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November 27, 2023

United States Department of Interior
Bureau of Land Management

RE: Draft Supplemental Environment Impact Statement on Ambler Road

To Whom This May Concern,

The City of Kotzebue is a local municipality within the Northwest Arctic Region of Alaska. The municipality is made up of seven elected officials. The City of Kotzebue serves over 3,200 residents and is the local hub for eleven different communities in the Northwest Arctic.

On November 16, 2023, the City of Kotzebue City Council held a public comment period on the Ambler Road Project. The intention was to better understand residents' viewpoints for the project. During this time, we notified residents that this was separate from submitting public comment on the draft supplemental environmental impact statement and encouraged residents to also submit comments online. In addition, we are thankful that Bill Hedman from the Bureau of Land Management has joined us to give an overview of the project.

During this time the city council heard from fourteen residents. Many of the residents expressed concerns over the impact of the Ambler Road with twelve residents commenting in opposition. In addition, we had two residents' comment that they were not directly opposed to the Ambler Road Project.

The concerns held by the residents of Kotzebue touched on several themes from subsistence impacts, management of lands, social impacts, and mining. A few residents touched on the process in which BLM is holding public hearings. Residents shared their concerns for the impact on caribou, seals, and other animals that many residents rely on for subsistence use. One resident stated, "the toxins from the mining will disproportionately impact low-income residents in the 66 impacted communities." In addition, another stated, "it is vital and culturally important to harvest spotted and bearded seals which will be adversely affected by the Ambler Road Project." On social impact, residents expressed concerns about BLM acknowledging in the S-EIS Statement that there will be long term adverse social impacts that will weaken community well-being.

Two residents offered testimony that was not directly opposed to the Ambler Road Project. One comment was that the City of Kotzebue should not take a position on the road. In addition, this

RE: Draft Supplemental Environment Impact Statement on Ambler Road Project
City of Kotzebue

individual stated that roads and mines could enhance the support of Cape Blossom Regional Port and that other routes should be considered. A regional for-profit entity provided testimony stating that they are evaluating their constituents' viewpoints and that recent surveys share that 69% of respondent's annual food supply is from subsistence harvest. There are economic benefits for the region as well.

The council directed City of Kotzebue administration to write a letter to discuss resident's statements. At this time, the City of Kotzebue does not have a formal stance on the matter.

Full testimony from all residents was recorded for public record and broadcasted on the local radio station. Audio recordings can be requested through the City of Kotzebue City Clerk by emailing customerservice@kotzebue.org.

Further questions can be directed to the City Manager, Tessa Baldwin, at tbaldwin@kotzebue.org or by phone at 907-442-3401.

Thank you,



Tessa Baldwin
City Manager
City of Kotzebue



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Northern Regional Land Office

3700 Airport Way
Fairbanks, Alaska 99709-4699
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TTY: 711 or 800-770-8973
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April 2, 2025

RE: ADL 421741, Decision to Authorize Easement to the Alaska Industrial Development and Export Authority for Ambler Road Issued

To Whom it May Concern:

You are receiving this letter because you were included in the Alaska Department of Natural Resources' original public notice of an application for an easement for the Ambler Road across state lands under ADL 421741 or because you provided comments on that application.

The department has authorized issuance, to the Alaska Industrial Development and Export Authority, of a 50-year private exclusive easement 250 feet in width and approximately 125 miles in length for a private industrial-access road and utility corridor, including temporary use of a 450-foot corridor during construction and survey.

Enclosed please find the administrative decision and associated documents, which are also located at: <https://dnr.alaska.gov/mlw/ambler-road/>.

DNR-DMLW complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services or special modifications to comment should contact Alaska Relay at 711 or 800-770-8973 for TTY services.

If you have any questions or need additional information, please contact the Northern Region Lands Section at nro.lands@alaska.gov or (907) 451-2740.

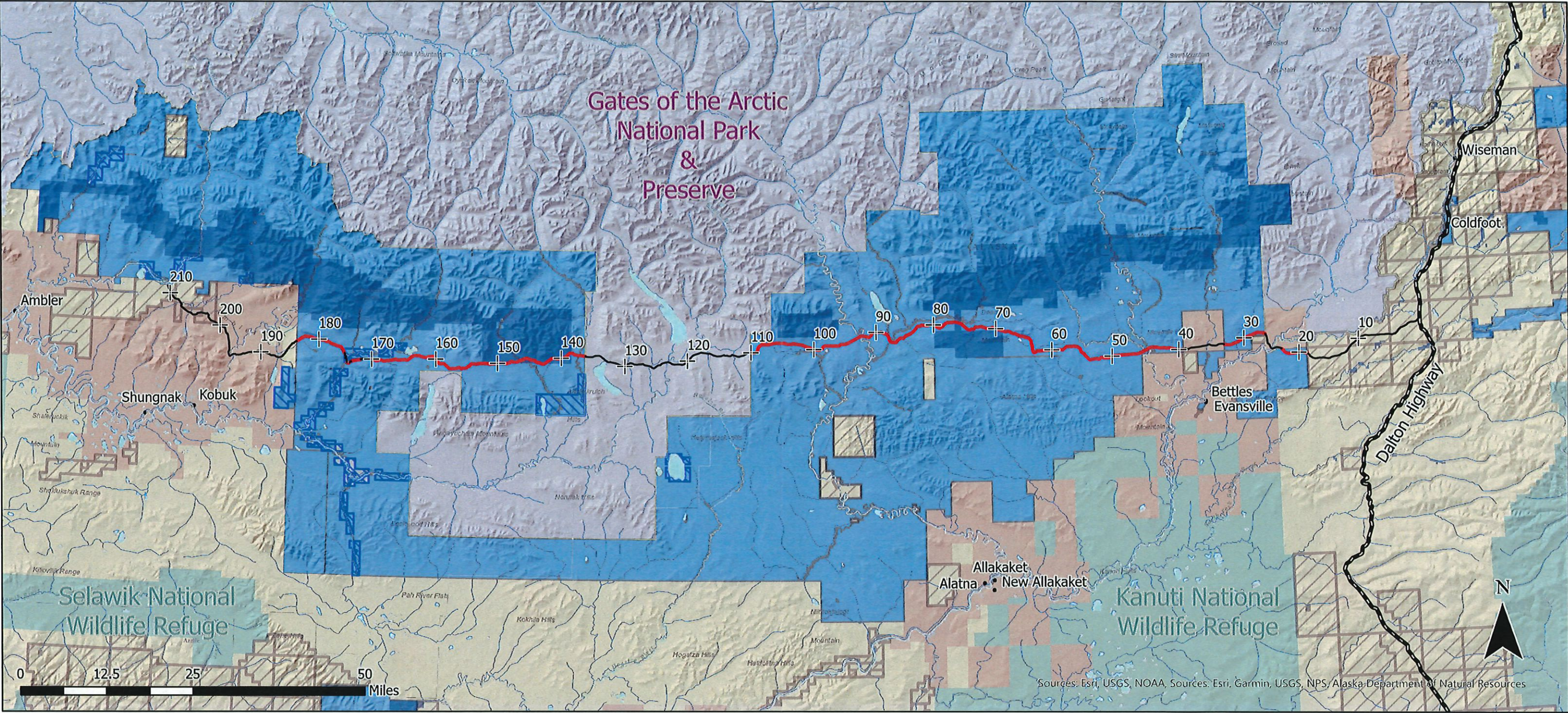
The DNR/DMLW reserves the right to waive technical defects in this notice.

Best Regards,

/s/

Northern Region Lands Office

Enclosures:
Administrative Decision
Entry Authorization
Draft Private Exclusive Easement Document
Ambler Road Maps



ADL 421741 - Ambler Road Right-of-Way
Appendix A - Alignment Overview Map A-1 of 19

Within: Fairbanks Meridian T25N - T26N, R16W - R25W; & Kateel River Meridian T19N - T20N, R12E - R27E.

State of Alaska | Department of Natural Resources | Division of Mining, Land, & Water
Northern Regional Office | 3700 Airport Way | Fairbanks, AK 99709



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Drawn by: Adam Leland, January 28, 2022

Legend

Ambler Road Centerline

- Requested Easement (On State Land)
- Other ROW (Other Land)
- Ambler Milepost
- Alaska Communities
- Road Centerlines
- State Mining Claims

Land Ownership

- State Land
- Bureau of Land Management
- National Park Service
- Fish & Wildlife Service
- Native Corporation
- Municipal Entitlement
- State Selected Land



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Northern Regional Land Office

Administrative Decision

ADL 421741
Alaska Industrial Development and Export Authority
Easement Application
AS 38.05.850

Table of Contents

LIST OF ABBREVIATIONS.....	4
REQUESTED ACTION.....	5
AIDEA's Private Exclusive Easement Request Details	5
Development Plan and Construction	6
Road Operation and Access.....	6
DNR ACTION.....	7
SCOPE OF DECISION	8
STATUTORY AUTHORITY	8
ADMINISTRATIVE RECORD	8
LOCATION INFORMATION	8
Geographic Location	8
Township Range.....	8
Other Land Information.....	9
TITLE.....	9
OTHER STATE INTERESTS	12
THIRD PARTY INTERESTS.....	12
BACKGROUND.....	14
Federal Process.....	15
PLANNING & CLASSIFICATION	16
Northwest Area Plan (NWAP)	16
Ambler Road Site Specific Plan	18
Navigable Rivers and Lakes	19
Public Trust Doctrine.....	20
Consistency with Area Plans	21
AGENCY REVIEW & PUBLIC NOTICE	22
Agency Review Summary	23
Agency Review Comment & Response.....	23
DNR, State Pipeline Coordinator's Section (SPCS).....	23

Alaska Department of Fish and Game (ADF&G)	23
Alaska Department of Environmental Conservation (DEC).....	25
National Park Service (NPS)	28
US Fish and Wildlife Service (USFWS)	28
Public Notice Summary	37
Public Notice Comment & Response	38
Application Issues.....	38
Alternative Routes	41
Project not in the State's Interest	42
Economic Benefit to the State	42
Procedural, Statutory, Constitutional Topics	44
Waiving of Fees.....	48
Government-to-Government Consultation	48
Traditional Knowledge	49
Traditional Values and Subsistence.....	50
Cultural Resource Impacts.....	52
Federal Process and Authorization	53
Caribou Impacts.....	54
Fish Impacts.....	56
Water and Wetland Impacts.....	57
Wild and Scenic River Impacts	58
Pollution Impacts.....	59
Climate Change	60
General Environmental Concerns.....	61
Tourism and Recreation.....	61
Creation of a Multidisciplinary Technical Working Group.....	62
Public Access to State Lands	62
Unanticipated Access and Trespass.....	63
Existing Infrastructure	65
Reclamation/Restoration.....	65
DISCUSSION.....	66
Private Exclusive Easement.....	66
Airstrips	66
Fiber Optic Cable and Amplifier Sites	66
Temporary Construction Camps.....	66
Incidental Material Use.....	66
Designated Material Sites	67
Communication Sites.....	67
Permanent Maintenance Camps	67

Public Access & AIDEA's Public Access Plan	67
Recreation	72
Cultural Resources and Heritage Sites.....	72
Environmental Analysis, Stipulations, and Mitigation Measures	73
Requirements Prior to Construction and Operation	73
Fees.....	74
Reclamation.....	75
Term	76
Entry Authorization	76
Performance Guaranty	76
Insurance.....	76
Survey.....	77
ECONOMIC BENEFIT AND DEVELOPMENT OF STATE RESOURCES	77
DECISION	78
ATTACHMENTS	78
RECONSIDERATION.....	78

LIST OF ABBREVIATIONS

AAP	Ambler Access Project	FOC	Fiber Optic Cable
ADF&G	Alaska Department of Fish and Game	GAAR	Gates of the Arctic National Park and Preserve
AGDC	Alaska Gasline Development Corporation	ISPMP	Invasive Species Prevention and Management Plan
AKLNG	Alaska Liquefied Natural Gas	JROD	Joint Record of Decision
AO	Authorized Office	NHPA	National Historic Preservation Act
AIDEA	Alaska Industrial Development and Export Authority	NNIS	Non-native Invasive Species
ANILCA	Alaska National Interest Lands Conservation Act	NOA	Naturally Occurring Asbestos
APDES	Alaska Pollutant Discharge Elimination System	NPS	National Park Service
BIF	Best Interest Finding	NPDES	National Pollution Discharge Elimination System
BLM	Bureau of Land Management	NRO	Northern Regional (Land) Office
BMP	Best Management Practice	OHA	Office of History and Archaeology
CSU	Conservation System Unit	OHW	Ordinary Highwater Water
DEC	Alaska Department of Environmental Conservation	PAAD	Public Access Assertion and Defense Section
DNR	Alaska Department of Natural Resources	RRSP	Regional Representative Sales Price
DOG	Division of Oil and Gas	RS 2477	Revised Statute 2477
DOI	Department of the Interior	SAIL	State Abatement of Impaired Land Section
DPOR	Division of Parks and Outdoor Recreation	SPRCRP	Spill Prevention and Response and Concentrate Recovery Plan
DOT&PF	Alaska Department of Transportation and Public Facilities	SHPO	State Historic Preservation Office
DMLW	Division of Mining, Land and Water	SSP	Site Specific Plan
EA	Entry Authorization	USACE	United States Army Corps of Engineers
EIS	Environmental Impact Statement	USFWS	United States Fish and Wildlife Service
FEIS	Final Environmental Impact Statement	WACH	Western Arctic Caribou Herd
FHP	Fish Habitat Permit		

REQUESTED ACTION

On October 20, 2021, the Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW), received an application for a private exclusive easement from the Alaska Industrial Development and Export Authority (AIDEA; the applicant) to construct an industrial road on state-owned, DNR-DMLW-managed lands extending from milepost 161 of the Dalton Highway to the Ambler Mining District. The purpose of the proposed easement is to provide AIDEA controlled access to the Ambler Mining District to facilitate potential mine development and transport of ore. The applicant has requested a private exclusive easement approximately 125 miles long, 450 ft. wide, and approximately 6,818 acres in size. AIDEA's entire proposed road will be 211 miles long and crosses state, federal, Native corporation, and borough land. More detailed information follows.

AIDEA's Private Exclusive Easement Request Details

AIDEA requests a 450 ft. wide construction corridor along the length of the alignment on state land as depicted on Appendix A. This width is intended to accommodate the width of the road, construction activities, minor changes in alignment to adapt to conditions on the ground, and the footprint and construction of support infrastructure. Once construction is complete, the final recorded private exclusive easement would be 250 ft. wide. AIDEA has requested a waiver of all DNR-DMLW fees for the Ambler Access Project (AAP).

The private exclusive easement application includes the following road characteristics and support facilities associated with the Ambler Access Project:

- Primary road surface 32 ft. wide with variable embankments typically 80 ft. wide;
- 36 Access roads 32 ft. wide with variable embankments typically 80 ft. wide;
- 12 vehicle turnouts 20 ft. wide by 250 ft. long;
- 15 bridges 32 ft. wide of varying length;
- Culverts – 13 large (10-20 ft.), 5 medium (4-10 ft.), and 1,779 small (up to 4 ft.);
- 2 airstrips with a landing surface of 150 ft. by 3,000 ft., and a footprint of 550 ft. by 6,400 ft.
- 21 material and riprap sites of varying size;
- 2 maintenance camps with a 12-acre footprint consisting of crew housing, storage and maintenance areas, water and sewer systems, generators, and fuel storage; and
- 4 temporary construction camps, with similar setup to the maintenance camps.

As explained in the Scope of Decision section below, this decision does not include authorization for any activities outside the 450 ft. construction corridor, to include material sites, permanent maintenance camps, or communication sites. Construction camps could be authorized within the construction corridor. Temporary construction camps outside the corridor can be authorized with a land use permit.

Development Plan and Construction

Predevelopment activities will consist of preliminary field and design work necessary for infrastructure planning and construction. Field work may consist of geotechnical and hydrological investigations, environmental studies, and cultural resource work. Current and ongoing preliminary field work on state land is authorized by Land Use Permits under AS 38.05.850. Prior to construction, AIDEA will submit design and construction plans for DNR-DMLW approval.

Construction of the road is proposed to proceed in three phases:

- Phase 1: The road will initially be constructed as a single-lane pioneer road with seasonal access. In this phase, the road will have limited shoulder space, 21 periodic turnouts, and include the construction of all bridges and culverts. Bridges will be built as one lane structures and will not be widened in later phases. The road will provide access to the Ambler Mining District during the fall and winter, but it is not anticipated to be used during the spring and early summer when portions of the road are soft and susceptible to damage from traffic.

Phase 1 includes the construction of support roads, maintenance camps, communication sites, material sites, and runways, plus the following:

- 4 temporary construction camps (within proposed material sites) during construction.
- 2 staffed gatehouses at each end of the road.
- The placement of a Fiber Optic Cable (FOC) in the bed of the roadway and using directional drilling to install the cable beneath the bed of rivers.
- Phase 2: The embankments needed for year-round use will be widened and deepened, but the road will remain single lane. This phase may be constructed immediately following Phase 1 as a single construction effort, or in subsequent years.
- Phase 3: Should mining activity and road traffic increase to where a single lane is insufficient, the road will be widened to accommodate two lane traffic. Culverts would be widened to accommodate widened embankments, but bridges would remain single lane. It is possible that Phase 3 will never occur.

Road Operation and Access

Consistent with federal right-of-way (ROW) authorizations that were issued in January 2021, the road will function as a private-industrial road and will not be open to public use. Associated airstrips would also be private and not open to public use. Access to the road will be controlled by a permitting system, administered by AIDEA with an established toll. All users of the road would have to abide by the terms specified in the road permitting system. It is anticipated that AIDEA's collection of use fees will recover the cost of road construction and operation, and the cost of debt financing.

AIDEA listed the following uses as qualifying for a permit to use the road:

- Official business¹ to and from the Ambler Mining District.
- Construction, operation, and maintenance personnel on official business for the road, including maintenance camp operation, and fiber optic and satellite communications.
- Borough, state, and federal land management agency personnel on official business for lands adjacent to the road or within the Ambler Mining District.
- Regulatory agency personnel on official business associated with compliance, monitoring, inspection, or enforcement for the Ambler Road project or District authorizations.
- State and federal emergency response officials and/or crew (police, medical, fire) on official business.
- Native regional corporation landowners' land management or permitting personnel on official business for lands adjacent to the road or within the Ambler Mining District.
- Commercial drivers transporting goods and/or fuel to communities and/or private parcels near the road alignment. Those communities to be served by commercial delivery would be responsible for funding and constructing connecting roads to the Ambler Road.

There is proposed to be no public use of the road, whether by vehicle, bicycle, foot, or other means, and staffed gatehouses would regulate access at either end of the road. AIDEA has proposed permitting perpendicular crossings of the road only at predesignated crossing locations, or at recognized trails and ROWs (e.g., RS 2477s, 17(b) easement, etc.). AIDEA proposed that this information will be provided to DNR-DMLW for review and approval as a part of their Public Access Plan.²

DNR ACTION

DNR-DMLW proposes issuing to AIDEA a 250-foot-wide private exclusive easement after construction. The private exclusive easement will include service roads, airstrips, and turnouts, and any improvements such as FOC that can be located within the 250-foot-wide private exclusive easement. The Northern Regional (Land) Office (NRO) also proposes issuing to AIDEA an entry authorization (EA) for construction within a 450-foot-wide corridor. The EA which authorizes construction and survey will include authorization of temporary construction camps within the 450-foot-wide construction corridor. The EA authorizes predevelopment activities consisting of preliminary field and design work necessary for infrastructure planning and construction. Field work may consist of geotechnical and hydrological investigations, environmental studies, and cultural resource work. Preliminary field work on state land currently authorized by Land Use Permits under AS 38.05.850 will be authorized by the EA. The EA also allows for construction of the road. For requirements due "prior to construction" that means prior to a contractor beginning construction of the road after design and construction plans have been approved.

The EA for construction and the private exclusive easement for the constructed road and ancillary access related improvements are for the alignment applied for by AIDEA and depicted on Appendix A. Any changes to the alignment would require an amended decision.

¹ "Official business" as used by AIDEA in its application and used throughout this decision, refers to AIDEA approved uses of the AIDEA constructed road and other AIDEA improvements.

² The Public Access Plan will require DNR-DMLW approval prior to construction of the road.

The details of the DNR-DMLW authorizations, to include pre-authorization requirements and mitigation measures to address impacts, are outlined in more detail throughout this decision.

SCOPE OF DECISION

The scope of this decision is to determine if it is in the State's best interest to grant a private exclusive easement through state lands for the proposed use. The scope of administrative review for this authorization is limited to (1) reasonably foreseeable, significant effects of the uses to be authorized; (2) applicable statutes and regulations; (3) facts pertaining to the land or resources; and (4) issues that are material to the determination that issuing the authorization is in the interest of the State of Alaska.

All other aspects of the applicant's project are outside the scope of this decision. Therefore, this decision does not address material sites outside of the construction corridor (450 ft.), any permanent maintenance stations, or communication sites. This decision also does not vacate or close any existing public access easements or restrict access to or along any public or navigable waters. Separate processes will be required for the other aspects of the applicant's project outside the scope of this decision.

STATUTORY AUTHORITY

This private exclusive easement application is being adjudicated pursuant to AS 38.05.035(a)(6), AS 38.05.850, and AS 38.05.127. Special Purpose material sales incidental to and within the construction corridor and private exclusive easement are adjudicated pursuant to AS 38.05.565.

ADMINISTRATIVE RECORD

The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced herein, the 2008 Northwest Arctic Plan (NWAP), Ambler Road Site Specific Plan (SSP) adopted June 27, 2022, other classification references described herein, land use permits for preliminary field work LAS 33785, LAS 33936, and LAS 34041, and the casefile for the application serialized by DNR-DMLW as ADL 421741.

LOCATION INFORMATION

Geographic Location

The applicant has requested that DNR-DMLW authorize a private exclusive easement extending west from milepost 161 of the Dalton Highway to the Ambler Mining District.

Township Range

The applicant has applied to use portions of state-owned, DMLW-managed lands within:

Fairbanks Meridian:

Township 25 North, Range 16 West, Sections 1-4;

Township 25 North, Range 20 West, Sections 1-6;

Township 25 North, Range 21 West, Sections 1-3;

Township 26 North, Range 17 West, Sections 22-24, and 27-32;

Township 26 North, Range 19 West, Sections 31-36;
Township 26 North, Range 20 West, Sections 35 and 36;
Township 26 North, Range 21 West, Sections 27-31, and 34;
Township 26 North, Range 22 West, Sections 17-21, 28, 29, and 33-36;
Township 26 North, Range 23 West, Sections 7-10, and 13-15;
Township 26 North, Range 24 West, Sections 2-5, 7, 8, 10-12, 16, 17 20, and 21; and
Township 26 North, Range 25 West, Sections 11 and 12.

Kateel River Meridian:

Township 19 North, Range 12 East, Sections 7-11, 13, 14, and 18;
Township 19 North, Range 13 East, Sections 18-20, 25-29, and 32;
Township 19 North, Range 14 East, Sections 13, 23, 24, and 26-30;
Township 19 North, Range 15 East, Sections 18-21, 27-30, and 34-36
Township 19 North, Range 16 East, Sections 25-29, and 31-35
Township 19 North, Range 17 East, Sections 20-23, and 25-30;
Township 19 North, Range 18 East, Sections 13-15, 19-24, and 30;
Township 19 North, Range 23 East, Sections 8-12, 17, and 18;
Township 19 North, Range 24 East, Sections 7-9, and 11-16;
Township 19 North, Range 25 East, Sections 1-4, and 7-10;
Township 19 North, Range 26 East, Sections 1-5, 9, and 10;
Township 20 North, Range 25 East, Section 36;
Township 20 North, Range 26 East, Sections 31, 32, and 36; and
Township 20 North, Range 27 East, Section 30 and 31.

As depicted in Appendix A.

Approximately 3,788 acres for the final 250 ft. private exclusive easement, and approximately 6,818 acres for construction corridor.

Other Land Information

Municipality: Northwest Arctic Borough and the Unorganized Borough.
Regional Corporation: Doyon, Ltd. and NANA Regional Corp.

