

**Alaskans for Wildlife • Alaska Soles Broadband – Great Old Broads
for Wilderness • Alaska Wildlife Alliance • Audubon Alaska •
Brooks Range Council • Earthworks • National Parks Conservation
Association • Northern Alaska Environmental Center • Sierra
Club • The Alaska Center • The Wilderness Society • Trustees for
Alaska • Winter Wildlands Alliance**

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Submitted Via E-Mail

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Re: Comments on the Application for Private Exclusive Easement for the Ambler Road (ADL 421741) and the Public Review Draft of the Ambler Road Site Specific Plan

Dear Ms. Brudie and Mr. Leland:

On behalf of the above-listed organizations and our members, we provide the following comments on the application for a private exclusive easement for the Ambler Road and the public review draft of the Ambler Road Site Specific Plan. Groups urge the Department of Natural Resources (DNR) to deny the easement as proposed because it is not in the public interest and there are insufficient safeguards to protect the public interest. There are also insufficient protections to ensure that the designated uses, as proposed in the Site Specific Plan, will be adequately protected if this massive project is allowed to proceed.

The Ambler Road, if built, would cross nearly 2,900 streams and 11 major rivers, would permanently fill over 2,000 acres of wetlands and would severely alter the hydrology of the southern Brooks Range. The Ambler Road would have far-reaching impacts to communities in the region, and would forever alter this landscape with industrial impacts extending far beyond the footprint of the road itself.

As detailed in the following comments, DNR should not approve the easement or finalize the Site Specific Plan because the project is likely to have devastating impacts on the region and is not in the best interest of the state. In addition to the known and widespread impacts likely to occur from this project, there are also still significant information gaps about AIDEA's plans — making it impossible for DNR to adequately evaluate whether measures are sufficient to protect the public interest, as required by the Alaska Constitution.

It is also premature for DNR to grant the easement or adopt the Site Specific Plan in light of pending litigation and recent announcements related to the project. The related federal

authorizations for the Ambler Road are currently subject to litigation in federal court.¹ The two lawsuits challenging the federal authorizations underscore the wide range of legal violations that occurred in the federal permitting process for this project, including violations of the National Environmental Policy Act (NEPA), the Clean Water Act, the Alaska National Interest Lands Conservation Act (ANILCA), the Federal Land Policy and Management Act, and the National Historic Preservation Act (NHPA). On February 22, 2022, the federal government filed motions with the court acknowledging some of the legal errors with the process to date and requesting that the court remand the decisions to the agencies to correct deficiencies with the NHPA analysis and the ANILCA Section 810 subsistence analysis, and to provide the opportunity for the agency to do a supplemental NEPA analysis to address the deficiencies in the prior environmental review.² Those acknowledged deficiencies included problems with the adequacy of the agencies' analysis of impacts to subsistence and other resources, such as aquatic resources and caribou. Both BLM and the NPS also suspended the federal rights-of-way to minimize ground-disturbing activities while it addresses the legal errors with the authorizations.³ All of this highlights that there were substantial gaps and problems with the analysis of this project to date. DNR should not approve the easement or make a disposal of an interest in state land when there are still so many questions about the legality of the related federal permits and whether those approvals will change.

The following comments further detail the numerous reasons why DNR should not approve either the Site Specific Plan or the easement, including because there is insufficient information about the project to move forward with these authorizations, approval of the project is not in the public interest or consistent with the Alaska Constitution, the project is not in the economic benefit of the state, the environmental questionnaire and analysis done to date is inadequate, and the Site Specific Plan is inadequate. The comments also explain why AIDEA is not entitled to any fee waivers.

¹ *N. Alaska Env'tl. Ctr. v. Haaland*, Case No. 3:20-cv-00187-SLG (Alaska D. Ct.); *Alatna Vill. Council v. Heinlein*, Case No. 3:20-cv-00253-SLG (Alaska D. Ct.).

² Mot. for Voluntary Remand, *N. Alaska Env'tl. Ctr. v. Haaland*, Case No. 3:20-cv-00187-SLG (Alaska D. Ct. Feb. 22, 2022) (ECF No. 113) (attached); Mot. for Voluntary Remand, *Alatna Vill. Council v. Heinlein* Case No. 3:20-cv-00253-SLG (Alaska D. Ct. Feb. 22, 2022) (ECF No. 111) (attached).

³ Tommy Beaudreau, Deputy Sec'y of the Interior, Decision: Suspension of Right-of-Way Grant No. F-97112 (Mar. 11, 2022) (attached) (suspending the right-of-way grant across BLM-managed lands); Tommy Beaudreau, Deputy Sec'y of the Interior, Decision: Suspension of Right-of-Way Permit No. RW GAAR-21-001 (Mar. 14, 2022) (attached) (suspending the right-of-way grant across NPS-managed lands).

I. There Is Insufficient Information for DNR to Evaluate the Proposal or for the Public to Meaningfully Engage in These Processes.

The materials currently provided to the public for both the easement and Site Specific Plan do not contain sufficient information to evaluate whether there are adequate safeguards regarding the Ambler Road, or if DNR is meeting its constitutional obligations to protect the public interest. DNR should provide additional information to the public about the proposals and how it will analyze of them, particularly to local communities, to ensure the public can provide meaningful and substantive comments.

The Alaska Industrial Development and Export Authority (AIDEA) has not provided sufficient information about this project, for purposes of the easement or more broadly, to fully assess and understand the proposed project. This is unacceptable. AIDEA has continually promised to answer questions and provide a broad range of information about this project to communities and the public. Instead, AIDEA has provided only bare-bones information in its materials — information that in many instances raises more questions than it answers.

The Public Review Draft for the Site Specific Plan (SSP) is meant to provide for public review and comment of the State’s proposed classification for lands that would be traversed by the Ambler Road. These classifications would serve as the basis for the management of state lands and water within the planning area. But the Site Specific Plan Draft lacks basic information about the lands and waters that would be classified and how classification would affect management of the lands. The document does little more than list acreages of lands and navigable waterways without clearly indicating where such State-owned or State-selected lands and navigable waterways are located within the various townships.⁴

Additionally, the description of resources and socioeconomic conditions within the 244,188-acre planning area are summarized in less than 3 pages.⁵ The general statements contained in these pages are completely inadequate to enable the public to comment on the proposed classifications and management regime. For example, regarding wildlife, the document notes that “[a]s many as 38 mammal species may occur in the plan area,” but does not actually identify these species for the public.⁶ The Site Specific Plan also attempts to identify navigable waterways in the planning area and explain how those would be managed. But it appears to only refer to navigable portions with anadromous fish present;⁷ this categorization must be broader to ensure that the values of all navigable waterways, not only those with anadromous fish present, are considered and that they are managed to protect all uses. Moreover, it is unclear how AIDEA

⁴ Alaska Dep’t of Nat. Res., Ambler Road Site Specific Plan Public Review Draft 1–3 (Jan. 2022) [hereinafter SSP].

