



TRUSTEES FOR ALASKA

PROTECT | DEFEND | REPRESENT

Submitted via e-mail and mail

March 28, 2024

Kate Burkhart
Alaska State Ombudsman
1500 West Benson Boulevard
Anchorage, Alaska 99503

Re: Complaint Regarding the Alaska Industrial Development and Export Authority's Unauthorized Expenditures of State Funds for the Ambler Mining District Industrial Access Road and Arctic National Wildlife Refuge Oil and Gas Leases

Dear Ms. Burkhart:

Trustees for Alaska submits the following complaint regarding continuing actions by the Alaska Industrial Development and Export Authority (AIDEA) authorizing expenditures for the Ambler Mining District Industrial Access Road (Ambler Road) and the Arctic National Wildlife Refuge (Arctic Refuge) oil and gas leases. AIDEA has unilaterally and repeatedly appropriated millions of dollars toward these projects without legislative approval, contrary to both the Alaska Constitution and AIDEA's statutory authority, as discussed in detail below.¹

The expenditures authorized unilaterally by the AIDEA board of directors for the Ambler Road and the Arctic Refuge, as documented in this complaint, total nearly \$54 million. AIDEA's actions not only usurped the authority of the Legislature, but also excluded the public from being able to play a meaningful role in overseeing how AIDEA expends state financial resources. These expenditures are occurring at a time when the state is facing budget limits and shortfalls.² At the same time, AIDEA also attempted to pay only a \$4 million cash dividend to the state treasury last year, along with attempting to transfer the failed Mustang Road to the state, instead

¹ See discussion *infra* at pp.11–16 (discussing the specific constitutional and statutory violations).

² Sean Maguire, *Falling Oil Prices Leave Alaska Lawmakers with a \$925 Million Revenue Hit, Affecting Budget and PFD*, ANCHORAGE DAILY NEWS, Mar. 21, 2023, <https://www.adn.com/politics/alaska-legislature/2023/03/21/falling-oil-prices-leave-alaska-lawmakers-with-a-925-million-revenue-hit-affecting-budget-and-pfd> (last visited Mar. 14, 2024); Yereth Rosen, *Dunleavy Proposes 'Status Quo' Alaska Budget, Nearly \$1 Billion Deficit to be Filled by Savings*, ALASKA BEACON, Dec. 14, 2023, <https://alaskabeacon.com/2023/12/14/dunleavy-proposes-status-quo-budget-with-nearly-1-billion-deficit-to-be-filled-by-savings/> (last visited Mar. 14, 2024).

of paying what would otherwise have been a \$17.8 million dividend to the state.³ The millions of dollars AIDEA improperly spent to date could have been used to meet other state needs and priorities. AIDEA should not be illegally usurping the Legislature's authority to determine whether and how to appropriate limited state funds, or the public's ability to weigh in on statewide financial decisions.

This is a matter of significant public concern. Trustees for Alaska respectfully requests that the Ombudsman immediately conduct an investigation into AIDEA's pattern of making expenditures without appropriate legislative approval and issue formal recommendations to resolve the issue, including recommendations to the agency to ensure its conduct complies with the law, as well as any recommended statutory changes to the Legislature to prevent AIDEA from acting contrary to the Alaska Constitution and beyond the scope of its statutory authority in the future.

Background

Ambler Road Expenditures

The estimated cost of building the Ambler Road is at least \$579.3 million.⁴ When accounting for ongoing maintenance costs of \$9.2 million per year and the interest costs for bonds sold to finance construction (\$551 million), the project will likely cost upwards of \$1.4 billion.⁵ To cover these costs, road users would need to collectively pay \$46.9 million in tolls per year for 30 years.⁶ At this time, there is only one mining company with one mining project poised to contribute toward any future costs of the road, and that company's payments would amount to only a small portion of the total cost per year for the 12-year operating life of that mine.⁷

While AIDEA may in the future finance the construction of this project through bonds, AIDEA is not yet at the stage where it is trying to issue bonds. As detailed below, AIDEA has instead been spending money outright to advance this project to the construction stage. Prior to 2019, AIDEA utilized funds that had properly gone through the legislative appropriations process for work on the Ambler Road.⁸ After the Legislature did not approve additional

³ James Brooks, *State Development Corporation Plans to Give Road — and Possible Costs to Alaska Government*, ALASKA BEACON, Mar. 16, 2023, <https://alaskabeacon.com/2023/03/16/state-development-corporation-plans-to-give-road-and-possible-costs-to-alaska-government> (last visited Mar. 14, 2024).