TITLE

The State holds the following title to lands encompassed by the private exclusive easement:

Patent 50-84-0655, dated August 15, 1984, acquired under General Grant GS 4753, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 1-4 of Township 25 North, Range 16 West, Fairbanks Meridian;

Tentative Approval, dated July 24, 1984, acquired under General Grant GS 4759, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 1-6 of Township 25 North, Range 20 West, Fairbanks Meridian;

Tentative Approval, dated July 24, 1984, acquired under General Grant GS 4762, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 1-3 of Township 25 North, Range 21 West, Fairbanks Meridian;

Patent 50-84-0784, dated September 26, 1984, acquired under General Grant GS 4755, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 22-24, and 27-32 of Township 26 North, Range 17 West, Fairbanks Meridian;

Tentative Approval, dated July 24, 1984, acquired under General Grant GS 4758, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 31-36 of Township 26 North, Range 19 West, Fairbanks Meridian;

Tentative Approval, dated July 24, 1984, acquired under General Grant GS 4760, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 35 and 36 of Township 26 North, Range 20 West, Fairbanks Meridian;

Tentative Approval, dated July 24, 1984, acquired under General Grant GS 4763, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 27-31, and 34 of Township 26 North, Range 21 West, Fairbanks Meridian;

Tentative Approval, dated August 1, 1984, acquired under General Grant GS 4767, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 17-21, 28, 29, and 33-36 of Township 26 North, Range 22 West, Fairbanks Meridian;

Tentative Approval, dated August 1, 1984, acquired under General Grant GS 4771, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 7-10, and 13-15 of Township 26 North, Range 23 West, Fairbanks Meridian;

Tentative Approval, dated September 24, 1984, acquired under General Grant GS 4777, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 2-5, 7, 8, 10-12, 16, 17, 20, and 21 of Township 26 North, Range 24 West, Fairbanks Meridian;

Tentative Approval, dated September 24, 1984, acquired under General Grant GS 4786, excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Sections 11 and 12 of Township 26 North, Range 25 West, Fairbanks Meridian;

Patent 50-87-0316, dated September 29, 1987, acquired under General Grant GS 2293, excepting and reserving a right-of-way for ditches and canals, for the following lands:

Sections 7-11, 13, 14, and 18 of Township 19 North, Range 12 East, Kateel River Meridian;

Patent 50-87-0315, dated September 30, 1987, acquired under General Grants GS 1896 and GS 2293, excepting and reserving a right-of-way for ditches and canals, for the following lands:

Sections 18-20, 25-29, and 32 of Township 19 North, Range 13 East, Kateel River Meridian;
Sections 23, 24, and 26-30 of Township 19 North, Range 14 East, Kateel River Meridian;
Sections 18-21, 27-30, and 34-36 of Township 19 North, Range 15 East, Kateel River Meridian;
Sections 25-29, and 31-35 of Township 19 North, Range 16 East, Kateel River Meridian;

Tentative Approval, dated September 22, 1980, acquired under General Grant GS 1896, excluding native allotment FF-18992c (USS 12446), excepting and reserving a right-of-way for ditches and canals, and a right-of-way for railroads, telegraph and telephone lines, for the following lands:

Section 13, Township 19 North, Range 14 East, Kateel River Meridian;

Patent 50-89-0146, dated February 9, 1989, acquired under General Grant GS 1897, excepting and reserving a right-of-way for ditches and canals, for the following lands:

Sections 20-23, and 25-30 of Township 19 North, Range 17 East, Kateel River Meridian;
Sections 13-15, 19-24, and 30 of Township 19 North, Range 18 East, Kateel River Meridian;

Patent 50-87-0309, dated September 30, 1987, acquired under General Grant GS 1898, excepting and reserving a right-of-way for ditches and canals, for the following lands:

Sections 8-12, 17, and 18 of Township 19 North, Range 23 East, Kateel River Meridian;
Sections 7-9, and 11-16 of Township 19 North, Range 24 East, Kateel River Meridian;

Patent 50-87-0311, dated September 30, 1987, acquired under General Grant GS 1899, excepting and reserving a right-of-way for ditches and canals, for the following lands:

Sections 1-4, and 7-10 of Township 19 North, Range 25 East, Kateel River Meridian;
Sections 1-5, 9, and 10 of Township 19 North, Range 26 East, Kateel River Meridian;
Section 36 of Township 20 North, Range 25 East, Kateel River Meridian;
Sections 31, 32, and 36 of Township 20 North, Range 26 East, Kateel River Meridian; and
Section 30 and 31 of Township 20 North, Range 27 East, Kateel River Meridian.

The State of Alaska acquired title to lands beneath tidally influenced and navigable-in-fact waterways on the date of statehood, including those lands underlying: the Middle Fork Koyukuk River, Harriet Creek, Koyukuk River, Wild River, John River, Malamute Fork of the John River,

Bedrock Creek, Malamute Fork of the Alatna River, Iniakuk River, Tobuk Creek, Alatna River, Helpmejack River, Kichaiakaka Creek, Kobuk River, Reed River, Kogoluktuk River, and Shungnak River, and Ambler River. Some of the waterways enumerated here will not necessarily be encumbered by the proposed private exclusive easement but are simply within sections of land through which the road corridor is proposed.

In the sections referenced above, title to the submerged lands, below the ordinary high water mark, of the listed rivers was received by the State on January 3, 1959, upon presidential proclamation (Proclamation No. 3269, 24 F.R. 81, 73 Stat. c16) admitting Alaska to the Union pursuant to Section 8(c) of the Alaska Statehood Act (Pub. L. No. 85-508, 72 Stat. 339), according to the Equal Footing Doctrine of the United States Constitution and the Submerged Lands Act of 1953 (43 U.S.C. §1301 et. seq.).

Any state-owned, DNR-DMLW-managed lands, or state-selected lands that may be managed by DNR-DMLW in the future that are crossed by the authorization considered herein at the time of this decision, which are omitted from this list, and are subsequently identified, are included in this decision. Navigable and public water determinations are subject to change pursuant to future findings.

OTHER STATE INTERESTS

Below is a list of known, qualified RS 2477 ROW within the proposed private exclusive easement corridor:

Slate Creek RST 412 within Sections 14, 15, 20-22, 29, and 30 of Township 29 North, Range 13 West, and Sections 25 and 35 of Township 26 North, Range 14 West, Fairbanks Meridian;

Tramway Bar RST 38 within Section 20 of Township 26 North, Range 13 West, Fairbanks Meridian;

Bergman – Cathedral Mountain RST 1611 within Section 29 of Township 26 North, Range 14 West, and Sections 32 and 33 of Township 26 North, Range 16 West, Fairbanks Meridian;

Bettles – Coldfoot RST 209 within Section 32 of Township 26 North, Range 16 West, Fairbanks Meridian;

Bettles – Wild Lake River Trail RST 18 within Sections 30-32 of Township 26 North, Range 18 West, Fairbanks Meridian; and

Hickel Highway RST 450 within Section 33 of Township 26 North, Range 18 West, Fairbanks Meridian.

THIRD PARTY INTERESTS

The applicant has requested a private exclusive easement that may impact the following interests³:

Land Use Permit LAS 34041 issued to the applicant throughout the authorization area.

Land Use Permit LAS 33936 issued to the applicant within Section 31, Township 26 North, Range 19 West, Fairbanks Meridian;

³ As March 14, 2025.

Mining claims ADL 732262 and ADL 732263 held by South32 USA Exploration, Inc. within Section 15, Township 26 North, Range 23 West, Fairbanks Meridian;

Mining claims ADL 732390 and ADL 732391 held by South32 USA Exploration, Inc. within Section 3, Township 26 North, Range 24 West, Fairbanks Meridian;

Mining claim ADL 732389 held by South32 USA Exploration, Inc. within Section 10, Township 26 North, Range 24 West, Fairbanks Meridian;

Mining claim ADL 732268 held by South32 USA Exploration, Inc. within Section 16, Township 26 North, Range 24 West, Fairbanks Meridian;

Mining claims ADL 732247 and ADL 732367 held by South32 USA Exploration, Inc. within Section 17, Township 26 North, Range 24 West, Fairbanks Meridian;

Mining claim ADL 732287 held by South32 USA Exploration, Inc. within Section 20, Township 26 North, Range 24 West, Fairbanks Meridian;

Mining claim ADL 732288 held by South32 USA Exploration, Inc. within Section 21, Township 26 North, Range 24 West, Fairbanks Meridian;

Municipal Entitlement ADL 414531 to the Northwest Arctic Borough within Sections 20 and 26-29, Township 19 Norther, Range 17 East, Kateel River Meridian;

Mining Claims ADL 726895 and ADL 726896 held by Valhalla Metals, Inc. within Section 20, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claim ADL 729898 held by Valhalla Metals, inc. within Section 21, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claims ADL 726899 and ADL 726900 held by Valhalla Metals, Inc. within Section 22, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claim ADL 726901 held by Valhalla Metals, Inc. within Section 23, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claims ADL 623878 and ADL 726909 held by Valhalla Metals, Inc. within Section 25, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claims ADL 726907 and ADL 726908 held by Valhalla Metals, Inc. within Section 26, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claims ADL 726905 and ADL 726906 held by Valhalla Metals, Inc. within Section 27, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claims ADL 629882 and ADL 726904 held by Valhalla Metals, Inc. within Section 28, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claims ADL 629883 and ADL 629884 held by Valhalla Metals, Inc. within Section 29, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claim ADL 629885 held by Valhalla Metals, Inc. within Section 30, Township 19 North, Range 17 East, Kateel River Meridian;

Land Use Permit LAS 33785 issued to the applicant within Section 28, Township 19 North, Range 17 East, Kateel River Meridian;

Mining Claim ADL 629875 held by Valhalla Metals, Inc, within Section 15, Township 19 North, Range 18 East, Kateel River Meridian;

Mining Claim ADL 623873 held by Valhalla Metals, Inc. within Section 19, Township 19 North, Range 18 East, Kateel River Meridian;

Mining Claims ADL 623874 and ADL 623875 held by Valhalla Metals, Inc. within Section 20, Township 19 North, Range 18 East, Kateel River Meridian;

Mining Claims ADL 623876 and ADL 623877 held by Valhalla Metals, Inc. within Section 21, Township 19 North, Range 18 East, Kateel River Meridian;

Mining Claims ADL 629876, ADL 629877, and ADL 629878 held by Valhalla Metals, Inc. within Section 22, Kateel River Meridian;

Mining Claims ADL 623879 and ADL 623880 held by Valhalla Metals, Inc. within Section 30, Township 19 North, Range 18 East, Kateel River Meridian;

The Kobuk - Alatna Portage Northern Route, RST 1915, within Sections 17 and 18 of Township 19 North, Range 23 East, Kateel River Meridian;

Lease ADL 421782 held by OTZ Telephone Cooperative, Inc. within Section 7 of Township 19 North, Range 23 East, Kateel River Meridian;

ROW Lease ADL 418997 held by Alaska Gasline Development Corporation within Section 14 of Township 26 North, Range 13 West, Fairbanks Meridian; and

Trapping Cabin Permit ADL 413390 held by David Schmitz within Section 5 of Township 25 North, Range 16 West, Fairbanks Meridian.

BACKGROUND

The Alaska Department of Transportation and Public Facilities (DOT&PF) as a part of the Roads to Resources initiative evaluated road alignments to identify a potential access corridor for an all-season road from the Dalton Highway to the Ambler Mining District. A potential corridor was identified that would connect the Dalton Highway to the Ambler Mining District crossing the Gates of the Arctic National Preserve. Access across Gates of the Arctic is guaranteed in Section 201(4) of the Alaska National Interests Lands Conservation Act (ANILCA).

In 2013, the project was transferred from DOT&PF to AIDEA. AIDEA proposes to form a public-private partnership to finance, construct, operate and maintain a private industrial access road. AIDEA is applying for a private exclusive easement to construct portions of the Ambler Road on state-owned, DNR-DMLW-managed lands. Ambler Road will be a private industrial access road intended to provide access to the Ambler Mining District to facilitate exploration and potential mine development as part of the AAP. The road alignment, as shown on Appendix A, crosses lands owned and managed by federal, state, municipal, and private (Native corporation) entities. The application considered here requests a private exclusive easement over approximately 125 miles of the proposed road alignment on DNR-DMLW managed state lands.

Federal Process

Prior to submitting the application considered here, AIDEA endeavored to complete the federal process for authorizations and ROW permits for those portions of the alignment on federally managed lands, including Bureau of Land Management (BLM), United States Army Corps of Engineers (USACE), and the National Park Service (NPS) Gates of the Arctic National Park and Preserve (GAAR). During that process, the AAP was subject to a Final Environmental Impact Statement (FEIS) that evaluated three potential road alignments and possible impacts to the environment, recreational uses, fish and wildlife, subsistence resources, local community culture and economic resources, and the economy of the State. The identified impacts were mitigated through specific road construction techniques and stipulations detailed in the FEIS and implemented in the federal decisions and ROW grants. Portions of the mitigation methods applied to the entire Ambler Road alignment (including those portions on state land, *see* the Joint Record of Decision, Appendix C), while others applied only to those portions on federal lands.

Following the March 2020 FEIS, BLM and USACE issued a Joint Record of Decision (JROD) on July 23, 2020. On August 25, 2020, the USACE issued a Clean Water Act Section 404 permit (404 permit) for the project. Although litigation followed in August and October 2020, BLM issued a ROW Grant in January 2021. Similarly, on January 5, 2021, NPS granted a ROW. In February 2022 the Department of Interior (DOI) requested the US District Court for Alaska grant voluntary remand, stating that additional legal analysis had revealed deficiencies in BLM's analysis of subsistence impacts under ANILCA Section 810 and consultation with tribes pursuant to Section 106 of the National Historic Preservation Act (NHPA). On March 14, 2022, BLM and NPS both suspended their federal ROW grants. The Court granted the request for voluntary remand in May 2022. BLM opened public scoping for a supplemental EIS in September 2022.

The final Supplemental EIS (SEIS) was completed, and the notice of the SEIS was published on April 26, 2024. The SEIS included a revised evaluation of impacts to subsistence uses and needs conducted pursuant to Section 810 of ANILCA. The SEIS selected the No Action Alternative. Following the April 2024 SEIS, a Record of Decision (ROD) was approved on June 26, 2024, which selected the No Action Alternative and terminated the previously issued ROW Grant across BLM-managed lands. On August 8, 2024, the USACE suspended the 404 permit, and on January 15, 2025, the USACE was directed to revoke their 404 permit since the BLM No Action Alternative made the project unfeasible.

On January 20, 2025, the President signed Executive Order (EO) 14153, which placed a temporary moratorium on all activities pursuant to the BLM's 2024 ROD in order to review the ROD and conduct a new analysis of the previously alleged legal deficiencies. The EO directed BLM and the USACE to take steps to reinstate the original 2020 JROD.

In response to the 2020 litigation, the State asserted that the 2020 FEIS was thorough and sufficient to identify and develop mitigation measures for the project and that additional analysis was unnecessary. The State's involvement in that litigation should not be confused with how DNR-DMLW considered the 2020 FEIS. DNR-DMLW used the information from the original 2020 federal process, FEIS and JROD, as *background information only* for this state decision and to ensure consistent mitigation measures along the entire route. Because the 2020 FEIS was only used as background information, DNR-DMLW's analysis stands on its own; it was not done relying on the 2020 federal process, FEIS and/or JROD. To be clear, DNR-DMLW's adjudication is being completed under state law and is consistent with state law. However, because this is being

adjudicated under state law, nothing in this decision alleviates AIDEA's requirement to comply with other processes or to obtain other required authorizations.

PLANNING & CLASSIFICATION

Northwest Area Plan (NWAP)

Approximately 47 miles of the proposed road, as applied for and depicted on Appendix A, are located within the boundaries of the 2008 NWAP. General state lands west of GAAR are classified under Land Classification Order No. NC-08-001. Lands within NWAP Unit U-02 are designated Mineral and Harvest (classified Mineral land and Wildlife Habitat land). The management intent for this unit is to manage for habitat and harvest values present and the exploration and development of mineral deposits. Authorizations issued in this unit that involve long-term uses are to consider impacts to Dall sheep and the Western Arctic Caribou Herd (WACH). Special consideration is to be given to activities occurring during the migration periods and to the protection of movement corridors and winter range. ADF&G is to be consulted prior to issuing long-term authorizations. The management intent also requires the protection of cultural resources, public access, and recreation use.

Lands within Unit U-05 are designated Habitat and Harvest (classified Wildlife Habitat land). The management intent for this unit is to manage for habitat and harvest values, and to protect dispersed recreation, access, and cultural resources. Uses may be authorized in this unit, but consideration must be given to impacts to WACH. ADF&G is to be consulted prior to issuing a long-term authorization use that may impact this population and opportunities for harvest opportunities must be maintained.

In addition to the management intent for each unit there are management guidelines for the land designations. Land designated Fish and Wildlife Habitat and Harvest Areas will be retained in public ownership and managed to maintain fish and wildlife production and related public uses. The guidelines outline the following goals for Fish and Wildlife Habitat and Harvest designated lands:

- Ensure access to public lands and waters to promote or enhance the responsible public use and enjoyment of fish and wildlife resources.
- Mitigate habitat loss when resource development projects or land disposals occur, avoid or minimize reduction in quality and quantity of fish and wildlife habitat.
- Contribute to Alaska's economy by protecting the fish and wildlife resources which contribute directly or indirectly to local, regional, and state economies through commercial, subsistence, sport and non-consumptive uses.
- Protect and maintain lands in public ownership and protect habitat for fish and wildlife resource protection to supply sufficient populations or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; and protect unique or rare assemblages of a single or multiple species of regional, state, or national significance.
- Manage state land and resources for sustained yield.

- Avoid the introduction of and reduce the spread of invasive plant and animal species and shall be managed consistent with the applicable requirements of 11 AAC 34, Plant Health and Quarantine.
- Manage to maintain and enhance the natural environment in areas known to be important as habitat for fish and wildlife.

The following management guidelines apply to all habitat areas through the planning area:

- When authorizing the development of state lands, DNR-DMLW will recognize the requirements of the activity or development and the effects to habitat when determining stipulations or measures needed to protect fish, wildlife, or their habitats. The costs of mitigation relative to the benefits to be gained will be considered in the implementation of this policy.
- All land use activities will be conducted with appropriate planning and implementation to avoid or minimize adverse effects on fish, wildlife, or their habitats.
- DNR-DMLW and ADF&G may require the mitigation of any significant damage to fish, wildlife, or their habitats that may occur as a result of a project or proposal. DNR-DMLW and ADF&G will enforce stipulations and measures appropriate to their agency and will require the responsible party to remedy any significant damage to fish, wildlife, or their habitats that may occur as a direct result of the party's failure to comply with applicable law, regulations, or the conditions of the authorization.
- When determining appropriate stipulations and measures, DNR-DMLW will apply, in order of priority, the following steps.
 1. Avoid anticipated, significant adverse effects on fish, wildlife, or their habitats through siting, timing, or other management options.
 2. When significant adverse effects cannot be avoided by design, siting, timing, or other management options, the adverse effect of the use or development will be minimized.
 3. If significant loss of fish or wildlife habitat occurs, the loss will be rectified by repairing, rehabilitating, or restoring the affected area to a useful state.
 4. DNR-DMLW shall consider requiring replacement with, or enhancement of, fish and wildlife habitat when steps 1 through 3 cannot avoid substantial and irreversible loss of habitat. The ADF&G will identify the species affected, the need for replacement or enhancement, and the suggested method for addressing the impact. Replacement with or enhancement of similar habitats of the affected species in the same region is preferable. DNR-DMLW will consider only those replacement and enhancement techniques that have either been proven to be, or are likely to be, effective and that will result in a benefit to the species impacted by the development. Replacement or enhancement will only be required by DNR-DMLW if it is determined to be in the best interest of the State either through the AS 38.05.035(e) or permit review process.

Lands within both units are to be managed for habitat and harvest values and lands within Unit U-05 are also managed for exploration and development of mineral deposits. Unit U-02 requires long-term authorizations to consider impacts to Dall sheep and both units require consideration be given to activities that potentially impact the WACH. ADF&G is to be consulted prior to

issuing long-term authorizations. The Ambler Road private exclusive easement would be a long-term authorization. ADF&G was a cooperating agency for the federal EIS process and consulted during the DNR-DMLW private exclusive easement adjudication process. ADF&G input to DNR-DMLW is outlined in the Agency Review section. Mitigation measures have been developed to mitigate impacts to wildlife. DNR-DMLW will include those measures in the DNR-DMLW authorizations. Both recreation and public access are addressed in the Discussion section.

Ambler Road Site Specific Plan

Lands not within the NWAP boundary are classified under Land Classification Order No. NC-21-001 and are within the Ambler Road SSP boundary. Approximately 78 miles of the proposed road on state land are within the Ambler Road SSP. The most eastern portion of the proposed road is within Unit A-1 and is comprised of state selected lands. Should these lands be conveyed to the State they will be classified and designated Resource Management. The management intent for this unit is to manage for a variety of uses and resources. Given the management intent, DNR-DMLW must consult with ADF&G regarding uses and authorizations that may impact caribou habitat or anadromous waterbodies. For any uses involving long-term authorizations DNR-DMLW must consider impacts on public access to subsistence resources and recreational activities. There are heritage sites within the unit that must be protected.

Unit A-2 includes lands from the vicinity of the Koyukuk River east to beyond the John River. The state land in this unit is interspersed with Doyon Native Corporation lands. The state lands are designated Habitat and Public Recreation-Dispersed (classified Wildlife Habitat land and Public Recreation land). The management intent for this unit is to manage for habitat and harvest values as well as dispersed recreation and access. DNR-DMLW must consult with ADF&G regarding long term or permanent uses that may impact the caribou herd population and any authorizations involving uses that may impact caribou habitat or anadromous waterbodies.

Unit A-3 includes lands from the vicinity of the John River to the area of the Iniakuk and Altana Rivers. The land in this unit is all state land. The state land is classified and designated Resource Management. The management intent for this unit is to manage for a variety of uses and resources. DNR-DMLW must consult with ADF&G regarding uses and authorizations that may impact caribou habitat or anadromous waterbodies. For any authorization involving long-term or permanent uses DNR-DMLW must consider impacts on public access to subsistence resources and recreational activities. DNR-DMLW shall protect any heritage sites within the unit.

Unit A-4 is a small unit within a larger unit comprised of a potential material and riprap site identified for construction of the Ambler Road. The land is to be retained in state ownership and the management intent is for its material resources.

Unit A-5 includes lands from the vicinity of the Iniakuk and Alatna River to the area of the Kobuk River. The state land is designated Habitat and Harvest (classified Wildlife Habitat land). The management intent for this unit is to manage for habitat and harvest values as well as dispersed recreation and access. DNR-DMLW must consult with ADF&G regarding authorizations involving uses that may impact caribou or moose habitat, Dall sheep populations, or anadromous waterbodies. For any authorization involving long-term uses, DNR-DMLW will consider impacts on public access to subsistence resources and recreational activities and shall protect heritage sites within the unit.

In addition to the management intent for each unit there are management guidelines for the designations. Lands with Habitat and Harvest designations (classified Wildlife Habitat land) will remain in state ownership. Permits, easements, material sales, leases, and other types of less-than-fee disposal of state land may be authorized. An easement for a transportation corridor is a less-than-fee disposal. Linear transportation facilities that serve a public purpose or are in the interest of the State may be authorized and must consider the values identified. Habitat values shall be maintained to the greatest extent practicable. If impacts to habitat cannot be avoided, they should be minimized through stipulations contained in an authorization.

The management guidelines for land designated for materials (classified Material land) allow for the issuance of a less-than-fee disposal authorization, a private exclusive easement for a transportation corridor, provided it does not impede the extraction of materials from the land, and it serves a public purpose or is in the interest of the State, though DNR-DMLW must consider the values identified in the unit.

The management guidelines for land designated Public Recreation-Dispersed (classified Public Recreation land) allow for some level of development or activities that facilitate dispersed recreation which may include remote airstrips, trapping cabins, trails, and primitive campsites among other uses and activities. Permits, easements, material sales, leases, and other types of less-than-fee disposal of state land may be authorized. A private exclusive easement for a transportation corridor is a less-than-fee disposal. Linear transportation facilities that serve a public purpose or are in the interest of the State may be authorized and must consider the values identified. Dispersed recreational values are to be considered. If impacts to values cannot be avoided, they should be minimized through stipulations contained in an authorization.

The management guidelines for land designated Resource Management (classified Resource Management land) allow for permits, easements, material sales, leases, and other types of less-than-fee disposal of state land to be authorized. A private exclusive easement for a transportation corridor is a less-than-fee disposal. Linear transportation facilities that serve a public purpose or are in the interest of the State may be authorized provided unit values identified and considered.