⁵ *Id.* at 3–5.

⁶ *Id.* at 4.

⁷ *Id.* at 11–12 (explaining ADF&G would be consulted prior to authorizing uses that would impact fishery populations).

or the State identified these waterways for purposes of this document, as AIDEA has not yet performed necessary surveys or studies to determine which waterways are anadromous, let alone navigable. Indeed, BLM recently confirmed that “[m]ost of the rivers and streams along the Project alignment have little or no data regarding the flow regime and no data [has] been gathered in the 50 easternmost miles of the alignment to support the Project.”⁸ Much more study is needed of the lands, waters, and resources of the project area for DNR to accurately describe the project area and its resources, and for the public to provide substantive comments on these proposed classifications.

The Easement Application similarly lacks critical information regarding the project and its location to enable DNR or the public to evaluate the proposed easement and its impacts. DNR claims that it is seeking comments regarding the project’s alignment, right-of-way width, ancillary facilities, and resource impacts.⁹ But AIDEA and DNR both lack basic information about the Ambler Road’s location and resources along the corridor necessary for such an assessment.

First, AIDEA’s plans for construction, operation, and reclamation of the project have not been clearly delineated. DNR itself acknowledges that AIDEA has yet to submit complete design plans for the project.¹⁰ This is because AIDEA has yet to actually complete the baseline data gathering, other field work, and the design work to make it clear to the public or the agencies precisely what it is proposing for this project.¹¹

AIDEA had originally proposed to construct the road in three phases over several years. Phase I would be a seasonal gravel “pioneer road” that would be upgraded in Phase II to a single-lane, gravel-surface road with year-round access. Phase III would expand the single-lane gravel road into a two-lane gravel industrial road. AIDEA’s application to federal agencies sought to construct all three phases, identifying Phase III as the completed project. The road would require over 40 gravel mines (also referred to as material sites) — some of which may contain naturally occurring asbestos — to provide the material for the road, as well as airstrips, maintenance stations, and camps. But AIDEA’s Easement Application itself raises questions of whether the road will ever be constructed to Phase III, stating that “a two-lane road *may* be built if required to support future permitted activity on state, federal, borough or ANCSA corporation lands along

⁸ Alaska Industrial Access & Export Authority, Ambler Access Project Preconstruction Phase Plan 3 (Mar. 2021) (attached) [hereinafter 2021 AIDEA Preconstruction Plan].

⁹ Alaska Dep’t of Nat. Res., Summary of Application for Private Exclusive Easement 5 [hereinafter Easement Summary].

¹⁰ Easement Summary at 3.

¹¹ *See, e.g., id.*

the route.”¹² This conflicting information does not allow the public to meaningfully evaluate the true impacts of this project.

AIDEA’s development plan is also completely devoid of the information necessary to understand in detail how this project might be constructed, and provides only an extremely sparse, high-level summary of the project.¹³ AIDEA’s development plan appears to fixate more on promoting the overinflated economic benefits of the project, at the expensive of actually meaningfully laying out how this incredibly complex project would be constructed, maintained, or reclaimed. This is not sufficient information for DNR to evaluate the impacts or for the public to weigh in on the project.

Moreover, AIDEA’s application itself illustrates that there is a significant amount of information missing about the proposed road and ancillary facilities that is only now being collected as part of AIDEA’s so-called “preconstruction effort.”¹⁴ This includes feasibility studies, data collection, and design work on a variety of critical components, including geotechnical investigations; right-of-way surveys; fish and aquatic resource surveys; other environmental studies; design work for the bridges and the roadway; design work for the fiber optics line and communication towers; land access agreements from landowners and managers; and cultural resources work.¹⁵ These studies are critical to determining the actual location of the road corridor and easement, and to understanding the resources and areas that would be impacted by this project. DNR cannot allow AIDEA to defer its submittal of significant, additional baseline and other project information until **after** DNR issues an easement. DNR must have this information now in order to consider AIDEA’s easement application and properly perform the required surveys.¹⁶ This information is also crucial to DNR’s analysis of whether the disposal is in the best interest of the state and whether there are adequate safeguards to protect the public interest, as required by the Alaska Constitution.¹⁷ Such future, yet-to-be-conducted studies were problematic during the federal permitting process and must be rectified prior to the State approving AIDEA’s application or moving forward on the Site Specific Plan.

DNR also cannot rely on the final environmental impact statement (FEIS) for the project to assess the scope or impacts, or to even understand the project’s design and location for purposes of the Site Specific Plan or Easement Application because those documents lacked critical information and analysis. For instance, the FEIS noted that field studies and exploration work were necessary to determine the project’s design and gravel needs, and that geotechnical

¹² Alaska Industrial Development & Export Authority, Easement Application Corrected Development Plan Narrative 3 [hereinafter Development Plan] (emphasis added).

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

¹⁶ 11 AAC 51.015(a) (requiring a survey of a public easement before disposing of State lands).

¹⁷ *See infra* Part II.

investigations were needed to verify those potential gravel mine sites.¹⁸ The FEIS also acknowledged it was unknown whether there are sufficient volumes of asbestos-free gravel along the corridor for road construction.¹⁹ AIDEA also deferred identifying areas of potential acid rock drainage (ARD) at these potential mine sites and along the road corridor,²⁰ and has yet to identify the “presence, extent and stability” of permafrost in the area.²¹ The FEIS also made clear that baseline studies and surveys for archaeological, historical, and cultural resources were still needed.²² It further indicated that AIDEA had yet to identify all streams and fish-bearing waters along the proposed Road alignment.²³ AIDEA is only now collecting this baseline data to fill these significant data gaps, as evidenced by its application referencing such “preconstruction work” and the right-of-way permits themselves, which indicate AIDEA still needs to collect and provide significant project information to the federal agencies.²⁴ Moreover, the Department of Interior recently acknowledged significant problems with its analysis of some impacts of the Ambler Road proposal and deficiencies with EIS process.²⁵ As such, DNR cannot rationally point to the environmental analysis contained in the FEIS to support its permitting decisions here.

In sum, DNR lacks sufficient information about the project area, and the design and location of the Ambler Road, to appropriately consider the Easement Application and Site Specific Plan. DNR should require more information from AIDEA, review its applications closely, and consider whether to re-release those applications for public comment. It cannot approve either of these proposals without additional information and analysis.

