transportation and/or utility functions in the same corridor; short and long term social, economic, and environmental impacts; and the measures that should be instituted to ameliorate adverse impacts. The agency having management responsibility for a particular unit or area referred to in Sections 601 or 806 shall be responsible for granting necessary easements or rights-of-way pursuant to existing authority. With the exception of the decision to classify lands for access, the choice of route and mode, and other matters lawfully dealt with by the Commission in its classification order, a classification for transportation or utility purposes by the Commission shall not relieve the managing agency of the duty to insure compliance with the requirements provided in existing authority.

(c) Nothing in this Section shall be construed to abrogate or otherwise adversely affect valid existing rights of access.

MINERAL DEVELOPMENT

Sec. 803. (a) The location, lease, sale, or other disposition of minerals and mineral materials located on lands referred to in Title II shall be prohibited. Subject to the provisions of this Act and the laws of general applicability to such systems, the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.), and the Act of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601 et seq.) shall apply to the units of the management systems referred to in Titles III, IV, V, and VI of this Act. With respect to said systems, the Mining Law of 1872, as amended and supplemented, and related Acts (30 U.S.C. 21 et seq.) shall cease to govern the disposition of minerals currently subject to location. In lieu thereof, the permit-lease system specified in Appendix A of the Senate Report which accompanies this legislation shall apply, and such appendix is hereby incorportated by reference.

(b) Within six years of the date of enactment of this Act, the Secretary shall determine the validity of unpatented mining claims located within the new and expanded units of the system referred to in Title II of this Act, and he shall submit to the Congress recommendations as to whether any valid or patented claims should be acquired by the United States. In making such recommendations, the Secretary shall provide information concerning the cost of acquiring particular claims, the environmental impacts expected to result from the continuing development of such claims, and the expected effect of termination on the local economy and on domestic mineral supplies.

(c) Consistent with the requirements for wilderness review provided in Section 805, the U.S. Geological Survey and the Bureau of Mines shall complete an inventory of mineral resources on lands encompassed within the units of the systems referred to in Titles II, III, IV, V, and VI of this Act.

AGRICULTURE AND GRAZING

Sec. 804. Subject to the provisions of this Act and the laws of general applicability to such systems, agricultural cultivation and grazing may be permitted by the Secretary, the Secretary of Agriculture, or the Commission, whichever is appropriate, within the units of the management systems referred to in Titles III, IV, V and VI of this Act. Consistent with the requirements of existing law, cultivation and grazing rights shall be allocated pursuant to a long-term leasing system developed jointly by the Secretary and the Secretary of Agriculture, after consultation with the Commission.

WILDERNESS REVIEW

Sec. 805. (a) Within three years of the date of enactment of this Act, the Secretary or the Secretary of Agriculture, whichever is appropriate, shall report to the President, in accordance with subsections 3(c) and (d) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(c) and (d)), his recommendations as to the suitability or nonsuitability for preservation as wilderness of areas of the new units and additions to existing units referred to in Titles II, III, IV, and V of this Act and of areas of the existing units of the National Park and Wildlife Refuge Systems with respect to which wilderness studies and recommendations were deferred pending further implementation of the Settlement Act. The designation of any area as wilderness and the administration of such area shall be accomplished in accordance with applicable provisions of the Wilderness Act, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(b) Within two years of the date of enactment of this Act, the Commission shall complete an inventory of the areas of Federal land in Alaska which meet the requirements for wilderness study provided in Section 3(c) of the Wilderness Act (16 U.S.C. 1132(c)). The purpose of such inventory shall be to facilitate the ultimate establishment of a statewide wilderness system which includes a diversified cross-section of eligible lands. On the basis of this statewide overview of candidate areas, the Commission shall make recommendations to the appropriate agency and to the President with respect to those areas which it finds suitable or nonsuitable for inclusion in the National Wilderness Preservation System. Areas of the units referred to in Title VI which are found unsuitable for designation as wilderness shall be deleted from the detailed review required by subsection (c) of this section, and subject to Section 502 of this Act, uses inconsistent with subsequent wilderness designation may then be permitted in such areas.

(c) On the basis of the review required by subsection (b) of this section and its detailed study of the units referred to in Title VI of this Act, the Commission, within ten years of the date of enactment of this Act, shall report to the President, in accordance with subsections (c) and (d) of the Wilderness Act, its recommendations as to the suitability or nonsuitability for preservation as wilderness of areas of the units referred to in Title VI. Notwithstanding the requirements of existing law, such study by the Commission shall take the place of the wilderness review which would otherwise be conducted by the managing agencies

listed in Section 601. In formulating its recommendations, the Commission shall consult with the appropriate managing agency, and each such agency shall cooperate fully with the Commission in satisfying the requirements specified in this subsection. The designation of any area as wilderness and the administration of such area shall be accomplished in accordance with applicable provisions of the Wilderness Act, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(d) Prior to the submission of any recommendations to the President pursuant to subsection (a) and (c) of this section, the U.S. Geological Survey and the Bureau of Mines shall conduct mineral surveys in order to determine the mineral values, if any, that may be present in such areas.

JOINT CLASSIFICATION AREAS

Sec. 806. (a) Subject to the veto power provided in Section 701(e) of this Act, the Commission is authorized to establish joint classification areas, as defined, in subsection (d) hereof. Such areas shall be classified by the Commission pursuant to land use plans which provide for various compatible uses. Prior to classification, lands encompassed within a joint classification area shall be open to such uses as the appropriate Federal or State agency or private landowner may permit: Provided, That privately owned lands may be included within a joint classification area only with the approval of the landowner. After classification, lands designated pursuant to this subsection shall be managed and utilized by the appropriate government agency or private landowner in accordance with the requirements specified in the classification order.

(b) With the concurrence of the State of Alaska, privately owned lands included within a joint classification area shall be exempt from State and local real property taxation and assessments so long as such lands are not developed: Provided, however, That any rents or other revenues derived from such lands or interests therein shall be taxable upon receipt by the landowner. For purposes of this subsection, "development" shall mean any disturbance of the land which results in the production of revenue. The Commission shall promulgate regulations to supplement the meaning of the term "development," as used herein.

(c) Not more than every five years after the establishment of a joint classification area, the Commission shall review the need for the continuing existence of such area. In the event that a private landowner elects to remove his lands from a joint classification area prior to the expiration of five years from the initial inclusion of such lands or prior to a Commission decision to terminate the classification area, whichever occurs first, the landowner shall be liable for the accrued State and local real property taxes and assessments which would have been owing on such lands but for their inclusion in a joint classification area, together with interest thereon in an amount to be determined at the rate charged by the appropriate taxing jurisdiction for delinquent property taxes.

(d) "Joint classification areas" as used herein means areas which include intermingled Federal, State, and/or privately owned lands located outside of units of the management systems referred to in Titles II, III, IV, V, and VI of this Act, which areas possess significant

natural values and/or resource development potential that would be enhanced by integrated and cooperative land use planning, classification, and management.

COOPERATIVE AGREEMENTS

Sec. 807. (a) Secretary, Secretary of Agriculture, and the Commission, as appropriate, are authorized to cooperate and seek agreements with the heads of Federal agencies and the owners of lands and waters within, adjacent to, or related to the units referred to in Titles II, III, IV, V, and VI of this Act, including, without limitation, the State of Alaska, or any political subdivision thereof, any private landowner, and any village or group having cultural or resource-based ties to the units of such systems, and with the concurrence of the Secretary of State and the governments of foreign nations. Such agreements shall have as their purpose the assurance that resources will be used, managed, and developed so as to facilitate and enhance the management of the unit or units involved. The agreements may also provide for access by visitors to and across lands which are the subject of the agreements. To the maximum possible extent, the Secretary, the Secretary of Agriculture, and the Commission shall coordinate their respective activities under this subsection.

(b) A private landowner who enters into a cooperative management agreement pursuant to subsection (a) of this section shall be eligible for the tax exemption provided in Section 806(b) of this Act if he otherwise satisfies the requirements provided therein: Provided, however, That if such landowner elects to remove his lands from a cooperative agreement prior to the expiration of five years from its execution or the bilateral termination of such agreement, whichever occurs first, he shall be liable for the accrued taxes and other charges referred to in Section 806(c) of this Act.

(c) The head of any Federal agency, other than the agencies that are parties to cooperative agreements executed pursuant to subsection (a) of this section or other appropriate authority, having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking respecting the lands and waters within, adjacent to, or related to the units referred to in Titles II, III, IV, V, and VI of this Act and the heads of any Federal department or interdepartmental agency, other than parties to such an agreement, having authority to license any undertaking respecting said units shall afford the Secretary or the Secretary of Agriculture or the Commission, as appropriate, a reasonable opportunity to comment with regard to such undertaking prior to the approval of the expenditure of any Federal funds or to the issuance of any license, as the case may be.

(d) Within one year of the date of enactment of this Act, the Secretary and the Secretary of Agriculture shall jointly explore the possibility of executing a cooperative management agreement respecting adjacent areas of the Wrangell-St. Elias National Park and the Chugach National Forest, and in the event that an agreement is not consummated, they shall report to the Congress on their progress toward such an agreement.

INTRADEPARTMENTAL ASSISTANCE

Sec. 808. The Secretary shall direct the U.S. Fish and Wildlife Service to participate, where appropriate and consistent with Section 801 of this Act, in fish and wildlife studies and resource planning respecting the units referred to in Titles II, V, and VI hereof. In addition, the Secretary shall direct the National Park Service, where appropriate, to participate in recreation planning, interpretation, historic resources research and protection, and ecological research respecting units referred to in Titles III, V, and VI of this Act.

EXECUTIVE COORDINATION COMMITTEE

Sec. 809. There is hereby established an Executive Coordination Committee composed of the Secretaries (or their designees) of Agriculture, Defense, Interior, and Transportation; the Administrators of the Environmental Protection Agency and the Federal Energy Administration; and the Federal and State Co-Chairmen of the Commission. Such Committee shall meet quarterly in order to coordinate those programs and functions of their respective agencies which could affect the administration of the lands and waters referred to in Titles II, III, IV, V, and VI and Section 806 of this Act. The Secretary of the Interior shall be the chairman of the committee. He shall be responsible for formulating an agenda for each meeting, after consultation with the other agency heads referred to herein, for providing any necessary staff support, and for preparing a brief summary of the disposition of matters discussed at each meeting. Such summary shall be published in the Federal Register.

PROPERTY ACQUISITION

Sec. 810. (a) Within the boundaries of the units referred to in Titles II, III, IV, V, and VI of this Act, and consistent with the laws of general applicability of such units, the Secretary and the Secretary of Agriculture, in the performance of their respective functions under this Act, are authorized to acquire lands, waters, and interests therein by donation, lease, purchase with donated or appropriated funds, condemnation, exchange, or otherwise: Provided, however, That property owned by the State of Alaska, including its political subdivisions, or by a Native corporation organized pursuant to the Settlement Act may be acquired only with the concurrence of the appropriate owner.

(b) In exercising his authority to acquire property by exchange, the Secretary or the Secretary of Agriculture, as the case may be, may accept title to any nonfederal property located within the State of Alaska and may convey to the granter of such property any federally owned property under the jurisdiction of that Secretary within said state. The property so exchanged shall be approximately equal in appraised fair market value: Provided, however, That the appropriate Secretary may accept cash from or pay cash to the grantor in order to equalize the value of the properties exchanged: Provided further, That where the properties to be exchanged are not equal in appraised fair market value or where such value cannot be ascertained with reasonable certainty, the appropriate Secretary may enter into an exchange if he

finds that the appraised fair market value of the property to be received, together with the value of other public benefits, equals or exceeds the value of the property which the Federal government will relinquish. At least ninety days (not counting days on which the Senate and the House have adjourned for more than three consecutive days) prior to the consummation of an exchange for other than equal appraised fair market value, the Secretary involved shall notify the appropriate committees of Congress of such exchange, and he shall provide the committees with a report which contains relevant background information and the justification for the exchange. Such Secretary is authorized to execute the proposed exchange unless, within the ninety-day period provided in the preceding sentence, the Congress has adopted a concurrent resolution expressing disapproval.

(c) From time to time, the Commission shall make recommendations to the Secretary or the Secretary of Agriculture, as appropriate, with respect to land exchanges which the Commission deems necessary and desirable to enhance the management or use of lands under the jurisdiction of said Secretaries. With respect to proposed exchanges affecting the units referred to in Title VI, the appropriate Secretary shall make every reasonable effort to effectuate the Commission's recommendations.

(d) Within three years of the date of enactment of this Act, the Commission shall prepare a report concerning the ownership, resources, management, and use of lands located on the Alaska Peninsula. The report shall include, among other things, Commission recommendations for any land exchanges which it deems necessary to enhance the management or use of lands and resources located on the Peninsula.

ADMINISTRATIVE SITES

Sec. 811. Secretary or the Secretary of Agriculture, as appropriate, may establish administrative sites or visitor facilities outside of the boundaries of the units referred to in Titles II, III, IV, V, and VI of this Act. For these purposes, such Secretaries may establish sites and facilities on Federal lands or acquire or lease other lands, subject to the limitations on acquiring property owned by the State of Alaska or a Native corporation, as specified in Section 810(a): Provided, That the amount of land designated for a particular site or facility shall not exceed eighty acres. With respect to the units referred to in Title VI, the appropriate Secretary shall consult with the Commission prior to acquisition of any administrative sites or visitor facilities which he deems necessary.

DESCRIPTION OF UNITS

Sec. 812. (a) The units described in Titles II, III, IV, V, and VI of this Act shall be comprised of the lands and waters generally depicted on the maps bearing the following designations:

(1) NPS Alaska, dated , for those lands referred to in Title II.

(2) NWR Alaska, dated , for those lands referred to in Title III.

(3) NFS Alaska, dated , for those lands referred to in Title IV.

(4) NWSRS Alaska, dated , for those lands referred to in Title V.

(5) ANLS Alaska, dated , for those lands referred to in Title VI.

(b) The maps described in subsection (a) of this Section shall be on file and available for public inspection in the offices of the Secretary and the Commission.

(c) As soon as practicable after the enactment of this Act, a map and legal description of each change in land status required by this Act shall be published in the Federal Register and filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and legal description shall have the same force and effect as if included in this Act: Provided, however, That the correction of clerical and typographical errors in each such legal description and map may be made. Wherever possible, cadastral surveys and boundaries shall follow or approximate hydrographic divides or other physiographic features.

ADJUSTMENT OF BOUNDARIES

Sec. 813. (a) Following at least 30 days notice in writing to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and after publication of notice in the Federal Register, the Secretary may make minor revisions in the boundaries of the units referred to in Titles II, III, IV, V, and VI of this Act, including revisions to encompass within the boundaries such additional lands as are necessary for administrative sites and visitor facilities, as provided in Section 811 hereof: Provided, however, That the Secretary of Agriculture and the Commission must approve boundary modifications relating respectively to the systems referred to in Titles IV and VI of this Act.

(b) Except as provided in subsection (a) of this Section, neither the Secretary, the Secretary of Agriculture, or the Commission is authorized to establish administratively new units or additions to existing units of the systems referred to in Titles II, III, IV, V, and VI of this Act.

EFFECT ON STATE SELECTIONS

Sec. 814. (a) No provision of this Act shall be construed to revoke or otherwise adversely affect any valid selection, or tentative approval, or patent made or received by the State of Alaska pursuant to the Alaska Statehood Act or other authority prior to the effective date of this Act, nor shall any provision of this Act be construed to prohibit the State from receiving tentative approval or patent to lands selected by it prior to the effective date of this Act but not yet tentatively approval or patented.

(b) Within 90 days following the enactment of this Act, and for a period of not less than one year thereafter, the Secretary shall make available to the State of Alaska for possible selection by it pursuant to the Alaska Statehood Act, all Federal lands in Alaska except:

(1) lands encompassed within existing or new units of the management systems referred to in Titles II, III, IV, V, and VI of this Act;

(2) lands reserved or withdrawn for a particular purpose other than existing or future classifications pursuant to Section 17(d)(1) of the Settlement Act or provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1701 et seq.);

(3) lands segregated for possible conveyance to a Native corporation pursuant to the Settlement Act: Provided, however, That except as otherwise provided in this Section, segregated land shall be made available for State selection upon the final relinquishment of Native selection rights, such availability to continue for a period of not less than one year from said relinquishment; and

(4) lands described in Public Land Order 5184, relating to an area of the Yukon-Kuskokwim Delta.

(c) Subsections 6(a) and (b) of the Alaska Statehood Act are hereby amended by deleting the words "twenty-five years" and inserting in lieu thereof "thirty-five years" in the first sentence of each subsection.

EFFECT ON NATIVE SELECTIONS

Sec. 815. (a) Except as provided in Section 17(d)(2)(E) of the Settlement Act, no provision of this Act shall be construed to adversely affect any otherwise valid selection or patent made or received by a Native corporation or individual pursuant to said Settlement Act.

(b) Upon the final relinquishment by a Native corporation of selection rights granted pursuant to the Settlement Act, any affected lands which are located within the boundaries of a unit referred to in Titles II, III, IV, V, and VI of this Act shall hereby be added to and be incorporated within the appropriate unit to be administered under the provisions of this Act and the laws of general applicability to such unit.

TITLE IX - MISCELLANEOUS

REGULATIONS

Sec. 901. (a) The Secretary, the Secretary of Agriculture, and the Commission are authorized to issue and publish in the Federal Register, pursuant to the Administrative Procedure Act (81 Stat. 195), such regulations as they deem necessary to carry out the provisions of this Act. Where significant public interest is demonstrated, a hearing on proposed regulations shall be held.

(b) The Secretary, the Secretary of Agriculture, and the Commission shall cooperate and consult with each other in the promulgation and implementation of the regulations referred to in subsection (a) to the end that such regulation, to the maximum extent possible, shall be uniform and consistent in their treatment of similar matters.

(c) Except to the extent that they are inconsistent with the requirements of this Act, existing regulations relating generally or specifically to the lands referred to in Titles II, III, IV, V, and VI of this Act shall remain in full force and effect until republished in total or in part by the appropriate agency.

ANNUAL REPORT

Sec. 902. The Secretary, the Secretary of Agriculture, and the Commission shall submit annually to the President and Congress of the United States and to the Governor and Legislature of the State of Alaska, a report concerning their respective agencies' activities to implement the provisions of this Act during the year. Among other matters, said Secretaries and the Commission shall include in their reports recommendations for any additional administrative or legislative action that they deem necessary to accomplish the purposes of this Act.

SAVINGS CLAUSE

Sec. 903. To the extent that there is a conflict not specifically provided for herein between any provision of this Act and any other Federal law, the provisions of this Act shall govern.

SEPARABILITY

Sec. 904. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

APPROPRIATIONS

Sec. 905. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act. Such appropriations are deemed by the Congress as critical to the successful administration and management of the lands referred to herein.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Federal-State
Land Use Planning Commission
For Alaska

November 23, 1976

Dear Working Group Member:

Enclosed please find copies of the issue papers and tentative agenda which our working group has prepared for use at the December meeting. Each paper has been revised to reflect the changes suggested at our last meeting. The enclosed packet does not include the paper on agriculture, which is apparently still being prepared by Congressman Young's staff.

Also enclosed are the memoranda and other materials which we agreed should be provided as background information for the December meeting. The Commission staff is still working on the second draft of our d-2 briefing booklet, and this material will be sent to you as soon as it is completed. The State is presently supplementing the summary of public opinion to incorporate the additional information which we discussed. The final version will also be sent to you at a later time.

Both Esther and I very much enjoyed the opportunity to work with you in preparing for the December meeting. If there is anything else that we can do prior to the 14th to facilitate the meeting, please let us know.

Sincerely,

John W. Katz
Counsel

JWK:go

Enclosures (15)
1. Tentative Agenda
2. Wildlife Management/Hunting/Subsistence
3. Access - Transportation
4. Mineral Exploration and Development
5. Wilderness Review
6. Cooperative Management
7. A Fifth System
8. A Federal-State Entity
9. Procedural Issues and Overview
10. Legislative Proposals
11. AS § 16.05.257
12. Policy regarding Subsistence Utilization of Fish and Game
13. Mineral Exploration and Development
14. Memo - Certain Legal and Policy Implications of Utility and Transportation Corridors Across (d)(2) Lands
15. Management Systems

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TENTATIVE AGENDA

Tuesday, December 14

8:30 - 9:30 a.m.	Background (LUPC)
9:30 - 10:45	Meeting of Principals
10:45 - 12 noon	Wildlife Management/Hunting/Subsistence
12:00 - 1:30 p.m.	Lunch
1:30 - 2:30	Wildlife Management/Hunting/Subsistence (continued)
2:30 - 3:30	Access - Transportation
3:30 - 3:45	Break
3:45 - 5:00	Access - Transportation (continued)

Wednesday, December 15

8:30 - 10:30 a.m.	Mineral Development
10:30 - 10:45	Break
10:45 - 12 noon	Wilderness Review
12:00 - 1:30 p.m.	Lunch
1:30 - 2:30	Wilderness Review (continued)
2:30 - 2:45	Break
2:45 - 5:00	Agriculture

Thursday, December 16

8:30 - 10:30 a.m.	Cooperative Management, Fifth System, and Federal-State Entity Designed to Promote Coordination and Cooperation
10:30 - 10:45	Break
10:45 - 12 noon	Cooperative Management, Fifth System, and Federal-State Entity Designed to Promote Coordination and Cooperation (continued)
12:00 - 1:30 p.m.	Lunch
1:30 - 5:00	Procedural Issues and Overview

WILDLIFE MANAGEMENT/HUNTING/SUBSISTENCE

1. Statement of Issue

What should be the Federal-State relationship with respect to the management of resident fish and game species in the 17(d)(2) areas? Should hunting be permitted within units of the National Park System? What provisions should be made for subsistence?