Except for Unit A-4, which is to be managed for material resources, all units require land be managed for habitat and harvest values as well as dispersed recreation and access. Unit A-3 is to be managed for a variety of uses and resources. DNR-DMLW shall consult with ADF&G regarding uses and authorizations that may impact wildlife habitat or anadromous waterbodies. DNR-DMLW must also consider impacts on public access to subsistence resources and recreational activities and shall protect any heritage sites.

DNR-DNLW consulted ADF&G during this private exclusive easement adjudication process. ADF&G's input is outlined in the Agency Review section. Mitigation measures have been developed to mitigate impacts to wildlife and anadromous waterbodies. DNR-DMLW will include those measures in the DNR-DMLW authorizations. Mitigation measures are discussed throughout the decision and a comprehensive list of all mitigation measures is included in the attached entry authorization. Both recreation, public access, and protection of cultural resources and heritage sites are addressed in the Discussion section.

Navigable Rivers and Lakes

Both the NWAP and the Ambler Road SSP outline management intent for navigable rivers and lakes and both plans speak to the Public Trust Doctrine.

Certain rivers and lakes identified in the NWP are given specific use designations because of their importance for recreation, commerce and habitat. The plan designations applied to shorelands are identical to those used for uplands, tidelands, and submerged lands. Because of its importance to regional transportation and commerce, in addition to its habitat and recreation values, the Kobuk River is co-designated Transportation and Habitat. Where the Kobuk traverses federal Conservation System Units (CSUs), a third designation, Public Recreation, also applies.

Navigable waters within federal CSUs (National Parks, National Preserves, National Wildlife Refuges, Wild and Scenic Rivers, others) that are anadromous are co-designated Habitat and Public Recreation. Navigable waterbodies that are not anadromous are designated Public Recreation. Both types of waterbodies are to be managed to protect their habitat and/or public recreation functions.

The designation and management intent for navigable waterbodies that cross or are surrounded by state-owned and state-selected lands are the same as those of the upland unit, except that those portions of navigable waterbodies that are anadromous are designated Habitat.

Navigable waterbodies that are not within federal CSUs and are not within state-owned, state-selected, or state-topfiled upland units, are designated Habitat if anadromous and General Use if not anadromous. Navigable waterbodies that are anadromous are to be managed to protect their habitat values, although uses can be authorized if these values are protected. Waterbodies designated General Use are to be managed to allow a diversity of uses consistent with the uses authorized on adjoining uplands in federal, private, or other state entity ownership. Upland uses are usually designated in an adopted land use or resource management plan or can be inferred from the actual or planned use of the unit.

Within the Ambler Road SSP navigable rivers and lakes are divided into two units, A-6 and A-7. For Unit A-6 the designation and management intent for navigable waterbodies that cross or are surrounded by state-owned and state-selected lands not within federal CSUs are the same as those of the upland tract, except for the navigable portions of waterbodies that contain fish spawning and rearing areas, which are designated Habitat. For Unit A-7 the navigable portions of waterbodies within federal CSUs that contain anadromous fish are designated Habitat. All such areas are also designated Public Recreation-Dispersed.

Public Trust Doctrine

The Public Trust Doctrine provides that public trust lands, waters and living natural resources in a state are held by the state in trust for the benefit of all the people and establishes the right of the public to fully utilize the public trust lands, waters, and resources for a wide variety of public uses.

The Public Trust Doctrine applies whenever navigable waters or the lands beneath those waters are altered, developed, conveyed, used, or otherwise managed. It also applies whether the trust lands are publicly or privately owned. Shorelands below the ordinary high-water mark are considered public trust lands. In summary, all submerged lands – including tidelands out to the three-mile-limit and the beds of navigable lakes, streams and rivers – are public trust lands. AS 38.05.965(21) defines public waters as “navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest.”

The Alaska Constitution contains numerous provisions embracing principles of the Public Trust Doctrine that require the State to exercise authority to ensure that the right of the public to use navigable waters for navigation, commerce, recreation, and related purposes is protected. In Alaska, the Public Trust Doctrine extends beyond those submerged lands in which the State holds title to include all waters that are navigable. The State's waters are themselves reserved to the people for common use.

The Alaska Constitution (Article VIII, sections 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) contain some of the provisions, which are the legal basis for applying the Public Trust Doctrine in Alaska. In Alaska, this doctrine guarantees the public's right to engage in activities such as commerce, navigation, fishing, hunting, trapping, and swimming, while also providing for the protection of areas for ecological study.

The Alaska Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied to any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." The Alaska Supreme Court has concluded "the provisions in Article VIII [of the Constitution] were intended to permit the broadest possible access to and use of state waters by the general public." *Wernberg v. State*, 516 P. 2d 1191, 1198-9 (Alaska 1973). The Alaska legislature has broadly defined the navigable and public waters available for public use in AS 38.05.965. Moreover, the legislature has endorsed a broad interpretation of the Public Trust Doctrine in Article VIII of Alaska's Constitution in finding that:

Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust. Sec. 1, Ch. 82, SLA 1985.

However, the right to use state waters does not include the right to enter or trespass upon private lands except in limited circumstances relating to safe portage described in AS 38.05.128(e).

Nevertheless, with 99 percent of Alaska in public ownership at statehood, DNR-DMLW must be cognizant of these constitutional guarantees of access to navigable waters under Article VIII, Section 14 and recognize its responsibility to implement the Public Trust Doctrine throughout this decision. Any management actions will be consistent with the Public Trust Doctrine as defined by the Alaska Constitution, statutes, court decisions, and public involvement.

Consistency with Area Plans

All public domain state land is managed for multiple use. General guidelines in both the NWAP and the Ambler Road SSP state that when considering authorizations for use of this public domain state land, DNR-DMLW will adjudicate applications to minimize damages to streambeds, fish and wildlife habitat, vegetation, trails, and other resources; minimize conflicts between resources and uses; and protect the long-term value of the resource, public safety, and the environment. Under the Ambler Road SPP's general guidelines, state land will be managed to protect access and public resources to include, but not limited to, habitat, recreation, water quality, watersheds, and trails.

Additionally, the Ambler Road SSP general guidelines require DNR-DMLW to protect significant cultural resources through the following actions:

- The Office of History and Archeology (OHA) within the Division of Parks and Outdoor Recreation (DPOR) reviews authorizations, construction projects, and land use for potential conflict with cultural resources. The office determines if there may be an adverse effect on heritage resources and makes recommendations to mitigate these effects.
- Cooperate with concerned government agencies, Alaska Native corporations, statewide or local groups, and individuals to develop guidelines and recommendation on how to avoid or mitigate identified or potential conflict.
- Require the establishment of buffers (50 ft. or greater) around significant cultural resources as a part of the overall protection process when subdividing or otherwise using state lands.

The AAP will have an impact on habitat, anadromous waterbodies, access for subsistence and recreational purposes, and potentially heritage/cultural sites. As a result, DNR-DMLW solicited comments to identify potential impacts and mitigation measures, for example:

- ADF&G and the State Historic Preservation Office (SHPO) were contacted during Agency Review to solicit comments on the proposed activities. *See* the Agency Review Section for specific details related to impacts and mitigation measures, and the Discussion Section for more information regarding mitigation measures to protect cultural resources and heritage sites.
- DNR-DMLW worked with DMLW's Public Access Assertion and Defense Section (PAAD) regarding navigable and public waters, and public access. *See* the Discussion section for more information about the Public Access Plan.
- Alaska Native corporations and local communities were included in Public Notice to obtain input on guidelines and recommendations on how to avoid or mitigate identified or potential conflict. *See* the Public Notice section for more detailed information.

Based on the NWAP and the Ambler Road SSP management intent for the various units, the general and designation guidelines, and the impacts and mitigation measures identified during Agency Review, issuing a private exclusive easement for the Ambler Road is determined to be consistent with the plans; provided the applicant adheres to the required mitigation measures (stipulations) identified for in the DNR-DMLW authorizations.

AGENCY REVIEW & PUBLIC NOTICE

The DNR-DMLW agency review and public notice process resulted in over 200 comments and recommendations. DNR-DMLW evaluated the proposed AAP and the information received from agencies and the public. Through this process DNR-DMLW identified mitigation measures to be included in the DNR-DMLW authorizations to mitigate impacts to fish, wildlife, habitat, public access to subsistence resources, recreation, and to protect cultural resources. Some of the mitigation measures to be included in the DNR-DMLW authorizations are the same or similar measures that were included in the now inactive 2021 BLM ROW grant and the 2020 USACE 404 permit. However, DNR-DMLW has included these mitigation measures based on its independent review, and not simply because they were included in the 2021 BLM ROW or 2020

USACE 404 permit. Mitigation measures that are identified throughout the Agency Review and Public Notice sections are written out in their entirety the first time they are discussed but are only listed by the title later in the document. A full list of mitigation measures is included in the attached EA.

Agency Review Summary

Agency Review of the application was conducted concurrently with the SSP from January 31, 2022 to March 2, 2022, and extended an additional 30 days to April 1, 2022. The request for review directed Agencies to the DNR-DMLW Ambler Road Project Website <https://dnr.alaska.gov/mlw/ambler-road/> for application materials and the option to submit comments through the online portal. The request for agency review was sent to the following entities: Alaska Department of Commerce, Community and Economic Development (DCCED); Alaska Department of Environmental Conservation (DEC), Commissioner's Office; DEC, Wastewater; ADF&G, Access Defense; ADF&G, Habitat; DNR, Division of Geologic & Geophysical Surveys (DGGS); DNR, Division of Oil and Gas (DOG), State Pipeline Coordinators Section (SPCS); DNR, DOG, Directors Office; DNR, DPOR; OHA; DOT&PF, Property Management; DOT&PF, ROW, Northern Region; DOT&PF, ROW, Statewide; BLM, Ambler Road EIS Project Manager; BLM, Central Yukon Field Office; BLM, Fairbanks District Office; USACE, Alaska District; and U.S. Fish and Wildlife Service (USFWS), Planning and Consultation. Information and comments received from sections within DMLW prior to and during agency review have been considered and included in the preparation of this decision.

Agency Review Comment & Response

DNR, State Pipeline Coordinator's Section (SPCS)

Comment: There are AS 38.35 pipelines where the proposed Ambler Road connects with the Dalton Highway. While the private exclusive easement application is concerned with established state lands only, the companion plan, the SSP, is concerned with both state-owned lands and state selected lands. This land includes the land at the Dalton Highway – Ambler Road intersection.

The AS 38.35 pipeline lessees are: Alaska Stand Alone Pipeline, ADL 418997, Alaska LNG-Mainline Pipeline, ADL 4212987, and the Trans Alaska Pipeline System, ADL 63574.

DNR-DMLW Response: Comment noted.

Alaska Department of Fish and Game (ADF&G)

Comment: As a cooperating agency, ADF&G played an essential role in the development of the special mitigation measures referenced in the Ambler Road EIS JROD. For specifics *see* Appendix F for mitigation; specifically pages F-61 (recreational and commercial fisheries), F-69 (subsistence uses and resources), F-72 (fish and wildlife – caribou), and F-75 (essential fish habitat – salmon).

Additionally, ADF&G Habitat will be responsible for issuing Fish Habitat Permits (FHP) for all activities in specific fish bearing waterbodies (culvert installations, bridge construction, water withdrawals, etc.). Habitat will also be coordinating the ADF&G comments for all state land use activities (DNR-DMLW authorizations for material sites, temporary camps, airstrips, etc.).

DNR-DMLW Response: While Appendix F of the JROD contains the USACE Supporting Information, Appendix G outlines the Special Conditions that were previously included in the USACE 404 permit which was issued to ensure the project is not contrary to the public interest and to ensure the project complies with the 404(b)(1) Guidelines. Although the USACE 404 permit was suspended, the special conditions identified by ADF&G in their comments will be included in the DNR-DMLW authorization as DNR-DMLW has determined they protect and mitigate impacts to recreational and commercial fisheries, subsistence uses and resources, fish and wildlife, and essential fish habitat. DNR-DMLW will include the following stipulations:

Clean Fill: The Grantee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete blocks with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

Erosion Control Measures: The Grantee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material outside the authorized work area. The erosion control measures shall remain in place and be maintained until all authorized work is completed and the work areas are stabilized. To the maximum extent practicable, plastic-free erosion and sediment control products such as netting manufactured from 100-percent biodegradable materials like jute, sisal or coir fiber shall be used for erosion control. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion.

Snow and Ice Clearing: Snow and ice clearing operations shall not result in the discharge of vegetation, soil or debris into waters of the U.S. outside of all authorized fill areas.

Culvert Widths: Culvert widths shall be 1.2 times the bank-full width of the stream plus two feet as recommended in the Washington Department of Fish and Wildlife's Water Crossing Design Guidelines, 2013. Culverts in fish-bearing streams shall be designed to maintain a natural channel and substrates to maintain a natural stream bed character. This embedded stream simulation design shall maintain fish passage by retaining the natural stream slope, meander, and water velocity and depth patterns similar to the natural (undisturbed) stream reaches upstream and downstream of the culvert location.

Cross-drainage Culvert Locations: Final cross-drainage culvert locations shall be determined in the field during breakup and locations staked. Existing (natural) drainage patterns shall be maintained throughout all construction and operation periods by the installation of culverts in all authorized fill areas in sufficient number and size to prevent ponding, dewatering, water diversion between watersheds, or concentrating runoff flows and to ensure that hydrology is not altered.

Stream Crossings & Floodplain Connectivity: Stream crossings shall preserve floodplain connectivity to the greatest extent possible.

Overflow Culverts: Overflow culverts should be at the same grade level as the floodplain, and placed to match the flood-flow patterns in the floodplain.

Gravel and Construction Materials: Gravel and other construction materials shall not be taken from streambeds, riverbeds, active floodplains, lakeshore or outlets of lakes. Material sites shall be located outside of active channels and active floodplains. A 500-foot buffer around all streams shall be maintained, within which no material site or access road to a material site shall be located.

Vegetation Buffer: Where it is practicable, a 100-foot undisturbed vegetation buffer shall be maintained along ponds, lakes, creeks, rivers or higher-value wetland (patterned fens, emergent wetlands and moss-lichen wetlands) unless site-specific conditions warrant an exception. Any exceptions must be approved by the Authorized Officer (AO). The buffer width shall start from the edge of the riparian area associated with the waterbodies or from the edge of the higher value wetland.

Culvert Adaptive Management Plan: A Culvert Adaptive Management Plan (AMP) for monitoring, maintaining, and repairing culverts over the life of the road shall be developed in consultation with ADF&G and the USACE. The AMP shall include documentation of culvert locations with GPS waypoints; regular monitoring during culvert installation and through the road operations; corrective measures which would be taken if concerns are identified; and timeframes for those measures to be implemented. Corrective measures may include installation of additional culverts, increasing culvert size, adding thaw lines, adding deadman anchors or other appropriate measures. The Grantee shall use its proposed Ambler Mining District Industrial Access Project (AMDIAAP) subsistence Advisory Committee to help in oversight of the AMP.

As ADF&G pointed out, under AS Title 16 they are responsible for developing and issuing FHPs for proposed activities conducted below mean high water of anadromous fish streams. Although the private exclusive easement will include airstrips, and the construction corridor will include temporary camps, designated material sites are not included in this decision. ADF&G will have an opportunity to comment on the Mining and Reclamation Plans when submitted. AIDEA will be responsible for obtaining necessary FHPs.

Alaska Department of Environmental Conservation (DEC)

DEC Responded with several comments and questions.

Comment: The information provided in the Environmental Risk Questionnaire does not clarify how many 4,000-gallon diesel tanks there will be for the entire road project. The description speaks of tank(s) (plural) but does not provide a number.

DNR-DMLW Response: A number is not provided because at this time it is not known the exact number of tanks that will be required for the entire road project. However, AIDEA will be required to store fuel and hazardous substances in accordance with state and federal law, and DNR-DMLW will include the following stipulation:

Fuel and Hazardous Substances: The use and/or storage of hazardous substances by the Grantee must be done in accordance with existing federal, state and local laws, regulations and ordinances. Debris (such as soil) contaminated with used motor oil, solvents, or other chemicals may be classified as a hazardous substance and must be removed and disposed of in accordance with existing federal, state and local laws, regulations and ordinances. Drip

pans and materials, such as sorbent pads, must be on hand to contain and clean up spills from any transfer or handling of fuel.

The storage of petroleum products below Ordinary High Water (OHW) or Mean High Water Mark (MHW) is prohibited. Fuel storage containers, including flow test holding tanks and hazardous substances, with a total combined capacity larger than 55 gallons, shall not be placed within 100 feet from the ordinary high-water mark of waterbodies. All fuel storage containers and associated materials must be removed by the permit expiration date. All fuel and hazardous substance containers shall be marked with the contents and the permittee's name using paint or a permanent label.

Definitions:

Containers means any item which is used to hold fuel or hazardous substances. This includes tanks, drums, double-walled tanks, portable testing facilities, fuel tanks on small equipment such as light plants and generators, flow test holding tanks, slop oil tanks, bladders, and bags. Manifolded tanks or any tanks in a series must be considered as single independent containers. Vehicles, including mobile seismic tanks, are not intended to be included under this definition.

Hazardous substances are defined under AS 46.03.826(5) as (a) an element or compound which, when it enters the atmosphere, water, or land, presents an imminent and substantial danger to the public health or welfare, including fish, animals, or vegetation; (b) oil; or (c) a substance defined as a hazardous substance under 42 U.S.C. 9601(14).

Secondary containment means an impermeable diked area or portable impermeable containment structure capable of containing 110 percent of the volume of the largest independent container. Double-walled tanks do not qualify as secondary containment unless an exception is granted for a particular tank. All piping and manifolds shall be within secondary containment.

Surface liner means any safe, non-permeable container (e.g., drips pans, fold-a-tanks, etc.) designed to catch and hold fluids for the purpose of preventing spills. Surface liners should be of adequate size and volume based on worst-case spill risk.

Comment: The Environmental Risk Questionnaire does not address the spillage of mining materials that could contain hazardous materials, such as cyanide. It is not clear if they are planning only to transport ore via the road and not transport hazardous materials. While they discuss parallels with the Red Dog Road where they only haul ore, they need to clarify if they plan to also allow for transportation of hazardous materials such as fuel and if cyanide would be included as a part of their operations.

Once there is an operating mine that uses the Ambler Road and they are engaged in ore processing, then reagents and/or cyanide could be transported at some time in the future. Would the road easement need to be readdressed if the proposed uses change?

DNR-DMLW Response: DNR-DMLW will be granting a private exclusive easement to AIDEA to develop an industrial road to access state mineral resources and potentially facilitate mine development and the transport of ore. The private exclusive easement will not limit the materials

hauled on the road so there would be no need to address this now or in the future. AIDEA, as the holder of the easement, will be responsible for ensuring those who use the road to transport materials – including hazardous materials – do so in accordance with state and federal law.

Although the private exclusive easement will not limit materials hauled on the road, prior to road construction a Spill Prevention and Response and Concentrate Recovery Plan (SPRCRP) shall be developed *in consultation* with DEC and DNR-DMLW. The SPRCRP shall address the following:

- Establish who can be a constant, credible, and quick response entity when spills occur (such as Alaska Clean Seas for the North Slope);
- Will the Tundra Treatment Guidelines be used? Spills along the Red Dog haul road have found that the use of a vac truck, rather than excavation, is the best practice for protecting tundra;
- For spills that impact land outside the boundaries of the private exclusive easement, additional permits from DNR-DMLW will be necessary for spill response and cleanup actions; and
- Describe the equipment and mitigation measures the applicant will employ to address spills.

DNR-DMLW will include the following stipulations:

Spill Prevention and Response and Concentrate Recovery Plan (SPRCRP): A SPRCRP will be required prior to operation of the Ambler Road. The plan shall be developed in consultation with DEC and DNR. The plan shall address who will be responsible for responding to spills; what tundra treatment guidelines will be used; and what equipment and mitigation measures the applicant will employ.

Concentrate Transportation: Trucks hauling concentrate from the Ambler Mining District to the Dalton Highway would be required to use covered, sealed containers to prevent ore concentrate from escaping the haul trucks and minimize the potential for impacts on streams from concentrate transport. The operating requirement would be carried through into AIDEA's permit requirements of any road user.

Spill Prevention Control and Countermeasure Plan: Grantee shall provide DNR-DMLW a copy of the Spill Prevention Control and Countermeasure Plan for review.

Notification of Discharge: The Grantee shall immediately notify the Department of Environmental Conservation (DEC) and AO of any unauthorized discharge of any amount of oil to water, a discharge of any amount of a hazardous substances (other than oil), and any discharge of oil greater than 55 gallons on land. All fires and explosions must also be reported immediately.

If a discharge, including a cumulative discharge, of oil is greater than 10 gallons but less than 55 gallons, or a discharge of oil greater than 55 gallons is made to an impermeable secondary containment area, the Grantee shall report the discharge within 48 hours. Any discharge of oil greater than one gallon up to 10 gallons, including a cumulative discharge, solely to land, must be reported in writing on a monthly basis.

Notification of discharge must be made to DEC online at ReportSpills.alaska.gov or by phone at 1-800-478-9300.

Notification of discharge must be made to the appropriate DNR Office, preferably by e-mail: Anchorage email dnr.sero.spill@alaska.gov, (907) 269-8528; Fairbanks email dnr.nro.spill@alaska.gov, (907) 451-2739; Juneau email dnr.sero.spill@alaska.gov, (907) 465-3513. The Grantee shall supply the AO with all incident reports submitted to DEC.

In addition to the stipulations above, DNR-DMLW will also include the *Fuel and Hazardous Substances* noted in the response to the first DEC comment.

National Park Service (NPS)

Comment: A portion of DNR-DMLW lands included in the current AIDEA easement application are immediately adjacent to NPS lands. There is potential for road-related activities on DNR-DMLW managed lands to affect resources and opportunities for subsistence activities on adjacent NPS lands. Cross-border effects are of particular concern in the areas of water and aquatic resources, fish, wildlife (including caribou), air quality, acoustic environment, and visual resources.

To minimize impacts to nearby NPS lands, we urge DNR-DMLW to develop rigorous protective stipulations for activities related to the construction, operation, and maintenance of the proposed Ambler Access Road on DNR-DMLW lands. We would be pleased to work collaboratively with you on these issues and stand ready to answer any questions or provide additional specific information relating to park resources that might assist in the evaluation, decision-making or stipulation development processes.

DNR-DMLW Response: It is the State's position that the mitigation measures identified through DNR-DMLW process, and the mitigation measures that will be developed for the additional authorizations needed (e.g., ADF&G FHPs, DEC Section 401 Water Quality Certification, DEC Alaska Pollutant Discharge Elimination System [APDES] permit) are rigorous protective stipulations for activities related to the construction, operation, and maintenance of the proposed road. DNR-DMLW asserts that the mitigation measures identified in this decision and implemented in the DNR-DMLW authorizations will protect water quality and aquatic resources, fish, wildlife (including caribou), air quality, and other natural resources. DNR-DMLW appreciates NPS's offer to work collaboratively with us. We look forward to addressing any issues that may arise in the future.

US Fish and Wildlife Service (USFWS)

The USFWS offered several comments and recommendations listed below:

Comment: The proposed road authorization differs from activities permitted under the 2020 JROD, where the USACE permitted a 20 ft. wide road and 15 mineral sites (i.e. narrower road and fewer mineral sites, among other February 5, 2020, design revisions) to avoid and minimize impacts and negate the need for compensatory mitigation.

DNR-DMLW Response: An authorization issued by DNR-DMLW does not alleviate the applicant's responsibility to obtain and abide by any additional permits and authorizations necessary under state and federal law. The applicant may be authorized by the State to construct

a road larger than that originally considered under a 404 permit. If AIDEA chooses to build to the larger plan, they will need to amend their permit with the USACE as applicable.

Comment: The USFWS recommends that DNR-DMLW evaluate the potential impact of the entire project, including the development of mines, regardless of land ownership. The mines will not be developed without the road, and the road is being proposed to access the mining claims.

DNR-DMLW Response: DNR-DMLW is adjudicating whether to grant a private exclusive easement on state public domain land under AS 38.05.850 for the construction and maintenance of a road for the purpose of accessing the Ambler Mining District for exploration and potential mine development in the future. Any authorization to undertake mining activity will require a separate permitting process that is outside the scope of this decision.

Comment: Endangered Species – No Endangered Species Act (ESA) listed species or designated critical habitat occur within the project area, and no action regarding ESA-listed species is required.

DNR-DMLW Response: Comment noted.