¹⁸ Bureau of Land Management, Ambler Road Final Environmental Impact Statement (Mar. 2020) [hereinafter Ambler Road FEIS], Vol. 1. at 3-14–3-15.

¹⁹ *Id.*

²⁰ Bureau of Land Management and U.S. Army Corps of Engineers, Ambler Road Joint Record of Decision (July 2020) [hereinafter Ambler ROD] at F-13–F-14.

²¹ *Id.* at C-3.

²² Ambler Road FEIS at 3-160.

²³ *Id.* at 3-67; *see also id.* (needing additional data collection to document all streams); *id.* at 3-80 (requiring additional surveys documenting fish presence).

²⁴ *See, e.g.*, Bureau of Land Mgmt., U.S. Dep’t of the Interior, Right-of-Way Grant: F-97112 ex. A, at 6–7 (2021) (attached) [hereinafter BLM ROW]; Nat’l Park Serv., U.S. Dep’t of the Interior, Right-of-Way Permit for Alaska Industrial Development & Export Authority, Right-of-Way Permit No. RW GAAR-21-001 ex. C, at 7 (2021) (attached) [hereinafter NPS ROW]; Development Plan at 2; 2021 AIDEA Preconstruction Plan at 3 (acknowledging significant data gaps).

²⁵ Mot. for Voluntary Remand, *N. Alaska Env’tl. Ctr. v. Haaland* (ECF No. 113); Mot. for Voluntary Remand, *Alatna Vill. Council v. Heinlein* (ECF No. 111).

II. Approval of the Easement Is Not in the Best Interest of the State.

A. *DNR is obligated under the Alaska Constitution to analyze whether the easement is in the best interest of the state and to take a hard look at the direct and cumulative impacts.*

Article VIII, section 10 of the Alaska Constitution makes it clear that “[n]o disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.” Issuance of the easement is indisputably a disposal of an interest in state land.²⁶ Thus, DNR is obligated under the Alaska Constitution to evaluate and ensure the project is consistent with the public interest.²⁷ As part of this evaluation, DNR is required to take a hard look at the full range of impacts from this project, including cumulative impacts.²⁸

The Alaska Constitution also requires DNR to provide the public with “timely and meaningful notice of its assessment of the cumulative impacts.”²⁹ Absent this timely and meaningful notice, DNR will violate its constitutional duty to take a hard look at the project.³⁰ This is a key duty that the Alaska Supreme Court has indicated is required to ensure the state is developing its resources in a way that is consistent with the public interest.³¹ To date, there has been no indication DNR would provide timely and meaningful notice to the public of its assessment of the cumulative impacts. The limited materials provided to the public to date do not reflect DNR’s assessment of the cumulative impacts of this project. They provide little information about what is even being proposed by AIDEA — let alone a meaningful analysis of the impacts of the proposal. DNR indicated in response to questions at the public listening sessions that it would not provide its analysis of the impacts of the project until it makes its decision. DNR is obligated under the Alaska Constitution to provide the public with that assessment of the cumulative impacts so the public has a meaningful opportunity to understand and review that impacts analysis prior to DNR making a decision. Providing that information after the fact is inadequate to meet its constitutional obligations and does not provide the type of timely and meaningful notice required by the Alaska Constitution and the Alaska Supreme Court.

At one of the listening sessions held for this permitting process, DNR staff indicated in response to questions that it would only be doing a written decision under AS 38.05.850 and that there would not be a best interest finding under AS 38.05.035(e). This is inappropriate and contrary to the Alaska Constitution. First, to the extent DNR is limiting its analysis and

²⁶ *SOP, Inc. v. Dep’t of Nat. Res.*, 310 P.3d 962, 967 (Alaska 2013).

²⁷ *See, e.g., Sullivan v. Resisting Envtl. Destruction on Indigenous Lands (REDOIL)*, 311 P.3d 625, 636–37 (Alaska 2013).

²⁸ *Id.*

²⁹ *REDOIL*, 311 P.3d at 636–37.

³⁰ *Id.* at 636.

³¹ *Id.*

determinations for this project to the considerations articulated in AS 38.05.850, which only refers to the greatest economic benefit to the state and the development of its resources, that scope is too narrow for the agency to meet its obligations under the Alaska Constitution. The Constitution requires a broader consideration of the public interest and a hard look at the full range of impacts of a project, prior to the agency making a disposal. DNR's constitutional obligations extend beyond what is reflected by the findings contained in AS 38.05.850. To the extent that DNR reads AS 38.05.850 to imply in any way that less is required in its consideration of this disposal, the statute is patently unconstitutional.

Second, the nature of the disposal occurring as part of this easement extends well beyond the limited scope of the easements contemplated under AS 38.05.850 or that is exempt from the requirement for a written best interest finding under AS 38.05.035. Alaska Statute 38.05.850 states that the director, without approval by the commissioner, may issue easements on state lands for a limited subset of authorizations, including for roads, trails, ditches, transmission lines.³² The easement at issue here would encompass project elements extending beyond the limited set of authorizations contemplated in AS 38.05.850. DNR indicated its intent is to include all supporting infrastructure as part of the easement authorization.³³ The easement and the disposal at issue here would encompass not only the main road, but also 36 or more access roads; multiple 12-acre maintenance and construction camps with housing, storage, and maintenance areas, water and sewer systems, generators, and fuel storage areas; multiple airstrips; communications towers and sites; and gravel mines for the project.³⁴ As a result, AS 38.05.850 alone should not apply to this easement.

Because the scope of the disposal that will occur through issuance of this easement goes beyond the scope of AS 38.05.850, DNR needs to comply with AS 38.05.035(e)'s best interest requirements.³⁵ Alaska Statute 38.05.035(e) requires the director, with the commissioner's consent, prepare a written finding that the interests of the state will be best served by the authorization. Consistent with the Alaska Constitution, that analysis must examine the foreseeable and significant effects of all phases and aspects of the project.³⁶ As part of that process, DNR is required to make a preliminary Best Interest Finding available for public comment and review.³⁷ DNR cannot bypass conducting this analysis in light of the scope of this disposal. The agency must conduct a best interest finding, including providing for public comment opportunities, and consider all of the impacts of this significant disposal of state lands.

³² AS 38.05.850(a).

³³ Easement Summary at 3.

³⁴ *Id.* at 2–3.

³⁵ DNR's constitutional obligations apply to the agency when making a disposal and transcend even the language in AS 38.05.035(e). However, either way that provision provides a guideline for how DNR may achieve compliance with the broader constitutional requirements.

³⁶ AS 38.05.035(e)(1)(A).

³⁷ AS 38.05.035(e)(6).