2. Background

The existing Federal-State relationship concerning resident fish and wildlife management is extremely complex. The State has the responsibility for managing resident fish and wildlife except where preempted by Federal law (e.g. McKinley National Park and the Marine Mammal Protection Act). Recent executive orders, regulations, laws (e.g. the Endangered Species Act) and court rulings have thrust other agencies like the U.S. Fish and Wildlife Service into more active managerial and frequently overlap with State and other Federal roles. The Bureau of Land Management and the U.S. Forest Service have, on the other hand, adhered to a strict policy of retaining habitat management authority while recognizing the State as the exclusive resident species manager. Recent legislation, like the Sikes Act Extension (P.L. 93-452), have further clarified this cooperative relationship.

Saltwater fisheries and marine mammal management authority is intricately distributed under the Halibut Commission, the North Pacific Council, the U.S. Departments of Commerce and Interior and the State of Alaska. A few d-2 decisions will affect these management programs by controlling access to some fisheries, rehabilitation sites and to marine mammal populations.

The question is whether or not the proposed d-2 areas should automatically fall under existing Federal management frameworks or whether some attempt should be made to alter the fish and wildlife management systems by recognizing Alaska's unique fish and wildlife problems and values.

Despite the large size of the d-2 areas, they cannot be considered complete ecosystems. Migratory habits of many species such as anadromous fish, moose and caribou plus the large range requirements of others precludes sensible management on less than a population or herd basis. In most cases, statewide programs are essential for long-term maintenance of the species and the human lifestyles dependent on them. Fragmented management can be averted by providing for statewide coordinated resource management.

One of the most sensitive issues involves subsistence. The State of Alaska Constitution allows for preferential treatment of beneficial uses but not on an ethnic basis. The State has given priority to

subsistence uses through legislation, regulations and administrative policies. Many of the subsistence user demands, however, may exceed the limits of the Alaska Constitution.

There is no universally acceptable definition of subsistence, although there is a State law defining it and several Federal and State policies recognizing it. It is apparent that a rigid interpretation of Alaskan subsistence needs will only alienate many of the users and demonstrate the usual bureaucratic insensitivity. Certainly, there are noticeable human use differences geographically and between species.

There will be considerable pressures on Congress to provide for subsistence uses in the d-2 legislation. Although the Alaska Native Claims Settlement Act specifically extinguished all aboriginal titles, there seems to be some question concerning future Federal responsibilities to provide for Native subsistence uses. The legislative history of ANCSA takes cognizance of subsistence but shows some unwillingness by Congress to create preferential rights for Natives. The conference report implies that, pursuant to the Act, the Secretary of the Interior could promulgate regulations preferring subsistence uses by those who depend upon subsistence for their livelihood. Whether the Secretary could promulgate regulations preferring one ethnic group over another is open to conjecture.

For subsistence users, the questions of tenure, flexibility, access and local input are important. Each system should be examined for its adaptability and responsiveness to these points. Similarly, management for subsistence can be complicated and expensive. Demands by the various users, including subsistence users, are increasing, requiring substantially more effort in wildlife research programs, population assessments and enforcement. Subsistence may require more intense management such as predator control, population manipulation, enhancement, rehabilitation programs, and strict enforcement to minimize social impacts resulting from violent fish and wildlife population fluctuations. Further subdivisions of the land base coupled with exclusive use provisions will require even more precise management.

There are proposals to establish national parks with provisions for subsistence and/or recreational fishing, hunting, and trapping. Even with mandatory review procedures and innovative administrative mechanisms, the issue is expected to generate considerable controversy. The controversy will center on whether or not fishing, hunting, and trapping should be allowed in parks at all, if these uses are allowed under what constraints, whether only subsistence users should be allowed and whether or not many of the prime fish and wildlife areas should be under the Park System.

Regardless of what approach is taken in establishing the Federal-State fish and wildlife management relationship on Federal lands, the system to which the land is assigned and specific boundaries must be carefully selected. Mechanisms for time and area zoning could be considered.

3. Policy Alternatives

a. Wildlife Management

(1) Each of the proposed systems could adopt the existing management frameworks peculiar to each agency. Under this option Congress would likely treat exceptions (i.e. hunting in parks, subsistence provisions, etc.) individually in the organic legislation.

(2) Congress could develop some co-equal fish and wildlife management scheme between State and Federal agencies, especially for those systems where extensive or intensive management of the fish and wildlife or their habitat is warranted and desirable.

(3) Congress could consolidate statewide resident species management under the State with guaranteed participation of Federal agencies. Continued trespass and habitat management authority would rest with the Federal land managing agency.

(4) Congress could completely preempt the traditional management role of the State over all d-2 lands. This could also be considered individually for each system or area.

b. Subsistence

(1) Management

(a) Leave subsistence under State authority to be treated through its normal administration, regulatory and legislative processes.

(b) Provide for specific subsistence uses by area under each Federal agency's authority.

(c) Provide for secretarial discretion by area or for all d-2 areas.

(d) Provide policy direction by establishing relative priority of subsistence use.

(2) User

(a) Provide specific criteria for determining subsistence users by:

- economic
- residency
- past use
- race

(b) Leave user definition to administrative discretion of regulating agency.

c. Hunting in National Parks

(1) Congress could choose to make no special use exceptions for parks.

(2) Congress could make special case-by-case exceptions allowing any combination of hunting, fishing and trapping uses.

(3) Congress could assign key parcels to the National Park System under special categories (i.e. National Preserves or National Recreation Areas) which traditionally allow for these types of uses under cooperative management programs.

ACCESS - TRANSPORTATION

1. Statement of Issue

What provision, if any, should be made for access across lands included in the following management systems: National Parks, Wildlife Refuges, National Forests, Wild and Scenic Rivers, any other system or modifications of the above?

2. Background

a. Implications

Economic growth and development are closely tied to an adequate, balanced transportation system, although authorities disagree as to which factor is controlling. Development in all its facets--economic, communication, transportation, ecologic--has had and will yet have far reaching effects on the social and cultural patterns and the characteristics of Alaskan Native and non-Native peoples alike, but especially on the indigenous cultures. D-2 land decisions are central to planned changes in this area, too. Public concerns, and resultant Federal and State environmental laws, have rendered environmental considerations important and at times preeminent. Development of highways, other transportation facilities, location of utility corridors and related construction have demonstrable environmental effects, including reduction or elimination of scenic amenities, and alteration of habitats and of biotic communities. Decisions made to develop an area or not, to locate a highway here rather than there, to open up communication or physical access in a given place or at a given time, not only impacts the specific area under consideration; they also carry with them opportunity costs and positive and negative ramifications for areas well removed.

b. Existing law respecting access across different categories of Federal lands.

In general, access for a wide range of purposes across public lands, whether they be in the Forest, Park, Refuge, or Wild and Scenic Rivers Systems, is authorized under certain conditions, usually to be approved or rejected at the Departmental level under the following guidelines:

(1) National Park System

(a) The Secretary of Interior has authority to establish and improve roads for the administration of the National Park System and to designate roads within 60 miles of a park boundary as national park approach roads.

(b) The Secretary of Transportation may not approve federally aided highways crossing national parks unless: (1) there is no feasible and prudent alternative to such use, and (2) all possible planning is done to minimize harm.

(c) Within four months, the Secretary of the Interior may certify that the proposed use of the land for highway purposes is contrary to the public interest or inconsistent with the purposes for which the land has been reserved.

(d) Federal-local cooperative studies are authorized to determine the most feasible Federal-aid routes for the movement of vehicular traffic through and around national parks so as to best serve the traveling public while preserving the natural beauty of the area.

(e) Rights-of-way for railroads across the "public lands" of Alaska are authorized by a statute which may apply to the National Park System. (Statutory authority which is applicable nationwide would preclude the grant of such rights-of-way, and there is some question about how the two statutes relate to each other.)

(f) The Mineral Leasing Act prohibits the designation of a right-of-way for an oil or gas pipeline through national park lands.

(2) National Forest System

(a) The granting of rights-of-way for roads, trails, highways, railroads, and other means of transportation is authorized.

(b) Pipeline rights-of-way may be granted for the purposes of transporting oil, natural gas, synthetic liquid or gaseous fuels, or any refined product thereof.

(Note: With certain exceptions not applicable here, the BLM, under the organic act, has identical authority with respect to public lands under its jurisdiction.)

(3) National Wildife Refuge System

(a) The granting of rights-of-way is authorized for a variety of purposes, including but not limited to, pipelines and roads. However, the Secretary must find that such a use is compatible with refuge objectives.

(b) Federal-aid highway projects are governed by the more stringent test set out in the parks section (1(b) and (c) above).

(4) Wild and Scenic Rivers System

The Secretaries of Interior and Agriculture may grant easements and rights-of-way over any component of the Wild and Scenic Rivers System in accordance with the laws applicable to the National Park and National Forest Systems, but any conditions precedent to granting of rights-of-way must be related to the policy and purpose of the Wild and Scenic Rivers Act. It appears that the Park Service authorities for granting rights-of-way govern all components of the Wild and Scenic Rivers System administered by the Interior Department. (Components of the System are classified and administered as: wild rivers, which are generally accessible only by trail; scenic rivers, which are accessible in places by road; or recreational rivers, which are readily accessible by road or railroad.)

(Note: State jurisdiction over the waters of any stream is unaffected so long as the exercise of such jurisdiction does not impair the purposes of the System.)

(5) Wilderness Areas

(a) Granting rights-of-way for permanent roads or railroads is not authorized. The President, however, may authorize power projects, transmission lines, and other facilities needed in the public interest, including road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States than will their denial.

(b) Generally, except for national parks, pipelines may pass through wilderness areas as provided under an amendment to the Mineral Leasing Act. However, an application for a pipeline through non-park wilderness area may be denied on the basis of incompatibility with the purposes of the area.

(c) Rights-of-way for ingress and egress to wilderness surrounding mining claims are preserved, subject to regulations promulgated by the appropriate agency head.

(The statutes referred to in this section and other applicable laws are discussed more fully in the attached transportation memo developed by the LUPC legal staff.)

3. Alternatives

a. Place lands in systems whose present management authorities and philosophies are closest to presently perceived access needs.

b. Amend as deemed desirable existing law governing those systems to more accurately reflect desires regarding access.

c. Congressional reservation of specific corridors in d-2 legislation.

d. Establish procedures and/or institutions to make future recommendations or designations for access as needs arise.

MINERAL EXPLORATION AND DEVELOPMENT*

1. Statement of Issue

   a. Where should mineral development be permitted?

   b. What method of disposal should be utilized with respect to hardrock minerals?

   Assuming adequate lease or contract stipulations and proper enforcement, it would appear that the Mineral Leasing Act of 1920 and the Mineral Materials Act are generally well adapted to the disposal of leasable minerals and mineral materials on d-2 lands open to such development. In this regard, none of the pending d-2 measures seeks to effect any significant changes in these laws.

2. Background

   a. Resource Information

   The Commission is in possession of resource and other relevant information prepared by the U.S. Geological Survey, Bureau of Mines, State Geological Survey, Office of Technology Assessment, the mining industry, the Commission staff, and other parties.

   b. Existing Law: Its Strengths and Weaknesses

   The Federal mining laws are set forth in 30 U.S.C., Chapter 2. Other portions of Title 30 also bear upon the discussion contained herein. Space limitations preclude a summary of the existing law. However, a good summary appears in Alaska Mining Law Manual, which was prepared by Charles F. Herbert under the auspices of the University of Alaska. In addition, summaries appear in consultant studies prepared for the Public Land Law Review Commission and in various other sources.

   The location-patent system established in the Mining Law of 1872 gives prospectors an absolute right to stake claims on any public lands not closed to such activity. For this reason, such law is critized by its detractors as precluding consideration of competing land uses and as precipitating land withdrawals which are much larger than they would otherwise have to be. On the other hand, supporters of the location-patent approach contend that hardrock minerals must be mined where they are found, and that for this reason, absolute priority must be given in mineral development.

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* Note: This paper is a summary of a more detailed version which is available. Also available are copies and/or summaries of the legislation and other materials referred to herein.

The 1872 Mining Law does not contain provisions relating to environmental protection and reclamation. Rather, its function is mineral disposal. Collateral laws, such as those relating to air and water pollution, mining practices, and reclamation, are relied upon to effect necessary environmental protection. Supporters of the present approach argue that the environmental safeguards provided in collateral legislation are sufficient and that the mineral disposal function should be kept separate from other matters, including environmental protection. Opponents of this view argue that the matrix of existing law does not provide sufficient protection and that the disposal and protection functions are so interrelated that it is inefficient and unrealistic to separate them.

Existing law allows the holder of an unpatented mining claim to obtain fee title to the lands encompassed within his claim upon proof of a valuable discovery. Supporters of this approach argue that fee title is necessary to insure land tenure during development. Opponents contend that such protection can be provided through mechanisms which permit acquisition of title to the mineral deposit itself and use of the surface estate but which do not result in the creation of permanent private "inholdings" on public lands. Opponents also argue that the "current marketability" test for a valuable discovery does not insure adequate tenure even under existing law.

Opponents of the existing law contend that the location-patent system has often been abused by persons who wish to use public lands for nonmining purposes. Supporters of the law contend that this problem is overstated and that various mechanisms such as the Surface Resources Act of 1955 already exist to prevent abuse.

The general mining law does not contain a royalty provision. Those who favor such a provision contend that the public should receive a fair return from the removal by private parties of valuable assets located on public lands. Those holding a contrary view contend that the public does derive a fair return through taxes, increased employment, and other benefits incident to mining activity. Such persons also argue that a royalty can cause waste by reducing the amount of minerals which can be extracted profitably from a given mine.

Other problem areas in existing law have also been identified. These include difficulties in the assessment work requirement, unnecessary distinctions between placer and lode claims, inadequacies in the procedures for the recordation and description of mining claims, the limited size of claims, varying state law requirements incorporated into Federal law, too stringent a test for what constitutes a valuable discovery, inadequate provision for the use of adjacent lands, and the doctrine of

extralateral rights. Those who support the location-patent system contend that these difficulties can be resolved through a "surgical" revision of existing law rather than through adoption of a wholly new approach.

c. Revision of Existing Law

Several legislative and other proposals have been made over the years to effect a more or less comprehensive revision of existing mining laws. While these proposals cannot be described adequately in a short briefing paper, they are mentioned here because there is no conceptual reason why the approaches embodied therein could not be incorporated into subsequent d-2 legislation.

d. The Pending D-2 Legislation

3. Policy Alternatives

a. Where should mineral development be permitted?

(1) Within which management systems should leasable and/or locatable mineral development be permitted?

None, one, or any combination of management systems.

(2) Within which units of otherwise closed systems should such development be permitted?

All or a lesser number depending upon resource potentials, environmental considerations, access, and other relevant factors.

(3) Should the boundaries of closed units be drawn so as to exclude areas having high mineral potential?

b. What system should be utilized to dispose of hardrock minerals located on d-2 lands?

(1) Existing law

(2) Modified location-patent system

(a) American Mining Congress bill

(b) Northwest Mining Association proposal

(c) Public Land Law Review Commission report (see One Third of the Nation's Land)

(d) Alternative "strategy model" proposed by certain participants in July 29, 1976 workshop sponsored by the Office of Technology Assessment

(e) Outline prepared by Commission Counsel

All of these proposals guarantee the right to locate mining claims on open lands, which feature is perhaps the most important component of the Mining Law of 1872. While the proposals differ in certain respects described in the more lengthy memorandum, they contain many common elements. All of the proposals would resolve the problems in existing law referred to in the last paragraph of Section 2b herein.

(3) Permit and Lease System

(a) Bills introduced in prior Congresses [Mink, Metcalf, Saylor, Jackson (by request)]

(b) Alternative "strategy models" currently being prepared by the Office of Technology Assessment

(c) Alternative formulations contained in consultant reports prepared for the Public Land Law Review Commission

(d) Proposal currently being circulated by the LUPC Counsel pursuant to the Commission's request for a permit and lease system

WILDERNESS REVIEW

1. Statement of Issue

Is Wilderness designation an appropriate classification of lands now in d-2 status? What is the most appropriate institution, if any, for Wilderness review?

Large areas of de facto wilderness are involved in most of the pending d-2 proposals. Future land management options for these areas could be affected, positively or negatively, by Wilderness designation. Certain administrative policies might be aided by Wilderness status, others could be restricted.

Upcoming congressional consideration of d-2 will raise the issue of classifying portions of these areas as Wilderness. At issue will be two basic questions: How, if at all, should Wilderness designation be applied to Alaskan d-2 lands, and what lands should be placed in such status? Answers to the first question must precede consideration of the second. This discussion will focus only on procedural questions, leaving the location of any Wilderness areas to a later time.

2. Background

The Wilderness Act of 1964 provides the statutory basis for consideration of Wilderness as it might apply to d-2 areas. The Act gives general definitions and guidelines for identifying candidate areas and for their management once designated as Wilderness. Portions of the Act most germane to the Alaskan situation are summarized below.

In the past, Wilderness areas have been established under the following procedures:

- Congressional identification of Federal land management systems to be reviewed. (This provision expired in 1974.)
- Administrative review including mineral reconnaissance.
- Review findings are submitted to Congress by President.
- Congressional consideration.

a. Definitions

Lands to be presented for Wilderness status must

(1) be undeveloped Federal land of primeval character. (State and private lands may be included by exchange or donation.)

(2) not have any permanent improvements or human habitation;

(3) appear to be affected primarily by natural forces;

(4) possess outstanding opportunities for solitude and primitive recreation;

(5) contain more than 5,000 acres or be of a size that makes Wilderness management feasible; and

(6) Wilderness study areas are administered by the managing agency so as to protect their potential for Wilderness status.

b. Wilderness Management Guidelines

Wilderness areas are to be administered under the following general guidelines:

(1) Subject to prior exisitng rights, policies for Wilderness areas are determined by management principles of the administering agency.

(2) Except as otherwise provided in the Act, and subject to prior existing rights, there are to be no roads, motorized access, permanent structure or commercial enterprises.

(3) Where already established, use of aircraft and motorboats may continue.

(4) Fire, insect and disease control may be undertaken.

(5) Water development projects are permitted.

(6) State and private lands within Wilderness areas are guaranteed rights to customary modes of access.

(7) Under recent court decisions, uses of lands within candidate Wilderness areas may be restricted until Congress renders a final decision.

c. Mineral Policy

Mineral development is treated under the terms of the Wilderness Act in the following manner:

(1) Prior to congressional consideration, an area must have been surveyed for its mineral potential by the U.S. Geological Survey.

(2) All National Park Service Wilderness areas are withdrawn from new mineral entry, however, claims may be filed until 1984 on U.S. Forest Service and some Wildlife Refuge areas. Regulations may be enforced pertaining to access and reclamation which are consistent with mineral exploration and development. These regulations have had the effect of restricting mineral activity in Wilderness areas.

3. Policy Alternatives

a. Remove Alaskan areas from provisions of the Wilderness Act.

b. Legislatively establish procedure for applying the 1964 Wilderness Act to d-2 areas utilizing present administrative systems. Review timetable and study areas would be specified.

c. Rewrite criteria procedures of the 1964 Wilderness Act to reflect Alaskan conditions.

d. Establish a new entity which would have responsibility for identifying, reviewing, and making recommendations to Congress on Wilderness in d-2 areas.

e. Create "instant Wilderness" by designation in d-2 legislation under the 1964 Wilderness Act.

Not all of the above alternatives are mutually exclusive; combinations of the last four are possible.

COOPERATIVE MANAGEMENT

1. Statement of Issue

Should Congress use the d-2 bill to promote cooperative management between adjoining public and/or private landowners in Alaska?

It has been suggested that the bill used to resolve Section 17(d)(2) of the ANCSA could also be used to promote cooperative management between State, Federal and even private landowners in Alaska. The need for strong cooperative management has been enhanced by the complex pattern of land ownership arising under ANCSA and the Statehood Act. This pattern increases the possibility of conflicts between land managers, particularly in regard to wildlife management. Habitat protection offered by a single land manager will often not be enough to protect a wildlife resource unless other land managers are willing to cooperate in this effort.

2. Background

a. Existing Federal Law

Federal law aimed at fostering cooperation among land managers includes the Coastal Zone Management Act, the Water Resources Planning Act, and the Sikes Act. The Sikes Act is probably most relevant to this discussion.

Under the extension to the Sikes Act (P.L. 93-452), the Secretaries of Interior and Agriculture are required "to develop....conservation and rehabilitation programs to be implemented on public lands under [their] jurisdiction...." Parks and refuges are in excluded from this provision. The programs are required to be developed in consultation with State agencies and must be consistent with any overall land use and management plans. The Act also specifically allows the State agency administering fish and game laws to voluntarily enter into a cooperative agreement in respect to each conservation and rehabilitation program. The agreements are required to address several points including habitat improvements, range rehabilitation, threatened and endangered species, and off-road vehicles.

b. Existing State Law

The Alaska Statutes authorize the Commissioner of Natural Resources to enter into "cooperative resource management or development agreements." They also authorize the Commissioner of Fish and Game to enter into agreements concerning fish and game management. In establishing the authorization concerning resource management, the intent of the Legislature is worth noting:

"The legislature recognizes the changing resource ownership patterns and increasing complexity of natural resource management and development in the state and the reality that use and enjoyment of land and resources by one possessor or owner may significantly affect rights of other adjacent or remote possessors or owners. It is the intent of this Act to clearly authorize the state to enter into cooperative resource management or development agreements when in the state and public interest, and under specific guidelines designed to protect the public and state interest."

