



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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October 29, 2019

Greg Dudgeon, Superintendent
Gates of the Arctic National Park and Preserve
4175 Geist Road
Fairbanks, AK 99709

Re: State of Alaska Comments on the Ambler Road Draft Environmental and Economic Analysis

Dear Mr. Dudgeon:

The State of Alaska (State) appreciates the opportunity to provide comments on the Draft Environmental and Economic Analysis (Draft EEA) released by the National Park Service (NPS) for the section of the Ambler Mining District Industrial Access Project (Ambler Road) that will cross Gates of the Arctic National Park and Preserve (GAAR). The Office of Project Management and Permitting (OPMP) coordinated with the State agencies to review the Draft EEA. Our comments represent the collective technical and regulatory expertise of the:

- Department of Natural Resources (DNR)
- Department of Environmental Conservation (ADEC), and
- Department of Fish and Game (ADF&G)

Please refer to the State of Alaska Ambler Road Draft EEA Technical Comments Matrix, attached.

The State recognizes that NPS prepared the Draft EEA in response to an application for transportation and utility systems and facilities on federal lands (SF-299) submitted by the Alaska Industrial Development and Export Authority (AIDEA) 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” across GAAR, including the Kobuk Wild and Scenic River, per Section 201(4)(d) of the Alaska National Interest Lands Conservation Act (ANILCA).

In our assessment, the Draft EEA addresses the potential environmental impacts associated with two alternative route alignments through GAAR, and provides a comparative analysis of each alternative for all resources, but does not provide a commensurate evaluation of the anticipated economic benefits or offer options about how to enhance positive impacts associated with the proposed project. This limits the utility of the document for the purpose of advising the Secretary of the Interior and the Secretary of Transportation on route selection and approval.

We respectfully request that NPS consider our comments during revisions to the Draft EEA, and consult further with the State on how to supplement key components of the document that are currently lacking in order to ensure the congressional direction in ANILCA is fulfilled:

The Secretaries in preparing the analysis shall consider the... environmental and social and economic impact of the right-of-way including impact upon wildlife, fish, and their habitat, and rural and traditional lifestyles including subsistence activities, and measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts. (ANILCA Section 201(4)(d)).

Please contact me directly at faith.martineau@alaska.gov or (907) 269-0949 for questions.

Sincerely,



Faith Martineau
Executive Director, OPMP

Attachment: (1) State of Alaska Ambler Road Draft EEA Technical Comments Matrix

Ecc: Kip Knudson, GOV Director of State/Federal Relations (kip.knudson@alaska.gov)
Corri Feige, DNR Commissioner (corri.feige@alaska.gov)
Jason Brune, ADEC Commissioner (jason.brune@alaska.gov)
Doug Vincent-Lang, ADF&G Commissioner (douglas.vincent-lang@alaska.gov)

State of Alaska
Ambler Road Draft EEA
Technical Comments Matrix

Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
State of Alaska Technical Comments on Draft EEA
Submitted October 29, 2019