At the listening session, DNR also told members of the public who expressed opposition to the project that their comments were not relevant to DNR's decision. DNR staff stated they needed to "evaluate specific issues in [its] process" and that DNR could not "deny an application for an easement solely on opposition to the overall project." Expressions of opposition by the public directly shed light on whether issuance of the easement is in the State's best interest, which DNR is obligated to consider under the Alaska Constitution. DNR needs to take that opposition and those concerns into consideration when evaluating whether the project is in the public interest.

B. There are not adequate safeguards to protect the public interest.

Another crucial constitutional requirement is for the agency to ensure that no disposals of interests in state lands occur without adequate safeguards of the public interest.³⁸ Here, there are not adequate safeguards in place and it is unclear what measures will ultimately be implemented to ensure protection of the public interest. The summary of the easement application claims that impacts have been mitigated through the road construction techniques and stipulations detailed in the FEIS and implemented in the federal decisions and ROW grants.³⁹ However, it was completely unclear throughout the federal permitting process what, if any, mitigation measures would actually apply to state lands. The State has still not clarified this. It is inadequate for DNR to point to the FEIS to explain what measures would be in place for purposes of state lands since the scope of the review and mitigation measures for state lands considered as part of that process was so limited. DNR needs to clarify for the public specifically which measures it plans to require for the portion of the project crossing state lands. Without that information, there is no way for the public to evaluate if there are adequate safeguards in place to protect the public interest.

In addition, even to the extent there are mitigation measures listed in the FEIS, those measures are not adequate to ensure the protection of the public interest. In the FEIS, BLM never conducted a site-specific analysis of the project or the effectiveness of potential mitigation measures because AIDEA never presented complete project information and designs for the agencies to engage in that analysis. Even the title of the section discussing mitigation measures is only labeled "potential mitigation" because of the uncertainty over what measures might ultimately be implemented.⁴⁰ In the FEIS, BLM's discussion of many potential mitigation measures was highly generalized and was deferred to a future, unclear point in time as part of a future design and permitting phase.⁴¹ Even in the ROWs themselves, much of the information

³⁸ Alaska Constitution art. VIII, sec. 10; *see also id.* art. VIII, sec. 1 (requiring use of public resources be "consistent with the public interest"); *id.* art. VIII, sec. 2 (requiring the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people").

³⁹ Easement Summary at 1.

⁴⁰ 3 Ambler Road FEIS app'x N.

⁴¹ *See, e.g., id.* at N-32.

about the project and mitigation is still missing; the ROWs reference a broad range of information that has yet to be provided to the agencies, including complete plans for the construction, operation, maintenance, and termination of the right of way.⁴² AIDEA has yet to gather key information and to design the project at a level that would allow for full consideration of the project, its impacts, and the necessary mitigation measures. Far more information is needed about the potential mitigation measures for the public and DNR to evaluate whether there are adequate measures in place to protect the public interest.

It is also deeply problematic that AIDEA is requesting a 450-foot-wide easement, with vague plans to use that space for the road, “construction activities, minor changes in alignment to adapt to conditions on the ground, and the footprint and construction of infrastructure.”⁴³ DNR indicated the easement will ultimately be reduced to 250 feet.⁴⁴ There is no indication precisely what and where activities will occur in the additional 200-foot space that AIDEA is requesting initially. That is a massive swath of additional land where there is the potential for significant damage and harm, and it is unclear how those impacts will be minimized and addressed. DNR should not hand AIDEA an open-ticket to cause damage and degradation to a substantially broader area than is necessary for the road. DNR should also require more site-specific, detailed information about how that additional land could be impacted by the project and should develop mitigation measures to address the long-term damage that is likely to occur to a much broader area. AIDEA also needs to specify which specific areas may ultimately be wider than 250 feet since that is completely unclear from the materials.

DNR should not grant a 450-foot easement. However, if DNR is going to grant a 450-foot easement, that is what DNR needs to consider as part of its Best Interest Finding. It is challenging to understand how the agency could find that such a large easement is necessary or in the public interest when in fact only a much narrower easement is actually necessary for the project. It is also unclear what the process would be for DNR to shift the easement size from 450 back to 250 feet. DNR needs to explain what that process will look like and what it intends to require or do to ensure any lands that are not ultimately in the smaller easement are properly restored. A full reclamation and restoration plan should be required for the areas AIDEA is apparently planning to impact as part of this wider footprint.

It is also troubling that DNR has indicated it will not accept comments about the adequacy of the federal review documents, despite the fact that DNR appears to be relying on those documents as a substitute for meeting its own obligations to take a hard look at the impacts of the project. DNR cannot simply rely on federal documents to meet its constitutional obligations; the agency must conduct the analysis necessary to support any findings concerning the public interest. Additionally, as illustrated by the pending litigation related to the federal authorizations, those documents are deeply flawed and do not provide an adequate basis for

⁴² BLM ROW ex. A, at 6–7; NPS ROW ex. C, at 7.

⁴³ Easement Summary at 1–2.

⁴⁴ *Id.* at 2.

DNR to evaluate the full range of impacts of this project. Those documents also do not excuse DNR from meeting its own constitutional obligations to take a hard look at the full range of impacts from the project.⁴⁵

III. Granting the Easement Will Not be in the Economic Benefit of the State.

Alaska Statute 38.05.850(a) states that, “[i]n the granting, suspension, or revocation of a permit or easement of land, the director shall give preference to that use of the land that will be of greatest economic benefit to the state and the development of its resources.” Granting the easement is not in the economic benefit of the state.

AIDEA makes various erroneous statements in the Summary of Easement Application, Easement Application Attachment B, and Cover Letter from AIDEA to DMLW regarding the soundness of project financing and economic gains that would benefit the State of Alaska. A recent independent study of Ambler Road financing and economic benefits puts many of these claims in doubt.⁴⁶

According to the study, the State of Alaska has systematically failed to address the real costs, risks, and liabilities of financing the proposed Ambler Road. The study found that moving forward with the road is unlikely to bring in any revenue for the state. Additionally, the road may put AIDEA’s credit rating in danger, limiting its ability to provide low-cost loans for Alaska businesses. Even under the best-case scenario, the state would see returns of 5 to 10 times less than it could make from simply investing the money in low-risk bonds. Despite all this, the state continues to spend significant money on the road, even though the economic conditions AIDEA has laid out for construction of the road may never, in fact, be met.

Even accepting the state’s cost estimates, the total expenditures that will be required to build, maintain, and then decommission the proposed industrial corridor total about \$1.4 billion. AIDEA has stated that it will not move forward with the road until it has signed lease agreements with the mining companies that will commit the mining companies to pay tolls that, collectively, will more than cover the full costs of building and operating the project. However, AIDEA is already actively spending large sums of money, including up to \$30 million approved for the 2022 field season in pre-construction activities without any assurance of economic recovery of those funds.

