

Congress of the United States

Washington, DC 20515

December 22, 2023

The Honorable Deb Haaland
Secretary, U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Secretary Haaland:

We write to express our continued disappointment and frustration with the Department of the Interior's (the Department) treatment of the Ambler Access Project (Ambler or AAP), most recently demonstrated by the Bureau of Land Management's (BLM) publication of a flawed and deficient draft Supplemental Environmental Impact Statement (SEIS) on October 13, 2023.

The AAP – a *private* haul road needed to access the world-class Ambler Mining District in northwest Alaska – was approved by the Department in 2020 after five years of comprehensive assessment, but has now been subject to three additional years of legal and regulatory delay as a result of a change in political leadership and posture at the Department.

Curiously, the Department voluntarily requested that the court remand the 2020 environmental impact statement for the AAP back to BLM *on the same day* President Biden held a summit stressing the importance of and need for critical and strategic minerals. The resulting delay for this project has come at a time when our state and nation urgently need the jobs, revenues, and domestic supplies of the minerals it will help facilitate.

Despite the AAP's significant benefits, and the mitigation measures available to minimize or eliminate its potential impacts, BLM has departed from the narrow request it put before the court for remand and is using the environmental review process to completely rewrite its analysis and further delay this project from moving forward. We find that unacceptable and urge the Department to approve the AAP in an economically viable manner no later than the second quarter of calendar year 2024.

I. Congress Intended the AAP to Receive Expeditious Approval

Our predecessors in Congress recognized the importance of the Ambler Mining District and specifically added language to the Alaska National Interest Lands Conservation Act (ANILCA) of 1980 to enable and ensure that a road could be constructed to provide access to it.

This was part of the careful balance that Congress struck with ANILCA: while conserving tens of millions of acres of land across Alaska, Congress guaranteed that certain economic

opportunities in our state, including responsible mineral development within the Ambler Mining District, would be allowed to proceed.

Section 201(4) of ANILCA specifically states, “Congress finds that there is a need for access for surface transportation purposes across the Western (Kobuk River) unit of 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 provisions of this subsection.”

That same subsection further requires the Secretaries of the Interior and Transportation to “prepare an environmental and economic analysis solely for the purpose of determining the most desirable route for the right-of-way and terms and conditions which may be required for the issuance of that right-of-way.” This analysis was required to be completed within one year of receipt of an application and was explicitly “in lieu of an environmental impact statement.”

Congress also provided that the Ambler analysis “shall not be subject to judicial review” and, upon its completion, gave the Secretaries 60 days to “jointly agree upon a route for issuance of the right-of-way across the preserve.”

While some contend that ANILCA only addresses the environmental review process for the portion of the AAP that crosses lands managed by the National Park Service, it is illogical to assume that Congress intended the permitting process to look like this. The reality is that Congress never expected the portion of the road that crosses BLM lands—which are not federal wilderness and have been selected by the State of Alaska for conveyance—to be an issue.

The reason why is simple: Congress did not anticipate that this road would cross lands that are still being managed by the BLM, as a result of Public Land Order (PLO) 5150 remaining in effect more than 40 years after ANILCA’s passage. Congress expected that PLO (among others) would be lifted in a timely manner, which would remove BLM from the permitting equation and leave jurisdiction for the project to the U.S. Army Corps of Engineers, National Park Service, and State of Alaska.

Instead of lifting PLOs, however, BLM has left them in place. Instead of the one- to two-year process envisioned and required by ANILCA, the AAP is now in its eighth year of federal permitting. Instead of the analysis prescribed by ANILCA, BLM remains involved and is now voluntarily in the midst of an SEIS. Further, despite your testimony earlier this year before the Senate Committee on Energy and Natural Resources assuring Congress that the SEIS was on track, and the schedule the Interior Department provided to the courts when seeking a voluntary remand, BLM has failed to keep the schedule and has fallen months behind, making it impossible to complete this process by the end of calendar year 2023.

