

Appendix B

RELATED LAWS AND POLICIES

National Historic Preservation Act

The BLM initiated consultation for Section 106 of the NHPA (54 USC 300101 et seq.) early in the process and accepted the role of Lead Federal Agency to develop a Programmatic Agreement pursuant to 36 CFR 800.14(b), that met the needs of all federal agencies. The National Park Service is a signatory to the agreement, which was signed by the GAAR Superintendent on April 23, 2020 and wholly executed on April 27, 2020.

Only a handful of archeological surveys and inventories have been conducted within the Kobuk Preserve and adjacent areas, including portions of the national park. Nevertheless, the distribution and nature of archeological resources is known well enough to understand that archeological resources are present, abundant, and well preserved. Although most known sites have not been thoroughly evaluated to determine their significance, many sites are known to have high research value.

AIDEA will be required to inventory archaeological, historic, and ethnographic resources within the Area of Potential Effects, and mitigate any adverse effects, according to the stipulations in the Section 106 Programmatic Agreement. This includes requirements for contractor cultural resource sensitivity training, resource monitoring requirements to assess potential indirect or cumulative effects from the Project, artifact curation and documentation requirements, and a plan for the inadvertent discovery of human remains. The Programmatic Agreement applies to all project activities and to all phases of the project, regardless of land ownership.

Endangered Species Act

Pursuant to Section 7 of the ESA (16 USC 1531 et seq.), the NPS contacted U. S. Fish and Wildlife Service (FWS) in July 2018 on the potential need to consult for federally listed species and confirmed that no ESA-listed species of animals or plants occurs within the Project area. NPS had determined that the Project would have no effect on federally listed species and FWS concurred. Therefore, NPS did not engage in Section 7 consultation for the project within the Preserve.

Clean Air Act

The selected alternative is not in a Clean Air Act (CAA) non-attainment area and the conformity determination requirements of the CAA do not apply to the project at this time. Any later indirect emissions are generally not within NPS's continuing program responsibility and generally cannot be practicably controlled by NPS or DOI. For these reasons, a conformity determination is not required for this permit action.

Magnuson-Stevens Fishery Conservation and Management Act

The BLM consulted with NMFS and determined there was substantial EFH for Pacific salmon in Project area waterways over the full length of the Ambler Road (from the Dalton Highway to the District), including the Kobuk River within the Preserve. Pursuant to 50 CFR 600.920(b), BLM's consultation suffices for this Decision as well. By letter dated March 30, 2020, NMFS concurred that the BLM EIS presents the necessary EFH assessment information and that implementation of its proposed mitigation

measures will minimize adverse impacts to EFH (Appendix I of the JROD). All mitigation measures pertaining to EFH are being adopted through this Decision.

Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

Throughout the EEA process, the NPS consulted with affected Tribes and Alaska Native organizations. Overall, the NPS engaged in over 300 meetings, teleconferences, and other communications.

Specific to meeting the requirements of Section 106 of the NHPA, the NPS joined with BLM in a Programmatic Agreement (PA) in consultation with Tribes and other interested parties. Consultation for Section 106 will continue throughout the life of the PA.

Executive Order 13112 Invasive Species

Invasive species are addressed in Ambler Road EEA, which includes mitigation measures to avoid or minimize impacts of invasive plant species and are implemented through this Decision.

Environmental Justice

There are no residents within the project area or in the Kobuk Preserve that could be impacted by the small portion of the road within the Preserve. BLM addressed Environmental Justice issues for the overall road in the Ambler Road FEIS Section 3.4.6, Environmental Justice.

Executive Order 11988 Flood Plain Management

NPS determined that both proposed road routes had elements that would be located within floodplains, namely associated with bridge and culvert crossings of major streams and rivers. NPS documented the potential impacts and took public and agency input on impacts and potential mitigation measures through the draft and final EEA. The EEA addresses floodplain issues in the “Hydrology and Floodplains” section, as well as in the “Water Quality” and “Fish” sections. There were no practical alternative routes within the Preserve that would avoid the crossing of floodplains of major streams and rivers altogether. The road would involve 5 bridges and hundreds of culverts within the Preserve. Because of the remoteness of the proposed alignments, potential floodplain impacts are not anticipated to affect human lives or property. The applicant proposed design features to minimize floodplain impacts specifically proposing to adequately pass peak flood flows. Additional mitigation measures to protect floodplains and waters of the U.S. have been incorporated into this Decision, which will adequately minimize and mitigate impacts to natural floodplain values. This section of the Decision, in combination with the impact analysis in the EEA, constitutes the findings of the Department.

