



U. S. Department of the Interior

Decision Record

Lake Clark National Park and Preserve Johnson Tract Transportation and Port Easements

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Approved:

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Summary of Decision

This Decision Record addresses the conveyance of two easements, a transportation and a port easement, to provide for the transportation of minerals from the Johnson Tract (the Decision). The easements are in Lake Clark National Park (the Park), outside of the Preserve, 125 miles southwest of Anchorage, Alaska, on the west side of Cook Inlet. The easements together will encumber approximately 2,642 acres.

The Alaska Native Claims Settlement Act (ANCSA) was enacted in 1971 to settle aboriginal land title claims with Alaska Natives by extinguishing these claims in return for compensation and property rights to be conveyed to newly established Alaska Native Corporations, including the Cook Inlet Region, Inc. (CIRI). The United States was unable to satisfy CIRI's entitlement because most of the lands in Southcentral Alaska were already claimed by the State of Alaska, the federal government, local communities, and private interests. To fulfill CIRI's entitlement consistent with ANCSA's intent, CIRI, the Department of the Interior (the Department), and the State of Alaska completed the Cook Inlet Land Exchange, which was ratified and incorporated into federal law in 1976 (1976 Act, Public Law 94-204 and Public Law 94-456, clarifying the former).

As part of the 1976 Act, CIRI relinquished ANCSA land selections around Lake Clark and agreed to support the creation of the Park, and in exchange received the 20,942-acre Johnson Tract, a known mineral prospect at the head of the Johnson River. The Johnson Tract consists of two smaller tracts: the 11,342-acre South Tract and the 9,600-acre North Tract.

By ratifying and incorporating the Cook Inlet Land Exchange into federal law, Congress required that the Secretary of the Interior (Secretary) "shall also convey" two easements—a transportation easement and a port easement—across what would become the Park. The easements are to allow for the transportation and shipping of minerals extracted from the Johnson Tract. The 1976 Act requires that the Secretary and CIRI "mutually agree" upon the location of these two easements.

This Decision Record captures the main factors considered in reaching the decision to convey transportation and port easements as reflected in the deeds (the Deeds) of this Decision. The National Park Service (NPS) has prepared a Non-Impairment Finding that is included as Appendix A.

Background

Alaska Native Claims Settlement Act (ANCSA)

ANCSA, the largest land claims settlement in U.S. history, became law on December 18, 1971, and was intended to resolve long-standing issues surrounding aboriginal land claims in Alaska, as well as to stimulate economic development. ANCSA extinguished Alaska Native aboriginal land claims in exchange for providing Alaska Natives with 44 million acres of land and nearly \$1 billion. ANCSA also established 12 regional and nearly 200 village corporations, which were conveyed land and other interests. CIRI is one of those 12 regional corporations.

Cook Inlet Land Exchange (1976 Act)

The 1976 Act or Cook Inlet Land Exchange was a three-way land exchange between the federal government, the State of Alaska, and CIRI. When ANCSA was passed in 1971, much of the land in southcentral Alaska was already State or privately owned or subject to a federal withdrawal, which meant the use of the land was restricted while the Department determined how the lands should be appropriated. CIRI was not satisfied with its land selections and sued the Department in 1973. After this litigation and

resulting negotiations, the State, the federal government, and CIRI agreed to the Cook Inlet Land Exchange, which was ratified and incorporated into Federal law by the 1976 Act.

The 1976 Act accomplished several things—it allowed the federal government to accommodate CIRI’s ANCSA entitlement and expanded CIRI’s lands to include selections that had mineral potential. Through the 1976 Act, CIRI relinquished ANCSA land selections around Lake Clark in support of the establishment of what would become Lake Clark National Park and Preserve.

As part of the exchange, CIRI received the Johnson Tract. For the North Tract (9,600 acres), the 1976 Act specified that CIRI receive only “the rights to metalliferous minerals.” The surface estate of the North Tract is managed by the NPS. For the South Tract (11,342 acres), the 1976 Act granted CIRI the land in “fee simple” subject to “a restrictive covenant [...] providing that the surface shall only be used for purposes reasonably incident to mining and mineral extraction, including processing and transportation”.

As part of conveying the Johnson Tract, the 1976 Act requires that the Secretary “shall also convey to CIRI an easement for a port which shall reasonably provide for receiving, shipping, storage, and incidental handling, and incidental facilities thereto, of the minerals extracted from the,” Johnson Tract and, “a transportation easement to provide for transportation by road, rail or pipeline of the minerals extracted from [the Johnson Tract] to the port easement.” The 1976 Act also requires that the Secretary and CIRI “shall mutually agree” to the locations of these two easements.

Alaska National Interest Lands Conservation Act (ANILCA)

The 1980 Alaska National Interest Lands Conservation Act (ANILCA) doubled the total acreage of the U.S. National Park System and created 10 new National Park System areas, including Lake Clark National Park and Preserve. ANILCA is widely regarded as the single-largest act of conservation in U.S. history and was considered a “win” by many as it represents a desire to balance land management in Alaska with conservation and resource development potential.

In creating Lake Clark National Park and Preserve, ANILCA Section 201 specifically states that the Park shall be managed, “[...] *for the following purposes, among others: To protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay; to maintain unimpaired the scenic beauty and quality of portions of the Alaska Range and the Aleutian Range, including active volcanoes, glaciers, wild rivers, lakes, waterfalls, and alpine meadows in their natural state; and to protect habitat for and populations of fish and wildlife including but not limited to caribou, Dall sheep, brown/grizzly bears, bald eagles, and peregrine falcons.*”

When ANCSA was passed in 1971 and subsequently in 1976 when the Cook Inlet Land Exchange was completed, the land surrounding the Johnson Tract was managed by the Bureau of Land Management. With the passing of ANILCA in 1980, the land surrounding Johnson Tract became a part of Lake Clark National Park to be managed by the NPS.

Johnson Tract Mineral Development History

Since 1980, CIRI and its contractors have intermittently been investigating the mineral potential of the Johnson Tract and environmental resources in the area. In 1983, Anaconda Mineral Company prepared an “Environmental Assessment” for mineral exploration of the North Tract. The assessment detailed four phases of work that included rock sampling, trenching, core drilling, and geologic mapping.

In 1993, CIRI prepared an “Environmental Analysis Document” in collaboration with the NPS Alaska Regional Office that evaluated four port options, and related transportation routes, from the South Tract to the Cook Inlet. The options included a route down the Johnson River and to an Iliamna Point port site, and three routes to the northeast to port sites in Tuxedni Bay. CIRI consultants also completed a Johnson River Road reconnaissance study in 1992 and a preliminary geotechnical and geophysical investigation in 1995.

North Tract Exploration and Resource Study Permits

In 2021, the NPS granted an authorization for access to HighGold (now JT Mining, Inc.), CIRI's mineral lessee, to the North Tract. The authorization provides access for purposes of subsurface mineral exploration of CIRI's subsurface estate. The authorization allows for 150 days of exploratory drilling in four specific areas between June 1st and October 31st annually with access via helicopter through 2028. The NPS conducted an Environmental Assessment under the National Environmental Policy Act (NEPA) prior to issuing the authorization. In addition, the NPS has issued limited, seasonal Special Park Use permits to JT Mining since 2021 in the area now proposed by CIRI for the transportation and port easements to allow JT Mining, Inc. to conduct environmental studies, cultural resource surveys, and reconnaissance-level engineering field surveys.

Project Description, Resource Analysis and Consultation

In July 2020, CIRI and the Department entered into a process agreement to support the conveyance of transportation and port easements. In 2023, CIRI began discussions with the Department and NPS to advance the conveyance of the transportation and port easements.

During preliminary discussions in the fall of 2023, CIRI proposed easement deeds to broadly accommodate all aspects of designing, permitting, constructing, operating, and maintaining transportation and port facilities with limited terms and conditions. NPS sought to structure the easement deeds to accommodate CIRI's immediate needs but also provide a process to adjust the easements and incorporate forthcoming information when the development of transportation and port facilities occurs.

Through negotiations, NPS and CIRI agreed to easements with stipulations to define CIRI's use of NPS managed lands. Specifically, a phased approach was developed to inform analysis and consultation and to address future uncertainties. Each easement would be structured to have three phases, (1) Planning, (2) Construction, and (3) Operation and Maintenance (O&M).

Upon execution for the Planning Phase, the easements would only allow for activities reasonably necessary to design, engineer, and permit a road/rail line and port. If future development progresses, the easements would be amended at each phase. To enable assessment of alternatives for future permitting processes (e.g., the U.S. Army Corps of Engineers' permitting under Section 404 of the Clean Water Act and State of Alaska permits) for construction of the transportation and port facilities, the easement areas would be broadest during the Planning Phase and would shrink during subsequent phases.

CIRI's Submission of a Proposal for Transportation and Port Easements

On June 26, 2024, CIRI submitted a proposal to the Department for the easements. CIRI included two proposed conveyance documents (easement deeds), one for the transportation easement and one for the port easement that included preliminary terms and conditions. These deeds incorporated some concepts from earlier discussions between NPS and CIRI.

In addition to the draft deeds, CIRI submitted an Environmental Information Document (EID) to support the Department's review of the proposal. The EID contains resource studies and data previously gathered by the NPS and data collected by CIRI and its consultants. The EID notes the easements proposed by CIRI are "intentionally broad to accommodate additional forthcoming engineering and environmental information that will instruct the specific location of the transportation route and port site within the broader easement area" (EID, Sec. 5-1). The EID also makes clear "no specific mine, road, rail line or port sites are being proposed as part of CIRI's current actions, and there is considerable uncertainty whether a mine, road, rail line or port will be constructed in the future" (EID 2024, Sec. 2-1). Consistent with these statements, to date CIRI has not submitted any information regarding a plan for mineral development including transportation and port facilities to the Department.

Resource Analysis – NPS Environmental Review

The NPS began work in support of preparing a Resource Analysis (RA) in January 2024 to help inform discussions with CIRI regarding proposed easement area options and associated terms and conditions.

The 1976 Act requires that the conveyance of the easements “shall be considered and treated as conveyances under [ANCSA],” Section 12(c) of Pub. L. 94-204, and are undertaken in partial fulfillment of CIRI’s entitlements under ANCSA. As such, the conveyance of the easements is subject to section 910 of ANILCA, 43 U.S.C. § 1638, and compliance with the procedural requirements of NEPA is not required.

NPS instead prepared an RA to evaluate the proposed easements needed to provide for the transportation of minerals from the Johnson Tract. ANILCA 910 and the rationale for preparing the RA rather than a NEPA document is covered in Section 1.4 of the RA.

The intent and objectives of the RA were to “[...] inform the selection of a “mutually agree[able]” transportation easement and port easement location as well as terms and conditions for the easements that best protect park resources consistent with the NPS mission (NPS Organic Act), the Park’s enabling legislation and purposes.”

During the RA preparation, CIRI had not submitted work plans or specific information regarding what activities would be conducted during the initial Planning Phase. As described in the RA (Section 2.1), “[...] to perform a robust analysis and inform appropriate terms and conditions for use of the easements, NPS must make reasonable assumptions of activities that can be expected to occur during the Planning Phase.” As such, the NPS developed a list of assumed activities using the best available information.

The RA analyzed site-specific impacts on resources for the Planning Phase and broadly analyzed actions for the Construction and O&M Phases. The NPS will conduct additional resource analyses if the easements are amended for the Construction and O&M Phases.

The RA analyzed four easement options (RA Section 2.3):

- No Action;
- CIRI’s proposal for transportation and port easements (RA Figure 2-1), including CIRI’s proposed terms and conditions for the Planning Phase (RA Section 2.5) as submitted by CIRI on June 26, 2024;
- NPS’s North Transportation Corridor and Hungryman Creek (North) Port Area (RA Figure 2-2), including NPS’s proposed terms and conditions for the Planning Phase (RA Section 2.5); and
- NPS’s South Transportation Corridor and Deep Water (South) Port Area (RA Figure 2-3), including NPS’s proposed terms and conditions for the Planning Phase (RA Section 2.5).

The RA also discussed previously considered easement area options that were dismissed from detailed analysis (RA Section 2.4).

Compliance and Consultation

As a part of the evaluation of the proposed easements, consultation was conducted with the State of Alaska as well as with associated tribal entities. Additionally, relevant compliance was undertaken as outlined below.