There is reason to doubt the rentals and royalties from use of the road will justify the various costs and liabilities associated with the road permitting, pre-construction, construction, maintenance, and reclamation. AIDEA’s projected economic benefits from the road are justified by a set of extremely optimistic assumptions.

⁴⁵ *REDOIL*, 311 P.3d at 636–37.

⁴⁶ POWERS CONSULTING, AN ECONOMIC ANALYSIS OF THE PROPOSED ALASKA AMBLER ACCESS ROAD (Dec. 2021) (attached).

First, it assumes there will be at least 4 mines. The AIDEA-sponsored economic analysis and the BLM FEIS accepted AIDEA's assumptions that rely on the premise there will be at least four mines in the Ambler region who will together pay for the road. Indeed, AIDEA says it will not proceed with construction until all four mines have signed leases committing themselves to paying the full costs of the road. However, at this point, only one of those mines has undergone a feasibility analysis. None have permits. Despite that, AIDEA is continuing to waste State resources advancing this project.

Second, it assumes an additional 20 years of road life without any basis. The 2020 Ambler Access Road FEIS analyzed a road that had a fifty-year life. In most previous analyses, the road's life was assumed to be 30 years because that was the longest term that financial markets allowed for municipal revenue bonds of the sort that AIDEA would sell to finance the construction of the Road. In the FEIS, BLM accepted AIDEA's optimistic assumptions that it would pay off the bonds in 30 years and make another 20 years of profit, even though the mining companies, ore deposits, mining technology, and markets cannot be identified at this point in time.⁴⁷ This assumption is made plain in the Summary of Easement Application, where AIDEA proposes delaying reclamation of the road on state land beyond the requested term of the easement due to the likelihood of additional mine use: "Given that the road will support continuing mineral resource exploration and development throughout the Ambler Mining District, potentially beyond the requested term of the easement, AIDEA does not anticipate reclaiming the road on state land until mining operations and mineral exploration in the Ambler Mining District are completed and the road corridor is determined to be no longer necessary."⁴⁸ There is no basis for this assumption. This is also contrary to the terms of BLM's right-of-way, which states that "[f]ull closure must be complete by the expiration of this grant," which is a 50-year grant.⁴⁹ DNR cannot ignore that there are reclamation requirements on federal land that have implications for the state portions of the road.

Third, AIDEA's projection of economic benefits assumes mines will be able to pay for the road despite evidence to the contrary. According to the FEIS, the road will cost \$1.4 billion to finance, build, maintain and ultimately deconstruct. Arctic, the only mine that has done a final feasibility study attempting to lay out costs, underestimates its likely toll and maintenance costs by nearly half. As stated in the Powers Report, "What becomes clear when we use the payments presented by the only mine that has been developed far enough to have a final Feasibility Study, is that the Ambler Access Road, as presented in the FEIS, cannot pay for itself."⁵⁰

In the easement application, AIDEA claims that the "LLC will develop protocols and impose restrictions on the road use in a similar manner to the Applicant-financed road to the Red Dog Mine. Applicant's finance plan will restrict how it can be used. Bonds will finance the road

⁴⁷ *Id.* at 5.

⁴⁸ Easement Summary at 5.

⁴⁹ BLM ROW at 1.

⁵⁰ Powers Consulting at 7.

and potential investors will be told the road will be used for a restricted purpose, largely limited to mining exploration and mining operations. These limitations on corridor usage allow the road to be built as a less expensive industrial road and not a public highway.”⁵¹

The recent Powers economic study makes it clear that there is a critical disconnect between the mining companies and what they are presenting to their investors, and AIDEA and the bonds that they are going to sell to their investors.⁵² Although AIDEA represents the road investment as riskless, AIDEA is unlikely to secure the \$1.4 billion in bonds needed to build the road unless it puts State money, its credit rating, or both on the line. Mineral investments are generally perceived to be high risk by investors. While AIDEA can generally secure lower interest financing than mining companies, that is unlikely to be the case when they are attempting to finance a road dependent on the return from speculative mining unless AIDEA backs the loans with state money and/or loan insurance. When AIDEA financed Red Dog Mine through the sale of bonds, “AIDEA had to ensure the bond payments by purchasing bond insurance and providing an irrevocable letter of credit. The state of Alaska also provided collateral in the form of state assets that AIDEA could use to assure that it would be able to pay off the bonds.”⁵³

Ignoring the flaws in AIDEA’s studies and projections, under a best-case revenue scenario, AIDEA projects a return to the state of 5 to 10 times less than the state would make from simply investing the money in bonds. The Cardno Report, which underestimates the cost of the road by over \$500 million, projects a rate of return on AIDEA’s investment of 0.6%. “Expressed as a percent of the capital investment in the Ambler Access Road (assumed to be \$875 million including the cost of money), the annual net revenue would be about 0.6 percent of the capital investment. Both represent relatively low returns on the investment despite the billion dollars of gross revenues collected in tolls. Over the last decade, the actual yield on relatively safe 30-year high quality market corporate bonds has been between 6 percent (January 2010) and 3 percent (April 2021).”⁵⁴

Despite AIDEA’s extensive claims in their cover letter to DMLW based exclusively on an Impacts Report by the University of Alaska dated June 28, 2019, the third-party economic analysis indicates that the road will provide little to no economic benefit to local communities: “While the multi-national mining companies may see substantial positive economic impacts from the proposed Ambler Access Road mines, the local people and local economies will see little of those projected economic benefits for the simple reason that the small, isolated villages cannot supply either the inputs the projected mines will need to operate or the goods and services on which employees at the mines are likely to want to spend their mining paychecks.”⁵⁵

⁵¹ Easement Application att. B, at 1.

⁵² Powers Consulting at 17.

⁵³ *Id.* at 8.

⁵⁴ *Id.* at 20.

⁵⁵ *Id.* at 31.

We disagree strongly with AIDEA's conclusions that the Alaska Legislature has empowered AIDEA's investments in this project through AS 44.88.010(a), (b), and (c)⁵⁶ and that continued investments in this speculative project are in the public interest of the state. They have provided no evidence that this project is essential or will secure long-term economic growth of the state. To the contrary, third-party economic analysis has determined that AIDEA's continued investments in this project are highly speculative, and that the applicants are pushing this project forward devoid of data that would indicate that the state will recoup its costs, let alone create local jobs and bring significant financial returns to the state. Instead, they are relying on extremely optimistic assumptions regarding financing a \$1.4 billion environmentally destructive project reliant on at least 50-year of mining activity requiring at least four major mines in a region that has yet to have a single mine that has begun the federal permitting process.⁵⁷ Overall, this project is not in the economic interest of the State and DNR should not grant the easement.

