APPENDIX C

Land Ownership and Management

LAND OWNERSHIP AND MANAGEMENT

Western Alaska Access Planning Study Area

Alaska has a complex system of land ownership and management as a result of various land laws such as the Native Allotment Act, the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), the Alaska National Interest Lands Conservation Act (ANILCA), and the 1978 Municipal Entitlement Act. Although the majority of Alaskan lands continue to remain in federal and state ownership, Native Alaskans, Native regional and village corporations, boroughs, cities, and the state have all selected lands under the laws cited previously. Many of these lands have yet to be adjudicated or conveyed to the selecting entity. In addition, multiple entities have often selected the same lands; in many instances, these conflicting selections have not yet been resolved. This study focuses on current land ownership within identified corridor alternatives and includes general explanations about the processes involved in permitting, leasing, and purchasing lands, including those that are still under selection. In addition, since lands within the study area are owned and managed by many different entities, efforts were made as early as possible to identify constraints on, the probability of, timeframes, and required permitting or purchase processes for obtaining rights-of way (ROW) for the corridor alternatives.

Land Ownership

Data from the United States (U.S.) Department of the Interior, Bureau of Land Management (BLM), and the State of Alaska Department of Natural Resources (DNR) Division of Mining, Land, and Water was reviewed to establish land ownership patterns within the study area. General land ownership within the study area includes federal lands, Native lands, other private lands, and state lands. The majority of the lands within the study area are federally and state owned, and within federal and state lands, there are designated areas of special management, which are subject to a multitude of land use and conveyance restrictions. Designated areas within federal lands include the conservation system units (CSUs). The sections that follow identify the different land status types and primary landowners within the study area.

Federal Lands

A significant portion of the land within the study area is federally owned. The BLM is the primary manager of these lands. Federal lands include state- and Native-selected lands that have not yet been conveyed. Federal holdings in the study area also include CSU lands managed by the National Park Service (NPS), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Army Corps of Engineers (USACE). About one-quarter of the land within the study area is within a CSU designated as wildlife refuges, wilderness areas, wild and scenic rivers, national parks, preserves, and monuments. These protected federal lands include:

- Bering Land Bridge National Preserve
- Gates of the Arctic National Park and Preserve and Wilderness Area
- Kobuk Valley National Park and Wilderness Area
- Noatak National Preserve
- Nowitna National Wildlife Refuge
- Innoko National Wildlife Refuge and Wilderness Area
- Kanuti National Wildlife Refuge
- Koyukuk National Wildlife Refuge and Wilderness Area

- Cape Krusenstern National Monument
- North Fork of the Koyukuk Wild and Scenic River
- Kobuk Wild and Scenic River
- Selawik Wild and Scenic River
- Selawik National Wildlife Refuge and Wilderness Area
- Nowitna Wild and Scenic River
- Unalakleet Wild and Scenic River

Native Lands

Native lands are private lands. ANCSA mandated the creation of regional and village Native corporations to receive title to approximately 10% of the land in Alaska as part of the settlement of certain aboriginal land claims. ANCSA became law in 1971 and will ultimately convey more than 45 million acres of land to village and regional corporations. To date, more than 36 million acres have been conveyed. The remaining selected lands are awaiting title adjudication. Conveyed lands include both interim conveyed (unsurveyed) and patented (surveyed) lands. Most of the ANCSA lands within the study area are owned in split-estate; the surface rights (estate) are owned by individual village corporations with the mineral rights (sub-surface estate) belonging to the regional corporation. Three regional Native corporations own lands within the study area: (1) Doyon, Limited; (2) Bering Straits Native Corporation; and (3) NANA Regional Corporation.

Other Private Lands

Other private lands within the study area are minimal and are owned by private individuals, municipalities, boroughs, and individual Native entities (allottees). As expected, these private lands are concentrated near established cities, villages, and along the populated portions of the existing highways and roads.

State Lands

The state has selected lands for conveyance from the federal government for three specific needs: settlement, resources, and recreation. To date, the state has received patent to approximately 85% of its total land selections with the remaining selected lands awaiting title adjudication. The DNR Division of Mining, Land, and Water is the primary manager of more than 150 million acres of landholdings belonging to the State of Alaska. The division develops area plans and management plans for the use of state lands and classifies the land for various uses including: (1) sale and lease of the land to the public; (2) lease and issuance of permits to use land for recreation, commercial, and industrial purposes; (3) the sale of sand and gravel and other materials; and (4) easements for temporary use of state land and access roads.