ID	Document Title	Page No.	Row/Line No.	Comment
1	EEA	General		In accordance with ANILCA 201(d)(ii), the EEA is considering ... <i>measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts.</i> Please incorporate positive impacts from the project in the final EEA. For example, communities could benefit from less expensive delivery of fuel, groceries, as well as new jobs in the area. The State and various Native Corporations will have the potential to gain revenue from land leases, material sales, and mining related activities.
2	Chapter 1	1	Last Paragraph	For clarity, please reiterate in this paragraph that the portion of the project within GAAR is subject to this EEA and not to the NEPA, per ANILCA 201(d). <i>This [environmental and economic] analysis ... shall be prepared in lieu of an environmental impact statement which would otherwise be required under section 102(2)(c) of the National Environmental Policy Act.</i>
3	Chapter 1	2	Second paragraph	Please also clarify in the EEA that Congress authorized crossing the Kobuk Wild and Scenic River: "Upon the filing of an application pursuant to section 1104(b), and (c) of this Act for a right-of-way across the Western (Kobuk River) unit of the preserve, including the Kobuk Wild and Scenic River...." (Emphasis added, ANILCA Section 201(c))
4	Chapter 1	4	First paragraph	Please revise the last two sentences of this paragraph as "Because the analysis in the EEA focuses.... <u>solely on impacts to resources within GAAR, as directed by Congress, additional impacts associated with the proposed road alignments outside of GAAR are discussed in BLM's EIS.</u> " The EEA focus is limited to the analysis required by 201(4)(d) and "shall not be subject to judicial review."
5	Chapter 2	10		The final paragraph on this page notes that the fiber optic line would be installed in the roadbed during Phase II construction. Will it be buried in the roadbed or installed in an adjacent area? Given the potential for damage to the permafrost and soils in this area, please provide more details and information on how potential environmental impacts will be avoided or mitigated.
6	Chapter 3	13	Subsistence, last paragraph	In determining the most desirable route, ANILCA section 201(d)(ii) requires the EEA to consider the social and economic impact of the right-of-way...including impact...upon rural and traditional lifestyles including subsistence activities, and measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts." Instead of reaching conclusions relative to the alignments and limits on discretionary authority in the EEA, the EEA refers to the Section 810 Analysis that BLM conducted on the entire project. Congress already authorized the right-of-way; where to locate the route across Gates is the scope of the EEA. Therefore, the determination of the route across Gates should be the sole focus of the subsistence analysis in the EEA. Deferring to the larger 810 analysis that is based on a purpose and need and range of alternatives identified pursuant to NEPA, is contrary to the congressional direction in ANILCA. To be consistent with ANILCA, we request the EEA provide a separate and appropriately scoped subsistence analysis.
7	Chapter 3	25	5 th paragraph	Addition of riprap can also change stream bed characteristics and alter salmon, etc. spawning substrate.
8	Chapter 3	26	1 st paragraph	Wastewater from truck washing equipment will need to be treated appropriately so this does not contaminate.

Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
State of Alaska Technical Comments on Draft EEA
Submitted October 29, 2019

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9	Chapter 3	29	3 rd paragraph	Need to capitalize the “A” in Arctic grayling
10	Chapter 3	29	4 th paragraph	Update with information from ADF&G (Joe Giefer, who led the AWC sampling effort in 2018): “In 2018 we found Chinook at the following sites. FSKK1802A01 – Mettenperg Crk - Adult Spawning FSKK1805C01 – Melozimoran Crk – Juvi Rearing FSKK1806A01 – Helpmejack Crk – Adult Spawning & Carcass FSKK1807C00 – Tobuk Crk – Adult Spawning FSKK1807C01 - Unnamed Trib of Alatna, near Tobuk Crk outlet, upstream, opposite side of Alatna – Juvi Rearing FSKK1816C04 – Hogatza River – Adult Spawning So, this data is no longer pending.”
11	Chapter 3	30	2 nd paragraph	And any addition of riprap can alter salmon, whitefish, etc. spawning habitat.
12	Chapter 3	39	Conclusion	Please revise the last sentence of this paragraph. <i>The impacts from constructing the entire length of the Ambler road alternatives <u>outside the Preserve are covered in the BLM EIS.</u></i>
13	Chapter 3	39	Visitor Experience	Congress designated GAAR with the intent that a road would go through the Preserve, this Section needs to recognize that intent. The analysis places more emphasis on the impacts of the road itself, than the differences between the two alternatives.
14	Chapter 3	41	Wilderness	Please delete this paragraph on Wilderness or retitle “Wilderness Character” and address the comparative impacts of the two alternatives in the conclusion. The proposed ROW locations are not in designated wilderness and the enabling legislation for GAAR also includes direction to grant the ROW.
15	Chapter 3	42	1 st paragraph	A surface transportation route through the Kobuk Preserve has already been approved by Congress. See Section 201(4)(b) of ANILCA. Only the alignment through the Preserve still needs to be determined. We request the following edit, If an <i>When an alignment through the Kobuk Preserve is approved and construction begins, the NPS would make information available to the public through the park website, through concessionaires, and at ranger stations about the activities associated with the road, including location, duration, and expected conditions.</i>

Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
 State of Alaska Technical Comments on Draft EEA
 Submitted October 29, 2019

