U.S. Department of the Interior
Bureau of Land Management

CHUGACH REGION LAND STUDY AND REPORT

Report to Congress

December 2022

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EXECUTIVE SUMMARY

Section 1113 of Public Law 116-9, the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act or Act) directed the Secretary of the Interior (Secretary) to coordinate with the Secretary of Agriculture and to consult with the Chugach Alaska Corporation (CAC) in conducting a study of land ownership and use patterns in Alaska's Chugach Region. The Dingell Act directs the Secretary to assess the impacts caused by split-estate ownership patterns, in view of Federal acquisitions under the Habitat Protection and Land Acquisition Program (Program), on the Chugach Region, the CAC, and CAC land. The Act further requires the Secretary to provide recommendations for possible land exchange options, as well as any other recommendations, to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives with a report describing the results of the study.

Section 1113 of the Act reads specifically as follows:

(a) Definitions.--In this section:

(1) CAC.--The term ``CAC'' means the Chugach Alaska Corporation.

(2) CAC land.--The term ``CAC land'' means land conveyed to CAC pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) under which--

(A) both the surface estate and the subsurface estate were conveyed to CAC; or

(B) (i) the subsurface estate was conveyed to CAC; and

(ii) the surface estate or a conservation easement in the surface estate was acquired by the State or by the United States as part of the program.

(3) Program.--The term ``program'' means the Habitat Protection and Acquisition Program of the Exxon Valdez Oil Spill Trustee Council.

(4) Region.--The term ``Region'' means the Chugach Region, Alaska.

(5) Study.--The term ``study'' means the study conducted under subsection (b)(1).

(b) Chugach Region Land Exchange Study.--

(1) In general.--Not later than 1 year after the date of enactment of this Act, the Secretary, in coordination with the Secretary of Agriculture and in consultation with CAC, shall conduct a study of land ownership and use patterns in the Region.

(2) Study requirements.--The study shall--

(A) assess the social and economic impacts of the program, including impacts caused by split estate ownership patterns created by Federal acquisitions under the program, on—

(i) the Region; and

(ii) CAC and CAC land;

(B) identify sufficient acres of accessible and economically viable Federal land that can be offered in exchange for CAC land identified by CAC as available for exchange; and

(C) provide recommendations for land exchange options with CAC that would—

(i) consolidate ownership of the surface and mineral estate of Federal land under the program; and

(ii) convey to CAC Federal land identified under subparagraph (B).

(c) Report.--Not later than 18 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report describing the results of the study, including--

(1) a recommendation on options for 1 or more land exchanges; and

(2) detailed information on--

(A) the acres of Federal land identified for exchange; and

(B) any other recommendations provided by the Secretary.

I. BACKGROUND

On March 24, 1989, the oil tanker *Exxon Valdez* ran aground in Prince William Sound, Alaska, spilling 11 million gallons of oil and inflicting significant damage to the area's natural resources. The civil settlement funds paid by Exxon to the United States (U.S.) and State of Alaska (State) were used to establish the *Exxon Valdez* Oil Spill Trustee Council (EVOSTC) and to develop the Habitat Protection and Acquisition Program (Program). Through the Program, the EVOSTC provided funds to the State and the U.S. to acquire land and interests in land deemed important for restoration values. Overall, the Program spent nearly 75% of the settlement to acquire 650,000 acres of land as protected habitat for injured resources and the services they provide. In the Chugach Region, nearly all the Program-eligible lands were owned by Alaska Native corporations.

The Alaska Native Claims Settlement Act of 1971 (ANCSA) defined twelve geographic regions of Alaska and provided for the establishment of Alaska Native corporations. Chugach Natives, Incorporated (CNI), now known as Chugach Alaska Corporation (CAC), formed in 1972 as the regional corporation representing Indigenous Alaskans in the Chugach Region. Five villages within the Region also formed corporations, each representing the residents of an Alaska Native Village recognized under ANCSA: Chenega Corporation, The English Bay (Nanwalek) Corporation, The Eyak Corporation, Port Graham Corporation, and The Tatitlek Corporation. In accordance with the entitlements outlined in ANCSA, each corporation selected and received title

to lands within the Chugach Region. Under ANCSA section 14(f), where a Native Village corporation selects and receives title to the surface, the regional corporation receives title to the subsurface, resulting in split-estate ownership. Regional corporations can also select additional lands and receive title to the surface and subsurface, or the "full fee" estate.

To provide restoration and rehabilitation for the natural resources and ecosystem services damaged in the *Exxon Valdez* Oil Spill, the Program entered into land sales agreements with four Native Village corporations (all except Port Graham) in which the U.S. and the State acquired title to the surface of some lands, which included a conservation easement for the government entity not acquiring fee title, and acquired conservation or timber easements on other lands where the corporations retained title. Of the subsurface estate conveyed to the CAC under the formula in ANCSA, approximately 241,000 acres are overlain by easements established by the Program.

At the time of the Program acquisitions, many participating corporations viewed the Program as a way to provide financial support and long-term value for shareholders, their descendants, and a broad spectrum of community services, while also protecting their ancestral lands and preserving traditional lifeways. Affected shareholders approved the land packages with votes ranging from 81-88% in favor. Over time, some representatives and others have reported negative consequences from the Program, including loss of access to lands and resources, increased public use and access, and impacts to culturally significant areas and activities.

II. STUDY AND REPORT TO CONGRESS

In response to the Dingell Act, the Bureau of Land Management (BLM) conducted a study of land ownership and use patterns in the Chugach Region, including an assessment of the social and economic impacts of the Program on the Region and on the CAC and its land (Socioeconomic Assessment, Appendix A). As directed by Congress, the study identifies accessible and economically viable Federal lands that could be exchanged with the CAC for lands it identified as available, and recommends exchange options that would consolidate ownership of the surface and mineral estate of Federal land under the Program (Potential Lands Identified and Recommended for Possible Exchange or "Recommendations," Appendix B). The report summarizes the study's

findings and recommendations, provides detailed information on lands identified for potential exchange, and offers additional recommendations to consider.

The Socioeconomic Assessment (Appendix A) examines how the EVOSTC Program acquisition of lands from four Alaska Native Village corporations established under ANCSA affected the Chugach Region and the CAC, including impacts from split-estate ownership patterns with overlapping Native, Federal, and State interests. The CAC owns the legally dominant subsurface underlying Program land interests and has the legal right to explore and develop its mineral resources, including through reasonable use of the surface. These rights exist regardless of the surface owner and, although the Program acquired the surface for the purpose of environmental recovery in non-development status, it did not acquire the CAC's development rights. The CAC's subsurface interest includes the right to use the surface if it constitutes reasonable use in the development of subsurface resources. Thus, the acquisition of the CAC subsurface that underlies federally owned surface would perfect the conservation of the surface, which is the purpose of the Program.

Due to the differences in relationships, mandates, and expectations between various landowners, where the U.S. owns the surface estate, the process of defining "reasonable" surface access to subsurface resources may be less favorable to the CAC than negotiating access with another landowner. The CAC also owns the full-estate on some lands adjacent to and affected by Program-acquired land interests. In the one known instance where such lands are not coastally accessible and permission to cross adjacent Program-acquired land may be needed, the CAC would need to negotiate with the Federal land manager, the State as the conservation easement holder under the Program, and the Native Village corporation as the holder of a reversionary interest.