Tribal Consultation

On June 10, 2024, NPS sent letters to the following tribes and Alaska Native Corporations to provide details about the project and offer government-to-government consultation should they find it necessary:

- Chickaloon Village Traditional Council
- Kenaitze Indian Tribe

- Knik Tribal Council
- Knikatu, Inc.
- Native Village of Tyonek
- Ninilchik Natives Association Inc.
- Ninilchik Traditional Council
- Salamatof Tribal Council
- Seldovia Native Association Inc.
- Seldovia Village Tribe
- Tyonek Native Corporation

NPS met with Tyonek Native Corporation on June 25, 2024, and the Kenaitze Indian Tribe on July 20, 2024. The Kenaitze Indian Tribe also sent a response to NPS's consultation request on July 30, 2024, and offered input into the subsistence uses of the area and expressed interest in reviewing the RA. NPS met with Chickaloon Village Traditional Council representatives on June 3 and October 24, 2024. On November 7, 2024, Chickaloon Village Traditional Council submitted a request for additional government-to-government consultation to the Assistant Secretary for Fish and Wildlife and Parks.

National Historic Preservation Act (NHPA)

In accordance with Section 106 of the National Historic Preservation Act (NHPA), NPS anticipates executing a programmatic agreement (per 36 CFR § 800.14(b)(1)(ii)). This clause permits the implementation of a programmatic agreement when effects on historic properties cannot be fully determined prior to the approval of an undertaking. Meetings were held with the State Historic Preservation Office, CIRI, and NPS on July 18, October 8, November 26, December 5, and December 12, 2024. On August 20, 2024, NPS invited the Advisory Council on Historic Preservation to be a signatory to the programmatic agreement and received their reply declining to participate on August 28, 2024. NPS has also invited many Cook Inlet tribes to consult on the programmatic agreement and if they choose to participate in consultation, they may become concurring parties to the final programmatic agreement. On September 24, 2024, NPS sent invitations regarding the Section 106 programmatic agreement and preference to be listed as a concurring party to Chickaloon Village Traditional Council, Kenaitze Indian Tribe, Knik Tribal Council, and Tyonek Native Corporation. During an October 9, 2024, meeting between NPS, CIRI and SHPO, the SHPO indicated that Kenai Peninsula Borough, Snug Harbor Outpost and Preservation Alaska should be considered as interested parties. Chickaloon Village Traditional Council and Snug Harbor Outpost have indicated that they are interested in becoming a consulting party and Ninilchik has expressed an interest to learn more about the programmatic agreement. When completed, the programmatic agreement will provide a process, including consultation, for avoiding, minimizing, and if necessary, mitigating any adverse effects to historic properties.

NPS posted the Programmatic Agreement on PEPC for a 30-day public review on November 5, 2024. The NPS received ten comments and these were considered in revising the PA. If a Programmatic Agreement is not entered into, NHPA matters will be addressed with supplementary terms and conditions.

ANILCA Section 810

The NPS completed an ANILCA Section 810 (Appendix B) analysis for the selected action, specifically Planning Phase, and found that it will not significantly restrict current subsistence use in the project area.

Wilderness Act

The project occurs in eligible wilderness. Though not designated as wilderness by Congress, the NPS manages eligible wilderness to preserve wilderness character (Director's Order 41 and NPS policy 6.3.1) The NPS completed a Minimum Requirements Analysis (MRA, Appendix C) and found that Planning Phase activities could result in short-term impacts to the undeveloped, natural, and solitude wilderness qualities from the noise and presence of helicopters and motorized equipment. Certain activities, such as

brushing, will have a longer duration impact on these qualities. As noted in the RA (Section 3.17), Construction and O&M of a road/rail line and port would change the qualities of the area such that those lands would no longer meet the requirements of wilderness eligibility. Prior to beginning Construction or O&M, the NPS would change the wilderness classification of the easements, along with an associated buffer, from eligible to ineligible wilderness.

Endangered Species Act (ESA)/Marine Mammal Protection Act (MMPA)

The NPS consulted with the Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) regarding the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). The NPS and NMFS met on August 2, August 19, October 24, 2024 to discuss ESA and marine mammals. Similarly, the NPS and USFWS met on June 5, August 20, October 4, and November 1, 2024. A joint call was held with both FWS and NMFS on November 5, 2024. The NPS met with NMFS and CIRI on October 25, and November 21, 2024, and FWS and CIRI on November 20, 2024 to discuss ESA and marine mammals. On November 11, 2024, CIRI provided NMFS with potential Planning Phase marine-related activities. The NPS sent a biological assessment for informal consultation on December 9, 2024. On December 20, 2024, FWS concurred in NPS's determination that the action "may affect, but is not likely to adversely affect" ESA-listed Northern Sea Otters or their critical habitat. For more information on the status of consultation, refer to *Section H. Notice to Proceed for the completion of NHPA and ESA Consultation* of this Decision.

Magnuson-Stevens Fishery Conservation

The NPS and NMFS held meetings on July 29 and August 19, 2024, to discuss essential fish habitat. The NPS determined that the selected action will have "no adverse effects" to essential fish habitat and sent a letter to NMFS on December 11, 2024 with that assessment.

Bald and Golden Eagle Protection Act/Migratory Bird Treaty Act

The NPS engaged in discussions with FWS on appropriate terms and conditions to minimize impacts to eagles as well as migratory birds. NPS and CIRI incorporated measures to avoid incidental take of these species as described below under Easement Terms and Conditions. Under these two laws, CIRI must engage, and if necessary, seek a permit from FWS if they plan to "take" any of these species.

Public Involvement

The NPS conducted a civic engagement period by posting a newsletter regarding the project on PEPC on June 10, 2024, and requesting comments by June 24, 2024. NPS received over 3,500 comments. The NPS considered the comments received.

Decision

This Decision conforms with ANCSA and the 1976 Act and conveys two easements, a transportation easement, and a port easement. The Decision was informed by discussions with CIRI, the RA, and consultation and compliance requirements from other applicable laws, regulations, and policy. This Decision provides CIRI easements allowing activities that are reasonably necessary to design, engineer, and obtain permits while also protecting park resources consistent with the NPS mission (NPS Organic Act) and the Park's enabling legislation and purposes. The easements are structured to be amended in the future to provide for the construction and operation of a road/rail line and port if the project progresses.

Structure of the Easements

The easements will be appurtenant to the Johnson Tract and co-extensive with the life of the mineral rights granted by Congress to CIRI within the Johnson Tract. The easements will terminate upon the expiration or termination of the Johnson Tract mineral rights and the completion of reclamation. The easements are encumbrances that will allow CIRI to use the lands subject to them for limited purposes

while the United States of America will continue to own and manage the lands throughout the easements' duration. The easements are structured to have three phases, (1) Planning, (2) Construction, and (3) O&M, captured in Table 1 below. The phasing and amendment provisions (Section 5) in the Deeds provide a process for the Department and CIRC to amend each easement when CIRC has developed a plan for both construction and operation and maintenance.. The phasing allows CIRC to commence project planning and assessment for future permitting and design while ensuring that forthcoming information will be incorporated into the Deeds to protect NPS resources. This Decision only authorizes activities reasonably necessary to design, engineer, and permit the transportation and port facilities during the Planning Phase. No permanent improvements are allowed during the Planning Phase.

Table 1. Overview of Deed Phases

Deed Phase	Easement to CIRC
Phase 1: Planning	<p>Activities reasonably necessary to design, engineer, and permit a road/rail line and port. This includes helicopter access to the easement areas, geotechnical assessment through the drilling of boreholes, hydrology and hydraulics analysis, additional environmental and cultural resource surveys, and associated disturbance.</p> <p>The transportation easement area is approximately 1,000 feet in width and 10.8 miles long, and includes two branches, one to the north and one to the south for a total of 1,463 acres. The port easement area is 1,179 acres.</p>
Phase 2*: Construction	<p>Activities reasonably necessary to construct a road/rail line and port area, including, for example, excavation, pile driving, installation of bridges and culverts, blasting, and material and worker transportation.</p> <p>A single transportation route and single port site will be selected before the Construction Phase begins.</p> <p>The transportation easement area around the centerline of the road/rail line shall be up to 250 feet in width as well as other areas necessary (for example, pull outs and laydown yards).</p> <p>The port easement area shall identify up to a 250-foot-wide buffer around the planned, port facilities. The port easement area shall substantially shrink at this phase to accommodate selection of a single port location.</p>
Phase 3*: Operation and Maintenance (O&M)	<p>Activities that would result from the O&M of a road/rail line and port for the transportation of minerals extracted from the Johnson Tract, including to haul mining materials and workers and ship or receive mining materials and workers.</p> <p>The transportation easement area shall be up to 100 feet in width as well as other areas necessary and shall be based on as-built drawings and surveys.</p> <p>The port easement area shall identify up to a 100-foot-wide buffer around the port facilities and shall be based upon as-built drawings and surveys.</p>

Key: O&M = Operation and Maintenance; RA = Resource Analysis

* An amendment to the Deeds will be required prior to proceeding with the Construction and O&M Phases (Phase 2 and 3, respectively). Additionally, site-specific environmental review and permitting are anticipated prior to each Construction and O&M occurring (Phase 2 and 3, respectively).

Easement Areas

In acknowledgement that CIRC is still in initial stages of development for transportation and port facilities, the easement areas for the Planning Phase are large enough to allow CIRC to continue to conduct feasibility assessments and refine development plans and together will include 2,642 acres. The easement areas will substantially shrink in subsequent phases to accommodate the selection of a single port location and the selection of either a north or south road/rail line. The phasing in the Deeds establishes a process for CIRC to work with the Department when it has a proposal for the construction of transportation and port facilities and ensures that the reduced easement areas will be adapted to address actual development plans.

Transportation Easement Area

The transportation easement is 10.8 miles long and approximately 1,000 feet wide and approximately 1,463 acres. The transportation easement area was changed from what was proposed by CIRC and represented as Option 2 in the RA (Section 2.3.2) to include additional space where the corridor enters Bear Pass to give more flexibility to avoid wetlands and fish habitat. The transportation easement area includes a branch in the middle and both a north and south fork to allow for CIRC to assess the viability of both routes. A single route will be selected prior to moving to the Construction Phase.

Port Easement Area

The port easement area is 1,179 acres. The port easement area proposed by CIRC and represented as Option 2 in the RA included important sedge meadow habitat for brown bears (RA Section 3.4.2). A large portion of the sedge meadow was removed from the final port easement area to protect as foraging habitat for bears. Once the sedge meadow was removed from the easement, the northern boundary of the port easement area shifted out to include additional uplands to ensure a large enough area and accommodate CIRC's needs for future potential port infrastructure.

The port easement area is large enough to assess three potential port locations during the Planning Phase, the Hungryman Creek location (RA Section 2.3.3) and the Deep-Water location (RA Section 2.3.4), as well as a possible location in the mudflats encompassed in the area to the south. At the Construction Phase, a single port location will be selected.

Easement Terms and Conditions

The easements will include both General Terms and Conditions (Section 4 of the Deeds) as well as Phase Specific Terms and Conditions (Exhibit B of the Deeds). The terms and conditions (T&Cs): (1) provide limitations and requirements for the activities that are reasonably necessary to design, engineer, obtain permits, and (for the General Terms and Conditions at least) the possible eventual construction and operation a road/rail line and port (2) protect park resources consistent with the NPS mission (NPS Organic Act), the Park's enabling legislation and purposes, and (3) ensure compliance with other laws, regulations, and policies.

The General T&Cs will pertain to all phases with certain amendments at each phase as necessary (for example Section 4.g. for insurance requirements). The General T&Cs establish overarching requirements on topics including applicable permits, impact avoidance and minimization, reporting, signage, and reclamation. The Phase Specific T&Cs are tailored to the work expected to occur with each phase and will be updated by amendment at each phase.

For the purposes of the RA, preliminary T&Cs were utilized to assess impacts to resources and evaluate options. The final T&Cs are a combination and modification of the preliminary T&Cs considered in Options 2-4 in the RA. The final T&Cs reflect further negotiations with CIRC to clarify expectations of the activities that will need to occur during the Planning Phase. The final T&Cs also incorporate feedback

from consulting agencies and information from the RA as well as from public comments received during the June 2024 civic engagement period.

Phase Specific Terms and Conditions – Planning Phase

Upon conveyance, the Deeds will contain Phase Specific T&Cs for the Planning Phase only (Exhibit B of the Deeds). An overview and explanation of the Phase Specific T&Cs for the Planning Phase of the easements is provided below.