A small percentage of state-owned land within the study area is managed by the Alaska Department of Fish and Game (ADF&G). These areas include the Minto Flats State Game Refuge and the Dalton Highway Corridor Management Area. The game refuge encompasses approximately 500,000 acres and is located about 35 miles west of Fairbanks between the communities of Minto and Nenana. The refuge was established to ensure the protection and enhancement of habitat, the conservation of fish and wildlife, and to guarantee continued hunting, fishing, and other compatible public uses within the Minto Flats area. The Dalton

Highway Corridor Management Area essentially encompasses the area extending five miles to the east and west of the Dalton Highway from the Yukon River to the Arctic Ocean and primarily restricts big game hunting activities and motorized vehicle access.

ROW Permitting/Purchasing Constraints

The necessary steps to permit and/or purchase ROWs within the study area vary widely. General procedures, regulatory constraints, probability of success, and timeframes associated with each land status type are set forth in the following sections.

Federal CSUs

As decribed previously, federally protected lands within the study area include national wildlife refuges (NWR), wild and scenic rivers, and national parks, preserves, and monuments, collectively referred to as CSUs. Title XI of ANILCA governs the procedures for permitting a Transportation and Utility System (TUS) in and across CSU lands. The primary agencies charged with permitting activities within a NWR, wild and scenic river, or national park include the USFWS, NPS, BLM, and the USACE.

The factors to be considered in making a decision to approve a requested ROW under Title XI are as follows:

- The need for and economic feasibility of the transportation system;
- Alternative routes and modes of access, including a determination with respect to whether there is any economically feasible and prudent alternative to the routing of the system through or within a CSU, national recreation area, or national conservation area, and if not, whether there are alternative routes or modes which would result in fewer or less severe or adverse impacts upon the CSU;
- The feasibility and impacts of including different transportation systems in the same area;
- Short and long-term social, economic, and environmental impacts of national, state, or local significance, including impacts on fish and wildlife and their habitat, and on rural traditional lifestyles;
- The impacts, if any, on the national security interests of the U.S. that may result from approval or denial of the application for a TUS;
- Any impacts that would affect the purposes for which the federal unit or area concerned was established;
- Measures which should be instituted to avoid or minimize negative impacts; and
- The short and long-term public values that may be adversely affected by approval of the TUS versus the short and long-term benefits that may accrue from such an approval.

Of all the land statuses within the study area, rights across any CSU lands will be the most difficult to obtain, and the permitting process is especially difficult to navigate. In an effort to present the information concisely, the discussion that follows is presented by sub-category of CSU lands.

Wild and Scenic River Easements and ROWs. Section 13(g) of the Wild and Scenic Rivers Act allows the granting of easements and ROWs within the boundaries of designated components in accordance with applicable laws, provided that the conditions are consistent with the purposes of the Wild and Scenic Rivers Act. Herein lies the primary concern with any State of Alaska Department of Transportation and Public Facilities (DOT&PF) application for a ROW across a wild and scenic river; the activity will not likely be consistent with the purposes of the governing act. It is, however, possible that if the proposed DOT&PF activity will not affect the free-flowing condition of a river, involves minimal impact, and is of great benefit to the public, the agency evaluation process might be successfully navigated. Regardless, the permit application would be subject to extensive agency and public review.

ROW Permits Across NWRs and National Parks, Preserves, and Monuments with Applicable Law. When an agency has applicable law to issue ROW permits, the general procedures set forth in **Table 1** would be the minimum level of activity required of the DOT&PF. This sub-category includes certain lands within NWRs and national parks, preserves, and monuments, but excludes lands within a wilderness area. As outlined in the table, there are many steps involved with applying for and obtaining a TUS ROW permit across CSU lands. Given the sheer volume of agency and public involvement necessitated by the process, it is anticipated that the entry application would become a politically charged issue that could be faced with potentially insurmountable agency, political, and public opposition. In addition, the entire TUS is disapproved if any portion of it is disapproved by an appropriate agency.