The study identifies sufficient acres of accessible and economically viable Federal land that could be offered in exchange for lands identified by the CAC as available for exchange to provide a range of options in the Recommendations (Appendix B). Based on preliminary estimated valuations, the identified sufficient acres of Federal land are expected to meet or exceed that which might be included in an equal value land exchange in order to provide choice, options, and sufficiency for a future land exchange. The Federal agencies together identified approximately

26,930 acres of accessible and economically viable land: the BLM identified approximately 1,200 acres, United States Forest Service (Forest Service) identified approximately 24,981 acres, and National Park Service (NPS) identified approximately 750 acres. The assessment did not include an opportunity for public review and comment with respect to the public resource values of the lands identified in the study or the impact of the Program on the Chugach Region.

While the report does not specifically identify what lands should be received in an exchange, the Department concurred with the Thompson Pass parcel identified by the BLM as accessible, economically viable, and otherwise appropriate for an exchange. The parcel is located along the Richardson Highway, approximately 25 miles from Valdez, Alaska, and is adjacent to a popular recreational area which may be conducive to commercial development. The CAC also identified the parcel as desirable in an exchange.

The report outlines alternatives to exchange, as well, including a purchase offer or the formation of a property account, like Congress created in the past to settle the Cook Inlet Region, Inc.'s land claims in the 1970s. A similar approach would allow the CAC to designate the lands it seeks to divest of the lands it has identified, and the appraised value of those lands could be used to purchase Federal properties determined to be excess property by the General Services Agency. Another option could be for the CAC to wait for more lands to become available as the BLM continues to adjudicate selections under the Alaska Statehood Act and ANCSA. Selected lands are encumbered from exchange until the entitlements are satisfied, unless the selection is voluntarily relinquished.

ABBREVIATIONS AND ACRONYMS

Act	John D. Dingell Jr. Conservation, Management, and Recreation Act of 2019
ADF&G	Alaska Department of Fish and Game
ADOLWD	Alaska Department of Labor and Workforce Development
AES	Alaska Earth Sciences
AKDNR	Alaska Department of Natural Resources
ANCSA	Alaska Native Claims Settlement Act of 1971
ANILCA	Alaska National Interest Lands Conservation Act
AO	Authorized Officer
ARDF	Alaska Resource Data Files
BLM	Bureau of Land Management
CAC	Chugach Alaska Corporation
CE	conservation easement
CEQ	Council on Environmental Quality
Chenega	The Chenega Corporation
Chugach Region	geographic region represented by Chugach Alaska Corporation and its Alaska Native village corporations
CIRI	Cook Inlet Region, Inc.
CNI	Chugach Natives, Inc.
CSIS	Community Subsistence Information System
DOI	United States Department of the Interior
EA	environmental assessment
EARMP	East Alaska Resource Management Plan
EMPSi	Environmental Management and Planning Solutions, Inc.
English Bay	The English Bay Corporation
ESA	Endangered Species Act
EVOS	*Exxon Valdez* Oil Spill
EVOSTC	*Exxon Valdez* Oil Spill Trustee Council
Eyak	The Eyak Corporation
FLPMA	Federal Land Policy and Management Act of 1976
Forest Service	United States Forest Service
FWS	Fish and Wildlife Service
G	Gram
GIS	Geographic Information System
GSA	General Services Agency
IC	Interim Conveyance
Lbs	Pounds
LWCF	Land and Water Conservation Fund
MILS	Mineral Industry Location System
MRDS	Mineral Resources Data System
Mt	metric ton
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act

NOEP	Notice of Exchange Proposal
NPS	National Park Service
Oz	Ounce
Ozt	troy ounce
PLSS	Public Land Survey System
Ppm	parts per million
Program or HPP	*Exxon Valdez* Oil Spill Trustee Council Habitat Protection and Land Acquisition Program
RMP	resource management plan
ROW	right-of-way
State	State of Alaska
Subsurface	Subsurface or mineral estate
Surface	surface estate
T&C	Terms and Conditions
TAPS	Trans-Alaska Pipeline System
Tatitlek	The Tatitlek Corporation
U.S.	United States of America
USDA	United States Department of Agriculture
USGS	United States Geological Survey
WO or HQ	BLM Washington Office or Headquarters

REPORT TO CONGRESS

Section 1113 of Public Law 116-9, the John D. Dingell, Jr. Conservation, Management, and Recreation Act

I. BACKGROUND

For thousands of years, since the retreat of the last ice age, the Indigenous Peoples of the Chugach Region traveled throughout the Copper River Delta and Prince William Sound by qayaq, anyaq, canoe, and networks of mountain trails to access abundant fish and wildlife resources year-round. Seasonal camps and settlements led to independent Tribal territories, each named after a principal village or unique geographical feature: the Nuchek People, the Shallow Water People, and those from Port Gravina, Tatitlek, Kiniklik, Chenega, and Montague Island.

Russian explorers arrived in the late 1700s and forced the Indigenous Eyak and Sugpiaq to harvest sea otter pelts and assimilate to Russian culture and customs, which over time established a vibrant and blended traditional heritage in the Region. After Russia sold its occupancy rights in the Alaska Territory to the U.S. in 1867, competitive American enterprises continued the fur trade well beyond what the ecosystem could sustain, resulting in a Federal moratorium from 1910-1940. Russian priests, fur traders, and year-round employment in the commercial fishing industry drew Native People from their villages to Alexandrovsk (Nanwalek) and Port Graham (Paluwik).

Resource development and strategic militarization dominated the regional cash economy in the early part of the 20th century and led to a large influx of non-Native settlers into Prince William Sound. In March of 1964, the magnitude 9.2 Good Friday earthquake struck southcentral Alaska, causing underwater avalanches, island uplifting, and tsunamis in Prince William Sound. A 70-foot wave destroyed the Village of Chenega, taking 23 of its 76 residents. Many survivors chose to move the village to Tatitlek, which had survived the quake with only minor injuries. The new Village of Chenega Bay was established in 1984.

In March of 1989, the oil tanker *Exxon Valdez* ran aground on Bligh Reef about 20 miles southwest of Tatitlek, spilling 11 million gallons of oil and inflicting significant damage to the area's natural resources. Bligh Island, which had protected Tatitlek from open water tsunamis during the

earthquake almost exactly 25 years earlier, was noticeably oiled, as were coves and shorelines near the new Village of Chenega Bay. Many of the most heavily oiled beaches were adjacent to Chenega Corporation lands selected for their cultural and subsistence value, which could no longer be expected to support the resettled community's wellbeing and security in the same ways. Nanwalek and Port Graham residents were similarly dependent on the lands and resources affected by the spill, and a post-spill employment boom lasted less than a year. As part of the land claims settlement, both communities selected traditional lands important for subsistence and the lands occupied by their ancestors, where prehistoric villages were located less than a century earlier.

The *Exxon Valdez* Oil Spill Trustee Council (EVOSTC) approached the Port Graham and English Bay (Nanwalek) corporations to consider selling Native lands within the boundaries of Kenai Fjords National Park as part of its new Habitat Protection and Acquisition Program (Program). The English Bay Corporation Board agreed to sell 32,000 acres of its remote inholdings, reserving a right of access for subsistence and placing a portion of the sale into a trust fund supporting a cultural resources program in partnership with the National Park Service.