A. Ground Disturbance

For the Planning Phase, CIRC will limit ground disturbing activities in the transportation easement to 2.5 acres and to 1 acre for the port easement. Ground disturbance refers to activities that utilize equipment to compact or disturb the ground, not including brushing. While the full easement area for the transportation and port easements are 1,463 and 1,179 acres respectively, the acreage limitation on ground disturbance narrows the scope of use and prevents alteration of most of the easement areas. Restricting ground disturbance during the Planning Phase protects a broad range of NPS resources (RA Section 3.2).

Specifically, the limitations for ground disturbance in the easements will prevent negative impacts to aquatic resources, wetlands, water quality and surface water hydrology by reducing the overall area where the creation of geotechnical drill pads or the creation of helicopter landing zones may occur. This decreases the chances for erosion, sediment transport and runoff that can have negative impacts for fish and invertebrate species.

Further limiting ground disturbance and impacts to resources, CIRC will not be allowed to utilize wheeled or tracked vehicles for work during the Planning Phase.

B. Helicopter Use

CIRC expects that helicopters will be the primary mode of access into the easements for the purposes of geotechnical drilling as well as for other Planning Phase work such as pedestrian surveys, access for installation of meteorological stations and water gauges, and other baseline environmental studies. As a result, it was infeasible to significantly restrict the number of helicopter hours. To protect the soundscape and limit negative impacts for bears and other wildlife from concentrated helicopter noise, helicopter flight time in the transportation easement will be restricted below 1,000 feet to no more than 350 hours between May 15 and October 1 in any calendar year. For the port easement, the limit will be 300 hours. Additionally, CIRC will limit the number of actively used helicopter landing zones based on rolling reclamation to 20 within the transportation easement and 20 within the port easement. Much of the terrain in the easement areas is unvegetated and CIRC will make reasonable efforts to select helicopter landing zones in open areas where brushing is not required or may be minimized.

All noise producing activity on, in or over the water of Tuxedni Bay and Tuxedni Channel between September 1 and May 15 will be prohibited (except for aircraft operating subject to the restriction discussed below) unless CIRC first obtains necessary permits under the MMPA and notifies NPS so it can determine whether to reinstate ESA Section 7 consultation with FWS and NMFS. At all times, helicopters and other aircraft may not hover above marine mammals and must operate at least 1,500 ft above sea level when within 500 lateral yards of marine mammals, except in the instance of an emergency or navigational safety. These terms and conditions are specifically important to protect the critically endangered Cook Inlet beluga whale population, which congregate in Tuxedni Bay and Tuxedni Channel during the winter months as the area provides uniquely quiet waters which are largely free of anthropogenic disturbance (RA Section 3.6.1.3).

To protect aquatic resources, wetlands, water quality and surface water hydrology CIRC will make reasonable efforts to limit the number of helicopter landing zones within wetlands or standing water. If

landing zones are required in wetlands or standing water, CIRI will take reasonable measures to limit and avoid unnecessary brushing and ground disturbance done for the purpose of creating the landing zone. Furthermore, all landing zones should be located 50 feet from flowing water.

C. Geotechnical Drilling

During the Planning Phase, CIRI will conduct engineering and geotechnical assessments through the drilling of boreholes, the digging of test pits, hydrology and hydraulics analysis. Geotechnical drilling rigs will be transported via helicopter to the drilling sites and drill pads will be created to support geotechnical drilling operations. In the port easement, CIRI will limit the number of exploratory geotechnical boreholes and test pits to no more than 100 and there will be no geotechnical drilling within any of the sedge grass meadow areas during June 15-August 1 to limit impacts to brown bears. In the transportation easement, CIRI will limit the number of exploratory geotechnical boreholes and test pits to no more than 150 and there will be no geotechnical drilling work between November 1 and April 15 of any calendar year to avoid bear denning sites.

If drilling activity, or other planning phase work produces underwater sound pressure levels (SPLs) exceeding 120dB, Protected Species Observers (PSOs) will be required in accordance with NMFS recommendations. PSOs monitor designated “shutdown zones” – zones where underwater SPLs from anthropogenic activities reach or exceed thresholds that result in take of marine mammals as defined under the MMPA. Should a marine mammal approach or enter the zone, PSOs will order the halt of all activities that may result in take and indicate when those activities can be resume (e.g., once the animal has departed zone). This is an important protection for endangered Cook Inlet beluga whales as well as for northern sea otters which are listed as threatened under the ESA.

There are a number of Phase Specific T&Cs that serve to protect wetlands, water quality and surface water hydrology by stipulating how geotechnical drilling operations may occur within the easements. These stipulations largely deal with how drilling operations manage water and fluid discharges during the drilling process to prevent negative impacts to water resources. CIRI will be required to provide a Spill Prevention and Response Plan to the NPS no later than June 1st each year. If drilling fluids and other waste materials are generated, waste material is not permitted to be released into the environment. Any material spills, including fuel spills, that require reporting to the Alaska Department of Environmental Conservation must also be simultaneously reported to the Park in addition to any requirements contained in the Spill Prevention and Response Plan.

D. Vegetation and Nonnative Species

CIRI will be conducting vegetation removal (brushing) to facilitate helicopter use and geotechnical drilling operations as well as for environmental, cultural, and pedestrian surveys within the easements. Brushing work will only be allowed to be conducted using handheld tools, including mechanized tools such as trimmers, chain saws, and brush cutters. As mentioned above, CIRI will not be permitted to use wheeled or tracked vehicles in the easements, including to conduct brushing. CIRI will make reasonable efforts to avoid cutting trees when brushing. For this purpose, a “tree” is defined as anything with a diameter larger than 6 inches and height larger than 15 feet. To further prevent young trees from being cut down, where reasonably possible brushing activities will be restricted to shrub or open ecotypes.

To prevent the spread of invasive species into the Park, clothing, gear, building materials, and all equipment will be cleaned and be free of soil or plant material before entering the Park. Annual invasive species mitigation practices will be included in annual reporting and if invasive species are found in the easements, the NPS will be consulted for appropriate measures to remove them. Any invasive species locations and removal will be presented within annual reporting to the NPS.

CIRI will avoid any ground or vegetation disturbing activity within 30 meters of any special status plant species. These plants are identified by the Alaska Natural Heritage Program. NPS will share with CIRI any available data on the known location of such species.

E. Reclamation

Within the Phase Specific T&Cs, the reclamation stipulations are specific to the Planning Phase. As noted above, there are also General T&Cs for pertaining to end of operations reclamation. For the Planning Phase, all ground disturbance will be returned as near to its pre-disturbed condition as is reasonably practical and shall occur within five (5) years after the disturbed area is abandoned or CIRI reasonably determines that the area will no longer be actively used. Reclamation for brushed areas shall mean putting cut brush, where available, back on the brushed area, or such other actions which may be mutually deemed reasonable and appropriate by NPS and CIRI. Reclamation of brushed areas shall occur within two (2) years after the brushed area is abandoned or CIRI reasonably determines that the area will no longer be actively used.

Geotechnical boreholes and test pits that do not collapse in upon themselves will be backfilled and no excavated ground will be left with a slope >15% greater than the surrounding slopes, and soil will be covered by rocks of the same average size as the surrounding rocks, or if initially vegetated, native vegetation.

F. Eagles/Migratory Birds

At all times, in both the transportation and port easements, CIRI will comply with the requirements of the Bald and Golden Eagle Protection Act. Specifically, no activity may occur within a 660-foot buffer around known active bald eagle nests and CIRI will make reasonable efforts to avoid operating helicopters and aircraft within 1,000 feet of any active eagle nest during the breeding season between May 1 and August 31.

For other migratory birds, CIRI will make reasonable efforts to limit brushing between May 1 and July 15 during nesting season and to avoid operating any aircraft below 2,000 feet when near any seabird colony from April 1 to September 7. If vessels are being utilized, to minimize impacts to nesting seabirds, vessels travelling greater than 5 knots shall not approach within 1,000 feet of all seabird colonies. All vessels used for Planning Phase activities will attempt to keep deck lighting to a minimum, and shield lights to direct illumination inboard and downward to the extent possible while still maintaining compliance with navigation rules. If red lighting is used, those lights be limited to interior spaces, and windows should be shaded to the extent practicable when indoor spaces must be lit at night.

G. ESA/MMPA

As mentioned above, if CIRI has an operational need to engage in work that is inconsistent with the Phase Specific T&Cs that pertain to MMPA, it will obtain any necessary permits under the MMPA and notify NPS so a determination may be made whether to reinstate ESA Section 7 consultation. In addition to the restrictions for noise producing activity from September 1 through May 15 and activities producing underwater sound from May 15 through August 30, there are vessel restrictions and required reporting measures to protect ESA listed species.

H. Notice to Proceed for the completion of NHPA and ESA Consultation

Though consultation and compliance for the ESA and NHPA are not yet complete, Planning Phase activities under the easements may not begin until NHPA and ESA compliance are completed. As specified in the Deeds' Phase Specific T&Cs notice to proceed provisions, compliance with these two laws must be complete before Planning Phase activities may begin. The Notice to Proceed may add new terms and conditions to the Phase Specific T&Cs for the Planning Phase which are required by NMFS, as appropriate and necessary, to address ESA issues.

Under the General T&Cs is a requirement for CIRI to comply with the terms of any programmatic agreement executed by CIRI and related to the discovery of archaeological, paleontological, or historical resources within the easement area. If a programmatic agreement is not used, compliance with NHPA will be addressed with supplementary terms and conditions. We have also made an ESA Section 7(d) determination, attached as Appendix D, concluding that the Notice to Proceed provision ensures that

conveyance of the easement before the completion of consultation with NMFS is consistent with the ESA.

Visitor Use and Experience and Socioeconomic Considerations

Lake Clark National Park and Preserve, and specifically the Park's 126-mile coastline, is located off the road system and is remote, undeveloped, and vast. The Park offers views of volcanoes, snow-covered mountains, expanses of forests, prime habitat for both marine and terrestrial wildlife, and free-flowing lakes and rivers that bring visitors from all over the world. The Park manages one of the largest wilderness areas in the United States, offering visitors opportunities for solitude, quietness, and wild landscapes. Access to the Park's coastline is possible via airplane or boat, although most visitors in the Park are commercially supported by a lodge, guiding service, or air or water taxi operator. The Park is used for a variety of recreational activities by visitors year-round, including bear viewing, hiking, camping, backpacking, hunting, fishing, and backcountry skiing.

Two of the most highly visited areas in the Park are the coastal areas of Chinitna Bay and Silver Salmon Creek. The closest high-use area to the easement area is Silver Salmon Creek, which includes the Johnson River at its northern boundary. Since 2009, visitation at Silver Salmon Creek has gone from around 700 annual visitors to 3,000 annual visitors in 2022. Visitation is increasing across the Park, but notably along the coastline likely attributed to the increasing popularity of bear-viewing.

Bear viewing opportunities are most common along the coast of the Park, including areas around Silver Salmon Creek, with some use occurring on the Johnson River. In 2022, 18 commercial operators originating from Homer, Kenai, Soldotna, and Anchorage reported a combined total of 3,000 bear viewing visitor use days in Silver Salmon Creek. Almost all the businesses offering bear viewing services are locally owned and operated and commercial operators generate over \$11 million per year in economic activity for bear viewing (RA Section 3.12.1).

Within Tuxedni Bay and Tuxedni Channel, waterways support salmon runs (Hungryman Creek and Bear Creek) and recreational fishing. Clamming is reported to occur in Tuxedni Bay north of Fossil Point and near Polly Creek. Setnetting, which is a type of passive fishing where nets are anchored in place to snag passing fish, occurs within Tuxedni Channel with several sites located off Chisik Island. Commercial visitation reported at Tuxedni Bay visitor use area is increasing. Snug Harbor Outpost is a lodge located at a former cannery on Chisik Island across Tuxedni Channel from the port easement. This lodge offers visitors a variety of activities and excursions within the Park. Redoubt Mountain Lodge at Crescent Lake takes visitors to areas in Tuxedni Bay for bear viewing during the summer season as well (RA Section 3.16.1).

During the Planning Phase, members of the public may continue to access the NPS land encumbered by the easements so long as such use does not interfere with CIRI's restriction of access in accordance with Section 3 of the Deeds. CIRI will be required to provide to the NPS annual reporting describing activities to be completed in the upcoming year which the NPS may use to notify members of the public, cabin users and commercial operators. The restrictions in the Deeds are intended to minimize disturbance for the public in the area, although the Planning Phase activities authorized by the easements will impact visitation at certain times.

