Alpine Satellite Development Plan
Final Environmental Impact Statement

Appendix C

Federal and State Laws, Regulations and Policies Applicable to the ASDP

The following is a list of laws and regulations that are potentially applicable to the Alpine Satellite Development plan as proposed in this EIS. This list is not definitive or exhaustive. The intent of this appendix is to provide general background and purpose information for the reader. All information was garnered from various government information Internet sites and other government documents.

Alaska Anadromous Fish Act (AS 16.05.850)

The Alaska Anadromous Fish Act requires that an individual or governmental agency notify and obtain authorization from Alaska Department of Natural Resources (ADNR) "to construct a hydraulic project or use, divert, obstruct, pollute, or change the natural flow or bed" of a specified anadromous water body or "to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed" of a specified anadromous water body. All activities within or across a specified anadromous water body and all instream activities affecting a specified anadromous water body require approval from ADNR.

Alaska Coastal Management Program Act of 1977 (ACMP) (AS 46.40.10, et. seq.)

The ACMP provides a balance through its guidelines and regulations for conservation of the coastal zone along with the development and use of natural resources. The ACMP states all activities that may affect coastal resources and uses, whether within or outside the coastal zone be consistent with the provisions of the ACMP. Through the ACMP, coastal districts develop coastal management programs (CMP) with enforceable policies to be included in the ACMP. These district plans must be approved by the Alaska Coastal Policy Council and by the Secretary of Commerce through the Office of the Ocean and Coastal Resource Management (OCRM).

Although federal lands are excluded from the coastal zone under the CZMA, uses and activities on federal lands that effect state coastal zones and its resources must be consistent with the state's management plan.

Alaska Fishway Act (AS 16.05.840)

The Alaska Fishway Act requires that an individual or governmental agency notify and obtain authorization from Alaska Department of Natural Resources (ADNR) for activities within or across a stream used by fish if the department determines that such uses or activities could represent an impediment to the efficient passage of fish. Culvert installation, stream realignment or diversion, dams, low-water crossings, and construction, placement, deposition, or removal of any material or structure below ordinary high water all require approval from ADNR. Construction activities also must be coordinated with critical spawning period of anadromous fish.

Alaska Historic Preservation Act (AHPA) (AS 41.35.010 – 41.35.240)

The AHPA was enacted to locate, preserve, study, exhibit, and evaluate the historic, prehistoric, and archeological resources of Alaska with the intent of preserving and protecting them from loss, desecration, and destruction so that the scientific, historic, and cultural heritage embodied in these resources may pass undiminished to future generations.

Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh-3233 and 43 U.S.C. 1602-1784)

ANILCA created over 100 million acres of new national parks, refuges, monuments, conservation areas, recreation areas, forests, and wild and scenic rivers in the State of Alaska, for the preservation of "nationally significant" natural resources. However, ANILCA has a number of unique rules and provisions intended to allow economic growth, and for people to move around Alaska, pursue traditional activities and lifestyles, and maintain their heritage while protecting Alaska's natural resources. Such rules concern everything from hunting and fishing on federal lands and waters in Alaska, to special access rights, federal land uses, oil and gas leasing and study, mining, and logging activities. Two such rules are Section 810 and Section 1320.

ANILCA Section 810 requires an evaluation and proposed finding of effects of proposed development on subsistence. It requires that this evaluation include findings on three specific issues: The effect of such use, occupancy, or disposition on subsistence uses and needs; The availability of other lands for the purpose sought to be achieved; and other alternatives that would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

Section 1320 of ANILCA authorizes the Secretary of the Interior to identify areas in Alaska that are suitable as Wilderness and to make recommendations to Congress for including them in the National Wilderness Preservation System.

Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601-1624)

ANSCA, which became law in December of 1971, recognized Alaska Native Land Entitlements with the creation of Native corporations with Native Alaskan's as shareholders and the conveyance of approximately 44 million acres of land, which was a little more than 10 percent of the entire state.

Alaska Public Land Act (AS 38.05.010 et. seq.)

The Public Land Act manages use of Alaska's public land and water resources. There are several right-of-way, water rights and land use permits associated with this act.

American Indian Religious Freedom Act (AIRFA) (42 U.S.C. 1996)

AIRFA is primarily a policy statement reaffirming Native Americans' right to religious freedom, "including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites." The Act strives to protect this right by encouraging Federal protection of sites considered sacred to Native Americans. Section 2 of the Act requires the President to order agencies to review their policies and procedures in consultation with traditional native religious leaders.

Archeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470)

The ARPA secures the protection of archaeological resources and sites on public and Indian lands, and encourages the exchange of information between involved individuals and entities.

Bald and Golden Eagle Protection Act (16 U.S.C. 668)

The Bald and Golden Eagle Protection Act makes it unlawful to take, pursue, molest, or disturb bald and golden eagles, their nests, or their eggs anywhere in the United States.

The Clean Air Act of 1967 (CAA) (42 U.S.C. 7401 et seq.)

The CAA as amended by the Clean Air Act Amendments of 1990 (CAAA), is intended to protect and enhance the quality of the nation's air resources by controlling emissions of EPA-designated air pollutants by stationary and mobile sources.

Pursuant to the CAA, EPA has established national air quality and pollutant emission standards designed to protect public health from any known or anticipated adverse effects of a regulated pollutant. EPA controls air pollutant emissions through such mechanisms as: issuing operating permits for facilities that emit significant amounts of hazardous air pollutants; establishing requirements and compliance deadlines for areas not in compliance with national ambient air quality standards (NAAQS) for certain pollutants; setting nationwide motor vehicle tailpipe emission standards and incentives for the use of alternative clean fuels; establishing a timetable for the phase-out of substances determined to deplete the stratospheric ozone; and implementing programs to prevent significant

deterioration of ambient air quality in areas that are currently in compliance with EPA-mandated air standards.

The CAA assigns primary responsibility to the states for protecting air quality through state-designed State Implementation Plans (SIPs). The statute requires that each state submit an SIP to EPA for approval, detailing how the state will implement, maintain, and enforce national air quality standards.

Clean Water Act (CWA) (22 U.S.C. 1251 *et seq.*)

The CWA is intended to implement policies and regulations to restore and maintain the chemical, physical, and biological integrity of the nation's waters. It prohibits the "discharge of toxic pollutants in toxic amounts" to navigable waters of the United States.

Pursuant to the CWA, EPA has established national water quality and pollutant emission standards designed to protect public health from any known or anticipated adverse effects of a regulated pollutant. EPA controls water pollutant emissions through such mechanisms as: establishing guidelines for effluent discharges from nonpoint-sources to the waters of the United States and the NPDES permitting program (Section 401); establishing guidelines for effluent discharges from point-sources to the waters of the United States and the NPDES permitting program (Section 402), regulating the discharge of dredged and/or fill material (Section 404); establishing procedures, methods and equipment, and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines (Section 311); and requiring all Federal agencies engaged in any activity that might result in a discharge or runoff of pollutants to surface waters to comply with all Federal, state, interstate, and local requirements with regard to the control and abatement of water pollution (Section 313).

Coastal Zone Management Act (CZMA) (16 U.S.C. 1452, Sec. 303 (1) and (2)).

The CZMA encourages states to preserve, protect, develop, and, where possible, restore or enhance valuable natural coastal resources such as wetlands, floodplains, estuaries, beaches, dunes, barrier islands, and coral reefs, as well as the fish and wildlife using those habitats. The federal program was designed to assist states in exercising their management responsibilities over land and water resources through the development and implementation of state management programs. A unique feature of the CZMA is that participation by states is voluntary. To encourage states to participate, the act makes federal financial assistance available to any coastal state or territory that is willing to develop and implement a comprehensive coastal management program.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601)

CERCLA and SARA were adopted to protect public health and the environment from risks posed by uncontrolled hazardous waste sites. CERCLA provides a statutory framework for identifying, prioritizing, and cleaning up waste sites. It also includes facility reporting requirements to state and Federal agencies for releases of hazardous substances in excess of specified amounts.

Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 9601)

EPCRA was enacted in 1996 as a free-standing statute under Title III of the Superfund Amendments and Reauthorization Act (SARA). It is intended to prevent an accidental release of an extremely hazardous substance from any facility and, in the event of a release, to provide a mechanism for emergency response through state and local emergency planning teams and emergency response plans. It also establishes a citizen's right-to-know about the storage and/or release of specific chemicals at facilities in their communities.

Endangered Species Act (ESA) (16 U.S.C. 1531)

The ESA is intended to protect wildlife, fish, and plant species in danger of becoming extinct, and to conserve the ecosystems on which endangered and threatened species depend. The Act defines "endangered species" as any species, except a recognized insect pest, in danger of extinction throughout all or a significant portion of its range.

