To: State Legislators and Media Contacts

From: Trustees for Alaska on behalf of the No Road to Ambler Coalition

Date: March 25, 2020

The Alaska Industrial Development and Export Authority (AIDEA) is attempting to unilaterally appropriate $35 million toward the Ambler Road project, in violation of the Alaska Constitution and state law — all at a time when the rest of the state’s and the public’s attention is directed at addressing the current coronavirus crisis.

AIDEA’s board is proposing to adopt Resolution No. G20-11 this Friday, March 27. The resolution would transfer and authorize the expenditure of $35 million for pre-construction work on its proposed Ambler Mining District Industrial Access Project (Ambler Road). According to the resolution, the money would fund “expert engineering, attorney, advisor, and other professional fees to work on permitting, road and bridge design, acquisition of rights-of-way, public outreach, cultural resources evaluations, and other tasks necessary or convenient to reaching a decision point on whether to proceed with the construction of the project.”

AIDEA’s actions would be directly contrary to the Alaska State Constitution and the Executive Budget Act. The Alaska Constitution vests the Alaska Legislature with the authority to appropriate funds, and both the Constitution and the Executive Budget Act outline the procedures and steps that must take place for there to be a valid appropriation.[[1]](#footnote-1) The Executive Budget Act specifically states that the actions of agencies are limited by executive decisions of the governor and appropriations by the legislature.[[2]](#footnote-2) The approvals for funding the Ambler Road would need to occur through an appropriations process by the legislature, and are done pursuant to a detailed process outlined in the statute. That has not occurred here. The Ambler Road and the permitting process for the road is a capital project[[3]](#footnote-3) and is funded through the state capital budget.[[4]](#footnote-4) The Ambler Road project is a capital appropriation item, and AIDEA cannot increase funding for this Project without approval, regardless of the source of that funding. Funds for the project are subject to appropriation by the legislature, not AIDEA. Because AIDEA has been unable to secure additional funding for the Ambler Road through the legislature and the capital budget process, it is now attempting to make an end-run around the authority of the legislature by unilaterally appropriating money from its revolving fund to this project.

The resolution would transfer the $35 million from AIDEA’s revolving fund to the Arctic Infrastructure Development Fund. However, AIDEA’s actions would be directly at odds with the purpose of that fund, which is targeted at providing financing for Arctic projects — i.e., loans.[[5]](#footnote-5) AIDEA is not proposing to provide financing under that program; it is making what amounts to a capital budget expenditure, without legislative approval or oversight. AIDEA in fact has no current plan in place for repayment of this money to the state, nor does AIDEA have an approved operations or financial plan in place for this project. It is inappropriate and contrary to state law for AIDEA to single-handedly appropriate these funds toward the Ambler Road. It also violates AIDEA’s fiduciary duty to the state and the people of Alaska to manage funds in a responsible manner — especially at a time when the state is in a crisis financially and due to the current pandemic.[[6]](#footnote-6)

Separately, AIDEA is also proposing Resolution No. G20-08, which would adopt a regulation allowing AIDEA to waive or modify the requirements of its own regulations during times of statewide emergency.[[7]](#footnote-7) AIDEA is proposing to adopt this broad resolution with no advance public notice or going through normal regulatory procedures, and its authority to adopt such a Resolution is unclear. It is unclear how AIDEA anticipates using this authority or whether it relates to its actions on the Ambler Road. Regardless, it would in no way negate AIDEA’s potential violations of the Alaska Constitution and the Executive Budget Act if it adopts its Ambler appropriation resolution.

1. *See, e.g.*, AS §§ 37.07.010-37.01.130; Alaska Const. art. II, art.IX § 12 (indicating the governor is required to submit to the legislature a proposed budget setting forth “all proposed expenditures and anticipated income of all departments, offices, and agencies of the state”); *Alaska Legislative Council v. Knowles*, 21 F.3d 367, 371 & n.21 (2001) (indicating the legislature holds “the power to legislate and appropriate” and “recognizing that appropriation power resides in [the] legislature and cannot be delegated to [the] executive”). [↑](#footnote-ref-1)
2. AS § 37.07.080(a); AS § 37.07.014(f). [↑](#footnote-ref-2)
3. AS § 37.07.120(4) (“‘capital projects’” and ‘capital improvements’ mean an allocation or appropriation item for an asset with an anticipated life exceeding one year and a cost exceeding $25,000 and include land acquisition, construction, structural improvement, engineering and design for the project, and equipment and repair costs.”). [↑](#footnote-ref-3)
4. [FY 2015 Capital Budget](https://omb.alaska.gov/ombfiles/15_budget/PDFs/Capital_Budget_Bill_SB0119Z.PDF), at 3:17; [AIDEA Response to Walker Administrative Order No. 271](file://trusteesdc/shared/America%27s%20Arctic/99.1%20Ambler%20Road%20and%20Mining/Administrative/Walker%20Administration/2015%2001%2009%20Ambler_Road_Project_Response_OMB%20-%204%20Page%20Version.pdf), at 1 (Jan. 2015) (explaining the funding source for the project is state capital appropriations from FY 2013 through FY 2015). [↑](#footnote-ref-4)
5. AS 44.88.800 (indicating the Arctic infrastructure development program was created “to promote and provide *financing* for Arctic infrastructure development”); 3 AAC 103.900 (defining *financing* to mean “either a loan or a guarantee of a loan or bond or a financing arrangement subject to the limitations on financing in AS 44.88.840”). [↑](#footnote-ref-5)
6. *See, e.g.*, AS 37.10.071. [↑](#footnote-ref-6)
7. Proposed 3 AAC 99.925 [↑](#footnote-ref-7)