

NANA



December 19, 2023

VIA <https://www.blm.gov/amblerroadeis>
Ambler Road Supplemental EIS Comments
BLM Fairbanks District Office
222 University Ave.
Fairbanks, AK 99709

Re: NANA Regional Corporation, Inc.’s Comments on the Ambler Road Draft Supplemental EIS (DOI-BLM-AK-F030-2016-0008-EIS)

To Whom It May Concern:

NANA Regional Corporation, Inc. (“NANA”) appreciates the opportunity to submit comments on the proposed Ambler Access Project (“AAP”) Draft Supplemental Environmental Impact Statement (“DSEIS”). NANA supports a robust and transparent public process that includes meaningful Tribal and Alaska Native Corporation (“ANC”) consultation, including the public meetings that have been held to date on the DSEIS.¹

Enclosed is **Attachment A – NANA Specific Questions and Comments**, which includes information and questions regarding specific statements in the DSEIS. NANA requests that the Bureau of Land Management (“BLM”) provide additional information including written responses to these questions as it finalizes the Supplemental Environmental Impact Statement (“SEIS”).

NANA is a Regional ANC organized under the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1601(b) (“ANCSA”) with more than 15,000 Iñupiat shareholders.² Under ANCSA, ANCs were established to meet the social, economic, and cultural needs of Alaska Native peoples. Since time immemorial, our people – the Iñupiat – have stewarded our ancestral lands in Northwest Alaska. As an indigenous-owned, governed, and managed corporation, NANA continues this stewardship for the benefit of our shareholders today. As such, our corporation is the fee simple

¹ Under federal law and the Department of Interior’s Policy on Consultation with Alaska Native Claims Settlement Act Corporations, and the National Historic Preservation Act, NANA has the right to government-to-ANC consultation, as an “Indian tribe.” Indeed, Federal law requires the Bureau of Land Management (“BLM”) to engage in meaningful and timely consultation with ANCs like NANA during the development of policies or projects that may affect their interests – *i.e., this remand record* – “on the same basis as Indian tribes under Executive Order No. 13175.” 54 U.S.C. § 300309; Pub. L. No. 108-199, 118 Stat. 3, *as amended by* Pub. L. No. 108-447, 118 Stat. 2809; Department of the Interior Department Manual 512 DM 5. We ask that in the final SEIS, BLM revise the statement in the DSEIS Volume 1 Section 1.5.4 that consultation with ANCs is “a matter of policy” to accurately state it is a matter of law.

² In 1976, NANA merged with 10 of the 11 village corporations in the NANA region. Following this merger, NANA became responsible for land management of both the surface and subsurface estates of its lands.

owner and manager of 2.2 million acres within the NANA region encompassing 38,000 square miles of ancestral Iñupiat homelands.

NANA acknowledges the federal government’s duty to obtain the free, prior, and informed consent of Alaska Native peoples through their own representative organizations with respect to potential projects that may impact them.³ It is within this framework that we submit our comments to the record. NANA has not taken a position for or against AAP. Rather, NANA is evaluating as it moves through the voluntary remand process that BLM, the U.S. Army Corps of Engineers (“USACE”) and the National Park Service (“NPS”) have collectively commenced.

As described more fully below, NANA has identified initial criteria that must be met before NANA will consider consenting to the proposed AAP or issuing a right-of-way (“ROW”) for the construction of AAP across our lands (including our selected lands described below). These criteria include, but are not limited to:

- Controlled, permitted access along the entire route.
- Community benefits.
- Shareholder jobs and workforce development.
- Protection of caribou migration, fish and other subsistence resources.

NANA is conducting an evaluation to determine if these criteria can be met in the context of the right to free, prior, and informed consent. Additionally, and most importantly, NANA is evaluating to ensure that AAP will not compromise the fee simple ownership rights to our lands in any manner or disrupt our Iñupiat way of life that is based on our connection to our lands, waters, and subsistence practices.

Alaska Industrial and Export Authority’s (“AIDEA”) proposed AAP route, Alternative A in the DSEIS, would cross 21.5 miles of NANA-owned lands and 3.11 miles of NANA-selected lands. NANA is the only entity that has authority to issue a ROW across NANA-owned lands. Additionally, NANA is the only entity that has authority to issue a ROW across our selected lands; as explained more fully below, BLM does not have that authority.⁴ Given the above, and as the Regional ANC with responsibility to steward our 15,000 Iñupiat shareholders’ collectively owned ancestral homelands and way of life, NANA is uniquely poised to present comments on AAP’s impacts on subsistence practices, Tribal cultural resources, and environmental justice concerns.⁵

A. NANA’S Mission

NANA’s mission is to improve the quality of life for our shareholders by maximizing economic growth, protecting and enhancing our lands, and promoting healthy communities through decisions, actions and behaviors inspired by our Iñupiat Illitqusiat values. Subsistence is the highest and best use of NANA lands. Accordingly, we approach management of our lands and

³ United Nations Declaration on the Rights of Indigenous Peoples arts. 19, 32 (2007).

⁴ While NANA has issued AIDEA a three-year permit to conduct studies on certain NANA-owned lands, that permit may be revoked at NANA’s sole discretion and will expire in April 2024.

⁵ NANA’s comments primarily focus on impacts to the NANA region out of respect for the organizations in the Doyon region who represent the interests of the people of the Doyon region.

engagement with other landowners in the NANA region in furtherance of the Iñupiat subsistence way of life. Additionally, we responsibly develop a portion of our lands in a manner that honors and protects our subsistence way of life, while simultaneously ensuring that current and future generations of shareholders have the economic resources they need to maintain a vibrant, healthy and sustainable region.

B. Controlled, Permitted Access Along the Entire Route

The NANA region is located in the remote Arctic. The 11 villages in our region are not connected by road to each other, the rest of Alaska or the Lower-48 states or Canada. Our communities are typically accessed by airplane, boat in the ice-free months, and snowmachine in the winter months. The AAP would change the accessibility of our region to the outside world. The accessibility issue is of primary concern to our shareholders.

The federal government's review process to date has been based on AIDEA's application for a right-of-way for an industrial, controlled access road. As proposed by AIDEA, AAP would be designed as a private industrial road that local communities may utilize for delivery of commercial goods. *See* DSEIS Appx. H at 25; and Appx. H at 2.2.2 (at H-31) (“[A]ccess would be controlled and primarily limited to mining-related industrial uses, although some commercial uses may be allowed under a permit process.”).

As stated above, NANA is evaluating the proposed AAP to determine whether our initial criteria can be met, including whether AAP can and will remain private. NANA will prohibit access to our lands if there are not explicit legal assurances that AAP will be designed and constructed as a private road and will remain private throughout its existence.

Access to our region as articulated in the DSEIS finds that each action alternative would impact our shareholders in Ambler, Kobuk, and Shungnak, among other communities, who fall within the category of “minority and low-income” people under applicable rules. In particular, the DSEIS indicates some disproportionately “high and adverse” effects on these populations, including potential reductions in subsistence resources, abundance and availability, damage to ethnographic resources and cultural properties, and public health risks. In particular, regarding the public health risks, the DSEIS finds potential for “high and adverse” impacts due to easier importation of drugs and alcohol, violent victimization, gender violence, and sex trafficking. *See* DSEIS at 3-202 to 3-205.⁶

NANA acknowledges the discussion of the risk of illegal trespass along the private road that may occur in the DSEIS. DSEIS Appx. H at H-33; *see also* DSEIS at 3-178. Given the potential for “high and adverse” risks to the people of Ambler, Kobuk, and Shungnak, as well as the adverse impacts to the subsistence way of life identified in the DSEIS, AIDEA as the project proponent, must provide NANA and the public with information regarding how it would prevent trespass and enforce the private nature of AAP beyond initially providing gates at either end of the road and

⁶ Appendix N. Potential Mitigation Section 3.4.5.1 identifies a potential mitigation measure that would involve AIDEA prohibiting workers from visiting local communities while on duty in order to protect against these negative public health consequences, but the DSEIS concludes the mitigation measure may not be effective on non-BLM lands.

minimal proposed patrols. AIDEA must undertake due diligence to provide NANA and the public with evidence of having conducted a robust analysis together with necessary legal assurances that the full length of AAP would remain private. Additionally, AIDEA must provide the public with documentation of the legal mechanism(s) which would protect against AAP from being converted to a public transportation system in the event members of the public sue to open the proposed road for public use as is desired by various individuals and organizations (see, for example, the Alaska Outdoor Council's 2019 comments on the initial EIS⁷.)

