



# RESOURCE DEVELOPMENT COUNCIL

Growing Alaska Through Responsible Resource Development

March 5, 2024

Submitted electronically to: [dskinner@blm.gov](mailto:dskinner@blm.gov)

Bureau of Land Management, Alaska District  
Fairbanks District Office  
ATTN: Douglas Skinner  
222 University Avenue  
Fairbanks, Alaska 99709-3816

Re: Draft Proposed Revised Section 106 Area of Potential Effects (APE) for the Ambler Mining District Industrial Access Road Pursuant to the 2022 Department of the Interior Voluntary Remand (January 2024)

Dear Mr. Skinner:

The Resource Development Council for Alaska, Inc. (RDC) submits the following comments to the Bureau of Land Management's (BLM) document entitled "Draft Proposed Revised Section 106 Area of Potential Effects (APE) for the Ambler Mining District Industrial Access Road (hereafter the "Ambler Access Project" or "AAP" or "Project") Pursuant to the 2022 Department of the Interior Voluntary Remand" dated January 2024 (hereafter "Revised APE"). The RDC has significant concerns regarding this proposed revision and the scope and precedence this would set. In a nutshell, this is an unprecedented misapplication of Section 106 and the proposed revisions drastically exceed the scope of Section 106's intent, establishing a precedent that would be very harmful to not just AAP but other development projects in Alaska. We respectfully ask that you employ the APE that supported the initial permitting decision and focus BLM's efforts on support for why *that* APE is appropriate and consistent with applicable standards.

**Who We Are:** The RDC is a statewide, not for profit, trade association comprised of individuals and companies from Alaska's fishing, tourism, forestry, mining, and oil and gas industries. RDC's membership includes all the land-owning Alaska Native regional corporations as well as Alaska Native village corporations, local communities, including the North Slope Borough, organized labor, and industry support firms. RDC's purpose is to encourage a strong, diversified private sector in Alaska and expand the state's economic base through the responsible development of our natural resources. The industries RDC represents are historically significant economic drivers for Alaska's economy. Combined, these industries employ or support employment for the majority of the more than 730,000 Alaskans who call Alaska home, including Alaska Native communities. For more than 48 years, RDC has proud history of balancing the need for a diverse economy with the need for the responsible development of our natural resources.

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(907) 276-0700

121 West Fireweed, Suite 250, Anchorage, Alaska 99503

[www.akrdc.org](http://www.akrdc.org)



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It is one of RDC's priorities to encourage the responsible development of Alaska's natural resources, and to encourage new exploration and projects. Projects such as this are more important than ever to provide responsible development of our nation's critical minerals in a permitting jurisdiction held to some of the highest environmental standards in the world. It is time for our federal agencies to conclude its very extensive review of this Project and allow it to move forward to its next phases.

**Background:** The Ambler Access Project is a proposed 211-mile road that will cross state (61%), Native corporation (15%), and federal lands (24%). The planned route is the shortest route between the existing Dalton Highway and the deposit rich Ambler mining district – a district rich in critical minerals. RDC previously commented in support of Preferred Alternative A pursuant to the original final EIS and ROD issued in 2020. RDC has commented several times in support of this Project throughout the course of this federal permitting process – most recently in December 2023 for the draft SEIS issued on this Project - and reiterates its support today.

The draft SEIS was a result of a 2022 court order from the U.S. District Court for the District of Alaska (District Court) after the Department of Interior (DOI) sought a voluntary remand of a final EIS and Record of Decision issued in 2020 that authorized the Project to proceed pursuant to Preferred Alternative A. The District Court ordered a remand of final EIS subject to two narrow issues. RDC previously commented on the proper scope for BLM to conduct the SEIS analysis. After several delays, BLM issued the draft SEIS in late 2023 that RDC pointed out far exceeded the scope of the District Court's remand. RDC maintained its support for Alternative A and encouraged BLM to move expeditiously to finalize a record of decision identifying Alternative A as the preferred alternative.

Similarly, today, RDC is concerned to learn of this proposed Revised APE document that significantly exceeds the scope of the remand. RDC also believes the Revised APE also exceeds the scope and intent of Section 106 and supporting regulations.

BLM's prior extensive analysis was in cooperation with multiple state, federal, and local cooperating agencies, with extensive public hearings, scoping meetings, and consultations, which began as early as 2015, when AIDEA first submitted its application. BLM's review included more than 330 days of public comment, public scoping period, and fifteen public meetings in thirteen rural Alaska village communities, including Allakaket, Huslia, Alatna, Hughes, Kobuk, Shungnak, Noorvik, Kiana, Ambler, and Evansville. After the draft EIS was released in August 2019, BLM held another eighteen public hearings in the same village communities, Anchorage, Fairbanks and Washington, D.C. BLM processed more than 29,000 written comments to the DEIS alone. Consultation was also extensive: more than 52 letters to federally recognized tribes were sent to solicit input on the Project; fifteen government-to-government consultations occurred; eleven Section 106 consultation meetings occurred; and an additional eight stakeholder meetings were held. More than thirty cooperating agency meetings were held that included representatives from



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Allakaket Tribal Council, Alatna Village Council, Hughes Traditional Council, Northwest Arctic Borough, Noorvik Native Community.