Comment: Interjurisdictional Fish – The potential impacts of the project to important fish stocks can be substantial and permanent. The Kobuk and Alatna Rivers (and their upper tributary streams) are important spawning and rearing watersheds for subsistence fish including sheefish, other whitefish species, and chum and chinook salmon.

DNR-DMLW Response: ADF&G provided comments during DNR-DMLW's agency review process. The mitigation measures that they identified, and that DNR-DMLW will incorporate in the authorizations are rigorous protective stipulations which will protect water quality, aquatic resources, and fish stocks important for subsistence. The following mitigation measures, as noted in the ADF&G Section above, will be included: *Clean Fill, Erosion Control Measures, Snow and Ice Clearing, Culvert Widths, Cross-drainage Culvert Locations, Overflow Culverts, Vegetation Buffer, and Culvert Adaptive Management Plan*. Additionally, ADF&G Habitat Section will be responsible for issuing FHPs for all activities in specific fish bearing waterbodies (culvert installations, bridge construction, water withdrawals, etc.).

Comment: Potential Public Access – The USFWS is concerned that DNR-DMLW is only considering industrial access and not the potential future public access to Ambler Road. The USFWS would like clarification if the State will authorize industrial only access for the life of the road. For example, the Dalton Highway began with restricted access and was later opened to the public. If public access is a possibility, the USFWS recommends that DNR-DMLW consider the potential impacts public access may have on fish and wildlife resources.

DNR-DMLW Response: AIDEA has applied for a private exclusive easement to construct a private industrial road to access the Ambler Mining District. In this decision, DNR-DMLW must determine whether it should grant AIDEA's requested private exclusive easement and if so, to identify ways to mitigate the impacts associated with AIDEA's planned development of that access easement. If at the end of the easement term there is a proposal for the road to be a public road, a new, separate process from this one would be required. The process would include agency review and public notice, affording an opportunity to consider potential impacts of that public road.

Comment: Use Beyond 50 Years – The USFWS recommends DNR-DMLW consider use beyond the project proposed 50-year timeframe. Proposed features, such as a buried FOC that may service nearby communities, suggest that the ROW may persist beyond 50 years.

DNR-DMLW Response: AIDEA has applied for a private exclusive easement for a 50-year term. It is outside the scope of this decision to consider the potential impacts of the road beyond the 50-year term. At the end of the 50-year private exclusive easement a new, separate process from this one would be needed if there is a proposal to continue to use the road. That process would include agency review and public notice.

Comment: Premature ROW Development – The USFWS is concerned that with the three-phase development of the road, a pioneer road (Phase 1) will be constructed long before mine development; the road may later be found to be unnecessary, it will be difficult to protect against unauthorized accesses, and may not employ environmental mitigations constructed in later phases (2 and 3). The USFWS recommends construction authorization only once specific and feasible mining proposals are developed and large-scale mining is ready to be implemented.

DNR-DMLW Response: AIDEA has applied for a private exclusive easement to construct an industrial road to access the Ambler Mining District. The road would facilitate access for exploration and development of the State's mineral resources. Absent a separate agreement otherwise, AIDEA will be required to return the land in a condition acceptable to DNR-DMLW. DNR-DMLW will include the following stipulation:

Site Restoration: Unless by a separate written agreement by the Grantor and Grantee, upon termination of this authorization, whether by abandonment, revocation or any other means, the Grantee shall return the lands to the Grantor in a condition acceptable to the Authorized Officer.

Until such time as DNR-DMLW accepts relinquishment of the private exclusive easement, AIDEA will be responsible for ensuring no unauthorized access and employing any environmental mitigation they are responsible for per the terms of their authorizations.

Comment: Permafrost – The USFWS recommends DNR-DMLW adopt permafrost mitigation measures proposed by ADIEA in the 2020 JROD, with two additional recommendations. First, where groundwater flow in the thawed active layer is necessary for the hydrology of high value wetlands, where the roadbed may prevent thawing of the active layer, permafrost stabilization measures should include features that minimize disruption of ground water flow. Second, the USFWS recommends using closed-cell extruded polystyrene or other closed cell foams, rather than non-extruded expanded polystyrene which may break into small pellets and spread across the landscape when exposed over the life of the project.

DNR-DMLW Response: DNR-DMLW will include the following stipulations:

Permafrost: Grantee shall design and construct the road to follow standard industry practices to reduce or eliminate permafrost degradation and associated road quality deterioration. Provisions for reducing permafrost degradation would be included in project design. Potential methods for addressing permafrost concerns include embankment insulation, air convention embankment, thermosiphons, sunsheds, snowsheds, or air ducts.

Foam Insulation: If foam is used to insulate the permafrost from thermal degradation, it will be composed of closed-cell extruded polystyrene or other closed cell foams (e.g., blue board) rather than non-extruded expanded polystyrene foam.

Groundwater Flow: The Grantee shall use construction methods and road design features that minimize the disruption of groundwater flow through the active layer above permafrost covered by the roadbed, to protect groundwater-fed wetlands such as fens. For drainage of fens and other unique wetland features the use of more porous fill material shall be maximized and compaction to underlying soils limited.

Comment: Naturally Occurring Asbestos (NOA) – The Service recommends avoiding NOA materials. If NOA materials must be used for construction, they should be capped with a suitable impermeable material to prevent exposure to air and leaching into ground water. A monitoring program should be developed and implemented to ensure integrity of NOA caps.

DNR-DMLW Response:

The following mitigation measure will be included as a stipulation:

Naturally Occurring Asbestos: Grantee shall avoid the use of materials containing naturally occurring asbestos (NOA is defined as 0.1 percent asbestos by mass) to the greatest extent practicable. If use of NOA materials cannot be avoided, the fill material and road cuts shall be capped with non-NOA materials in order to not expose NOA to the air, and Grantee shall follow DOT&PF measures as allowed under 17 Alaska Administrative Code 97 and described in May 14, 2015, regulations regarding the use of materials containing NOA.

Additionally, in the DNR-DMLW easement application AIDEA committed to developing a NOA Management Plan. This plan would inform workers and residents of NOA in road materials where unavoidable to minimize risk from NOA.

NOA Management Plan: The Grantee shall develop and implement a plan to inform workers and residents of all communities in the area directly affected by the Ambler Road of the occurrence of NOA in road materials, and on the ways to minimize exposure to NOA and reduce health risk.

Comment: Fugitive Dust – To avoid contamination of waters and harm to aquatic organisms with dust suppressant chemicals, the USFWS recommends not using dust suppressants within 328 ft. (100 m) of fish-bearing streams and high-value wetlands and use only water to control dust.

DNR-DMLW Response:

DNR-DMLW will include the following stipulations:

Roadside Vegetation: The Grantee shall employ mitigation measures to reduce contamination of roadside vegetation through industry BMPs that prevent and minimize fugitive dust, stormwater runoff, erosion, and spills and leaks. Contaminant monitoring will continue throughout the life of the project.

Dust Suppressants: Dust suppressants with ingredients known to be harmful to aquatic organisms would not be used within 328 feet of any fish-bearing stream and higher-value wetlands (i.e., emergent wetlands, moss- lichen wetlands, patterned fens, shallow ponds).

Additionally, in the DNR-DMLW private exclusive easement application AIDEA committed to developing dust control plan; therefore DNR-DMLW will include the following stipulation:

Dust Control Plan: The Grantee shall provide the Authorized Officer with a copy of the Dust Control Plan.

Comment: Transportation of Ore Concentrates – To avoid concentrate escape during transit, the USFWS recommends implementing the mitigation measures within the 2020 EIS (Vol. 3, Appendix N, Section 3.2.3) to help contain hazardous materials during transportation. Because these measures were not entirely effective at the Red Dog Mine, the USFWS recommends developing additional containment measure or more effective washing and sealing procedure before the vehicles leave the mine site.

DNR-DMLW Response: A SPRCRP shall be developed *in consultation* with DEC and DNR to mitigate potential contamination from hauling concentrate. *See* DNR-DMLW comment response to DEC comments.

DNR-DMLW will include the following stipulations: *Fuel and Hazardous Substances, Spill Prevention and Response and Concentrate Recovery Plan (SPRCRP), Concentrate Transportation, Spill Prevention Control and Countermeasure Plan, and Notification of Discharge.*

Comment: Sand and Gravel Materials Sites – The USFWS recommends avoiding active flood plains as material sites to avoid fish entrapment and increased sediment flow downstream.

DNR-DMLW Response: Designated material sites are not within the scope of this decision. While some incidental use of material within the construction corridor may be used in accordance with AS 38.05.565 and DNR-DMLW DPF 2023-01 AIDEA will need to submit material sale applications with reclamation plans to DNR-DMLW for adjudication. At that time DNR-DMLW will seek agency and public comments and address more fully gravel extraction mitigation measures.

For material extraction incidental to the private exclusive easement corridor authorization, DNR-DMLW will require mitigation measures identified in *Gravel and Other Construction Materials* detailed in the ADF&G agency comments above.

Comment: Floodplain Connectivity – The USFWS recommends project design preserve floodplain integrity both up and downstream at all floodplain crossings, including culverts. We also recommend setting the invert for overflow culverts at the same grade level as the floodplain, in addition to the elevated overflow culverts that account for aufeis overflow.

DNR-DMLW Response: DNR-DMLW will include the following stipulations:

Floodplain Connectivity: During design, culvert widths and bridge spans will be increased as needed, and/or overflow culverts will be installed to improve floodplain connectivity and accommodate stream characteristics to reduce the likelihood of damming or erosion. Overflow culverts, typically set at higher elevations relative to the primary culvert, will be considered at stream crossings where aufeis formation is probable to keep water flowing across the roadway and prevent erosion and damming should flow through the primary culvert become impeded or blocked by ice. Overflow culverts also will be

considered at stream crossings where there is a high likelihood of large woody debris (e.g., fallen trees) blocking culverts, based on the prevalence of timbered banks and active stream erosion upstream of the crossing. Overflow culverts also would be considered at broad, active floodplains, especially where the main stream channel is poorly defined, to better accommodate hydrologic connectivity across the floodplain. Design features related to this mitigation will be determined during the design/permitting phase and implemented throughout the project footprint on state managed lands.

Hydrologic Connectivity: Bridges and culverts will be installed at all identified drainage crossings, including rills and ephemeral channels, to maintain hydrologic connectivity, minimize changes to watershed basin areas, and reduce the likelihood of water impoundment degrading permafrost. An adequate number of culverts and/or bridges will be installed to maintain hydrologic continuity and existing drainage patterns within wetland complexes, ephemeral channels, and perennial stream channels. Grantee shall evaluate the use of bridges versus culverts on braided streams to reduce impacts to the stream and allow natural stream channel movement. Design features related to this mitigation will be determined during the design/permitting phase and implemented throughout the project footprint on state managed lands.

Comment: Sheet-flow Connectivity – The USFWS suggests spacing cross-drainage culverts sufficiently close together to spread sheet flow and prevent thermokarst action.

DNR-DMLW Response: The mitigation measures included in the *Cross-drainage Culvert Locations* stipulation identified in the ADF&G agency comment section above will be included in the DNR-DMLW authorizations.

Comment: Water Quality – The USFWS recommends conducting baseline water quality studies in the project area prior to construction and implementing a detailed analysis of cumulative impacts to water quality of the ROW. This analysis should include impacts to birds, aquatic species, and their habitats. This study is important to have a baseline on which monitoring the project can be based.

DNR-DMLW Response: The DEC Water Quality Section develops water quality standards, addresses nonpoint source pollution, and assesses surface water quality. DEC was included in the Agency Review. AIDEA will be required, through additional authorizations needed, such as the DEC Section 401 Water Quality Certification, to ensure potential impacts to water quality are mitigated. The DEC, Water Quality Section oversees the Water Quality Assessment & Monitoring program. DNR-DMLW asserts that the mitigation measures identified in this decision and implemented in the DNR-DMLW authorizations, as well as any other required authorizations, will protect water quality.

Comments: Wetlands – Wetlands provide many functions, including habitat, mitigating floods, and recharging aquifers. The project will impact thousands of acres of wetlands under the jurisdiction of the USACE. The USFWS also considers patterned fens to be a high-value, uncommon, and unique wetland type, of which the Nutuvukti Fen is one of the largest in the interior. Other patterned fens may exist in the project area. The USFWS recognizes that emergent wetlands and open-water ponds are valuable for fish and wildlife. The USFWS recommends avoiding these and less common wetlands, such as patterned fens.

DNR-DMLW Response: The Nutuvuki Fen is located on NPS Lands, but to address impact to other uncommon wetlands the following mitigation measure will be included by DNR-DMLW as a stipulation:

Uncommon Wetlands: Disturbance to uncommon wetlands such as patterned fens and moss-lichen wetlands will be avoided to the maximum extent practicable.

Additional DNR-DMLW mitigation measures to protect and mitigate impacts to water quality, vegetation, soils, fish and wildlife habitats, and floodplain functions are listed in the ADF&G agency comment section.

Comment: Wetland and Riparian Buffers – The USFWS recommends undisturbed native vegetative buffers between wetland and riparian habitats, and materials sites and the road. We recommend adopting BLM's BMPs, which ensure a 100-foot buffer along lakes and creeks, for the whole project area. We recommend expanding this BMP to include high-value wetlands, and measuring the buffer from the edge of the riparian/wetland area, rather than the bank-full elevation.

DNR-DMLW Response: The *Vegetation Buffer* stipulation identified in the ADF&G agency comments section above will be included by DNR-DMLW as a stipulation.

Comment: Uncommon Wetlands – In addition to patterned fens, wetlands dominated by moss and lichens are uncommon in the area. The wetland inventory conducted for the FEIS did not detect these types of wetlands in the project area, but the USFWS recommends ground truthing the area where moss-lichen wetlands may occur to ensure they are avoided. The USFWS recommends protecting these types of wetlands and maintaining at least a 100-foot buffer between them and the project area.

DNR-DMLW Response: DNR-DMLW will include the following stipulations: *Vegetation Buffer* and *Uncommon Wetlands*.

Comment: Revegetation and Restoration – The USFWS recommends stabilizing and restoring wetland and upland sites in a timely manner within the growing season using native plant materials, salvaging and stockpiling topsoil for use in later reclamation and have AIDEA furnish a bond to ensure all project components are removed and ROW restored to beneficial habitat (including the removal of fill in wetlands and restoring the original contours of the landscape).

DNR-DMLW Response: DNR-DMLW will require a Reclamation Plan prior to any construction. DNR-DMLW will include the following stipulations:

Reclamation Plan: The Grantee shall submit a reclamation plan prior to construction.

Site Restoration of Ground Disturbing Activities: To prevent erosion, disturbed areas shall be stabilized immediately after construction. Revegetation of the site shall begin as soon as site conditions allow and in the same growing season as the disturbance unless climatic conditions warrant additional time. Additional time must be approved by the AO. Native vegetation and topsoils removed for project construction shall be stockpiled separately and used for site rehabilitation.

Revegetation: In order to minimize the risk of introducing invasive species, the Grantee will rely on use of topsoil with live native vegetation where practicable, and on planting

and reseedling as secondary options. If planting and reseedling is required native grass seed from local community sourced seeds or the Alaska Plant Materials Center will be required.

The State is not requiring a reclamation bond at this time as AIDEA is a state corporation, a subdivision of the State, though the State reserves the right to require a bond in the future.

During review of the Reclamation Plan DNR-DMLW in coordination with the DMLW State Abatement of Impaired Land (SAIL) Section will make a determination to what standard the land shall be returned. It could be determined that the standard is a beneficial habitat including the removal of fill in wetlands and restoring the original contours of the landscape is appropriate, but land use may change in the future warranting a different standard. DNR-DMLW will evaluate the Reclamation Plan once received.

Comment: Invasive Species – The USFWS recommends developing and implementing an Invasive Species Prevention and Management Plan (ISPMP) which includes Early Detection and Rapid Response (EDRR) actions (FEIS Vol 3, Appendix N, Page N-27, Section 3.3.1.3), as well as certifying all equipment and vehicles used are weed free prior to transport and use in the field. This may include:

- washing equipment of dirt and debris that may harbor invasive plant seed and propagules;
- disposing of spoil and vegetation contaminated with invasive species and revegetating with local native plant species;
- using weed-free erosion control products;
- employing management strategies that anticipate and suppress secondary invaders, rapidly restoring native plants to fill the space vacated by the invasives, and developing a monitoring plan;
- reviewing <http://aknhp.uaa.alaska.edu/apps/akepic/> for the location of non-native invasive species, understanding that lack of information does not mean that invasives are not at that location; and
- have staff and contractors review <http://weedcontrol.open.uaf.edu/> and search for Best Management Practices (BMP) at the UAF Cooperative Extension Service by searching for “invasive” at <http://cespubs.uaf.edu/publications/>.

DNR-DMLW Response: DNR-DMLW will include the following stipulation regarding the prevention and management of invasive species:

Invasive Species Prevention and Management Plan: The Grantee will prepare an Invasive Species Prevention and Management Plan (ISPMP) to prevent the introduction and spread of Non-native Invasive Species (NNIS), including terrestrial and aquatic plant and animals.

At a minimum, the ISPMP will:

- be consistent with the current state and federal Invasive Species Management Policies;
- identify methods and timeframe for conducting a baseline NNIS assessment prior to initiating surface disturbing activities, and periodic assessments throughout the duration of the authorization

- identify methods of NNIS prevention and infestation management;
- include clear procedures for documenting and reporting detections of NNIS;
- include specific practices, procedures, and best management practices for preventing the introduction and spread of NNIS, including ensuring that all equipment is free from invasive species seeds and propagules (both terrestrial and aquatic);
- include a program (procedures, timeframes, documentation) for training all employees engaged in road construction or maintenance and all drivers authorized to use the road in invasive species awareness and abatement to include identification and reporting of any invasive species encountered during field activities.
- Include an adaptive management and monitoring framework to mitigate the introduction and spread of NNIS (including terrestrial and aquatic plants and animals) throughout the duration of the authorization and for at least five growing seasons after completion of reclamation.

Comment: Migratory Birds – The USFWS considers seven species as birds of conservation concern within the project area: Olive-sided Flycatcher, Lesser Yellowlegs, Wandering Tattler, Short-eared Owl, American Golden-plover, and Solitary Sandpiper. The Gray-headed Chickadee is also a species of interest due to population declines.

The USFWS recommends taking measures to minimize impacts to breeding birds, for which the season is generally May 1 through July 15. The most effective mitigation method to minimize effects to nesting birds is to conduct activities before and after the breeding season. Because nesting varies by bird species and habitat, the USFWS recommends consulting the timing recommendation for the project area. Additional measures to minimize impacts to birds can be found on the Migratory Bird Program website <https://www.fws.gov/library/collections/avoiding-and-minimizing-incidental-take-migratory-birds>.

DNR-DMLW Response: This information will be provided to AIDEA. In addition, AIDEA has committed to ensuring that construction of the pioneer road would comply with possible restrictions during bird nesting periods in accordance with the Migratory Bird Treaty Act. Any vegetation clearing activities between May 1 – July 15, would not be conducted until a qualified biologist completed bird sweeps.

DNR-DMLW will include the following stipulation:

Clearing Activities: The Grantee shall ensure that vegetation clearing during all phases of construction will be scheduled to minimize impacts on migratory birds and any other birds on the BLM special status species list (to be provided by BLM and updated periodically). The primary mechanism to avoid and minimize impacts is to conduct vegetation clearing outside of the nesting season (May 1–July 15 for this region). If the Grantee chooses to clear vegetation during this timeframe then the Grantee will have a qualified biologist survey any area where vegetation will be damaged by the project or associated activities within 48 hours prior to vegetation disturbance. If an active nest is located, an appropriate avoidance area (as determined by the qualified biologist) will be marked and avoided until the biologist determines that the nest has been naturally vacated.

Comment: The USFWS recommends making stockpiles and active cutbanks of sandy or silty material unattractive to bank swallows by avoiding vertical faces by leaving a slope of less than 70 degrees and removing old, inactive nests before birds return.

DNR-DMLW Response: This recommendation will be provided to AIDEA.

Comment: Eagles and their Nests – As Bald and Golden Eagles are documented nesting in the area, the USFWS recommends coordination with the Northern Alaska Fish and Wildlife Field Office regarding appropriate survey methods (both spatial and temporal) and to develop avoidance and minimization measures to address impacts to eagles.

DNR-DMLW Response: This recommendation will be provided to AIDEA.

Comment: AIDEA proposes constructing repeater towers, and as many appear located near fish-bearing waters, the USFWS recommends altering or reducing the tower's large, flat surface and lattice structure so that they are less attractive for building a nest. For example, change the tower's surface so it is less flat and unable to support a nest structure, and reduce or cover open lattice work to deter nest construction. It is also helpful to document the site before and after deterrence placement, so if a nest is successfully placed it may help justify a nest removal permit.

DNR-DMLW Response: This recommendation will be provided to AIDEA.

Comments: Colocation to Towers and Proposed Roads – The USFWS recommends AIDEA review the proposed OTZ Microwave Communication Towers project (ADL 421765) and co-locate those towers and/or communications systems within the project area to minimize impacts to fish, wildlife, and their habitats.

DNR-DMLW Response: The OTZ Microwave Communications Tower Project (ADL 421764) is a series of towers extending from the Dalton Highway corridor to the Kotzebue Sound region intended to bring broadband internet access to underserved communities. These towers require line-of-sight for broad band transmission, and the towers are to be constructed at elevation to facilitate this requirement. DNR-DMLW is adjudicating a public and charitable lease for this project.

The recommendation to collocate the towers with the Ambler Road private exclusive easement was submitted by the USFWS during agency review for both projects. This option was ultimately rejected for the following reasons: the tower system design is optimized for line-of-sight communication at higher elevation locations; the decision considered here is limited to the adjudication of the private exclusive easement for the road and does not include infrastructure or facilities outside the road right-of-way where collocation may be possible; under a private, exclusive easement considered here, the collocation of another project within the private exclusive easement footprint could not occur under the authority of the DNR-DMLW but would ultimately rest with AIDEA; and the timing of development of the Ambler Road relative to the construction of the towers is uncertain. Ultimately, these are distinct projects under different authorities with distinct technological requirements and will not be collocated.

Public Notice Summary

Public Notice of the application was conducted concurrently with the SSP from January 31, 2022 to March 2, 2022, and extended an additional 30 days to April 1, 2022. The notice was posted to

the State of Alaska Online Public Notice System and the DMLW Ambler Road Project Website <https://dnr.alaska.gov/mlw/ambler-road/>, and sent to the following entities: AK Assoc. of Conservation Districts; AK Forest Assoc.; AK Miners Assoc.; AK Moose Federation; AK Outdoor Access Alliance; AK Outdoor Council; AK Quiet Rights Coalition; AK Wilderness Rec & Tourism; Alaska Backcountry Hunters & Anglers; Alaska Outdoor Council; Alaska Trails; Alaskan Perimeter Expeditions; Alatna Traditional Council; Alatna Village; Allakaket Traditional Council; Audubon Alaska; Aurora Dog Mushers; City of Allakaket; City of Ambler; City of Anaktuvuk Pass; City of Buckland; City of Fairbanks; City of Hughes; City of Huslia; City of Kiana; City of Kobuk; City of Kotzebue; City of Noorvik; City of Selawik; City of Shungnak; Dinyea Corp.; Doyon, Ltd.; Evansville Tribal Council; Evansville, Inc.; Fairbanks Native Assoc.; Fairbanks North Star Borough; Great Land Trust; Greater Fairbanks Chamber of Commerce; Hughes Village; Huslia Village; Kikiktagruk Inupiat Corp.; K'oyitl'ots'ina, Ltd.; Nagsragmiut; Nana Corp; Native Village of Selawik; Native Village of Shungnak; Native Village of Ambler; Native Village of Buckland; Native Village of Kiana; Native Village of Kobuk; Native Village of Kotzebue; Native Village of Noatak; Native Village of Stevens; Natural Resources Conservation Service; Noorvik Native Community; North Slope Borough; Northwest Arctic Borough; Nunamiut Corp, Inc.; Remote Site Services, Inc.; Resource Development Council for AK, Inc.; Sierra Club Alaska Chapter; South32 USA Exploration Inc.; Stevens Village IRS Council; Tanana Chief's Conference; Tanana Village; The AK Center; Too-gha, Inc.; Tozitna, Ltd.; Trout Unlimited, AK Program; Trustees for Alaska; Valhalla Metals; Village of Anaktuvuk Pass; Western Arctic Caribou Herd Working Group; and the trapping cabin grantees for ADLs 403355, 407141, and 413390. Comments were collected on the DNR-DMLW online comment portal, accessed via link on the Public Notice Announcement and the DNR-DMLW Ambler Road Project Website.