C. Community Benefits

As indicated above, a prerequisite for NANA's potential support for AAP is a demonstration that the proposed project will result in community benefits manifested by a reduction in the inequitably high cost of living for the residents of Ambler, Kobuk, and Shungnak.⁸

The DSEIS claims that a secondary benefit from AAP would come from commercial access for communities closest to the proposed road, "creating opportunities for less expensive transportation of goods to and from some NAB/YKCA communities." DSEIS at 3-196; *see also* Appx. F, Table 22. The DSEIS discusses potential commercial access scenarios (see, for example, Appendix H. Indirect and Cumulative Scenarios, Section 2.2.1 at H-26). It identifies that Ambler would be 22 miles from the proposed AAP under all action alternatives, Kobuk would be 9 miles under Alternatives A and B and 2 miles under Alternative C, and Shungnak would be 15 miles under Alternatives A and B and 5 miles under Alternative C. The DSEIS claims that:

- The AAP would link directly to the existing 15-mile road connecting Bornite and Kobuk, so it is reasonably foreseeable that Kobuk would see direct deliveries of commercial goods to the community.
- Because AAP would not connect directly to Ambler or Shungnak, residents in those communities would still be expected to obtain goods by boat, snowmachine or ice roads from drop-off locations.

The DSEIS also discusses fuel and gas prices and acknowledges that

[u]ltimately, the cost savings that would accrue to community residents as a result of trucking heating fuel and gasoline along the Ambler Road would depend on retail price-setting practices at the community level.

DSEIS at 3-197.

The DSEIS similarly discusses potential freight transportation benefits but ultimately leaves the question of whether AAP will, in fact, reduce the cost of living for residents of these rural communities unanswered given the lack of data needed to make this determination. NANA strongly suggests that BLM require neutral, independent economic studies to evaluate whether, in

⁷ Bureau of Land Management, BLM National NEPA Register, DOI-BLM-AK-F030-2016-0008-EIS, 2020 Ambler Final EIS, <https://eplanning.blm.gov/eplanning-ui/project/57323/570>.

⁸ *See* DSEIS Section 3.4.5 – discussing the benefits provided by the commercial transport of goods, fuel, equipment, and supplies across AAP to these rural communities.

fact, AAP will reduce the cost of transporting goods, fuel, equipment, and supplies to these impacted communities and accordingly, reduce the extremely high cost of living.

The DSEIS assumes Ambler, Kobuk, and Shungnak would pursue additional permanent roads connecting to the AAP, and that the connecting roads would be authorized as public roads funded in part by public dollars. The DSEIS further supposes that the public, especially residents of the communities, would use the connecting roads. *See* Appendix H at H-29, 30. BLM cites to the Northwest Alaska Transportation Plan 2022 Update prepared for the Alaska Department of Transportation and Public Facilities’ report that includes a potential Ambler-Shungnak-Kobuk connection route linking to the Bornite Road. Appendix at H-33. Given the strong desire of these local communities that AAP remain private, NANA challenges the validity of the DSEIS assumptions, due to their unsupported and speculative nature. Moreover, as the indigenous private owner of land in these areas, NANA would need to undertake significant review of any additional potential road developments that would be on or near our lands, particularly if the assumption is that they would be public.

D. Shareholder Jobs and Workforce Development

In passing the Alaska National Interest Lands Conservation Act (“ANILCA”), Congress ensured that protecting public lands in Alaska would not undermine, but rather affirmatively guarantee, an adequate opportunity for the economic and social needs of Alaskans. 16 U.S.C. § 3101. As the Ninth Circuit aptly explained in *City of Angoon v. Marsh*, 749 F.2d 1413, 1415-1416 (9th Cir. 1984), ANILCA was the legislative means by which Congress ensured the proper balance between the designation of national conservation areas and the necessary disposition of public lands for more intensive private use that would address the economic and social needs of the people of Alaska.

Similarly, Executive Order No. 14096 seeks to ensure that there are economic opportunities for all, including those living in underserved and overburdened communities like those of Northwest Alaska. The DSEIS highlights potential jobs related to construction and operation of AAP in pages 3-186 to 3-191 and jobs related to mining in pages 3-191 to 3-193. This discussion is of specific interest to NANA given the importance of employment and training opportunities for our shareholders that must be demonstrated before NANA will consider consenting to AAP or other potential projects on our lands.

It is imperative that AIDEA submit a workforce development and employment plan as a component of the federal review process to verify that AIDEA is conducting the due diligence required to ensure Alaskans, including NANA shareholders, will be trained and ready for employment as part of AAP should it be authorized. Currently, while the DSEIS provides an overview of the project’s employment potential, and identifies the development of an AIDEA workforce development plan as a mitigation measure to identifying and promoting work and training opportunities for local residents,⁹ it remains challenging to assess whether such a plan will come to fruition, or if it would sufficiently result in meaningful employment and training for local residents, including NANA shareholders. Without additional information about the employment

⁹ Appx. N. Potential Mitigation at N-46.

and training plan and its timeline for development and implementation, it remains difficult for the public to weigh the potential benefits of AAP against the risks identified in the DSEIS.

Finally, AIDEA's workforce development and employment plans will be most effective if developed through consultation with Tribes, ANCs, communities, and other stakeholders. The DSEIS's assessment that this mitigation measure "would be partially effective at...enhancing economic benefit" leaves much to the imagination.

E. Protection of Caribou Migration, Fish and Other Subsistence Resources

As explained previously, NANA's policies state that the highest and best use of our lands is subsistence, and that NANA's land management, and pursuit of economic development must be done in such a way as to minimize impacts to our subsistence resources. In other words, NANA has an interest in preserving the historic and culturally significant character of its lands while also ensuring the future economic success of the Iñupiat people.¹⁰ The majority of NANA shareholders living in Northwest Alaska rely on caribou, moose, salmon, sheefish, birds, and other wildlife to provide at least 25 percent of their household foods. Over 65 percent of NANA's shareholders living in Northwest Alaska rely on subsistence foods for over 50 percent of their household food. Hunting, fishing, and gathering are core to Iñupiaq culture and provide an outlet that connects individuals and communities to each other, the natural resources around them, and Iñupiaq values. Subsistence plays a crucial role in our collective food security and will continue to do so for future generations.

For these reasons, NANA believes every effort needs to be made to minimize impacts to subsistence resources along AAP and supports the studies being conducted to understand potential impacts to subsistence and cultural resources. The DSEIS specifically adds information related to fish and caribou, but these data and the conclusions drawn are incomplete and do not provide NANA, subsistence users, and the public with an accurate analysis of the potential impacts the project could have. Specifically, information on caribou does not discuss how caribou move with respect to other natural linear features in the landscape and studies that draw conclusions from what may not be a representative sample of collared animals. It is essential that the BLM share more information in the DSEIS related to the interaction of caribou with other linear features in the landscape and address the incomplete data presented in the DSEIS.

Additionally, the DSEIS assumption that with covered trucks there is significant dust dispersal is unfounded and overestimates the potential impacts of dust to caribou, fish, and vegetation. The studies cited do not clearly differentiate dust from potential truck concentrate dust versus road dust. Any fugitive dust related to the road can be controlled by utilization of dust palliatives that are not toxic, nor harmful to caribou, fish, or vegetation.

BLM is assessing the impacts of the potential project on subsistence and the environment, which NANA has and continues to support. However, in the context of evaluating AAP's impacts, NANA must ensure that our corporation – alone – retain the authority to manage subsistence uses on our

¹⁰ See Declaration of William Monet *N. Alaska Env't Ctr. et al. v. Haaland, et al.*, No. 3:20-cv-00187-SLG, Dkt. 55 at 3 (D. Alaska, May 18, 2021)

lands on behalf of our shareholders. This right will not, and should not ever, be extended to federal or state agencies including BLM and AIDEA.

The DSEIS evaluates subsistence impacts pursuant to ANILCA Section 810 throughout the entire length of AAP. *See generally* DSEIS, Appx. M; *id.* at M-3-M-7. However, ANILCA Section 810 does not require a subsistence “evaluation for [federal] actions regarding private lands.” *Angoon v. Hodel*, 803 F.2d 1016, 1028 (9th Cir. 1986) (explaining that, while Section 810 does not specify whether it applies to private lands, “other provisions of ANILCA tend to belie the applicability of section 810 to private lands”).