3. Alternatives

There are two approaches that could be used to promote cooperative management. One would simply make it attractive for adjoining, but distinct land managers to enter into voluntary cooperative agreements. This is the traditional approach.

The other would place certain lands directly under the classification or management authority of an agency representing varied interests. This would involve creation of a fifth system.

Specifically, the d-2 legislation could be written to do any or all of the following:

a. It could endorse the creation and implementation of voluntary cooperative agreements. Guidelines for such agreements could be designated within the legislation, or the authority for establishing guidelines (and promoting passage of agreements) could be given to some type of cooperative agency.

b. Legislation could establish a clearinghouse-type procedure. Management programs of individual agencies having implications for other land managers would be submitted to a cooperative agency for distribution and comment. The agency itself could even be charged with review responsibility. Participation of land managers in the clearinghouse could be mandated within the legislation or tied to budgetary purse strings.

c. Legislation could designate certain lands directly under the authority of a cooperative agency representing Federal and State and perhaps private interests.

If the final d-2 legislation contains provision b or c above, it it will also need to identify lands subject to the provision. The following approaches could be used in identifying such lands:

a. The legislation (and companion State legislation) could make all Federal, State and voluntary private land owner/managers in Alaska subject to the cooperative provision.

b. The legislation (and companion State legislation) could designate certain boundaries within which all Federal, State, and voluntary private land owner/managers would be subject to the cooperative provision.

c. The legislation (and companion State legislation) could designate certain classes of Federal and State lands in Alaska which would be subject to the cooperative provision.

d. The legislation (and companion State legislation) could make those lands disposed of within the legislation and designated State lands subject to the provision.

A FIFTH SYSTEM

1. Statement of Issue

Is there a need to create a new land classification and/or management agency in Alaska?

In addition to lands which unquestionably meet the criteria for inclusion as Alaska units of the National Park, National Wildlife Refuge, National Forest and Wild and Scenic Rivers systems there are other Federal lands of national interest which do not readily fit within existing systems.

2. Background

Three nationwide management systems -- National Park Service, U. S. Forest Service, and U. S. Fish and Wildlife Service -- are named as potential managers of the d-2 lands. The fourth system -- Wild and Scenic Rivers -- is not a management but a classification system which takes its management from the adjacent land manager. Each of the agencies has some classification authority for the lands under its jurisdiction, as well as the full proprietary authority of the Federal government over lands owned by it. Each may have areas within a management unit designated wilderness areas under the Wilderness Act.

The National Park Service classified lands within national parks into natural, historic and recreational categories. National Park "natural areas", exemplified in Alaska by the present Mount McKinley National Park and Katmai and Glacier Bay National Monuments, are managed to place primary emphasis on the preservation of natural features, and use or management conflicts are resolved in favor of the protection of natural, scenic, wildlife or historical values. In Park Service "natural areas" mining and hunting are not allowed.

The U.S. Forest Service manages under concepts of multiple use and sustained yield allowing mining under the 1872 Mining Law and hunting with seasons, bag limits, methods and means of harvest set by ADF&G. Forest Service lands in Alaska, are also subject to the 400,000-acre selection entitlement of the State of Alaska under the Alaska Statehood Act.

The U.S. Fish and Wildlife Service is dedicated to wildlife conservation and rehabilitation. Uses compatible with this primary objective may be permitted including mineral leasing, hunting, fishing and trapping, for example. Basically all such acts are prohibited unless permitted. D-2 refuges will be created by Congress and not by Executive Order, as those in Alaska in the past have been. The Federal-State relationship with respect to resident game management is a major issue with respect to placing additional large mammal habitat areas under Fish and Wildlife Service management.

The effect of designation of a Wild and Scenic River depends upon which of three categories is used. Wild Rivers are to be free of impoundments with rivers essentially in a primitive state and inaccessible except by trail. Scenic rivers are also free of impoundments and largely primitive but accessible in places by roads. Recreational rivers are accessible by road or railroad many have some development along their shorelines, and may have undergone some impoundment or diversion in the past. Of chief concern to Alaska is the effect of this classification upon hunting, fishing and other subsistence activities, as well as the use of rivers for transport.

The Bureau of Land Management has interim managing authority over the d-2 lands, those withdrawn for Native selection, surface management of NPR 4, and Federal lands withdrawn for classification - the d-1 lands. The recently passed Federal Land Policy and Management Act of 1976 confirms BLM management on the basis of "multiple use and sustained yield" unless otherwise specified by law. The general policy of the Act also directs retention in Federal ownership in most instances. However, the repealer of the homestead laws, for example, in the rest of the nation does not apply in Alaska for ten years. Mining on BLM lands is conducted under the 1872 Mining Law, and seasons, bag limits, methods and means of harvest for hunting are set by ADF&G. BLM's new organic act gives the agency enforcement and closure authority on lands under its jurisdiction.

With the denial of some uses or the ability to prohibit all uses unless they are compatible with the wildlife values to be protected, the National Park Service and the U.S. Fish and Wildlife Service are able to provide the intensive management to critical areas of apparent national interest value. Neither service's management, however, is flexible enough to allow it to respond to multiple demands for land use.

In addition to lands which unquestionably meet the criteria for inclusion as Alaska units of the National Park, National Wildlife Refuge, National Forest and Wild and Scenic Rivers systems, there are other Federal lands which:

- are in Federal public ownership
- contain natural scenic values
- contain wildlife habitats
- contain geological, botanical, zoological, ecological archaeological, or historical features
- minerals, timber, range or other commercial, valuable resources
- have significant relationship to adjoining state or private landholdings necessitating area-wide planning

3. Alternatives

a. Place all lands in d-2 withdrawals in one of the conservation systems - National Parks, Wildlife Refuges, Forests or Wild and Scenic Rivers.

b. Place Federal lands not included in one of the conservation systems into d-1 category for classification by the Bureau of Land Management. After proper classification disposal may be made through:
   i. selection by the State of Alaska under the Statehood Act
   ii. application of the 1872 Mining Law or the Homestead Act and other public land laws which apply in Alaska for ten years.

c. Place Federal lands not included in one of the conservation systems in a Federal land reserve category under management by the Bureau of Land Management under the organic Act. The Reserve status would:
   i. prohibit disposal by State selection
   ii. prohibit disposal under the public land laws.

d. Restructure an existing agency, or create a new Federal agency, with classification and management responsibilities for all, or most, of the d-2 lands.

e. Create a new classification entity:
   i. with land management authority in classification entity
   ii. with land management delegated to an existing "line" agency
   iii. establishment by Congress of basic management rules within which classifications must occur
      a. such as a permit and lease system for mineral exploration or development
      b. a lease system for grazing or farming
      c. transportation planning and environmental analysis
   iv. establishment of basic rules by the classification entity

(for more detail on management systems see Management Systems background paper.)

A FEDERAL-STATE ENTITY

1. Statement of Issue

Should such an entity be created? If so, what should be its makeup and authority?

When land transfers under the Alaska Native Claims Settlement Act and the Alaska Statehood Act are complete, Federal, State and private land managers, particularly Alaska Native corporations, will own lands in every region of Alaska. With the expiration of the Joint Federal-State Land Use Planning Commission there will be no continuing, formal entity in which Federal and State governments participate.

2. Background

It will be some time before land ownerships and management regimes in Alaska are finally established. At present there is need to reduce the present over-selection of Native lands in some regions. Also undetermined at this time is the location of the remaining 35-million-acre selection entitlement of the State of Alaska which need not be completed until 1984. Another element of uncertainty is the determination of the navigability of inland lakes and streams. This factor, alone, may result in significant State ownership of submerged lands within the d-2 lands now under consideration.

The policies, management objectives, and management authorities of the Federal land managing agencies differ. There are also differences among State land and resource managers, to say nothing of differences between public land managers and Native corporate land managers.

The land ownership patterns themselves often do not follow natural or ecological boundaries. Many of the resources, particularly wildlife, migrate from one ownership or one management unit to another irrespective of boundaries.

With few exceptions most Federal lands in Alaska are areas of concurrent jurisdiction between the Federal and State governments with respect to the exercise of the police power of the State. With liberal construction by the courts of the delegated powers of the Federal government and the provision in Article VI of the United States Constitution that the laws of the United States made in pursuance thereof are the supreme law of the land, and the further power of the United States Government under Article IV of the Constitution to enact laws dealing with Federal lands, as recently exemplified in the case of New Mexico v. Kleppe, there is

continuing potential for conflict between Federal and State regulatory and managing authorities.

As pointed out in the paper on cooperative management there are many cooperative agreements between Federal agencies and often between Federal and State agencies dealing with a single subject-matter or a single geographic area. The structure of the Alaska State government allows coordinative effort through the Division of Policy Development and Planning and various cabinet level task forces appointed for specific issues. The ability of the Federal government to coordinate activities at the Washington level is less apparent.

If Congress creates an entity classification of designated Federal and State lands whose management and land use may be closely inter-related could be delegated to it. There may also be need to place some lands under the management of such an entity.

3. Alternatives

a. Create no entity and rely on existing coordinative tools leaving classification and management to each government and designated agencies within it.

b. Create a Federal entity in Alaska with a corresponding entity at the national level to coordinate land use planning and management of Federal land managers in Alaska. (An entity similar to the Presidents Review Committee which was established in Washington, D.C. when the Federal Field Committee for Development Planning in Alaska was established in Alaska could be proposed.) Rely upon a similiar state body for corresponding coordination of planning and management of State lands and the regulation of private lands.

c. Create a Federal-State entity to provide planning and policy direction for Federal and State land classification and management in any of a number of combinations.

1. Lands. Place designated Federal and State lands under the new entity. These could include:
   - the so-called fifth system Reserve lands designated by Congress out of the present d-2 withdrawal lands,
   - some or all of the remaining Federal lands now under
   - lands to be designated by the State.

2. Authority. The entity could be granted authority;
   - only to plan and coordinate;
   - only to classify lands under its mandate;
   - to designate managers and provide management guidelines,
   - to manage designated lands or any combination of these authorities

3. Composition. The entity could be limited to Federal and State representation or could provide for representation by representatives of local governments or Native corporate landowners. It can be a large or small Board or Commission with staffing dependent upon its delegated authority and responsibility. Because of the sovereign nature of the Federal and State landowners a veto perhaps should be provided with the Federal government holding a veto power over actions affecting Federal lands and the State government holding a veto power over actions affecting State lands.

Sec. 16.05.257. Subsistence hunting regulations. (a) The board, at its regularly scheduled annual game board meeting, may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit only upon recommendation of the department, based on biological evidence, or the majority vote of the active local advisory committees for that game management unit or subunit, including but not limited to:

(1) the establishment of subsistence hunting areas;

(2) the regulation of transportation methods and means to protect subsistence hunting within subsistence hunting areas, including the prohibition or limitation of pack animals, mechanized vehicles and aircraft, other than watercraft or wheeled vehicles operating on a road maintained by public funds;

(3) the establishment of open and closed seasons and areas to protect subsistence hunting;

(4) the limitation of hunting to only one sex of the animal.

(b) In this section

(1) "subsistence hunting" means the taking of game animals by a state resident for food or clothing for personal or immediate family use;

(2) "subsistence hunting area" means an area designated by the board as primarily important for subsistence use and in which it is unlikely that subsistence needs will be met if recreational hunting including hunting for trophy purposes is permitted or if certain methods and means are continued. (§ 1 ch 199 SLA 1975)

Effective date.—Section 2, ch. 199, SLA 1975, makes this section effective on June 26, 1975, in accordance with AS 01.10.070(c).

Legislative committee report.—For report on ch. 199, SLA 1975 (SCS HB 369 am S), see 1975 House Journal, p. 733.

SUBSISTENCE UTILIZATION OF FISH AND GAME POLICY

STATEMENT BY THE COMMISSIONER AND ALASKA BOARD OF FISH AND GAME

Although fish and game resources were once a crucial factor in the survival of all Alaskans, a growing population segment is becoming partially or totally independent of these resources. This change is the result of advanced food production technologies elsewhere, rapidly improving logistics, and a growing immigrant population whose demands mainly involve recreational uses of the resource. Nevertheless, direct domestic utilization of fish and game is still vital to the existence of many rural Alaskans and is an essential supplement to the larders of some urban citizens. Beyond directly satisfying food requirements, home consumption of fish and game tends to preserve cultures and traditions and gives gratification to a strong desire possessed by many to hunt and fish. The latter functions seem genuinely important to the physical and psychological wellbeing of a large number of Alaskans.

By reason of culture, location, economic situation or choice, large numbers of people will find it impossible to abandon or alter their way of life at a pace paralleling changes brought by new shifts in land status and ownership, nonrenewable resource developments, transportation improvements and a phenomenal rate of population growth. The following policy statement on subsistence use of the fish and game resource has been prepared in recognition of the above facts and of the responsibilities mandated to the Board and the Commissioner.

The Fish and Game Board and the Commissioner of Fish and Game recognize that existing cultures and life styles in Alaska are of great value and should be preserved.

The Board and the Commissioner believe that, although limitations on the productivity of fish and game stocks prohibit continued increases in the numbers of subsistence resource users, domestic utilization is still of fundamental importance to many Alaskans. Accordingly it is assigned the highest priority among beneficial uses.

Within legal constraints fish and game will be allocated to subsistence users on the basis of need. Needs of individuals, families or cultural groups differ in type and degree and it is recognized that subjective judgement will be an unavoidable necessity in weighing actual need. Elements considered in establishing the level of need include cultures and customs, economic status, alternative resources (availability of social services), location and voluntary choice of life style.

The Board and Commissioner also understand that subsistence requirements will not affect all resources in all areas equally, and recreational and commercial uses will continue to be permitted where and to the extent that they do not interfere with or jeopardize subsistence resource use.

MINERAL EXPLORATION AND DEVELOPMENT*

1. Statement of Issue

a. Where should mineral development be permitted?

Question a. assumes that for the foreseeable future, any possible conflicts between the development of geothermal resources and other land uses will not become a major policy issue. This assumption should be considered in light of available information. In any case, geothermal resources often occur in places which are also favorable for hardrock minerals, and so the geothermal issue will be considered at least tangentially within the context of the consideration of hardrock resources.

b. What method of disposal should be utilized with respect to hardrock minerals?

Assuming adequate lease or contract stipulations and proper enforcement, it would appear that the Mineral Leasing Act of 1920 and the Mineral Materials Act are generally well adapted to the disposal of leasable minerals and mineral materials on d-2 lands open to such development. In this regard, none of the pending d-2 measures seeks to effect any significant changes in these laws.

2. Background

a. Resource Information

The Commission is in possession of resource and other relevant information prepared by the U.S. Geological Survey, Bureau of Mines, State Geological Survey, Office of Technology Assessment, the mining industry, the Commission staff, and other parties. This material will be available for the December meeting.

b. Existing Law: Its Strengths and Weaknesses

The Federal mining laws are set forth in 30 U.S.C., Chapter 2. Other portions of Title 30 also bear upon the discussion contained herein. Space limitations preclude a summary of the existing law. However, a good summary appears in Alaska Mining Law Manual, which was prepared by Charles F. Herbert under the auspices of the University of Alaska. In addition, summaries appear in consultant studies prepared for the Public Land Law Review Commission and in various other sources.

The location-patent system established in the Mining Law of 1872 gives prospectors an absolute right to stake claims on any public lands not closed to such activity. For this reason,

such law is critized by its detractors as precluding consideration of competing land uses and as precipitating land withdrawals which are much larger than they would otherwise have to be. On the other hand, supporters of the location-patent approach contend that hardrock minerals must be mined where they are found, and that for this reason, absolute priority must be given in mineral development.

The 1872 Mining Law does not contain provisions relating to environmental protection and reclamation. Rather, its function is mineral disposal. Collateral laws, such as those relating to air and water pollution, mining practices, and reclamation, are relied upon to effect necessary environmental protection. Supporters of the present approach argue that the environmental safeguards provided in collateral legislation are sufficient and that the mineral disposal function should be kept separate from other matters, including environmental protection. Opponents of this view argue that the matrix of existing law does not provide sufficient protection and that the disposal and protection functions are so interrelated that it is inefficient and unrealistic to separate them.

Existing law allows the holder of an unpatented mining claim to obtain fee title to the lands encompassed within his claim upon proof of a valuable discovery. Supporters of this approach argue that fee title is necessary to insure land tenure during development. Opponents contend that such protection can be provided through mechanisms which permit acquisition of title to the mineral deposit itself and use of the surface estate but which do not result in the creation of permanent private "inholdings" on public lands. Opponents also argue that the "current marketability" test for a valuable discovery does not insure adequate tenure even under existing law.

Opponents of the existing law contend that the location-patent system has often been abused by persons who wish to use public lands for nonmining purposes. Supporters of the law contend that this problem is overstated and that various mechanisms such as the Surface Resources Act of 1955 already exist to prevent abuse.

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Other problem areas in existing law have also been identified. These include difficulties in the assessment work requirement, unnecessary distinctions between placer and lode claims, inadequacies in the procedures for the recordation and description of mining claims, the limited size of claims, varying state law requirements incorporated into Federal law, too stringent a test for what constitutes a valuable discovery, inadequate provision for the use of adjacent lands, and the doctrine of extralateral rights. Those who support the location-patent system contend that these difficulties can be resolved through a "surgical" revision of existing law rather than through adoption of a wholly new approach.

c. Revision of Existing Law

Several legislative and other proposals have been made over the years to effect a more or less comprehensive revision of existing mining laws. While these proposals cannot be described adequately in a short briefing paper, they are mentioned here because there is no conceptual reason why the approaches embodied therein could not be incorporated into subsequent d-2 legislation.

Legislation embodying a modified location-patent system has been introduced in behalf of the American Mining Congress. This measure is summarized in the accompanying attachment A. In addition, several variants of a permit and lease system have been introduced in one or both of the preceding two Congresses. This legislation includes bills introduced by the late Congressman John Saylor, Congresswoman Patsy Mink, Senator Lee Metcalf, and Senator Henry Jackson (by request of the previous administration). The bills vary in a number of important respects, including the nature and extent of administrative discretion, application and approval procedures, performance standards during the term of a permit or lease, environmental controls, royalties, etc. Copies of these measures are on file in the Commission's offices and are available for your review.

Various organizations and groups have, or are now in the process of, developing proposals for legislative reform. One such proposal was made by the Public Land Law Review Commission in its report entitled, One Third of the Nation's Land. Basically similar approaches have been advanced by the American Mining Congress, the Northwest Mining Association (see attachment B), and other industry groups. In addition, the Congressional Office of Technology Assessment is presently in the process of examining alternative "strategies" for the disposal of mineral resources, and the Counsel for the Land Use Planning Commission has developed draft legislation which is now being circulated for comment.

d. The Pending D-2 Legislation

Legislation submitted by the Secretary of the Interior would allow hardrock mineral development under a permit and lease system within units of the National Wildlife Refuge System, the Iliamna National Resource Range, and a portion of the Yukon-Charley National Rivers. Development of minerals under the Mineral Leasing Act of 1920 would also be permitted in these areas. The components of the permit and lease system recommended by the Secretary for hardrock minerals are not specified. The Secretary's bill would preclude mineral development altogether within units of the National Park System (except part of Yukon-Charley) and in the Noatak National Arctic Range (during a 20-year study period) while allowing such activity under the existing mining and mineral leasing laws within new national forests.

The bill does not contain provisions concerning mineral development within wild and scenic rivers located within proposed parks, refuges, and forests. However, subject to valid existing rights, the bill does withdraw from location and leasing those lands encompassed within wild rivers situated outside of the aforesaid management systems. Under existing law, mineral development within units of the Wild and Scenic Rivers System is governed generally by the rules and regulations applicable to the management system in which a particular river is located. However, the Secretaries of Interior and Agriculture are authorized to promulgate special regulations governing such development. With respect to wild rivers, existing law specifies that the minerals in Federal lands which constitute the bed and bank or which are situated within one-quarter mile of the bank are withdrawn from the operation of the mining and mineral leasing laws.

Legislation introduced by Congressman Don Young would permit mining and mineral leasing under existing law within management units otherwise open to such activity. The bill introduced in behalf of certain conservation groups calls for limited use of a permit and lease system, the components of which are not specified, for hardrock minerals located within national forest areas. Limited use of the Mineral Leasing Act of 1920 within forests is also authorized. The bill would foreclose mineral development altogether within national parks, wildlife refuges, ecological reserves, and units of the National Wild and Scenic Rivers System. Within two years of the bill's enactment, the Secretary would add to existing management units any appropriate lands withdrawn for, but not selected by, Native corporpations. Two measures introduced by Congressman John Dingell which relate solely to wildlife refuges would foreclose mineral development within the units established therein.

3. Policy Alternatives

a. Where should mineral development be permitted?

(1) Within which management systems should leasable and/or locatable mineral development be permitted?

None, one, or any combination of management systems.