IV. AIDEA's Applications are Inadequate and Do Not Capture the Full Scope of the Environmental Impacts of the Project.

The 211-mile Ambler Road would slice through this region to facilitate development of hardrock mines, harming thousands of acres of wetlands, miles of streams, and significantly and irreversibly impacting the region's lands, waters, animals, and people. The Site Specific Plan and AIDEA's Easement Application both fail to adequately acknowledge or explain the environmental impacts of this project on the resources and existing uses of the southern Brooks Range.

The Site Specific Plan partially recognizes the importance of the area traversed by the road corridor to fish, wildlife, recreation and subsistence, but fails to indicate how the significant and permanent impacts this project is certain to cause are compatible with the region's existing uses.⁵⁸ DNR indicates that AIDEA would only have to maintain designated values to the greatest extent practicable, but maintaining designations for habitat and subsistence harvests would be blatantly incompatible with the type of intense development contemplated for the Ambler Road—which includes not only an easement for the corridor, but would also permit gravel mining on these same lands.⁵⁹ As described in more detail below, the Site Specific Plan is not adequate to protect existing uses, in addition to failing to protect the resources along the corridor from the road's significant environmental impacts.

The Environmental Risk Questionnaire accompanying AIDEA's Easement Application is also wholly inadequate to assess the environmental risks of the Ambler Road. For instance, there is no detail regarding the likelihood or risks of spills of hazardous materials. While the document

⁵⁶ Cover Letter from AIDEA to DMLW for Easement Application 2 (Oct. 20, 2021).

⁵⁷ Powers Consulting at 17.

⁵⁸ SSP at 10 (Resource Allocation Table).

⁵⁹ *Id.* at 7.

describes that road would be used to haul hazardous chemicals and materials (“hazmat”) used in mine operations, it downplays the potential impacts from spills by stating that sealed containers would “minimize” loss of hazmat, and that spills are rare.⁶⁰ The document also touts AIDEA’s experience not spilling hazmat along the existing Delong Mountain Transportation System, but states that “concentrate spills have occurred” along the road.⁶¹ It also notes that fuel tanks up to 4,000 gallons in size would be used to store diesel fuel, but does not assess the probability or impacts of fuel spills.⁶² The application does not provide any tangible information regarding the risk of spills, just conclusory statements and assumptions that spills are not likely.

Contrary to what is asserted in the Environmental Risk Questionnaire, the risk of spills and their impacts along the road corridor are significant and need to be addressed.⁶³ A new third-party comparative analysis of projected versus actual spills for the five largest operating mines in Alaska indicate that the existing models used to determine spill risks has failed in Alaska over the past 40 years.⁶⁴ The report tallied more than 8,150 total spill incidents associated with the five mines, releasing over 2.3 million gallons and 1.9 million pounds of hazardous materials since 1995.

This data is at stark odds with the projections in the original environmental reviews conducted at the time of mine permitting, which provided no projection at all for total on-site and transportation-related spills for all 50 hazardous materials. The 8,150 spills included 114 truck accidents, which spilled ~6,000 gallons and 1.6 million pounds of hazardous materials. Truck accident spills occurred 26.5 times more frequently than was predicted when the author applied the model most commonly used in the EIS process to predict truck accident spills at all five mines for all hazardous materials, and to ground-truth the accuracy of the model against actual spills.

To the extent the state is relying on spills risk assessments from prior permitting documents for these five major Alaska operating mines (e.g., Red Dog) and associated haul roads, then the analysis for the easement is similarly flawed, since it depends on risk assessments that severely underestimated the number of actual spills.

The Environmental Risk Questionnaire (ERQ) fails to provide any quantitative spill risk assessment related to industrial traffic along the proposed Ambler Road. Instead, it points to

⁶⁰ Alaska Industrial Development & Export Authority, Easement Application, Environmental Risk Questionnaire att. A, at 1 (Oct. 20, 2021) [hereinafter Environmental Risk Questionnaire].

⁶¹ *Id.*

⁶² *Id.*

⁶³ Susan Lubetkin, Alaska Mining Spills: A Comparison of the Predicted Impacts Described in Permitting Documents and Spill Records from Five Major Operational Hardrock Mines (Apr. 2022) (attached).

⁶⁴ *Id.*

information about the Red Dog Mine haul road (the Delong Mountain Transportation System (DMTS)) for comparison. The ERQ acknowledges that concentrate spills on the DMTS have occurred, but it asserts that the design of new concentrate containers has reduced the loss of concentrates during transport accidents. Yet, the ADEC spill database contradicts this assertion. Lubetkin (2022) found that the amount of ore concentrate spilled *was higher* from 2008–2020 than from 1995–2007.⁶⁵ Altogether, the report identifies 58 trucking accident (*collision/allision + rollover/capsize*) spills associated with Red Dog Mine from 1995–2020.⁶⁶

State officials have identified the difficulty of cleaning up concentrate spills on the tundra, and the damage that is done when excavating the tundra to remove the spilled concentrate. In response to a 2019 truck spill along the Red Dog Haul Road that released 5,300 pounds of zinc concentrate to the tundra, state officials highlighted the difficulty of tundra rehabilitation in e-mails and an interview with KTOO.⁶⁷ According to Tom DeRuyter, the northern Alaska region state on-scene coordinator with DEC, “When you start excavating tundra you do really severe damage to the tundra itself. That takes long-term restoration, and it would be great if we could figure out a way to remove the zinc concentrate without doing the severe damage to the tundra root system that you do with an excavator.”⁶⁸ According to the article, the introduction of nonnative plant species was also a factor at previous spill sites.

Furthermore, it is inadequate to use the DMTS system as a comparison to the proposed Ambler Road, which is four times longer and includes crossings for roughly 3,000 streams and 11 major rivers. The risk of spills is more significant, given the length, topography, and number of stream crossings. A comprehensive, site-specific, quantitative spill risks assessment is necessary to understand the potential impacts to resources.

Further, DNR cannot rely on AIDEA’s promises to develop plans and gather information regarding environmental concerns later to analyze the impacts of granting AIDEA’s requested easement. For instance, AIDEA’s application states that a Storm Water Pollution Prevention “would be developed” and would identify practices to reduce water quality impacts.⁶⁹ But that does not provide DNR or the public sufficient information to understand the scope and severity of water quality impacts that the project is likely to cause or how the State would ensure such impacts are mitigated. Similarly, the document states that AIDEA would conduct geotechnical investigations to screen for ARD, but has not yet developed a plan to test for or avoid ARD, let alone address the scope of potential impacts.⁷⁰ AIDEA also states that asbestos would be avoided to the “greatest extent practicable,” but such a cursory statement provides no information to the

⁶⁵ *Id.*

⁶⁶ *Id.* at 297.