Executive Order 11990 Protection of Wetlands

Over 60% of the project area within the Preserve is estimated to be wetlands. Construction of the road requires fill in wetlands and other waters of the U.S, and will impact other wetland areas indirectly. NPS documented the potential impacts and took public and agency input on impacts and potential mitigation measures through the draft and final EEA. The EEA noted and evaluated potential wetland impacts in the “Wetlands” section, as well as the “Water Quality”, “Hydrology and Floodplains” and “Fish” section. Due to the extent of wetlands and other waters in the project area, avoiding wetland impacts was determined not to be practicable. AIDEA proposed design features to minimize wetland impacts, specifically proposing measures to avoid or minimize melting permafrost, placement of riprap,

maintaining hydrologic connectivity with culvert design, and steps to avoid or minimize adverse impacts to the Nutuvukti Fen, among others. Additional mitigation measures to protect wetlands have been incorporated into this Decision, which will adequately minimize and mitigate impacts to natural floodplain values. This section of the Decision, in combination with the impact analysis in the EEA, constitutes the findings of the Department.

Wild and Scenic Rivers Act

The segment of the Kobuk River within the Preserve is designated as wild under the Wild and Scenic Rivers Act (WSRA). All economically feasible and prudent alternatives cross the designated segment of the Kobuk River.

Pursuant to Section 10(a) of the WSRA, 16 U.S.C. §1281, the designated segment of the Kobuk River is administered to protect and enhance the values which caused the river to be included in the Wild and Scenic River system without, insofar as is consistent with those values, limiting other uses that do not substantially interfere with public use and enjoyment of those values. WSRA also requires primary emphasis to be given to protecting the river's esthetic, scenic, historic, archaeological, and scientific features. ANILCA Section 1107(b) requires that the right-of-way be subject to terms and conditions to assure that the steam flow of, and transportation, on the designated segment of the Kobuk River is not interfered with or impacted, and that the project is constructed in an environmentally sound manner.¹

Congress did not identify specific values of the Kobuk River that caused it to be included in the Wild and Scenic Rivers system, but under the WSRA, a wild river area is one that is "free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted", representing "vestiges of primitive America." The Northern Alignment does not include any impoundments in the Kobuk River, and limitations on use of the right-of-way combined with the required terms and conditions, discussed further below, will ensure that the area remains generally inaccessible, primitive and unpolluted.

Through planning, NPS has identified five outstandingly remarkable values of the Kobuk River: cultural resources, fisheries, geology, recreation, and scenery. Project design features and the recommended terms and conditions provide adequate measures to protect these values and those of wild rivers generally, minimizing the project footprint below the ordinary high water mark, maximizing hydraulic capacity, and avoiding to the extent practicable impacts to the river's free flowing condition, water quality, scenic quality, fisheries, recreational opportunities, geologic features, cultural resources and other natural resources. These measures also fulfill the requirements of ANILCA Section 1107(b). The measures include, but are not limited to:

¹ WSRA Section 7(a), which prohibits Federal agencies from authorizing water resources projects within a wild and scenic river corridor that would have a "direct and adverse effect" on the values for which a river was designated, is not applicable to the proposed project because Section 201(4) of ANILCA divests the Secretary of any discretion as to whether to issue the right-of-way, including across the designated segment of the Kobuk River. Further, any effects to the Kobuk's river values associated with surface transportation to the Ambler Mining Districts have already been authorized by Congress and therefore could not reasonably be construed as direct and adverse to those values. Congress provided alternate protections for the Kobuk River by requiring compliance with ANILCA Section 1107(b). See ANILCA Section 201(4)(e).

- Constructed features within 0.25 miles of the Kobuk River (i.e., the boundaries of the designated wild river) must be minimized to the extent possible. Any such features may not interfere or impede stream flow or transportation on the river.
- Design and construction of the bridge would employ measures to minimize effects on water flow and fish migration and would include measures such as use of clean temporary diversion structures (e.g., Super Sack containers); working in low-water conditions when the need for diversion and dewatering requirements are lessened; minimizing use of riprap by exploring bioengineering alternatives for bank protection and stabilization; placing pilings to allow for unimpeded river traffic; and restricting in-water construction during critical migration and spawning movements.
- The bridge will be designed to adequately convey at a minimum the 100-year peak flood without damage to the roadway embankment or adjacent channel reaches. Scour characteristics of the river would be evaluated to minimize long-term risk to bridge abutments and piers.
- The bridge will be designed to minimize impacts on river flow and allow continued navigation on the river by watercraft that use this stretch of the river, typically rafts, canoes and kayaks and small motorized vessels.
- Kobuk River bridge design would consider aesthetics and incorporate design measures that minimize visual impacts. Vegetative screening techniques such as willow brush layering will be used to cover riprap areas and provide a more natural aesthetic. The Kobuk River bridge design will use brush and willow layering or use geo-cells for stabilization on steep slopes to reduce the use of riprap and promote vegetation establishment.
- In acknowledgement of public use of the designated Kobuk River, the applicant is required to work with NPS to manage visitor safety and communicate information about potential closures associated with construction activities.
- Where riprap cannot be eliminated, local materials must be used to blend more closely with local rock substrate. Geotextile fabric would be placed beneath any riprap as appropriate to prevent migration of fines out of the underlying soils into surface water flows.
- Impacts to historic properties will be mitigated in accordance with the Section 106 Programmatic Agreement.