A "threatened species" is defined by the Act as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The USFWS maintains the list of endangered species. Species include birds, insects, fish, reptiles, mammals, crustaceans, flowers, grasses, and trees. The law prohibits any action, administrative or real, that results in a "taking" of a listed species, or adversely affects habitat. Likewise, import, export, interstate, and foreign commerce of listed species are all prohibited without a permit from the Secretary of Interior. Sections 2(c) and 7 of the Act direct Federal agencies to comply with the Act and consult the U.S. Fish and Wildlife Service to determine whether endangered and threatened species or their habitats are known to be in the vicinity of the proposed action.

Executive Order 11514 – Protection and Enhancement of Environmental Quality

This Executive Order details the responsibilities of Federal agencies and the CEQ in directing their policies, plans, and programs to meet national environmental goals.

Executive Order 11988 - Floodplain Management

This Executive Order directs Federal agencies to establish procedures to ensure that the potential effects of flood hazards and floodplain management are considered for actions undertaken in a floodplain. Impacts to floodplains are to be avoided to the extent practicable.

According to the "Floodplain Management Guidelines," there is a multi-step, decision-making process that must be fulfilled by federal agencies to help them avoid adverse impacts. The steps include the following: determining if a proposed action would indeed be in a floodplain, conducting public review of the action, identifying and evaluating alternative plans and sites, assessing possible impacts, development of mitigation measures, and informing the public of decisions made. Various actions are subject to this order: acquiring, managing, or disposing of federal lands or facilities; federally created, financed, or assisted construction or improvements; and federal activities that affect land use.

Executive Order 11990 - Protection of Wetlands

This Executive Order directs government agencies to avoid short- and long-term adverse impacts to wetlands, whenever a practicable alternative exists.

Wherever effects to wetlands cannot be avoided, federal agencies are to include all practicable measures to minimize adverse impacts. The EO applies to acquisition, management, and disposition of federal lands and facilities, construction and/or improvement projects in conjunction with a federal agency, and federal activities/programs that affect land use.

Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The Environmental Justice (EJ) Executive Order directs federal agencies to develop environmental justice strategies to identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations (including Native American Tribes), with the goal of making EJ a part of their mission and achieving environmental protection for all communities. Federal agencies are to consider the following ways to evaluate EJ under NEPA: identifying the affected area to determine if minority populations or low-income populations would be affected, analyzing the effects of the agencies'

actions on minority populations and low-income populations, evaluating public health data, and assessing possible cultural, social, or historical factors that may be affected by the action. Mitigation measures identified as part of the NEPA process should address significant and adverse environmental effects of proposed actions on minority populations and low-income populations. Moreover, agencies are required to provide opportunities for effective community participation in the NEPA process.

Executive Order 13007 – Indian Sacred Sites

This executive order directs each executive branch agency with statutory or administrative responsibility for the management of Federal lands to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

Executive Order 13112 – Invasive Species

Federal agencies are to prevent the introduction of invasive species, control those that are introduced and provides for the restoration of native species.

Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments

This executive order directs federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, strengthen the G2G relationships with Indian Tribes, and reduce the imposition of unfunded mandates upon Indian Tribes.

Executive Order 13186 – Responsibilities of Federal Agencies To Protect Migratory Birds

This executive order directs all federal agencies to avoid or minimize the impacts of their actions on migratory birds, and to take active steps to protect birds and their habitat. It directs that agencies ensure that environmental analyses of federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern.

Executive Order 13212 – Actions To Expedite Energy-Related Projects

This executive order directs federal agencies take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.

Federal Land Policy and Management Act (FLPMA) (43 U.S.C. Section 1732)

The FLPMA provides for multiple use of public lands while protecting them from unnecessary or undue degradation. The BLM under the authority of the Secretary of the Interior have the authority to grant permits and regulate the use, occupancy and development of public lands to meet this objective.

Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901)

The Fish and Wildlife Conservation Act of 1980 encourages Federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats. Additionally, the Act requires Federal agencies undertaking projects affecting water resources to consult with the U.S. Fish and Wildlife Service and the state agency responsible for fish and wildlife resources to conserve or improve wildlife resources.

Fish and Wildlife Coordination Act (FWCA) (16 USC 661 *et seq*).