⁶⁷ Elizabeth Harball, *State Raises Concerns About Red Dog Mine Spill Cleanups*, KTOO, August 3, 2019, <https://www.ktoo.org/2019/08/03/state-raises-concerns-about-red-dog-mine-spill-cleanups> (last visited Mar. 29, 2022) (attached).

⁶⁸ *Id.*

⁶⁹ Environmental Risk Questionnaire att. A., at 2–3.

⁷⁰ *Id.*

public, or DNR, to understand the potential for asbestos releases that would endanger both the environment and public health. There is also no indication how asbestos will actually be avoided and how hazards to human health from the use of potentially asbestos-contaminated gravel will be addressed and minimized. There is still no indication that there is actually sufficient asbestos-free gravel in the area to build this massive project. DNR cannot just assume asbestos releases do not present an issue, and must put in place measures that ensure the protection of public health.

Instead of knowing baseline conditions and doing an adequate analysis of those conditions prior to approval, AIDEA's application also relies on future baseline studies and surveys. Such future studies cannot be used to excuse the lack of detailed information and analysis now.

The Ambler Road also poses significant threats to water quality and other resources that have been entirely overlooked or downplayed in this Questionnaire. The FEIS acknowledged that, even with AIDEA's design measures in place, there would be widespread changes to overland, surface, and groundwater flows, and myriad other adverse impacts from the road.⁷¹ The Corps of Engineers likewise acknowledged that foreseeable future actions, including mining, would cause a wide range of "major impacts" to aquatic resources and fisheries.⁷² Moreover, BLM and the Corps found that the Ambler Road would lead to contamination from fugitive dust and impacts to waterways from thousands of stream crossings.⁷³ But these significant impacts, and measures to minimize and avoid them, are not described by AIDEA. And as explained above, AIDEA cannot properly rely on the environmental analyses conducted for the federal permitting process to fill these critical gaps. Even to the minimal extent the federal permitting processes addressed these concerns, it is still unclear what mitigation measures if any will actually apply to state lands.

Additionally, there would be significant impacts to the soils and permafrost under and alongside the road corridor that are not addressed in the application. Thawing permafrost causes drainage changes could further impound water and warm subsurface soils; if permafrost thaw issues occur during early phases, shoulder rotations and embankment cracks could impact the road's surface and increase gravel needs in the future, necessitating more gravel mining. Moreover, the documents provided by AIDEA also fail to acknowledge that construction activities, gravel mining, camp use, maintenance activities, and vehicle and aircraft traffic would cause significant air quality impacts. This is all in addition to the Ambler Road's significant impacts on caribou, birds, recreation, community health, and other resources and concerns.

⁷¹ 2 Ambler Road FEIS app'x H, at H-54 to H-55 (noting construction would degrade fish spawning habitat, increase water temperatures, and introduce fugitive dust and toxins into waterways); 3 *id.* app'x N at N-26 (FEIS explaining bridges and culverts would only be "partially effective" at maintaining hydrological connectivity and wetland functions because of difficulty in predicting drainage pathways and potential that culvert installation and maintenance would be inadequate).

⁷² Ambler ROD at F-38.

⁷³ *Id.* at F-45 to F-48.

These impacts much be considered by DNR, and clearly identified in the permit application so that the public can adequately comment and understand how DNR plans to mitigate impacts.

V. The Site Specific Plan Is Inadequate to Ensure the Protection of Designated Uses.

The Site Specific Plan is intended to set out the land use designations and to contain an inventory and analysis of resources and uses for state land in the planning area. Under AS 38.04.060, the commissioner is required to prepare and maintain on a continuing basis an inventory of all state land and water and their resource and other values. The inventory in the Site Specific Plan is inadequate to meet DNR’s obligations. The “resource inventory” in the plan contains less than a 3-page overview of the resources that occur in the plan area, despite the fact that the plan is for a massive area covering approximately 244,188 acres of state-owned and state selected lands.⁷⁴ It is crucial that DNR complete a robust inventory to ensure it knows the location and ways in which different resources and users utilize this area. Without in-depth information about where resources occur, which is currently lacking, DNR cannot adequately protect those resources and uses from potential impacts.

The plan states that there are as many as 38 mammal species in the area, 141 birds, and more than 20 fish species.⁷⁵ However, it is unclear what species are specifically in the areas or where those species might be found. There are only a handful of sentences that note broadly that those species are in the area.⁷⁶ DNR also relies on the Anadromous Waters Catalog to state that five Pacific salmon species can be found in the affected environment.⁷⁷ However, many of the waters across this broad region have not been fully surveyed and it is unclear where they actually occur, so it is inadequate to assume based on the Anadromous Waters Catalog that those species have been sufficiently identified and inventoried in the area.

Similarly, the inventory contains one sentence about the soils in the area.⁷⁸ This fails to capture the intricacies of the permafrost and vulnerability of permafrost resources across this vast area. There are significant concerns about the potential for permafrost thaw and degradation, and how that will impact the integrity of AIDEA’s proposed project, particularly with the poorly insulated Phase I of the road proposed by AIDEA. One sentence is insufficient to capture key information that needs to be understood to ensure any management guidelines are sufficient to prevent serious permafrost degradation in the area.

The cultural resources inventory is inadequate. That section contains 2 sentences noting at a high level that there are 56 previously recorded AHRS sites in the plan area.⁷⁹ It is unclear if

⁷⁴ SSP at 3–5.

⁷⁵ *Id.* at 4–5.

⁷⁶ *See id.*

⁷⁷ *Id.* at 5.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.* at 5.

DNR has recently inventoried the area or taken into consideration the cultural resources that are likely to be impacted by the project. AIDEA has failed to date to do an adequate cultural resources survey for the area that will be impacted by the proposed road, which further calls into question whether DNR has adequately inventoried and considered the cultural resources of this vast area.

There is also only one sentence on recreation, stating there is road-based activity along the Dalton Highway, backcountry trips in the southern Brooks Range, and float and fishing trips in the river corridors.⁸⁰ This broad statement does not provide a meaningful look or inventory of how and where recreational use occurs across this massive area. By not fully addressing where and how recreation, access, and use of the area occurs, DNR leaves it open-ended whether and how it will actually protect those uses in this area.