II. The Draft SEIS Exceeds the Scope of Remand

Our review of the 1,283-page draft SEIS for the AAP indicates that BLM has exceeded the scope of its remand. BLM requested the remand to reconsider two primary considerations—its analysis of subsistence impacts under ANILCA and tribal consultation under the National Historic Preservation Act—yet the agency has reopened nearly the entire previous analysis and is

recasting its content. The resulting draft SEIS minimizes the economic benefits of the AAP while raising an array of new concerns and treating worst-case scenarios as likely outcomes.

For example, the draft SEIS' headline claims that the AAP could impact subsistence in 66 communities. This number is misleading because it encompasses all potential alternatives and all potential routes for the AAP. Only one alternative will be selected, only one road will be built along one route, and under no conceivable scenario would subsistence for 66 communities be affected—especially after mitigation is factored in.

Another example is the draft SEIS' claims that the AAP will result in trespass and may not remain a private road. The draft SEIS states that, "While the road would not be open to the general public by design, public use and trespass are reasonably expected to occur." Meanwhile, BLM received an application that explicitly asked for a private road and trespass is illegal. The fact that other haul roads in Alaska—including for the North Slope, the Red Dog Mine, and the Pogo Mine—have not faced these issues at meaningful scale (or, for that matter, impacted subsistence) is largely ignored. The draft SEIS' assertions thus appear unfounded and designed to deepen local apprehensions.

The draft SEIS also includes expanded analysis of the potential environmental impacts of the AAP. We urge BLM to recognize the AAP, which has not yet been constructed, is clearly not responsible for existing fish and wildlife declines. The AAP's proponents have committed to robust mitigation measures that will help avoid impacts to local resources, and the draft SEIS must recognize that restricted-use haul roads in Alaska can and historically have been carefully constructed and operated to protect the surrounding environment.

Minimization of Economic Benefits

While the draft SEIS amplifies discussion of the AAP's potential environmental impacts, BLM has minimized descriptions of the AAP's economic benefits, as well as the benefits of the mines it would facilitate access to. Within the draft SEIS, few statements about jobs, revenues, and quality of life are unqualified.

For example, BLM claims in the draft SEIS that "impacts to employment would occur but would not be expected to disproportionately benefit low-income and minority populations." Another is that jobs associated with the AAP "may be temporary." Among other assertions, these stand out:

"Mining-related jobs would be a long-term, temporary effect and would be lost once the mines closed. Although this would, in effect, be a reversion to existing conditions, it would be perceived as an adverse economic effect at the time unless there were a clear source of replacement employment."

"Some mine employees from NAB/YKCA communities may not continue to reside in the region after they are hired. Mining has high average wages and allows workers to live where they prefer and commute to the work site on a rotating schedule."

“Also difficult to forecast are the effects of mining development in the District on the overall economic and social well-being of individuals and families in NAB/YKCA communities. Rotating shifts at a remote mining project would involve long periods away from home, which have been blamed for marital discord and family dysfunction. Moreover, income from employment in mining projects could be spent in ways that are beneficial or adverse.”

These statements are unnecessarily critical of the economic benefits the AAP and mining would create. We remind the Department that new economic opportunities in this region are hard to come by; high-paying jobs would be welcome by most residents; the prosperity and higher standard of living those jobs create is an unequivocal good; and the eventual end of those jobs, decades from now, cannot be construed as a defect of the AAP or any mine project.

Descriptions of Future Mining

We also take issue with the draft EIS’ discussion of the mine projects the AAP would facilitate access to, which would be permitted separately in the future. We find the agency’s descriptions to be generally one-sided, with more attention given to those projects’ potential impacts than proven mitigation measures, their economic benefits, and the national need for the minerals they would produce.

For example, the draft SEIS explores the potential impacts of a tailings dam failure—an event without precedent in America’s modern mining industry—while failing to acknowledge the necessity of new mines to provide the raw materials for clean energy technologies that will reduce the impacts of climate change.

In fact, the Ambler District contains significant deposits of the minerals and metals needed to produce clean energy technologies, including:

Copper: Copper is the “metal of electrification” and fundamental to everything from wind power to transmission lines to electric vehicles. The United States’ net import dependence for copper has risen sharply over the past 25 years, from 12 percent in 1997 to 41 percent in 2022. Experts from S&P Global and Bloomberg New Energy Finance are also forecasting that supply shortages of copper will begin in the late 2020s, and that those shortages will worsen in the 2030s and beyond unless new mines are permitted in the near term.