The FWCA, as amended, proposes to assure that fish and wildlife resources receive equal consideration with other values during the planning of water resources development projects. The Act authorizes the Secretary of the Interior to provide assistance to and cooperate with federal, state, and public or private agencies and organizations in the development and protection of wildlife resources and habitat; make surveys and investigations of the wildlife in the public domain; and accept donations of land and funds that will further the purposes of the Act.

Hazardous Materials Transportation Act of 1975 (HMTA) – (40 U.S.C. 1811)

The HMTA as amended, authorizes the Secretary of Transportation to protect the Nation adequately against risks to life and property, which are inherent in the transportation of hazardous materials. The regulations pertaining to the HMTA contain specific requirements for the packaging, labeling, and transportation of hazardous materials. These regulations apply to "...any person who transports, or causes to be transported or shipped, a hazardous material; or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked certified, or sold by such person for use in the transportation in commerce of certain hazardous materials."

Magnuson-Stevens Fishery Management and Conservation Act (M-SFMCA) (16 U.S.C. 1801-1883)

The M-SFCMA establishes national standards for fishery conservation and management within the exclusive economic zone and oversees the preparation of fishery management plans. Fishery management plans describe the fisheries and contain necessary and appropriate conservation and management measures, applicable to foreign fishing and fishing by vessels of the U.S. The Sustainable Fisheries Act: Amendments to M-SFCMA. SFA amendments to the MSFCMA include changes to existing National Standards for fishery management. The changes provide guidelines, based on the National Standards, provide more detailed requirements for fisheries management under the M-SFCMA. The Guidelines also serve as an aid in the development of Fisheries Management Plans, and as a guide to the Secretary in the review and approval of those Fisheries Management Plans. One of the key Guidelines calls for delineation of Essential Fish Habitat (EFH).

Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361-1407)

The MMPA was enacted in 1972 for the purpose of ensuring that marine mammal are maintained at, or in some cases restored to healthy population levels. The original Act established a moratorium of the "taking" or importing of marine mammals except for certain activities that are regulated and permitted. Regulated and permitted activities include scientific research, public display, and the incidental take of marine mammals in the course of commercial fishing operations.

Jurisdiction over marine mammals under the MMPA is split between two agencies, the USFWS and NOAA Fisheries. The USFWS has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus while NOAA Fisheries has jurisdiction over all other marine mammals.

Migratory Bird Treaty Act (Title 16 U.S.C. 703)

The Migratory Bird Treaty Act is intended to protect birds that have common migration patterns between the United States and Canada, Mexico, Japan, and Russia. The Act regulates the harvest of migratory birds by specifying the mode of harvest, hunting seasons, and bag limits.

National Environmental Policy Act of 1970 (NEPA) (42 U.S.C. 4321)

Congress established a national policy for the protection and maintenance of environmental resources by providing a mandatory process for all federal agencies to follow. NEPA ensures that environmental

effects will be considered by requiring that federal agencies consider the environmental effects of their proposed action and alternatives on the human environment before deciding to fund and implement the action.

Essentially, NEPA documents the effects of federal funding on certain environmental resources, and provides for public involvement in the decision-making process. NEPA is called a process law. However, it only requires a certain decision-making process be followed; it does NOT mandate specific outcomes.

Under NEPA, all federal agencies must prepare a detailed statement of the environmental effects of proposed federal actions that may significantly affect the quality of the human environment. The Act also established the Council on Environmental Quality (CEQ) to oversee NEPA implementation. CEQ has promulgated regulations for NEPA implementation at 40 CFR 1500. NEPA also directed federal agencies to develop their own regulations to ensure compliance with NEPA requirements.

National Historic Preservation Act of 1966 (NHPA) (16 USC 470 et seq.)

The purpose of the NHPA is to ensure consideration of the values of historic properties in carrying out federal activities, and to make efforts to identify and mitigate impacts to significant historic properties. Federal agencies must consider the effects of their undertakings on properties in or eligible for the Register of Historic Places, and consequently work to minimize harmful effects on the property.

Section 106 also requires that federal agencies provide the Advisory Council on Historic Preservation (ACHP) with the opportunity to comment on the undertaking. The Section 106 review process is usually carried out as part of a formal consultation with the State Historic Preservation Officer (SHPO), the ACHP and other parties, such as Native Tribes that have knowledge of, or a particular interest in, historic resource in the project area. Formal consultation is concluded upon preparation of a Memorandum of Agreement among the consulting parties that addresses the treatment of adverse effects.