DNR's analysis of the land uses in the area is also inadequate. In adopting a Site Specific Plan, the commissioner is required to consider present and potential uses of state land.⁸¹ DNR includes one sentence indicating there is "[r]ecreational use, subsistence use, [and] mining use."⁸² This cursory statement is inadequate to demonstrate the commissioner has actually considered present and potential uses of state land, or that the consideration of those uses was done at a level that is adequate to capture and address those uses across a vast region. DNR needs to do more to document and consider where different uses occur across the full region to ensure those uses are protected, particularly if it authorizes a road through the region that could have significant negative impacts on those uses.

The Site Specific Plan is also supposed to provide management guidelines for the use of the lands at issue.⁸³ The statute indicates each decision about the location of easements and rights-of-way, other than for minor access, shall be integrated with land use planning and classification.⁸⁴ DNR's Site Specific Plan does not adequately address or account for how the proposed easement will be addressed and incorporated into the plan. Instead, the Site Specific Plan assumes without basis that projects like roads will be compatible with existing uses. This is not a given, particularly with such a massive project with numerous damaging components in addition to the road itself. In the management designations for different areas, DNR indicates that permits, easements, material sales, leases, and other types of less-than-fee disposals of state lands may be authorized even in areas that are designated for habitat, harvest, public recreation, and resource management.⁸⁵ These statements appear to rely on the baseless assumption that any road and infrastructure can be done in a way that is compatible with protecting designated uses

⁸⁰ *Id.*

⁸¹ AS 38.04.065(b)(5).

⁸² SSP at 5.

⁸³ *See* AS 38.04.065.

⁸⁴ AS 38.04.065(f).

⁸⁵ SSP at 7–8.

like subsistence and recreation. However, allowing a project like the Ambler Road through those areas is fundamentally incompatible with the protection of those uses.

DNR also needs to incorporate additional measures into the Site Specific Plan to ensure the protection of the public interest and existing uses. In classifying land, the director “shall consider the natural resources and conditions present on the land and shall seek to minimize the adverse effect of private settlement on wildlife, fishery, mineral, timber, and other significant resources of the land.”⁸⁶ As discussed above, there are inadequate measures in the easement to protect the public interest or to minimize the impacts of use of the lands at issue.⁸⁷ Similarly, the Site Specific Plan does not contain sufficient measures to protect existing uses and resources from the far-reaching impacts of this industrial road corridor. It is completely unclear from the face of the Site Specific Plan what measures will apply to the easement to minimize the adverse impacts to wildlife, fish, and other significant resources and uses. Those measures need to be incorporated into the Site Specific Plan.

There are also flaws and a lack of clarity around A-06 and A-07 designations in the Site Specific Plan. There is no map clarifying where exactly DNR is considering those designations to be in effect, which makes it challenging for the public to understand the contours of how DNR is defining those designations. DNR should add in maps delineating where it considers those designations to apply.

The discussion about A-06 says the designation and management intent are the same for those of the upland tracts, except for the navigable portions of waterbodies.⁸⁸ It is unclear what exactly DNR means by those statements. DNR should both clarify what it means and set out management intent specific to that designation since the management concerns for water resources are inherently different and unique from the management concerns at play for upland areas.

For A-07, that section is extremely limited in how it defines that designation as only encompassing the navigable portions of waterbodies with anadromous fish.⁸⁹ That designation should be broader to ensure that protections are not limited to solely the navigable areas of waterways with anadromous fish. Additionally, as noted above, studies to date have been inadequate to fully inventory and identify where and to what extent waterbodies in the region are used by anadromous fish. Additional work needs to be done to accurately inform where this designation applies. The management intent section for A-06 also does not set out anything about the management intent for those areas and how those areas will actually be managed and protected. DNR needs to incorporate in additional measures addressing the management principles and protections that will be put in place in those areas.

⁸⁶ AS 38.04.005(b).

⁸⁷ *See supra* Part II.B.

⁸⁸ SSP at 12.

⁸⁹ *Id.*

VI. DNR Should Not Waive Any Fees Associated with the Easement.

AIDEA has requested that DNR waive all fees associated with both processing the easement application and with maintaining the easement on the basis that the project has a public purpose and is in the public interest. Neither AIDEA nor DNR point to any provisions in the statute, regulations, or DNR Fee Order that provide a justification for a full waiver of the fees associated with the application and issuance of the easement.

Fees for easements are established under 11 AAC 05.070. Although 11 AAC 05.070(a) states that the director of the division of mining, land and water may, by written order, reduce or revise one or more of the fees established in those provisions by waiving a portion of the fee, those provisions also make it clear that those waivers “must apply to all applicants or petitioners for that authorization, petition, or service”; may not exceed 20 percent of the amount established in the regulations; and may not waive any of the additional fees imposed by the regulations. Although the regulations at 11 AAC 05.070(b) provide that the director can consider waiving “a portion of a fee” under subsection (a) when taking into consideration the public interest, that waiver is still subject to the limitations in 11 AAC 05.070(a). The Division of Mining, Land, and Water’s Director’s Order Regarding Fees (Fee Order Number 3) likewise does not provide for full fee waivers and, consistent with the requirements in the regulations, applies consistently for similarly-classified applicants and does not reduce the fees in the regulations by more than 20 percent.⁹⁰

AIDEA should not be provided with special treatment by waiving any of the fees associated with this authorization. The regulations do not provide for a full waiver of fees or differing treatments for similar categories of applicants, and neither AIDEA nor DNR have provided any legal basis or justification for such a waiver request.

Either way, such a waiver would not be in the public interest. AIDEA is asking for a private easement meant to facilitate industrial development and access to the Ambler Mining District. The use of the road will be entirely commercial and AIDEA anticipates charging the fees for use of the road. As discussed throughout these comments, this project is not in the public interest and does not have a public purpose since it will be closed to the public and utilized by mining companies to industrialize the region. The mere fact that AIDEA is the project proponent does not convert what is otherwise a commercial industrial road into a road with a public purpose. It would be inappropriate and contrary to law for DNR to waive any fees associated with this easement.

VII. Conclusion

In sum, we are deeply concerned about the significant impacts from the proposed project to the resources and values in the area. The project is not in the best interest of the state and there

⁹⁰ Div. of Mining, Land & Water, Dep’t of Nat. Res., State of Alaska, Director’s Order Regarding Fees: Director’s Fee Order Number 3 (June 12, 2018).

are inadequate protections in place as part of either the easement or the Site Specific Plan to ensure protection of the public interest, as required by the Alaska Constitution. DNR should not approve either the easement or the Site Specific Plan, and should provide additional information about the proposal to the public prior to moving forward with any further consideration of AIDEA's easement application.

Thank you for your consideration of this letter. Please contact Suzanne Bostrom at sbostrom@trustees.org or (907) 433-2015 with any questions.

Sincerely,

Jim Kowalsky, Chair
Alaskans FOR Wildlife

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Northern Alaska Environmental Center

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