Future Phases – Construction and O&M Phases

While impacts to NPS resources during the Planning Phase are expected to be short-term in nature, it is likely that this will change if construction of transportation and port facilities were to commence and a road/rail line and port were to be built. At that time, NPS will conduct additional environmental reviews, consultations, and compliance (as necessary and appropriate) and the Deeds and Phase Specific T&Cs will be amended. Prior to construction occurring, site-specific environmental review and permitting are anticipated for future, non-NPS permitting processes (such as for the U.S. Army Corps of Engineers' permitting under Section 404 of the Clean Water Act). A determination regarding impairment of park

resources and values under future phases will be made if the Deeds are amended to advance the Construction and O&M Phases.

Conclusion

The Alaska Native Claims Settlement Act (ANCSA) was passed in 1971 to settle aboriginal land title claims with Alaska Natives and the 1976 Act was enacted in support of fulfilling CIRI's ANCSA land entitlement. The 1976 Act specified that the Secretary shall convey two easements—a transportation easement and a port easement—across what would become Lake Clark National Park. The easements are to allow for the transportation and shipping of minerals extracted from the Johnson Tract. This Decision Record addresses the conveyance of these two easements, a transportation and a port easement, that together will encumber approximately 2,642 acres within Lake Clark National Park. Taking all factors into account, this Decision appropriately balances the need to fulfill the obligations to CIRI with the protection of park resources through the minimization of impacts to natural, social, cultural, and subsistence resources.

Appendix A: Non-impairment Determination

Lake Clark National Park and Preserve, Johnson Tract Transportation and Port Easements

By enacting the National Park Service (NPS) Organic Act of 1916 (Organic Act), Congress directed the U.S. Department of the Interior and the NPS “to conserve the scenery, natural and historic objects, and wild life in the [National Park] System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” (54 USC 100101(a)). Congress reaffirmed this mandate in 1978 by stating that the NPS must conduct its actions in a manner that will ensure no “derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress.” (54 USC 100101(b)(2)).

NPS Management Policies 2006, Section 1.4.4, explains the prohibition on impairment of park resources and values: “While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.”

An action constitutes impairment when its impacts “harm the integrity of park resources or values, including the opportunities that otherwise will be present for the enjoyment of those resources or values” (NPS 2006, Section 1.4.5). To determine impairment, the NPS must evaluate the “particular resources and values that will be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts. An impact on any park resource or value may constitute impairment, but an impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is:

- necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park
- key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park;
- or identified in the park’s general management plan or other relevant NPS planning documents as being of significance.” (NPS 2006, Section 1.4.5).

NPS Management Policies 2006, Section 1.4.4, explains the prohibition on impairment of park resources and values (underlining is added):

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The impairment of park resources and values may not be allowed by the Service unless directly and specifically provided for by legislation or by the proclamation establishing the park. The relevant legislation or proclamation must provide explicitly (not by implication or inference) for

the activity, in terms that keep the Service from having the authority to manage the activity so as to avoid the impairment.

As described in the Resource Analysis (Section 1.2), the Cook Inlet Land Exchange (1976 Act) requires that the Secretary shall convey to CIRI, “[...] an easement for a port which shall reasonably provide for receiving, shipping, storage, and incidental handling, and incidental facilities there to,” and, “[...] a transportation easement to provide for transportation by road, rail or pipeline,” of the minerals from the Johnson Tract to the port easement. The 1976 Act also requires that the Secretary and CIRI “shall mutually agree” to the locations of these two easements.

Purpose Statement (from Foundation Document)

The Lake Clark National Park and Preserve (the Park) Foundation Statement (NPS 2009) was used as a basis for determining if a resource is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park, or
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park, or
- Identified in the park’s general management plan or other relevant NPS planning documents as being of significance

The purpose of the Park is to protect a region of dynamic geologic and ecological processes that create scenic mountain landscapes, unaltered watersheds supporting Bristol Bay red salmon, and habitats for wilderness dependent populations of fish and wildlife, vital to 10,000 years of human history.

Specifically, Section 201 of the Alaska National Interest Lands Conservation Act (ANILCA) states that the park shall be managed for the following purposes, among others:

- to protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay;
- to maintain unimpaired the scenic beauty and quality of portions of the Alaska Range and the Aleutian Range, including active volcanoes, glaciers, wild rivers, lakes, waterfalls, and alpine meadows in their natural state;
- to protect habitat for and populations of fish and wildlife including but not limited to caribou, Dall’s sheep, brown/grizzly bears, bald eagles, and peregrine falcons.
- Subsistence uses shall be permitted in the park where such uses are traditional.

This non-impairment determination has been completed for the selected action, as identified in the Decision Record (DR) for the Lake Clark National Park and Preserve Johnson Tract Transportation and Port Easements. This non-impairment determination is informed by the NPS Resource Analysis (RA) and, where appropriate, relevant sections of the RA are referenced.

Under the selected action, the NPS will convey two easements (deeds) to CIRI that will consist of three phases: (1) Planning; (2) Construction; and (3) Operation and Maintenance (O&M). Upon execution, the only permissible uses in the easement areas are related to Planning Phase. The Department and CIRI will amend the easements if future development phases (Construction and O&M) materialize. Therefore, this non-impairment determination only considers the effects of the Planning Phase of the selected action. A determination regarding impairment of park resources and values under future phases will be made, as appropriate, if and when the Construction and O&M Phases materialize.

Congress mandated that the conveyances of the easements “shall be considered and treated as conveyances under [ANCSA],” Section 12(c) of Pub. L. 94-204, and are therefore undertaken in partial fulfillment of CIRI’s entitlements under ANCSA. Conveyance of the easements is subject to Section 910 of ANILCA, 43 U.S.C. § 1638 and a NEPA document is not required (RA Section 1.4). The National Park

Service (NPS) has instead prepared a RA to evaluate proposed easements needed to provide access to the Johnson Tract within Lake Clark National Park.

We note that an easement is a limited right to the use of land for a specific purpose. The lands subject to the easement will remain park lands. Additionally, the easements spell out the limits of how CIRI may use these lands, for the Planning Phase, generally it may only conduct activities reasonably necessary to the planning and designing of a road or rail line and port. Of the 2,642 acres that will be subject to the easements initially, only 3.5 acres may be subject to ground disturbing activities at any one time and brushing will also be limited. Thus, while the initial easement area may be approximately 2,642 acres, the entire area will not be subject to the same level of activity.

The following resource impact topics were evaluated in detail in the RA and are evaluated in this non-impairment determination (NPS 2011): aquatic resources, wildlife, cultural resources, water quality and surface water hydrology, soundscapes, wetlands, vegetation, and paleontology. A non-impairment determination was not made for visitor use and experience, subsistence, health and human safety, environmental justice, or socioeconomics because these impact topics are not generally considered to be park resources or values according to the Organic Act and are not subject to the non-impairment standard of the act (NPS Management Policies § 1.4.6) thus, these topics cannot be impaired in the same way that an action can impair park resources and values. Though subsistence was not addressed here, a separate analysis, per ANILCA Section 810, was completed. A non-impairment determination was not made for wilderness character qualities because wilderness itself is not a resource subject to the non-impairment standard (NPS Management Policies § 1.4.6), but rather is a composite resource that includes a multitude of resources that are subject to the non-impairment standard, some of which are evaluated here.

Additionally, a non-impairment determination was not made for special status species as no ESA-listed species or designated critical habitats are known to occur within the transportation or port easements. Thus, NPS did not make a non-impairment finding for these species. However, several ESA-listed species and designated critical habitats are known to occur in the marine waters adjacent to the port easement area in which there may be effects from occurring due to activities in the easement areas. NPS consulted with the National Marine Fisheries Service and U.S. Fish and Wildlife Service who have regulatory authority over these species (see Decision Record).

Other Park resources were considered but dismissed from detailed analysis in the RA (Section 3.2) as they are expected have negligible or no impacts from Planning Phase actions, and thus no potential for impairment. However, as the RA notes, these resources are worth considering in Construction and O&M Phases (RA Section 3.2).

Aquatic Resources

Aquatic resources analyzed in the RA (Section 3.3) include freshwater/anadromous fish (Dolly Varden [*Salvelinus malma*], coho salmon [*Oncorhynchus kisutch*], chum salmon [*Oncorhynchus keta*], and pink salmon [*Oncorhynchus gorbuscha*]) and aquatic invertebrates (i.e., Chironomid invertebrates (midges)) which function as an important source of food for fish and other animals. Many aquatic resources are dependent on the quality or quantity of aquatic habitats, which is discussed here and separately under *Water Quality and Surface Water Hydrology and Wetlands*.

The transportation easement contains approximately 18¹ acres of perennial rivers and streams, consisting of portions of Bear Creek, the Johnson River and one smaller tributary. Additionally, the transportation

¹ Acreages calculated for each resource impacted are approximate and give NPS a basis for the exercise of its professional judgment in making this impairment determination.

easement covers approximately 119 acres of wetland and waters habitat and will also be subject to the easement conveyed. While some wetland habitats are isolated and not hydrologically connected to other waters, wetland habitats adjacent to perennial streams and rivers can provide important off-channel habitat for various fish species, particularly juvenile salmonids.

The port easement area covers approximately 33 acres of perennial waterbodies consisting of a small channel to Hungryman Creek, Bear Creek, Little Bear Creek, the unnamed tributary within the Bear Creek drainage (AWC Stream Code 245-30-10135), and a portion of tidal areas associated with Tuxedni Channel. Additionally, approximately 69 acres of wetland and waters habitats are included in the port area easement conveyance.

Under the selected action, drilled material, drilling fluids, or fuels have potential to enter aquatic habitats if not controlled or contained, potentially resulting in mortality of fish and aquatic invertebrates. Drilling activities will also require pumping of water from nearby sources, which could temporarily alter the availability and/or quantity of habitat available for aquatic resources. Brushing and creation of helicopter landing zones and drill pads could alter stormwater flows, potentially increasing erosion and sediment transport into aquatic habitats. Additionally, direct mortality may result from accidental crushing of salmon redds and increased sedimentation from runoff and changes in surface flow.

Certain terms and conditions will mitigate these impacts, including, but not limited to: a prohibition on discharging drilling materials into any standing/flowing water or vegetation areas; submission of and adherence to a Spill Prevention and Response Plan; minimization of dewatering impacts to fish; maintaining a distance of 50ft from flowing water for drill pads, landing zones, and sumps; secondary containment to prevent fuel spills, etc. See *Water Quality, Fish, Wetlands, Floodplains and Aquatic Resources* and *Geotechnical Operations* located in Exhibit B of the deeds for the easements for a complete list of the applicable terms and conditions that will mitigate potential impacts of Planning Phase actions to aquatic resources.

While terms and conditions within the conveyed easements will mitigate some impacts to aquatic resources, the selected action may directly and adversely impact approximately 51 acres of perennial rivers and streams and 188 acres wetland and water habitats which could reduce the quality and quantity of habitat available to fish and aquatic invertebrates. However, impacts will remain localized within portions of the easement areas, resulting in impacts to only a fraction of these types of resources found within the easements. Furthermore, the easements contain a relatively small portion of these habitats compared to those available in Park, which consists of 414,923 acres of wetlands and waters, which includes 72,478 acres of perennial rivers and streams (RA Table 3-4). The aquatic resources, fish species and their habitats within the easement areas are similar to resources found throughout the park. Specifically, the fish species and their habitats within the easement areas are found throughout coastal areas of the park and region. Any potential disturbance to or mortality of individual fish or aquatic invertebrates will not result in population-level impacts throughout the park and region. Populations of the fish and aquatic invertebrates that will be impacted under the selected action will continue to exist and thrive throughout the Park. Thus, aquatic resources within the Park will remain available for future enjoyment and will not be impaired.

Wildlife

As discussed in the RA, the wildlife in or near the easement areas include a variety of birds (waterfowl, shorebirds, seabirds, raptors, passerines and other migratory birds), terrestrial mammals (bears, moose, etc.), and marine mammals (harbor seals, harbor porpoise, killer whales, Stellar's sea lion, etc.). Many wildlife species are dependent on the availability of habitat, which is discussed separately under *Wetlands* and *Vegetation*. Important coastal brown bear foraging habitat (e.g., sedge meadow) was largely excluded

from the easement areas and, for the 20 acres of sedge meadow included in the easement areas, seasonal restrictions for geotechnical drilling were added in the terms and conditions.