The EVOSTC similarly negotiated with multiple Native Village corporations that owned up to 125,000 surface acres each. Corporation representatives identified themselves as willing sellers of vital habitat, with at least four corporations planning to log the lands if they could not first find a buyer for the property. The EVOSTC chose not to enter negotiations for purchase of those lands at the time, hoping to develop more clear guidelines for acquisition. By 1994, EVOSTC had developed the Program and process by which it would purchase property interests.[1]

Over the years following its creation in 1994, the Program acquired various interests in lands from Native Village corporations, which had received the surface pursuant to the Alaska Native Claims Settlement Act (ANCSA).[2] In most cases, ANCSA's split-estate framework meant that where a Native Village corporation was conveyed the surface, the relevant Regional corporation received

[1] The Habitat Protection Process was described in the Restoration Framework Supplement published by the EVOSTC in July of 1992 and offered for public review and comment. The process was also described in the Draft Restoration Plan, Summary of Alternatives for Public comment (April 1993), and in the Supplement to the Draft Restoration Plan (June 1993). Public comments in support of the habitat protection process were extensive. On January 31, 1994, the Council adopted the Resolution to Proceed with the Habitat Protection Program.
[2] 43 U.S.C. §§ 1601 et seq.

the associated subsurface.[3] (See Appendix C, Alaska Native Lands and the Alaska Native Claims Settlement Act (ANCSA): Overview and Selected Issues for Congress, for more information and background on split-estate.) Of the five Native Village corporations in the Chugach Region, four chose to sell surface lands or interests in the form of a conservation easement or a timber easement to the Program. During the same period, the Chugach Alaska Corporation (CAC) chose to not sell its subsurface to the Program.

Generally, where the U.S. acquired the surface pursuant to the Program, the State holds a conservation easement, and where the State acquired the surface, a conservation easement is held by a Federal land management agency. Although the conservation easements generally prohibit surface development, with limited carve-outs and exceptions, the easements also explicitly recognize separate subsurface rights, which were not acquired: "(N)othing herein shall be deemed to pertain to, affect, expand or limit the rights of the subsurface owner to utilize that estate in accordance with applicable law." (See Exhibit 1, English Bay Conservation Easement, page 4.)

The CAC requested help from Congress to address its concerns that Program acquisitions have harmed its ability to access and develop its lands. In 2019, Congress passed the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act) to require an assessment of the impacts of the Program through the Chugach Region Land Exchange Study, as well as this Report to Congress summarizing the Study and offering recommendations, including exchange options.

II. SUMMARY OF THE CHUGACH REGION LAND EXCHANGE STUDY

The Chugach Region Land Exchange Study is broken out into two documents. First, the Socioeconomic Assessment (Appendix A) analyzes the social and economic impacts of the Program and its land acquisitions where ANCSA created a split estate on the Chugach Region, the CAC, and CAC's lands. The Bureau of Land Management (BLM) contracted with Environmental Management and Planning Solutions, Inc. (EMPSi) for a social and economic impact assessment of the Program. Second, the Recommendations (Appendix B) portion of the Study identifies

[3] The term "subsurface" as used will generally be synonymous with "mineral estate" unless otherwise noted.

Federal lands that can be made available for exchange and options that would consolidate ownership interests in Program lands.

A. SUMMARY OF THE SOCIOECONOMIC ASSESSMENT

EMPSi developed the Socioeconomic Assessment on behalf of the BLM with assistance from the CAC. The U.S. Forest Service (Forest Service), National Park Service (NPS), and U.S. Fish and Wildlife Service (FWS) later reviewed and assisted the BLM in refining the document. The Socioeconomic Assessment discusses at length the demographics, history, land ownership and management, and physical characteristics of the Chugach Region, and the direct and indirect impacts of the Program on Alaska Native corporations and their regional land base. In researching the information, EMPSi attempted to contact key information holders and members of the Alaska Native corporations and Villages in the Chugach Region to obtain direct information regarding the impacts of the Program. EMPSi did not contact other regional stakeholders, such as city governments, the State, the EVOSTC, non-governmental organizations, industry groups, or chambers of commerce.

1. IMPACTS TO THE REGION

When acquiring lands, the Program tried to be sensitive to the individual needs of each Native Village corporation and negotiated accordingly to the extent possible. Each acquisition was subject to shareholder approval and generally received overwhelming support. The acquisitions included a broad range of conditions, such as retention of subsistence rights on some lands, areas of exclusive shareholder access/prohibition of public access, retention of cultural resources, lands for shareholder homesites, and areas set aside for small-scale economic development.

The direct monetary payments for the land provided the most easily quantifiable benefit to the four corporations that participated in the Program, which received a combined total of $132.4 million in exchange for approximately 241,000 acres of surface estate or other land interest. These payments provided funds for the corporations to meet community member needs and develop economic opportunities with a reduced land base, to distribute dividends to shareholders, and to set up trust funds to provide for long-term benefits and maintain cultural connections to the land.

Some corporations were able to leverage a portion of the proceeds as capital to pursue other business development ventures, including commercial real estate, tourism, government contracting,[4] construction, and other professional services. Some viewed the Program as a means of generating income for the communities that did not require logging operations on the land. Following the devastating impacts of the *Exxon Valdez* Oil Spill, the Program's purchase of lands assisted the Villages in shifting from an economic model based primarily on timber production to a more diverse portfolio of revenue-generating programs. Remote camps and lodges surrounded by protected natural habitat have become a significant draw for Alaska tourism, and retention of lands for homesites and small-scale economic development has additionally benefited the Region.

The Program has also provided indirect benefits to the Region beyond monetary investment. As stipulated in the conservation easements, property acquisitions increased public access for recreational activities, offering benefits to the tourism industry and local support businesses. Salmon streams and lakes that benefit from the Program's habitat preservation goals contribute to the sustainability of wild salmon populations and the salmon-driven economy of the Region.

Interviewees noted negative impacts from the Program, as well. Sale of the land and land interests reduced the amount of Native-owned land in the Region and residents' ability to control how important lands and resources are managed in long-term restoration. Program acquisitions accompanied increases in public use, management costs to address trespass and damage concerns, and intensive use patterns associated with tourism, guided hunting, and other public access when the lands entered public ownership, often as part of a national park, national forest, or other destination. Heightened public awareness brought by the *Exxon Valdez* Oil Spill may have also contributed to increased public use and interest in visiting the area, compounding those impacts.

a. Impacts to the CAC and CAC lands

In interviews, the CAC representatives identified two major categories of impacts to the CAC and its lands. First, that Program acquisitions devalued and frustrated access to their subsurface estate by creating a need to comply with the requirements for public conservation lands and to negotiate

[4] Alaska Native corporations qualify as socially and economically disadvantaged small businesses under Section 8(a) of the Small Business Act to receive certain preferences in Federal contracting.

with multiple interest owners. Second, that the nature of the Program fosters a heightened public antagonism towards all development activity, regardless of ownership interest, making it more expensive, time-consuming, and controversial to exercise subsurface development rights. The Assessment did not materially compare the situation to other regional corporations operating on split-estate lands outside the Region that are not affected by the Program.

b. Description of CAC lands

The CAC holds title to approximately 378,000 acres of full-fee estate and has a remaining entitlement of approximately 10,000 full-fee estate acres under the ANCSA. These full-fee estate lands include lands the CAC received pursuant to a settlement agreement with the U.S. in the CNI Agreement (Appendix D). The CAC also holds title to approximately 550,000 acres of subsurface, of which approximately 241,000 acres are overlain by a combination of conservation easements (228,003 acres) or timber easements (28,968 acres) established under the Program. The Assessment and Recommendations break down the location of the acres of Program lands within CAC lands and **Table 1** illustrates the ownership interests in the land.