It is necessary to determine as a policy matter within which management systems mineral development will be permitted. While organic acts and administrative policies governing individual units vary, the following statements are generally valid. National parks are closed to mineral development; wildlife refuges are closed unless specifically opened; national forests and BLM lands are open on a multiple use basis; and units of the Wild and Scenic Rivers System are governed by the rules discussed in section 2. All of the "fifth system" proposals which have been advanced thus far allow mineral development either on a multiple use basis or when compatible with the dominant use, such as wilderness-wildlands.

(2) Within which units of otherwise closed systems should such development be permitted?

All or a lesser number depending upon resource potentials, environmental considerations, access, and other relevant factors.

(3) Should the boundaries of closed units be drawn so as to exclude areas having high mineral potential?

Some conflicts between mineral development and other land uses can be avoided by drawing boundaries to excise mineralized areas. Of course, such a resolution is not always possible because of the existence of other considerations, such as the need to protect important scenic features. The Land Use Planning Commission has sought to delineate the boundaries of proposed national parks in a way that would avoid mineralized areas. However, because such areas often occur in "uplift" locales of great scenic beauty, this has not always been possible. With regard to wildlife refuges, the geology indicates that the principal conflict will be between the protection of migratory waterfowl and petroleum development. In accordance with the working group's present understanding, the question of boundary delineation and its relationship to the first policy issue mentioned above will be left to the principals for resolution at their December meeting.

b. **What system should be utilized to dispose of hardrock minerals located on d-2 lands?**

(1) Existing law (see summaries referred to in Part 2.)

(2) Modified location-patent system

(a) American Mining Congress bill (see summary - attachment A.)

(b) Northwest Mining Association proposal (see attachment B.)

(c) Public Land Law Review Commission report (see One Third of the Nation's Land.)

(d) Alternative "strategy model" proposed by certain participants in July 29, 1976 workshop sponsored by the Office of Technology Assessment (see attachment C.)

(e) Outline prepared by Commission Counsel

Principal components:

[1] Policy statement from the Mining and Minerals Policy Act of 1970.

[2] Gradual increases in monetary amount of assessment work during claim tenure. Payments in lieu of assessment work permitted. Ability to "bank" excess assessment work expended in one year to satisfy requirements in subsequent years. Ability to spread assessment work among claims in the same general vicinity. Recognition of more kinds of work as satisfying the assessment work requirement. Improvement of procedures for checking assessment work. Suspension of assessment work requirement in certain circumstances.

[3] Patent to the minerals only, with absolute right to obtain surface use through lease of lands needed for prospecting, development, production, processing, and other uses incident to mineral development. Lease rental to be based on the fair market value of surface use.

[4] Patent based on proof of a valuable discovery or upon submission of a work plan and other action demonstrating a commitment to produce minerals. (The latter test is preferred because it avoids uncertainties and complexities associated with the discovery doctrine.) Utilization of the

original "prudent man" test, and not the "current marketability" test, for determining what constitutes a valuable discovery. Ability of the prospector to hold a claim for a reasonable period of time before such claim can be challenged for lack of a valuable discovery. Increase in patent fees.

[5] Elimination of extralateral rights and the distinction between lode and placer claims.

[6] Federal preemption of state laws (except recording statutes) regarding location and tenure, as such laws apply to Federal claims.

[7] Conformance of claim boundaries to the public land survey system. (The "stale" claim problem has been resolved by the recordation provisions of the BLM Organic Act and the "Mining in Parks" bill. The BLM Act requires both Federal and State recordation.)

[8] Increase in maximum claim size from 20 to 160 acres. No restriction on the number of claims which can be held by any one person.

[9] Determine which disposal system should govern certain "ambiguous" minerals, such as the silicates of potassium and sodium.

[10] Environmental protection and reclamation standards provided through collateral law (Federal, State, and local) which would apply to mining activity but would not be incoporated into the disposal system. Additional protection of surface resources provided through promulgation by BLM of regulations similar to those developed by the Forest Service to ameliorate surface impacts within national forests.

[11] Adequate provision for surface access to mining claims.

[12] Possible inclusion of a gross or net royalty provision.

[13] Continuation of survey work conducted by U.S. Geological Survey and Bureau of Mines, such work to cover all Federal lands, including those encompassed within exsisting and future withdrawals.

All of these proposals guarantee the right to locate mining claims on open lands, which feature is perhaps

the most important component of the Mining Law of 1872. While the proposals differ in certain respects, they all would resolve the problems in existing law referred to in the last paragraph of Section 2b above.

Regarding specific concepts, the Northwest Mining Association opposes a royalty provision. On the other hand, the American Mining Congress's bill calls for a two percent gross royalty which may not exceed five percent of net, and the Public Land Law Review Commission recommended that "a royalty should be collected on production both before and after patent." With respect to the question of patent to the surface estate, the PLLRC recommended that a mineral operator should have the option of acquiring such title, but if he does not, "the right to the mineral interest should terminate automatically at the end of a reasonable period after cessation of production." The Northwest Mining Association opposes the latter condition on the ground that the mineral estate is a discrete right and has no necessary relationship to ownership of the surface. The American Mining Congress proposes a patent which includes both the surface and mineral estates subject to a possibility of reverter if the lands are used for nonmineral purposes. Various minor differences between the three proposals also exist.

The approach described in item (c) is similar to, but differs in certain respects from, the proposals made by the Public Land Law Review Commission, the American Mining Congress, and the Northwest Mining Association. Although there would probably be agreement on the relevant points, not all of the proposals deal with each of the matters considered above. Moreover, in a few instances, the system described in item (c) presents a slightly different approach or a synthesis of differences between the three proposals.

(3) Permit and Lease System

(All of the legislation and other materials described below are on file in the Commission's offices.)

(a) Bills introduced in prior Congresses [Mink, Metcalf, Saylor, Jackson (by request)].

(b) Alternative "strategy models" currently being prepared by the Office of Technology Assessment.

(c) Alternative formulations contained in consultant reports prepared for the Public Land Law Review Commission.

(d) Proposal currently being circulated by the LUPC Counsel pursuant to the Commission's request for a permit and lease system.

This proposal has been incorporated into draft legislation. Major provisions concern entry procedure, the exploration permit, approval of the permit, exploration plan, annual labor, development lease, approval of the lease, plan of development, annual rental on leases, royalty, environmental protection and reclamation, reclamation bonds, reclamation fund, annual filing of certain data, surface owner protection, application of the National Environmental Policy Act, access, and revenue sharing with the states.

JWK:go

Federal-State
Land Use Planning Commission
For Alaska

November 12, 1976

MEMORANDUM

TO: Burton W. Silcock, Federal Co-Chairman
Walter B. Parker, State Co-Chairman

THRU: John W. Katz, Counsel

FROM: Lee D. Morrison, Legal Extern

SUBJECT: American Mining Congress - Proposed Revisions to the Mining Law of 1872

Existing Claims

The bill provides that existing unpatented mining claims may be maintained if an application for patent or a declaration of interest is made within three years of the enactment of the bill or within three months of the conclusion of an appeal proceeding. A declaration of interest--which contains the names of persons asserting an interest in the claim, a description of the claim, and, in most cases, a map prepared from a field survey--does not render valid any claim which is invalid at the time of the bill but does allow the claimant five years from the time of the bill to perfect the claim by discovery of a valuable mineral deposit. If the United States demonstrates a specific present need, it may contest and declare null and void any claim for which a declaration of interest is or could be filed if, at the time of the contest, no discovery has been made. Apart from this provision a claim under a declaration of interest is maintained until it is abandoned, or there is a failure to comply with the assessment provisions, or there is a failure to file for patent within five years of the enactment of the bill. If a patent application is disapproved or cancelled, the claimant has an exclusive right for 180 days to relocate the claim. If, on the date of enactmen the claim can be shown to contain a valuable mineral deposit, the claimant can obtain patent under preexisting law.

New Claims

A claim must generally be between 20 and 80 acres and the exterior boundaries, whenever possible, must conform to the lines of the public land survey. For surveyed lands, with a known monument, location is

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made by monumenting the northwest corner, posting a location notice, and recording the location notice with the county or district recording office and the Bureau of Land Management. On other lands, location is made by monumenting four corners, posting and filing a location notice, and, within 180 days, posting and filing a location certificate which includes information obtained from a field survey.

The bill specifically preempts all state and mining district laws respecting location and maintenance of mining claims and substitutes its own procedures. Subject to the requirements of statutes dealing with multiple mineral development and protection of surface resources, a locater has the exclusive right of possession and use of all the surface included within the boundary lines of his locations necessary for exploration, development, mining, and processing operations and uses reasonably incident thereto. In addition, he has the exclusive right to explore for, develop, mine, produce, dispose of, and patent all mineral deposits covered by the bill within the vertical planes extended downward along the boundaries of the mining claims. The locater will be held liable for damage to surface resources and tangible improvements owned by the surface owner and must maintain, subject to a waiver by the surface owner, a bond to secure payment of damages. The owner of a claim is also subject to applicable Federal, state, and local laws dealing with environmental protection.

The requirement of the performance of annual labor can be met by expending monies on labor, materials, surveys, improvements and activity of any kind which would tend to discover or facilitate the development of mining or the processing of mineral deposits within the claim. Annual labor may be deemed to benefit each claim individually when performed on a single claim if the claims are contiguous and within a four square mile area. A claimant may elect to pay to the United States a sum in lieu of performing annual labor. In the event there exists a legal impediment which affects the right of the claimant to enter the surface of the claim or to gain access across adjoining lands, the performance of annual labor or payment in lieu thereof will be deferred.

The holder of a mining claim is entitled to patent if the claim contains a valuable mineral deposit (measured by the prudent man test), or if the owner of the claim has filed a plan of development which has been approved by the Secretary and equipment and facilities have been acquired and installed in substantial compliance with such a plan of development. The plan of development is expected to contain information regarding: the boundaries and grade of the mineral deposit; a description of facilities and equipment to be used; the timing of the operation and the investment required; the manner of complying with laws relating to the protection of the environment; and a designation of lands owned by the United States, outside the mining claim, which the claim owner has selected for purchase or exchange in connection with development, mining, and processing operations on the claim. The plan of development may be rejected only if it does not constitute a method by which minerals can be extracted or if the selected lands are not reasonably necessary for mining or processing operations. The filing of a plan of development has the effect of

segregating the land from all other uses and appropriations inconsistent with mining operations. The purchase price for lands covered by mineral patent is $50 per acre for the mineral deposits plus the appraised fair market value of the remaining nonmineral interests in land owned by the United States.

The patent grants title to mineral deposits within the vertical boundaries of the claim and title to the remaining interest in the land held by the United States, subject to a reserved royalty. The royalty is paid to the United States in the amount of 2 percent of the mine value of the minerals. Mine value is defined as the proceeds from the sale of the minerals less: all direct and indirect costs of processing, transporting, and selling the minerals; a reasonable profit attributable to processing and selling; and all taxes. In no event may the royalty exceed 5 percent of the net mining income for the year allocable to the mineral for which the royalty is paid. Net mining income is defined as the mine value of the mineral less all direct and indirect costs incurred in mining the mineral. Land acquired under the bill may be used only for mining, mineral exploration, development, processing, or uses reasonably incident thereto. If other uses are made of the land without consent of the Secretary, title will revert to the United States, after the patentee is given 90 days to discontinue the unauthorized use. At anytime after a determination that it serves no public purpose, the Secretary may release to the patentee the possibility of reverter.

LDM:go

NORTHWEST MINING ASSOCIATION
W. 1020 Riverside Ave. - Spokane, Washington 99201

RECOMMENDATIONS OF THE MINING LAW REVISION COMMITTEE FOR AMENDING THE GENERAL MINING ACT OF 1872

(The following is the report of the Committee and is offered for comment by the members of Northwest Mining Association. Please mail all comments as soon as possible to the Association office.)

In light of the current Congressional interest in HR-8435, the proposed Mineral Leasing Act of 1975, introduced by Rep. Patsy Mink (D-Hawaii), the Committee has reviewed the Bill and found it to be an untenable proposal for governing mining on Federal lands. The Committee rejects the essence of the proposal which would: a) inhibit the free prerogative of individuals to explore for minerals; b) close additional Federal lands to mineral exploration and mining; c) deny the security of tenure to mineral rights, and d) impose additional unconscionable bureaucratic controls on the mining industry.

The conceptual approach of the Bill is foreign to the philosophical foundation of the mining industry and inimical to private exploration and mining development on Federal lands. HR-8435, consequently, offers no real basis for constructive criticism or amendment.

In the view of the Committee, amendment rather than repeal of the General Mining Law of 1872 can best correct the deficiencies of the law. The location-patent system should be retained, causes for abuse should be corrected and the weaknesses stemming from the changes in industry exploration practices should be strengthened.

The Committee notes the great time and effort that were devoted to comprehensive studies of mining law revision by the President's Materials Policy Commission (Paley Report - 1952), the Hoover Commission and, most recently, the Public Land Law Review Commission (PLLRC).

POLICY

The following statements drawn verbatim from the PLLRC 1970 Report to the President and Congress* are believed to accurately reflect the policy position of the Northwest Mining Association, and are recommended for adoption.

> *"Public land mineral policy should encourage exploration, development, and production of minerals on the public land.*
>
> *"Mineral exploration and development should have a preference over some or all other uses on much of the public lands. As a land use, mineral production has several distinctive characteristics. Mineral deposits of economic value are relatively rare and, therefore, there is little opportunity to choose between available sites for minerals production, as there often is in allocating land for other types of use. Also, development of a productive mineral deposit is ordinarily the highest economic use of land.*
>
> *"The Federal Government generally should rely on the private sector for mineral exploration, development, and production by maintaining a continuing invitation to explore for and develop minerals on the public land. We are satisfied that private enterprise has succeeded well in meeting our national mineral needs, and we see no reason to change this traditional policy."*

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*One Third of the Nation's Land, a report to the President and Congress by the Public Land Law Review Commission, Washington, DC, U.S. Gov't Printing Office, June 1970.

(Over)

RECOMMENDATIONS FOR REVISION

It is recommended that the following recommendations of the PLLRC, relating to modification of the General Mining Act of 1872, be legislated into law.

Elimination of Long-Dormant Claims

> *"Congress should establish a fair notice procedure (a) to clear the public lands of long-dormant mining claims, and (b) to provide the holders of existing mining claims an option to perfect their claims under the revised location provisions we recommend."*

Public Land Open to Prospecting

> *"All public lands should be open without charge for non-exclusive exploration which does not require significant surface disturbance."*

Terms of Exclusive Right to Explore

> *"Congress should provide for the exclusive right to explore a claim by (a) establishing the maximum size of an individual exclusive exploration right and the aggregate acreage to be held by one person; (b) specifuing the period of time for which that exploration right is granted, and (c) establishing the performance requirements designed to assure diligent exploration as a condition of retaining or renewing the exploration right.*
>
> *"Mining claims should conform to public land subdivisions in all cases. There should be no distinction between lode and placer claims, and no extralateral rights to minerals outside of claim boundaries should be acquired."*

It is understood that such provisions would apply only to claims located after the effective date of legislation.

Perfecting a Claim

> *"Locators should be required to give written notice of their claims to the appropriate Federal land agency within a reasonable time after location. Similarly, periodic written notice to Federal and County officials of compliance with performance obligations owed to the United States should be required as a condition to validity of each mining claim.*
>
> *"Locators should not be required to comply with state laws relating to location and maintenance of valid mining claims other than those provisions requiring recordation."*

Finally --

> *"An explorer should be required to pay rental subject to offsetting credits for actual performance work completed."*

Development and Production Rights (Patenting)

> The right to a secure title of a mineral discovery must not be dependent upon the uncertainties of the cyclical price patterns or minerals but rather on the fact that a, *"mineral explorer is prepared to commit himself by contract to expend substantial effort and funds in the development of a mineral property."*
>
> Patenting should apply to the mineral rights and only such right to the use of its surface necessary for the extraction and processing of the minerals to which patent has been granted. *"Mineral operators, however, should have the option of acquiring title or lease to the needed land areas when they are willing to pay the market value of the surface rights."*

to the mineral interest should terminate automatically at the end of a reasonable period after cessation of production.

"Mineral patent fees should be increased at least enough to cover administrative costs associated with the issuance of patents."

Protecting the Environment

"Upon receipt of the required notice of location, a permit should be issued to the locator, subject to administrative discretion exercised within strict limits of Congressional guidelines, for the protection of surface values. While an administrator should have no discretion to withhold a permit, he should have the authority to vary these restrictions to meet local conditions.

"Where mineral activities cause a disturbance of public land, Congress should require that the land be restored or rehabilitated after a determination of feasibility based on a careful balancing of the economic costs, the extent of the environmental impacts, and the availability of adequate technology for the type of restoration, rehabilitation, or reclamation proposed.

"Up to the time commercial production commences, exploration, development, and production plans should be reviewed by the land managing agency for consideration of environmental factors, but administrators should be required to approve or disapprove the plans within a reasonable time."

The above environmental considerations are in accord with the provisions of the U. S. Forest Service regulations.

OBJECTIONS TO PLLRC RECOMMENDATIONS

Payment of Royalties

A recommendation by the PLLRC that *"a royalty should be collected on production both before and after patent,"* is not supported by the committee on the basis that it is conservationally unsound; that is, it does not provide for optimum use of natural resources, but actually reduces our inventory of mineral reserves and mineral resources.

Such an additional cost would, a) raise economic cutoff grade in operating mines thereby reducing the total recoverable minerals from ore bodies with gradational (assay wall) boundaries; b) reduce undeveloped, marginally economic ore deposits to waste rock

Furthermore, since there is a sharing of the proceeds from minerals mined from public lands via the personal and corporate income taxes and other state and local taxes, there is no need for additional, unreasonable assessments.

The application of a royalty, as with state severance taxes, would, in the final analysis, reduce total government revenues and mineral resource utilization.

Reversion of Mineral Patent Rights

A further recommendation by the PLLRC that the committee objects to is *"if the mineral patentee does not acquire title to the surface, the right to the mineral interest should terminate automatically at the end of a reasonable period after cessation of production."*

(Over)

Cessation of mining, furthermore, may not relate to the long term exhaustion of the mineral resource and it is therefore unreasonable to require reversion of minerals under any circumstances.

RECOMMENDATION IN SUPPORT OF S-309

While the committee rejects HR-8435 and all other similar leasing bills presently before Congress, it strongly supports S-309 as a step toward the necessary revision of the Mining Act.

Senator James A. McClure (R-Idaho) has introduced a Bill (S-309) to provide for recordation of mining claims. Filing of a notice of intent to hold a mining claim within three years after enactment would be required with notice to be filed in the appropriate county office. A mining claim would be conclusively presumed to have been abandoned if such filing is not made within the three-year period.

The purpose of the Bill is to clear title to the public domain presently clouded by an estimated five to six million abandoned mining claims. The Bill is supported by the AMC and the NWMA. A letter to your Congressman backing the Bill would help to put the mining industries in a positive stance with regard to legislation.

Respectfully submitted,

Dave Hintzman
Walt Weid
Dennis Wheeler
Jerry Aiken
Hank Eyrich
Bob Garwood
Wallace McGregor
Robert J. Zache

to whether the government ever would fund a program at a level between II and III for the evaluation of withdrawn lands either internally or by contract because of the high costs.

b. In-house vs. Contract Exploration (Detailed Discussion Issue 12). Some doubt was expressed as to whether, and if so to what extent, it would be feasible for the government to contract for the requisite reconnaissance/exploration of withdrawn lands because of the highly qualitative nature of such reconnaissance/exploration and, more particularly, because of the politic sensitive nature of the effort. Others suggested that, where sensitivity is of an environmental nature, consideration be given to the possibility of dividing withdrawn lands into less sensitive and more sensitive categories and either contracting out the less sensitive areas or opening them to industry-sponsored reconnaissance/exploration under appropriate terms and conditions.

4. Alternate Strategy

During both the morning and evening plenary sessions as well as the Panel A discussions, a number of persons raised questions regarding the general appropriateness and more particularly the political realism of the two proposed strategies. Some, for example, questioned whether various proposed changes in the existing system were in fact necessary or responsive to specific problems. Cited earlier in this regard were the comments of the oil industry representatives who argued that the 1920 Leasing Act was working well in the oil and gas area and so why tamper with a good thing. Similarly, various hard-rock mining industry representatives felt that while there were certainly deficiencies with the current location system, these could be dealt with through modifications of that system. Others questioned the practicality of specific elements of Strategies A and B. For example, some in the mining industry doubted that the proposed elimination of so-called national interest land withdrawals under Strategy B would be politically possible.