The State of Alaska has never successfully navigated through the TUS permitting process, and the probability of being granted such a permit is poor. Aditionally, if the state should prove succesful, the issued permit would only be valid for 20 years. After that time, the DOT&PF would need to reapply for a new permit, regardless of whether any improvements had been constructed wihtin the permitted area or not. A denied applicant may appeal to the President of the U.S. or seek judicial review.

Table 1: ROW Permit Process for NWRs, Parks, Preserves, and Monuments

Interest to be Acquired	General Procedure	Approximate Acquisition Timeframe	Probability of Success
TUS ROW Permit	• Pre-application conference(s) USFWS, NPS, BLM, and/or USACE	6 to 10 years	Poor
	• Application filing (SF 299)		
	• Environmental impact analysis		
	• NEPA compliance		
	• Agency review		
	• Revisions/additional information exchange		
	• Public comment and review		

Interest to be Acquired	General Procedure	Approximate Acquisition Timeframe	Probability of Success
	• Agency decision process and establishment of terms of use		
	• Appraisal		
	• Determination of fees		

ROW Permits Across Lands within a Designated Wilderness Area or Without Applicable Law. When the proposed TUS crosses a wilderness area or an agency does not have applicable law allowing it to issue ROW permits, the general procedures set forth in **Table 2** would be the minimum level of activity required of the DOT&PF. It is anticipated that the application for a TUS ROW permit through a wilderness area would also become a politically charged issue facing potentially insurmountable agency, political, and public opposition long before ever being reviewed by the President of the U.S.. It is most likely that the permit application would be denied. A denied applicant may seek judicial review.

Table 2: ROW Permit Process for Wilderness Area

Interest to be Acquired	General Procedure	Approximate Acquisition Timeframe	Probability of Success
TUS ROW Permit	• Pre-application conference(s) USFWS, NPS, BLM, and/or USACE	8 to 10 years	Poor
	• Application filing (SF 299)		
	• Environmental impact analysis		
	• NEPA compliance		
	• Agency review		
	• Revisions/additional information exchange		
	• Public comment and review		
	• Agency decision process		
	• Agency tentative approval or disapproval and recommendation to the President of the U.S.		
	• Presidential review and decision process		
	• If approved by President of the U.S., recommendation to the U.S. Congress for approval		
	• Congressional review and decision process		
	• Appraisal		
	• Determination of terms of use and fees		

Other Federal Lands

The following discussion concerning federal lands includes lands that are subject to pending state selection, Native selection, and/or municipal entitlements. Any acquisition of lands subject to an existing selection may require require additional coordination with the entity that has selected the lands. The need for, and the level of coordination, is usually determined by how far the selection process has progressed. For example, a selected property that has already been adjudicated for title, surveyed, and nearing conveyance, would require considerable coordination

with the selecting entity. A property that has not yet been adjudicated for title may not require any coordination with the selecting entity.

The procedures for acquiring a ROW permit across federal lands not within a CSU are presented in **Table 3**. Applications for a ROW permit across the majority of non-CSU federal lands within the study area would be processed by the BLM Fairbanks District Office; applications across lands within the Seward Peninsula would be processed by the Anchorage Field Office. The procedures for acquiring a ROW permit across non-CSU federal lands are very similar to the procedure for acquiring a ROW permit across state lands. As with the state process, the federal application must also go through considerable agency and public review. Difficulties that may be encountered include land withdrawals, non-compliance of the proposed DOT&PF use of the land with existing land use management plans or classifications, agency and/or public opposition to the proposed use, and in rare cases, inability to come to an agreement on allowed terms of use and fees. Most of these difficulties can be overcome; however, the acquisition timeframe would again need to extend to accommodate their resolution.

Table 3: ROW Permit Process for Federal Lands not within a CSU

Interest to be Acquired	General Procedure	Approximate Acquisition Timeframe	Probability of Success
ROW Permit	• BLM application process	18 to 48 months	Good
	• Environmental impact analysis		
	• NEPA compliance		
	• Agency reviews		
	• Public comment		
	• Appraisal		
	• Negotiation of terms of use and fees		

Native Lands

As stated previously, the majority of Native-owned lands within the study area are privately owned in split-estate by Native Village and Regional corporations. It is assumed that there are also lands within the study area, both restricted and unrestricted, that have been patented to Native individuals (Native allotments). The level of reconnaissance required for this study does not include determining ownership of individual parcels of land so the locations of individual allotments have not been identified. Procedures for acquiring ROWs across unrestricted Native allotments are cumbersome at best, requiring extensive survey, appraisal, and Bureau of Indian Affairs coordination. ROWs are substantially more difficult to acquire across restricted Native allotments. Given these facts, it is recommended that, once a preferred route has been identified, it be designed so that the alignment does not require acquisition from any Native allotment lands. With this in mind, the process presented in **Table 4** is for DOT&PF acquisition of ownership rights from split-estate Native Village and Regional corporation lands.