Table 1. Chugach Region - Land Management Overview

Land Ownership	Total GIS Surface Acres
U.S. Forest Service	4,188,200
U.S. National Park Service	1,959,000
State of Alaska	1,378,500
Bureau of Land Management	1,116,700
U.S. Fish and Wildlife Service	121,400
Local Government	29,200
Chugach Alaska Corporation	370,000
Chenega Village Corporation	39,200
English Bay Village Corporation	44,700
Eyak Village Corporation	91,100
Port Graham Village Corporation	100,000
Tatitlek Village Corporation	103,100
Private	16,600
Alaska Native Allotments	9,000

Other Federal[1]	600
Military[2]	1,600
Water[3]	235,400
Total	**9,804,300**

Within the subsurface that is overlain by or adjacent to Program acquisitions, the CAC indicated interest in 104 mineral occurrences in the Chugach Region. Of these, numeric estimates of quantity and grade were available for only 17 mineral occurrences. With limited information and data available at this time, it is not possible to determine whether development of any of these deposits would be economically feasible regardless of surface ownership. To date, there has been no development of these subsurface resources.

c. Impacts to CAC lands

The Program expressly acquired the surface or a conservation easement in the surface from the Native Village corporation subject to the CAC's dominant rights as the subsurface owner to "make such use of the surface as is reasonably necessary to remove the minerals."[5] Reasonable use of the surface to access the mineral estate cannot be denied. The agreements and instruments establishing the easements, as well as the associated deeds, included language acknowledging the subsurface owner's rights and stating that the land transactions neither diminish nor increase them.

The law does not establish a method for determining "reasonable use" of the surface by an ANCSA subsurface owner except that it may be determined by agreement between the owners of surface and subsurface.[6] As a result, the CAC may need to negotiate with the Federal agency managing the surface acquired through the Program, the State agency managing its conservation easement interest, and the Native Village corporation regarding its reversionary interest, to determine "reasonable use" of the surface when the CAC considers exploration or development of its subsurface. Depending on the details of a particular project, various State and Federal regulations can apply regardless of surface ownership (e.g., State permits under Section 402 and Federal

[5] *Norken v. McGahan*, 823 P.2d at 628 (Alaska 1991). None of the Program acquisitions were within the village boundaries, thus no prior consent of the surface landowner is required. See 43 U.S.C. § 1613(f); *Leisnoi v. Stratman*, 154 F.3d 1062 (9th Cir. 1998).
[6] *Leisnoi*, 154 F.3d at 1071.

permits under Section 404 of the Clean Water Act). The CNI Agreement also commits the CAC to engage in responsible resource development planning in consultation with Federal land managers and considering the views of the public.[7] Other rules and procedures, however, may be triggered by the nature and terms of the Program acquisitions.

For instance, for the Port Gravina Quarry project—to date, the only development the CAC has proposed for subsurface underlying Program interests—the CAC and the Forest Service agreed to determine "reasonable use" of the Federally managed surface through a public process that included an environmental assessment. According to representatives of the CAC, working with the Forest Service as the surface owner in Port Gravina caused additional expenses that would not have existed had the surface owner been the original Native Village corporation, including over $265,000 in legal, permitting, and project management costs. The public process undertaken for the Port Gravina project successfully avoided litigation over what constitutes "reasonable use" of the surface or by interested third parties. In negotiating public use with the CAC through public environmental review, the Forest Service sought to mitigate any impact on the CAC's development timeline for the project. The process took approximately 18 months, during which time the Forest Service frequently communicated with CAC representatives ensuring that CAC's development timeline was not affected. Even so, the CAC estimates Port Gravina's development costs were 20-25% higher and operating costs 3-5% higher than they would have been without the Program.

Unlike when the government owns the surface, negotiations with a Native Village corporation and other fee owners do not rely upon a defined regulatory scheme where the government typically bears the lion's share of costs associated with the process. This lack of defined process can also contribute to delay in negotiating the terms and litigation risk should the parties disagree. While litigation is also possible where a Federal agency must comply with the National Environmental Policy Act (NEPA), in that case the agency would bear the main burden and cost of defending the "reasonable use" determination.

[7] The Port Gravina project area involved both Program-acquired surface (and associated conservation easement) above CAC-owned subsurface and adjacent to CAC owned full-estate lands. The full-estate lands remain subject to the provisions of the CNI Settlement Agreement, in particular paragraph 18; "In accordance with the land management policies adopted by CNI, resource planning shall be developed and implemented in cooperation and consultation with the appropriate state and federal agencies that have land management and resource planning responsibilities in the Chugach Region. CNI, in its planning, will give due regard and consideration to views expressed by interested groups and the public and will plan in accordance with sound land management and resource development goals."

In some cases, the Program established conservation easements on lands adjacent to full-estate lands owned by the CAC. While the State holds these conservation easements when the U.S. acquired the surface, in some instances the U.S. holds the easements where the Native Village corporations retained surface ownership (Appendix A, page 31.) The Assessment identified one instance where access over a Program conservation easement may be needed to develop a mineral occurrence on adjacent CAC land.

Prior to the Program acquisitions, the CAC would have had no right of access across Native Village corporation surface to the CAC's adjacent fee lands unless agreed upon between the corporations. Sections 1110(b) and 1323(a) of the Alaska National Interest Lands Conservation Act (ANILCA) require that a Federal land managing agency provide adequate and feasible access to inholdings across public lands, subject to reasonable regulation. Granting access across a conservation easement may be more complicated because the covenants often prohibit certain means of access, such as use of motorized vehicles or road construction, which the CAC could have secured through negotiations without those covenants. While the CAC could also negotiate access with the State holder of a conservation easement and the Native Village corporation holder of the reversionary interest, even if all parties agree to modify a conservation easement, doing so would involve administrative processes requiring time and public engagement.

Importantly, Program acquisitions do not affect valid existing rights. If any recognized means of access to CAC lands existed prior to the acquisition by the Program, that means of access continues upon the establishment of the conservation easements. For example, public access easements across Native-owned lands established under section 17(b) of ANCSA are not affected, nor are any prior established rights-of-way agreed to between the corporations.