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16	Chapter 3	44	Impacts	<p>Please revise this sentence and the EEA to clarify the purpose of the EEA as a stand-alone document and delete the incorporation by reference. <i>An analysis of the social and economic impacts of the proposed Ambler road <u>within the Preserve as a whole is included herein.</u> contained in Section 3.4.5 of the BLM Draft EIS (BLM 2019), which is incorporated herein by reference.</i></p> <p>Section 201(d)(ii) clearly identifies that the EEA is to include the social and economic impact of the ROW.</p> <p>References to BLM's Appendix C should also be deleted and the costs specific to the portion of the road through GAAR included within this document.</p>

Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
 State of Alaska Technical Comments on Draft EEA
 Submitted October 29, 2019

17	Chapter 3	45	3 rd paragraph	<p>ANILCA designated the Kobuk River a wild and scenic river in 1980 and it is currently classified as a wild river. No ORVs were identified by ANILCA. Congress was also aware of the likelihood of a road crossing the river when it was classified as “wild” and limited the ROW conditions to those specified in ANILCA Section 1107.</p> <p>Section 1107(b) Wild and Scenic Rivers System states that:</p> <p style="padding-left: 40px;"><i>Any transportation or utility system approved pursuant to this title which occupies, uses, or traverses any area within the boundaries of a unit of the National Wild and Scenic Rivers System shall be subject to such conditions as may be necessary to assure that the stream flow of, and transportation on, such river are not interfered with or impeded, and that the transportation or utility system is located and constructed in an environmentally sound manner. (emphasis added)</i></p> <p>The EEA instead identifies the analysis criteria as: <i>The analysis of impacts on the wild-designated Kobuk River was based on a qualitative assessment of how the proposed alignments would affect the free-flowing character, water quality, the wild classification of the river, and the five Outstandingly Remarkable Values (ORVs) for which the river was designated. In addition, this analysis considers the protection and enhancement of the Kobuk River for the benefit and enjoyment of the public, as called for under the Wild and Scenic Rivers Act.</i></p> <p>Congressional direction in ANILCA Section Sec. 201(d)(ii) identified the resources the Secretary shall consider in the EEA analysis as:</p> <p style="padding-left: 40px;"><i>The environmental and social and economic impact of the right-of-way including impact upon wildlife, fish, and their habitat, and rural and traditional lifestyles including subsistence activities, and measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts.</i></p> <p>We request that the analysis of impacts on the wild classified Kobuk River focus on the criteria in ANILCA 201(d)(ii) and 1107(b) and base the preferred location of the route on that analysis. It is unnecessary to evaluate the proposed road on the basis of the additional criteria, Free-flow, Water Quality, and Outstandingly Remarkable Values, except as they relate to the criteria in Sections 201(d) and 1107(b), especially considering the National Wild and Scenic Rivers System website at https://www.rivers.gov/info/q-and-a-answers.cfm?id=66 indicates that “Any portions of a FHWA project that may affect the river’s free flowing condition (i.e., bridges, roadway improvements, etc.) are also subject to the evaluation of the river-administering agency under Section 7 of the Wild and Scenic Rivers Act. Given Congress’ direction to authorize surface transportation across GAAR, including the Kobuk River, the standards and criteria in Section 7 of the WSRA are not applicable.</p>
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Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
 State of Alaska Technical Comments on Draft EEA
 Submitted October 29, 2019