In addition, two public listening sessions were conducted via Microsoft Teams on March 11 and March 29, 2022, for both the easement and the SSP. The listening sessions provided an opportunity to disseminate information about the easement application and the SSP and collect verbal comments from participants who may otherwise not be able/willing to submit written comments.

Public Notice Comment & Response

The online comment portal received 113 comments between the easement application and the SSP, of which 16 were duplicated and 3 were received by mail. In addition, 26 comments were received by mail or email, of which 11 were postcards in opposition to the Ambler project.

The first public listening session generated 22 verbal comments and 12 comments in the associated chat dialog. The second public listening session generated 14 verbal comments and 5 comments in the associated chat dialog.

The public response to the project during the notice period was extensive and comments covered a broad range of topics related to the project. Because topics between individual commentors were shared and/or overlapped, these comments are summarized below by topic with the corresponding state response. Public comment topics that were also brought up by agencies are addressed above.

Application Issues

Insufficient Application

Comment: The application materials submitted by AIDEA are insufficient to meaningfully evaluate the project or to get meaningful public engagement. AIDEA has failed to submit detailed design and construction plans for the road, has provided only cursory plans regarding maintenance and operation, and has not provided any plans regarding future reclamation of the road. This lack of information makes it impossible for sufficient public review of the project and is not enough information for DNR-DMLW to conduct an adequate analysis of project impacts.

DNR-DMLW Response: DNR-DMLW determined the application was sufficient to meaningfully evaluate the project and engaged the public in accordance with statutory requirements and standard practice. Detailed design and construction plans and specific maintenance and operation plans are not needed to effectively evaluate the project and develop mitigation measures. Comprehensive mitigation measures have been developed through both the state process. Prior to construction, AIDEA will submit design and construction plans to DNR-DMLW for review and approval to address any new issues that may arise. Should there be significant changes to the project that DNR-DMLW determines warrant additional agency and public review, DNR-DMLW will conduct an additional review and provide legally appropriate notice.

Comment: There is no information regarding pre-construction field studies. Preliminary resource information is critical to determining the actual location of the road and how resources may be impacted. This information is necessary before the adjudication of the private exclusive easement because it is crucial to the analysis of whether the project is in the best interest of the state and mitigating impacts to state resources. This includes geotechnical surveys, right-of-way surveys, fish and aquatic resources surveys, cultural resources surveys, environmental studies, bridge design, fiber optic design, and land access agreements from adjacent landowners. This information must be gathered, analyzed, and subject to public review before considering the application for a private exclusive easement for the road.

DNR-DMLW Response: DNR-DMLW determined that the application submitted was sufficient to meaningfully evaluate the project without the results of all the pre-construction field studies. Comprehensive mitigation measures have been developed. The pre-construction field studies will be completed prior to construction and AIDEA will submit design and construction plans for DNR-DMLW approval. Should there be changes to the project that DNR-DMLW determines warrant additional agency and public review, DNR-DMLW will conduct that additional review.

Comment: The application does not capture the full scope of potential environmental impacts of the project. The environmental questionnaire is inadequate to assess the risk as it does not address:

- The likelihood and risk of hazardous materials spills. A recent third party spills analysis contradicts the analysis conducted in the FEIS and should be considered carefully by DNR-DMLW.
- Quantitative spill risk assessment associated with traffic on the road.
- Impacts to caribou, birds, recreation, community health, and other unintended consequences.

The applicant downplays the threats to the environment, such as threats to water flow and aquatic resources, impacts to soils and permafrost, declines in air quality from gravel mining, camp use, etc.

Based on the materials provided by the applicant, DNR-DMLW does not have enough information to develop meaningful mitigation methods and safeguards to ensure that the public interest is protected. It is also unclear what mitigation methods DNR-DMLW anticipates implementing in any authorization.

DNR-DMLW Response: In granting this private exclusive easement, DNR-DMLW has determined that the Ambler Road can be built in an environmentally responsible way. Mitigation measures addressing impacts to water flow and aquatic resources, impacts to soils and permafrost, potential air quality issues, and potential spills have been developed and are identified throughout this decision. For a more detailed discussion *see* the Agency Review section.

Comment: The AAP Commitments Matrix included in the application materials is unreadable and should be resubmitted with a new, more complete application for public review.

DNR-DMLW Response: The AAP Commitments Matrix as submitted was difficult to read, but DNR-DMLW was able to modify the matrix in order to obtain the information. DNR-DMLW determined the application was complete for adjudication.

Comment: AIDEA has requested a 450-ft. easement for construction activities, with a 250 ft. easement to be issued once the road is constructed but hasn't given an indication of what and where activities will take place within that 200-ft. additional space.

It is unclear how that land will be impacted, and how impacts will be mitigated. It is also unclear how DNR-DMLW would shift the easement width from 450 ft. to 250 ft. DNR-DMLW should elaborate on this process and submit it to public review and comment.

Further, DNR-DMLW typically issues public easements up to 100 ft. It is unclear why DNR-DMLW is considering a request of 450 ft., particularly since it is unclear what AIDEA intends to do within this width.

DNR-DMLW Response: The 450 ft. construction corridor is for construction activities to take place, such as temporary camps, lay down yards, equipment storage, stockpiling of material, cut and fill operations, etc. DNR-DMLW does not need to know precisely where these activities will take place within the construction corridor. The EA has comprehensive mitigation measures to address impacts regardless of location within the corridor. Issuing an authorization for a wider construction corridor prior to issuing the private exclusive easement based on an as-built survey is not a unique practice. DNR-DMLW asserts it does not warrant additional public notice.

A 250 ft. easement width for the final private exclusive easement is similar to other easements widths issued by DNR-DMLW, ranging between 200 ft. and 300 ft. AIDEA applied for an easement width of 250 ft. which at the time of application corresponded with the width of the federal ROW grant.

Comment: DNR-DMLW cannot rely on promises for future planned development and information gathering regarding environmental concerns. That information is necessary now to allow review by DNR-DMLW and the public to ensure that impacts are mitigated. The plan of

future studies cannot be used as an excuse for the lack of detailed information now when it is necessary for DNR-DMLW's review now. DNR-DMLW should suspend consideration of the application until AIDEA can provide a more detailed application that includes analysis of the potential impacts the project will have within the project area, methods to mitigate those impacts, and provide it for public review and comment.

DNR-DMLW Response: DNR-DMLW determined that the application submitted was sufficient to meaningfully evaluate the project without the results of all the pre-construction field studies. Comprehensive mitigation measures have been developed through this process. The pre-construction field studies will be completed prior to road construction and AIDEA will submit design and construction plans for DNR-DMLW approval. Should AIDEA's project plan change, additional DNR-DMLW process and approval may be required.

Inconsistent Application Materials

Comment: There are instances in AIDEA's easement application that are inconsistent with the Federal authorizations.

- In AIDEA's state application, the applicant describes a road surface 32 feet wide, but USACE JROD permitted a 20 feet wide road to avoid and minimize impacts and negate the need for compensatory mitigation.
- Federal authorizations indicate that the road will be built to the phase 3 standard, but the state application indicates the possibility that the road will only be built to phase 2.

DNR-DMLW Response: In this decision, DNR-DMLW is adjudicating a final private exclusive easement that would be for 250 ft. regardless of what level/standards the road is ultimately built to. Regardless, AIDEA must comply with state and federal law in constructing the road. AIDEA will be required to obtain any additional permits, authorizations, or amendments necessary for larger construction; meaning if AIDEA chooses to build to the larger plan, they will need to obtain a USACE permit consistent with that larger road construction.

Alternative Routes

Comment: DNR-DMLW should consider alternatives to the current alignment of the road. Such alternatives include:

- A road heading west to connect with the DMTS.
- An alternative road alignment that avoids GAAR by going around NPS lands to the south.
- A road that leads to a navigable river for a port, such as the Kobuk River.
- Seasonal construction of winter road rather than an all-season road.
- A system of aerial tram cable lines to move ore to the existing road system.

DNR-DMLW Response: DNR-DMLW is tasked with adjudicating AIDEA's AS 38.05.850 private exclusive easement application as applied for.

Project not in the State's Interest

Comment: Ambler Road is not in the State's interest and public comment is overwhelmingly negative. Based on public response during the two listening sessions, the public and Tribes are overwhelmingly against the AAP. The project is a waste of public funding (also many references to using Alaskan taxpayer money) and is more likely to have a net negative impact to Alaska, its resources, and its people. "[M]aximum use consistent with the public interest" and "maximum benefit" as codified in Article VIII of the Alaska Constitution, are highly nuanced statements and should not be limited to short-term financial gain when the long-term intrinsic value of undisturbed lands is much higher. The DNR-DMLW mission is to benefit the residents of the State, and authorizing, funding, and maintaining a road for private interests that is not constructed to a standard safe for public use, is not in the public interest. It is also unclear how the project will promote the health, security, and general welfare of Alaskans, especially those who live in Ambler and other communities impacted by the road.

Given the large negative public response, the AAP is clearly not in the public interest, and DNR-DMLW should not authorize a private exclusive easement and ultimately reject the AAP.

DNR-DMLW Response: The Ambler Mining District was selected by the State as part of the State's land entitlement under the Statehood Act. This land was selected because of its mineral potential and was intended to be developed consistent with the Alaska Constitution. Article VIII §1 of the Alaska Constitution states,

... it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

AIDEA's proposed road is consistent with Article VIII, § 1 of the Alaska Constitution because it will aid in the "development of [the State's] resources" by facilitating exploration, spurring potential mine development, and developing the State's mineral resources. All of which would contribute to and improve the State's overall economic development. While DNR-DMLW understands that the public comment about the proposed project, DNR-DMLW will include mitigation measures in its private exclusive easement and land use authorizations.

Economic Benefit to the State

Comment: Ambler Road is in the economic interest of the State. The AAP will provide an economic boost for the state, its peoples, and for the U.S. production of necessary minerals. Benefits include:

- Creation of high paying long-term jobs and new job opportunities through additional projects that will benefit rural communities.
- Development of a FOC that may serve future mining and rural communities, and will benefit educational, medical and other uses.
- Access to critical mineral resources necessary for the worldwide demand for products and technology related to renewables, reducing carbon footprints, and the green economy. U.S. production of critical minerals is necessary for economic and national security, particularly in light of the current Russia-Ukraine conflict and can be done in an environmentally responsible way using current technologies.

- The State uses a well-established permitting and review process, with multiple opportunities for the public to provide input. Alaska also has over 100 years of experience in mining industries, with new innovations and advancements to protect the environment. While the mines have not yet been proposed, the permitting process will give the public additional opportunities to provide input.

DNR-DMLW Response: DNR-DMLW concurs that the AIDEA's proposed road has an economic benefit to the State.

Comment: AIDEA has misrepresented the economic benefit that the AAP will have for the State and public. AIDEA's economic justification relies on incorrect assumptions regarding: the volatility of market prices of metals and the effect on investment; capital and operational expenditures for the State; uncertainty regarding entering into toll agreements with companies; and over all mine life. AIDEA misleadingly downplays the risk and has had their economic justification challenged by a new economic report.

Further, it is unclear if AIDEA's own economic analysis has taken into account the cost of moving ore by truck 400 miles to Fairbanks and to rail or port for export. It seems unlikely that the cost of exporting mined material to market, even with a new road, will pencil out a profit for mining companies.

DNR-DMLW must commission an independent economic assessment that analyzes the costs vs returns to the State from construction to operation to reclamation, including the sensitivity analyses regarding metal commodity prices and labor costs. This study should be completed prior to authorizing an easement, as was done prior to legislative approval of the Red Dog Mine.

Further, state funds are being used to facilitate development of a road intended to support the private industrial investment of mining companies that are not based in Alaska. This is an inappropriate use of state funds, particularly since it is being used to fund a private road for private corporations. Money generated by the mine will flow out of the state and the public will see little economic benefit. Local residents and communities will also see little investment as they cannot provide the goods and services necessary to operate the mine or support mine employees. There are also few direct employment opportunities for which rural Alaskans are qualified. Rather, mine supplies, services, and employees will be imported from other areas.

The rate of return on the investment of a road is also poor. The State could do far better with a higher rate of return by merely investing the money, or investing in sustainable, low carbon economy. Alternatively, the State could invest similar funding into projects such as recycling metals found in rural villages and dump sites, or an intra-state subway system.

In financial 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 finance for construction of the road. Optimistically, AIDEA has assumed that it would pay-off the bonds within that 30-year period and have another 20 years of profit. However, at this time there are no companies, ore deposits, mining technology, or markets to support this assumption.

Finally, the wild nature of Alaska's lands is inherently valuable now and to future generations. The creation of the road and mines is a short-sighted and short-term gain that would permanently degrade the landscape.

DNR-DMLW Response: DNR-DMLW is proposing to issue a private exclusive easement for the construction and operation of an industrial access road to provide access to state mineral resources in the Ambler Mining District. DNR-DMLW would issue an EA for construction and operation of a road. Once the road is built and the EA requirements are met, then a final private exclusive easement would be issued. If the road is not built, a final private exclusive easement will not be issued. AIDEA, not DNR-DMLW who has been tasked with determining whether to grant AIDEA's requested private exclusive easement, will be responsible for ensuring the economic viability of the project.

Procedural, Statutory, Constitutional Topics

Inappropriate Statutory Process

Comment: A decision under AS 38.05.850 is inappropriate for a project as large as the AAP, as it was designed for minor easements, rights-of-way, and permits that are revocable, nonexclusive and/or limited value resources and do not necessitate compliance with Section 10 of Article VII of the Alaska Constitution. Large projects like the AAP where an easement, right-of-way, or permit would not be functionally revocable are excluded from the Section 850 process because the Director is required to provide public notice before issuance under AS 38.05.850(c). Further, DNR-DMLW has indicated its intent to include all support infrastructure as part of the easement authorization, including access roads, material sites, airstrips, communications towers, and support camps, expanding the scope of the authorization beyond a simple easement under Section 850.

Easements are a disposal that trigger the requirements of Section 10 of Article VIII of the Alaska Constitution, which requires prior public notice and "other safeguards of the public interest" before a disposal of interest in public lands. Because Section 850 is not applicable to the AAP, DNR-DMLW must conduct a Best Interest Finding (BIF) under AS 38.05.035 which includes public notice of a preliminary decision, and under the requirement of Section 10, Article VIII of the Alaska Constitution, take a "hard look" and provide a "cumulative impacts assessment."

DNR-DMLW Response: The comment addresses three separate issues related to statutory interpretation. Each is discussed separately below.

First, AS 38.05.850 authorizes DNR-DMLW to "issue . . . right-of-way, or easements on state land for roads." AS 38.05.850 does not include any size limitations. The additional authority within AS 38.05.850 – i.e. that the director may issue revocable, non-exclusive permits for limited value resources – does not apply to AIDEA's application.

Second, DNR-DMLW agrees that an AS 38.05.850 easement constitutes a disposal of an interest in state land, requiring public notice under the Alaska Constitution. However, the legislature in considering "other safeguards of the public interest" related to AS 38.05.850 decisions specifically exempted AS 38.05.850 easements from a written best interest finding. *See* AS 38.05.035(e)(6)(H).⁴ Therefore, DNR-DMLW does not need to complete a written best interest finding for this AS 38.05.850 decision or undertake an AS 38.05.035(e) best interest finding process.

⁴ This exemption was added by the Legislature via CSSB 255 (RES) in 2000 (codified at AS 38.05.035(e)(6)(H)) in the wake of the Alaska Supreme Court's decision in *Northern Alaska Env'tl Center v. State*, 2 P.3d 629 (Alaska 2000).

Being a disposal, however, DNR-DMLW must comply with the following: (1) AS 38.05.850(c) which requires DNR-DMLW to provide reasonable notice of the easement application; and (2) public notice pursuant to Article VIII, § 10 of the Alaska Constitution. Here, DNR-DMLW has satisfied both AS 38.05.850(c) and the Alaska Constitution by providing the following extensive notice:

- For a period of 30 days – the customary notice period provided by DNR-DMLW for easement applications.
- Extended notice of an additional 30 days and DNR-DMLW also held two virtual listening sessions so that people could provide oral comments. The notice effectively mirrored AS 38.05.945, even though it was not statutorily or legally required in this instance.
- Public notice to over 75 entities, including all municipalities, Regional Corporations, and Village Corporation anywhere near the proposed easement.

Lastly, DNR-DMLW agrees that this decision is limited to authorizing the main road, roads to potential material sites, and airstrips for access. Consequently, the scope of this decision includes the principal road, access roads, airstrips, and temporary construction camps. It also includes installation of linear utilities (i.e. fiber optic) as an acceptable secondary use of an access easement. Finally, it includes the disposal of material from within the right-of-way. This decision does not, however, include material site designations, material sales, or authorization of permanent camps or communication towers; those authorizations will need to be considered under different statutory authorities.

Authorization of the Easement Without Including the Mine(s)

Comment: DNR-DMLW cannot adequately consider the direct, indirect, and cumulative impacts of authorization of the road without including the authorization of the mine(s). The sole purpose of the private exclusive easement is to provide industrial access to the Ambler Mining District to facilitate mine development. The mine(s) cannot be developed without the road, and the potential impacts of those mining operations should be considered cumulatively with the impacts of the road.

Sulfide mines have a dismal environmental record, particularly impacting watersheds. There is virtually no way to ensure containment of contaminated waters, and failure is nearly 100%. Mines in this area would inevitably pollute the Kobuk drainage, having lasting impacts on fish and the local communities of the area. The analysis of impacts of the AAP must include the potential impacts of these mines given the potential to change the area.

Breaking up the project into separate authorizations appears to be a deliberate attempt to minimize and divide up the project so that when one part is approved, the other project aspects can be rubber stamped.

DNR-DMLW Response: DNR-DMLW is adjudicating whether to grant a private exclusive easement on state public domain land under AS 38.05.850 for the construction and maintenance of a road—to provide access Congress provided for in section 201(4) of ANILCA—for the purpose of accessing the Ambler Mining District for exploration and potential mine development in the future. Any authorization to undertake mining activity will require a separate permitting process that is outside the scope of this decision.

Comment: How will the mining operations clean up contamination and what will be the size of the bond to ensure compliance?

DNR-DMLW Response: As noted in the previous response, DNR-DMLW is adjudicating a private exclusive easement on state public domain land under AS 38.05.850 for the construction and maintenance of a road for the purpose of accessing the Ambler Mining District for exploration and potential mine development in the future. Any authorization to undertake mining activity will require a separate permitting process that is outside the scope of this decision. The bond amount for a mine would be determined during the permitting process for the mine.

Comment: What is the mine development plan, road use plan, and repayment plan for road construction?

DNR-DMLW Response: As noted in the previous response, DNR-DMLW is adjudicating private exclusive easement on state public domain land under AS 38.05.850 for the construction and maintenance of a road for the purpose of accessing the Ambler Mining District for exploration and potential mine development in the future. Any authorization to undertake mining activity will require a separate permitting process that is outside the scope of this decision. As for a road use plan and repayment plan for road construction, DNR-DMLW reiterates that the road will be a private industrial use only road, owned and operated by AIDEA or their established LLC, and they anticipate building the road via a public-private partnership which hopes to recoup the cost of road construction by charging tolls for use of the road by the mining companies.

Comment: What amount would the State be paid for extracting ore before it is processed?

DNR-DMLW Response: Alaska has Mining License Tax (7% tax on net income over 100,000 USD) and corporate income taxes that apply to mining on all lands regardless of ownership. For those operations on state lands, an additional 3% net profit production royalty must be remitted yearly to the State. That is on top of state mining claim and lease annual rental payments.

Comment: What would be the truck traffic on the road and existing infrastructure, where will ore be processed, and how will it be transported?

DNR-DMLW Response: As noted in the above responses, mine development will require a different permitting process and review. At this time, no permits have been issued for a mine and there are no mine development plans. Therefore, it is not possible to say definitively what the truck traffic on the road and existing infrastructure would be. Since there is no mine development plan, DNR-DMLW cannot speak to where ore would be processed. If the Ambler Road is built it is anticipated that the ore will be transported along the Ambler Road as that is one of the purposes AIDEA states the road will be used for.

Cumulative Impacts Assessment

Comment: To satisfy DNR-DMLW's constitutional requirements to protect the public interest, DNR-DMLW must do a "Cumulative Impacts Assessment" and a "hard look review" of the entire AAP, including mine development, and make it available for public review before an authorization is issued. This includes all necessary baseline studies and surveys, assessment of direct, indirect and cumulative impacts of the entire project, and consultation with Tribes and each affected community.

The State cannot rely on the federal review of the AAP to fulfill its constitutional obligations: the FEIS and federal decisions are fundamentally flawed, deficient, and subject to legal challenge. The State must conduct its own analyses independently.

DNR-DMLW Response: The response to “Inappropriate Statutory Process” above is incorporated into this response.

The “hard look” that DNR-DMLW takes here is within the provided framework of AS 38.05.850. In considering a private exclusive easement application, our inquiry is whether issuing an easement for a road that may (or may not) eventually provide private industrial access to an area of significant mining potential will be of “greatest economic benefit to the state and the development of its resources.”

An easement is a single authorization to use state land to construct access. Other developments beyond the scope of that easement will require additional authorizations, i.e. an authorization for mining or for certain material sites. For this reason, the holding in *Sullivan v. REDOIL*, 311 P.2d 625 (Alaska 2013), which applies to phased oil and gas projects, does not apply to DNR’s decision to grant an easement – a singular land use authorization – under AS 38.05.850.

Inadequate Public Notice

Comment: Given that a BIF under AS 38.05.035 is the only appropriate decision process for the AAP, DNR-DMLW has not conducted adequate public notice. DNR-DMLW has failed to take a “hard look” at potential direct and indirect impacts of the project, has not provided either a “Cumulative Impacts Assessment” or a preliminary decision for public review, thus not ensuring that DNR-DMLW is properly safeguarding the public interest.

DNR-DMLW has only granted 60 days to review the project, repeatedly rejecting requests for additional time and face-to-face meetings within the affected communities. A 60-day comment is insufficient to allow meaningful input from Tribes. DNR-DMLW conducted public listening sessions to take comments from affected communities, but this method is also inadequate due to limited access to broadband and cell phone service in rural communities. The timing of the first listening session also conflicted with tribal regional meetings ahead of the Tanana Chiefs Conference (TCC) Convention, resulting in limited participation. In addition, materials related to this authorization were difficult to find, given that they were not searchable using conventional internet search engines. DNR-DMLW must allow for a more inclusive notice period, including conducting face-to-face meetings in all affected communities.

DNR-DMLW Response: This comment raises two issues: (1) that an AS 38.05.850 easement adjudication requires an AS 38.05.035 best interest finding process; and (2) that DNR-DMLW failed to provide adequate public notice.

On the first issue, under AS 38.05.035(e), the legislature exempted AS 38.05.850 easement adjudications from a written best interest finding (a BIF).

On the second issue, DNR-DMLW has complied with all public notice requirements for an AS 38.05.850 easement adjudication. DNR-DMLW provided public notice for 60 days. DNR-DMLW scheduled and held two virtual listening sessions. DNR-DMLW regrets that the first listening session conflicted with the TCC Convention. A second listening session was scheduled for after the TCC Convention. DNR-DMLW realizes that virtual meetings are not ideal due to broadband and cell phone service in rural communities and some people would prefer face-to-

face meetings, but many people were able to attend and participate. Overall, DNR-DMW received over 200 comments on the proposed private exclusive easement through email, letter, online comments portal, and listening sessions.

While initially the DNR-DMLW Ambler Road website was not searchable, upon being notified of that issue, it was corrected and was indexed by Google on March 15, 2022. The website was available well before the deadline for comments.

Comment: During the listening sessions, DNR-DMLW was repeatedly unable to answer questions requesting additional details about the road construction, mine development, or establishing environmental safeguards, mitigation, and reclamation. DNR-DMLW does not have the basic information to ensure that their decision is in the best interest of the State and the public, or to get meaningful feedback during the public review process.

DNR-DMLW Response: DNR-DMLW held the two virtual listening sessions to solicit public comments and information. DNR-DMLW was only in the public comments phase of adjudication, which is prior to a written decision which addresses topics such as mitigation measures. DNR-DMLW was not prepared to provide answers regarding specific road construction design features, environmental safeguards, mitigation, and reclamation.