This Revised APE once again illustrates BLM's interest in expanding the scope and complexity of the remand rather than providing critical predictability for the project applicant and other stakeholders. The federal law authorizing the right of way access to the Ambler Mining District guaranteed an expedited process. The BLM is not honoring the mandate of ANILCA and is instead delaying the State of Alaska's entitlement to access its lands.

### ***Concerns to the Draft Proposed Revised APE:***

The National Historic Preservation Act contains a process – called the Section 106 process – that is being mis-used by BLM in the context of the Ambler Road permitting. BLM is now proposing a 7-10 fold increase in the geographic scope that would have to be evaluated under Section 106. This area, the so-called Area of Potential Effects (APE) would be unprecedented in Alaska permitting.

BLM is now proposing to use the Section 106 process primarily to protect wildlife, including caribou, moose, bear, and Dall sheep. Section 106 is not a wildlife protection scheme; instead, it is a scheme to require evaluation of historic and cultural remains. Other federal laws, such as ANILCA Section 810, are focused on the protection of wildlife and subsistence. BLM should not use Section 106 to duplicate the work that happens under ANILCA and other statutes. In fact, BLM expressly notes that this is not a proper application of the Section 106 process on page 4 of the Revised APE but goes to great lengths to justify why it is doing so.

The tenfold (1000%) increase in the scope of the proposed Revised APE would exponentially expand the complexity, cost and level of effort involved to identify properties within it and the timeframe for completion of the Section 106 process. (Note: this is an approximation based on the prior 2-mile total APE and the new figure of 2,000,000 acres.)

The original APE was an appropriate exercise of BLM's discretion to determine the APE for the undertaking. Its rationale was documented and received the SHPO's concurrence. Projects (like road construction) have characteristic impacts that fall within the experience and competencies of federal agencies. Absent special circumstances, there is no reason to depart from the agency's longstanding past practice based on the typical impacts of road construction.

The proposed change in the Revised APE, if adopted, will also likely bring significant uncertainty to projects that have been approved over the past several years in records of decision that government and private sector entities have understood to be final. Again, the lack of certainty raised by this proposed Revised APE should even give agency officials pause for exceeding their proper scope of analysis.



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The new APE conflicts with the process prescribed in the ACHP regulations, under which the nature and scale of the undertaking – not the historic properties in “the region” – define the APE. Under the default four steps of the Section 106 process prescribed in regulations promulgated by the ACHP (“Subpart B”), an agency must: (1) identify the undertaking (36 C.F.R. § 800.3), (2) identify historic properties – the first step of which is to identify the APE (id. § 800.4(a)); (3) assess the undertaking’s impacts on historic properties (id. § 800.5); and (4) resolve adverse impacts, if any (id. § 800.6).

BLM’s rationale of assessing impacts to caribou and other wildlife species that might avoid the road is not based on any criteria that fall within the regulatory definition of “effects” on historic properties. 36 C.F.R. 800.5. Furthermore, impacts to subsistence resources were already analyzed to the extent required as part of the ANILCA Section 810 analysis for the Road.

In addition to dramatically extending the timeframe for applicants to build their projects, the precedent that would be set by the proposed change would greatly augment the workload of the federal agencies and potentially state agencies, who are ultimately responsible for inventorying resources within the APE. This will put a drain on the funds and resources of federal land management agencies to support far-ranging survey activities on state and tribally owned lands.

**Conclusion:** RDC supports rational permitting schemes, including the legitimate use of the Section 106 process to protect culturally and historically significant properties. But Section 106 should not be viewed or used by federal agencies as a de facto land management tool. As RDC has stated many times in the past regarding this Project, as well as other Alaskan resource development projects, subsistence and wildlife management are critical considerations in the permitting process. However, for the reasons outline above, the Revised APE is not the proper place to do so and exceeds the scope of authority under Section 106.

RDC has members that cover every facet of the proposed Ambler Access Project, from the potential construction companies and engineering firms that will build the road, to the mining companies that will be able to operate, to the telecommunications companies that will expand broadband access, as well as Alaska Native corporations and their communities who will benefit, if the AAP is approved. This project represents more than just jobs and economic benefits. Access to the Ambler mining district, including a right-of-way through federal lands guaranteed by Congress in ANILCA in 1980. Older than the commitments in ANILCA is the creation of Alaska Native Corporations under the Alaska Native Claims Settlement Act of 1971, which ensured that it would be Alaska Native communities making final decisions and reaping the eventual benefits of land use. The federal government’s involvement in this matter should be straightforward and not interfere with, or undercut, any of the vital local decision making regarding this project.



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Alaskans deserve the right to leverage our resources. We have proven time and time again that we can responsibly steward our resources. We have a history that we can be proud of which demonstrates our ability to protect the surrounding environment and mitigate concerns while maximizing benefits for Alaskans through the responsible development of our resources. If the federal land management agencies continue to stall permitting, delay final decisions, including proposed new routes or mitigation measures that are uneconomic and beyond the scope of court ordered remands, our self-determination is directly undermined.

We respectfully encourage BLM to withdraw the proposed document and continue to a final record of decision in an expeditious manner. It is critical for the BLM to adhere to its timeline commitment for permitting and avoid future delays.

Thank you for your consideration of these comments.

Sincerely,

Leila Kimbrell  
Executive Director

Cc: BLM State Director Steve Cohn  
Governor Michael J. Dunleavy  
Senator Lisa Murkowski  
Senator Dan Sullivan  
U.S. Representative Mary Peltola



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