Here, as explained below, BLM agreed in 2014, pursuant to the Alaska Land Transfer Acceleration Act (“ALTAA”), to transfer to NANA approximately 11,000 acres of land in Township 19 North, Range 11 East, Kateel River Meridian, pursuant to Section 12(c) of ANCSA. These lands directly underlie the route proposed under Alternatives A and B and are treated by BLM as “public lands” for purposes of the DSEIS. As emphasized below, NANA has not consented to BLM’s use of its lands and as recognized by ANILCA Section 102(3),¹¹ these are not “public lands” subject to ANILCA Section 810 and should not be evaluated as part of the Section 810 analysis.

NANA is opposed to any attempt by the federal agencies to erode its sovereignty over its lands, whether through National Historic Preservation Act (“NHPA”) Section 106 or ANILCA Section 810 or any other interpretation of law. NANA – *and NANA alone* – has the right to manage its lands for subsistence purposes and to balance those goals against its need to responsibly develop its lands in the best interests of its Iñupiat shareholders. Had BLM promptly transferred these lands in 2014, as it agreed to do, NANA would have the ability to fully manage and protect subsistence uses and resources on these lands, rendering the federal agencies’ ANILCA Section 810 review both legally prohibited and unnecessary. Though NANA appreciates the information resulting from the ANILCA Section 810 evaluation, the Final SEIS must acknowledge NANA’s entitlement to these lands and the impact that entitlement has on AAP.

NANA has more than 50 years of experience managing resource development on our lands while maintaining the traditional subsistence way of life of our people.¹² AIDEA’s application included a subsistence committee to evaluate potential impacts of the AAP. NANA supports the criteria identified in the DSEIS in how the committee will be selected working with Tribes. NANA supports developing the wildlife interaction avoidance plan, the access plan, hazard mitigation plan, and wildlife monitoring plans. While the development and implementation of each of these plans is critical for all phases of AAP, the DSEIS only acknowledges the need for AIDEA to consult with “other governmental agencies as appropriate” and in so doing, only acknowledges “ANCSA village corporations” to develop these plans. Appendix N at 14, 30, 31, 40. In finalizing the SEIS, BLM must acknowledge the need for AIDEA to develop these plans with Regional ANCs, particularly NANA, which merged with 10 of the 11 village ANCs in the NANA region and consequently performs the duties of both village and regional corporations as a landowner. Because Regional and Village ANCs are necessary participants in the development and approval

¹¹ The Federal Land Policy and Management Act (“FLPMA”) under 43 USC § 1702(e) excepts “lands held for the benefit of Indians, Aleuts, and Eskimos” from the definition of “public lands.”

¹² NANA’s shareholders are the Iñupiat who have stewarded their traditional homelands for time immemorial.

of these plans, the SEIS must recognize the right of both to be at the table in any further evaluation of AAP.

F. NANA’S Land Ownership Rights

NANA will not grant support for AAP without federal agencies’ and AIDEA’s acknowledgement and protection of NANA’s land interests. As a preliminary matter, and as indicated above, NANA has not consented to issue a ROW across NANA lands. Any future consent by our corporation will be conditioned on AAP remaining private. While the involved federal agencies have taken the position that they can control what occurs on our owned lands under the auspices of NHPA Section 106, that statute cannot be read that expansively. NANA knows of no legal principle that would allow BLM to dictate how NANA uses or manages our lands that we own in fee simple, especially here, where NANA is not a signatory to the Programmatic Agreement (“PA”) entered into by BLM with AIDEA and other consulting parties under NHPA Section 106.

Similarly, NANA has not consented to ROW access across approximately 11,000 acres of selected lands, as we continue to wait for BLM to convey our lands to us under a 2014 Settlement Agreement with BLM pursuant to the ALTAA.¹³ BLM entered into a binding contract with NANA more than nine years ago to transfer lands validly selected by NANA in 1975 under ANCSA and that NANA is lawfully entitled to now own in fee simple. As of this writing, BLM is in breach of that binding commitment. These selected lands are lands that are by law rightfully NANA’s and by law should have been conveyed to NANA under ANCSA Section 12(c). BLM’s authority to grant a ROW for AAP construction, and to otherwise control whether and how AAP is actually built, is premised, in part, on BLM’s illegal possession of lands that are rightfully NANA’s.¹⁴ BLM’s own regulations require that the agency consult with NANA prior to issuing a right-of-way through our selected lands.¹⁵ And, under ANILCA Section 102, 16 U.S.C. § 3102, lands selected by a Native Corporation under ANCSA that are not yet conveyed (and not otherwise determined to be invalid or relinquished), are not “public lands.” At a minimum, BLM must seek NANA’s consent as to what happens to these lands that are rightfully NANA’s. 43 C.F.R. § 2650.1(a)(2). BLM’s failure to either seek or obtain such consent renders any future re-issued ROW procedurally and substantively flawed and invalid.

Relatedly, AIDEA (in the context of the Statehood Defense and Unlocking Alaska Initiatives)¹⁶ has made public statements articulating both the legal right and the desire to consider taking

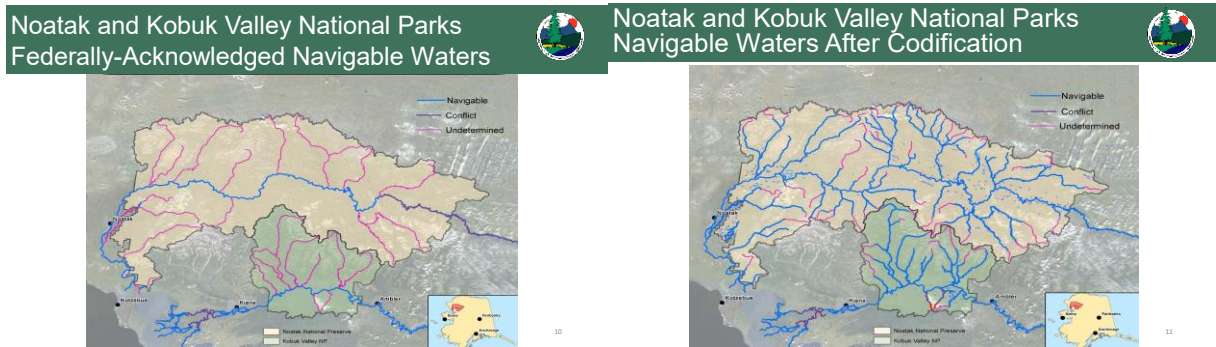
¹³ Pub. L. 108-452, § 209, 118 Stat. 3575, 3586 (2004). NANA is seeking consultation with BLM regarding the Settlement Agreement.

¹⁴ Under the 2014 Settlement Agreement, BLM contractually waived its rights to rely on ANCSA Section 22(i), 43 U.S.C. § 1621(i) (otherwise providing that prior to a conveyance pursuant to ANCSA Section 14, the Secretary’s authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by a withdrawal).

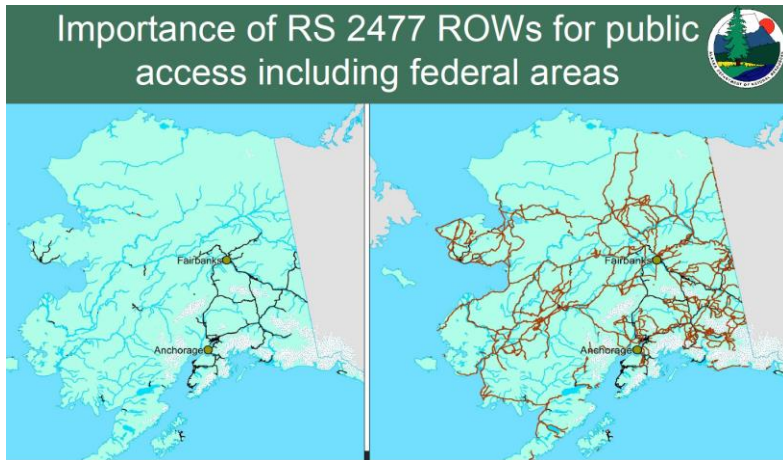
¹⁵ 43 C.F.R. § 2650.1(a)(2) (“Prior to the Secretary’s making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered.”).