Native American Graves Protection and Repatriation Act (NAGPRA)

NAGPRA established a means for American Indians, including members of Indian Tribes, Native Hawaiian organizations, and Native Alaskan villages and corporations, to request the return or "repatriations" of human remains and other cultural items presently held by Federal agencies or Federally assisted museums of institutions. The Act also contains provisions regarding the intentional excavation and removal of, inadvertent discovery of, and illegal trafficking in Native American human remains and cultural items.

Naval Petroleum Reserves Production Act (NPRPA)

The NPRPA gives the Secretary of the Interior the authority to conduct oil and gas leasing and development in the NPR-A. Its stated purpose is to provide for the development of the reserve “in a manner consistent with the total energy needs of the Nation, and for other purposes.” The law exempts the NPR-A from other laws that require wilderness reviews and BLM’s normal land use planning. Through the law, BLM is to manage the lands to prospect “environmental, fish and wildlife, and historical and scenic values,” and is specifically required to assure that oil and gas activities in Special Areas be conduced “in a manner which will assure the maximum protection of… surface resources to the extent consistent with the requirements of [the] Act for the exploration of the reserve.” Portions of the Teshekpuk Lake and the Colville River Special Areas are in the ASDP Area.

North Slope Borough Land Management Regulations (NSBMC §§ 19.10.010 – 19.70.060)

The North Slope Borough (NSB) requires compliance with its zoning and permitting ordinances and issues permits for development, uses, and activities on land within the NSB. The NSB regulates land

uses and activities within the borough to provide for the protection of the health, safety, and welfare of NSB residents and to assure compliance with environmental policies of local concern.

Oil Pollution Act of 1990 (OPA)

OPA streamlined and strengthened EPA's ability to prevent and respond to catastrophic oil spills. A trust fund financed by a tax on oil is available to clean up spills when the responsible party is incapable or unwilling to do so. The OPA requires oil storage facilities and vessels to submit to the Federal government plans detailing how they will respond to large discharges. EPA has published regulations for aboveground storage facilities; the U.S. Coast Guard has done so for oil tankers. The OPA also requires the development of Area Contingency Plans to prepare and plan for oil spill response on a regional scale.

Resource Conservation and Recovery Act (RCRA) of 1976 (42 U.S.C. 6901) and The Federal Hazardous and Solid Waste Amendments (HSWA)

RCRA establishes EPA's authority to control hazardous waste from the "cradle-to-grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also set forth a framework for the management of non-hazardous wastes. The 1986 amendments to RCRA enabled EPA to address environmental problems that could result from underground tanks storing petroleum and other hazardous substances. RCRA focuses only on active and future facilities and does not address abandoned or historical sites.

Rivers and Harbors Act of 1899

The Rivers and Harbors Act of 1899 requires that a permit be obtained from the U.S. Army Corps of Engineers for construction of a dam, dike, or other structure in or affecting navigable waters. The term "navigable waters" include waters subject to the ebb and flow of the tide and/or waters usable for commerce transportation.

Safe Drinking Water Act (SDWA) of 1974 - 42 (U.S.C. s/s 300f et seq.)

The SDWA as amended, is intended to protect the quality of public water supplies and all sources or potential sources of drinking water whether from above ground underground source. The Act authorized EPA to establish safe standards of purity and required all owners or operators of public water systems to comply with primary (health-related) standards. State governments, which assume this power from EPA, also encourage attainment of secondary standards (nuisance-related). The underground injection control (UIC) program (authorized by Part C of the SDWA) was established to provide safeguards so that injection wells do not endanger current and future underground sources of drinking water (USDW).

Toxic Substances Control Act of 1976 (TSCA) (15 U.S.C. 2601)

TSCA is intended to protect human health and the environment from hazardous chemicals by authorizing EPA to track the 75,000 industrial chemicals currently produced or imported into the United States and to require testing of new and existing chemical substances that may pose an environmental or human-health hazard. EPA can ban the manufacture and import of those chemicals that pose an unreasonable risk. TSCA also regulates the treatment, storage, and disposal of certain toxic substances, specifically polychlorinated biphenyls (PCBs), chlorofluorocarbons (CFCs), asbestos, dioxins, certain metal-working fluids, and hexavalent chromium.

TSCA supplements other Federal statutes, including the CAA and the Toxic Release Inventory under EPCRA.