As for being able to speak to mine development, no mine is proposed. DNR-DMLW is adjudicating a private exclusive easement for the construction and maintenance of the road and ancillary features for the purpose of accessing the Ambler Mining District for exploration and potential mine development in the future. While DNR-DMLW understands the connection between road and mine development, any application for a mine will be a separate permitting process – with its own review process – and is not within the scope of this decision.

Waiving of Fees

Comment: DNR-DMLW should not waive fees associated with the authorization of this easement. This project is not in the public interest nor for a public purpose as it is a private exclusive easement for an industrial road. AIDEA's legislative origin and statutory purpose does not change the fact that the road is a commercial venture.

Further, while the Director for DNR-DMLW may waive portions of fees under 11 AAC 05.070(a), those waivers must apply to all petitioners for a given authorization. The DNR-DMLW Director's Order Regarding Fees (Fee Order 3) also does not provide full fee waivers and applies a 20% fee reduction across all applicants consistent with 11 AAC 05.070(a). AIDEA should not be afforded special treatment. To not charge fees is not in the public interest and is contrary to law.

DNR-DMLW Response: DNR-DMLW proposes to waive the land use fees associated with the entry authorization and easement. *See* the Fees Section below for a more detailed discussion.

Government-to-Government Consultation

Comment: The Supreme Court has recognized the sovereignty of Alaska's Tribes, and the Governor's office has directed state agencies to designate Tribal liaisons (Administrative Order 300) to facilitate government-to-government consultation with sovereign Tribal interests. DNR-DMLW has consistently rejected calls for increased notice period and face-to-face meetings,

directly contravening these policies. These exclusionary tactics are highly disrespectful, offensive, and unacceptable, particularly since Tribes and native villages would be the most affected by the AAP.

DNR-DMLW must provide to the Tribes a draft impact analysis, draft mitigation measures, and a draft public interest finding for review and comment and conduct robust and meaningful government to government consultation.

DNR-DMLW Response: DNR-DMLW routinely engages with citizens, including tribal representatives, as part of our mission to develop, conserve and maximize the use of Alaska's natural resources consistent with the public interest. Engagement with tribal organizations and members is especially critical, as this project directly impacts the Tribes and Native villages in the area.

The comment period for AIDEA's easement application was held for 30 days which is the standard for easement applications and the notice was extended an additional 30 days. DNR-DMLW also held two virtual listening sessions so that people could provide oral comments. While DNR-DMLW understands that virtual meetings are not ideal due to potential connectivity issues and the desire to have people meet face to face, the virtual listening sessions were determined to be the most practicable way to provide an opportunity for people to provide oral comments.

DNR-DMLW recognizes Alaska Tribes and their sovereignty. Because Alaska Tribes have this sovereignty, DNR-DMLW received several comments citing Administrative Order No. 300; asserting it required DNR-DMLW to consult directly with Alaska Tribes during the AS 38.05.850 process.

Administrative Order No. 300 states the Alaska Native Language Preservation and Advisory Council should "take steps to work actively to promote the survival and strengthening of Alaska Native cultural and language loss in the State of Alaska." Administrative Order No. 300 (September 23, 2018); available at: <https://gov.alaska.gov/admin-orders/administrative-order-no-300/> (accessed on February 28, 2025). Administrative Order No. 300 does not state that DNR-DMLW must undertake a separate, unique consultation process when it adjudicates an AS 38.05.850 easement application.

Further, DNR-DMLW is aware that in AS 01.15.100, the Alaska Legislature "recognize[d] all tribes in the state that are federally recognized under 25 USC 5130 and 5131." However, that recognition did not "create a concurrent trust relationship between the state and federally recognized tribes." AS 01.15.100 also does not suggest that DNR-DMLW must undertake a separate consultation process with Alaska Tribes when they adjudicate an AS 38.05.850 easement application.

Traditional Knowledge

Comment: Tribes are in a position to provide traditional information necessary for the State's decision-making process. Tribal governments have gathered substantial preliminary information of use to DNR-DMLW's decision, including information gathered for a cultural fishing resource inventory reference collection, local subsistence knowledge including caribou migration and sheefish spawning areas, and the location(s) of traditional use and sacred areas. DNR-DMLW must go to these affected communities to solicit the input of communities and elders. These requests cannot be made through impersonal, electronic outreach such as virtual meetings since

tribal participation is low because technology can be inaccessible and the desire to participate in that format is low.

DNR-DMLW Response: A decision was made to not travel to affected communities. We understand the challenges of providing information through electronic outreach and virtual meetings for those in rural communities, but many did provide their opinion on the project regardless of those challenges. We acknowledge that those opposed to the project would have liked to express their opposition face to face, for us to see them and hear them in a manner that is more meaningful to them, but we did hear their voices.

DNR-DMLW provided a public comment period. DNR-DMLW reviews those comments to ensure it makes an informed decision on AIDEA's application. DNR-DMLW would have welcomed and appreciated the submission of information during the public comment period that "Tribal governments have gathered . . . for a cultural fishing resource inventory collection, local subsistence knowledge including caribou migration and sheefish spawning areas, and the location(s) of traditional use and sacred areas." However, DNR-DMLW never received that information.

Comment: Traditional knowledge does not alleviate the State of the responsibility of conducting its own information gathering and impacts analysis; Tribes should not bear the burden of providing the information for the State's decision-making process.

DNR-DMLW Response: The State's decision process for easements involves conducting agency review and soliciting public comments. DNR-DMLW used analysis from the federal processes and input from subject matter agencies in analyzing impacts and developing mitigation measures. DNR-DMLW provided a public comment period. DNR-DMLW reviews those comments to ensure it makes an informed decision on AIDEA's application.

Traditional Values and Subsistence

Comment: The AAP will profoundly affect traditional subsistence resources, including WACH population size and migration routes, and spawning areas for whitefish, particularly sheefish. "Destruction of subsistence resources threatens the fundamental human rights of Alaska Native people to maintain their culture, spirituality, and way of life. When opportunities to engage in subsistence activities are limited, opportunities to transmit knowledge about those activities, which are learned through participation, are also limited. The loss of direct use of the land leads to reduced knowledge among the younger generation of place names, stories, language, spiritual practices and traditional ecological knowledge associated with those areas, as well as short- or long-term declines in the subsistence way of life."

Population and access reductions to subsistence resources would harm traditional subsistence culture throughout the region. "Potential adverse impacts would include, without limitation, declines in resource abundance and availability; reduced access and harvesting opportunities; and disruption of sharing networks, social cohesion, transmission of knowledge to future generations, and spiritual, cultural, and physical health and well-being." Local communities would experience food insecurity and suffer from the economics of having to import food resources.

At the time of notice and the listening sessions, DNR-DMLW was unable and unwilling to elaborate on how it intended to quantify the impacts the project would have on subsistence and what methods would be used to mitigate those impacts.

Prior to any state decision-making process, DNR-DMLW must ensure that AIDEA has collected and analyzed sufficient baseline data and DNR-DMLW must conduct its own detailed analysis in consultation with Tribes for each affected community and develop robust mitigation measures.

DNR-DMLW Response: DNR-DMLW held two virtual listening sessions to solicit public comments and information. DNR-DMLW was only in the public comments phase of adjudication, which is prior to a written decision which addresses topics such as mitigation measures. DNR-DMLW was not prepared to provide answers regarding quantifying impacts the project would have on subsistence, and the how DNR-DMLW would mitigate those impacts.

DNR-DMLW consults with ADF&G regarding impacts to wildlife and subsistence resources. As a cooperating agency, ADF&G assisted with the Subsistence Technical Report (FEIS, Volume 3, Appendix L) and played an essential role in the development of the mitigation measures. For this reason, DNR-DMLW did not develop separate metrics to quantify impacts on subsistence and will not be developing different mitigation measures.

The following mitigation measures were identified and DNR-DMLW will include them as stipulations:

Construction Timing Windows: The Grantee shall work with land managers and wildlife agencies to identify construction timing windows to protect wildlife. Timing design features related to this mitigation will be determined during the design/permitting phase.

Minimize Impacts to Wildlife: The Grantee must include, in its road design, measures to minimize impacts to wildlife movement and minimize habitat fragmentation during construction. This may include, but not be limited to, such features as:

- Burying infrastructure or facilities that may deter wildlife movement.
- Creating wildlife escapement design features in excavations.
- Siting and orienting infrastructure and facilities to allow unfettered wildlife movement.
- Using vegetation to provide screened and unfragmented movement corridors around infrastructure and facilities.

Fish-bearing-stream Crossings: All fish-bearing-stream crossings will be natural channel designs (e.g., U.S. Fish and Wildlife Service 2019) and follow fish passage design guidelines to facilitate fish passage for all life stages.

Road Traffic: Vehicles will be required to slow down or stop and wait to permit the free and unrestricted movement of wildlife across the road at any location. During known caribou migration, the AO may require temporary cessation of traffic.

Subsistence Working Group: The Grantee shall consult directly and regularly with affected subsistence communities, represented in the subsistence working group formed by the Grantee including the following items:

- The Grantee shall consult with directly affected subsistence communities to discuss the siting, timing, and methods of road construction and operations.
- The Grantee shall make every reasonable effort, including such mechanisms as conflict avoidance agreements and mitigating measures, to ensure that road

construction activities and operations and maintenance activities carefully consider and minimize interference with subsistence activities.

Subsistence Activity Impact Mitigation: The Grantee shall notify workers and road users when subsistence activities are ongoing in the area and direct them to refrain from actions that may affect the activities (e.g., not removing trapline markers). Subsistence activity impact mitigation will also include:

- Identifying locations and times when subsistence activities occur and minimizing work during these times and in these areas to the maximum extent practicable.
- Scheduling work (e.g., blasting) to avoid conflict with subsistence activities when possible.
- Managing project-related aviation activities to minimize disturbance of hunters or prey species.

Cultural Resource Impacts

Comment: The APP “has the potential to degrade or destroy ancestral sites, long-time travel routes, traditional use areas, landscapes, traditional cultural properties (TCPs), Indigenous named places, and customary practices.” “Diminishing or destroying cultural resources is tantamount to diminishing or destroying our fundamental identities as Tribes and indigenous peoples.” While AIDEA is currently engaged in some cultural resource work, that work is narrowly focused on archaeological work and artifacts, ignoring ethnographic research to identify ethnographic landscapes, TCPS, and/or sacred sites. What limited information is available indicates that there is a high likelihood that both archaeological resources and ethnographic resources exist within the project area and are likely to be affected by both direct and indirect impacts of the AAP.

Despite the long-term interest in developing the Ambler area for mining, there is still little information regarding cultural resources in the area. The Federal analysis and resulting decision and authorizations culminated in a PA to ensure cultural resource investigations, and that impacts to cultural resources be minimized and mitigated consistent with the NHPA § 106. However, the Federal response to recent litigation admits that the PA fails to provide for adequate Tribal consultation and is too narrow in scope by focusing on archeological resources and ignoring ethnographic resources. The State cannot rely on the PA for its obligation to protect and preserve cultural resources and must conduct its own comprehensive survey in consultation with Tribes.

In addition, AIDEA has failed to conduct the detailed research necessary to ensure that impacts to cultural resources are minimized and mitigated and is only now engaging in active data collection while simultaneously conducting ground disturbing preliminary field work. AIDEA must conduct the necessary cultural resource survey work, in consultation with Tribes, before ground disturbing work initiates, and before DNR-DMLW authorizes a private exclusive easement.

TCC and other Tribes have provided some preliminary cultural resource documents and other information to assist DNR-DMLW in their assessment of impacts to cultural resources. Additional information may be provided to DNR-DMLW as appropriate while it conducts additional cultural resource evaluations. “However, we wish to emphasize that these voluntary efforts of limited scope are not a substitute for DNR-DMLW and AIDEA undertaking comprehensive cultural resource studies, including both archaeological and ethnographic studies,

throughout the region that would be affected by the Ambler Road and associated mining and secondary roads. It is the responsibility of the project proponent and decision making agency to ensure that the adverse impacts of their proposed activities are fully considered. The burden, in terms of time, resources, and funds, of conducting such studies cannot be shifted onto Tribes.”

DNR-DMLW Response: State law requires all activities requiring licensing or permitting from the State of Alaska to comply with the Alaska Historic Preservation Act, which prohibits the removal or destruction of cultural resources on land owned or controlled by the State. *See* the Cultural Resources Section below for a more detailed discussion about mitigation of cultural resource impacts.

Federal Process and Authorization

The AAP Federal Review is Complete and Sufficient

Comment: The AAP has been through a thorough environmental and project analysis, in which significant time and cost has been invested. The Federal analysis provides a substantial basis on which to proceed with a timely, transparent, consistent, and clear state authorization. As the state adjudication proceeds, it is important to remember that the required federal steps were followed and the FEIS was ultimately approved.

Given that Alaska is poised to accelerate production of critical minerals necessary to meet U.S. needs, the supplemental federal FEIS review of the project appears contradictory to the President’s commitment to increasing domestic mineral production. The Ambler district is a large prospective copper-zinc mineral belt with extensive deposits of critical minerals and other elements essential for our tech-focused economy and military effectiveness. Federal impediments to Alaska’s efforts to be a resource development state – consistent with ANILCA – do not align with our nations ever-increasing need for resources.

DNR-DMLW Response: The State concludes that the FEIS completed in March 2020 was thorough and was sufficient to identify and develop mitigation measures for the project and that additional analysis is unnecessary.

State Reliance on Federal Analysis

Comment: DNR-DMLW, in their summary of the application, has alluded to relying on parts of the FEIS, JROD, and other parts of the federal analysis. However, it is unclear what parts the State considers relevant to its decision. By not clarifying this as part of the application materials, the public has been unable to review and comment upon this aspect of the AAP.

DNR-DMLW Response: DNR-DMLW reviewed and considered the information in the 2020 FEIS and JROD. DNR was also a cooperating agency in the EIS process. Although DNR-DMLW reviewed the FEIS, the easement adjudication process is not dependent on the FEIS. The mitigation measures that DNR-DMLW developed through the adjudication of AIDEA’s easement application are outlined throughout this decision and included in the attached authorizations. Although some of the mitigation measures are similar to those developed during the federal process, DNR-DMLW relied on its own analysis to develop the mitigation measures after conducting agency review and public notice which is the process for easement decision making.

Federal Litigation

Comment: The U.S. Department of the Interior (DOI) has suspended ROW permits for portions of the AAP that cross lands managed by the BLM and the NPS, citing issues with the FEIS process. Additionally, in response to pending federal litigation over the AAP, the DOI has requested that the court allow the Department to voluntarily remand the decision so that additional information gathering and decision-making be undertaken. In taking these recent actions, the DOI has admitted to several legal deficiencies in the decision-making process.

In light of these developments, the validity of the FEIS and the ultimate issuance of the federal ROW permits have been called into question. The State cannot rely on the analyses in the FEIS to ensure that state resources are protected, and that cultural and subsistence issues are mitigated. The State should not issue an easement on state land if there is no adjoining ROW on federal lands. The adjudication of this easement should be postponed until the federal issues have been resolved.

DNR-DMLW Response: The FEIS completed in March 2020 provided DNR-DMLW with a resource for identifying and developing mitigation measures for the project. While DNR-DMLW used information from the federal process and FEIS, DNR-DMLW asserts there is sufficient information to adjudicate the private exclusive easement application. Again, the scope of this decision is as follows: granting an easement on state public domain lands for AIDEA's road project. AIDEA will need to obtain other state and federal authorizations for other parts of its planned project.

State Application Timing Relative to Federal Permits

Comment: Considering a state application for an easement after the federal process has concluded puts the State in the untenable position of possibly denying an application when federal ROW permits may have already been granted. Having the state process occur before, or at the same time as the federal process gives the public and Tribes a chance to give more meaningful input that has a higher likelihood of being integrated into DNR-DMLW's decision-making at a meaningful time. Impacts to rural communities and Tribes are not being afforded due consideration.

DNR-DMLW Response: Although at the time of AIDEA's easement application the FEIS was completed, that is no longer the case. DNR-DMLW is tasked with adjudicating an application for a private exclusive easement on state public domain land under AS 38.05.850 for the construction and maintenance of a road the purpose of accessing the Ambler Mining District for exploration and potential mine development in the future. The decision-making process under AS 38.05.850 is a separate state process. DNR-DMLW sought input from the public and Tribes through the public notice.

Caribou Impacts

Comment: The Western Arctic Caribou Herd (WACH) will be permanently impacted by the road. This will likely lead to declines in herd numbers, affecting access and availability of caribou to traditional subsistence harvest.

DNR-DMLW Response: DNR-DMLW coordinated with ADF&G regarding the above statement and the following comments. While it is unavoidable that there will be some impacts, neither DNR-DMLW nor ADF&G agree that the WACH will be permanently impacted by the road.

ADF&G pointed out that caribou herds across Alaska have co-existed with road systems and industrial activity and still provide yield for subsistence and other uses.

Possible impacts include:

- Industrial avoidance – Caribou are sensitive to industrial noise, light, sounds, and smells, and will likely avoid industrialized area that would normally be part of their forage, migration, and breeding areas. Possible effects include decrease range fidelity and increased stress, startle and flight responses, smaller range size, predation, and energy expenditure.

Response: ADF&G agrees that caribou may be initially sensitive to new industrial activities in their range. The Central Alaska Caribou Herd initially avoided areas of oil infrastructure. However, over time, caribou became accustomed to the activity and have coexisted with it.

- Road avoidance – Studies have shown that caribou adjust their movements to avoid proximity to and the crossing of roads and may take several days to cross a road. Rather than approach a road, Caribou will often travel parallel to a road by several miles or turn around to find an alternative route.

Response: Caribou herds across Alaska have co-existed with road systems and still provide yield for subsistence and other uses. Examples include the Nelchina and Fortymile caribou herds.

- Migration route disruption – Because caribou migration is affected by the movements of lead herd members, if caribou encounter individuals heading the opposite direction, others will often turn and follow. The net effect is that migration duration and routes will be lengthened, and caribou may spend increased time and energy during their migration. This affects energy reserves necessary for breeding and rearing young, and the herd may experience population decline.

Response: ADF&G acknowledges that roads have the potential to impact movement of caribou. That said, other herds in Alaska and elsewhere co-exist with roads larger than the proposed access road. ADF&G believes that mitigation measures used along the Red Dog Road can minimize impacts to movement and migration along the Ambler Road.

- Avoidance of potential calving grounds – If industrialization occurs near historical calving grounds, caribou may avoid those areas and resort to less optimal locations to bear young. This may result in decreased survival of young.

Response: The calving grounds of the WACH are over 100 miles to the northwest of the project area. While there could be some impacts associated with movement, ADF&G does not expect these to be significant.

- Declines in suitable forage – Caribou have been shown to avoid lichen forage that is covered by dust. Dust from road operations and use can travel long distances from the main alignment, covering lichen and reducing the availability of suitable forage.

Response: DNR-DMLW will include the following stipulations: *Roadside Vegetation*, *Dust Suppressants*, and *Dust Control Plan*. See Agency Review section for detailed discussion.

- Climate change is already having a negative impact on caribou herds through environmental and wildfire induced changes in forage availability, and general environmental uncertainty such as timing of breakup. Further changing their landscape with a road contributes to the pressures already faced and will likely accelerate population declines.

Response: DNR-DMLW and ADF&G cannot predict how the changing weather patterns may affect the WACH. The mitigation measures discussed herein appear flexible enough to adjust and address those potential changes.

- Latest data indicates that the WACH has declined 25% over the last 2 years. The AAP will contribute further to this decline.

Response: Many factors are thought to be contributing to the decline in the WACH. The AAP will have some impacts. The mitigation measures in the Ambler Road FEIS include measures intended to reduce disturbance to caribou.

Comment: The federal FEIS has already acknowledged that the road, ancillary facilities, mines, and secondary roads will have profound negative impacts on WACH caribou, including the potential for population declines. DNR-DMLW must conduct its own robust analysis of potential effects on WACH and draft mitigation measures that it makes available for public review, prior to considering issuing an easement for Ambler Road.

DNR-DMLW Response: DNR-DMLW relies upon ADF&G to evaluate and address potential effects on caribou, specifically the WACH. While it is unavoidable that there will be some impacts, neither DNR-DMLW nor ADF&G agree that additional analysis is needed and that the WACH will be permanently impacted by the road. DNR-DMLW will include the following stipulations to mitigate impacts to caribou:

Winter Maintenance: Snowbank height will be minimized to allow caribou passage, in particular during spring migrations, to the extent practicable.

Breeding Seasons: During periods of wildlife breeding, lambing, or calving activity, and during major migrations of wildlife, the Grantee's activities on DNR-managed land may be restricted by the AO with written notice. From time to time, the AO may furnish the Grantee a list of areas identified by ADF&G where such actions may be required, together with anticipated dates of restriction.

DNR-DMLW will also include the following stipulations: *Minimize Impacts to Wildlife, Road Traffic, and Construction Timing Windows.*

Fish Impacts

Comment: Fish species, including salmon, sheefish, and white fish, are expected to be harmed by the road and ancillary facilities. Possible impacts include:

- Damage to spawning areas located within drainages crossed by the road or near industrialized areas. Damage could occur through increased sedimentation from run off, construction within spawning areas, increased concentrations of hazardous materials leached into waters, and declines in aquatic invertebrates from decreased water quality.

- Habitat and headwater fragmentation as a result of watersheds bisected by the road that may not facilitate free movement of fish. This may be particularly problematic as climate change shifts appropriate habitat with streams and between drainages.
- Fish and aquatic invertebrate prey may be impacted by declines in water quality associated with increased sedimentation, concentration of heavy metals and other contaminants, and pollution from hazardous material spills near or in waterbodies.
- Culvert design and potential for failure will have impacts on fish habitat and watershed availability. Current application does not speak to how culverts will be designed and maintained. ADF&G standards for culverts are inadequate and outdated, and most culverts fail at some point.
- The project will require large water withdrawals from streams, rivers, lakes, and ponds during construction and for ongoing maintenance, such as dust control. Such removal may impact resident fish if large volumes are removed.
- Changing hydrology dynamics as the road acts as a barrier.
- Recreational, commercial, and subsistence fisheries will be impacted by declines in fish stocks, including downstream fisheries in places such as Kotzebue.
- Increase access generated by a newly constructed road also increases the likelihood of the introduction of non-native species in fish habitat. Species of particular concern include Elodia and White sweetclover which can drastically impact fish habitat.

DNR-DMLW Response: DNR-DMLW relies upon ADF&G's expertise to address potential impacts to fish. ADF&G has identified mitigation measures to be included in the DNR-DMLW authorizations to mitigate impacts to fish. Additionally, ADF&G Habitat Section will be responsible for issuing FHPs for all activities in fish bearing waterbodies. Those FHPs will include terms and stipulations to protect fish and mitigate impacts.

DNR-DMLW will include the following stipulations: *Clean Fill, Snow and Ice Clearing, Roadside Vegetation, Revegetation, Hydrologic Connectivity, Floodplain Connectivity, Culvert Widths, Cross-drainage Culvert Locations, Overflow Culverts, Culvert Adaptive Management Plan, Groundwater Flow, Vegetation Buffer, Erosion Control Measures, Dust Suppressants, Invasive Species, and Fish-bearing-stream Crossings.*

Water and Wetland Impacts

Comment: Construction of the road would result in compacted soils along the length of the road alignment, dozens of bridges, thousands of culverts, and multiple material sites, as well as fill to wetlands and large water withdrawals from ponds and streams. Possible impacts may include:

- Disruption of surface and ground water flow due to blockages, diversions, reduced waters connectivity, flooding, and erosion.
- Lowering of the water table, impacting upwelling of waters in other locations that may be used as fish spawning grounds.
- Increased mineralization, sedimentation, and contamination in waters due to erosion from the constructed road and changes in water flow.

- Pollution from runoff from vehicle and industrial operations, airborne dust from traffic settling in water, acids and other metal contaminants leached from exposed rocks.
- Possible contamination of downstream drinking water supplies.
- Bridge crossing for wild and scenic rivers may impede river traffic, reduce scenic value, change hydrology, and diminish recreational value.

Basic hydrology, hydraulics, and quality of waters throughout the project area are poorly understood. Prior to considering authorization of the road, baseline water studies must be conducted and incorporated into comprehensive mitigation measures, and such information should be made available to the public for review.

DNR-DMLW Response:

DNR-DMLW will include the following stipulations: *Clean Fill, Erosion Control Measures, Snow and Ice Clearing, Culvert Widths, Cross-drainage Culvert Locations, Floodplain Connectivity, Hydrologic Connectivity, Overflow Culverts, Gravel and Construction Materials, Vegetation Buffer, Culvert Adaptive Management Plan, Groundwater Flow, Roadside Vegetation, and Dust Suppressants*. For more detailed information on these stipulations, see the Agency Review section. See below response to comment regarding the Wild and Scenic River.