Cobalt: Cobalt is a key input for electric vehicles as well as smartphones and alloys. Most cobalt is produced via modern-day slavery in the Democratic Republic of the Congo (DRC) and then refined in China; the U.S. currently imports 76 percent of its supply. The International Energy Agency reports the energy transition resulted in a 70 percent increase in demand for cobalt between 2017 and 2022, and that global demand could be 21 times higher by 2040.

Gallium and Germanium: The U.S. imports 100 percent of its supply of gallium and the vast majority of its supply of germanium, which are used in semiconductors, electronics, and other applications. China, which produces roughly 98 percent of the world’s gallium and 60 percent of global germanium, recently announced export restrictions on both. Those constraints

demonstrate China's control over key supply chains and have raised the prospect of supply shortages that wreak havoc on domestic industries.

While the U.S. has no apparent strategy to ensure a stable domestic supply of these commodities, the Ambler District conveniently contains deposits with all four of them. The Department should thus regard the AAP as strategic infrastructure that can be safely built while simultaneously boosting Alaska's economy, strengthening our national security, and preventing the energy transition from being abruptly derailed.

III. BLM's Permitting Process is Creating Uncertainty, Confusion, and Division

Beyond our criticisms of various aspects of the draft SEIS, we are concerned by the broader effects of BLM's interminable permitting process for the AAP.

When this administration took office in January 2021, the AAP was fully approved, a right-of-way grant had been issued to the project proponent, and regional stakeholders were able to engage in negotiations on a specific, well-defined project. Three years later, BLM's permitting process is having a deleterious impact on Alaskans' ability to understand what this project is, where and how it will be constructed, how it will functionally be operated, and how the environment will be protected through mitigation measures and related protocols.

The longer the federal permitting process drags out, the more uncertainty and division there will be about this project. This is both unnecessary and harmful. BLM's lack of clarity on the AAP prevents legitimate stakeholders—from project proponents to community leaders to Alaska Native Corporations—from negotiating and potentially reaching agreements on it.

IV. Our Request

While we are disappointed and frustrated by BLM's draft SEIS for the AAP, we urge the Department to complete the permitting process by:

- 1. Approving a New Record of Decision by the Second Quarter of 2024.** The federal permitting process for the AAP has now spanned more than eight full years. In seeking a voluntary remand, BLM pledged to complete its supplemental analysis for the AAP by the end of calendar year 2023. That timeline has already slipped, and further delays are inexcusable. The agency must complete its work in accordance with its latest court filings and issue a new Record of Decision (ROD) in the second quarter of calendar year 2024.
- 2. Selecting Alternative A.** BLM's analysis continues to make clear that one alternative—Alternative A—is greatly superior to all others under evaluation. Alternative A provides the shortest route for the AAP and will in turn have the least impact on surrounding communities' subsistence resources and the natural environment. BLM should select Alternative A as its preferred alternative, approve this alternative in its upcoming ROD, and quickly reissue the suspended permits.

- 3. Ensuring an Economically Viable Project.** The AAP's potential environmental impacts can be reduced or eliminated through careful planning and mitigation measures. We recognize that BLM will require both, but urge the agency to ensure the project remains viable so that its proponents can actually construct it.

Both Alaska and the nation need the jobs, revenues, and minerals that the AAP would facilitate access to. ANILCA mandates this project's approval, and BLM's extensive analysis indicates that it can be responsibly constructed with reasonable protections. Approving the AAP would deliver significant economic and security benefits for Alaska and the U.S. Rejecting the AAP, or approving it in a non-viable manner, would cost us those benefits, prolong our deep dependence on foreign minerals, and magnify the vulnerabilities and atrocities associated with it.

We accordingly urge the Department to expeditiously complete the SEIS process and re-approve the Ambler Access Project.

Sincerely,



Lisa Murkowski
United States Senator



Dan Sullivan
United States Senator



Mary Sattler Peltola
Representative for All Alaska