¹⁶ Press Release, Office of Governor Mike Dunleavy, *Unlocking Alaska* (Mar. 2, 2021), <https://gov.alaska.gov/unlocking-alaska/> (“Alaska’s destiny lies in full ownership of our natural resources. These actions are a first step in ‘Unlocking Alaska’ – an initiative that I will continue to advance in the coming months. My administration will not rest until Alaska has achieved the foundational promises of statehood, and every Alaskan

privately owned land from ANCs like NANA (without ANC consent) to facilitate the construction of the AAP. The State’s goals with these initiatives are to expand public access and state management and regulatory authority over lands and waters. The State claims that it is entitled to 77,028 acres of submerged lands beneath what it deems to be navigable waters, contending that these lands were wrongfully granted to Regional ANCs pursuant to ANCSA. Significantly, 3,277 of these acres are lands owned in fee simple by NANA. The maps below are illustrative of the State’s intention to expand its footprint in Northwest Alaska. To the extent that BLM may have a role in determining what lands may be eligible to be taken by the State, BLM should acknowledge NANA’s rights to lands pursuant to ANCSA.



As reflected in the DSEIS, the State is attempting to expedite adjudication of state RS 2477 ROW claims in order to secure public access across Alaska. The State’s maps below show on the left the status of current RS 2477 ROWs, and the map on the right illustrates what would be the results of the State’s attempted efforts.



In short, BLM must condition any future authorizations to AIDEA on assurances from AIDEA and the State that they will not attempt to access NANA lands without NANA’s explicit consent, and that they will not attempt to take NANA lands by eminent domain or otherwise.

is granted unfettered access to our lands and waters.”); Alaska Department of Natural Resources, Division of Mining, Land & Water, *Presentation to Senate Resources Committee – SB 227* (Apr. 8, 2022), https://www.akleg.gov/basis/get_documents.asp?session=32&docid=92581.

G. Area of Potential Effects Expansion Pursuant to NHPA Section 106

NHPA Section 106 requires BLM to evaluate the impacts of the issuance of the right-of-way for AAP on historic property within “the area of potential effects” (“APE”). 36 C.F.R. § 800.5(a). For the purposes of the NHPA, historic properties are considered within an APE, which is the geographic area within which a proposed project may result in direct or indirect adverse effects to historic properties. 36 C.F.R. § 800.16(d). BLM originally defined the APE for this project as a one-mile buffer on each side of the project corridor and around all project components. *See* Appx. J, Attachment A. On that basis, the signatories to the PA contractually agreed to perform a Section 106 evaluation of that one-mile APE. To NANA’s knowledge, that PA has not been amended. Unless, and until, the PA is amended, BLM is legally bound to use the APE contractually agreed to by the PA signatories throughout the duration of the Section 106 consultations.

We understand, however, that as part of the remand, BLM has revisited the scope of the APE to purportedly ensure that potential adverse effects are adequately considered, presumably in light of the issues identified by the Tribal plaintiffs in the underlying litigation.¹⁷ As a result, the DSEIS now proposes to establish a 10-mile-wide study area (5 miles on either side of the road) to broadly encompass an expanded APE, while using the ROW corridor (generally 500 feet wide)¹⁸ to address cultural resources that are most likely to be destroyed or damaged from construction of the road and associated project components (e.g., turnouts, camps, staging areas, material sources, airstrips, access roads, maintenance stations). *See* DSEIS at 3-246.

The DSEIS offers no rationale for this five-fold increase. Without any explanation for this increase in the study area, it is difficult, if not impossible, to offer constructive comments on the propriety of that scope which would appear arbitrary and capricious without that explanation and justification. However, it should be noted that a five-fold increase in the scope of the APE would dramatically increase the number of potential historic properties deemed eligible for listing on the National Register that would be required to be evaluated as part of the NHPA Section 106 consultation.

Between NANA and Doyon (and excluding the selected lands that BLM should have already conveyed to NANA pursuant to the ALTAA 2014 Settlement Agreement), ANCs own 15% of the land crossed by the AAP.¹⁹ It is likely that a five-fold increase in the scope of the APE would encompass additional lands owned by NANA. While BLM may arguably have the obligation to consider the effects of its undertakings on historic properties located on private lands, that obligation does not vest the agency with jurisdiction to *control* activities on those private lands that do not themselves require any federal authorization.

¹⁷ In seeking a voluntary remand, the federal defendants indicated that they expected to address concerns raised by the Tribal plaintiffs concerning the adequacy of the scope of the APE, and in particular, the potential that the Ambler Road would impact “landscape-scale properties identified as having cultural significance to the tribes.” *See* Defendant’s Motion for Voluntary Remand, *Alatna Village Council, et al. v. Heinlein, et al.*, No. 3:20-cv-00253-SLG, Dkt. 111 at 20 n.15 (D. Alaska Feb. 22, 2022).

¹⁸ The reference here to a 500-foot ROW is inconsistent with the 250-foot ROW in AIDEA’s application and referenced throughout the DSEIS.

¹⁹ According to the DSEIS, NANA lands make up 10% and Doyon lands are 5% of the AAP.

More specifically, while NHPA Section 106 requires federal agencies to “take into account the effect” of their undertakings on “any historic property,” 54 U.S.C. § 306108, and the NHPA further requires their preservation programs to ensure that “the preservation of property not under the jurisdiction or control of the agency but potentially affected by agency actions is given full consideration in planning,” *id.* § 306102(b)(3), their responsibility for the preservation of historic property is limited to such property “that is owned or controlled by the agency,” *id.* § 306101(a)(1).

In short, as demonstrated above, because BLM has no authority to restrict activities on privately held lands owned by NANA, it cannot use the NHPA Section 106 consultation process to do so through expansion of the APE or any other means. Nor can BLM use its contracting authority through a NHPA Section 106 PA to enlarge its jurisdictional authority – only Congress can do that. Indeed, a programmatic agreement cannot take effect on ANC-owned lands unless and until the ANC explicitly agrees to it.

The PA recognizes the above:

This PA shall apply to the Project and all of its Phases, Components, and Stages, including those not known at this time, not defined in the EIS, or not specified in the permits, permit applications, or other Project documents, so long as the activities occur within the jurisdiction of a state or federal agency.

Programmatic Agreement § II(A) (emphasis added).²⁰ Because NANA is not a signatory to the PA, BLM cannot cite to the PA as a basis to control activity on NANA’s lands.

Finally, as emphasized above, NANA supports BLM’s efforts to ensure that the subsistence evaluation it conducts as part of the ANILCA Section 810 analysis and accompanying National Environmental Protection Act (“NEPA”) evaluation is thorough and fully addresses impacts facing NANA’s shareholders. But BLM should not confuse or conflate those analyses with the evaluation it is required to undertake pursuant to NHPA Section 106.

NANA is particularly concerned that the federal agencies may be asked to designate traditional cultural landscapes (“TCLs”) in any expanded APE under NHPA Section 106 based on arguments addressing subsistence impacts. To evaluate and address subsistence impacts resulting from BLM’s ROW decision concerning AAP, Congress intended that BLM would use ANILCA Section 810 – not the NHPA.

Indeed, in enacting ANILCA, Congress intended to “provide for the maintenance of sound populations of, and habit for, wildlife species,” “protect the resources related to subsistence needs,” and “protect and preserve historic and archeological sites, rivers, lands.” 16 U.S.C. § 3101(b). Congress found that the “continuation of the opportunity for subsistence uses . . . is essential to Native physical, economic, traditional, and cultural existence,” and that the “situation in Alaska is

²⁰ BLM’s Manual for Protecting Cultural Resources (in the section governing “responsibility” for Non-Federal Cultural Resources) recognizes that BLM’s authority to protect cultural properties on lands outside BLM jurisdiction is limited. BLM Manual Section 8140.06.D.

unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence use.” 16 U.S.C. § 3111(1), (2). Accordingly, Congress declared it to be federal policy that the “utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands.” *Id.*, § 3112(1). Congress also defined “subsistence uses” broadly, to include in addition to a “sufficient food supply,” “customary and traditional practices which ANILCA was designed to protect.” *Alaska Wilderness Recreation & Tourism Ass’n v. Morrison*, 67 F.3d 723, 731 (9th Cir. 1995). Although ANILCA, by its terms, applies on “public lands,” while BLM’s Section 106 obligations apply to all federal undertakings, BLM cannot substitute a NHPA Section 106 evaluation for an ANILCA Section 810 evaluation.