As described in the RA (Section 3.4.2), the potential for human-wildlife conflict will increase during Planning Phase activities, potentially resulting in wildlife mortality. Use of helicopters in the area has potential to disturb wildlife in the easement areas and beyond (since noise generated from helicopter use will extend beyond the easement boundaries). Clearing of vegetation for the creation of landing zones is unlikely to directly impact large terrestrial animals, because they will likely avoid areas with an abundance of human activity and recent helicopter use. However, small mammals that are unable to leave the area may be crushed by landing activities or brushing. The creation of geotechnical drilling pads may disturb wildlife within the easement areas. For instance, wildlife may avoid drilling areas during operation when increased terrestrial noise and human presence occur. In general, helicopter use and geotechnical activities may cause individual animals to abandon important life history areas (foraging, denning, resting) due to potentially loud noise associated with these activities and/or intermittent human presence in the area, thereby interrupting important biological processes.

Under the selected action, certain terms and conditions will mitigate these impacts, including, but not limited to: ensuring compliance with the Bald and Golden Eagle Protection Act, CIRI acquiring necessary permits under the Marine Mammal Protection Act, seasonal limitations on brushing and aircraft use, and bear avoidance/minimization measures. Refer to Wildlife, Reclamation, Bald Eagles/Migratory Birds, and Special Status Species located in Exhibit B of the deeds for the easements for a complete list of the applicable terms and conditions that will mitigate potential impacts of Planning Phase actions to wildlife.

While adherence to terms and conditions within the easement areas will mitigate some effects from Planning Phase actions to wildlife, wildlife in and around the easement will still be adversely impacted. However, the impacts on wildlife will remain localized to the easement area and its immediate vicinity. The impacts of Planning Phase activities to wildlife will be largely intermittent as wildlife will exhibit temporary changes in behavior that will likely return to baseline conditions once surveyors leave the immediate area and Planning Phase activities cease. The Park is over 4,030,006 acres and the conveyed easements are 2,642 acres in total. The wildlife and their habitats within the easements are found throughout the Park and region. As a result, any potential disturbance or mortality of animals will not result in population-level impacts throughout the Park and region. The wildlife populations and their habitats that will be impacted under the selected action will continue to exist and thrive throughout the Park. Thus, wildlife within the Park will remain available for future enjoyment and will not be impaired.

Cultural Resources

Under the selected action, an easement covering approximately 2,642 acres will be conveyed to CIRI for Planning Phase activities. The Area of Potential Effect (APE) includes an area for direct and indirect Planning Phase actions and is described within the draft Programmatic Agreement. The draft Programmatic Agreement outlines measures and processes to avoid, minimize, or mitigate adverse effects to cultural resources. A reconnaissance survey in and around most of the easement areas was completed in 2023 and generally characterizes resources and provides information for future surveys. The easement areas have not yet been surveyed for an archeological Phase I Survey (Identification).

The selected action and the area of potential effect for the transportation easement areas will cross an area in the vicinity of Bear Pass that is considered to have a moderate probability to contain prehistoric, protohistoric, and historic cultural resources. The northern port easement, around the mouth of Hungryman Creek, covers an area of high potential for prehistoric, protohistoric, and historic cultural resources. The southern port easement will cross a high probability area that is located on a 3.4 mi strip that stretches south from the mouth of Corrie Creek along the tidewater. This area contains two potential

historic properties as well as areas with high potential for prehistoric, protohistoric, and historic cultural resources that have yet to be identified (see Section 3.5 of the RA for additional information). Prior to the initiation of Planning Phase activities and in consultation with local Alaska Native Tribes, Alaska Native Corporations (ANCs), and the SHPO, the area for direct effects will be surveyed for cultural resources. Any historic properties or cultural resources found in the surveys will be discussed with Park staff to determine appropriate actions to comply with Section 106.

Under the draft Programmatic Agreement, protection for cultural resources will be consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. As these cultural resources are nonrenewable and irreplaceable, preservation of the cultural resources in the Park and within the APE is critical. Preservation measures will include avoidance, minimizing, or mitigating adverse effects. If a cultural resource is identified, CIRI will implement actions approved under the Programmatic Agreement. By following the Section 106 process outlined by the draft Programmatic Agreement, working closely with NPS staff, and halting any activity if there is a discovery of cultural resources until an assessment of the resource's significance can be completed, adverse effects to cultural resources within the easements will be mitigated. These provisions provide for the protection and perpetuation of cultural resources within the Park. If a programmatic agreement is not finalized, NPS will ensure equal protection for these resources through supplementary terms and conditions. Thus, the selected action will not result in impairment to cultural resources for the Park.

Water Quality and Surface Water Hydrology

The selected action will affect water quality and surface water hydrology in the easement areas from the creation of landing zones and implementation of a geotechnical investigation program. A description of the wetland and water habitats and approximate acreages that each easement area covers are described in the *Aquatic Resources* Section.

Vegetation removal for landing zone or geotechnical pad creation will likely increase erosion around the landing zones, potentially leading to downslope transport of eroded sediment that could be deposited in nearby waterbodies. This could increase turbidity and sediment loads, thereby impacting water quality. Additionally, fuel needed for these operations could spill, impacting water quality. Water will be pumped from the nearest stream during geotechnical drilling which could lower stream flows and could affect the overall hydrology of the stream used as a water source.

Under the selected action, certain terms and conditions will mitigate impacts to water quality and surface water hydrology, similar to those covered under Aquatic Resources. These include, but are not limited to limiting ground disturbance, submission of a Spill Prevention and Response Plan; maintaining a distance of 50ft from flowing water for drill pads, landing zones, and sumps; secondary containment to prevent fuel spills, etc. See *General, Water Quality, Fish, Wetlands, Floodplains and Aquatic Resources, Geotechnical Operations, and Reclamation* located in Exhibit B of the deeds for the easements for a complete list of the applicable terms and conditions that will mitigate potential impacts of Planning Phase actions to water quality and surface water hydrology.

While adherence to terms and conditions within the conveyed easement will mitigate some impacts to water quality and surface water hydrology, the impacts of the selected will still adversely impact 51 acres of perennial rivers and streams and 188 acres wetland and water habitats. However, the impacts to water quality and surface water hydrology will remain localized within portions of the easement areas, resulting in impacts to only a fraction of these types of resources found within the Park which consists of 414,923 acres of wetlands and waters, which includes 72,478 acres of perennial rivers and streams (RA Table 3-4). The water quality and surface water hydrology located within the easements are similar to resources found throughout the Park. Under the selected action, water quality and surface water hydrology

throughout the Park will continue to exist in a state similar to current conditions. Therefore, water quality and surface water hydrology within the Park will remain available for enjoyment by current and future generations and will therefore not be impaired.

Soundscapes

Soundscapes in the in near the easement areas are predominately natural, with little human-created noise. In general, the median summer, daytime sound levels are typically between 31 and 37 decibels.

The selected action could result in the introduction of intermittent year-round noise in the easement areas and their immediate vicinity, resulting in adverse impacts to soundscapes. Access to the easement areas for geotechnical and pedestrian surveys will require the use of helicopters, which will be the greatest source of human-introduced noise in and around the easement areas under the selected action. Another source of human-introduced noise in and around the easement areas will be associated with geotechnical drilling, including operation of the drills, as well as the use of mechanized equipment for brushing for creation of drill pads and helicopter landing zones. Motorized boats are another potential source of human noise under the selected action as CIRC might utilize motorized boats to accomplish certain Planning Phase activities, including resource surveys.

Certain terms and conditions will mitigate some impacts to soundscapes, including but not limited to: limiting ground disturbance, limiting the number of boreholes and test pits, limiting aircraft flight time/altitude/seasons. See *General*, *Special Status Species*, and *Aircraft/Helicopter Use* located in Exhibit B of the deeds for the easements for a complete list of the applicable terms and conditions that will mitigate potential impacts of Planning Phase actions to soundscapes.

While adhering to terms and conditions within the conveyed easements will mitigate some impacts to soundscapes, the selected action will still adversely affect soundscapes in the easement areas and immediate vicinity such that the impacts may be noticeable and severe. However, noise generated during Planning Phase activities will be intermittent (occurring only during that activity) and will return to baseline conditions once those activities cease. The impacts to soundscapes will remain localized to the easement areas and their immediate vicinity. The conveyed easements are 2,642 acres while Lake Clark National Park and Preserve is 4,030,006 acres. Under the selected action, the majority of the Park's soundscapes will remain primarily natural, with little human-created noise. The Park's soundscapes will continue to have vast areas of natural soundscapes. Therefore, soundscapes will not be impaired under the selected action.

Wetlands

Wetlands and waters encompass about 10 percent (approximately 415,000 acres) of the Park (USFWS 2020), of which approximately half are freshwater wetlands (RA Table 3-4). Estuarine and marine wetlands are the least common class of wetlands and waters, accounting for <1 percent of the total area of the Park (RA Section 3.9).

The transportation easement will convey an easement covering approximately 137 acres of wetlands and waters and approximately 1,445 acres of uplands. Waterbodies and relatively permanent waters (specifically, perennial rivers and streams) make up a relatively small percentage of the area.

The port easement will convey an easement covering approximately 102 acres of wetlands and waters, and 1,076 acres of uplands for a total of 1,179² acres. The majority of the wetlands and waters in the port area easement are associated with the floodplain and adjacent terraces of Bear Creek, including several beaver dam complexes and upper saltmarshes along Tuxedni Channel.

Under the selected action, there will be adverse impacts on wetlands such as trampling and compaction resulting from pedestrian surveys. There will also be adverse impacts that result from digging soil test pits. These impacts are expected to be localized to the specific area where surveys and digging occurs, and wetlands are expected to recover from these impacts within 1-2 years of the action ceasing. Brushing for helicopter landing zones and drill pad creation will result in varying degrees of impact, depending on the type of wetland (herbaceous versus shrub/forest) impacted. Specifically, creation of helicopter landing zones and drill pads in herbaceous wetlands will result in shorter-term, impacts on herbaceous wetlands. Whereas, impacts to shrub and forested wetlands will be longer-term due to the longer recovery time required for woody vegetation relative to herbaceous vegetation, the latter of which will not need to be cleared. Additional impacts from drill pad creation will include soil compaction, bushing (as discussed above), temporary disruption to the wetland hydrology in the vicinity of the drill pads, and potential contamination from spills. Impacts to wetlands from ground disturbing activities, such as test pits, will be short-term, and are expected to recover quickly (1–2 years).

Certain terms and conditions will mitigate some impacts to wetlands and include but are not limited to: limiting ground disturbance, limiting the landing zones within wetlands or standing water, limiting the number of boreholes and test pits in wetlands, backfilling, minimizing brushing and avoiding tree cutting, and spill prevention and response. See *General, Aircraft/Helicopter Use, Vegetation, Water Quality, Fish, Wetlands, Floodplains, and Aquatic Resources, Geotechnical Operations, and Reclamation* located in Exhibit B of the deeds for the easements for a complete list of the applicable terms and conditions that will mitigate potential impacts of Planning Phase actions to wetlands.

While adherence to terms and conditions within the conveyed easements will mitigate some impacts to wetlands, the selected action will still adversely impact wetlands in the easement area. Wetlands do not provide the ideal substrate to prepare helicopter landing zones or to construct temporary drill pads due to the wet, organic soils, thus, it is likely that few to no helicopter landing zone or drill pads will be placed in wetlands. The easements will cover approximately 239 acres (or .06%) of wetlands and waters of the total 414,923 acres available in the Park. The port easement will cover approximately 108 acres (or 1.2%) of estuarine/marine wetlands of the total 8,431 acres available in the Park. No estuarine/marine wetlands occur in the transportation easement. As discussed above, wetlands will be expected to recover after Planning Phase activities cease and impacts to wetlands will remain localized within the easement areas. Thus, wetlands within the Park will remain available for future enjoyment and will not be impaired.

Vegetation

At a broad scale, vegetation patterns in the area of the easements are driven largely by the maritime climate and the steep topography of the Aleutian Range. In the RA, the acres for vegetation structure classes (such as forest and woodland) were aggregated and calculated. A list of the vegetation that comprises each vegetation structure can be found in RA Section 3.10.

The selected action will convey a transportation easement covering approximately 1,417 acres of vegetation and approximately 43 acres of unvegetated lands. Upland shrublands and meadows, followed by upland forests and woodlands are the most abundant vegetation types located within the transportation

²Note that the difference in total acres estimated compared to the acres reported for the total port easement is due to the lack of wetland status mapping in small areas of the port easement.

easement. There are also large areas of lowland shrublands, which include shrub-dominated wetlands occurring in the Johnson River Valley near where the transportation easement turns north toward Bear Pass and riverine shrublands, and located on the Johnson River floodplain near the western terminus of the transportation easement. The remaining vegetation types all represent 1 percent or less of the lands within the transportation easement.