Alaska National Interest Lands Conservation Act, Title XI

Title XI of ANILCA, which addresses the proposed construction of transportation and utility systems in and across Conservation System Units generally, is largely superceded by the more specific procedures mandated in ANILCA Title II, Section 201(4), as implemented by 43 CFR 36.13(a). Nonetheless, in an abundance of caution and in the spirit of transparency, the Secretaries have considered the issues presented by Section 1104(g)(2) and make the following findings:

(A.) The need for, and economic feasibility of, the transportation or utility system

The need for the Project was identified by Congress in Section 201(4) of ANILCA. The economic feasibility of the Project largely is a business decision of AIDEA and its investors and is based on the economic feasibility of the mines proposed in the District. AIDEA plans to issue revenue bonds as a principal tool to finance the construction of the project. These taxable bonds would be sold through private placements to various potential buyers (banks, investment funds, high-net worth individuals, and others). In the event that the project is not successful, the investors or bondholders who purchased bonds to finance the project assume the risk of the project's revenues falling short. Maintenance of the

road will be paid from road user fees. AIDEA has represented that the Project will not be constructed until agreements with the road users to fund long-term operations and maintenance of the project are in place. AIDEA will not issue bonds until the requisite agreements are in place. AIDEA has successfully developed similar industrial projects, such as the Delong Mountain Transportation System, further supporting the economic feasibility of the Project.

(B.) 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 conservation system unit, 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 adverse impacts upon the conservation system unit.

Because Section 201(4) requires issuance of a right-of-way through the Preserve, the Secretaries did not analyze whether there is any economically feasible and prudent alternative to routing the Project through the Preserve. The Southern Route was developed in order to assess the shortest potential route through the Preserve. As discussed in Section III.C and IV of this Decision, the Northern Route results in fewer and less severe adverse impacts overall. It is noted that the BLM and Army Corps evaluated an alternative which avoided any conservation system unit, but that alternative was ultimately determined to be neither economically prudent nor environmentally preferable.

(C.) The feasibility and impacts of including different transportation or utility systems in the same area.

The Project right-of-way would be suited to other transportation or utility systems in the same corridor, if there was demand for them. A railroad on precisely the same alignment may not be feasible because of grades too steep for rail access, but much of the route would be technically feasible to access by rail. However, there is no foreseeable demand for separate road and rail systems in the same corridor. If there were demand for separate, non-AIDEA or non-mining access on the same road, NPS would need to separately consider such requests for access through a new application process. The impacts of any separate construction would be additive to the impacts of the road, including, for example, loss of habitat and valuable wetlands. However, keeping activity in a single, linear corridor would minimize the additive impacts in other resource categories, such as noise, visual effects, and recreation and tourism.

(D.) 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.

Short- and long-term effects are fully addressed in the EEA. Regarding the specific topics noted:

- Social and economic effects of State and local significance (short- and long-term) are addressed in the Socioeconomics section and in Section IV of this Decision.
- Fish and wildlife effects and their habitat effects of State and local significance are addressed in the Fish and Caribou sections and in Section IV of this Decision.
- Rural traditional lifestyle effects of State and local significance are addressed in the Socioeconomics sections cited in the first bullet, as well as in the Subsistence technical report (Appendix L of the BLM FEIS), the Section 810 Analysis (Appendix E of the JROD) and Section IV of this Decision.

(E.) The impacts, if any, on the national security interests of the United States that may result from approval or denial of the application for a transportation or utility system.