In sum, there appeared to be a strong body of opinion that the starting point for any strategy design effort should be the existing systems and that any proposed changes should be limited to those deemed absolutely necessary in order to make the current systems function properly. To underscore their point, those favoring this approach proposed an alternate strategy to amend the Mining Law of 1872 which they dubbed the "band-aid strategy," consisting of the following elements:

a. Include the policy statement from the Mining and Minerals Policy Act of 1970.

b. Restrict patents to minerals only.

c. Ability to obtain surface rights, not necessarily amounting to full title, at fair market value for the duration of the mineral activity.

d. Ability to obtain a patent by the submittal of a work plan that will indicate a commitment to produce minerals.

e. Ability of a prospector to hold a claim for a reasonable length of time before he must show a discovery.

f. Elimination of extralateral rights and the distinction between lode and placer claims.

g. Require claim recordation with the Federal Government and the elimination of state claims.

h. Require claim boundaries to conform to public land surveys.

i. Permit federal preemption on conflicts with state laws.

j. Set a maximum claim size of 160 acres and a minimum of 20 acres, with the permissible size of an actual claim being any multiple of 20 up to 160. However, do not impose a maximum size to the amount of claims that may be held in a contiguous block nor to the total numbers of claims that may be held in a given state or in the United States.

k. Required assessment work should be escalated annually. Assessment work should be bankable. More kinds of work should be included within the assessment concept and a surplus of assessment work on any one claim should be chargeable against assessment requirements for all other claims held by any one "person".

l. The classification of ambiguous minerals should be clarified and specifically such terms as sodium silicates and potassium silicates should be deleted from existing law.

m. Determination of patentability of a mineral discovery should be returned to a "prudent man" test.

n. Environmental protection (including reclamation requirements according to most but not all participants) should be provided through collateral law.

o. A final determination of all proposed Congressional withdrawals should be expedited.

p. A system should be developed for systematic and periodic review of all withdrawals and Congress should review all "large" withdrawals.

q. The Federal Government should continue to perform the assessment of mineral resource potential on withdrawn land and the amount of this work should be increased, but all exploration should be left to private industry.

r. A way must be found to assure surface access to all mineral claims

s. Any strategy for modifying the law of 1872 must include production royalties.

These elements would be subject to a review of provisions for modifying the law of 1872 as contained in proposed bills of the American Mining Congress, the Northwest Mining Association, and H.R. 13777 ("Federal Land Policy and Management Act of 1976").

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Federal-State
Land Use Planning Commission
For Alaska

November 23, 1976

MEMORANDUM

TO: The Co-Chairmen

FROM: David L. Schooler, Legal Extern, and
Lee D. Morrison, Legal Extern (Co-author of legal analysis)

REVIEWED BY: John W. Katz, Counsel

SUBJECT: Certain Legal and Policy Implications of Utility and Transportation Corridors Across (d)(2) Lands

INTRODUCTION

The following memorandum deals with utility and transportation corridors. The Bureau of Land Management has proposed 40 such corridors in "Multimodal Transportation and Utility Corridor Systems in Alaska" (two volumes, published in October and November 1974). The Commission responded to the BLM report, as it related to corridors passing through Native lands, in a letter to the Secretary of the Interior, dated April 7, 1975. This memorandum addresses the relationship of the corridors to the (d)(2) lands, and, more generally, to transportation issues in the State of Alaska. Though transportation policy is in some ways a separate issue from that of the (d)(2) lands, there are important connections. For example, the reservation of 17(b) easements has distinct (d)(2) implications. Further, any transportation policy for the State must account for the (d)(2) lands.

The memorandum is divided into three sections. The first is a legal analysis of the statutory authority for obtaining rights-of-way through Federal and State lands.* The second section enumerates formal statements made by the Commission

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* This section was revised to reflect the changes in the law brought about by the Federal Land Policy and Management Act of 1976, Act of October 21, 1976, (BLM Organic Act), and other changes in State or Federal law as of August, 1976. See appendix I for the sections of the BLM Act dealing with the effect on other laws and the repeal of laws relating to rights-of-way.

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on the question of utility and transportation corridors. The third section discusses alternative institutional arrangements for handling utility and transportation corridor proposals.

PART A: LEGAL ANALYSIS

This portion of the memorandum examines whether or not utility and transportation corridors may pass through the various types of Federal and State land, and, if so, under what conditions. The utility and transportation facilities discussed include railroads, pipelines, highways, power lines and communication lines, canals, and water conduits. The types of Federal lands discussed are unreserved public lands, military reserves, national forests, wilderness areas, wildlife refuges, the National Park System, and wild and scenic rivers. The types of State lands discussed are unreserved lands, parks, and recreation areas. Despite the form of organization used in this section, it is necessary to read the entire legal analysis because statutes applicable generally are not discussed in relation to each management system.

Unreserved Public Lands

Section 501 of the BLM Organic Act gives the Secretary of the Interior, with respect to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case, land designated as wilderness), the authority to grant rights-of-way over such lands for a multitude of purposes.1/ Section 103 of the Act defines the term "public lands" to include lands and interests in lands owned by the United States and administered through the BLM. This definition excludes lands located on the Outer Continental Shelf and lands held for the benefit of Alaska Natives.

The Secretary concerned may grant rights-of-way only when he is satisfied that the applicant has the technical and financial capability to construct the project in accordance with the requirements of the Act.2/ Section 505 requires each right-of-way to contain terms and conditions which will minimize damage to the environment; require compliance with applicable Federal or state air or water quality standards; and require compliance with state standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of rights-of-way if these standards are more stringent than Federal standards. Further conditions may be included if deemed necessary to protect Federal interests; manage the surrounding lands; protect the interests of

subsistence users; or require location of a route that will cause the least damage to the environment, taking into consideration its feasibility. The Secretary may also require posting of a bond or other security to secure obligations imposed by regulation or condition on the holder of a right-of-way.2a/ Each right-of-way is to be limited to the ground which: will be occupied by the facilities for which the right-of-way was issued; is necessary for operation of the project; is necessary for public safety; and will do no unnecessary damage to the environment.2b/ An applicant for a project which may have a significant environmental impact may be required to submit a plan for construction, operation, and rehabilitation which shall comply with regulations and stipulations promulgated under the Act.2c/

Generally, the holder of a right-of-way granted under the BLM Act is required to pay annually the fair market value of the right-of-way as determined by the Secretary concerned. The rental may be waived in connection with a cooperative cost share program or may be waived or reduced for Federal, state, or local governments and non-profit organizations.2d/ In addition, the Secretary of the Interior (the Secretary of Agriculture has similar authority under pre-existing law 16 U.S.C.A. §§532-538) is authorized to provide for roads within and near public lands which will permit maximum economy in harvesting timber while at the same time meeting the requirements for managing other resources. Financing may be accomplished by use of any combination of: appropriated funds, timber purchase contract requirements, or cooperative financing with public or private agencies.2e/

The Secretary concerned may provide, under applicable provisions of the Act, for the use of rights-of-way by federal agencies, subject to conditions he may impose,2f/ but no action may be taken to terminate or limit such a right-of-way without consent of the head of the agency using the right-of-way.2g/

After due notice to the holder of the right-of-way (and in the case of easements, an administrative proceeding under 5 U.S.C.A. §554), the Secretary concerned may terminate a right-of-way on the grounds of abandonment or non-compliance with the applicable terms of the Act, the regulations, or the lease. No administrative proceeding is required if the lease terminates by its own terms, and there may be an immediate temporary suspension, without hearing, in order to protect public health, safety, or the environment.2h/ The Act does not affect existing rights-of-way, but with the consent of the owner, the Secretary concerned may reissue the right-of-way pursuant to the Act.2i/

Transportation

The BLM Organic Act authorizes the granting of rights-of-way over public lands and National Forest System lands for roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation. The Act totally repeals 43 U.S.C.A. §932, which granted rights-of-way "for the construction of highways over public lands, not reserved for public uses." The BLM Act does not preclude the use of lands for highways pursuant to the authority provided in 23 U.S.C.A. §317 (see also §107) to appropriate Federal interests in lands for highway purposes.2j/ Section 317 is applicable to Federal-aid highways (23 U.S.C.A. Ch. 1) and other Federally funded highways (23 U.S.C.A. Ch. 2), such as: forest and public land highways, development roads and trails, parkways, and defense access roads. If the Secretary of Transportation determines that lands owned by the United States are reasonably necessary for the highway rights-of-way, he must file with the Secretary of the department charged with administering the lands. Then -

> [i]f within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary [of Transportation] that the proposed appropriation of such land...is contrary to the public interest or inconsistent with the purposes for which such land...[has] been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land...may be appropriated and transferred to the State highway department....2k/

With respect to other law, 23 U.S.C.A. §137 and 49 U.S.C.A. §1653(f) direct the Secretary of Transportation to cooperate with the Secretaries of Interior, Housing and Urban Development, and Agriculture and with the states "in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed." The state highway departments must submit plans for the Federal-aid primary system to the Secretary of Transportation for his approval.3/ The state highway departments and the appropriate local officials must agree on plans submitted to the Secretary for the Federal-aid secondary system.4/

Electrical Energy and Communication Facilities

The BLM Act* authorizes rights-of-way for "...systems for generation, transmission, and distribution of electric energy,"4a/ but requires that the applicant also comply with the Federal Power Act of 1935 (49 Stat, 847,16 U.S.C. 791 et seq.). The Federal Power Commission is authorized to issue licenses -

> for the purpose of constructing, operating, and maintaining...water conduits...transmission lines, or other project works necessary or convenient... for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction...or upon any of the public lands... or for the purpose of utilizing the surplus water or water power from any government dam.... Provided... that upon the filing of any application for a license which has not been preceded by a preliminary permit... notice shall be given and published....5/

No projects are to be approved unless the Commission judges the plan to be in conformance with a "comprehensive plan for improving or developing a waterway or waterways."6/ The Commission is authorized "to cooperate with the executive departments and other agencies of State or National governments"7/ in investigating power projects. Agencies of the Federal government are directed to give the Commission information and lend it technical support.8/

Commission regulations describe its mandate as only applying to -

> primary lines transmitting power from the power house or appurtenant works of a project to the point of junction with the distribution system or with the interconnected primary transmission system.9/

Decisions relating to nonprimary lines across Federal lands must be made by the Federal agency having jurisdiction over the land in question;10/ the BLM Act provides the mechanism by which the BLM and Forest Service may make this determination.11/

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* It is assumed that the BLM Act was intended to repeal existing authority relating to electrical energy and communication facilities across public lands (43 U.S.C.A. §961). The table of repealers apparently has a typographical error substituting §951 for §961, but the Statute-at-Large number corresponds to §961.

Similarly, the BLM Act authorizes rights-of-way for "systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication."12/

Transportation and Storage of Water

The BLM Act provides for rights-of-way for reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water.13/ Presumably, any of these structures constructed for the purpose of generation of electric energy would be considered under §501(a)(4) and be subject to the Federal Power Act of 1935.14/ 43 U.S.C.A. §945, which authorizes the reservation in patents granted by the United States of a right-of-way for ditchs or canals constructed by the authority of the United States, remains in effect.

Pipelines

Pipeline rights-of-way through public lands may be granted by the Secretary of the Interior or the appropriate agency head, according to section 28 of the Mineral Leasing Act of 1920, as amended.15/ Pipeline rights-of-way may be granted for the purpose of transporting "oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom."16/ This authority is not affected by the BLM Act, since pipelines for the transportation of these hydrocarbons are specifically exempted from the BLM Act.16a/ Requirements respecting the eligibility of applicants are referred to in the Mineral Leasing Act.17/ It is appropriate for an agency head to grant a permit if the land which is the subject of the application falls entirely under that agency's jurisdiction.18/ Otherwise, the Secretary of the Interior is empowered to make the decision. In the event that lands covered by the right-of-way application are controlled by more than one department of the Federal government, the Secretary of the Interior must consult with the appropriate Secretaries.19/ In all cases, if a Secretary or agency head determines that a right-of-way through a Federal reservation under his jurisdiction is inconsistent with the purposes of the reservation, a right-of-way will not be granted.19a/

The width of the right-of-way is limited to the ground occupied by the pipeline plus 50 feet, "unless the Secretary or agency head finds, and records his reasons...that...a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety."20/ Related facilities to the pipeline include, but are not limited to, bridges, roads, airstrips, pump stations, terminals and storage tanks.21/

Further -

> [a] right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.22/

All rights-of-way and permits are subject to regulations promulgated by the Secretary or agency head "regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination."23/ These regulations must include protection of the public "from sudden ruptures and slow degradation of the pipeline."24/ Prior to receiving a right-of-way or permit through an environmentally fragile area, the applicant must submit a plan of construction, operation, and rehabilitation. The Department of the Interior's regulations require that the plan -

> shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.25/

These regulations may be applied to previously granted rights-of-way.26/ Right-of-way or permit applications shall be granted "only when" the Secretary or agency head "is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project."27/

Public hearings must precede the granting of a right-of-way.28/ The Federal government must be reimbursed by the applicant for all processing and monitoring costs.29/ The Federal government may request an applicant to post a bond.30/ Pipelines and related facilities are considered common

carriers.31/ Abandonment or noncompliance with any requirement may be grounds for suspension or termination of the grant.32/

Notice of any application for a right-of-way for a pipeline 24 inches or more in diameter, which crosses reserved or unreserved Federal lands, must be submitted to the House and Senate Committees on Interior and Insular Affairs. Unless each Committee waives its right to do so, no such application may be approved until 60 days following submission of the application and the Secretary's or agency head's report on the proposed conditions of the grant.34/

The Secretary or agency head shall specify the extent of liability of right-of-way and permit holders. The Secretary or agency head shall also specify the extent of liability to third parties, if the lands concerned are under the exclusive jurisdiction of the Federal government. If the Secretary or agency head determines that activities taking place in a right-of-way "present a foreseeable hazard or risk of danger to the United States," he may impose a standard of strict liability.35/

The Natural Gas Act36/ empowers the Federal Power Commission to issue a certificate of public convenience and necessity authorizing a natural gas pipeline under the terms of that Act and under "such reasonable terms and conditions as the public convenience and necessity may require."37/ However, in certain instances, the FPC and the Department of the Interior will examine similar factors in making decisions respecting certification and right-of-way grants, respectively. All applications for the certificate must show proposed facilities on a "map of suitable scale."38/ Where the construction is not proposed for currently used rights-of-way, the applicant must submit a map of planned facilities and all rights-of-way held by the applicant or others that could be used, plus a statement reporting which of those rights-of-way will be used or considered.39/ The regulations also provide that -

> [i]n the interest of preserving scenic, historic, wildlife and recreational values, the construction and maintenance of facilities...should be undertaken in a manner that will minimize adverse effects on those values.40/

The planning, construction, and maintenance of rights-of-way for natural gas pipelines "should, as a general practice, conform to" the following. First, the letter and spirit of the National Environmental Policy Act41/ should be met. In this regard, NEPA provides -

> all practicable means be used to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social and economic requirements of present and future generations.... There is increasing need to fit the construction of pipeline facilities into an overall plan for land development and use....42/

Second, in deciding where to locate proposed pipelines, "consideration should be given to the utilization, enlargement or extension of existing rights-of-way belonging to either the applicant or others,"43/ even if the existing right-of-way is not used for natural gas pipelines. Third, the regulations provide -

> [w]here practical, rights-of-way should avoid the national historic places listed in the National Register of Historic Places and natural landmarks listed in the National Register of Natural Landmarks... and parks, scenic, wildlife, and recreational lands, officially designated.... If rights-of-way must be routed through such...places...they should be located in areas or placed in a manner so as to be least visible from public view and so far as possible in a manner designed to preserve the character of the area.44/

Third, "where practical," rights-of-way are to avoid heavily timbered areas.45/ Fourth, right-of-way widths should be kept to a minimum.46/ Fifth, "soil stability, protection of natural vegetation and the protection of adjacent resources" should be taken into account in deciding on the clearing method.47/

Extensive environmental standards are imposed on the construction48/ and maintenance of natural gas pipelines.49/

The BLM Act authorizes rights-of-way for-"pipelines and other systems for the transportation and distribution of liquids and gases," other than those covered by the Mineral Leasing Act.49a/ The Act also authorizes rights-of-way for -

> pipelines, slurry, and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith.49b/

Utility Corridors

Utility corridors are encouraged by the Mineral Leasing Act. That section states that in the interest of minimizing environmental impacts and minimizing the proliferation of rights-of-way across Federal lands -

> the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way... or permit area.33/

The section on right-of-way corridors in the BLM Act is modeled on the provisions of Section 28 of the Mineral Leasing Act, but the authority to grant additional rights-of-way is reserved to the Secretary concerned and not the agency head. In addition, the BLM Act provides criteria for designating right-of-way corridors and for determining whether rights-of-way should be confined to corridors.49c/

Lands Reserved for the Military

If the Secretary of the Defense makes a finding that "it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon" lands reserved for military uses for "any purposes he considers advisable."50/ Permitted uses include, but are not limited to, railroads, pipelines, canals, ditches, and flumes. Thus, the Secretary generally has a great deal of discretion to decide whether or not a right-of-way may pass over military lands.51/ The right-of-way authority for non-primary electrical transmission lines and for communication facilities is found in 16 U.S.C.A. § 420, which is identical to 43 U.S.C.A. § 961. The Federal Power Commission (FPC) has the authority to grant licenses for primary electrical transmission lines acros public lands 51a/, but a transmission line may be allowed only after a finding by the FPC that the license will not interfere with or be inconsistent with the purpose for creating the reservation.51b/ Pipeline rights-of-way are subject to the amended Section 28 of the Mineral Leasing Act.

National Forests

Congress has authorized the Secretary of Agriculture to administer national forests.52/ The purposes of the National Forest System are "to improve and protect the forest," to secure "favorable conditions of waterflows...to furnish a continuous supply of timber,"53/ and "for outdoor recreation, range...and wildlife and fish purposes." (Mining is also a generally accepted use.)54/

The Secretary of Agriculture's authority to grant rights-of-way, with respect to lands within the National Forest System, is identical under the BLM Act to the Secretary of Interior's authority, except that rights-of-way for transportation facilities are not authorized "...where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System"54a/, and except that the Secretary of Agriculture is excluded from the section (§502) authorizing cost-share roads for timber production. This is so because he already has similar authority under the Act of October 13, 1964, 16 U.S.C.A. §§532-538. This Act, which also provides for construction of roads and trails within and near lands administered by the Forest Service in order to meet the "demands for timber, recreation, and other uses of the lands..."54b/, is not affected by any portion of the BLM Act.54c/

Section 28 of the Mineral Leasing Act authorizes pipeline rights-of-way for transporting certain hydrocarbons through national forests, subject to denial based upon a finding of incompatibility with the purposes of the Federal reservation.54d/ The BLM Act provides the authority for the creation of rights-of-way to transport materials not covered by the Mineral Leasing Act.54e/

Wilderness Areas

The National Wilderness Preservation System was established by Congress in 1964.55/ Congress defines wilderness as an area where the earth and life systems are "untrammeled by man, where man himself is a visitor who does not remain...an area of undeveloped Federal land, retaining its primeval character and influence, without permanent improvements."56/ The Wilderness Act states that -

> except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area...and except as necessary...for the purpose of this chapter... there shall be...no structure or installation within any such area.57/

The BLM Act requires wilderness study of areas identified during the public land inventory process mandated by §201(a) of the BLM Act as having wilderness characteristics described in the Wilderness Act.57a/ Congress may then designate these areas as Wilderness Areas;57b/ the BLM Act requires that these areas be governed under the provisions of the Wilderness Act which apply to national forest wilderness areas.57c/ The BLM Act does not change existing law regarding

rights-of-way in wilderness areas since the section of the Act establishing the authority to grant rights-of-way specifically excludes land designated as wilderness.57d/

There is other statutory authority which specifically provides for rights-of-way for some transportation functions through Wilderness Areas:

> The President may, within a specific area and in accordance with such regulations as he may deem desirable, authorize...power projects, transmission lines, and other facilities needed in the public interest, including the road construction and maintenance essential to development and use thereof, upon his determination that such use or uses in the specific area will better serve the interests of the United States and the people thereof than will its denial.58/

Rights-of-way for ingress and egress to wilderness-surrounded mining claims are preserved, subject to regulations promulgated by the appropriate agency head.59/

Until December 31, 1983, the mining and mineral leasing laws apply to wilderness areas located in national forests -

> to the same extent as applicable prior to September 3, 1964...subject however, to such reasonable regulations governing ingress and egress as may be prescribed by the Secretary of Agriculture consistent with the use of the land for mineral location and development and exploration, drilling, and production, and use of land for transmission lines....60/

With the exception of national parks, which are generally excluded from the ambit of section 28, pipelines may pass through wilderness areas under the amendment to section 28 of the Mineral Leasing Act. In the Senate version of the amendment, wilderness areas were specifically excluded from those areas through which pipeline passage was authorized. In the House version of the amendments, no areas were excluded from the operation of the amendment. The Conference Committee excepted certain Federal lands from the operation of the amendment, but specifically did not include wilderness areas among them.61/ However, a right-of-way may be denied based upon a finding of incompatibility with the purpose for the Federal reservation.61a/

Wildlife Refuges

The Secretary of the Interior has jurisdiction over the National Wildlife Refuge System.62/ The System includes -

> all lands, water, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas.63/

The Secretary may grant rights-of-way across refuge lands for a variety of purposes. They include, but are not limited to, powerlines, telephone lines, pipelines, and roads.64/ The grant of a right-of-way includes land necessary for construction, operation, and maintenance of the permitted activities. The conditions upon the grant of a right-of-way are that the Secretary must determine that the permitted activity is "compatible with the purposes for which these areas are established,"65/ and that the grantee pay fair market value for the right-of-way, as determined by the Secretary.66/

Rights-of-way for federally aided highways are subject to a stiffer test. 23 U.S.C.A. §138 and 49 U.S.C.A. §1653(f) state that the Secretary of Transportation -

> shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife or refuge of national, state, or local significance... or any land from a historic site...unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.67/

This provision was upheld in Citizens to Preserve Overton Park v Brinegar, 494 F.2d 1212 (1974) and D. C. Federation of Civic Associations v Volpe, 459 F.2d 1231 (1972), in which the court stated "the purpose of section 138, in our view, was to preserve parkland by directing the Secretary to reject its use except in the most unusual situation where no alternative would be available."68/ In addition, the Secretary of the Interior under 23 U.S.C.A. §317 may certify his disapproval of the proposed use of the lands for highway purposes. (See previous discussion.)