Finally, 28,968 acres of Program interests overlying CAC subsurface are only timber easements. These easements prohibit a Native Village corporation from engaging in or allowing commercial timber harvesting on the protected property, but the corporation otherwise reserves, retains, and continues to have all legal rights and privileges as the landowner. As such, the restrictions of the timber easement only impact a very specific use of the surface and should not affect any access

rights held by the CAC as a subsurface owner. (See Exhibit 2, Eyak Timber Conservation Easement, page 3.)

d. Overall impacts to the CAC and CAC lands due to Program acquisitions

The CAC has the legal right to access its subsurface regardless of the surface owner, but only to the extent of what is considered "reasonable use" in agreement with the surface owner(s), whether that entity might be a Native Village corporation, the State, and/or the U.S. The Assessment illustrates that the CAC and Federal surface owners have already followed an agreed-upon process to negotiate reasonable use for one subsurface exploration and development project, with some evidence the Program acquisitions increased CAC's burden, litigation risk, and costs but with no similar non-acquisition or timber easement-only projects to compare it to in the Region.

To date, the Port Gravina project discussed above has been the only attempt to develop a project on lands partially overlain by Program interests. In that case, the Forest Service and the CAC successfully negotiated a method to determine reasonable use through analysis in an environmental assessment and avoided litigation. The CAC has identified other mineral occurrences where it has interests but has not taken any action to fully explore or develop those occurrences. The Assessment reviewed these mineral occurrences and found that while economically significant quantities of minerals may exist in the ground, the data are insufficient to determine if any prudent miner would actually develop a profitable mine where known mineral occurrences exist, regardless of the Program and surface ownership.

2. Overall Impacts from Program Acquisitions in the Chugach Region

Monetary payments from the Program continue to have a positive effect through community investment, economic diversification, and cultural revitalization and resource protection. Program acquisitions benefit habitat conservation and secure public access for recreation and travel. These positives are tempered by the loss of a regional land base and control over management and use decisions which Native Village corporations have on the lands they retained. The Assessment did not investigate other positive impacts anticipated for the Chugach Region, like increases in tourism, job creation, and other ways to maximize the benefits realized by the Program's restoration success. Likewise, there was insufficient information to assess or quantify negative

impacts from Program acquisitions by, for example, comparing the regulatory burden, public expectations, time, and expense for projects under more than one applicable ownership scenario.

B. IDENTIFICATION OF LANDS AVAILABLE FOR EXCHANGE

The Act directs the Secretaries to identify sufficient acreage of accessible and economically viable Federal land that can be offered in exchange for CAC land identified by the CAC as available for exchange. The CAC identified approximately 225,000 acres as available for exchange, most of it subsurface overlain by Program acquisitions; the CAC's subsurface at Port Gravina, where the corporation is currently developing a gravel quarry, was not included.

In determining sufficient acres that can be offered in exchange for these lands, the Federal agencies considered both the subsurface acres the CAC identified as available and the approximate relative value of those acres to the Federal surface and full-fee acres the agencies identified as available to offer for exchange. All of the CAC lands identified for exchange are subsurface lands, which are generally lesser property interests than the accessible, economically viable, and predominantly full-fee estate lands identified by the government. Past exchanges and land purchases demonstrate that subsurface is typically a small fraction of the value of the full-fee interest or surface interest in the same land and is of even lesser relative value where there is no confirmed mineral value. The Federal lands being offered were considered more valuable per acre than the majority of lands within the Chugach Region. Differences in views as to the relative value of the respective lands are to be expected in exchange discussions without a specific appraisal.

1. BLM: POTENTIAL LANDS IDENTIFIED FOR POSSIBLE EXCHANGE

BLM identified two blocks of land potentially available for a possible exchange:

- Thompson Pass: Approximately 1,200 acres within Township 9 South, Range 2 West, Copper River (full-estate).
- Bering Glacier: All unencumbered BLM-administered lands within the Chugach Region, specifically sixteen townships located within the Copper River Meridian between the Bering Glacier and the Wrangell–St. Elias National Park and Preserve. The identified lands contain approximately 215,000 acres (full-estate). The lands are not accessible or economically viable, and so do not meet the terms of the Dingell Act.

The CAC identified the two sections at Thompson Pass for economic feasibility and reasonable accessibility to the Richardson Highway. The State relinquished its selection of the two Thompson Pass parcels on the condition that the BLM exchange the lands with the CAC and requested BLM reserve a public land access easement through the parcels to other public lands. If the exchange does not occur, the selections will remain with the State. The BLM issued the decision on January 28, 2022, to make the parcels available for disposal, including in an exchange with the CAC.

The Bering Glacier block encompasses all BLM-administered land within the Chugach Region that is not encumbered by a selection under the ANCSA or the Alaska Statehood Act and is not otherwise reserved for public purposes by a Public Land Order. The BLM included this land to provide more flexibility for Congress if it chooses to direct an exchange, as all the land identified as potentially available by Forest Service and NPS have existing public purpose designations. While the lands could be offered in an exchange, they could not be identified as accessible and economically viable under the terms of the Act. The CAC did not request these lands and have communicated they are not interested in acquiring them.

2. Forest Service Lands Identified

The Forest Service identified four blocks of economically viable and accessible land, predominantly fee estate, including:

- Drier Bay: Approximately 2,996 surface acres within Township 3 North, Range 10 East, Seward Meridian. This land would convey to the CAC the surface of land in which it obtained the subsurface pursuant to the CNI Settlement Agreement.
- Bering River: Approximately 7,876 full fee acres in Townships 17 and 18 South, Ranges 7 and 8 East, Copper River Meridian.
- Snow River: Approximately 11,462 full fee acres in Township 2 North, Ranges 1 and 2 East, Seward Meridian.
- Hinchinbrook Island: Approximately 2,646 acres in Townships 17 and 18 South, Range 8 West, Copper River Meridian (full-estate).

The CAC identified the Drier Bay and Bering River blocks as being accessible and economically viable. The Snow River block was included by the Forest Service due its location

adjacent to road-accessible lands owned by the CAC. Altogether, the Forest Service identified approximately 25,116 acres from the Chugach National Forest.

3. NPS Lands Identified

NPS identified two parcels of economically viable and accessible land potentially available for a possible exchange, including:

- Taan Fjord: Approximately 450 acres within Township 21 North, Range 24 East, Copper River Meridian.
- Kageet Point: Approximately 300 acres within Township 21 North, Range 24 East, Copper River Meridian.

The CAC identified the Kageet Point parcel for economic reasons and both the Taan Fjord and Kageet Point parcels are coastally accessible and adjacent to lands already owned by the CAC. Kageet Point provides a vital public access point, containing a popular kayak launching and docking site, an airstrip, and the access point for a public easement to the Chaix Hills Trailhead and Chaix Hills Trail easements. In order to protect the public's interests, any conveyance of this land would need to be subject to public access easements.

III. OPTIONS AND RECOMMENDATION FOR A LAND EXCHANGE

The Dingell Act requires the Secretary to include in the report a recommendation on options for one or more land exchanges and detailed information on the acres identified as available for exchange.

A. EXCHANGE PROCESS

In Alaska, the BLM conducts land exchanges under three primary authorities: (1) Federal Land Policy Management Act (FLPMA);[8] (2) ANCSA;[9] and (3) ANILCA.[10] Congress has also used specific legislation to authorize targeted land exchanges. Unless otherwise directed, those Congressionally directed land exchanges generally follow the FLPMA process and procedures as explained in Appendix E. All three primary statutory authorities generally require land exchanges

[8] 43 U.S.C. § 1716.
[9] 43 U.S.C. § 1621(f).
[10] 16 U.S.C. § 3192(h)

to be equal in value, although non-equal values can be exchanged under ANCSA and ANILCA if the Secretary agrees that it is in the public interest for the appraised values to not be equal. The Secretary's determination of whether an exchange of lands of unequal value is in the public interest is reviewable by courts.