Executive Order 13603, National Defense Resource Preparedness, delegates a number of authorities granted to the President through the Defense Production Act of 1950 (DPA), other statutes, and the

Constitution, to the Secretary of the Interior to ensure the vitality of the domestic industrial base including the availability of critical minerals. Under section 306 of that E.O. the Secretary of the Interior, along with the Secretary of Defense, is delegated the authority of the President under section 303(a)(1)(B) of the DPA “to encourage the exploration, development, and mining of strategic and critical materials”. Executive Order 13817, issued on December 20, 2017, A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals, establishes as Federal policy the need to identify new sources of critical minerals; increase activity at all levels of the supply chain, including exploration, mining, concentration, separation, alloying, recycling, and reprocessing critical minerals; ensure that our miners and producers have electronic access to the most advanced topographic, geologic, and geophysical data within U.S. territory; and streamline leasing and permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals. In response to Executive Order 13817, the USGS prepared a critical minerals list, “Final List of Critical Mineral 2018”, and the Department of Commerce prepared a strategic plan, “A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals”. Increasing access to allow for the exploration and development of critical minerals is an important goal of that plan.

As part of its critical minerals and metals investigation, USGS looked at carbonate-hosted copper deposits, which often also host the critical minerals cobalt, germanium and gallium. Cobalt is an important ingredient of super-alloys used to make aircraft turbine engines. This application makes up nearly half of the United States consumption of this critical mineral. Germanium and gallium have properties that make them important minerals in a number of modern applications including solar cells, infrared optics, LEDs, semiconductors and smartphones. The best-known carbonate-hosted copper deposit in Alaska is Bornite, also known as Ruby Creek, in the Ambler Mining District along the southern slopes of the Brooks Range. While renowned for its high copper grades, Bornite also hosts significant quantities of cobalt and potentially other critical minerals. The proposed Ambler Road will provide the access necessary for the development and production of these critical minerals in furtherance of the national security interests of the United States.

(F.) Any impacts that would affect the purposes for which the Federal unit or area concerned was established.

Impacts to GAAR are addressed throughout the EEA; both alternatives have similar impacts. Because Congress in ANILCA Section 201(4)(b) specifically provided for road access to the District across the Preserve at the time it established GAAR, these impacts cannot preclude issuance of a right-of-way across the Preserve.

(G.) Measures which should be instituted to avoid or minimize negative impacts.

The Secretaries have carefully examined potential mitigation measures and design features proposed by the applicant. The full suite of measures that will be instituted to avoid and minimize negative effects are discussed in Section V. These measures are expected to substantially protect valued resources along and near the road within the Preserve. See effectiveness evaluations in Appendix N of the BLM EIS for more detail.

(H.) The short- and long-term public values which may be adversely affected by approval of the transportation or utility system versus the short- and long-term public benefits which may accrue from such approval.

Based on the public comment record, the public values many things about the Project area in its existing condition, including particularly:

- Subsistence opportunities; subsistence resources such as caribou, moose, salmon, and sheefish; and the traditional rural lifestyle and Native cultures that have subsistence as the central feature.
- Large tracts of natural lands and waters with intact ecosystems, substantially without roads, airports, and signs of human habitation.
- Recreation opportunity and recreation/tourism-based business opportunity in the area, including backpacking, river floating/boating, fishing, sport hunting, camping, flightseeing, lodge stays, and guiding for many of these activities.

These values would be adversely affected by the Project, as explained in the EEA.

Substantial public benefits also are expected to result from the Project:

- The road would provide much-needed, high-paying jobs for construction (approximately 6 years) and operation (approximately 50 years). The majority of jobs are expected to be held by Alaskans. Specific numbers of jobs are detailed in the Socioeconomics section of the EEA.
- The Project is expected to induce greater exploration within the District and to result in development of multiple mines. Exploration and development would be indirect and cumulative effects of the Project and would result in many more jobs for initial development and for on-going operations (approximately 50 years). Again, the majority of jobs ² are expected to be held by Alaskans. Specific numbers of jobs are detailed in BLM EIS Appendix H, Section 3.5.5, Socioeconomics.
- The State of Alaska, Northwest Arctic Borough, and ANCSA Native corporation landowners would be expected to accrue substantial taxes, fees, mineral royalties, payments in lieu of taxes, job training, and other economic benefits to the State's General Fund and to the people of region and of the State as a whole.
- Communities nearest to the road, particularly Kobuk, Shungnak, and Ambler near the western end and Bettles and Evansville nearer to the eastern end, will have opportunity to connect to the Project's fiber optic cable and to benefit from greater internet bandwidth and speed, allowing greater participation in e-commerce, telemedicine, and general communications. Similarly, the same communities and area residents/landowners near the road will have the opportunity to take commercial deliveries via the road, with likely substantial improvements in the cost of living (lower fuel and grocery prices). See BLM EIS Appendix H, particularly Section 2.2, Indirect Road Access Scenarios, and Section 3.5.5, Socioeconomics.
- Society as a whole is expected to benefit from the copper and other metals, including zinc, lead, gold, and silver, to which the road would provide access.

² University of Alaska Center for Economic Development, "Economic Impacts of Ambler Mining District Industrial Access Project and Mine Development" (2019)