⁴ THOMAS MICHAEL POWER & DONOVAN POWER, POWER CONSULTING INC., AN ECONOMIC ANALYSIS OF THE PROPOSED ALASKA AMBLER ACCESS ROAD 14 (2021) (Attachment 1). The Power report references Trilogy Metals, the parent company to Ambler Metals.

⁵ *Id.* at 6, 14. Accounting for inflation, this figure is likely significantly higher now.

⁶ *Id.* at 15.

⁷ *Id.* at 17, 19–20.

⁸ *See, e.g.*, S. Bill 119, 2d Sess. (2014) (appropriating \$8.5 million toward the Ambler Road); Memorandum from Ted Leonard, Executive Director, to AIDEA Board Members re: Resolution No. G14-02 Relating to Permits, an Environmental Impact Statement and other work on the Proposed Ambler Mining District Industrial Access Road 2 (Apr. 24, 2014) (Attachment 2); AIDEA, Resolution No. G14-02: Resolution of the Alaska Industrial Development and Export Authority Relating to Permits, an Environmental Impact Statement and Other Work on

appropriations for the project, AIDEA began unilaterally directing money toward the Ambler Road project without approval by the Alaska Legislature through the budget process. A summary of those unauthorized expenditures — totaling \$33,882,000 — is provided herein, with relevant documentation attached.

In 2019, the AIDEA board appropriated \$718,000 to the Ambler Road from its general fund without legislative approval.⁹ The purpose of the expenditure was to cover costs to advance the Ambler Road environmental review process to the final Environmental Impact Statement (EIS) stage. The costs included consultant fees for responding to comments on the draft EIS, preparing a cultural resources plan, developing a mitigation plan for the U.S. Army Corps of Engineers, establishing a subsistence committee, and paying for ongoing legal fees and travel costs.

On March 27, 2020, the AIDEA board adopted Resolution G20-11, in which AIDEA's board of directors shifted \$35 million from its general fund into its Arctic Infrastructure Development Fund (AIDF) for use on the Ambler Road project.¹⁰ The board at that time did not

the Proposed Ambler Mining District Industrial Access Road (Apr. 24, 2014) (Attachment 3) (indicating the board was allocating money toward the project pursuant to the legislatively authorized appropriation); Office of Mgmt. & Budget, State of Alaska, Capital Appropriation Status Report 263 (Feb. 2, 2016) (Attachment 4) (indicating in the status report on capital appropriations that AIDEA received \$8.5 million in capital appropriations for the Ambler Road in 2014, of which it had spent over \$6 million as of early 2016).

⁹ Memorandum from Tom Boutin, Executive Director, to AIDEA Board Members re: Predevelopment Work for Resource Access Roads and Resolution No. G19-21, at 2 (Oct. 23, 2019) (Attachment 5); *see also* AIDEA, Resolution No. G19-21: Resolution of the Alaska Industrial Development and Export Authority Relating to Predevelopment Work on Potential Access Road Projects (Oct. 23, 2019) (Attachment 6); Elwood Brehmer, *Final Ambler Road Review Out; AIDEA Adds \$35M for Project*, ALASKA J. OF COMMERCE, Apr. 1, 2020, <https://www.alaskajournal.com/2020-04-01/final-ambler-road-review-out-aidea-adds-35m-project> (Attachment 7). The AIDEA board also unilaterally appropriated \$50,000 for the West Susitna Access Road in the same resolution (G19-21), despite not having received approval from the Legislature for that expenditure. The board again approved an additional \$162,500 in spending toward the West Susitna Access Road in Resolution No. G20-20 in 2023. AIDEA, AIDEA Predevelopment Projects Quarterly Report (Mar. 1, 2023) (Attachment 8) [hereinafter AIDEA 2023 Report]. These expenditures suffer the same legal flaws as the other improper expenditures outlined in this complaint and warrant review.