An example of where an exchange of unequal value may be in the public interest is where the government would receive lands considered to be low value when considering the highest economic use, but of high value as habitat for an endangered species. In this case, the public interest may allow the government to place a higher value on the land than a fair market analysis would otherwise consider acceptable to protect the endangered species. Where the land values do not equal, cash may be used to equalize the exchange, as well.

In addition to equal value requirements, many existing exchange authorities require the public interest be well served. The BLM regulations at 43 CFR 2200.0-6.6(b) define public interest considerations as protection of fish and wildlife habitat, cultural resources, watersheds, wilderness, and aesthetic values; enhancement of recreational opportunities and public access; consolidation of lands to improve development; and expansion of communities. The BLM must reserve any rights or interests that are needed to protect the public interest and may impose restrictions on the use of lands conveyed. Additionally, the intended use of the conveyed Federal lands should not conflict significantly with management of adjacent Federal and Indian trust lands.[11] The FLPMA and BLM regulations also require that land exchanges be located within the same state.[12]

Federal land exchanges, as explained in Appendix E and shown in **Figure 1**, require a feasibility report, draft agreement to initiate an exchange, and draft notice of exchange proposal (NOEP). The NOEP serves three purposes: (1) allow public participation and the ability to provide written comments or concerns about the exchange proposal; (2) notifies all authorized users and others who may have interests in or claims against the Federal and non-Federal land; and (3) provides

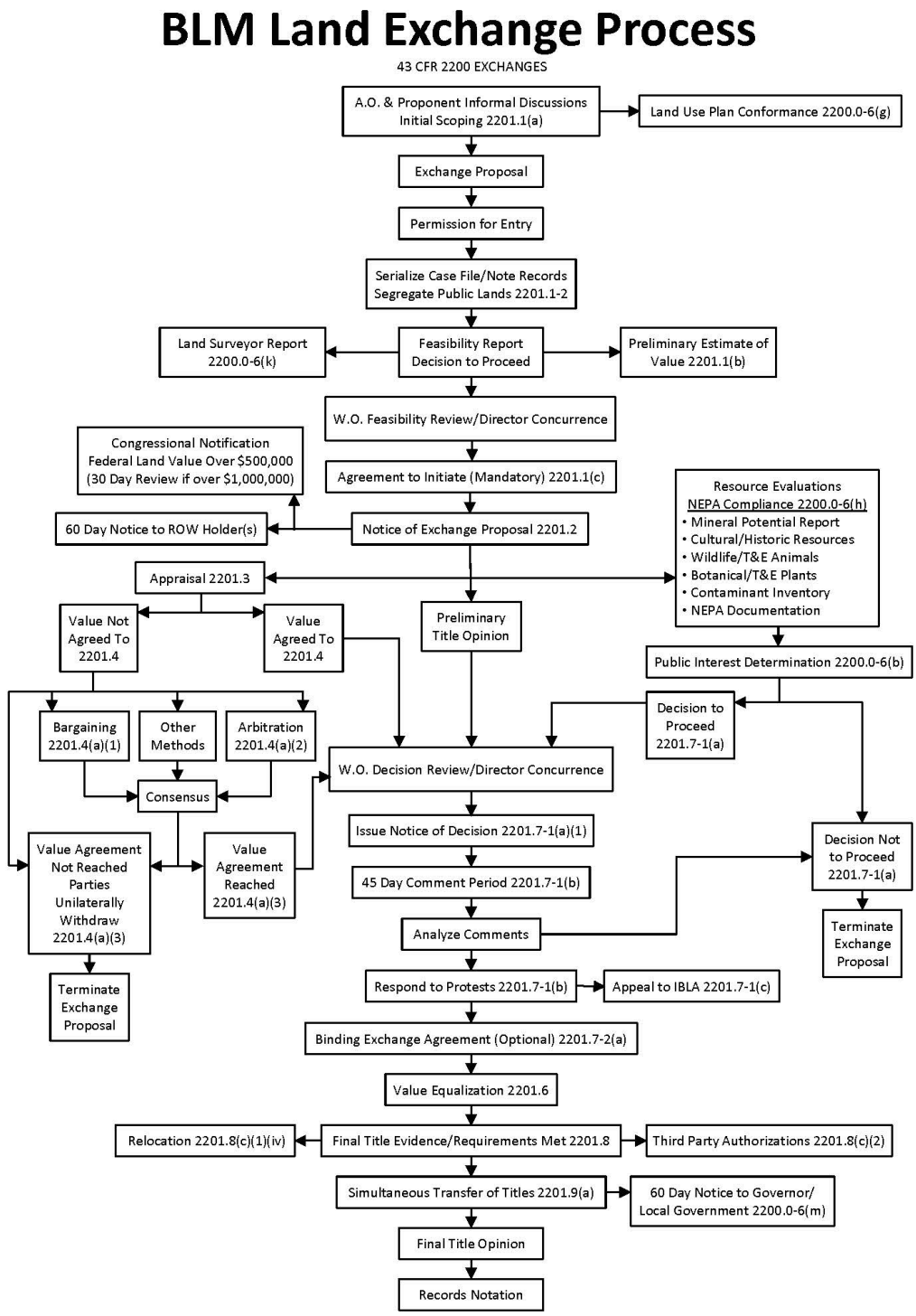
[11] 43 C.F.R. § 2200.0-6(b)(2)
[12] 43 U.S.C. § 1716(b); 43 C.F.R. § 2200.0-6(d). BLM's land exchange regulations apply to exchanges pursuant to ANILCA and ANCSA to the extent the regulation does not conflict with those statutes. 43 C.F.R. § 2200.0-8(c). Neither of those statutes explicitly allows for an exchange for land outside of Alaska, so 43 C.F.R. § 2200.0-6(d) would apply.

notice to State and local governments, and congressional delegations having jurisdiction over the land in the exchange proposal. Notice must be provided to the House and Senate Committees on Appropriations of any Federal land exchanges valued over $1 million and provide the Committee members 30 days to review the exchange.

In the course of the exchange, the agency will have to undertake extensive analysis to ensure that disposing of the land for the exchange does not harm any protected resource and would not convey any contaminated lands. The agency would need to undergo consultation to determine if the exchange could jeopardize any threatened and endangered species pursuant to Section 7 of the Endangered Species Act. Another consultation would be necessary to ensure historic properties are adequately protected under Section 106 of the National Historic Preservation Act (NHPA). Section 810 of the ANILCA will require the agency to review whether the disposal would restrict access to subsistence uses. If the exchange occurs under the FLPMA, the agency will need to comply with the NEPA. The agency will also have to confirm that the lands do not have contamination pursuant to Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act before the agency conveys the land. Taken together, the exchange action for any of the agencies involves a massive effort involving staff, time, and funding to ensure the exchange complies with all applicable statutory and regulatory requirements.

Figure 1 illustrates a high-level overview of the BLM exchange process. NPS and FWS exchange processes mirror much of BLM's. Appendix E provides more detail for the Department of the Interior agencies' processes and the Forest Service process, as well. The exchange process may take anywhere from a few months to many years, depending upon the complexity of the project.