The selected action will convey a port easement covering approximately 1,158 acres of vegetation and 21 acres of unvegetated lands. Upland forest and woodlands are the most abundant dominant vegetation type, followed by upland shrublands and meadows, and riverine forest and woodlands. The easement area also includes approximately 71 acres of coastal meadows, which are relatively rare in the Park.

Effects to vegetation under the selected action include trampling, soil compaction, and severed plant roots from geotechnical borings or digging soil test pits. Impacts to vegetation could also occur from brushing for helicopter landings or geotechnical pads. As discussed under *Wetlands*, impacts to trees and shrubs will be greater than to herbaceous vegetation due to the longer regeneration time. For ground disturbing activities, such as soil test pits, wet and mesic vegetation and soils are expected to recover quickly (1–2 years), while dry vegetation (particularly alpine vegetation) will recover more slowly (3–5 years). While it is low, there is at least some potential for invasive species introductions and accidental spills that could result in mortality of vegetation.

Certain terms and conditions will mitigate some impacts to vegetation, including but not limited to limiting ground disturbance, invasive species management, avoidance of state listed special status plant species, minimizing brushing and avoiding tree cutting, backfilling, and spill prevention and response. See *General, Aircraft/Helicopter Use, Vegetation, Water Quality, Fish, Wetlands, Floodplains, and Aquatic Resources, Geotechnical Operations, and Reclamation* located in Exhibit B of the deeds for the easements for a complete list of the applicable terms and conditions that will mitigate potential impacts of Planning Phase actions to vegetation.

While adhering to terms and conditions within the conveyed easements will mitigate some impacts to vegetation, the selected action will still adversely impact vegetation in the easement areas. Coastal meadows are relatively rare in the Park, representing 0.2 percent (9,884 acres) of the land area (RA Section 3.10). Thus, any impacts to coastal meadows will be disproportionate to the total area affected. However, of the 9,884 acres of coastal meadows available in the Park, approximately 71 acres (or 0.7%) will be subject to the easement conveyed, and thus only a portion of those 71 acres impacted by Planning Phase. The impacts are expected to be intermittent, lasting the duration of the activity, and for the vegetation to recover once Planning Phase activities are complete. The impacts to vegetation will remain localized within the easement area. Aside from the coastal meadow, the impacted vegetation types are similar to other vegetation types within the Park or region. As a result, vegetation within the Park will remain available for future enjoyment and will not be impaired.

Paleontology

Paleontological resources are nonrenewable and irreplaceable resources and were analyzed in Section 3.11 of the RA. The easement areas have not been surveyed for paleontological resources. However, these areas consist of Jurassic marine sedimentary rocks and volcanic units with numerous fossils. Planning Phase activities that could impact paleontological resources include the creation of landing zones, creation of drill pads, geotechnical drilling, and excavation of soil test pits. Each of these activities could expose in situ fossils by disturbing native soil and shallow, weathered bedrock. Fossils exposed during ground disturbance could be damaged by wind and water erosion or crushed by increased foot traffic or equipment driving over the fossil specimens, precluding further study of the resource. Increased risk of

damaging subsurface paleontological resources during geotechnical drilling is possible. However, Exhibit B of the deeds for the easements outlines terms and conditions for paleontological resources.

The NPS will conduct a pre-ground disturbing paleontological survey of the easements. The survey will (1) identify paleontological resource within the easements, (2) understand the potential for these resources to be impacted by Planning Phase activities, and (3) make recommendations for a monitoring program during ground disturbing activities. NPS will provide CIRI the findings of any paleontological survey conducted by NPS along with any NPS recommendations for consideration, including the potential for a paleontological monitor during ground disturbing activities in areas where paleontological resources are known to occur. CIRI will make reasonable efforts to incorporate the findings of any NPS paleontological survey and recommendations into seasonal work plans during the Planning Phase. Additionally, if paleontological resources are found within the Port Easement Area, CIRI will address them using the Inadvertent Discovery procedures set out in any programmatic agreement executed by CIRI that is in force and relates to the discovery of archaeological, paleontological, or historical resources within the Port Easement Area. Thus, if a paleontological resource/site is inadvertently discovered, Planning Phase activities will cease, and the site will be addressed to protect the site from further disturbance following the Inadvertent Discovery procedures in the draft Programmatic Agreement or supplementary terms and conditions. As a result, paleontological resources within the Park will remain available for future enjoyment and will not be impaired.

References

NPS (National Park Service). 2006. Management Policies 2006. U.S. Department of the Interior.

NPS. 2009. Lake Clark National Park and Preserve, Foundation Statement. U.S. Department of the Interior.

NPS. 2011. Guidance for Non-Impairment Determinations and the NPS NEPA Process. U.S. Department of the Interior.

NPS. 2024. Lake Clark National Park and Preserve, Johnson Tract Transportation and Port Easements, Resource Analysis. U.S. Department of Interior.

Appendix B: ANILCA Section 810 Analysis

ANILCA SECTION 810 ANALYSIS - SHORT FORM

National Park Service - Alaska Region

ANILCA mandates the completion of a Section 810 analysis for any decision to withdraw, reserve, lease, or permit the use, occupancy, or disposition of Federal public lands in Alaska (16 U.S.C. §3120).

Project Title: Lake Clark National Park and Preserve, Johnson Tract Transportation and Port Easements

PEPC Number: 119751

Location of Proposed Action: Lake Clark National Park, in the vicinity of Tuxedni Bay

Summary of Proposed Action: The project proposes to convey a transportation easement and a port easement to CIRI per the conditions of the 1976 Cook Inlet Land Exchange Act, Public Law 94-204. The conveyance process includes three phases. These include Planning, Construction, and Operation and Maintenance (O&M). The current analysis examines the Planning Phase. The Planning Phase actions could include activities reasonably necessary to design, engineer, and permit a road, or rail line, and a port. Once conveyed, the easements will remain in place for the duration of CIRI's mineral rights in the Johnson Tract.

Dates of Review: 8/30/2024-1/13/2025

Analysis:

This analysis uses information from, among other sources, the Resource Analysis (RA) regarding federally-qualified subsistence use.

1. Evaluation of the effect of the proposed action(s) on subsistence uses and needs.

Transportation Easement Area

The proposed transportation easement is 10.8 miles long and approximately 1,000 feet wide and covers an area that is approximately 1,463 acres.

Port Easement Area

The proposed port easement area covers 1,179 acres.

The lands affected by the proposed project fall within Game Management Unit 9A and are open to federally qualified subsistence users who are residents of one of the Park's six resident zone communities (Nondalton, Pedro Bay, Iliamna, Newhalen, Port Alsworth and Lime Village). There is no known current federal subsistence use of the proposed project area.

These resident zone communities are all located on the west side of the Chigmit Mountains, a subunit of the Aleutian Mountains. The project area is on the east side of the mountain range. There is no practical non-aviation-based access from the west side to the east side of the mountains. ANILCA Section 811(b) permits access to park lands for subsistence purposes by surface transportation only. This lack of access is likely a primary factor in the lack of subsistence use of this area.

On July 30, 2024, the Park received a letter from the Kenaitze Indian Tribe expressing concerns about potential impacts from the project on their traditional clamming beds in the tidal zone of Tuxedni Bay. We note that federal subsistence jurisdiction does not extend to the marine waters adjacent to the project area ("Cook Inlet Area-Tuxedni Bay and Chisik Island", *Federal Subsistence Management Regulations for the Harvest of Fish and Shellfish on Federal Public Lands and Waters in Alaska*, p. 88). Thus, these activities appear to be outside the scope of this analysis. Regardless, we consider them briefly. The use of the port easement will be intermittent during the Planning Phase, and it is anticipated that clamming in the area could continue. Impacts to clambers could be in the form of noise impacts or if there is geotechnical drilling occurring in certain areas, small portions of clamming beds would be unavailable, and users would need to move around those areas.

The proposed easements exclude a large sedge meadow area as critical foraging habitat for bears. The proposed terms and conditions also reduce potential impacts for subsistence resources by limiting helicopter noise, habitat fragmentation, and geotechnical drilling. This will help preserve a potential future subsistence hunting of bears in the area.

During the Planning Phase, the proposed transportation and port easement areas will remain available for public and subsistence use, however access could be restricted for periods of time when CIRI is actively doing work in the area and where public access would create safety concerns. The proposed easements will be amended both at the Construction and O&M Phases and public and subsistence access may change when that occurs.

If the easements advance to the Construction and O&M Phases, additional ANILCA 810 analyses will be completed at that time.

2. Evaluation of the availability of other lands for the purpose sought to be achieved.

There are no other lands outside of the Tuxedni Bay area suitable to convey a transportation easement and a port easement to CIRI per the conditions of the 1976 Cook Inlet Land Exchange Act, Public Law 94-204. Although NPS has in the past considered an easement route that would proceed down the Johnson River valley, that alternative was dismissed from detailed analysis during the current project

consideration. This dismissal was based on a variety of factors, including impacts to wildlife and other resources, in addition to CIRI's indication the Johnson River route is not viable. Although we are unaware of any subsistence activity occurring in the Johnson River area, it is an important moose habitat area that could be used for subsistence in the future.

3. Evaluation of other alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

There is no known current use of these lands for subsistence purposes.

Although the Secretary of the Interior (Secretary) is required to convey a transportation easement and a port easement to CIRI, this conveyance could be accomplished in different ways. Accordingly, NPS considered several options or alternatives for this action. As described in the RA, NPS considered: 1) no action; 2) CIRI's June 2024 proposal; 3) a northern route to Tuxedni Bay; and 4) a southern route to Tuxedni Bay. The options included preliminary terms and conditions proposed to limit negative impacts to NPS resources.

The current proposed easements were developed through discussions between NPS and CIRI and represent a combination and modification of options 2, 3, and 4. No action would of course eliminate the disposition of these lands but is not viable in the long term because the Secretary is required to convey easements to CIRI. As described in the RA, the terms and conditions analyzed as a part of options 3 and 4 would be more protective for subsistence resources and lessen adverse impacts to the availability and abundance of subsistence resources.

4. Evaluation of whether an option may "significantly restrict" subsistence use.

Consider whether any of the following may occur:

- a) a substantial reduction in subsistence uses due to factors such as direct impacts on the resource or adverse impacts on habitat:
☐ yes ☒ no
- b) a large reduction in the abundance of subsistence resources;
☐ yes ☒ no
- c) a large reduction in subsistence uses due to changes in availability of the resources caused by a major redistribution, migration, or relocation:
☐ yes ☒ no
- d) a reduction in subsistence uses due to major increases in competition for the resource by non-subsistence users:
☐ yes ☒ no

e} a reduction in subsistence uses due to substantial interference with access to harvestable resources, such as by physical or legal barriers:

☐ yes X no

Findings:

This ANILCA Section 810 analysis finds that the proposed action will not significantly restrict current subsistence use in the project area.

/s/ Elizabeth Rupp
Elizabeth Rupp
LACL Cultural Resources Team Lead

1/13/2025
Date

MINIMUM REQUIREMENTS ANALYSIS FRAMEWORK WORKBOOK (NPS Alaska Version)

“...except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act...”

— Section 4(c), Wilderness Act of 1964

Introduction

The Minimum Requirements Analysis (MRA) is designed to examine whether a project truly needs to occur in wilderness, and if so, how to accomplish it with the least impact to the wilderness resource. The framework below is intended to help managers: 1) evaluate actions proposed in wilderness that could impact wilderness character and/or that involve a use otherwise prohibited by the Wilderness Act; and 2) consider appropriate choices about administrative actions they might take. The goal of the MRAF is to help provide consistency in the way wilderness-managing agencies consider actions in wilderness, to help wilderness stewards consider tradeoffs between impacts and benefits, and to ensure that agencies strive to preserve wilderness character through their on-the-ground decisions.

As applicable, per agency policies, collaborate and coordinate with associated Tribe(s) with historical, treaty, or related ties to the area.