National Parks

The National Park System is administered by the Secretary of the Interior.69/ The System includes national parks, monuments, preserves, historical parks, memorials, parkways, capital parks, and other lands.70/ "Each area within the National Park System shall be administered in accordance with the provisions of any statute made specifically applicable to that area."71/

16 U.S.C.A. §5 authorizes the department head having jurisdiction over the lands to grant rights-of-way for up to 50 years for electric power transmission, communications transmission lines, and for radio, television, and other forms of communications transmitting, relay, and receiving structures and facilities.71a/ 16 U.S.C.A. §5 is the same grant as 43 U.S.C.A. §961; §420; and §523. All were repealed by the BLM Act insofar as they apply to the issuance of rights-of-way through public lands, as defined in the Act, and lands in the National Forest System. This creates a situation in which rights-of-way for power and communications facilities through parks and other reservations are now governed by a different set of statutes than those applicable to BLM or Forest Service lands.

The statutory provisions for parks provide that the right-of-way width is not to exceed 400 feet in the case of poles and lines and 400 feet by 400 feet for forms of communications transmitting, relay, and receiving structures and facilities. These rights-of-way may not be granted without the approval of the "chief officer of the department under whose supervision or control such reservation falls, and upon a finding by him that the same is not incompatible with the public interest."72/

All or part of a right-of-way may be annulled by declaration of the agency head having jurisdiction over the park after a two-year period of nonuse or abandonment. Rights-of-way which would normally be granted by the FPC must be granted by Congress.73/

At least three statutes relate to the construction of highways across land encompassed within a national park. First, as previously discussed, 23 U.S.C.A. §138 provides a stringent test for approval by the Secretary of Transportation of federally aided highways crossing national parks. A recent amendment to this section authorizes Federal-local cooperative studies to determine the most feasible Federal-aid routes for the movement of vehicular traffic through and around national parks "so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."73a/ Second, 16 U.S.C.A. §8 authorizes the Secretary of the Interior to establish and improve roads for the administration of the National Park System. Third, 16 U.S.C.A. §8(a) and (b) authorize the Secretary of the Interior to designate roads located within sixty miles of a park boundary as national park approach roads.

The Mineral Leasing Act prohibits the designation of a right-of-way for an oil or gas pipeline through national park lands.74/

43 U.S.C.A. §942-1 authorizes rights-of-way for railroads across the "public lands" of Alaska. This statute has been repealed by the BLM Act insofar as it applies to rights-of-way on public lands (as defined in the BLM Act) and National Forest system lands, but it still applies to national parks.74a/ However, the general authority for railroad rights-of-way (43 U.S.C.A. §§934-939), enacted prior to §942-1, prohibits the construction of railroads through national parks. The resolution of this conflict is not clear, but if the authority to build railroads through national parks in Alaska ever existed, it still exists.

Wild and Scenic Rivers

The National Wild and Scenic River System was created by Congress to preserve those rivers in a "free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."75/

In general, the Wild and Scenic River System -

> shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values.76/

There are three possible classifications within the Wild and Scenic Rivers System. Wild river areas are free of impoundments, generally accessible only by trail, and essentially primitive and unpolluted. Scenic river areas are free of impoundments, largely primitive and undeveloped, but accessible in places by roads. Recreational river areas are readily accessible by road or railroad, may have some development, and may have undergone some impoundment in the past.76a/

The Wild and Scenic River System is subject to several jurisdictional authorities. Where national forest land is involved, the Secretary of Agriculture has jurisdiction. Otherwise, the Secretary of the Interior has jurisdiction. Any portion of the system which lies in the National Wilderness Preservation System -

> shall be subject to the provisions of both the Wilderness Act and this chapter with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter the more restrictive provisions shall apply.77/

With respect to management generally, any component of the Wild and Scenic River System that falls within or is added to the National Park System is subject to the statutory authority governing the parks. Similarly, wild and scenic rivers located within the National Wildlife Refuge System are subject generally to the statutory authority governing refuges. If there is conflict between the Wild and Scenic Rivers Act and the National Park System acts or the act establishing the National Wildlife Refuge System, the more restrictive provisions shall apply.78/ The Secretary of Agriculture "may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this chapter" (the Wild and Scenic Rivers Act).79/ Consequently, the Secretary of Agriculture is given more discretion to administer wild and scenic river areas that fall within his jurisdiction than is the Secretary of the Interior for parks and refuges.80/

The section of the Act which specifically relates to transportation functions states that the respective Secretaries "may grant easements and rights-of-way over... any component of the wild and scenic rivers system in accordance with the laws applicable..." to the national park and national forest systems but any conditions precedent to granting of rights-of-way must be related to the policy and purpose of the Wild and Scenic Rivers Act.80a/ Thus, it appears that it was Congress' intent to require the application of park service statutory authorities for granting rights-of-way on all components of the Wild and Scenic Rivers System administered by the Interior Department.

Lands Owned by the State of Alaska

The Alaska State Legislature has stated that -

> no state land...shall, except by act of the state legislature, be closed to multiple purpose use, if the area involved contains more than 640 acres.81/

Under existing law, the State of Alaska has dedicated a tract of land, 100 feet wide, between all sections of State-owned land and four rods wide between all other sections for use as public highways82/ pursuant to 43 U.S.C.A. §932 which has since been repealed by the BLM Act. Rights-of-way previously created under §932 are maintained under §509(a) of the BLM Act. For a highway to be wider, it must be so designated by the Highway Department.83/ The Department is authorized to designate the State highway system.84/

The Director of the Division of Lands for the State, "without the prior approval of the Commissioner" of the Department of Natural Resources -

> may issue permits, rights-of-way or easements on state land for secondary roads, trails, ditches, transmission and distribution pipelines not subject to AS 38.35, telephone and transmission lines...and other similar uses or improvements.... The commission, upon the recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses. In the granting, suspension, or revocation of a permit or easement of lands, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources.85/

Preference also goes to upland or lowland owners along coast lines, depending on the use to which the property will be put.86/

The stated policy of the Right-of-Way Leasing Act87/ is that a pipeline transportation system should be aimed at making "the maximum contribution to the development of human resources of this state, the increase in the standard of living for all of its residents and the careful protection of its incomparable natural environment."88/

Persons desiring to own a pipeline which is proposed to be located in whole or part or State land must apply to the Commissioner of Natural Resources for a non-competitive right-of-way lease of the State land.89/ In making the determinations, the Commissioner is required to consider whether or not the proposed use will unreasonably conflict with existing uses of the land involving a superior public interest, and whether or not the applicant has the technical and financal capability to : protect State and private property interests; prevent any significant adverse environmental impact; undertake any necessary restoration or revegetation; protect the interests of subsistence users in the area; pay reasonably foreseeable damage arising from construction or operation of the pipeline.90/ The lessee will be obligated by lease stipulations to meet the first five criteria listed above.91/ In addition, the lessee will be held liable for damages incurred by the State due to the construction and operation of the pipeline, and the lessee will be required to furnish security to protect the public from damages arising from the construction and operation of the pipeline.92/

The following withdrawals are subject to a more stringent test: roadside rests, recreational beaches, wilderness trails, campsites, recreation areas, historical parks, and State parks.93/ In these areas there shall be no "uses incompatible with their primary function as public recreation land and waters."94/ The Commissioner of Natural Resources is directed to designate incompatible uses for these areas.95/ Under this test, right-of-way determinations will vary according to the "primary purpose" and the current use of those withdrawals.96/

PART B: FORMAL COMMISSION STATEMENTS

The following are the formal Commission statements on Alaska transportation issues. The first two declarations are found in Land Planning and Policy in Alaska's Recommendations Concerning National Interest Lands, prepared by the Commission and printed by the Senate Committee on Interior and Insular Affairs (June 1974). The first statement is found on page 27 of the report:

Findings

Alaska's transportation system is in its infancy. At the same time, the geographic considerations, long distances involved, and sparse population create a unique set of transportation needs. These needs cannot be met by haphazard development of transportation facilities. A genuine multimodal transportation system is essential if the transportation goals of the State, as it develops, are to be met.

The Commission finds that land use should determine transportation patterns, rather than the reverse. The Commission strongly feels that any transportation facilities that are developed must be designed in a manner which minimizes the adverse impact of the facility on the environment; and further, that residents of areas to be affected by such facilities should have full opportunity to participate in transportation decisions through a proper system of public hearings.

Hence, the Commission finds that it is impossible to identify specific major transportation corridors through the (d)(2) lands under consideration at this time. The Commission, however, recognizes that provisions for future access should be made in accordance with the development of an intermodal transportation system.

Recommendations

A few specific recommendations have been made in some of the (d)(2) areas for local access to or through the units under consideration, and these recommendations are specifically stated hereafter. In all other respects, the Commission recommends that access to or through all (d)(2) areas should be allowed. Further, it is recommended that provision be made in the final classification of the (d)(2) withdrawals for the identification of a transportation corridor or corridors at a later time. No such corridors should be designated with specificity unless they are found to be in conformance with a statewide transportation plan pursuant to which all possible modes of transportation have been evaluated.

It is also recommended that transportation facilities

be constructed only after a finding is made that such facilities can be constructed in a manner that will not have significant adverse effect on the primary uses designated for the lands contained in the (d)(2) areas. The views of local residents should be solicited and considered through a process of public hearings or meetings.

It is also recommended that access to adjacent lands from major transportation corridors be controlled in such a way that adverse impact on uses and values of such adjacent lands is minimized.

The second statement is found on pages xvi and xvii of the report's appendix:

Transportation

The impact of transportation on the quality of life is substantial. A vast array of tangible and intangible benefits can arise from the existence of an appropriate transportation system. On the other hand, negative consequences may result, including ecosystem disturbances, social disruption, and the depletion of otherwise renewable resources.

In confronting this dilemma, several policy parameters relating to land use and transportation planning have been identified. The Commission is vitally concerned that land use determine transportation patterns, and not the reverse. A major corollary is the desire to minimize the adverse impacts of any transportation system that proves necessary to achieve designated land use patterns.

Alaska's land mass includes unusual and often unique topographic and geologic features which must be considered in the development of appropriate transportation systems. It is essential that a genuine multimodal system can be created, one which is compatible with the maintenance of environmental quality. The employment of the term "system" highlights the fact that the mere presence of alternative forms of transportation does not necessarily constitute a multimodal system. Instead, "system" as used here means that a variety of transportation modes are used in an optimal manner to satisfy differentiated user needs. The optimality of the system is determined according to preestablished objective standards, such as frequency, reliability, quality, and costs of service. Such a system demands great creativity in design and, at a minimum, the implementation of major innovations in transportation technology and thinking. Simple transplants of transportation patterns from an earlier era or other locales, will not meet the developing needs of Alaska.

Broadly speaking, the transportation system should facilitate economic and social well-being in the State. As such, it must take into account special characteristics of some user needs. At the same time that some may wish to travel at nearly the speed of sound across hundreds of miles, others need to traverse from frozen riverways or to move bulk cargo over rugged mountain terrain. Still others desire to be isolated from some forms of transportation; e.g., a new highway may be perceived as jeopardizing subsistence hunting or fishing patterns in an area.

Three primary goals of transportation can be distinguished. The first of these relates to the movement of people, while the second focuses on general cargo and freight movement. The third set of goals concerns specialized transportation activities such as those related to natural resource exploration and extraction. Superimposed on these categories is the distinction between interregional and intraregional service requirements.

There are other dimensions of a good transportation system that must also be recognized. Investment in significant transportation facilities is a major undertaking, and once underway is difficult to undo. Care should be exercised in developing specialized facilities, particularly for natural resource development activities, to be sure that the true social costs of the undertaking are fully met. As a matter of general policy, transportation should not be used as a subsidy to resource development. If exceptions to this policy are to be made, it should be the burden of the proponent of the exception to conclusively demonstrate that the project is truly in the public interest; and informed public discussion of such questions should be encouraged.

Likewise, proposals for public investment for transportation facilities as a cue to "general economic development" must be scrutinized carefully, especially when claims are asserted that the mere existence of transportation facilities would insure economic development. The relationship between transportation development and economic development is not necessarily one of cause and effect; indeed, evidence suggests that economic development prompts the growth of transportation facilities, not that the presence of transportation routes, by themselves, prompts development.

In a letter to Secretary Morton, dated April 7, 1975, the Commission responded to the Bureau of Land Management report entitled "Multimodal Transportation and Utility Corridor Systems in Alaska." While the letter focused on the question of corridor easements reserved across Native lands under Section 17(b) of the Settlement Act, certain general con-

clusions were included. The Commission indicated that greater information and analysis is needed before reserving such easements. In another letter dated April 18, 1975, Co-Chairman Silcock expressed his position that several rights-of-way should be reserved, based on resource information now available.

Co-Chairman Silcock made a statement before the Subcommittee on the Environment and Land Resources, Senate Committee on Interior and Insular Affairs on May 15, 1975, regarding the proposed "National Resource Lands Management Act." A portion of that testimony dealt with standards to be applied to right-of-way construction and operation:

> With respect to Section 409, relating to State standards for right-of-way construction and operation, we believe that the fortuity of adjacent non-Federal lands should not be the critical factor in determining whether the Secretary should comply with more stringent State regulations. The fact that a pipeline crosses a state will inevitably create impacts that would appear to give such a state a legitimate interest in right-of-way regulation. Accordingly, we suggest that the compliance requirement stipulated in Section 409 be extended to the situation just described.

PART C: ALTERNATIVE INSTITUTIONAL MECHANISMS

The discussion of utility and transportation corridors is predicated on the possible need to transport goods, services, or people by surface modes using new routes. The basic issue is how to determine and react to such needs in a manner which is consistent with the objectives of (d)(2) lands, local needs and desires, and other considerations. An institutional mechanism is needed to examine and make decisions regarding this issue.

The institutional mechanisms should be able to perform several functions:

- --with other appropriate agencies and officials, determine the objectives of a utility and transportation corridor system;
- --develop a data base upon which to make decisions;
- --receive and incorporate input from interested parties; and
- --analyze specific corridor proposals.

The potential parties of interest in a corridor right-of-way decision are many:

- --resource extractive and transporting interests and other users;
- --construction companies and labor unions;

--the public served;

--individuals living near the proposed route;

--Native village and regional corporations;

--environmentalists;

--Federal agencies;

--State agencies;

--local governments; and

--others.

Previously, the Commission has stated that land use should determine transportation, not the reverse. This position would preclude significant right-of-way development until more is known about transportation demand, supply, and impacts. The Commission's position would indicate designation of utility and transportation corridors only when the demand is proven and when environmental and other considerations have been adequately addressed. It dictates a balancing of a variety of demands and impacts, plus an analysis of those who would benefit from corridor development and those who might be injured by such development. If the decision is to construct a corridor, the Commission's position may dictate the inclusion of some transportation modes and the exclusion of others. For example, if a pipeline were to be constructed southward from the northwestern portion of the State, there may be no need for a highway; there may be no local demand or desire for one. All transportation decisions should compare a corridor system to the current, or an improved, air or marine transportation system.

A number of alternative institutional mechanisms are available for the Commission to consider. Eight alternatives are set forth below; there are other permutations. For any of these alternatives, transportation decisionmaking could be but one of many functions. In each case, a higher Federal or State official could have veto authority. In each instance, following a decision to designate a particular corridor, the authority to grant rights-of-way remains with line agencies. Alternative 2 through 5 assume a mandatory implementation, not an advisory, function; the others do not.

1. Status Quo. For an analysis of how this would operate, see Part A of this memorandum.

2. Reservation of Specific Corridors in (d)(2) Bills. Congress could reserve specific utility and transportation corridor rights-of-way in the legislation which it passes concerning the (d)(2) lands. [This is the approach taken in Congressman Young's (d)(2) bill (H.R. 6848).]

3. Federal Commission. Congress could give the power to designate corridor rights-of-way to an independent commission having various responsibilities for the (d)(2) lands. This commission would be directed to coordinate with the State Department of Highways or the proposed Department of Transportation. The commission could have jurisdiction over the (d)(2) lands or over all Federal lands.

4. Joint Federal-State Commission. Congress and the State of Alaska could give the power to classify corridor rights-of-way to a new independent Commission.

5. LUPC as the Commission. Congress and the State of Alaska could extend the existing Joint Federal-State Land Use Planning Commission for Alaska and authorize it to carry out the responsibilities outlined in alternatives 3 or 4.

6. Federal Advisory Commission. Congress could create a commission to advise the Secretary of the Interior and the Secretary of Transportation, or the President, on corridor right-of-way decisions, among other things.

7. Joint Federal-State Advisory Commission. Congress and the State of Alaska could create a joint Federal-State commission to advise the Federal government and the State of Alaska on corridor right-of-way decisions, among other things.

8. LUPC as The Advisory Commission. Pursuant to existing authority, the Joint Federal-State Land Use Planning Commission for Alaska could advise the Federal and State governments on corridor right-of-way decisions.

The criteria against which these eight institutional alternatives should be judged are as follows:

A. Will the mechanism have an overview of transportation problems, particularly within the context of the (d)(2) lands?

B. Will it have the flexibility to take adequate cognizance of new information and changing circumstances?

C. Will it possess the necessary expertise?

D. Will it reduce fragmentation in the governmental decisionmaking process respecting transportation?

E. Will it effectively coordinate Federal and State efforts?

F. Will it promote cost-effectiveness in the admin-

istrative structure for making transportation decisions?

G. Will it adequately consider the views of interested parties?

H. Will it have the necessary authority to insure proper implementation of its decisions?

I. Will it have sufficient independence from existing Federal and State agencies, to the extent that such independence is deemed desirable?

The advantages and the disadvantages of the eight alternatives may be measured through the use of matrix set out below. Because the criteria contained in the matrix inevitably involve a judgment which is largely subjective, no effort has been made to evaluate the various alternatives. However, individual Commission members may wish to undertake an evaluation of their own using the criteria which are presented and any others which seem appropriate.

	Status Quo	Reservation in (d)(2) Bills	Federal Corridor Commission	Joint Commission	LUPC as Commission	Federal Advisory Commission	Joint Advisory	LUPC as Advisory Commission
A. Overview								
B. Flexibility								
C. Expertise								
D. Reduce Fragmentation								
E. Coordination								
F. Cost-Effectiveness								
G. Public Views								
H. Necessary Authority								
I. Independence								

FOOTNOTES

1/ Federal Land Policy and Management Act of 1976 (BLM Organic Act) Act of October 21, 1976, Pub. L. No. 94-579 §501.

2/ Pub. L. No. 94-579 §504(j).

2a/ Pub. L. No. 94-579 §504(i).

2b/ Pub. L. No. 94-579 §504(a).

2c/ Pub. L. No. 94-579 §504(d).

2d/ Pub. L. No. 94-579 §504(g).

2e/ Pub. L. No. 94-579 §502(a).

2f/ Pub. L. No. 94-579 §507(a).

2g/ Pub. L. No. 94-579 §507(b).

2h/ Pub. L. No. 94-579 §506.

2i/ Pub. L. No. 94-579 §509(a).

2j/ Pub. L. No. 94-510(b).

2k/ 23 U.S.C.A. §317(b).

3/ 23 U.S.C.A. §103(b)(1).

4/ 23 U.S.C.A. §103(c)(1).

4a/ Pub. L. No. 94-579 §501(a)(4).

5/ 16 U.S.C.A. §797(e).

6/ 16 U.S.C.A. §803(a).

7/ 16 U.S.C.A. §797(e).

8/ Id.

9/ 18 C.F.R. §2.2.

10/ Id.

11/ Pub. L. No. 94-579 §501(a)(4); §504(j).

12/ Pub. L. No. 94-579 §501(a)(5).

13/ Pub. L. No. 94-579 §501(a)(1).

14/ 18 C.F.R. §2.2.

15/ 30 U.S.C.A. §185.

16/ 30 U.S.C.A. §185(a).

16a/ Pub. L. No. 94-579 §501(a)(2).

17/ 30 U.S.C.A §181.

18/ 30 U.S.C.A. §185(c)(1).

19/ 30 U.S.C.A. §185(c)(2).

19a/ 30 U.S.C.A. §185(b)(1).

20/ 30 U.S.C.A. §185(d).

21/ Id.

22/ 30 U.S.C.A. §185(e).

23/ 30 U.S.C.A. §185(f).

24/ 30 U.S.C.A. §185(g).

25/ 30 U.S.C.A. §185(h)(2).

26/ Id.

27/ 30 U.S.C.A. §185(j).

28/ 30 U.S.C.A. §185(k).

29/ 30 U.S.C.A. §185(l).

30/ 30 U.S.C.A. §185(m).

31/ 30 U.S.C.A. §185(r)(1).

32/ 30 U.S.C.A. §185(o)(1).

33/ 30 U.S.C.A. §185(p).

34/ 30 U.S.C.A. §185(w)(2).

35/ 30 U.S.C.A. §185(x).

36/ 15 U.S.C.A. §717 et seq.

37/ 15 U.S.C.A. §717f(c).

38/ 18 C.F.R. §157.14(a)(6).

39/ 18 C.F.R. §157.14(a)(6-a).