¹⁰ In the original version of Resolution G20-11, the AIDEA board expressly authorized AIDEA to spend up to \$35 million on the Ambler Road. AIDEA, Resolution No. G20-11: Resolution of the Alaska Industrial Development and Export Authority Transferring [sic] Funds to the Arctic Infrastructure Development Fund, Approving the Ambler Mining District Industrial Access Project as an Arctic Infrastructure Development, and Authorizing Expenditures from the Arctic Infrastructure Development Fund for Pre-Development Work on the Ambler Mining District Industrial Access Project (Mar. 27, 2020) (draft) (Attachment 9) (stating 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”). The board subsequently modified its

authorize any specific expenditures of those funds. However, the board subsequently adopted Resolution G20-19, which authorized AIDEA to spend up to \$500,000 from the AIDF to pay for agencies, consultants, engineers, attorneys, and others to do predevelopment work on the Ambler Road.¹¹ In addition to that amount, the board authorized AIDEA to spend additional funds “for costs incurred for staff time, staff travel, administrative, and overhead costs of the Authority relating to the project.”¹² In the resolution, the board included the caveat that AIDEA was only authorized to spend the \$500,000 on the condition that the funds would be matched by funds made available by Ambler Metals, the primary company planning to advance a mining project related to the Ambler Road.¹³ However, there was no requirement or agreement in place for Ambler Metals to reimburse or pay back the \$500,000 amount, and the \$500,000 was slated to be a direct expenditure, not a loan to Ambler Metals.¹⁴ AIDEA’s board claimed it was authorized to make this expenditure pursuant to its “authori[ty] [under the AIDF] to enter into agreements with government entities for the transfer and control of infrastructure, facilities, rights-of-ways, and studies and to contract for services with a professional advisor, including an attorney, bond counsel, engineer, or other technical expert necessary to fulfill the purposes of the program.”¹⁵

In 2020, after two sets of parties filed litigation challenging the legality of the federal authorizations related to the Ambler Road, AIDEA’s board authorized additional expenditures of up to \$500,000 from the AIDF to retain a private law firm to represent AIDEA in those lawsuits.¹⁶ The board purported to take this action pursuant to the statutory provision establishing the AIDF related to “contract[ing] for services with a professional advisor, including an attorney or other technical expert necessary to fulfill the purposes of the program.”¹⁷

In 2021, AIDEA entered into an agreement (“2021 Development Agreement”) with Ambler Metals wherein AIDEA and Ambler Metals agreed to contribute up to \$35 million each

resolution. The modified resolution still transferred \$35 million from AIDEA’s revolving fund to the AIDF for use on the Ambler Road project, but added a provision requiring further approval from the board prior to any expenditures. AIDEA, Resolution No. G20-11: Resolution of the Alaska Industrial Development and Export Authority Transferring [sic] Funds to the Arctic Infrastructure Development Fund, and Approving the Ambler Mining District Industrial Access Project as an Arctic Infrastructure Development (Mar. 27, 2020) (Attachment 10). At the March 27, 2020, meeting, the AIDEA board indicated its intent was to use the funding for pre-construction work on the Ambler Road that summer.

¹¹ AIDEA, Resolution No. G20-19: Resolution of the Alaska Industrial Development and Export Authority Relating to Predevelopment Work for the Ambler Access Project 2–3 (June 24, 2020) (Attachment 11).

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *See id.*

¹⁵ *Id.* at 2; *see also* AS 44.88.830(a)(6).

¹⁶ AIDEA, Resolution No. G20-29: Resolution of the Alaska Industrial Development and Export Authority Approving Intervention into Litigation Related to the Ambler Project and Appointing Litigation Counsel (Oct. 28, 2020) (Attachment 12).