BLM must also guard against basing its identification of *historic properties* on subsistence characteristics that are to be evaluated under ANILCA, not the NHPA. This would include any future determination as to whether a particular tract of land or an entire landscape is eligible for listing on the National Register. *See Alatna Village Council, et al. v. Cohn, et al.*, No. 3:20-cv-00253-SLG, Dkt. 111 at 20 n.15 (D. Alaska Feb. 22, 2022) (federal defendants’ motion for voluntary remand acknowledging government’s intent to reconsider whether there are landscape-scale properties with cultural significance to Tribes that might require that the APE be extended). Again, as explained throughout this comment letter, NANA has a particular interest in ensuring that it alone retains the right to manage the lands it owns in fee simple for subsistence and other purposes and is concerned that the Tribal plaintiffs may attempt to use the NHPA Section 106 process to encumber its lands through a proposed traditional cultural landscape designation based on subsistence uses.

The NHPA was enacted in 1966 to ensure the preservation of historic resources. *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep’t of Interior*, 608 F.3d 592, 609 (9th Cir. 2010). In contrast, ANILCA was enacted in 1980, specially to “protect subsistence uses by rural residents of Alaska.” *People of Vill. of Gambell v. Clark*, 746 F.2d 572, 580 (9th Cir. 1984). Because ANILCA provides the more specific mandate focused explicitly on protecting subsistence resources, interpreting the NHPA to encompass the need to protect subsistence uses would render ANILCA superfluous and entirely unnecessary.

“[S]tatutory provisions acting upon the same subject should be interpreted and applied in a way that ‘gives effect to each’ and ‘preserves the purposes of both.’” *Syngenta Crop Prot., LLC v Willowood, LLC*, 944 F.3d 1344, 1356 (Fed. Cir. 2019) (citation omitted). Here, ANILCA provides specific requirements for land use managers like BLM to protect subsistence resources in making federal land management decisions like approval of rights of way for the AAP in this case, while NHPA Section 106 applies to historic resources more generally. *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) (“[W]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.”); *see also Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23, 35 (2003) (“A statutory interpretation that renders another statute superfluous is of course to be avoided.”).

H. Action Alternative If the AAP Were to Be Built

NANA agrees with the DSEIS's conclusion that Alternative A has the least negative impact to subsistence – in particular, the Western Arctic Caribou Herd. In contrast, NANA agrees with the BLM that Alternative C is the least preferred alternative in light of its unreasonably long length which will adversely affect the environment and subsistence resources while making it more difficult to maintain AAP in an Arctic environment and to police it to ensure public safety and prevent trespass.

I. Conclusion

Quyanaq – thank you. We appreciate the opportunity to comment on the proposed Ambler Access Project. Please contact Liz Qaulluq Cravalho, VP of Lands, to discuss these comments further.

Very truly yours,
NANA Regional Corporation

Attachment A – NANA Specific Questions and Comments

Comments Regarding Native Lands

NANA Comment: The subject of Native Lands is mentioned in two places within Volume 1, DEIS: 1) on page 3-157 (Native Lands), and 2) Table 5 on page F-9 (Alaska Native Lands patented or interim conveyed or specifically Native selected). NANA is concerned that Native Lands, especially validly selected Native Lands, are not addressed accurately at either place nor throughout the DSEIS. Following is further comment related to references to Native Lands:

1. BLM provides (3-157): “Native Lands. The study area includes lands owned by NANA and Doyon Limited, regional corporations established under ANCSA. Within each of the regions are village corporations, some of which own the surface estate around their respective villages (e.g., Evansville) and some of which have merged their assets with the NANA (e.g., Kobuk, Ambler, Shungnak). In general, the regional and village corporations provide social and economic opportunities to their shareholders. Another land ownership consideration is lands granted under the Native Allotment Act of 1906, providing for the grant of up to 160 acres to individual Alaska Natives. The Secretary of the Interior grants Native allotments, typically as restricted-title properties. As shown in Volume 4, Map 3-24, the Native corporations have selected lands from the federal government, and these selections still are pending.”

NANA Comment: BLM needs to distinguish between “public lands” and Native Lands, including validly selected Native Lands. All lands validly selected by ANCs are Native Lands under ANCSA and ANILCA²¹ – and not public lands.

Pertinent to this DSEIS, NANA’s validly selected lands located within Township 19 Range 11 E are crossed over by the routes proposed under Alternative A and Alternative B. As a reminder to BLM, NANA validly selected these Township 19 Range 11 E lands in 1975, almost 50 years ago; under the terms of ANCSA, these selected lands are under the conveyance requirements set out in the Alaska Land Transfer Acceleration Act of 2004 enacted almost 20 years ago, and are part of the 2014 conveyance settlement agreement between BLM and NANA executed almost 10 years ago. By law and agreement, these Township 19 Range 11 E selected lands should have been conveyed to NANA already. At a minimum, BLM should state in this DSEIS that Native validly selected lands are not public lands and therefore not subject to ROW authorization without NANA’s consent.

NANA objects to any decision by BLM to issue a ROW authorization across NANA’s validly selected lands located in Township 19N Range 11E without first receiving NANA’s consent. It should be NANA’s decision to burden our Native-selected lands. From NANA’s perspective, BLM does not have the authority to issue a ROW authorization across any Native validly selected lands since these lands are not considered public lands, but are Native Lands, by law.

²¹ 16 U.S.C. § 3102(3)(B); 43 U.S.C. § 1601 et seq. Even under FLPMA, the definition of public lands excepts “lands held for the benefit of Indians, Aleuts, and Eskimos.” 43 U.S.C. § 1702.

BLM needs to clarify this distinction between public lands and Native-selected lands within this section and throughout the DSEIS, including on relevant maps in Volume 4.

In this section, BLM references “Volume 4, Map 3-24” as showing Native corporations selected lands;²² however, that map has been removed from the DSEIS’ Volume 4. Please note that the 2020 Final EIS does show Map 3-24 (tilted Administered Lands) and includes the description “Native Selected” in the legend and a hatched color code over selected lands on the map – a color/hatching distinct from BLM’s color and for the Alaska Native Lands. Of concern, in the DSEIS’ Volume 4, BLM added Map 2-2b (titled Alternatives Overview with Administered Lands) in which there is no reference to “Native Selected” in the legend and the distinctive color hatching has been removed from the map.

In light of the deletion, addition and subtraction to “Administered Lands” (Maps 3-24 and Map 2-2b), NANA is requesting BLM explain why the changes were undertaken to the maps within the DSEIS and to return the distinction between BLM and Native-selected lands.

2. BLM Provides: Page F-9, 1.1.2, 1.1.2 Environmental Consequences, Table 5. Acreage of land by owner within the right-of-way by alternative

NANA Comment: Table 5 shows the amount of land by owner that would be within the project right-of-way for each of the three alternatives. Table 5 should be revised to subtract acreage totals for Alaska Native-selected lands from DOI lands and place as a subset of Alaska Native Lands. The patented and interim conveyances would also be a separate subset of Alaska Native Lands. This change to Table 5 would provide accurate information for landowner status within the project ROW per alternatives.

3. BLM Provides: Volume 2; Appendices G-K, Map A-14, Appendix A - Area of Potential Effects (APE) Ambler Road Programmatic Agreement

NANA Comment: Map A-14 in Appendix A, Volume 2 shows NANA’s selected lands as BLM lands with no indication that the lands are Alaska Native-selected lands. Similar to other maps and references in the DSEIS,²³ this BLM Map A-14 in Appendix A, Volume 2 does not show the Native-selected lands designation in the legend or on the map. As we have discussed in our earlier comment, there is legal significance to Native Lands selected pursuant ANCSA and its exception to “public lands” managed by BLM. As to the Native-selected lands that should be shown on this map, these are NANA-selected lands that were described in an earlier comment. At a minimum, this Map A-14, and any other map showing Alaska Native-selected lands, needs to include Alaska Native-Selected Lands on the legend and the map itself.

4. BLM Provides: Volume 4, Map 2-3 Page 3 (Alternatives A and B).

²² See Volume 4, Table of Contents (page i).

²³ See Volume 4, Map 2-2b, Map 2-3 Page 3, Map 2-4, Page 4, Map 3-25*, Map 3-26, Map 3-29.