40/ 18 C.F.R. §2.69(a).

41/ 42 U.S.C.A. §4321 et seq.

42/ 18 C.F.R. §2.69(a).

43/ 18 C.F.R. §2.69(a)(1)(i).

44/ 18 C.F.R. §2.69(a)(1)(ii).

45/ 18 C.F.R. §2.69(a)(1)(iii).

46/ 18 C.F.R. §2.69(a)(1)(iv).

47/ 18 C.F.R. §2.69(a)(1)(v).

48/ 18 C.F.R. §2.69(a)(1)(vi)-(xxii).

49/ 18 C.F.R. §2.69(a)(2).

49a/ Pub. L. No. 94-579 §501(a)(2).

49b/ Pub. L. No. 94-579 §501(a)(3).

49c/ Pub. L. No. 94-579 §503.

50/ 10 U.S.C.A. §2668.

51/ Id.

51a/ 18 C.F.R. §2.2.

51b/ 16 U.S.C.A. §797(e).

52/ 16 U.S.C.A. §471 et seq.

53/ 16 U.S.C.A. §475.

54/ 16 U.S.C.A. §528.

54a/ Pub. L. No. 94-579 §501(a).

54b/ 16 U.S.C.A. §532.

54c/ Pub. L. No. 94-579 §510(a).

54d/ 30 U.S.C.A. §185(b)(1).

54e/ Pub. L. No. 94-579 §501(a)(2); §501(a)(3).

55/ 16 U.S.C.A §1131 et seq.

56/ 16 U.S.C.A. §1131(c).

57/ 16 U.S.C.A. §1133(c).

57a/ Pub. L. No. 94-579 §603(a).

57b/ Pub. L. No. 94-579 §603(b).

57c/ 16 U.S.C.A. § 1131 et seq.

57d/ Pub. L. No. 94-579 §501(a).

58/ 16 U.S.C.A. §1133(d)(4).

59/ Id.

60/ 16 U.S.C.A. §1133(d)(2).

61/ 2 Cong. & Admin. News 2523 (1973).

61a/ 30 U.S.C.A. §185(b)(1).

62/ See generally 16 U.S.C.A. 668dd et seq.

63/ 16 U.S.C.A. §668dd(a)(1).

64/ 16 U.S.C.A. §668dd(d)(1)(B).

65/ Id.

66/ 16 U.S.C.A. §668dd(d)(2).

67/ 23 U.S.C.A. §138.

68/ D.C. Federation of Civic Associations v Volpe, 459 F.2d 1212 at 1248 (1974).

69/ See generally 16 U.S.C.A. §1 et seq.

70/ 16 U.S.C.A. §1c(a).

71/ 16 U.S.C.A. §1c(b).

71a/ 16 U.S.C.A. §5.

72/ Id.

73/ 16 U.S.C.A. §§796-797.

73a/ 90 Stat. 440.

74/ 30 U.S.C.A. §185.

74a/ Pub. L. No. 94-579 §706(a).

75/ 16 U.S.C.A. §1271; see generally 16 U.S.C.A. §1271 et seq.

76/ 16 U.S.C.A. §1281(a).

76a/ 16 U.S.C.A. §1273(b).

77/ 16 U.S.C.A. §1281(b).

78/ 16 U.S.C.A. §1281(c).

79/ 16 U.S.C.A. §1281(d).

80/ 16 U.S.C.A. §1284(g).

80a/ 16 U.S.C.A. §1284(g).

81/ A.S. 38.05.300.

82/ A.S. 19.10.010.

83/ A.S. 19.10.015.

84/ A.S. 19.10.020.

85/ A.S. 38.05.330.

86/ See Id.

87/ A.S. 38.35.010 et seq.

88/ A.S. 38.35.010.

89/ A.S. 38.35.050.

90/ A.S. 38.35.100(a).

91/ A.S. 38.35.120(d).

92/ A.S. 38.35.120(a)(13)and (14).

93/ See generally A.S. 41.20.

94/ e.g., A.S. 41.20.150.

95/ A.S. 41.20.020(g).

96/ Interview with personnel of the Division of Parks, Department of Natural Resources, State of Alaska.
Conducted by David Schooler, November 21, 1975.

43 USC 1770.

SEC. 510. (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title: *Provided*, That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–538) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further*, That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501(b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c) (1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued under this title from any provision of the antitrust laws of the United States.

"Antitrust law."

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C. 12 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894.

15 USC 8, 9.

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

SEC. 705. (a) Effective on and after the date of approval of this Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System: Effective date.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statutes 2339				661.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed: but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damages shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340				661.
The following words only: ", or rights to ditches and reservoirs used in connection with such water rights."				
Feb. 16, 1897	335		29: 599	684.
Mar. 3, 1899	427	1	30: 1233	665, 956, (16 U.S.C. 535).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoirs site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875	152		18: 482	934-939.
May 14, 1898	299	2-9	30: 409	942-1 to 942-9.
Feb. 27, 1901	611		31: 815	943.
June 26, 1906	3543		34: 451	944.
Mar. 3, 1891	561	18-21	26: 1101	946-949.
Mar. 4, 1917	181	1	39: 1197	
May 23, 1928	409		45: 665	
Mar. 1, 1921	93		41: 1194	970.
Jan. 13, 1897	11		29: 484	952-955.
Mar. 3, 1921	219		42: 1437	
Jan. 21, 1895	37		28: 635	951, 956, 957.
May 11, 1898	179		29: 139	
May 11, 1898	293		29: 404	
Mar. 4, 1917	181	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	961 (16 U.S.C. 5, 471, 430, 520).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."				
May 27, 1902	378		66: 95	
May 21, 1896	212		29: 127	942-945.
Apr. 12, 1910	136		36: 269	946-950.
June 4, 1897	2	1	30: 35	16 U.S.C. 551.
Only the eleventh paragraph under Surveying the public lands.				
July 22, 1937	517	31, 34	50: 525	7 U.S.C. 1010-1012.
Sept. 3, 1954	1235	1	68: 1146	931c.
July 7, 1959	Public Law 86-608.		73: 341	40 U.S.C. 345a.
Oct. 20, 1962	Public Law 87-852.	1-3	76: 1129	40 U.S.C. 319-319c.
Feb. 1, 1905	288	4	33: 628	16 U.S.C. 524.

(b) Nothing in section 706(a), except as it pertains to rights-of-way, may be construed as affecting the authority of the Secretary of Agriculture under the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551); the Act of July 22, 1937 (50 Stat. 525, as amended, 7 U.S.C. 1010-1212); or the Act of September 3, 1954 (68 Stat. 1146, 43 U.S.C. 931c).

MANAGEMENT SYSTEMS

The attached material was prepared by Esther Wunnicke of the staff of the Federal-State Land Use Planning Commission for inclusion in the Commission's d-2 briefing book. It is a more complete discussion than that included in the second draft of the briefing book.

The attached draft includes discussions of, and background information on:

Management of National Interest Lands
- National Park Service
- U. S. Forest Service
- U. S. Fish and Wildlife Service
- Wild and Scenic Rivers System

Management Needs in Alaska

Management of Other Federal Lands
- Bureau of Land Management

Relationship of Federal, State and Private Land Managers

October, 1976

SUBJECT TO CHANGE

III. C. MANAGEMENT SYSTEMS

Three nationwide management systems--National Park Service, U.S. Forest Service, and U.S. Fish and Wildlife Service--are named as potential managers of the d-2 lands in Section 17(d)(2) of the Native Claims Settlement Act. The fourth system--Wild and Scenic Rivers--is not a management system, but a classification system which takes its management from that of the adjacent land manager. All three land managers already manage several million acres in each system in Alaska, as well as other units throughout the United States. Another major land managing agency in Alaska is the Bureau of Land Management which is responsible for all unreserved Federal lands and, with the transfer of jurisdiction from the Navy to the Department of the Interior, has been given a mandate to manage surface resources on what will become National Petroleum Reserve Alaska.

The chief distinctions among the managing agencies are in the organic acts establishing policy for their management, staffing and financial support, and the way they are perceived by their constituencies. Each has some classification authority for the lands under its jurisdiction, and each, with the recent passage of the Federal Land Policy and Management Act of 1976, has, or will have, the proprietary authority to deny access, or condition allowed access, to units within its management jurisdiction.

The reservation by Presidential Order of the Afognak "Timberland Reserve" in 1892, followed by designation in 1907 of the Tongass National Forest which encompasses most of Southeast Alaska, was the first reservation in Alaska of what have come to be called "national interest lands." It is also interesting to note that it was this reservation which extinguished the aboriginal title of the Tlingit and Haidi Indians of Southeast Alaska and which was the source of the suit of the Tlingit and Haidis in the Court of Claims for compensation for this loss of aboriginal right. An additional large unit of the National Forest Service, the Chugach National Forest, and three large units of the National Park Service, Mount McKinley National Park, Katmai National Monument, and Glacier Bay National Monument, had been designated by Statehood in 1959, along with many units of the Wildlife Refuge System, the largest and most commonly known being the Kenai Moose Range on the Kenai Peninsula, and the 9-million-acre Arctic Game Range created within the first year of statehood. Smaller units of the Refuge System on the coasts of Alaska were established to protect migratory waterfowl and sea mammals, particularly those for which the United States had international treaty obligations.

Conservation interests early recognized that not only were there other prime park, wildlife refuge, and forest lands in Alaska which in the national interest should be reserved from disposal to private individuals under the public land laws or to the State of Alaska under its selection rights, but that there were necessary additions to existing national interest lands to assure their boundaries and to assure a comprehensive conservation system throughout Alaska. With the passage of the Alaska

Native Claims Settlement Act, Congress also recognized that in addition to its obligation to treat fairly with the original inhabitants of Alaska--the Aleuts, Indians, and Eskimos which make up the Native population of Alaska--and to fulfill its statutory promise in the Statehood Act to the State of Alaska, there was an obligation to protect the national interest lands in Alaska.

Management of National Interest Lands

National Park Service

The National Park Service, established by Act of Congress, August 25, 1916, manages land in order to "conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Within this basic objective, lands in the National Park System are managed in different ways according to a number of categories or "classifications." The agency is dedicated to the resolution of any use or management confict in favor of the protection of the natural, scenic, wildlife or historical values mentioned in its enabling legislation.

Some parks have characteristics of natural, historic, and recreational categories, and the Service is laying stress on land classification within the parks so that resources may be appropriately identified and managed in terms of their inherent values and appropriate uses.

National Park Service natural areas, exemplified in Alaska by the present Mount McKinley National Park and Katmai and Glacier Bay National Monuments, are managed to place primary emphasis on the preservation of natural features of the area. Commercial harvest of timber, except where required to control insects or disease, is prohibited. Mineral prospecting, mining, and the extraction of minerals or the removal of soil, sand, gravel, and rock are also prohibited. For many years, mining claims could be established in and mining permitted in these natural parks in Alaska. With the recent passage of legislation prohibiting the acquisition of new mining rights in these, as well as other, National Parks, these exceptions in Alaska to general Park Service management will no longer be applicable. There are inholdings in the existing parks in Alaska, however, which, if they are not acquired by the Park Service, will be allowed to continue operations under strict surveillance. For the next four years, new surface disturbances for the purpose of mineral production will be prohibited.

Public hunting is also prohibited, as is livestock grazing, and commercial fishing, except where provided by law. Sport fishing is permitted. Except where necessitated as a condition of establishment, where required by applicable law, or where required to serve park utility systems, transportation corridors and rights-of-way for private or corporate entities are not allowed in natural and historical parks.

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National Park Service historical areas such as, in Alaska, the Sitka National Historic Park, are managed to place primary emphasis on maintaining, and, where necessary, restoring, the historic integrity of structures, sites, and objects of historical significance; and natural resources are to be maintained to resemble, as nearly as possible, the resource scene that occurred at the time of the period of history being commemorated.

Recreation areas include the national recreation areas, national seashores and lakeshores, national parkways, national scenic riverways, national rivers, and national scenic trails. Here, outdoor recreation is recognized as the dominant or primary resource management objective. Natural resources within recreation areas may be used and managed for additional purposes where compatible with recreation. Harvesting of timber, mineral prospecting, and removal of nonleasable minerals under applicable regulations may be permitted if such uses will not significantly impair the values of the area. Leasable minerals may also be removed in accordance with the Mineral Leasing Act. Public hunting, fishing, and possession of fish and resident wildlife are governed by applicable State laws with designation of zones and periods during which no hunting or fishing are permitted for reasons of public safety, administration, fish and wildlife management, or other public use and enjoyment of the area.

A new category in the Park Service system is the National Preserve category, applying now only to the Big Thicket National Preserve in Texas and the Big Cypress National Preserve in Florida. The primary purpose is to preserve areas with natural values of national significance, generally areas characterized by high scientific value, including significant ecological communities, and rare, unusual or endangered flora and fauna. Resource utilization, including exploration and extraction of minerals, recreation activities, construction of physical facilities, hunting, trapping, and fishing are permitted only if consistent with the primary objective of preserving the natural area.

Increased populations and increased demands for recreational resources, as well as the fact that often the measurement of Park Service success for purposes of funding is the number of public visitors each year to its units, have required new policies and methods. Recently, revised Park policies provide for the limitation of those activities which are detrimental to the natural and historic values each park was established to preserve. And that "the level, frequency and duration of permitted uses shall be limited where necessary to protect park resources from alteration or loss." Not only is the assessment of environmental impacts provided for in Park policy, but additional public involvement in policy and management determinations is the thrust of these new policies.

Methods and means are necessary to make this policy effective so that Park users may not be the instrument to destroy Park values. Additionally, Service responsibilities for the safety of its users must be addressed clearly and constructively. Alaskans are particularly conscious of this factor in Park Service management as a consequence of the 1976 climbing season when several lives were lost on Mount McKinley.

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Because of a general "no hunting" policy, if the taking of fish, game, and other renewable resources for subsistence purposes by Alaska Natives and other rural Alaskans dependent on a subsistence lifestyle from the parks is allowed, a modification of customary Park Service management is required.

The Commission has determined as a general policy that prime natural, scenic, wildlife, and historical areas identified to be of national interest in Alaska should be placed under National Park Service management. It has further determined that without modification traditional Park Service management which disallows mining and hunting should be designated for these areas.

U.S. Forest Service

The Forest Service in the Department of Agriculture has primary Federal responsibility for the protection and development of the Nation's forestry resources. The first act for organizing and managing the public forest was passed in 1897. The Forest Service was formed in 1905 when the Bureau of Forestry in the Department of Agriculture was transferred responsibility of managing the Nation's Forest Reserves, later renamed the National Forests, from the General Land Office. At first, management of the National Forests was primarily custodial, protecting the forests from fires, insects and diseases, over-grazing, and erosion. After the end of World War II, demands for the goods and services which came from the forests increased greatly with a growing population of the United States, and there was intensified public concern for environmental quality.

National Forests provide many resources, and the National Forest Service has always permitted use of timber, grazing, mining, hunting, fishing, and trapping. As outdoor recreation became more popular, picnic areas, camping, campgrounds, cabins, hiking trails, and wilderness areas were provided. In 1960, Congress strengthened the Forest Service management policy with the passage of the Multiple Use-Sustained Yield Act. The Multiple Use-Sustained Yield Act defines multiple use as "the management of all the various renewable surface resources of the National Forest so that they are utilized in the combination that will best meet the needs of the American people."

The Service, through the Secretary of Agriculture, has broad authority for special classification of National Forest lands where areas of special interest have been designated as virgin, scenic, geological, historical, botanical, and zoological areas.

Fish and wildlife habitat is managed by the Forest Service with seasons, bag limits, methods and means of harvest and use set by the Alaska Department of Fish and Game; mineral development and exploration and development of locatable minerals on National Forest lands include the right to prospect, locate, mine and remove minerals and obtain patent to the claim.

Passage of the National Environmental Policy Act of 1969 and its requirements for Environmental Impact Statements provided additional opportunities for public environmental concerns to take substantive form. The Forest Service in Alaska has been the target of several suits brought under the NEPA, and Forest Service, Alaska, as well as some units of the Forest Service elsewhere is now subject to a so-called "Mohanganalia decision" prohibiting clear-cutting of timber. This issue, as well as other issues of Forest Service management practices, was before the Congress in the recently passed National Forest Management Act of 1976. The Act amends the 1974 Humphrey-Rarick Act, and in Section 18 harvesting guidelines are provided. Despite Forest Service contention that it has ample expression of congressional intent in order to do its job, the Service was also included, along with the Bureau of Land Management in the Federal Land Policy and Management Act of 1976.

The Forest and Rangeland Renewable Resources Planning Act (P.L. 93-378), also referred to as the Resources Planning Act or the Humphrey-Rarick Act, was passed August 17, 1974. It calls for long-range planning by the Forest Service to insure an adequate supply of forest resources in the future in the United States and the maintenance of the quality of the environment. Under the Act, the Forest Service must periodically submit to Congress a renewable resources assessment and a long-range renewable resource program. The renewable resource program is to be a long-range plan for all Forest Service programs, including the National Forest System, Research, and State and Private efforts.

Section 8 of the Humphrey-Rarick Act reiterates that the development and administration of the renewable resources of the National Forest System are to be in full accord with the concepts of multiple use and sustained yield of products and services as set forth in the Multiple Use Sustained-Yield Act of 1960. The definition of the National Forest System as given in the 1974 Act says that the System "consists of units of federally owned forest, range and related lands throughout the United States and its territories, united into a nationally significant system dedicated to the long-term benefit of present and future generations, and that it is the purpose (of this section) to include all such areas into one integral system." The Act also specifies another characteristic of Forest Service management. That is that "on-the-ground field offices, field supervisory offices, and regional offices of the Forest Service shall be so situated as to provide the optimum level of convenient, useful services to the public, giving priority to the maintenance and location of facilities in rural areas and towns near the national forest."

This Service, because of its long history and multiple use-sustained yield direction, has had a great deal of contact with local residents; and, as a consequence, has delegated considerable decision-making authority to its local officers. It also provides technical assistance to other landowners with respect to timber management.

There are three arms of the Forest Service: National Forest System, State and Private Forestry, and Research managing what the Service sees

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as six major responsibilities or "resource systems"--outdoor recreation and wilderness, wildlife and fish habitat, rangeland grazing, timber resource, land and water, and human and community development.

The primary missions of the Outdoor Recreation and Wilderness System are to provide outdoor recreation opportunities and wilderness on national forests, protect and manage scenic, cultural and wilderness resources, and provide technical assistance and advice to other public and private forest landowners in developing forest-based recreational opportunities. The primary mission of the Wildlife and Fish Habitat System is to provide wildlife and fish habitat with special emphasis on threatened and endangered species in close coordination with states who have responsibilities for wildlife and fish populations. The primary mission of the Rangeland Grazing System is to provide forage for domestic livestock grazing on forest land and rangeland.

The primary mission of the Timber Resource System is to grow and make available wood for the Nation on a continuing basis. The primary mission of the Land and Water System is to protect, conserve, and enhance the basic resources of air, soil, and water on forest land and rangeland.

As a multiple use manager, it is often difficult for the Forest Service to deny uses on lands under its management, and with lumbering interests a large part of its constituency, it is often perceived by conservation interests as an agency which resolves conflict in favor of timbering, at all cost. In its renewable resources assessment and recommended renewable resource program filed to meet the requirements of the Humphrey-Rarick Act, the Forest Service focuses on (1) dispersed recreation opportunities with a moderate allocation of National Forest land to statutory wilderness designation, (2) priority on the most cost-effective resource management for timber and range activities, and (3) accelerated efforts on behalf of wildlife and fish, land and water stewardship, as well as human and community development. (Here, it should be noted that Forest Service lands are subject to a 400,000-acre selection entitlement of the State of Alaska specified in the Alaska Statehood Act.)

Issues in Forest Service management include how and when clear-cutting should be used; what kinds of recreational facilities and opportunities should be provided by the National Forests, and who should pay for them; and how much land should be designated as wilderness. It is too early to judge whether the recommended renewable resource program can be achieved or what the end result of the National Forest Management Act of 1976 will be. What should be apparent to those who view the designation of d-2 lands as an unchangeable decision is the changed policy and management practices direction which may come from future congressional review.

In determining areas which are best suited for Forest Service management in Alaska, a crucial question has been whether or not additions to the system should be made in interior Alaska.

U.S. Fish and Wildlife Service

The Wildlife Refuge (and Range) System is maintained "for the fundamental purpose of wildlife conservation and rehabilitation" and is managed by the U.S. Fish and Wildlife Service. Uses compatible with this primary purpose are allowable by permit of the Secretary of the Interior. These refuges are established for the restoration, preservation, development, and management of wildlife and wildlands habitat; for the protection and preservation of endangered or threatened species and their habitat; and for the management of wildlife and wildlands to obtain the maximum benefits from this resource. The system includes wildlife refuges, wildlife ranges, game ranges, wildlife management areas, waterfowl production areas, and other areas for the protection and conservation of fish and wildlife that are threatened with extinction.

In most instances, refuges are on Federal lands and waters controlled by the U.S. Fish and Wildlife Service. Some are established on lands and waters primarily controlled by some other Federal or public agency.

The special mission of the Refuge System is to provide, manage, and safeguard a National network of lands and water sufficient in size, diversity, and location to meet people's needs for areas where the entire spectrum of human benefits associated with migratory birds, other wild creatures, and wildlands are enhanced and made available. These areas are dedicated to the wildlife found thereon. But, public enjoyment of wildlife refuge areas is allowed consistent with the major management objective.