Wild and Scenic River Impacts

Comment: How will DNR-DMLW justify the environmental impact of roadways crossing Wild and Scenic designated rivers when they've been designated as such for their "remarkable scenic, recreational, geologic, fish and wildlife, historic, or other similar value"? Given that this is one of the most significant protections and designations for rivers, I find it very difficult to believe that DNR-DMLW can look beyond this designation and consider providing permits for a project that would cross these rivers and streams while claiming that construction wouldn't disrupt or irreversibly damage the incredible subsistence, ecological, cultural, and recreational value they provide.

DNR-DMLW Response: In their application, AIDEA proposes that the Ambler Road will cross the Wild and Scenic portion of the Kobuk River within the Gates of the Arctic National Park and Preserve. It will then cross downstream of the Wild and Scenic portions of the Alatna, John, and North Fork Koyukuk Rivers. The State of Alaska holds title to lands beneath tidally influenced and navigable waterways within its jurisdiction, including lands underlying the North Fork Koyukuk, John, Alatna, and Kobuk Rivers. DNR-DMLW acknowledges that the road and bridge will have an impact; however, DNR-DMLW does not agree that the wild and scenic nature of the river at the bridge site will irreversibly damage the subsistence, ecological, cultural, and recreational values they provide. The Kobuk River is 380-mile-long river that originates in the Endicott Mountains in the Brooks Range and flows west to Kotzebue Sound. With Section 201(4)(b) of ANILCA, Congress allowed for access through these lands and areas and thus implicitly supported the infrastructure needed to provide such access; which would ostensibly include a bridge over the Kobuk River. See the Public Access Plan section in the Discussion Section for specific criteria regarding bridge standards.

Pollution Impacts

Comment: The road, secondary roads, ancillary facilities, material sites and future mines have a high risk of hazardous material spills and other forms of pollution, in addition to those mentioned above. Mine haul roads have a high likelihood of spills. Such spills include ore concentrates, processing chemicals, hydrocarbons, and dust suppressants. A recent study looked at the frequency of spills from current mining operations available through an ADEC database and found that the actual frequency of transportation related spills is 230 times higher than originally predicted.

DNR-DMLW Response: DNR-DMLW will include the following stipulations: *Fuel and Hazardous Substances, Spill Prevention and Response and Concentrate Recovery Plan (SPRCRP), Concentrate Transportation, Spill Prevention Control and Countermeasure Plan, and Notification of Discharge.* See Agency Review section for detailed discussion.

Comment: Fugitive dust from construction and road operations travels long distances and settles on vegetation and in streams, ponds, and wetlands. Fugitive dust can act as a vector for transporting pollutants and pose a hazard to respiratory health, and flora and fauna. Fugitive dust also contributes to early snowmelt through lowered albedo, decreases in mosses and lichens, increase depth of thaw within proximity to the road, and contributes to thermokarst in roadside areas.

DNR-DMLW Response:

DNR-DMLW will include the following stipulations: *Roadside Vegetation, Dust Suppressants, and Dust Control Plan.* See Agency Review section for detailed discussion.

Comment: Operational hazards from mining operations such as spills of drilling muds and waste waters such as tailings ponds pose environmental risk from spills and containment ruptures. While not directly related to construction of the road, such risks are linked to the mines for which this road will serve. These risks must be considered as part of the road authorization for the potential impact of the entire project.

DNR-DMLW Response: DNR-DMLW is adjudicating a private exclusive easement under AS 38.05.850 for the construction and maintenance of the road and ancillary features for the purpose of accessing the Ambler Mining District for exploration and potential mine development in the future. Any application for a mine will require a separate permitting process and is outside the scope of this decision.

Comment: Naturally Occurring Asbestos (NOA) commonly occurs throughout the project area, but the location and extent of NOA is unknown. Creation of material sites in NOA rich areas and use of that material in road building will generate airborne hazards throughout construction and normal operation. This presents a health hazard to workers and residents of surrounding communities. DNR-DMLW should conduct geological surveys to identify and predict NOA in the project area and provide that information to the public for comment.

DNR-DMLW Response:

DNR-DMLW will include the following mitigation measures: *Naturally Occurring Asbestos and NOA Management Plan.* See the Agency Review Section for a more detailed discussion.

Comment: The application materials, particularly the Environmental Risk Questionnaire fail to provide any realistic analysis, mitigation, or response plan regarding pollution and/or contamination and/or environmental impact issues. In the application, AIDEA points to its experience with the DeLong Mountain Transportation System (DMTS, which services the Red Dog Mine), however this is not a good comparison: the AAP would be 4 times longer and crosses many streams and water bodies, and according to a recent analysis of the ADEC spills database, the spill frequency and amount of material spilled is much higher than originally predicted.

DNR-DMLW Response: DNR-DMLW has conducted its own review and analysis through the private exclusive easement adjudication process and to address potential environmental impacts will include the following mitigation measures: *Fuel and Hazardous Substances, Spill Prevention and Response and Concentrate Recovery Plan (SPRCRP), Concentrate Transportation, Spill Prevention Control and Countermeasure Plan*, and *Notification of Discharge*. See the Agency Review section for more detailed discussion.

Comment: The environmental risks associated with the AAP are too high to be in the public interest. If DNR-DMLW is to consider the project, it should reject the current application and have AIDEA submit a new application with a comprehensive analysis of the environmental risks, mitigation, and spill response, and make it available for public review and comment.

DNR-DMLW Response: DNR-DMLW understands that any resource development project has environmental impacts. Through DNR-DMLW's private exclusive easement adjudication process, which involved public review and comment, comprehensive mitigation measures have been developed to address impacts to the land, water, fish, and wildlife resources. DNR-DMLW asserts that the Ambler Road can be built in an environmentally responsible way to protect the wild nature of Alaska's lands now and for future generations and is in the State and the Public's interest. A new application and additional analysis are not needed to identify risks and develop mitigation measures. Spill response is addressed throughout the Agency Comment section.

Climate Change

Comment: The Arctic is experiencing increasing average temperatures due to climate change, resulting in melting permafrost and changes to flora, fauna, and their ecosystems.

- Melting permafrost across the landscape threatens infrastructure such as the stability and maintenance of roads and bridges. It is unclear how climate change will impact proposed Ambler Road infrastructure in terms of longevity, maintenance cost, and potential failure. DNR-DMLW must conduct an analysis of the impacts of climate change and determine how to mitigate impacts.
- Road construction will contribute to melting permafrost, resulting in increased emissions of methane gas from thawed organic material. Methane is a potent greenhouse gas with 25 times the warming potential as CO₂.
- Climate change will likely impact traditional subsistence practices in the area, though it is not yet understood what the overall impact will be. DNR-DMLW must take into account how the Ambler Road project will impact indigenous people's ability to adapt their subsistence practices to a changing environment.

- DNR-DMLW should evaluate how authorizing the AAP will contribute to greenhouse gas emissions and climate change, including from increased infrastructure and industrial transportation.

DNR-DMLW Response: AIDEA will be responsible for ensuring their design and construction of the AAP sufficiently address impacts of climate change on the road. DNR-DMLW, as noted in the Agency Review Section, will include the following stipulations: *Foam Insulation* and *Groundwater Flow*. Mitigation measures have also been developed to address impacts to subsistence practices. See responses to comments for Traditional Values and Subsistence for a more detailed response. Through its own process DNR-DMLW has consulted with other state agencies in the identification and development of mitigation measures. The mitigation measures identified and included as stipulations meet DNR-DMLW's statutory requirements and the requirements of the NWAP and the Ambler Road SSP. These measures will mitigate the impacts of the project, balancing protection of the environment and development of state resources.

General Environmental Concerns

Comment: The project area is a large swath of undeveloped, wild lands. Truly wild areas are rare in the U.S. and are of high intrinsic value. Constructing new industrial projects in a previously undisturbed area destroys one of the last few pristine areas and represents an unacceptable loss.

DNR-DMLW Response: DNR-DMLW understands that any resource development project has environmental impacts. Through DNR-DMLW's private exclusive easement adjudication process extensive mitigation measures have been developed to protect the land, water, fish, and wildlife resources. DNR-DMLW asserts that the Ambler Road can be built in an environmentally responsible way to protect the wild nature of Alaska's lands now and for future generations and that it does not represent an unacceptable loss.

Tourism and Recreation

Comment: The tourism industry is an important sector of Alaska's economy and relies on pristine wild spaces, especially adjacent to GAAR. Tourists fly into GAAR to float rivers (several public commentators have guided such trips) out of the park and into reaches of the river that will be crossed by the road. With the construction of the AAP, the river floats will now encounter bridges ultimately diminishing their value. Tourists also travel up the Dalton Highway and the increased truck traffic from the AAP will impact the experience by increased encounters with trucks hauling ore and the resulting airborne dust.

Alaska's vast wilderness, and the recreational opportunities these spaces permit, promotes the Alaska tourism industry, an important economic engine that supports many small "Mom and Pop" operations. By granting the AAP, the state is valuing mining interests over tourism industry, potentially because of the lobby power of large mining operations.

DNR-DMLW Response: Article VIII, section 1 of the Alaska Constitution states, "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." Reflecting that constitutional direction, AS 38.04.005 requires DNR-DMLW to manage general state lands "to provide for maximum use of state land consistent with the public interest." This requires DNR to manage state lands for multiple purposes to ensure land is "available for both public and private uses." Consistent with these provisions, while the issuance of a private exclusive easement for a

restricted industrial road doesn't provide access for recreation and tourism, and the authorization does not preclude existing recreation and tourism. DNR-DMLW recognizes that the addition of bridges on popular recreational rivers may have an effect on the float experience, but such impacts are anticipated to be minor. As described in the previous response, DNR-DMLW asserts that the Ambler Road can be built in an environmentally responsible way that will protect the recreational experience and allow the tourism industry to continue experiencing economic growth.

Creation of a Multidisciplinary Technical Working Group

Comment: If there is a need for information for DNR-DMLW to conduct an analysis of the proposed AAP, DNR-DMLW should put together a multidisciplinary technical working group to bring the necessary information together.

DNR-DMLW Response: It is DNR-DMLW's position that the mitigation measures identified through DNR-DMLW process, and the mitigation measures that will be developed for the additional authorizations needed (e.g., ADF&G FHPs, DEC Section 401 Water Quality Certification, DEC Alaska Pollutant Discharge Elimination System permit) are rigorous protective stipulations for activities related to the construction, operation, and maintenance of the proposed road, and therefore a separate multidisciplinary technical working group is not necessary. DNR-DMLW asserts that the mitigation measures identified in this decision and implemented in the DNR-DMLW authorizations will protect water quality and aquatic resources, fish, wildlife, air quality, and other natural resources.

Public Access to State Lands

Comment: DNR-DMLW should not issue a private exclusive easement for a road that will access lands previously only accessible by aircraft or watercraft. DNR-DMLW should make this road accessible for all Alaskans for access to both state lands and to GAAR. Building and maintaining a road to state and federal lands is enshrined in the Alaska Constitution, Article VIII, Section 1. If public access through GAAR is an issue, and the NPS will not issue a ROW on federal lands, the State should authorize the route around those federal lands.

If a private exclusive easement is issued, the State should do one of the following:

- At 30 years, renegotiate the terms of the easement with AIDEA to allow public use.
- At the completion of phase 3, terminate the private exclusive easement and negotiate a new agreement allowing public use where DNR-DMLW retains the authority to conduct permitting for commercial and individual vehicle traffic while ore is being transported on the road.
- At 30 years, the private exclusive easement and road improvements should become property of the state.

Finally, the road should not be reclaimed at the end of 50 years, as it would provide ongoing access to state lands.

DNR-DMLW Response: AIDEA has applied for a private exclusive easement for a private industrial road. The purpose of the road is to facilitate exploration and transportation of resources, equipment, supplies, and personnel to the Ambler Mining District in support of mining. A private exclusive easement is determined to be appropriate for a road for industrial purposes that will be

solely owned by and controlled by AIDEA or an AIDEA established LLC. AIDEA will have full control over the improvements and therefore may limit and regulate access to and charge a toll or fee for the use of the improvements. The public will continue to have access to these public lands as they do now, they simply will not be able to use AIDEA's improvements that they have control over. For additional information on public access *see* the discussion section below.

DNR-DMLW intends to issue a 50-year term private exclusive easement that contains certain stipulations and requirements that AIDEA must follow. Unless by a separate written agreement by DNR-DMLW and AIDEA, upon termination of the private exclusive easement, whether by abandonment, revocation or any other means, AIDEA shall return the lands to the State in a condition acceptable to DNR-DMLW at that time.

At the end of the 50-year private exclusive easement a new, separate process from this one would be needed if there is a proposal to continue to use the road. That process would include agency review and public notice.

Other Access Issues

Comment: The road would impact use of a winter trail (RS2477) that travels north from Bettles to access a cabin at Wild Lake.

DNR-DMLW Response: RST 18, Bettles-Wild Lake River Trail crosses the proposed Ambler Road alignment. DNR-DMLW considers this a vital part of the existing transportation network. AIDEA will be required to provide access across the road at this location and to establish and maintain a crossing in a manner consistent with customary use of the area. The route is to be addressed in a Public Access Plan. For more information, *see* Public Access Plan Discussion Section.

Comment: How far will people need to travel to utilize the predesignated crossing locations?

DNR-DMLW Response: It will depend on where the travel is occurring. AIDEA will be required to prepare a Public Access Plan that should establish crossings corresponding to qualified RS 2477's, navigable waterways, routes identified through satellite photography, and routes identified through consultation with local communities and land managers. Many section line easements may be closed, but transverse access should remain approximately once every two miles on state land, and approximately once every six miles on other lands. For more information, *see* the Public Access Plan Discussion Section.

Unanticipated Access and Trespass

Comment: Despite the applicant requesting a private exclusive easement with controlled access at each end of the constructed road, there will be public use of the road. It will be difficult to control public use of the road over an extent of 200 miles. The public will have increased ease of access to previously inaccessible areas. Similar issues are documented with the Red Dog industrial road.

It is also reasonable to expect that the road will eventually become public. The Dalton Highway was originally constructed as a private industrial road but was later opened to the public by an act of the legislature. It is not unreasonable to expect a similar result with the Ambler Road. The eventual opening and long-term implications of public access on the road should be considered

during the adjudication of the road, including the burden of road maintenance and improvements that would fall on the State.

Increased public access, whether through trespass or eventual road opening, would have impacts throughout the project area and beyond. Such impacts may include:

- Increasing habitat degradation due to increased public use, such as off-road vehicle use, camping, etc.
- Increased boat and river traffic.
- Increased competition for fish and wildlife resources between subsistence users and sports users. Populations of sport species will decline in response to increased harvest pressure.
- Increase settlement of wild lands, either through legal programs or trespass.
- Wildlife behavior changes in response to increased public use such as avoidance or increased startle and flee responses.
- Introduction of invasive species through contaminated vehicles, equipment, and clothing.
- Increases in crime as a result of greater access, such as drug and alcohol abuse, trespass, theft, sexual assault, and murder in local communities.

DNR-DMLW Response: DNR-DMLW is proposing to issue AIDEA a private exclusive easement with a 50-year term. AIDEA will own the improvements and will control access. AIDEA plans to control access at both ends of the road with manned gates, which would prevent highway vehicles from using the road. Due to limited access and use DNR-DMLW does not anticipate habitat degradation; increased off-road vehicle use, camping, boat and river traffic; increased competition for fish and wildlife resources; and wildlife behavior change due to increased public use.

If there are issues related to population decline of game species, those issues would be addressed through the Alaska Board of Game. The Board of Game is also responsible for allocation of game species. The private industrial road will not provide access for settlement.

DNR-DMLW does not currently have lands classified as “settlement” within AIDEA’s proposed project area.

Use of public lands in accordance with DNR’s regulations is not considered trespass. Except for the initial segment of the proposed road from the Dalton Highway which crosses Doyon Corporation land and a segment of Northwest Arctic Borough land on the west end, the remainder of the road crosses public land, i.e. general state land and federal land. While the public will be prohibited from using AIDEA’s road, they are not prohibited from being on public lands in this area and using them consistent with DNR regulations.

With regards to increases in crime as a result of greater access, DNR-DMLW reiterates that a private industrial road within a private exclusive easement with controlled access will limit increases in public uses.

Invasive species is a potential impact due to industrial use of the road. As previously mentioned DNR-DMLW will require an Invasive Species Prevention and Management Plan.

Although DNR-DMLW does not anticipate increased public use as a result of the private industrial road, DNR-DMLW will continue to advocate for public access to public lands and

intends to protect existing access as outlined in the Public Access Plan section below in the Discussion Section.

Lastly, there are several steps required for the road to later become a public road: AIDEA would have to concur, federal agencies would have to go through their required processes, and DNR-DMLW would have to go through a new adjudication process that would include a written decision and public notice. Those steps have not occurred.

Existing Infrastructure

Comment: Completion of the APP will inevitably lead to increased traffic on the Dalton Highway and other public roadways. Increased truck traffic will lead to increased maintenance costs for the State and unsafe conditions for Alaskan travelers.

DNR-DMLW Response: Increased truck traffic on the Dalton Highway and other public roadways, associated maintenance costs, and road safety are outside the scope of this decision. DOT&PF was included in agency review.

Reclamation/Restoration

Comment:

- Plans are not clearly articulated in the application materials and are inconsistent with other authorizations the applicant has obtained from federal entities. ADIEA should be required to resubmit application materials with fully fleshed out reclamation plan for public review.
- Arctic tundra is difficult to rehabilitate following gravel removal. Ground surface elevation tends to be compressed, which can lead to ponding and hydrology change if all gravel is removed. If some gravel is retained to maintain surface elevation, reestablishing native tundra vegetation can be impeded.
- Permafrost soils are not stabilized by revegetation; it is the accumulation of organic materials that provide the necessary insulation. Once that layer is removed, it is very difficult to stabilize soils.
- Native tundra plants are generally not commercially available for use in restoration activities. Rather it is native grass cultivars. Grasses are not recommended for tundra restoration because they do not provide thermal stability, they inhibit the colonization of the area by native plants, and seed can contain up to 3% invasive species.
- Complete reclamation of the road surface cannot be reasonably expected, and it is unlikely that a bond large enough to support such an effort would be funded. It would be very difficult and expensive to design and carry out a reclamation plan for permafrost areas that would not result in thawing, eroded, muddy trough (like the Hickel Highway). Ultimately removing all the gravel would be many more times as expensive as putting it there in the first place, and that would be just the first step towards reclamation.

DNR-DMLW Response: DNR-DMLW has determined the application materials submitted were sufficient for adjudication of the private exclusive easement. DNR-DMLW will require a Reclamation Plan prior to construction and will consider the above concerns when evaluating the plan. DNR-DMLW will include the following stipulations: *Reclamation Plan, Site Restoration,*

Site Restoration of Ground Disturbing Activities, and Revegetation. See the Agency Review section for more details on the above listed stipulations.

DISCUSSION

Private Exclusive Easement

DNR-DMLW intends to issue a private exclusive easement to AIDEA, for the main road alignment, secondary access roads to material sites and airstrips. AIDEA will own the improvements, including the road, within the DNR-DMLW issued easement. AIDEA will control access to the road and thus authorize third party use of the AIDEA owned road. DNR-DMLW reserves the ability to issue authorization *across* the road at points identified in the Public Access Plan. The construction corridor authorized under the entry authorization will be 450 ft. (250 ft. either side of road centerline) during construction and the final private exclusive easement will be 250 ft. (125 ft. either side of centerline). A private exclusive easement will be issued once construction and a DNR-DMLW approved as-built survey are complete.

Airstrips

Airstrips and ancillary access roads are included in the easement as they are access related. Use of the airstrips will be restricted by AIDEA. To address fuel storage DNR-DMLW will include standard stipulations related to spill response and hazardous materials in addition to the following stipulation:

Airstrips: The Grantee shall operate project airstrips for Ambler Road activities only, except for emergency landings. The general public shall not have use of airstrips for recreational or other, non-business related purposes.

Fiber Optic Cable and Amplifier Sites

Fiber Optic Cable (FOC) and amplifier sites or regeneration stations are considered an acceptable secondary use within a private exclusive access easement and are therefore authorized.

Temporary Construction Camps

Temporary construction camps within the 450 ft. construction corridor are included in this decision. Temporary construction camps outside the construction corridor will require a separate permitting process also under AS 38.05.850. DEC has regulatory oversight of drinking water, food service, solid waste, and wastewater activities at camps. Requirements and authorizations of camps are determined by the size and duration of the camp's operation. Large camps require approval from DEC, and must go through the standard permitting, plan reviews, and authorizations. ADF&G has resources for safety when living and eating in areas where bear areas. AIDEA will be responsible for obtaining any necessary authorizations for temporary camps.

Incidental Material Use

Under AS 38.05.550-.555, material sites throughout the State are formally designated, subject to best interest findings, public notice, and public comment. After the sites are designated, then materials – i.e. gravel – can be sold from those sites.

In contrast, AS 38.05.565 authorizes DNR-DMLW to sell or dispose of materials from sites that have *not been designated* under AS 38.05.550. AS 38.05.565(a)(3) allows a holder of a permit, land lease, or right-of-way issued by DNR, if the materials to be extracted and removed during the construction, use, or maintenance of the facility authorized by a permit, land lease, or right-of-way, are: (1) necessary and incidental to the primary purpose of the permit, land lease, or right-of-way, and; (2) the materials are put to beneficial use in a way that alters the character, usefulness, or availability of the materials in their native forms. DNR authorizes the sale of materials under AS 38.05.565 via a permit, in the context of a land lease, or in the context of a right-of-way.

Sales of materials under AS 38.05.565(3) must be sold at the Representative Regional Sales Price (RRSP) unless the materials are moved within and not removed from the boundaries of a permit, land lease, or right-of-way issued by the department without altering the character, usefulness, or availability of the materials in their native form. The RRSP for the Ambler Area will be determined in a separate decision for the designated material sites.

If materials are extracted from a material source within the construction easement and placed within the road prism, the RRSP applies. If the materials are extracted within the construction easement, including the road prism, and removed (moved off-site) for purposes that will alter the character, usefulness, or availability of the materials in their native form, the RRSP also applies.

There is no charge if materials are extracted from and re-placed within the road prism, if materials are extracted from and moved within the construction easement (stockpiled) or for use by the state, or if materials are extracted from within the construction easement and removed (moved off-site) for future use by the state (such as where the material is moved to a designated material site or moved to another location for return to the road easement-site after project completion).

Materials from within the construction corridor may only be used consistent with AS 38.05.565.

Mining and Reclamation Plans must be submitted for approval for any material mined within the construction corridor, but not a part of standard cut and fill operations.

Designated Material Sites

Material sites must be designated per AS 38.05.550 and require a separate DNR-DMLW authorization.

Communication Sites

Communication sites not within the 250 ft. corridor will require a separate DNR-DMLW authorization.

Permanent Maintenance Camps

Permanent maintenance stations will require a separate DNR-DMLW authorization.

Public Access & AIDEA's Public Access Plan

AIDEA has applied for a private exclusive easement. As such, the general—but necessarily conditioned—ability to exclude the public and other users from the area is included. Uses that would otherwise be permitted on state land will not be permitted to occur within this private exclusive easement. The entire road is approximately 211 miles long and the private exclusive

easement considered here, across state land, is 125 miles. The existing transportation network through which the Ambler Road corridor extends includes navigable and public waters, Revised Statute 2477 (RS 2477) rights-of-way, ANCSA 17(b) easements and section-line easements, all legally protected pre-existing public rights. The public access provided by this diverse transportation network supports important activities for many Alaskans, including recreation, hunting, fishing, trapping, mining existing claims, and subsistence activities. These routes provide vital links to many areas of the state that would be wholly isolated without them. Granting a private exclusive easement, however, does not--and should not--include the termination of existing public-access routes that pass through the Ambler Road corridor.

The Alaska Constitution, Alaska statutes, and Alaska case law firmly prohibit the curtailment of public access. In other words, the Ambler Road cannot block all public access and curtail use of navigable and public waters, RS 2477 rights-of-way, and other existing transportation easements that traverse the Ambler Road corridor. Restricted commercial access to economic opportunities provided by the Ambler Road can peacefully coexist with orderly public use of access routes that pass through the corridor.