¹⁷ *Id.* at 2; *see also* AS 44.88.830(a)(6).

for predevelopment costs for the Ambler Road.¹⁸ The agreement indicates AIDEA and Ambler Metals would each cover 50% of the costs as set out in an annual budget.¹⁹ AIDEA's share of these expenditures are not loans — they are outright expenditures without any agreement in place for those costs to be repaid by Ambler Metals or any other entity.²⁰ Additionally, the agreement indicates that even the amounts contributed by Ambler Metals for its share of the costs at this stage would be credited toward future tolls if the project proceeds to financing and construction.²¹ This further reduces the potential proceeds to the state and increases AIDEA's long-term expenditures. The Legislature never approved AIDEA's expenditures of those funds through the budget process. AIDEA again claimed to be acting pursuant to its purported authority under the AIDF to finance Arctic infrastructure development.²²

On April 14, 2021, the AIDEA board authorized AIDEA to spend up to \$6,500,000 from the AIDF for use on 2021 field work for the Ambler Road.²³ Similar to past resolutions, the AIDEA board indicated it was relying on its purported authority under the AIDF to “finance” Arctic infrastructure development and to enter into agreements for rights-of-ways and studies, and to contract for services with a professional advisor.²⁴ While the funds would be matched by Ambler Metals, the funds were to be spent directly by AIDEA on that work — i.e., not via a loan and with no commitment for repayment by Ambler Metals.²⁵ The funds were to be used for program management, stakeholder outreach, geotechnical investigations, right-of-way surveys, environmental studies, project designs for the bridges and roadway, land access agreements from landowners and managers, and cultural resources work.²⁶

On the same day, the AIDEA board also authorized AIDEA to spend \$300,000 from the AIDF to pay Doyon, Limited for three years of annual fees and to “make such other expenditures

¹⁸ Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Ambler Access Development Agreement with Ambler Metals LLC: Resolution No. G21-03, at 1 (Feb. 10, 2021) (Attachment 13).

¹⁹ *Id.*

²⁰ *See id. ex. A*, at 5 (indicating in the Ambler Access Development Agreement that Ambler Metals will only reimburse AIDEA for half of the reimbursable costs up to \$35,000,000).

²¹ *Id. ex. A*, at 6–7.

²² AIDEA, Resolution No. G21-03: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project 1–2 (Feb. 10, 2021) (citing AS 44.88.830(a)(2), (5)–(6)) (Attachment 14).

²³ AIDEA, Resolution No. G21-09: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project to Conduct Certain Final Feasibility and Permitting Activities with Respect to the 2021 Field Season Plan and Budget (Apr. 14, 2021) (Attachment 15).

²⁴ *Id.* at 1–2.

²⁵ Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Ambler Access Project 2021 Field Season and Plan: Resolution No. G21-09, at 1 (Apr. 14, 2021) (Attachment 16); *see also id. ex. A*, (setting out the individual budgetary estimates for program management, stakeholder outreach, survey and mapping, roadway and structures design, hydraulic and hydrologic design, geotechnical investigations and design, facilities design, cultural resources work, wetlands mapping, logistics, and access agreements).

²⁶ *Id.* at 1–2.

as needed,” including for insurance or a bond in the amount of \$500,000, to access Doyon lands along the route for the Ambler Road.²⁷ Later in 2021, the AIDEA board also authorized AIDEA to pay NANA Regional Corporation, Inc. an annual fee of \$38,000 for approximately three years (approximately \$114,000 total) to access NANA lands for field work related to the feasibility of the route for the project.²⁸

In 2022, the AIDEA board authorized AIDEA to spend up to \$15,400,000 from the AIDF for work related to AIDEA’s 2022 project plan and field work.²⁹ Similar to past resolutions, the resolution indicated the board was acting pursuant to its purported authority under the AIDF to finance Arctic infrastructure development and the AIDF provision that allows AIDEA to enter into agreements for rights-of-ways, studies, and contracting for professional services.³⁰ Those funds were to be matched, but not reimbursed, by Ambler Metals pursuant to the 2021 Development Agreement as part of an overall \$30.6 million budget for AIDEA’s 2022 work on the Ambler Road.³¹ The 2022 program included expenditures for program management, communications work, stakeholder outreach, design and survey work, geotechnical work, facilities, cultural resources, environmental and permitting work, independent cost estimating, logistics, and access agreement and right-of-way payments.³²

The AIDEA board adopted an additional resolution in 2022 that authorized AIDEA to spend an additional \$250,000 from the AIDF to pay for a feasibility analysis related to the Ambler Road.³³ The resolution indicated the analysis was to look at the feasibility of the Ambler Road corridor connecting to road, rail, and port infrastructure to support the export of mining ore produced from the Ambler mining district via rail-accessed ports in Southcentral Alaska.³⁴

²⁷ AIDEA, Resolution No. G21-10: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project with Respect to a Land Access Agreement with Doyon Limited to Conduct Pre-Development Activities 3 (Apr. 14, 2021) (Attachment 17).