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18	Chapter 3	45	3 rd paragraph	Regarding the statement: <i>The Kobuk River is an important subsistence resource used by surrounding communities and impacts to this river could have impacts on these communities.</i> Impacts to subsistence activities should be addressed in the subsistence analysis for this EEA instead of the WSR section.
19	Chapter 3	46	5 th paragraph	Please delete the discussion on Free Flow, and instead discuss impacts to “stream flow” and “transportation on the river”. In addition, the Wild and Scenic Rivers Act considers rivers ineligible if a stream is impounded or has undergone a diversion and is not free flowing. No impoundments or diversions are proposed for the Kobuk River so it would maintain its’ free-flowing character. Bridges don’t change a rivers free-flowing character. If the language below remains, we request the following edit: Constructing a multi-span bridge across the Kobuk River with piers in the river channel and abutments in the floodplain would require alteration of the bed and banks of the Kobuk River, <u>yet would not impound or divert</u> resulting in long term adverse impacts on the free flow of the Kobuk River.
20	Chapter 3	46	1 st paragraph	ANILCA designated the Kobuk River a wild and scenic river and classified it a wild river. We request the following clarifying edit: The construction of the proposed Ambler road across the Kobuk designated <u>Wild and Scenic</u> River means that a portion of this designated <u>classified</u> wild river would no longer be free from human development.
21	Chapter 3	47	Cultural Resource ORV	The analysis speculates that there will be “unauthorized collection of artifacts from workers.” The analysis should identify the terms and conditions and other regulatory authorities that would mitigate that, and other types of potential impacts described in this section, including the Section 106 process. This also applies to the disclosed potential impacts for other ORVs.
22	Chapter 3	47	Water Quality, 2 nd paragraph	While it is surprising that there are still data gaps about the characteristics of the river at the proposed crossings, given Congress has authorized the road, including crossing the Kobuk River; the EEA should specify how the proposed terms and conditions in Appendix C and other regulatory authorities, such as the Clean Water Act, will protect water quality at both crossings.
23	Chapter 3	48	Fisheries paragraph	Awkward sentence. Recommend rewording to “The designated Kobuk River Preserve protects crucial spawning habitat for sheefish that, along with the sheefish that spawn in the Selawik River, overwinter in Kotzebue Sound.”
24	Chapter 3	48		Please delete analysis related to “free-flow” of the river and instead address “stream flow” of the river.

Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
 State of Alaska Technical Comments on Draft EEA
 Submitted October 29, 2019

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25	Chapter 3	48	Comparative Analysis	Please re-write this section to discuss differences between the two alternatives regarding the criteria listed in 201(d) and 1107(b).
26	Chapter 4	51	Agency Consultation	This section, Coordination with the BLM EIS Process, should explain that the EEA and EIS are separate documents and why BLM is preparing an EIS for the entire project
27	Chapter 4	51	Last paragraph	Chapter 4. Given that the BLM EIS is not mutually exclusive of the NPS EEA, perhaps provide a link so that readers can easily read through the EIS and/or pertinent sections.
28	Appendix C	C-6	Bullet 4	<p>Under what authority is this bullet prepared: <i>Other than the direct approach to the bridge crossing the Kobuk Wild River, no project elements, including permanent or temporary access roads, trails or other development will be allowed within the 0.25-mile boundary of the Kobuk River</i></p> <p>The WSR Act does not prohibit development within WSR corridors, especially as modified by ANILCA. Road, trail, recreational facilities and other infrastructure may be allowed, consistent with classification and accommodations (https://rivers.gov/info/q-and-a-answers.cfm?id=108). Congressional intent as the Kobuk WSR and GAAR NP were created was that a functional road would be built in this area, which includes needed project elements. This requirement is unreasonable.</p>
29	Appendix C	C-7	First line under FISH	Need to capitalize the “A” in Arctic char
30	Appendix C	C-8	NPS/FHWA Involvement	As the agency responsible for the management of fish and wildlife resources in Alaska, and as the permitting agency for activities within fish bearing waters, we request recognition that the NPS/FHWA staff will work with ADF&G staff on proposed studies and designs to avoid or minimize impacts to fish.
31	Appendix C	C-8	Monitoring	As the agency responsible for the management of fish and wildlife resources in Alaska, and as the permitting agency for activities within fish bearing waters, we request recognition that NPS staff will work with our staff on proposed designs to avoid or minimize impacts to fish.
32	Appendix C	C-10	Wildlife	ADF&G is responsible for the wildlife population management. Please add the following sentence to the first paragraph, after the following: <i>ANILCA requires the protection of habitat for and the populations of fish and wildlife. In accordance with ANILCA 1314, ADF&G is responsible for the management of fish and wildlife populations within the State.</i>
33	Appendix C	C-11	Subsistence Activities	Instead of deferring to BLM’s 810 analysis, which addresses the entire project, the NPS should incorporate data from the ADF&G Division of Subsistence for this EEA and should include discussion that focuses not only on any negative impacts to subsistence use, but also on what subsistence opportunities will continue to be available. See previous related comment.

Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
 State of Alaska Technical Comments on Draft EEA
 Submitted October 29, 2019

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34	Appendix C	C-13	Wild and Scenic River	Placing such restrictions on the project on the basis of its “wild” classification when Congress has authorized a road crossing, is unreasonable. Further, ANILCA included numerous exceptions that allowed development within CSUs, including wild rivers. Please re-write this section in accordance with ANILCA 1107(b) which would include conditions to assure stream flow of, and transportation on, the river is not interfered with or impeded.
35	Appendix C	C-14	Monitoring	Please revise the following sentence to meet the requirements set forth in ANILCA for Wild and Scenic Rivers in 1107(b): <i>Design plans will ensure that the road location, bridge spans and piers, abutment protection plan, and construction do not affect the stream flow of, and transportation on, [the] river. [Or] that the transportation or utility system is located and constructed in an environmentally sound manner, status as a national wild river and minimize impacts to the outstandingly remarkable values of the river.</i>
36	Appendix C	C-14	Visitor Experience	This paragraph implies that the Ambler Access Road is being constructed within designated wilderness, when in fact it is being constructed within the Preserve area and its construction was authorized by Congress when it created GAAR. Please revise as follows: <i>GAAR-is includes one of the largest and best-preserved wilderness areas in the United States. The remote location, challenging access, and current NPS management all combine to provide visitors with the opportunities described in the enabling legislation. The enabling legislation also recognized the need for access for surface transportation across the western unit of GAAR and stipulated that the Secretary of the Interior “shall permit such access”. Introduction of an industrial road to this area will cause changes to the wilderness character of the area and the current visitor experience. In a limited area of the Preserve, the physical presence of the road, with associated engine noise and sounds associated with construction and maintenance related activities add a human element to an otherwise largely natural soundscape. Regardless of management controls on traffic, the physical presence of the proposed Ambler road will alter the nature of the visitor experience. The wild and undeveloped character with opportunities for solitude will be diminished compared to the current condition.</i>
37	Appendix C	C-14	Goals and Terms and Conditions	This section should include some goals and conditions that will be instituted to “enhance positive impacts” as called for in ANILCA 201(d)(ii).
38	Appendix C	C-15	Monitoring	As currently proposed, the road is proposed for industrial access only. Please explain how the NPS is foreseeing demographics of road users changing.

Ambler Road Project in Gates of the Arctic National Park and Preserve EEA
 State of Alaska Technical Comments on Draft EEA
 Submitted October 29, 2019

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39	Appendix C	C-15	Human Health and Safety, Goals	<p>Please revise the following bullet: Prohibit the use of gravel materials containing <u>The use of naturally occurring asbestos in the construction, maintenance or operation of the road through Preserve lands will be avoided unless no other suitable materials are available. In the event NOA materials are the only feasible option for road construction, AIDEA would follow ADOT&PF's interim guidance and standards for NOA material us.</u></p> <p>The applicant indicated that the use of gravel materials containing naturally occurring asbestos would be avoided when possible. The Secretary is directed in ANILCA to approve this ROW application, this Condition appears to possibly make the road infeasible.</p>
40	Appendix C	C-16		This page discusses air quality and the need for protective measures similar to those needed on the Red Dog Road. These protective measures will likely require review by ADEC, as well as collaboration with National Park Service staff. Please add review and consultation with ADEC to this section.
41	Appendix C	C-17	Admin Terms and Conditions	In-water restrictions during construction to protect fish are the responsibility of the ADF&G. Please remove the requirement “to preserve the wild status of the Kobuk River” as that is beyond the scope of what Congress authorized.
42	Appendix C	C-19	Applicant Proposed Mitigation Measures	Where appropriate, applicant proposed mitigation should be incorporated into the EEA. Congress, in specifying a 21-month time frame for resource analysis and preparation of a draft EEA in ANILCA 201(d), clearly indicated an intent that this approval would not be years in the making.
43	Appendix C	C-23		This page discusses dust palliatives and collaboration with the University of Alaska Fairbanks (UAF) Transportation Center. This will also likely require review by ADEC. Please add review and consultation with ADEC to this section.