DNR-DMLW recognizes that on an industrial road safety is an important concern and that managing resources near the right-of-way may also merit the closure of some legally protected but rarely or never used access routes (principally section line easements). Conversely, public access routes that are used or that otherwise provide potentially useful access should remain open, as transverse public traffic is likely to be rare in this comparatively remote area and should thus be a limited burden on the applicant. This decision does not here authorize the closure of any existing public access easement, including but not limited to rights-of-way under RS 2477 (former 43 USC §932), section line easements, or ANCSA 17(b) easements. This decision also does not abridge any right of the public to traverse along navigable or public water bodies within the private exclusive easement area, the right to enter adjacent land above the ordinary high-water mark as necessary to portage around obstacles or obstructions per AS 38.05.128(e), or the ability of DNR-DMLW to impose easements adjacent to water bodies pursuant to AS 38.05.127. Determination of navigable, public, or other waters and imposition of necessary AS 38.05.127 easements will be conducted during the Public Access Plan approval process (*see below*).

Balancing the interests of commercial development and public access can be achieved through a thoughtful and proactive Public Access Plan that protects public access routes and promotes resource and infrastructure development. Preparation of a Public Access Plan will be required by the state authorization. The same plan prepared for any potential federal right of way authorization may also be submitted for approval to DNR-DMLW but must also meet the criteria set forth here for areas of state land, including lands under navigable waters.

The applicant shall make provisions for suitable permanent crossings for the public where the Ambler Road crosses or runs along existing roads, foot trails, winter trails, valid existing easements (including RS 2477 and ANCSA 17(b) easements), or other routes identified through applicant's coordination with local communities and land managers. Provisions for crossings will be implemented during Phase 1 construction and maintained through all project phases. The applicant shall not block or obstruct the ingress or egress along any permanent existing roads or trails, including perennial winter trails and subsistence trails identified by communities, unless explicitly approved by the AO. Where the proposed alignment interferes longitudinally with traditional trails or state qualified RS 2477 routes, the applicant will maintain such routes in their current location by altering or refining the Ambler Road design or replacing those facilities with

parallel facilities of equal or better condition. Location of security gates will be adjusted if/as needed to ensure no unauthorized access.

Prior to construction or closing any portion of the corridor to public access, the applicant shall prepare and submit a Public Access Plan inclusive of construction and operations periods to the AO for review and approval. Because DNR-DMLW intends to provide public notice of potential closures, evaluate any comments received, and render a decision to approve the plan, with or without modifications, the plan should be submitted to the AO at least 120 days before any closures are needed. DNR-DMLW approval of the plan will be required before construction may commence and before any portion of the corridor may be closed to public access.

In the corridor, providing for public access consists of two parts. First, preserving or imposing sufficient *legal* rights to cross the right-of-way and second, providing for *constructed* crossings within those legal crossings where the design of the road or associated features would otherwise impede existing or reasonably likely uses.

Therefore, in the Public Access Plan, the applicant shall identify current legal crossings within the corridor as follows:

- On state uplands – all section line easements, rivers determined navigable or potentially navigable by DNR-DMLW, and state asserted RS 2477 trails.
- On non-state lands (and state shorelands of navigable waters surrounded by non-state uplands) – rivers determined navigable or potentially navigable by DNR-DMLW, state asserted RS 2477 trails, and ANCSA 17(b) easements. Section line easements, protracted or otherwise, need only be listed if the applicant is relying upon them to provide sufficient overall access along the corridor (*see below*).

Regarding closures of section line easements: the applicant shall indicate the section line easements where they propose to close legal access, if necessary for public safety or to manage other resources. DNR-DMLW will consider closure of select section line easements as part of a Public Access Plan approval in a later decision. If section line easements are approved for closure, fees for closures or restrictions of public easements may apply under 11 AAC 05.070(d)(2)(D) and/or (E).

Regarding closures of RS 2477s and access to navigable waters: the applicant shall indicate RS 2477s and easements providing access along and to navigable water bodies that they feel require closure for public safety or to manage other resources. Those potential closures will also be part of a Public Access Plan and require a later decision. At this time, DNR-DMLW does not anticipate approving long-term closures of any RS 2477 trails or approving limitations of access along and to navigable water bodies.

Regarding the frequency of legal crossings: on state land, one legal crossing approximately every two miles shall be provided. However, no RS 2477 trails, navigable or potentially navigable water bodies, or “to and along” easements adjacent to such water bodies shall be closed. Section line easements may be considered for closure. On non-state lands, one legal crossing approximately every six miles shall be provided. Legal crossings shall remain open but need not be constructed except as described below.

The Plan shall consider the design of the road in each phase, the degree of impediment to current or reasonably foreseeable traffic that the road design or supporting features would present and

shall provide for the construction of crossings where such traffic would be impeded. Construction of crossings shall occur:

- Wherever a state asserted RS 2477 trail currently crosses or runs along the corridor. The level of improvement should be equal to that which currently exists and should support the modes of traffic that the existing trail supports. The following RS 2477 trails shall have constructed crossings:
 - RST 412, Slate Creek Trail
 - RST 38, Tramway Bar Trail
 - RST 1611, Bergman-Cathedral Mountain Trail
 - RST 209, Bettles-Coldfoot Trail
 - RST 18, Bettles-Wild Lake River Trail (also protected under ANCSA 17(b))
 - RST 450, Hickel Highway
- Where the state owns the adjacent uplands, crossings should be constructed along both banks—or as near as practicable given the road and bridge design--of all rivers determined navigable or potentially navigable by DNR-DMLW. The level of improvement of the crossings need only accommodate existing and reasonably foreseeable uses during the life of the road. Where on state uplands, the state anticipates imposing AS 38.05.127 “to and along” easements incorporating any constructed crossings and a sufficient area adjacent to the river to allow for public access during shoulder seasons.
- Where the state does not own the uplands adjacent to rivers determined navigable or potentially navigable by DNR-DMLW, particular attention should be paid to the bridge design to ensure that all existing and reasonably foreseeable river traffic remains unimpeded year-round and that design features do not impair the ability to portage along the banks as provided in AS 38.05.128. If the design features cannot be fashioned to ensure such passage, the applicant shall secure commensurate public rights of access from upland landowners and construct transverse access where and to the extent necessary to accommodate existing and reasonably foreseeable uses.

Rivers along the route considered navigable or potentially navigable by DNR-DMLW include:

- Koyukuk River
- Wild River
- John River
- Alatna River
- Malamute Fork, Alatna River
- Kobuk River
- Reed River
- Beaver Creek
- Mauneluk River

- Kogoluktuk River
- Shungnak River
- Ambler River

Crossings, that are both legal and constructed, along waterbodies that have evidence of current public use, even if not navigable, should be provided. In their proposed Plan, the applicant shall provide information about the locations and uses of such crossings to DNR-DMLW for consideration of whether to issue “to and along” easements in such locations where on state land. The width of each waterbody crossed, and any information regarding its uses, on the entire alignment shall be collected and provided to DNR-DMLW so that AS 38.05.127 evaluations can be made in connection with the plan approval process.

Crossings, that are both legal and constructed, should be provided along existing trails identified in aerial imagery and through AIDEA coordination with subsistence communities in the region and land managers. Such a crossing shall be provided where the Alatna Portage, identified by DNR-DMLW, crosses the road.

If the eventual road design makes traversing legal but unconstructed crossings unreasonably difficult for snowmachines, ATV’s, dogsleds, or pedestrians, then construction of appropriate ramps or other methods may be required to provide usable crossings at approximately six- or two-mile intervals as described above.

The Plan shall include standards for various crossing points substantially as follows:

- Each crossing shall be clearly marked and designated to ensure identifiable access throughout the year. Constructed crossings should be especially clear. Legal crossings must remain free of obvious impediments and obstacles. All collocated routes must be maintained or rerouted to avoid conflict with the ROW and should also be clearly marked.
- The Plan will include the types and locations of all crossing points. Where crossings are constructed, the construction methods shall support travel perpendicular to the ROW that is safe and appropriate for use with snowmachine, ATV, dogsled, and pedestrian traffic, and other uses if those uses currently occur. Each constructed crossing must be established and maintained in a manner consistent with customary use of the area. Uses or developments of legal crossings (where managed by DNR-DMLW) exceeding Generally Allowed Uses (11 AAC 96.020) will be subject to permitting by DNR in consultation with the applicant.
- Constructed crossings shall minimize hazards to users of both the crossing and the road easement. Standards for constructed crossings shall be set forth in the Plan, including:
 - Widths to allow for meaningful usage.
 - Proper drainage.
 - Proper sight distances for all parties with appropriate brushing and buffers as needed.
 - Slopes, construction materials, and crossing angles to assure safe and practical usage.
 - Absence of impediments.
 - Proper crossing angles to ensure the safety of all parties.

- Utilization of appropriate construction materials.
- Bridge standards shall be set forth in the Plan, including:
 - Vertical clearance between ordinary high water (OHW) and the low chord of each bridge shall be enough to allow safe passage of all current and reasonably foreseeable river users under the bridge.
 - Piers or other support structures shall not impede navigability or access to navigable or public waters and shall not be constructed in the thalweg of the channel.
 - Bridges or other constructed crossings of waterways shall be designed to accommodate bankfull width of streams at a minimum.
 - In the event the road is decommissioned, no impediments to navigation should remain.

Bridges or constructed crossings at waterways shall be designed to accommodate transverse travel by ATV, snowmachine, dogsled, and foot traffic at all water levels.

DNR-DMLW retains the right to access land covered by the private exclusive easement at any time for land management purposes and to permit access to other agencies or landowners having permit-compliance or land management responsibilities in order to execute those responsibilities.

Recreation

The lands and waters within the authorization area are used for dispersed recreation, including river float trips, sport fishing, hunting, and backpacking. Because of the remote nature of these lands, access is largely by plane (though additional access may be by boat, snow machine or dog sled). Data on recreational uses is limited to that collected by the NPS with the boundaries of GAAR. Within GAAR, the NPS estimated that annual visitation average to Walker Lake (a popular destination near the AAP alignment) between 2013 to 2019 was approximately 65 people per year, though this estimate may be low. Presumably, some of the visitors to GAAR end up traveling outside the park boundaries, often by river, to state managed uplands. It is therefore presumed that the actual number of recreational users of state lands is low.

It is unlikely that recreational use of state managed lands will be lowered by the authorization of the AAP. Those willing to commit the financial and logistical difficulties of accessing these lands will likely continue to do so.

Other potential impacts to recreation include those addressed in public comments regarding fisheries (sport fish), caribou availability, water quality, and public access across the road. DNR-DMLW will address these impacts through stipulations detailed in Agency/Public comments, and through the Public Access Plans detailed above.

Cultural Resources and Heritage Sites

State law requires all activities requiring licensing or permitting from the State of Alaska to comply with the Alaska Historic Preservation Act, which prohibits the removal or destruction of cultural resources on land owned or controlled by the State. This also includes reporting of historic and archaeological sites on lands covered under contract with or licensed by the State or governmental agency of the State. Should inadvertent discoveries of cultural resources occur during the project, the State Historic Preservation Office should be notified so that they may

evaluate whether the resources should be preserved in the public interest as specified in Section 41.35.070(d).

AIDEA has proposed project phasing. Identification, assessment of effects, and mitigation must be completed prior to implementing any permanent changes to state lands. As only a very small portion of the proposed AAP area has been surveyed for cultural resources, it is essential that AIDEA inventory the AAP area for cultural resources prior to construction. If inventory prior to land disturbing field work is not feasible cultural resources monitoring may be appropriate to assist with avoidance and minimization measures.

The following stipulation will be included in the DNR-DMLW authorizations:

Alaska Historic Preservation Act: The AHPA, AS 41.35.200, prohibits the appropriation, excavation, removal, injury, or destruction of any state owned historic, prehistoric, archaeological or paleontological site without written approval from the DNR Commissioner. Should any sites be discovered, the applicant shall cease any activities that may cause damage and immediately contact the AO and the OHA in the DPOR.

AIDEA must comply with all federal laws directly or indirectly related to the AAP, to include any requirements for implementation of Section 106 of the NHPA (16 USC 470 et seq.).

Environmental Analysis, Stipulations, and Mitigation Measures

This decision considers the environmental factors directly related to the authorization for use of state lands, specifically whether the approval of the authorization is in the State's interest. The purpose of this consideration is to identify any associated mitigation measures or other requirements necessary to protect the public interest, while informing the overall decision of whether or not to approve the authorization.

Several comments received have asserted that AIDEA must complete all pre-construction field studies prior to consideration of the easement application and DNR-DMLW must conduct its own detailed analysis and develop robust mitigation measures. Through its own process DNR-DMLW has consulted with other state agencies in the identification and development of mitigation measures. The mitigation measures identified and included as stipulations meet DNR-DMLW's statutory requirements and the requirements of the NWAP and the Ambler Road SSP. These measures will mitigate the impacts of the project, balancing protection of the environment and the public's access and use of these public lands. For a complete list *see* the attached entry authorization and draft private exclusive easement.

While it is not possible to eliminate all impacts of a 211-mile road across undeveloped land, DNR-DMLW has determined that with the implementation of identified mitigation measures and stipulations developed through DNR-DMLW's adjudication process that impacts can be mitigated, balancing the need for access to state resources and protection of the environment and current uses.

Requirements Prior to Construction and Operation

Prior to *road construction* AIDEA shall submit the Public Access Plan and Reclamation Plan for DNR-DMLW approval. Following approval of the Public Access Plan, the Design and Construction Plans are required for review to ensure the requirements of the Public Access Plan

are fully incorporated into the design. In addition, the Invasive Species Prevention and Management Plan and the Reclamation Plan are required prior to construction.

Prior to *operation of the road*, AIDEA shall develop a Spill Prevention and Response and Concentrate Recovery Plan *in consultation* with DEC and DNR-DMLW and provide DNR-DMLW a copy of the Spill Prevention Control and Countermeasure Plan. In addition, the Culvert Adaptive Management Plan, the NOA Management Plan, and the Dust Control Plan will be required prior to operations of the road.

Fees

Per 11 AAC 05.020(b)(5), DNR-DMLW may waive or reduce certain fees for a state agency if the agency demonstrates to DNR-DMLW's satisfaction that the fee waiver or reduction is in the public interest. DNR-DMLW must consider the direct and indirect benefits of the private industrial road, as well as the restrictions which will be imposed on those impacted and the general public. DNR-DMLW must also consider the availability of the proposed road to general public use for travel (whether it is a public project).

DNR-DMLW considers AIDEA to be a state agency for the purposes of its statutes and regulations. AIDEA is a state corporation housed under the State of Alaska Department of Commerce, Community and Economic Affairs. Although AIDEA is a state agency, unlike the state highway system or other *public* roads, the Ambler Road is proposed to be a *private* exclusive easement for primarily industrial use. However, the road is anticipated to facilitate access to potential future mines and thus indirectly enhance economic growth for the State, it is in the public interest to waive fees associated with the private exclusive easement.

DNR-DMLW will waive the following fees:

- application fee (11 AAC 05.070(d)(1)(a));
- annual easement entry authorization land use fee (11 AAC 05.070(d)(1)(K));
- annual private exclusive easement land use fee (11 AAC 05.070(d)(2)(A)); and
- application and annual fees for closure/restriction of existing public access easement or Rights-of-Way, where existing RS 2477 and Section Line Easement travel will be closed to limit crossings of the private road (11 AAC 05.070(d)(1)(J)(ii) and (d)(2)(e))⁵.

Application fee. DNR-DMLW's application fees for AIDEA's application fall under 11 AAC 05.070(d)(1)(a). Given the above, DNR-DMLW seeks to help facilitate construction of this project and thus waives application fees.

Annual entry authorization land use fee. DNR-DMLW's annual entry authorization land use fee falls under 11 AAC 05.070(d)(2)(I). DNR-DMLW will waive entry authorization fees that would typically be assessed annually for a private exclusive easement during the construction phase of the project (prior to final survey). It is in the public interest to waive those fees during the construction phase of the project.

Annual private exclusive easement land use fee. DMLW's annual private exclusive easement land use fee falls under 11 AAC 05.070(d)(2)(A)(ii). DNR-DMLW will waive the annual private exclusive easement land use fee that would typically be assessed annually for a private exclusive

⁵ Easement closures or other restrictions will require a separate decision after receiving AIDEA's Public Access Plan.

easement during the term of the easement. It is in the public interest to waive those fees during the term of the easement.

Fees would not be waived if AIDEA assigns the private exclusive easement to a non-qualifying entity.

Material used within the construction corridor. Special purpose materials (incidental) extracted from within the construction corridor (and outside of the road prism) will be charged the RRSP, per 11 AAC 05.130(d)(2)⁶ and AS 38.05.565(a)(3)(A).

The Ambler area RRSP will be determined as part of the designated material sites decision. Per AS 38.05.550(d) the commissioner shall provide for valuation of materials in or upon state land. Materials sold or conveyed under AS 38.05.550 — 38.05.565 may, at the director's discretion, be sold at RRSP periodically determined by the commissioner for each type of material and for defined geographic regions, under procedures established by regulation. Per 11 AAC 71.090(c) The commissioner will periodically establish representative sales prices for material that are an estimate of the material's fair market value. Representative sales prices may vary by area to account for local conditions but may not be less than the administrative base price, which is currently \$0.50 per cubic yard. Per 11 AAC 71.090(e) the appraised fair market value for material sold will consider operating costs unique to the material source. The sales price for material sold under (c) of this section will, at the discretion of the commissioner, allow for adjustments for operating costs unique to the material source, including road construction that will benefit the state after the sale is concluded.

DNR-DMLW may consider a payment plan for the cost of materials, to be determined upon review of material extraction plans for sources within the construction corridor.

Reclamation

AIDEA did not submit a Reclamation Plan with the updated application materials. AIDEA proposes that transportation and communications projects such as Ambler Road are vital to the economic development of the State and promote the health, security, and general welfare of the Alaskan public through job opportunities and critical infrastructure. 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. Although the State does not anticipate the road being reclaimed prior to the end of mine life, if mines are developed, a reclamation plan is required and AIDEA will be responsible for reclamation. As noted previously in the decision, DNR-DMLW will include the following stipulations: *Reclamation Plan* and *Removal of Improvements and Site Restoration*.

The State will require the state land to be returned in a condition acceptable to the Authorized Officer at the time. DNR-DMLW as the land manager will identify the appropriate staff to inspect and approve the reclamation. It is anticipated that the SAIL Section would be integral to the process of determining the appropriate standard and inspecting the area to ensure compliance with the standard. If ongoing monitoring is required, ADIEA will be responsible.

⁶ Is not adjudicated in this AS 38.05.850 easement decision; requires a separate decision under AS 38.05.550.

The State is not requiring a reclamation bond as AIDEA is a state corporation, a subdivision of the State, though DNR-DMLW reserves the right to require a bond in the future.

Term

AIDEA has requested a private exclusive easement term of 50 years. DNR-DMLW intends to issue a private exclusive easement for the requested term. The expiration date is based on the date of the decision, not the date the easement is issued.

Entry Authorization

The EA is an interim authorization issued for construction and survey prior to private exclusive easement issuance. An EA will be issued for a term ending **ten years** from the date of the decision for the purpose of constructing and surveying the road and ancillary facilities related to the road. In addition to construction and survey, the EA authorizes temporary construction camps within the 450-foot-wide construction corridor. The EA authorizes predevelopment activities consisting of preliminary field and design work necessary for infrastructure planning and construction. Field work may consist of geotechnical and hydrological investigations, environmental studies, and cultural resource work. Preliminary field work on state land currently authorized by Land Use Permits under AS 38.05.850 will be authorized by the EA. For requirements due “prior to construction” that means prior to a contractor beginning construction of the road after design and construction plans have been approved.

The EA for construction and survey of the main road and ancillary access related improvements are for the alignment applied for by AIDEA and depicted on Appendix A. Any changes to the alignment would require an amended decision.

An extension of the EA may be granted at the written request of the applicant if granting the extension is deemed appropriate by DNR-DMLW. If an extension is required, the applicant must contact DNR-DMLW no later than 30 days prior to the expiration of the EA and certify there have been no changes to the approved development plan. The term of the EA is included in the full term of the private exclusive easement.

Performance Guaranty

A performance guaranty is intended to incentivize performance of the conditions of the entry authorization and private exclusive easement and provide a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, etc.), restoration (interim and final), and any associated costs after termination or expiration of the private exclusive easement. DNR-DMLW considers AIDEA to be a state agency for the purposes of its statutes and regulations. AIDEA is a state corporation housed under the State of Alaska DCCED. In consideration of AIDEA’s status as a state agency, no performance guaranty is required at this time. DMLW reserves the right to require a performance guaranty during the terms of either the EA or the final easement.

Insurance

It has been determined that insurance is not required as the applicant is self-insured.

Survey

A DNR-DMLW-approved as-built survey is required to determine the proper location and acreage of installed improvements and the associated easement on state-owned, DNR-DMLW-managed lands. The survey must be produced in accordance with survey instructions provided by the DNR-DMLW Survey Section and stamped by a Professional Land Surveyor registered in the State of Alaska. A final private exclusive easement will not be issued until the as-built survey has been approved by DNR-DMLW. The applicant is required to submit a preliminary draft as-built survey a minimum of one year prior to the expiration of the EA to allow adequate time for DNR-DMLW's review and approval of a final as-built survey.

ECONOMIC BENEFIT AND DEVELOPMENT OF STATE RESOURCES

Land within the Ambler mineral district was selected by the State as a part of the State's land entitlement under the Statehood Act. This land was selected because of its mineral potential and intended to be developed consistent with the Alaska Constitution, Article VIII, Natural Resources, § 1, Statement of Policy, which states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest." While it has been argued that the Ambler Road is not consistent with the public interest, a road will facilitate exploration, potential mine development, and development of the State's mineral resources which is anticipated to contribute to the economic development of the State, which is consistent with the public interest. A road to the Ambler Mining District has been contemplated since the original state selection. When Congress enacted ANILCA they realized that a road would be needed in the future. This need was clearly expressed in ANILCA Section 201(4)(b), which states, "Congress finds that there is a need for surface transportation purposes across the Western (Kobuk River) until the Gates of the Arctic National Preserve (from the Ambler Mining District to the Alaska Pipeline Haul Road) and the Secretary shall permit such access in accordance with the provision of this subsection." While DNR-DMLW understands that there are significant concerns with the construction of a road of this nature, DNR-DMLW has identified mitigation measures to be included as stipulations to mitigate impacts, balancing development of a road with environmental protections. Although these measures cannot eliminate all environmental impacts, they can mitigate the impacts and provide for development of a transportation corridor in support of the development of the State's resources.

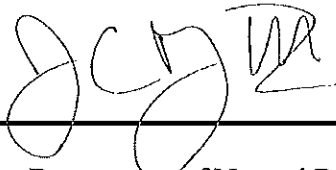
In accordance with AS 38.05.850, DNR-DMLW considers if the requested authorization will provide the greatest economic benefit to the State and development of its natural resources. Specifically, staff assess both direct and indirect economic benefits and whether the proposed authorization encourages the development of the State's resources.

The proposed private exclusive easement provides access to state resources facilitating exploration and potential development of the State's mineral resources which will promote conditions for economic development, thus providing an indirect benefit to the State. In consideration of these factors, and because there are no competing requests for authorization, approval of this private exclusive easement will provide the greatest economic benefit to the State.

DECISION

When adjudicating an easement authorization pursuant to AS 38.05.850, DNR-DMLW seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with public interest. In consideration of all events and criteria listed above, I hereby determine that the authorization to be granted by this decision is consistent with DNR and DMLW's missions, that this project is consistent with the overall classification and management intent for this land, and that issuance of the authorization as described above is in the interest of the State of Alaska.

Unless a party seeks reconsideration, this decision goes into effect and becomes a final administrative order and decision of the department on the 31st day after signature.



4.02.2025

John Boyle
Commissioner, Department of Natural Resources

Date

ATTACHMENTS

- Appendix A – Map Book
- Entry Authorization
- Draft private exclusive easement document

RECONSIDERATION

An eligible person affected by this decision may request reconsideration to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any request for reconsideration must be received by the Commissioner's Office within twenty (20) calendar days after issuance of the decision under 11 AAC 02.040. The Commissioner may order or deny a request for reconsideration within thirty (30) calendar days after issuance of the decision. If the Commissioner takes no action on a request for reconsideration within thirty (30) days after issuance of the decision, the request for reconsideration is considered denied. The Commissioner's decision on reconsideration, other than a remand decision, is a final administrative order and decision of the department. An eligible person must first request reconsideration to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Reconsideration may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Reconsideration must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160(a)-(b). A copy of 11 AAC 02 is available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.