²⁸ AIDEA, Resolution No. G21-22: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project with Respect to a Land Access Permit with NANA Regional Corporation to Conduct Certain Development Activities (Sept. 30, 2021) (Attachment 18).

²⁹ AIDEA, Resolution No. G22-03: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project to Conduct Certain Final Feasibility and Permitting Activities with Respect to the 2022 Field Season Plan and Budget (Jan. 27, 2022) (Attachment 19).

³⁰ *Id.* at 2.

³¹ Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Ambler Access Project 2022 Field Season Plan and Budget: Resolution No. G22-03 (Jan. 14, 2022) (Attachment 20) [hereinafter Memorandum re: Resolution G22-03].

³² *Id.* at 3.

³³ AIDEA, Resolution No. G22-06: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project to Conduct Technical Feasibility Studies of the Ambler Access Corridor and Proposed Tidewater Export Terminals (Apr. 13, 2022) (Attachment 21).

³⁴ *Id.* at 2.

In March of 2023, the AIDEA board approved a resolution that consolidated three of its prior resolutions for accounting purposes: Resolution G20-19 for the 2020 pre-development costs, Resolution G21-09 for the 2020 field season plan and budget, and Resolution G22-03 for the 2022 field season plan and budget.³⁵ The board did not expressly authorize any specific, new expenditures, but did indicate it was authorizing future expenditures based on future ratifications by the board for development of the Ambler Road.³⁶ The staff memorandum supporting the resolution noted that Ambler Road funding to date has totaled \$63 million, with \$38.4 million expended and \$24.5 million encumbered.³⁷ AIDEA's combined budget approvals in Resolutions G20-19, G21-09, G22-03 — none of which tie back to legislatively approved appropriations — totaled \$22.4 million (with a combined budget totaling \$44.8 million, when accounting for Ambler Metals' 50% cost share).³⁸ Of that \$44.8 million, AIDEA indicated it had spent nearly \$19 million, has encumbered over \$24.3 million, and has a balance of approximately \$1.5 million.³⁹

The AIDEA board subsequently approved an updated version of this resolution in October 2023.⁴⁰ The updated resolution authorized AIDEA to finalize contracts with engineers, contractors, and other professionals in accordance with a 2024 project budget and increased the spending authorization from \$22.4 million up to \$26.5 million from the AIDF.⁴¹ The resolution

³⁵ AIDEA, Resolution No. G23-07: Resolution of the Alaska Industrial Development and Export Authority Relating to the Development of the Ambler Project Through the Consolidation of Previously Approved Project Funding Resolutions G20-19, G21-09, and, G22-03 in Order to Record Project Expenditures by Fund Source (Mar. 1, 2023) (Attachment 22).

³⁶ *Id.* at 3.

³⁷ Memorandum from Randy Ruaro, Executive Director, to AIDEA Board Members re: Resolution G23-07 Ambler Road Project Budget Reporting 1 (Mar. 1, 2023) (Attachment 23). The \$63 million figure appears to include both the amounts AIDEA spent toward the project without legislative approval, as well as amounts appropriated by the Legislature toward the project prior to the start of AIDEA's unilateral spending decisions in 2019.

³⁸ *See id.* at 1.

³⁹ *Id.*; *see also* AIDEA 2023 Report, *supra* note 9. In February 2023, AIDEA reallocated \$2,235,975 of those funds to pay for costs associated with preparation of a Supplemental EIS. Letter from Jeffrey San Juan, Interim Program Mgr., Ambler Access Project, to Randy Ruaro, Executive Director, AIDEA, and Ramzi Fawaz, President & Chief Executive Officer, Ambler Metals, LLC, re: Request for Task and Budget Changes for the 2022/2023 Field Season for the Ambler Access Project (Feb. 14, 2023) (Attachment 24).