NANA Comment:

- a. Map 2-3 Page 3 shows the route for both Alternatives A and Alternatives B from MP 170 for Alternative B to the end of both routes on BLM-managed lands (State-selected lands). This map does not show the selected status for NANA-selected lands located between MP 200 to MP 210 of Alternative A. Instead, these selected lands are color coded as lands administered by BLM with no indication that these lands are Native-selected lands. NANA requests that BLM distinguish these selected lands from other BLM-administered lands by creating two sublayers under Alaska Native Lands in the legend: one layer for patent or interim lands and one layer for Native-selected lands with a distinctive color code.
- b. Map 2-3 Page 3 shows two material sites and an access road to a State-owned water source on the NANA-selected lands discussed in the above comment. There are three (3) concerns with these material sites and the access road:
 - i. Would the two material sites be a part of the proposed BLM ROW? The access road crossing NANA-selected lands to a water source located on state lands appears to be part of the ROW. NANA is concerned that, should BLM decide to authorize the ROW, the project proponent AIDEA will be seeking to extract gravel from these material sites and construct the access road – on NANA-selected lands. As a point of emphasis, if BLM does not intend to convey these selected lands to NANA prior to any BLM ROW authorizations, then NANA is requesting BLM seek NANA’s consent to issue the ROW authorization across NANA’s selected lands.
 - ii. The access road to the western material site appears to cross NANA-owned lands. A reminder, NANA has not issued a ROW to AIDEA to cross our lands and that includes not issuing one for this access road to the western material site.
 - iii. The western material site is divided by the boundary line between NANA-selected lands and NANA-owned lands. This boundary issue could be an administrative issue for payment of gravel resources by AIDEA, if BLM decides not to convey the selected lands to NANA pursuant to law and agreement.

Comments Related to BLM-Managed Lands

5. BLM Provides: DSEIS, Mission Page (behind cover page) “Mission: To sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.”

NANA Comment: Despite BLM stating that its mission is to “public lands,” BLM uses the terms “public land or public lands” and “BLM managed lands” throughout the DSEIS. The mission of BLM does not include “BLM managed lands” nor does the SEIS provide a definition of it. The use of both terms may confuse the public as to the scope of BLM’s jurisdiction and authority. NANA requests clarification from BLM on whether “BLM managed lands” is a statutorily defined term and BLM’s preference to use this term instead of the statutorily defined “public lands” throughout the DSEIS.

6. BLM Provides (B-1): Appendix B, 1.5 Collaboration and Coordination* Table 1. Key permits, approvals, and other requirements by agency* DOI BLM (Responsible Agency), FLPMA (Jurisdiction/Legal Authority) “Key permit, approval, or other requirement: Decision whether

to grant ROW permit and authorization to regulate the use, occupancy, and development of public lands and to take action to prevent unnecessary or undue degradation of public lands”

NANA Comment: BLM needs to distinguish public lands from Alaska Native validly selected lands as these selected lands are not public lands; in particular, those lands crossed over by the proposed Alternative A and Alternative B that BLM agreed to convey to the NANA pursuant to the 2014 Settlement Agreement under the authority of the Alaska Land Transfer Acceleration Act of 2004.

7. BLM Provides: “DOI BLM (Responsible Agency), ANCSA (Jurisdiction/Legal Authority) Key permit, approval, or other requirement: Coordination with ANCSA landowners (DOI Policy on Consultation with Alaska Native Claims Settlement Act Corporations [2011])”

NANA Comment: The consultation and coordination with ANCSA landowners derive first from federal law: 54 U.S.C. § 300309; Pub. L. No. 108-199, 118 Stat. 3, as amended by Pub. L. No. 108-447, 118 Stat. 2809. Under this federal law, BLM is required to engage in meaningful and timely consultation with ANCs like NANA during the development of policies or projects that may affect our interests – “on the same basis as Indian tribes under Executive Order No. 13175.” *Id.* As such, federal law requires BLM to consult with ANCSA landowners; it is not just DOI policy. NANA requests BLM add this clarification into this section of Table 1.

8. BLM Provides (ES-3): Western Terminus, Volume 1, Executive Summary, Alternatives: Alternative A: Alternative A is AIDEA’s proposed route, beginning at Milepost (MP) 161 of the Dalton Highway and extending west along the southern flanks of the Brooks Range to the Ambler River within the District. It crosses Gates of the Arctic National Park and Preserve (“GAAR”). It would be 211 miles long, with 25 miles crossing BLM-managed land. The trip distance—Fairbanks to the western road terminus—would be 456 miles.

Alternative B: Alternative B is AIDEA’s proposed alternative route to the Dalton Highway based on input from the NPS to minimize the amount of NPS land crossed and to avoid large waterbodies. It is a variation on Alternative A, with the same termini. It dips southward near GAAR to cross the National Preserve farther south than Alternative A. It would be 228 miles long, with 25 miles crossing BLM-managed land. The trip distance—Fairbanks to the western road terminus—would be 473 miles.

Alternative C: Alternative C grew out of scoping comments on the original EIS that suggested a route in the Tanana, Hughes, Hogatza, and Kobuk area, and is being carried forward in this Supplemental EIS. The route begins at MP 59.5 of the Dalton Highway, passes through the Ray Mountains, and proceeds generally to the northwest to pass just north of Hughes and just west of Kobuk. It terminates at the Ambler River within the District. It would be 332 miles long, with 274 miles crossing BLM-managed land. The trip distance—Fairbanks to the western road terminus—would be 476 miles.

BLM Provides (3-177): Volume 1, Mining, Access, and Other Indirect and Cumulative Impacts: “The Ambler River is anticipated to be bridged for access to the Smucker Mine”

BLM provides (F-14 – F-15): Volume 1, Table 15: “Table 15 shows a summary of economic inputs for the Smucker project. The Smucker project is projected to have a mine life resource of \$1.1 billion, a operating life of 5 years, and annual revenues of \$218, 834, 200.”

BLM provides (H-24 – H-25): Volume 2, Table 2.9 (Mine Development Timeline): “Table 2.9 (on Page H-25) shows that the Smucker mine production would not start until 2051 and is projected to end in 2056.”

BLM provides (H-55): “H-55 is a map titled *Hypothetical Baseline Development Scenario*. The map focuses on the proposed alternatives within the Ambler Mining District, and existing trails.”

BLM provides (Map 2-3, Pages 3-7): “Volume 4, Map 2-3 shows, in relevant part, the last 3 miles of the western end of all three (3) Alternatives. This last 3 miles crosses BLM managed.”

NANA Comment: The approximately three-mile portion of the AAP that is a part of terminus for Alternatives A, B, and C is not necessary at this time and NANA requests it be removed from consideration for BLM ROW authorization.

As BLM states on page ES-3, the three-mile segment is to serve the Smucker prospect located on the western side of the Ambler Mining District and would require a bridge over the Ambler River.

Yet, as shown in Table 2.9, Smucker is the last of the four mining projects (Arctic, Bornite, Sun, and Smucker) projected for development and is not anticipated to begin production until 2051.

Based on the economic information provided in Volume 1, Table 15 (Pages F-14 and F15), NANA questions whether the Smucker project would be developed as it seems it would barely break even over a mine production life of five years.

As shown on the map on Page H-55, the other three projects do not need secondary access via the three-mile segment.

The most advanced mining projects, Arctic and Bornite, can be accessed over lands located prior to the three-mile segment; and the Sun project is accessed off state lands located miles prior to the three-mile segment.

In addition, removing the last three miles of the western side of the route would address two additional issues: 1) eliminating the jurisdictional landownership issues that will arise due to the material site, maintenance facility, and airstrip straddling the boundary line between BLM-managed/State-selected lands and NANA-owned lands (*see* DSEIS Volume 4, Map 2-3 Pages 3, 7); and 2) lessen environmental consequences by removing both the Shungnak bridge currently designed in order to reach the three-mile segment and the material site at the terminus. Removing the Shungnak River bridge and the western terminus material site, and relocating the facilities and nearby construction camp to a site a few miles east along the proposed route on the same Ambler lowlands would eliminate many issues with the three-mile segment.

Finally, NANA questions why BLM would even consider issuing a ROW authorization for this three-mile segment considering that the only way to access this three-mile segment is through NANA-selected and NANA-owned lands. NANA has stated publicly that we have made no decision in support or opposition to the AAP. NANA has also not agreed to a ROW across our lands for this project. Considering NANA's position, it seems premature for BLM to issue a ROW for this three-mile segment at the western terminus.

For these reasons, NANA requests BLM deny a ROW for this three-mile segment crossing BLM-managed/State-selected lands at the western terminus.