Figure 1. BLM Land Exchange Process.



1. Federal budgetary impacts of exchanges

The contemplated exchanges are expected to have a significant budgetary and staffing impact on land management agencies tasked with completing the exchanges. The process involves appraisals, surveys, title work, consultations, environmental reviews, and other substantial costs and fees that apply to both the lands being acquired and disposed of that might not be readily ascertainable. The cost of conducting a land exchange varies depending upon the amount of acreage, the remoteness, and the legal complexities. Not only do specific services such as survey or appraisal have fees and costs attached, but the cost of labor for all Federal employees (and contractors) working on the exchange can be expensive. Exchanges involving small amounts of land and having little complexity or controversy will require several hundred hours of staff time in addition to the costs to appraise, survey, and conduct site inspections. The BLM, FWS, and NPS generally process less-complex exchanges within five years. Complex and/or controversial exchanges can take even longer, even 20-plus years in the case of a recent BLM exchange, with agency costs easily surpassing $1,000,000.

An exchange with any entity involves survey costs even if the proponent conveys previously surveyed lands to the U.S. The change to Federal land ownership can require boundaries to be re-surveyed, defined, and monumented. Moreover, in Alaska, the U.S. has been surveying only those lands that it knows have been or will be conveyed under one of the three major land laws in Alaska. Any lands leaving the U.S. in an exchange are unlikely to have a completed survey and will need to be surveyed before they can be patented.

Most surveys for lands conveyed pursuant to ANCSA within the Chugach Region were completed in 1977. A few remaining Interim Conveyances (IC) require survey for patenting and those should be completed in the next couple years. In most cases, Alaska Native corporations have been awarded Public Law 93-638 contracts for completing the work. Exchanges would necessitate additional and potentially repeat survey work, beyond the completed surveys for the corporation's existing land pattern and remaining entitlement. To reduce that burden on the U.S., corporations

could share in the costs of the new survey, if needed, in particular where it benefited from the contract for the initial survey of its own lands under a Public Law 93-638 contract.[13]

B. LAND EXCHANGE OPTIONS

1. DETAILED INFORMATION ON THE THOMPSON PASS PARCEL

The Thompson Pass parcel comprises 1,200 acres in Sections 5 and 6, Township 9 South, Range 2 West, Copper River Meridian, Alaska, near the city of Valdez, Alaska at approximately Mile 23 of the Richardson Highway. Specifically, the parcel is 0.4 miles east of the hairpin turn on the Richardson Highway and adjacent to a popular outdoor recreational known for its backcountry downhill skiing opportunities. These sections of land are sub-alpine with short willow and some dwarf birch. This block of land has no known mineral or timber resources nor any known mineral resources available. The BLM determined the land meets the economically viable principal based upon the CAC identifying the lands to be of economic interest. The parcel's close location to the Richardson Highway could allow commercial use of the land. Most businesses in the area operate seasonally, either in the winter or summer.

The State selected these parcels under the Alaska Statehood Act. The CAC approached the State requesting the State relinquish its selection. The State agreed to provide a conditional relinquishment of its selection with the stipulation that the lands will be conveyed to the CAC through an exchange and an easement for public access to State land would be reserved. If an exchange does not occur, the State will retain its selection.

Because the BLM identifies exchanges under existing authorities as discretionary actions, even under ANCSA or ANILCA, the BLM must be in conformance with its own resource management plans (RMP) when entering into an exchange. In developing an RMP, the BLM analyzes the lands it manages and, based on criteria described in FLPMA, identifies lands that may be available for disposal or exchange. In this case, the relevant plan, the East Alaska RMP (EARMP), did not include the two sections identified by the CAC as lands that the BLM would consider disposing

13 Public Law 93-638, also known as the Indian Self-Determination and Education Assistance Act authorizes Indian Tribes and Tribal Organizations (including Alaska Native corporations) to contract for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members.

of through an exchange. Additionally, the EARMP stated that exchanges would not be considered until completion of the State and ANCSA conveyances. Therefore, the exchange proposed by the CAC did not conform with the previous RMP.

A Notice of Intent to amend the RMP was published in the Federal Register on November 24, 2020. The proposed EARMP amendment, environmental assessment, and finding of no significant impact were made available to public on September 28, 2021, and the protest period ended on November 29, 2021. The EARMP amendment became effective on January 28, 2021, thereby making the Thompson Pass parcels potentially available for exchange under existing authorities.

IV. OPTIONS FOR CONSOLIDATING SPLIT-ESTATE OWNERSHIP

The Federal agencies have also reviewed other potential mechanisms aimed specifically at consolidating ownership in Program acquisitions which may provide important and more immediate benefits than using a land exchange. If the CAC is interesting in selling its subsurface interests back to the U.S., it would provide a simple mechanism to consolidate Federal ownership, reduce costs for both the Federal agencies and the CAC, and provide additional flexibility to the CAC to choose how to use those funds in the future. Alternatively, Congress could create a program like the land bank used to satisfy the Cook Inlet Region, Inc.'s (CIRI) land claims to allow the CAC to use the value of its subsurface to purchase Federal properties excessed by the General Services Agency (GSA), which will most likely be outside the Chugach Region. Finally, exchanges could be delayed until more land becomes available that has not been priority selected or designated for another purpose.

A. PURCHASE OF THE SUBSURFACE OR MINERAL ESTATE

A cash purchase of CAC land provides the most efficient option to consolidate Federal ownership and address impacts to the CAC's ability to develop its subsurface. Providing Federal agencies with the funds to purchase CAC's subsurface interests would enable the acquisition on agreeable terms. Some of the Federal lands the CAC identified in its May 2020 list of Properties Identified for Exchange Opportunity (Appendix F) include miscellaneous lands outside of the State, such as mineral estate in the National Forest System lands, strategic ports of call on the West Coast of the U.S., and lands in former Department of Defense sites in Hawaii and Guam. These lands could be

purchased with the proceeds of a cash sale, whereas parcels outside Alaska cannot be exchanged under existing authorities.

Federal purchase of the subsurface interests would also involve significantly less expense and staff time for the U.S. Like an exchange, the U.S. would need to complete an appraisal, inspect the land for contamination, and complete a title opinion before accepting the land. However, this process would only occur on the lands being acquired and there would be no administrative costs to complete due diligence including an appraisal, a Section 106 of the NHPA inspection for historical properties, or surveying the lands to be conveyed, like in an exchange. Likewise, the Federal agencies could avoid consultation under the Endangered Species Act or the NHPA, analysis under NEPA[14] and Section 810 of ANILCA for subsistence to review the decision to convey lands out of government ownership.

Finally, a purchase can potentially occur much quicker than a land exchange. The exchange processes described above adds significant time to the process and the potential for bottlenecks. The following sections describe two potential funding options to purchase CAC's subsurface interests.

1. Purchase by the Land and Water Conservation Fund

In remarks made in the U.S. House of Representatives on August 18, 2020, the late Congressman Don Young spoke in support of using the Land and Water Conservation Fund (LWCF) to consolidate ownership and management of split-estate interests that do not work for the respective owners. He specifically cited split-estate "such as that referred to in Section 1113, the Chugach Region Land Study," of the Dingell Act as an appropriate circumstance in which to use LWCF to consolidate Federal/private split-estate. The Federal agencies would be willing to work with the CAC and Congress to identify lands that might be acquired through the LWCF program to consolidate some, or all, of CAC's subsurface associated with surface conversation easements, or to equalize the value of property in an exchange. The CAC would have to choose to be a willing seller for this to occur.