MINIMUM REQUIREMENTS ANALYSIS FRAMEWORK WORKBOOK COVER PAGE (NPS Alaska Version)

Project Title:

Lake Clark National Park and Preserve, Johnson Tract Transportation and Port Easements, Phase One Planning Activities 2024

Approvals:

Prepared by:

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Position: Natural Resource Program Manager

Signature:

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Reviewed by:

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Position: Acting Resource Protection Program Lead

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Approved by:

Name: Susanne Fleek-Green

Position: Superintendent

Signature:

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Date: 2025.01.15 11:36:45 -09'00'

Project Title:

Johnson Tract Port and Transportation Easement Conveyance and Phase One Planning Activities 2024

Step 1: Determine If Administrative Action May Be Necessary

Issue Statement:

The Secretary of the Interior is mandated by the 1976 Cook Inlet Land Exchange (1976 Act) to convey two easements, a transportation and port easement, to Cook Inlet Region Incorporated (CIRI), across Lake Clark National Park (LACL). The easements incorporate a phased, authorizing only Planning Phase work upon initial conveyance and requiring amendments to the easements prior to advancing to both the Construction and Operation and Maintenance Phase. Planning Phase activities will be limited to activities that are reasonably necessary for CIRI to design, engineer, and permit their project. Those activities may include geotechnical assessment and drilling, helicopter use, hydrological assessments, and cultural and environmental resource surveys.

Explain the issue that requires action. The issue may be a problem, situation, opportunity, or other circumstance that requires consideration. It is not a proposed action, tool, project, or solution.

Options Outside of Wilderness: Can the issue be resolved or addressed outside of wilderness?

☐ YES

STOP – EXPLAIN BELOW AND DO NOT TAKE ACTION

☒ NO

EXPLAIN BELOW AND PROCEED TO THE NEXT SECTION

All easement locations are within eligible wilderness.

Criteria for Determining Necessity: Do any of the criteria below apply?

A. Do Any Valid Existing Rights Apply?

☒ YES ☐ NO

In 1976, the Cook Inlet Land Exchange Act, Public Law 94-204 provided for additional land selections by CIRI to fulfill their land entitlement under ANCSA. CIRI was conveyed the Johnson Tract, a 20,942 acre tract within LACL in exchange, in part, for CIRI's relinquishment of land selections around Lake Clark. The Johnson Tract is comprised of the North Tract, which is 9,600 acres in which CIRI received "the rights to metalliferous minerals", and the South Tract, which is 11,342 acres in "fee simple" subject to a "restrictive covenant" that limits the use to "purposes reasonably incident to mining and mineral extraction".

The “Terms and Conditions” of the 1976 Act stated: “The Secretary shall also convey to CIRI an easement for a port which shall reasonably provide for receiving, shipping, storage and incidental handling, and incidental facilities thereto, of the minerals extracted from the lands conveyed. The Secretary shall also convey to CIRI a transportation easement to provide for transportation by road, rail, or pipeline, of the minerals from the above-described lands to the port easement. The Secretary and CIRI shall mutually agree upon the location of these two easements.”

Valid existing rights are created by a legally binding conveyance, lease, deed, contract, or law. Cite the specific right, terms and conditions, and source.

B. Do Special Provisions of Wilderness Legislation Apply?

☐ YES ☒ NO

What is the special provision in wilderness legislation (i.e., Section 4(d) of the Wilderness Act of 1964 or subsequent wilderness-enabling laws) that requires action? Cite law and section. If there is language regarding a special provision, is it stated in terms of "shall" or "must"? If there is special provision language, is it specific about a type of use, tool, location, or time?

C. Do Requirements of Other Federal Laws Apply?

☐ YES ☒ NO

Does another Federal law, by itself or as implemented or interpreted through Executive Order, court order, etc., require action? Cite law and section. If other laws apply, are they specific about type of use, tool, location, or time?

D. Effects to Wilderness Character: Is action necessary to preserve/maintain one or more of the five qualities of wilderness character, or is action necessary to address a degradation, threat, or impairment of wilderness character?

UNTRAMMELED

☐ YES ☒ NO

Is there an action/project/installation that is intentionally controlling or manipulating the components or processes of ecological systems that this project is in response or relation to? An unauthorized water impoundment, for example.

UNDEVELOPED

☐ YES ☒ NO

Would the project maintain or improve the undeveloped quality? The undeveloped quality can be degraded by structures, installations, motorized or mechanized equipment/access methods, etc.

NATURAL

☐ YES ☒ NO

Would the project maintain or improve the natural quality? Either now or in the future, are there, or could there be, threats to ecological systems (or components of them) that the project would address? Examples of threats include non-native species, air or water pollution, diminished integrity of ecological processes, etc.

OUTSTANDING OPPORTUNITIES FOR SOLITUDE or PRIMITIVE and UNCONFINED RECREATION

☐ YES ☒ NO

Are opportunities for solitude or primitive and unconfined recreation unacceptably degraded? Degradations include threats to opportunities for solitude, recreational facilities that decrease self-reliant recreation, management restrictions on visitor behavior, etc. Would the project maintain or improve this quality?

OTHER FEATURES OF VALUE

☐ YES ☒ NO

Is there a tangible feature: 1- identified in legislation? 2 - on a national register? 3 - that is integral to the meaning of this wilderness? 4 - identified in a local management plan or wilderness character narrative? Is the feature degraded or threatened? How would the project maintain or enhance the tangible feature?

Step 1: Determination – Is Administrative Action Necessary in Wilderness?

Based on the responses and detailed explanations in A through D above, if action must occur in wilderness to address the situation and at least one criterion in A through D is met, check the “Yes” box below. Describe how wilderness character as a whole would be preserved (maintained) or improved as a result of the proposed project. If none of the criteria have been met, action is NOT necessary. Check the “No” box, explain why the proposed project does not meet the criteria, and stop your analysis.

☒ YES **EXPLAIN BELOW AND COMPLETE STEP 2**

☐ NO

STOP – EXPLAIN BELOW AND DO NOT TAKE ACTION

The 1976 Act Terms and Conditions state the Secretary shall convey to CIRI an easement for a transportation route and an easement for a port. The conveyance of the easements is not discretionary and to reach mutual agreement as directed by Congress, action must occur in the eligible wilderness.

Step 2: Determine the Minimum Activity

Uncontrollable Timing Requirements

What, if any, are the considerations that would dictate timing of the action?

In 2019, CIRI and HighGold mining company (now JT Mining) entered a 10-year lease of the Johnson Tract for mineral exploration. In 2020, JT Mining worked with the NPS for authorization to access NPS land around the Johnson Tract for certain activities associated with their mineral exploration. In January of 2023, CIRI began discussions with NPS and the Department of Interior to advance the conveyance of the easements.

In June 2024, the NPS received a proposal for deeds for the transportation and port easements. The DOI and NPS negotiated with CIRI on the deeds in support of conveying the easements in early 2025.

For example, to avoid a critical bird nesting season, work can only be accomplished during snow-free months. Do not include availability of workers, available funding, or other administrative considerations.

Feasibility of Alternatives

Only include alternatives that are feasible and can achieve the goals of the project. Some alternatives that are not feasible may warrant documentation in the “Alternatives Considered but Dismissed” section to provide a brief description and explanation of why it was dismissed and not considered in detail.

Possible reasons for dismissal include alternatives that are logistically or physically impossible, have unacceptable impacts, are unsafe, are proven ineffective, or won’t achieve project goals.

No Action Alternative

Including a No Action Alternative is optional. A No Action alternative can:

- Provide a comparison that identifies if an action alternative would cause greater degradation to wilderness character than doing nothing at all.

- Provide short- and long-term comparisons of effects.

In some situations, the No Action alternative might better preserve the qualities of wilderness character than taking action. This is especially true with more complex issues. Generally, simple issues do not warrant a No Action alternative.

Alternatives

Alternative 1:

Convey easements and provide authorization to conduct planning activities that are reasonably necessary for CIRI to design, engineer, and permit their project. Those activities may include geotechnical assessment, hydrological assessments, and cultural and environmental resource surveys. This would include helicopter landings, clearing of landing zones, developing temporary drill pads, geotechnical drilling, digging of test pits, use of soil probes, and temporary installation of monitoring equipment. The total area of disturbance would be less than 3.5 acres and would occur within the approximately 2,642 acre transportation and port easement areas. Of the 2,642 acres, approximately 2,512 are eligible wilderness.

Description of the Alternative:

This alternative involves using a helicopter to access and transport personnel and equipment to conduct Planning Phase activities in the transportation and port easement areas. This work will help refine the location of the transportation and port easements to the area necessary to meet the needs to support mineral transportation from the Johnson Tract to a port.

Planning Phase Activities

During the Planning Phase, NPS anticipates that CIRI's use of the easements will include preliminary engineering and geotechnical assessment through the drilling of boreholes, creation of test pits, hydrology and hydraulics analysis, additional environmental and cultural resource surveys, and associated disturbance. CIRI's use of the easement areas will also include reclamation activities.

Planning Phase activities are expected to be mostly seasonal, with activity primarily occurring from May through November. All activities would be confined to the easement area. Features constructed on the ground, such as helicopter landing zones and drill pads, would not be permanent or long-term. No roads or other permanent infrastructure will be constructed during this phase. No wheeled or tracked vehicles will be allowed.

The NPS has made reasonable assumptions of activities that can be expected to occur during the Planning Phase. NPS's assumptions regarding Planning Phase activities are based on prior correspondence, permit requests from CIRI and JT Mining, and NPS's experience with other similar projects. Access via air will be necessary. It is our understanding most flight operations will be based from CIRI's South Tract.

NPS assumes the following activities will occur during the Planning Phase:

Pedestrian Engineering Surveys (does not include geotechnical drilling)

- Ground truthing of previous reconnaissance work, including a global positioning system (GPS)-based field survey, will serve as a basis for refining the centerline for the potential transportation easement and site conditions at prospective port areas within the potential port area easement.
- The pedestrian traverse would consist of walking as much of a potential transportation easement centerline as possible. The traverse will also include site-specific assessments of stream crossings, topography, and other considerations relevant to baseline surveys for construction.
- A 2–4-person crew would complete the pedestrian traverse/GPS survey. The route traverse would occur after the snow is off and before full vegetation green-up around mid-July.
- Shallow soil test pits will be periodically hand dug with a shovel or tested with a 1-inch-diameter hand probe.

Geotechnical drilling

- If necessary, a stable, level platform to support the drill and their associated supplies, temporary drill pads should be constructed to prevent excessive damage to the ground surface and vegetation. Pads would be constructed of wood timbers, geotextiles, or duradeck pads and placed on the ground with minimal surface disturbance.
- It is expected that no more than 250 boreholes and test pits are needed for the project with no more than 150 in the transportation easement and 100 in the port easement.
- Fuel required for each drill will be transported via helicopter in fly tanks ranging in capacity from 70 to 130 gallons and will incorporate secondary containment. Drilling pads will have fuel stored in secondary containment with cumulative storage of up to 260 gallons. In the event of a spill, personnel will immediately contain the spill and spill response procedures from the spill prevention and response plan followed.
- Drill pads will be deconstructed and the area repaired. Drill pad and landing zone reclamation would take place concurrently with drilling operations. Drill pad reclamation would occur after a drill is removed from the drill pad. The drill pad would be deconstructed and moved by helicopter to the next site for reuse.
- Restoration of brushed areas shall mean putting cut brush, where available, back on the brushed area, or such other actions which may be mutually deemed reasonable and appropriate by NPS and CIRI. Restoration of brushed areas shall occur within two years after the brushed area is abandoned or CIRI reasonably determines that the area would no longer be actively used.
- Boreholes and test pits that do not collapse in upon themselves would be backfilled.

- In reclamation, no excavated ground would be left with a slope >15% greater than the surrounding slopes, and soil will be covered by rocks of the same average size as the surrounding rocks, or if initially vegetated, native vegetation.

- It is unknown the amount of flight time needed per year as this would be dependent on the intensity of exploratory work; however, 350 hours under 1,000 feet in the transportation easement area and 300 hours in the port easement area hours are not expected to be exceeded per year.

Environment and Cultural Resource Surveys

- Reconnaissance surveys would continue within the potential transportation and port easement areas. The surveys will involve archeology teams completing field traverses that may include digging shallow pits to provide three-dimensional assessment of any cultural sites. Subsurface testing will focus on areas identified as having the potential to contain intact subsurface features or artifacts. Shovel tests will be 50 by 50 centimeters and will be excavated to a depth of 1 meter or sterile soils when possible.

- A programmatic agreement between NPS, the Alaska State Historic Preservation Office, and CIRI is anticipated to provide further details and stipulations regarding required cultural resource protection and work for the Project.

- Hydrology and hydraulic analysis would include the installation of stream gauges in waterways within the easement area to gather stream flow data.