Comments Related to Protection of Caribou Migration, Fish and Other Subsistence Resources.

9. BLM Provides (3-19 – 3-21): 3.2.3 Hazardous Waste*, Environmental Consequences, Impacts Common to All Action Alternatives, Truck Spills: “The most common model used in EIS analyses to estimate the number of accidents involving trucks transporting ore concentrate is the equation $N = RT$.⁹ This equation is used to estimate the potential spills from trucks transporting ore concentrate which may occur during the life of the project in all alternatives, and the following R values estimate the range of projected spills. R equals 1.87×10^{-7} (Harwood and Russell 1990) and is similar to the national average (2010–2017) for accident rate per vehicle mile of large trucks carrying hazardous materials of 1.62×10^{-7} (Lubetkin 2022). However, comparing the rate of spills to 5 major mines in Alaska, the prediction of accidents associated with spills of hazardous materials is underestimated. When R is adjusted based on observed ore concentrate spill rates at 5 major mines in Alaska (Pogo, Kensington, Greens Creek, True North/Fort Knox, and Red Dog) R equals 4.95×10^{-6} (Lubetkin 2022).”

NANA Comment: The spill report references national averages for trucking of hazardous material (chemicals, etc.). No comparison of concentrate trucking spills is cited. In addition, the SEIS appears to blend truck and transportation related spills together. There needs to be more clarity because some of the “transportation” related spills may in fact be process water spills into containments. If this is the case, then the large volume of process water spills into containment areas is skewing the analysis of spills.

10. BLM Provides (3-67 – 3-68): Impacts Common to All Action Alternatives, Vegetation Impacts: “Fugitive dust generated from the placement of fill material during construction and roadway operations has an adverse effect on vegetation communities adjacent to the roadway in arctic and near-arctic regions. Research has shown that dust particles can travel up to 656 feet (200 meters) from roadways (McGanahan et al. 2017; Myers-Smith et al. 2006), but the greatest impact to vegetation from dust occurs within the first 328 feet (100 meters) (Auerbach et al. 1997; McGanahan et al. 2017; Myers-Smith et al. 2006; Walker and Everett 1987). A study of fugitive dust at the Red Dog Mine (Teck Cominco AK, Inc. 2007) found higher fugitive dust emissions when temperatures were at or below freezing and precipitation was low. When low temperatures and humidity conditions are present, dust may travel long distances in the direction of prevailing winds. In general, studies have shown an adverse effect of reduced biodiversity of lichen and moss species; however, some vascular plants show increased growth near the edge of the road where thicker dust deposits help to increase temperatures during the growing season.”

“Studies show that even with a change from tarps to hydraulically sealed lids and truck rinsing procedures, ore concentrate dusts have been transported up to 2.5 miles (4 kilometers) from the Red Dog Mine haul road and low levels much farther (Hasselbach et al. 2005; Neitlich et al. 2017). Concentrations of fugitive dust deposition composed of lead have been found to be greatest approximately 33 feet (10 meters) from the road (Hasselbach et al. 2005) but could occur within 328 feet (100 meters) from the road (Ford and Hasselbach 2001). However, heavy metal dust has also been shown to impact vegetation well beyond 328 feet (100 meters), although impacts decrease logarithmically with distance (Neitlich et al. 2017). Heavy metal dust can persist in the soil for many decades (Neitlich et al. 2017), resulting in impacts to the surrounding vegetation and habitat. The effects from ore dust to vegetation include lichen mortality, decreased lichen species richness and cover, decreased moss cover, and degradation of moss species (Neitlich et al. 2017), which could result in degradation and changes to vegetation community composition. Appendix N has potential mitigation measures that would require AIDEA to submit and follow approved dust-limiting plans.”

NANA Comment: The issue of fugitive dust in the reports related to Red Dog represents a significant flaw in interpretation of the studies cited because there is no way to differentiate dust distribution from before the trucks were covered (approximately 2001) to after they were covered. The studies by Neitlich et al., and Hasselbach et al. do not mention such a baseline (e.g., before covered trucks and after). Therefore, the assumption by BLM that even with covered trucks there is significant dust dispersal is unfounded. Additionally, the studies do not clearly differentiate dust from potential truck concentrate dust versus road dust. Trucks at Red Dog are now fully covered and washed; therefore, any fugitive dust related to the road can be controlled by utilization of dust palliatives. We request more clarification by BLM of these studies or take them out of the SEIS.

11. BLM Provides (3-12): NOA (naturally occurring asbestos): “[T]he unevaluated surficial deposits are likely to have measurable amounts of NOA.”

NANA Comment: The SEIS suggests “the unevaluated surficial deposits are likely to have measurable amounts of NOA.” Additionally on page 43, BLM states that “areas targeted for mining likely contain NOA.” These are clear overstatements/simplifications. For example, the Bornite deposit is hosted by carbonate rock, which contains no NOA. BLM’s assertions are based upon a broad stroke geological evaluation that does not have support; there is no detailed geological mapping or sampling in the area to support the statements in this DSEIS. In addition, based on statute and regulation, the State of Alaska has specific policies and procedures for dealing with NOA-bearing materials if they are encountered in a materials site, for example. Overall, the references to NOA throughout the SEIS are very generalized and overstated. References should either 1) have geological backup or 2) be deleted.

12. BLM Provides: Subsistence Evaluation: Impacts to Caribou (Pages 3-133 to 3-138).

NANA Comment: The DSEIS identifies that the primary concerns related to all routes are the potential impacts to caribou migration and the wintering grounds of caribou. The DSEIS includes more data on caribou and specifically looks at studies related to the Delong Mountain

Transportation System and roads and pipelines on the North Slope oil fields. The DSEIS however, does not compare the relationship between caribou “bouncing” off other linear features such as river systems to determine if there is a significant difference or impact between rivers and roads in these areas.

13. BLM Provides (N-31): “It is unlikely that other land management agencies would require similar but separate commitment from AIDEA.”

NANA Comment: Subsistence is the highest and best use of NANA lands as stated previously. NANA, working with its shareholders, has a vested interest in ensuring that subsistence resources are protected and that harvest levels for communities are not negatively impacted by resource development activities. Specifically, ensuring the health of herds and their ability to cross roads that exist, as well as rivers, is essential to protecting subsistence access, availability and abundance. NANA does not want to see a continued decline in the Western Arctic Caribou Herd that ultimately will impact harvest regulations on state and federally managed lands.

Unfortunately, with respect to BLM’s Comprehensive Fish and Wildlife Monitoring Plan mitigation measure, the DSEIS incorrectly assumes that “[i]t is unlikely that other land management agencies would require similar but separate commitment from AIDEA.” N-31. In the case of the DMTS, NANA has requirements for wildlife monitoring, avoidance, and reporting of spills. NANA currently requires lease and permit holders to avoid wildlife, establish bonds and/or proof of insurance to protect our lands, and notify of spills and the response as soon as they occur on or adjacent to our property.

NANA supports the development of the wildlife interaction avoidance plan, access plan, hazard mitigation plan and wildlife monitoring plans. As stated in the DSEIS, each of these plans should be revisited on a regular cycle to ensure continuous improvement and adjust for other changes that may arise that are not related to AAP that may be impacting flora and fauna. These plans should also include review and incorporation of the best available technology to support these plans. If the AAP were to advance, NANA would require plans to the effect of those listed above, and it appears baseless to state other land management agencies would not require these commitments. BLM needs to correct these statements that misrepresent the interest of NANA, and potentially other Alaska Native Corporations.

14. BLM Provides (N-37): “All wildlife would have the right of way on the Ambler Road. Vehicles must 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 Authorized Officer may require temporary cessation of traffic. All data on the road closures due to caribou, including all recorded caribou observations and other relevant information, must be shared with the State, BLM and the NPS.”

NANA Comment: BLM correctly identifies that “all wildlife would have the right of way” on the proposed AAP. However, the mitigation measure suggests that the Authorized Officer “may require temporary cessation of traffic” without reference to the wildlife interaction avoidance plan. The plan references in the mitigation measures should be developed to determine when traffic must be stopped to address any interactions with wildlife, and NANA

recommends that even if the Authorized Officer has this authority, that BLM will make these determinations in alignment with the plan.

Additionally, the plan should require the disclosure of “all data” as referenced be shared with NANA and other Alaska Native Corporation landowners.