The procedures for acquiring ownership rights across Native Village and Regional corporation lands are very similar to the procedure for acquiring other private lands, with more private ownership entities typically involved in the process for Native lands. Negotiations are usually initially conducted separately with the individual ownership entities so that their concerns are

addressed and then together in regards to the compensation split. Difficulties that may be encountered during the acquisition process include overcoming concerns regarding a loss of subsistence lands, non-compliance of the requested DOT&PF land use with restrictions that may be in place due to existing Native land management plans, lack of an organized and/or active Village or Regional corporation board, and opposition from community residents, village elders, or the Village Council/Regional corporation board. Here again, many issues and concerns will probably arise that can be overcome with time.

Table 4: ROW Permit Process for Split-Estate Private Native Lands

Interest to be Acquired	General Procedure	Approximate Acquisition Timeframe	Probability of Success
Fee simple or ROW Easement	• Appraisal • Offer • Independent negotiations with each ownership entity • Title clearing	6 to 18 months	Good

Other Private Lands

ROWs across other private lands are primarily acquired by negotiation under the rules and regulations of the acquiring agency and the lead funding agency as appropriate. Should negotiations fail, the agency may choose to acquire the necessary rights via entering into eminent domain proceedings. The possible constraints of acquiring private lands could include local governing land use restrictions such as zoning, deed restrictions, and clouds on title. Most of the issues that arise when acquiring private lands are not insurmountable; the acquisition timeframe would extend to accommodate resolution of the issues. The procedures for acquiring a ROW permit across other private lands are presented in **Table 5**.

Table 5: ROW Permit Process for Other Private Lands

Interest to be Acquired	General Procedure	Approximate Acquisition Timeframe	Probability of Success
Fee simple or ROW Easement	• Appraisal • Offer • Negotiation • Title clearing	6 to 18 months	Good

State Lands

ROWs across state lands managed by DNR are normally granted to the DOT&PF via an Interagency Land Management Agreement (ILMA). As shown in **Table 6**, there are a number of steps involved in the ILMA application process. If the ROW to be acquired is located across land that is unclassified, a development plan would most likely have to be adopted and a land classification issued before the application would even be reviewed by DNR staff. A development plan describes in detail the intended use of the land and the timetable for its development to include type and location of planned improvements and all activities associated with construction of the improvements.

The application must go through agency, public, and possibly coastal management review. Difficulties that may be encountered include non-compliance of the proposed DOT&PF use of the land with existing land use management plans, agency, and/or public opposition to the proposed use, and in rare cases, inability to come to an agreement on allowed terms of use. Most of these difficulties can be overcome; however, the acquisition timeframe would again need to extend to accommodate their resolution.

Table 6: ROW Permit Process for State Lands

Interest to be Acquired	General Procedure	Approximate Acquisition Timeframe	Probability of Success
ILMA or ROW Permit/Lease	• DNR application process • Environmental impact analysis • NEPA compliance • Agency reviews • Public comment	6 to 18 months	Very good

An application for a ROW across the Minto Flats State Game Refuge would come under considerable scrutiny as the refuge's primary purpose is to protect habitat and wetlands. The permitting application process is anticipated to require a more detailed level of environmental planning and review as well as agency review. Any application will need to show that there are no other feasible alternatives to crossing the refuge, anticipated mitigation activities for disturbed areas, and efforts to minimize refuge impacts. It is possible that an application for a DOT&PF ROW across the refuge would be denied. The Dalton Highway Corridor Management Area is a minimal management area with motorized traffic limited to certain defined existing roadways, trails, and waters. Since the management of the area is primarily related to hunting and access, an application for a DOT&PF ROW across the conservation unit lands would most likely be deemed allowable. Any application would still need to show how the use of the lands within the permitted area is consistent with the existing corridor management plan.