Basically, all acts are prohibited on a refuge unless permitted by the Secretary of the Interior, and the Secretary is authorized, under such regulations as he may prescribe, to (1) permit the use of any area within the system for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established, and (2) permit the use of, or grant easements in, over, across, upon, through or under any areas within the system for purposes such as powerlines, pipelines and roads, again, whenever he determines that such uses are compatible with the purposes for which these areas are established. Such uses may include mineral leasing, hunting, fishing and trapping, timber sales, and mining and metalliferous mineral location, as well as scientific investigations, hiking, camping, and other recreational use.

Most wildlife refuges and ranges have been established by Executive Order, and one of the chief distinctions between refuges established under Section 17(d)(2) of the Settlement Act and existing refuges and ranges is that the d-2 refuges will be established by Congress and, consequently, more difficult to modify or amend. Another distinction with respect to wildlife refuge lands in Alaska is that existing refuges have been made subject to limited selection rights by Alaska Native villages within them, presenting management problems and challenges to

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the Service. On the other hand, without congressional action the Service can designate, and has designated, refuge lands authorized in the Settlement Act to replace those lands, in area, at least, which were selected by village corporations.

The Federal-State relationship with respect to resident game management is the major issue determining whether large mammal habitat areas in addition to, for example, the present Arctic Game Range and Kenai Moose Range should be placed under Fish and Wildlife Service management, or whether the proposed new additions to the Refuge System should emphasize migratory waterfowl nesting and breeding areas.

The size and location of proposed wildlife refuges is of particular concern to the State of Alaska for another reason. A 1975 decision of the Comptroller General has recently been confirmed by him to the effect that receipts from oil and gas leases on wildlife refuges created by withdrawals of public lands are required to be distributed pursuant to 16 U.S. Code Sec. 715s(c) rather than pursuant to the Mineral Leasing Act. If this decision is not overturned by judicial opinion, the effect is that 25 percent of the receipts will go to counties (or in Alaska's case boroughs), and 75 percent for the management of the refuges. Both the revenues to the State of Alaska and portions of the money settlement to Alaska Natives under the Settlement Act are based upon the Mineral Leasing Act.

As a matter of policy, the Commission has placed emphasis on prime waterfowl habitat areas rather than upland game areas.

Wild and Scenic Rivers System

The Wild and Scenic Rivers System is a congressional classification established in 1968. As designation of a wilderness area under the Wilderness Act does not change the proprietorship of the area, neither does designation of a wild and scenic river. It does establish certain controls on riverfront development and use, however. All rivers in the national system must be substantially free-flowing, have high quality water, and be long enough to provide a meaningful experience for the river traveler. Regulation and management of rivers in the system vary somewhat depending on which of three categories--wild, scenic, or recreation--apply.

Wild rivers are essentially in a primitive state and inaccessible except by trail. They are free of impoundments with watersheds or shorelines essentially primitive and waters unpolluted.

Scenic rivers, or sections of rivers, are free of impoundments, with shorelines and watersheds still largely primitive and undeveloped but accessible in places by roads.

Recreational rivers are readily accessible by road or railroad, may have some development along their shorelines, and may have undergone some impoundment or diversion in the past.

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Any use, such as dams for hydroelectric purposes, which would change the free-flowing characteristic of the river would be precluded, and depending upon the management system of surrounding lands, hunting or mining may be denied on the rivers designated. Even within larger managing units which allow mining and the acquisition of title under the 1892 Mining Act, some restriction may be placed on the mining operation by classification of the river as a part of the Wild and Scenic River System. For instance, the issuance of a patent to any mining claim affecting lands within the system confers title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required for carrying on prospecting or mining operations. Minerals in lands which constitute the bed or bank or are situated within any river designated as a wild river will be withdrawn, subject to valid existing rights from all forms of appropriation under the mining laws and from operation of the mineral leasing laws. No such withdrawals are made in scenic or recreational river areas. Safeguards against pollution of the river and unnecessary impairment of the scenery within the area may be provided for by regulation even where mining is allowed.

With almost all of Alaska's rivers meeting the criteria for designation as units of the Wild and Scenic Rivers System, Commission review was on a statewide basis to assure that representative rivers were chosen. Of chief concern to Alaska residents was the effect of this classification upon hunting, fishing, and other subsistence activities, as well as the use of the rivers for transport.

Management Needs in Alaska

Given sufficient manpower and funding, and in a situation of intensive management, each of the present land managing agencies could manage a particular piece of land for a particular purpose or for compatible purposes. Their chief distinctions are in staffing, organic acts establishing them or giving them policy direction, the way in which their success is measured and the way in which they are perceived by their constituencies. To find that they are rivals for, often, the same tract of land, one need only trace the history of any of the proposals now before Congress for the creation, and designation of management of national interest units. The Park Service and Fish and Wildlife Service with the same Assistant Secretary in the same Department and responding to the same congressional committee compete for larger acreages, additional staff and additional funding. Even greater is the rivalry between the Forest Service in the Department of Agriculture which responds to another set of congressional committees and another constituency, and Department of the Interior agencies. That there is need for coordination between and among the Federal agencies designated for national interest land management is apparent.

Given the magnitude and strategic importance of State and private landholdings by Native corporations, often within the same ecosystem as a proposed unit of national interest land, and even more often adjoining

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such units, there is need for coordination among Federal land managers, State land managers, and Native corporate land managers.

To establish a rational land use pattern in Alaska, it will be necessary to:

...provide intensive management to critical areas which are subject to impact or which are of such apparent national interest value that they should be set aside now.
...preserve other lands whose national interest qualities may either be less apparent or whose other resource values cannot now be accurately determined, for future land and resource management options.
...determine a unified policy for treatment of the Federal lands, along with State and private lands, in Alaska, with clear regulation, rulemaking and enforcement consistent with that policy.
...eliminate, where possible, duplication of effort and expertise.
...establish administrative boundaries which follow natural boundaries.
...provide means of coordination which carries with it authority to bind the component parts and line responsibility of the various agencies to the coordinating board of agency.
...assume participation by private citizens in institutional decisions.
...make best utilization of the existing land management systems.

Essential to the implementation of the land ownership and land use pattern which the Congress is in the process of establishing for Alaska is the need for unified planning and decision making. Without unified policy planning, each competing manager makes an independent assessment, an independent plan and an independent commitment to competing groups. Not only may such independent action cancel benefits which, in good faith, the land manager may think will be derived from the plan, but it may result in action on the land which is detrimental.

Unified planning and decision making is based on the recognition that knowledge of the future is limited and that no agency or group can predict or design with certainty. This recognition is also the foundation establishing a process of future classification of lands whose merits and resources are not now readily ascertainable.

Management of Other Federal Lands

The Organic Act of 1884 extended land laws relating to mining claims to Alaska, followed 14 years later by the extension of the homestead laws, and in 1900 by the extension of a system of public land surveys. The administration of these and other public land laws was placed in the General Land Office which, with the Grazing Service in the Department of the Interior, was the predecessor of the Bureau of Land Management which was created in 1946. With these beginnings in the General Land Office,

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the Bureau of Land Management has been perceived by many as a land disposal, rather than a land managing, agency.

During territorial times and the early days of statehood when most of Alaska was in the public domain, the Bureau of Land Management's direction was custodial and protective in nature, principally from wildfire. Unlike its counterparts in the "lower 48" BLM-Alaska had no broad land classification authority except for a period between 1964 and 1970 under the Classification and Multiple Use Act. (The Taylor-Grazing Act which provided classification authority for the other public land states did not apply to Alaska.) The administration of the Homestead Act was a prime Bureau of Land Management responsibility, particularly after World War II when there was a rush to homestead in Alaska, not so much for settlement as for speculation. For example, by the end of 1955, 59 percent of the acreages transferred to homesteaders on the Kenai Peninsula were unoccupied or abandoned and another 31 percent were being used solely for residential purposes.

As the Nation gradually reversed its policy to dispose of public lands "to open up the country" and assure economic development, many executive withdrawals were made in territorial Alaska. Most of these were "temporary withdrawals" under authority of the Pickett Act or under the inherent authority of the President. A great number of these withdrawals are still in effect today. The chief distinction between these two authorities is that the Pickett Act specifically exempts mineral entry for metalliferous minerals from the withdrawal, whereas the inherent authority of the President permits the closing of public lands, by withdrawal, to mineral entry. Although some withdrawals were made by executive order, most of them in recent years have been made by the Bureau of Land Management for the Secretary of the Interior by public land orders.

Section 204 of the Federal Land Policy and Management Act practically repeals all existing withdrawal authority and, in addition to requiring congressional review of any withdrawals of more than five thousand acres, also provides for twenty-year terms for other withdrawals and for procedures for and a three-year limitation on emergency withdrawals to "preserve values that would otherwise be lost." Interestingly, lands in Alaska are not included in review of some existing withdrawals required of the Secretary of the Interior within fifteen years from the date of the Act.

An extensive examination of the management policies and practices of the Bureau of Land Management and the Forest Service was made by the Public Land Law Review Commission whose summary report to the Congress, One-Third the Nation's Land forms the basis for many of the changes in public land law and public land management which are now taking place. Most recently was passage in October, 1976 of the Federal Land Policy and Management Act of 1976 mentioned above. With most of the nation's public lands in Alaska and with the myriad responsibilities placed on it by the Alaska Native Claims Settlement Act, the Bureau of Land Management is one of the largest and most important agencies in Alaska.

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The Bureau of Land Management has interim managing authority over the lands under consideration for inclusion by the Congress in one of the four systems--that is, the "d-2 lands." It also has management authority over the lands withdrawn for selection by Native village and regional corporations under the Claims Act and those lands withdrawn for classification under Section 17(d)(1) of the Claims Act--the "d-1 lands." Most recently, it has been given surface management authority over what will become in June, 1977, National Petroleum Reserve in Alaska, in addition to its leasing authority for offshore Federal lands under the Outer Continental Shelf Act.

Bureau of Land Management management means multiple use management. This is reiterated in the declaration of policy in the new organic act where it is stated that "management be on the basis of multiple use and sustained yield unless otherwise specified by law." In the Federal Land Policy and Management Act of 1976 "multiple use" is defined as

> the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs for future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values....

The Bureau of Land Management uses a land use planning system to determine which uses best serve the public. Hunting, fishing, trapping, mining, grazing, use of off-road vehicles, and timber uses all are allowed on BLM lands. BLM also makes lands available for subsistence, residential, agricultural, recreational, industrial, commercial, and real estate uses. Except for the major disposals dictated by the Statehood Act and the Claims Act, no other new disposals are now allowed on the lands in Alaska under BLM jurisdiction. The Bureau has yet to begin a classification procedure for the d-1 lands as a necessary first step to future disposals, including many of those to the State of Alaska. As an indication that the future disposal of public lands may seldom be made, particularly outside Alaska, is another statement of policy in the new organic act that it is the policy of the United States that "the public lands be retained in Federal ownership unless as a result of the land use planning procedure provided for in this act, it is determined that disposal of a particular parcel will serve the national interest." However, Section 702 of the Act which repeals the homestead laws for the rest of the nation extends the date of that repealer for ten years in Alaska. Thus, should Alaska d-1 lands be classified for settlement and occupancy, the Homestead Act would apply to such lands.

BLM has many responsibilities in Alaska, as it does in the eleven western states. Its fire-fighting responsibility for about two-thirds of Alaska's land area includes fighting fires on lands of other Federal agencies, as well as State and Native lands and other private lands outside organized boroughs. The Bureau also has responsibility for surveying Federal lands. About 150 million acres of uplands in Alaska must be surveyed before final titles can be conveyed to the State of Alaska and Alaska Native corporations. BLM also is the disposal agency, often for lands which are under other agency jurisdictions, most notably leasing under the Mineral Leasing Act and the Outer Continental Shelf Act.

Grazing which is such a large part of the responsibility of BLM in the western states is not of major importance in Alaska except for reindeer which are licensed to graze on the public lands in Alaska.

The Bureau, because of its responsibility to respond to needs and forces outside the agency, such as fire, or the decision of a homesteader to obtain a particular tract, or a miner to explore for, locate, mine and eventually obtain patent to a mining claim, has been in a different position from the other managing agencies. With classification authority many of these problems in the future may be eliminated. With passage of the Federal Land Policy and Management Act of 1976 giving the Bureau enforcement and closure authority on the lands under its jurisdiction many other problems will be eliminated. Responding as it does to many "publics" however, most of whom are not oriented toward preservation but rather to use of the land's resources and the land itself as a commodity, the Bureau is often not seen as an agency to whom environmental protection should be entrusted. One chance to prove itself in Alaska has been given by choice of the Department of the Interior to manage exploration of oil and gas on NPR 4, and, in it, choice of the Bureau of Land Management to assume surface management responsibility for the petroleum reserve.

Another opportunity is for the Bureau to respond quickly and effectively by regulation and designation of manpower and resources to its new management tasks. The Act provides for the issuance of regulations necessary for its implementation and for criminal penalties for violations of such regulations. It also provides for institution of civil action for injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary. Presently, the only Federal statutes which make it a criminal offense to injure or destroy resources on the public domain relate to wanton destruction or willful setting of fire to timber on the public lands.

With the major obstacles to its management removed by passage of the Organic Act, the Bureau of Land Management in Alaska is faced with some immediate management needs: revisions of regulations for off-road vehicle use are necessary. Earlier regulations which established criteria for designating restricted and closed areas were held invalid in 1974 in National Wildlife Federation v. Morton. Regulations and procedures for classification of d-1 lands have not yet been developed.

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Much of the land under BLM management in Alaska is, or has been, open to mineral entry with the rights of locators and mining claimants governed by the terms of the Mining Laws of 1972, including the right of ingress and egress to their mining properties. This will be a factor in the planning and management of the public lands, as will the earlier noted effect of application of the Homestead Act in Alaska ten years beyond its expiration in other states. The major management need for the Bureau of Land Management is the preparation of regulations to implement its new authorities.

Relationship of Federal, State, and Private Land Managers

Federal, State, and private land managers, particularly Alaska Native corporations, will own lands in every region of Alaska. These lands were often selected for quite different reasons. Recommendations for additions to or new units of the four systems stress the protection of high quality wildlife habitat, preservation of scenic and wilderness resources, and the provision of recreation. State selections have stressed lands for human occupancy and resource development potential, although many acres have been identified for habitat protection and recreational use. Native selections have tended to concentrate on wildlife lands for subsistence use near the villages or for resource development. Although it would appear that State and Native selections are somewhat similar, one is for public use, while the latter is for private use.

None of the land selections have been made with complete freedom. Native selections, for example, were constrained by the terms of the Settlement Act which limited some selections to 25 township blocks, following township lines, around existing villages and others to deficiency lands withdrawn for that purpose. A checkerboard pattern of ownership within the 25-township withdrawal areas will also often result from the terms of the Settlement Act.

A further uncertainty as to the exact location and management regime for Alaska's lands is presented by the need to reduce the present over-selection of Native lands in some regions to the land selection entitlement in the region. Also undetermined at this time is the location of the remaining 35-million-acre selection entitlement of the State of Alaska. The State need not complete its selections until, at the earliest 1984, with the possibility that having been delayed in its selections first by the so-called "land freeze" and next by the withdrawal of lands under the Settlement Act, the State will ask for an extension of time within which to make its selections. Another element of uncertainty is the determination of what inland lakes and streams were navigable at the time Alaska became a State. A determination of navigability carries with it ownership by the State of Alaska of the submerged lands under the lake or stream. This may result in significant State ownership within designated "national interest" lands, or within, or bisecting, Native landholdings.

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As has been seen, the policies, management objectives, and management authorities of each of the four Federal land managing agencies differ. Thus, it is not unreasonable to assume that even on Federal lands there may be conflicts between adjoining Federal land managers. There are similar discrepancies among State land and resource managers, to say nothing of differences between State public land managers and Native corporate land managers. There is need for institutions to unify and coordinate planning and management of Alaska lands.

One unifying source is the police power of the State for the adoption of surface land use controls. However, Article VI, Clause 2, of the United States Constitution provides that the Constitution and the laws of the United States made in pursuance thereof are the supreme law of the land. Thus, should the State law be determined to be an obstacle to the purpose and objectives of the national government in an area of authority delegated to the Federal government, the Federal law would prevail. One then looks to the regulatory authority of the Federal government as a unifying force. But Federal regulatory power is limited to delegated constitutional authority which is, however, usually liberally construed by the Courts. The constitutional basis of the Clean Air Act (42 USC 1857), Federal Water Pollution Control Act (33 USC 1251), and Solid Waste Disposal Act (42 USC 3251), for example, is found in the Commerce clause (Article I, Section 8, Clause 3) which has been held to sustain environmental protection.

Although the Commerce clause may be the source of some environmental protection laws which apply irrespective of land status, it is the Property clause in Article IV, Section 3, Clause 2, of the United States Constitution which is the source of the authority of Congress to enact laws dealing with Federal lands. Congress has exclusive jurisdiction over some Federal lands and concurrent legislative jurisdiction where the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority. In Alaska, Mount McKinley National Park is an area of exclusive jurisdiction in the Federal government with the State reserving only the right to serve process and tax persons and corporations in the park.

All other Federal lands in Alaska, including some dedicated to military purposes, are areas of concurrent jurisdiction. On the basis of concurrent jurisdiction Naval Petroleum Reserve No. 4 was included within the North Slope Borough, for example, even though Section 11(b) of the Alaska Statehood Act reserved to the United States "the power of exclusive legislation" over those lands held by the military, including NPR 4, at the time of Statehood, because other provisions included State service of process, concurrent jurisdiction consistent with laws hereafter enacted by Congress pursuant to such reservation of authority.

Absent congressional legislation on the subject the State police power extends over Federal lands within its political boundaries which are not reserved to the exclusive jurisdiction of Congress, so long as Congress has not also acted in the same arena, thereby preempting State authority. The inclusion within a state of lands of the United States does not take

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from Congress the power to control their occupancy and use, to protect them from trespass and injury, and to prescribe the conditions upon which others may obtain rights in them, even though this may involve the exercise in some measure of what commonly is known as the police power.

The proprietory relationship of the Federal and State governments will result in their being adjoining landowners, with boundaries which often do not follow natural divisions. The legal and regulatory relationship of the Federal and State governments will often be overlapping, particularly in areas of concurrent jurisdiction or where only the proprietory rights of the Federal government are asserted on Federal lands.

Presently, OMB Circular No. A-95 requires Federal agencies to develop procedures for assuring that Federal plans and projects are consistent or compatible with State, areawide, and local development plans and programs. Also, State, areawide, and local applicants seeking HUD comprehensive planning assistance (701) program grants must, by statute, consider the effect of major Federal activities on their planning and development. In addition, proposed Coastal Zone Management programs require the cooperation of all landowners in the coastal zone in accordance with a State plan for the coastal zone. One problem is a recent ruling of the U.S. Attorney General that Federal lands, regardless of their status (that is, whether they are public domain or lands reserved for particular purposes), cannot be considered a part of the coastal zone. This points up the need for specific articulation of future Federal-State relationships in Alaska with respect to cooperative planning management, or classification of State or Federal lands which involves participation of the other government.

There is need to (1) exchange information regarding plans, policies, and projects, (2) develop methods for involving Federal, State, and sub-State agencies in each other's planning process, (3) for agreement on the use of common data bases and, to the degree feasible, common boundaries for planning purposes, (4) identifying marginal activities which can be eliminated, thereby effecting cost reductions, and (5) identifying priorities for cooperative intergovernmental action.

There are many cooperative agreements between Federal agencies and often between Federal and State agencies usually dealing with a single subject-matter or a single geographic area. For example, the Forest Service has an agreement with the National Park Service and is working on an agreement with the Environmental Protection Agency for 208 planning. The Bureau of Outdoor Recreation has 21 agreements with various agencies. The Corps of Engineers has 36 agreements with various Federal agencies concerning water resource matters; and the Bureau of Land Management has agreements with five Federal and four State agencies, and is beginning to develop a model agreement for use with State clearinghouses under A-95 procedures. Taking leadership in this coordinative effort, particularly at the Washington level, has been the Council on Environmental Quality and the Department of Housing and Urban Development.

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The structure of Alaska State government lends itself to coordinative effort through the Governor's Office of Planning and Development, and various cabinet-level task forces appointed for specific issues. The ability of the Federal agencies to coordinate their activities at the Washington level is less apparent. The Alaska Task Force in the Department of the Interior, joined by Forest Service representatives from the Department of Agriculture, was formed to deal with the implementation of the Alaska Native Claims Settlement Act with mixed results, resulting largely from lack of staffing for the Task Force itself and decisions by some members to act unilaterally without Task Force discussion or coordination. An earlier group structured to coordinate Alaska Federal programs was the President's Review Committee. This was the Washington, D.C. counterpart to the Federal Field Committee for Development Planning in Alaska, and functioned from 1964 to mid-1971. This body's membership was at the Assistant-Secretary level from the departments having major responsibilities in Alaska. It met quarterly, had a small staff, and maintained frequent contact with the Alaska-base Federal Field Committee. Such a structure, at the minimum, seems necessary if the coordinative efforts of an Alaska Federal-State coordinating body are to be effective.

Without regional governments in much of rural Alaska, there has not been time to formulate coordinating mechanisms on a regional level. Thus, there is need of a coordinative body in which Federal and State governments fully participate, both at a Federal and State level.

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