15. BLM Provides (3-90): “The primary effects to fish and aquatic organisms would result from degrading habitat quality at and downstream of conveyance structures and gravel mine sources near rivers, potentially impeding seasonal habitat connectivity, modifying hydrologic conditions along the entire length of the road embankment, changes in water quality or quantity available in source lakes or rivers due to ice road development and maintenance; and introducing the potential for accidental spills of petroleum products, mineral concentrates and other contaminants into aquatic habitats.”

NANA Comment: The statement above does not take into consideration existing regulations for gravel mining activities that are specifically focused to prevent damages to waterways and especially fish habitat. Gravel mining related to this project will need to adhere to state, U.S. Army Corps of Engineers, and other federal permits. This section of the DSEIS should clearly describe the level of risk posed by gravel mining activities while also describing the mitigation measures afforded through various regulatory requirements for gravel mining activities.

16. BLM Provides (N-50): 3.4.8. Cultural Resources*: “3. Potential BLM Mitigation Measure: AIDEA’s road construction, operations, maintenance, and closure/reclamation would be coordinated with local communities and Tribes to help ensure these activities would not limit access to Native American religious sites, would not limit use and possession of sacred objects, would protect the indigenous people’s freedom to worship through ceremonial and traditional rites (as defined in the American Indian Religious Freedom Act, 42 USC 1996); and would avoid adversely affecting the physical integrity of any Sacred Sites that may be located on federal lands, per EO 13007 (May 24, 1996; 61 FR 26771).”

NANA Comment: The new mitigation measure for avoidance of cultural resources proposed by BLM regarding consultation with “local communities and Tribes” ignores the rights of Alaska Native Corporations to participate in the Section 106 process specifically for lands owned by the Corporation. BLM needs to recognize both the rights of Tribes and ANCs²⁴ in the identification of these important cultural sites. Additionally, this section should not be the intent of AIDEA (as well as BLM’s suggestion regarding wildlife monitoring) to protect fish species and their relationship to gravel mining.

17. BLM Provides: Outmigration and severing of cultural ties (3-195).

NANA Comment: The DSEIS over emphasizes the risk of outmigration due to an increase in compensation related to resource development and underestimates the impact of continued lack of economic development on outmigration. The DSEIS does not take into consideration the lack of economic development, its impacts on the cost of living in rural Alaska, and the

²⁴ ANCs, both regional and village corporations, are included in the definition of “Indian tribe” under the NHPA. 54 U.S.C. § 300309.

threat of school closures due to outmigration in areas where the cost of living and lack of childcare are issues impacting the ability of working adults and their families to remain in the community.

The DSEIS assumes that subsistence will remain the same in a no action alternative setting, but does not account for the increased cost of energy for homes where subsistence resources are stored and of transportation to harvest resources. The subsistence economy and the cash economy are intertwined, and so the ability to participate in subsistence activities is impacted by the lack of jobs. Outmigration can occur because of the lack of affordability for families in rural communities, which would also further sever ties to establishing and maintaining subsistence practices.

The Northwest Arctic Borough's population is 7,423 (July 2022 Census estimates) with over 82% being Alaska Native. The largest non-government-related sources of jobs in the Northwest Arctic Borough is the Red Dog Mine. In 2022, Red Dog accounted for 941 shareholder jobs (seasonal and full-time jobs) and this workforce earned a combined \$55.3 million in wages.

Comments Related to Controlled, Permitted Access Along the Entire Route.

18. BLM Provides (3-138): Risks of trespass and general public access to road: “While gates may keep highway vehicles from accessing the road from the Dalton Highway, hunters on snowmobiles and ATVs would be able to bypass the gates and access the road between the gates. If the road is eventually opened to the public, this could result in higher levels of human activity along the road, higher levels of recreational use of areas adjacent to the road, and higher levels of hunting and trapping. Although, regulation of hunting could partially mitigate the impacts of increased hunter access on caribou these increases in human activity would likely increase the energetic impacts to caribou along the road and decrease the use of the area by caribou.”

NANA Comment: The DSEIS' proposed mitigation measures related to wildlife interaction avoidance and access planning are critical to addressing the issues of trespass along the entire route. In NANA's comments to the first EIS, NANA requested consistent use of measures across the entire route to ensure public access is not possible.

19. BLM Provides (N-40): “AIDEA would prepare and submit a comprehensive Access Plan inclusive of construction and operational periods. The plan would be developed in consultation with the State, NPS, BLM, ANCSA village corporations owning lands in the ROW and the Subsistence Advisory Committee (SAC), and would be approved by the Authorized Officer.”

NANA Comment: Though NANA agrees with the development of this plan with the expectation that Regional Alaska Native Corporations be added, BLM needs to clarify if the intent is for the Authorized Officer to approve the initial plan prior to construction before “notice to proceed” is provided to AIDEA.

Comments on Shareholder Jobs and Workforce Development.

20. BLM Provides (3-184): “The largest employers in the NAB are TeckAlaska (owner and operator of the Red Dog Mine)”

NANA Comment: NANA Regional Corporation and Teck, Alaska are partners in the Red Dog Mine through an operating agreement. NANA owns the surface and subsurface estate of this property.

21. BLM Provides (3-187): Employment and Income: “Road construction could also potentially generate economic benefits for ANCSA corporations, such as Doyon Limited and NANA. For example, portions of the road alignments cross 10 to 12 miles of land that Doyon Limited owns, including ownership of the surface and subsurface (Alternatives A and B) or subsurface only (Alternative C). Furthermore, there are proposed project material sites located on land for which Doyon Limited owns the subsurface estate. Elsewhere, Doyon Limited manages 40 sand, gravel, and rock sources in 34 villages within the Doyon region to generate revenue (Doyon Limited 2019). Road construction would require approximately 23.6 million cubic yards of material for a total estimated cost of \$160.2 million (\$205 million in 2023 dollars), which includes labor and the material expense. Of this total amount, under a 2015 approximation of the current Alternative A, approximately \$28.6 million (or \$36.6 million in 2023 dollars) in revenues could accrue to Alaska Native entities (Cardno 2015).”

NANA Comment: The above BLM reference from the DSEIS is informative – as to Doyon Limited. Other than the statement “Road construction could also potentially generate economic benefits for ANCSA corporations, such as Doyon Limited and NANA,” BLM does not mention nor provide any information related to NANA. In light of this oversight, NANA requests BLM provide information pertaining to NANA.

22. BLM Provides (3-193): “Employment opportunities in mining projects could also lead to a depopulation of some NAB/YKCA communities due to migration to urban centers, the effects on the range and level of local public services and facilities could be negative.”

NANA Comment: As stated in the sections related to subsistence, the assumption that outmigration would occur due to higher paying jobs is incorrect. The DSEIS does not provide adequate data used to evaluate this unfounded assumption. In NANA’s experience, and as shared through work at the University of Alaska Anchorage Institute for Social and Economic Research, outmigration of shareholders related to mining jobs is not significantly different from normal rates of outmigration and the longer an individual holds a job in this field, the less likely they are to leave the region. BLM needs to base these statements in facts and data that actually reflect trends related to outmigration. This includes assessing the relationship between school closures and other socio-economic pressures that exacerbate outmigration which increases severing the ability of Alaska Native people to participate in subsistence activities generationally.

Comment on Community Benefits

23. BLM Provides (3-185): “Heating fuel is a major expenditure in the study area communities, as shown in Appendix F, Table 12.”

NANA Comment: Appendix F, Table 12 is missing data for heating fuel and gasoline in 2022 for Ambler, Kobuk, and Shungnak. These data can be obtained from the Northwest Arctic Borough. These data need to be updated to reflect the additional increases in the cost of fuel that occurred in 2022 to provide an accurate picture of the cost of energy.

Additional Comments for the SEIS

24. BLM Provides (3-184): “The Red Dog Mine, which is the largest zinc and lead mine in the world”

NANA Comment: The Red Dog Mine is not the largest zinc and lead mine in the world; it is either the first or second highest producing zinc and lead mine in the world. BLM needs to correct this misstatement in the final EIS because it gives a false impression of magnitude of mine operations.

25. BLM Provides (H-37): “BLM is not required to speculate about future actions.”

NANA Comment: The reference to the Reasonably Foreseeable Actions is overstated and not supported. Though BLM states it is not required to speculate about future actions, it goes on to list several including impacts from potential development of Graphite One and expansion of the Port of Nome, both on the Seward Peninsula and the Manh Cho deposit by Tetlin as examples of actions that may impact the SEIS.