- Hydrology and hydraulic analysis includes water quality sampling to characterize baseline conditions of waterways. Water quality stations would be established and monitoring completed in three or four short excursions. A team of two field technicians would be at each water quality site for approximately 1 hour to collect a water sample and record field parameters. Access is via helicopter, which would land in an open area as close as safely practical and wait for the sample to be collected before moving to the next site.

List of potential mechanized equipment

- Helicopters

- Small power tools for cutting, drilling, and fastening used in creation of drill rig platforms.

- Drill rig for bore holes, chain saws, and other power tools for removal of vegetation.

What are the details of this alternative? When, where, and how will the action occur? Provide a comprehensive narrative description of the alternative.

Component Methods

How will each of the components of the action be performed under this alternative?

Component	Components	Component Methods for this Alternative
	<i>Example: Transportation of personnel to the project site.</i>	<i>Example: Workers walk to work site.</i>
1	Helicopter flight to support field activities and movement of equipment for project activities.	Use a Type 2 helicopter to provide access and transport equipment. Total flight time would be up to 650 hours annually below 1000' between May 15 and October 1.
2	Landings of helicopters for deployment of field crews and for equipment deployment.	Helicopters would land as needed to deploy field crews and equipment necessary for Planning Phase activities.
3	Create landing zones for helicopter access.	Landing zones would be limited in size to the minimum required for the activity being conducted and what is needed for safety. A total of 40 actively used zones based on rolling reclamation would be expected.
4	Create drill pads for geotechnical drilling.	Drill pads would require clearing vegetation from an area no larger than reasonably necessary. Use mechanized tools to construct drill pads onsite.
5	Conduct geotechnical drilling.	Operate geotechnical drill rigs to drill up to 250 bore holes.
6	Assess and monitor water quality.	Install water quality monitoring instruments in waters withing easement areas.
7	Assess area for archeological resources.	Pedestrian surveys with test pits dug as needed.

Effects to Wilderness Character

What is the effect of each Component Method on the qualities of wilderness character? Include both positive and negative effects, and cumulative impacts.

UNTRAMMELED: Describe the manipulation of the biophysical environment and its effects. Examples include suppression of natural fire or managing vegetation or wildlife, even if it improves the Natural Quality (e.g., eliminating a non-native species).

No effect from the activities on this component of wilderness character.

UNDEVELOPED: Describe 1. Type and degree of structures and installations: number, duration, and how advanced are materials and technology. 2. Motorized tools or mechanical transport: number, duration, and intensity of use.

Use of helicopter, cutting of landing zones, developing drill pads, using motorized equipment for creation of drill pads/landing zones and drilling will negatively impact this quality of wilderness. A maximum of 650 hours of flight annually. Clearing vegetation from drill pads and up to 40 helicopter landing zones in the project area. Sounds from motorized equipment to construct/deconstruct pads and sounds of drill rig operations. Some work and installations (stream gauges, stakes, flagging, etc) would be of short duration and low intensity, limiting the impact in time and space. Other activities, such as brushing, would have a longer duration impact.

NATURAL: Describe the effects to this quality, including any protection, degradation, or restoration of natural conditions.

Use of helicopter, cutting of landing zones, developing drill pads, using motorized equipment for creation of drill pads/landing zones and drilling would cause temporary negative impacts to the natural quality. Both in changing the natural vegetation of the area, as well as the potential to disturb wildlife. Helicopter impacts would be for up to 650 hours below 1,000 feet between May 15 and October 1 each year but would be temporary in space and time. Similarly, the use of motorized/mechanical equipment for creation of drill pads/landing zones and drilling would also have impacts that would be constrained spatially and temporally, with some seasonal and spatial restrictions where needed to protect sensitive wildlife species. The impacts to the natural quality from brushing for landing and drilling pads, would be longer lasting and dependent on the type of vegetation removed, extent of vegetation removed, and ability for reclamation. Overall, ground disturbance would amount to less than 3.5 acres cumulatively based on the terms and conditions of the easement conveyance.

OUTSTANDING OPPORTUNITIES FOR SOLITUDE or PRIMITIVE and UNCONFINED RECREATION: Explain how opportunities for visitors to experience solitude or a primitive and unconfined type of recreation will be protected or degraded.

Use of helicopter, cutting of landing zones, developing drill pads, using motorized equipment for creation of drill pads/landing zones and drilling would cause temporary negative impacts to the opportunities for solitude or primitive and unconfined recreation. Use of helicopter would negatively impact soundscape and solitude. These impacts are

temporary in nature. Additionally, the use of motorized/mechanical equipment for creation of drill pads/landing zones and drilling would also have impacts on the primitive nature of the area through their presence and noise they generate. These will not be bounded in space to the easement areas but will extend beyond these areas. The presence of equipment and personnel conducting the work will lessen the opportunity for solitude and primitive recreation in the area.

OTHER FEATURES OF VALUE: Describe any effects to tangible features of scientific, educational, scenic, or historical value that are not accounted for in the above qualities, including cultural and paleontological resources that are integral to wilderness character.

No effect from the activities on this component of wilderness character.

Alternatives Considered but Dismissed

What alternatives were considered but dismissed and why?

Other alternatives considered by NPS in its Resource Analysis were not feasible and reasonable alternatives because they could not be agreed upon and thus are not considered in this analysis.

Reasons for dismissing an alternative include: not responsive to the issue; does not meet project objectives; causes greater harm to wilderness character; so costly that it could not be implemented; safety issues/risk cannot be mitigated. Do not eliminate alternatives from full consideration simply because implementation would take more time, money, or personnel, or because the skills or equipment needed are not readily available on the local unit.

Determination – What is the Minimum Activity?

Selected Alternative:

Convey easements and provide authorization to conduct Planning Phase activities reasonably necessary for CIRI to design, engineer, and permit their project. Those activities may include geotechnical assessment, hydrological assessments, and cultural and environmental resource surveys. This would include helicopter landings, clearing of landing zones, developing temporary drill pads, geotechnical drilling, digging of test pits, use of soil probes, and temporary installation of monitoring equipment. The total area of disturbance would be less than 3.5 acres and would occur within the 2,642 acre transportation and port easement areas. Of the 2,642 acres, approximately 2,512 are eligible wilderness.

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Explain rationale for selection. How will the project preserve/maintain or improve wilderness character? Include a comparison of the selected alternative with other alternatives. Explain how the benefits of the project to wilderness character as a whole outweigh the impacts.

The required Planning Phase work to make a determination on the transportation and port easements will impact the undeveloped, natural, solitude, and primitive qualities of wilderness. The remote nature of the area and the activities required for evaluating and determining a transportation route and port area will require helicopter use, cutting of landing zones, creation of drilling platforms, geotechnical drilling, installation of water quality monitoring devices, and personnel conducting pedestrian surveys of geologic, cultural, and natural resources. There are no reasonable and feasible alternatives to

these activities that provide the necessary information and fulfill the mandate of the 1976 Act to convey transportation and port easements to CIRI.

In order to perform a robust resource analysis and inform appropriate terms and conditions for use of the easements, NPS made reasonable assumptions of activities that can be expected to occur during the Planning Phase. NPS's assumptions regarding Planning Phase activities are based on prior correspondence, permit requests from CIRI and HighGold, and NPS's experience with other similar projects. The amount of activity may vary annually but will be confined to the easement areas. Any features constructed on the ground, such as landing zones and drill pads, will not be permanent or long-term. No roads or other permanent infrastructure will be constructed during this phase.

The NPS's assumptions regarding Planning Phase activities also informed the extent and duration of work needed. These considerations led to the mitigations that are incorporated into the terms and conditions for the easements.

Once the Planning Phase activities are completed, the transportation and port easements will be reduced in size for the Construction Phase of the project. At that point, the process to remove these areas from eligible wilderness with a corresponding 1-mile buffer, as currently is applied to the boundary of the Johnson Tract, will be considered.

Approved?	Prohibited Use	Quantity, Timing, Frequency, or Duration
X	Mechanical Transport:	Helicopter flights will occur, with a total of up to 650 flight hours per year under 1,000 feet.
X	Motorized Equipment:	Helicopters, small power tools, and drill rigs will be used. Flight hours are limited to 650 between May 15 and October 1 annually below 1,000 feet.
<input type="checkbox"/>	Motor Vehicles:	
<input type="checkbox"/>	Motorboats:	
X	Landing of Aircraft:	Helicopter landings and up to 40 landing zones
<input type="checkbox"/>	Temporary Roads:	
X	Structures:	Drill pads will be temporarily constructed to

Approved?	Prohibited Use	Quantity, Timing, Frequency, or Duration
X	Installations:	Water quality monitoring equipment will be temporarily installed in waters within the easements.

What mitigation measures, monitoring, and reporting will be required?

Requirements related to wilderness character that are part of project stipulations:

CIRI and JT Mining are required to collect GPS records of the landing zones, drill pad locations, water monitoring installations, and other pedestrian surveys for natural and cultural resource work on parklands and send them to NPS. Data will be provided at the end of each field season.

Phase Specific terms and conditions related to minimizing impacts are included in Exhibit B of the deeds.

Mitigation can be used to: avoid impacts by not implementing part of an action; minimize impact by limiting the magnitude of the action; rectify impact by rehabilitating the affected environment.

****approval page with signatures is on page 1****

**ENDANGERED SPECIES ACT SECTION 7(D)
DETERMINATION RELATING TO JOHNSON TRACT EASEMENTS
JANUARY 15, 2025**

On December 9, 2024, the National Park Service (NPS) initiated informal consultation with, and provided a biological assessment to, the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act (ESA, 16 U.S.C. §§ 1531 *et seq.*). The consultation considers effects on ESA-listed species and ESA-designated critical habitat from conveyance of two easements, a transportation and a port easement, to provide for the transportation of minerals from the Johnson Tract. The easements are located in Lake Clark National Park, 125 miles southwest of Anchorage, Alaska, on the west side of Cook Inlet.

The Department is conveying the easements according to the Cook Inlet Land Exchange. The Cook Inlet Land Exchange was ratified and incorporated into federal law in 1976 (1976 Act, Public Law 94-203 and Public Law 94-456, clarifying the former). The 1976 Act required that the Secretary of the Interior (Secretary) “shall . . . convey” two easements—a transportation easement and a port easement—across what would become Lake Clark National Park.

Section 7(d) of the ESA requires that, after initiation of consultation under section 7(a)(2), the Federal agency “shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate” section 7(a)(2). 16 U.S.C. § 1536(d). For the reasons explained herein, NPS has determined that conveying the easements after the initiation of section 7 consultations with NMFS, but prior to receipt of its letter of concurrence or biological opinion, does not violate ESA section 7(d).

CIRI and the Department have agreed to, and incorporated into both deeds, a notice to proceed provision whereby planning phase activities will not be allowed to begin until completion of ESA consultation (either through issuance of a letter of concurrence or biological opinion). *See* Attachment A. Additionally, CIRI has agreed as a part of each deed that it will abide by whatever different or additional terms and conditions the NMFS may require through its consultation review. *Id.* Therefore, conveyance of the easements under the 1976 Act does not foreclose the formulation or implementation of any reasonable and prudent alternative measures. NMFS retains full discretion to formulate whatever reasonable and prudent alternative measures it deems appropriate to ensure compliance with section 7(a)(2).

Based on the information NPS has been provided to date, discussions with CIRI, and discussions with NMFS, we have concluded that construction and operation and maintenance of a road/rail line and port are not “reasonably certain to occur.” Therefore, this determination covers the effects of planning phase only, which includes activities reasonably necessary to design, engineer, and permit a road/rail and port. NPS will reinitiate consultation at the later phases.

Thus, conveyance of the easements before consultation completes will not violate ESA section 7(d) because NMFS retains the ability to require any “reasonable and prudent alternative

measures” it determines are required by the ESA and CIRI and NPS have agreed to abide by whatever additional measures NMFS may deem necessary.

SHANNON
ESTENOZ



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SHANNON ESTENOZ
Date: 2025.01.15
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Shannon A. Estenoz
Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior

Attachment A - Notice to Proceed

Notice to Proceed

1. Planning phase activities are not authorized to begin until NPS issues a notice to proceed. NPS will issue a notice to proceed within 30 days of the latest of the following: 1) execution of a programmatic agreement to the extent that the parties agree that such agreement is necessary; or 2) issuance of letter of concurrence or biological opinion, as appropriate, by NMFS. Issuance of the notice to proceed does not require amendment to the Deed. The notice to proceed will not add any new terms and conditions to planning phase activities except those which may be required by NMFS, as appropriate and necessary, to address Endangered Species Act issues.