[14] An exchange under ANCSA or ANILCA generally would not require the completion of a NEPA analysis but would still require the completion of the other outlined steps.

2. Congress Establishes a Fund for the Purpose of Acquiring CAC's Subsurface

If Congress intends that the Federal land management agencies will acquire CAC land identified as available for exchange, it could appropriate the funds needed to purchase the land. For instance, instead of directing the agency to conduct an exchange of properties potentially at a cost of millions of dollars to the government, it could designate a set amount for acquiring appraised property from the CAC.

B. CONGRESS ESTABLISHES A PROPERTY ACCOUNT

Although a somewhat different approach, there is precedent for fulfilling a portion of a regional corporation entitlement with a property account that allows the corporation to purchase surplus properties. In 1974, the CIRI, found itself in a situation similar to that faced by the CAC, a great many mountaintops and glaciers available for selection, and not much else.

The CIRI sued the Department in U.S. District Court and simultaneously began working with the Department and the State to find a solution. The three parties entered into a comprehensive agreement entitled *Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area*, as clarified August 31, 1976 (T&C). Because the T&C described a variety of novel ways to fulfill several of CIRI's entitlements under the ANCSA, it required legislation to implement. Section 12 of the Act of January 2, 1976, 43 U.S.C. 1611 note, ratified the agreement.

The T&C included among its provisions a pool of properties identified by the BLM and the GSA and offered to CIRI for conveyance. A portion of the CIRI's entitlement under Section 12(c) of the ANCSA was set aside for conveyances from the pool of properties, first as credits or "chits." The CIRI used the credits to purchase excessed Federal properties located in Alaska. Through several amendments to the legislation, the pool of properties evolved from "bidding chits" for Federal properties into a funded account by converting approximately 600,000 acres of CIRI's Section 12(c) entitlement to money (see Appendix H, The CIRI Story). The U.S. Treasury holds the account known as the Cook Inlet Property Account (Property Account).

The CIRI used the Property Account to purchase surplus Federal properties in Alaska and across the U.S. Surplus Federal properties include real property or personal property, or a combination thereof. Properties held in receivership or conservatorship were also available to the CIRI. The Property account provided the CIRI with flexibility to choose how to fill a portion of its entitlement outside the standard ANCSA process. The CIRI identified properties in which it was interested, attended GSA auctions where properties of interest were offered, and bid on those properties. The BLM-Alaska's involvement in instances where the CIRI was the successful bidder on out-of-state properties was limited to coordinating payment and tracking the account balance. With respect to in-state parcels, the BLM's involvement was more substantial depending on the type of parcel.

In this case, the CAC already owns the lands from which the Property Account would be created. To put this system in place, the government could designate the CAC's subsurface into blocks of land and have each block of land appraised. The CAC could then use the blocks of appraised land to trade for lands that become available through GSA disposals of excessed Federal properties. Unlike a land exchange, the costs of disposing the Federal land would occur regardless of the CAC's interest in the land since the land would have already undergone the GSA's determination that the property is excess. Unlike a purchase, the CAC would never receive money for its land and perhaps avoid any potential tax implications. In order to allow flexibility, the appraisals should be designated to be effective for an extended duration. Were the CAC to express interest in this option, legislation would be required.

C. CONDUCT AN EXCHANGE WHEN MORE LANDS BECOME AVAILABLE

An additional category of lands that could be offered to the CAC for a potential exchange, yet currently unavailable, would be the lowest priority State-selected lands within the Chugach Region. The State continues to maintain an outstanding land entitlement under the Alaska Statehood Act of approximately 5.2 million acres, with existing selections of over twice that amount or approximately 13 million acres. This exceeds the State's limit on over-selection in ANILCA section 906(f). The State prioritized its selections on a scale of 1 to 4, with Priority 1 identifying the State's most-desired lands and a Priority 4 identifying its least-desired lands. Based on the amount of acreage the State placed in each priority category, its remaining land entitlement

under the Statehood Act will be filled by all of its Priority 1 and Priority 2 land selections, and approximately 20% of its Priority 3 land selections.

Given the number of over-selections the State keeps on the record, none of the selected Priority 4 land will be conveyed to the State. Of this six-million-acre pool of Priority 4 lands, approximately 26,000 acres in the Chugach Region are BLM-managed lands.[15] Although the U.S. could reject the State selections on these priority lands, the Alaska Land Transfer Acceleration Act allows the State to reprioritize its land selections. Therefore, the U.S. would prefer to work with the State on a case-by-case basis if the CAC shows interest in taking title to any of the State's Priority 4 selections via an exchange. If the CAC does express interest, the BLM will request the State to relinquish any of those Priority 4 lands not reprioritized by the State.

The lands which are made available through this process are not designated to other purposes like the land identified by Forest Service and NPS which are within Conservation System Units pursuant to the ANILCA. As such, either by waiting for these lands to become available before considering an exchange or by acting more immediately after receiving the State's acquiescence to relinquish a selection, an exchange can occur which does not create more inholdings within Conservation System Units. This is the mechanism that was used to make the lands available at Thompson Pass and has that track record of success in this situation.

V. CONCLUSION

The BLM, Forest Service, NPS, and FWS coordinated in the preparation of this Report to Congress and the related documents including the Socioeconomic Assessment (Appendix A) and the Recommendations (Appendix B). The agencies met often over the two-year period while also communicating via email and Microsoft Teams chats and meetings. In addition, the agencies consulted periodically with the CAC in developing the Assessment and Recommendations (see Appendix G, Communication Timeline).

15 These lands appear to have no other encumbrance other than the State selection. However, each legal description will need a thorough land status review to ensure there are no other encumbrances that may be an impediment to an exchange, such as other competing selections or withdrawals.

The agencies' Alaska staff and leadership committed a significant amount of time and money in preparing the Study for Congress. Split-estate issues can present challenges for not only the Alaska Federal land management agencies, but for the agencies nationwide. The exchange process is lengthy and costly but may be worthwhile where the value to the public at large is comparable to the value to the CAC.

Finally, the Secretaries recommend the following with respect to the recommended option for a land exchange:

1. Use of existing exchange authorities or similar language can ensure the ability for full public participation. Public involvement will assist the Federal agencies in assessing those needs and meet the intent of Section 4105 of the Dingell Act.
2. Any exchange, regardless of the authority, can be based on equal value determined by appraisal or other than equal value, as determined by Congress or a designee.
3. That the CAC helps cover specific administrative costs of the exchange, especially as it relates to the costs of additional and/or redundant survey efforts.
4. That any legislated exchange explicitly provides for the U.S. to reserve interests in the land to protect public access and other resources identified by public review and the consultations under Section 7 of the Endangered Species Act, Section 106 of the NHPA, and Section 810 of the ANILCA.
5. If the proponent believes the rights the U.S. proposes to retain diminish the value of the land, the exchange can be equalized through other means such as cash or a reduction in the acreage of the land the U.S. acquires.