⁴⁰ AIDEA, Resolution No. G23-07A: Resolution of the Alaska Industrial Development and Export Authority Relating to the Development of the Ambler Project Through the Consolidation of Previously Approved Project Funding Resolutions G20-19, G21-09, and, G22-03 in Order to Record Project Expenditures by Fund Source (Oct. 30, 2023) (Attachment 25) [hereinafter Resolution G23-07A].

⁴¹ *Id.* at 3. AIDEA recently signed contracts with four consultants for “community liaison and workforce development.” Nathaniel Herz, *Alaska Development Authority Signs Contracts with Ex-Dunleavy Aides, Paying Up to \$295/Hour*, Alaska Beacon, Mar. 19, 2024, <https://alaskabeacon.com/2024/03/19/alaska-development-authority-signs-contracts-with-ex-dunleavy-aides-paying-up-to-295-hour> (Attachment 26). Each of those contracts will pay between \$168,000 and \$250,000 this year. *Id.* The request for proposals indicates AIDEA may extend each of the contracts for an additional three years, for a combined total of four years and

again indicates the AIDEA board was purporting to act pursuant to its authority under the AIDF.⁴² This resolution added an additional \$4.1 million in spending from the AIDF for the 2024 field work season.⁴³ Similar to prior authorizations, this approval was for an outright expenditure and not for a loan.

Further, in April 2023 the board adopted an additional resolution that authorizes AIDEA to spend up to \$4.5 million from AIDEA’s Economic Development Account, the Sustainable Energy and Transmission Fund, and the AIDF to do “pre-feasibility, planning, and analysis tasks for projects that relate to the development of natural resources, industrial access roads, ports, port facilities, ore terminals, ore processing facilities, energy facilities, energy projects, Arctic infrastructure, and industrial manufacturing facilities.”⁴⁴ Although it is not clear if it is directly related to the Ambler Road, the resolution does not identify any specific statutory authority for the appropriation and does not provide any indication that the expenditure was approved at any point by the Legislature.⁴⁵ The resolution also notes that these pre-feasibility assessments “may or may not be reimbursed.”⁴⁶

Arctic Refuge Oil and Gas Lease Expenditures

On December 23, 2020, the AIDEA board adopted Resolution G20-31, which unilaterally approved the expenditure of up to \$20 million to bid on oil and gas tracts for the Arctic Refuge lease sale.⁴⁷ The Legislature never appropriated or otherwise approved AIDEA’s use of those funds to bid on Arctic Refuge leases. AIDEA had never previously expended funds to purchase leases on Alaska state or federal lands. The board made the rushed decision to bid on Arctic Refuge leases with very short public notice and almost entirely behind closed doors. AIDEA subsequently bid on lease tracts at a January 6, 2021 lease sale, and was the high bidder on nine

up to \$1,000,000. AIDEA, Request for Proposals: State of Alaska Public Outreach and Community Liaison Professional Services: RFP 24046, at 4 (Aug. 18, 2023) (Attachment 27). The source of these funds is unclear. However, it is possible the money is coming in whole or in part from the funds the AIDEA board unilaterally allocated toward the Ambler Road, which included \$1.2 million for “Stakeholder Outreach” (including “Workforce Development Committees”) in 2024 alone. Memorandum from Randy Ruaro, Executive Director, to AIDEA Board Members re: Ambler Access Project 2024 Field Season Plan and Budget: Resolution No. G23-07A, at 2–3 (Oct. 16, 2023) (Attachment 28) [hereinafter Memorandum re: G23-07A].

⁴² Resolution G23-07A, *supra* note 40, at 1–2.

⁴³ Memorandum re: G23-07A, *supra* note 41, at 1, 3.

⁴⁴ AIDEA, Resolution No. G23-08: Resolution of the Alaska Industrial Development and Export Authority Relating to the Approval of the Expenditure of Funds for the Purpose of Initial Planning and Analysis with Respect to Developing and Financing AIDEA Projects, Infrastructure Development, Energy Development Projects, Land and Project Site Development, and Intermodal Transportation, Industrial Transportation, Industrial Access Roads and Port(s) 3 (Apr. 11, 2023) (Attachment 29).

⁴⁵ *Id.*

⁴⁶ *Id.* at 3.

⁴⁷ AIDEA, Resolution No. G20-31: Resolution of the Alaska Industrial Development and Export Authority Relating to the Evaluation and Potential Submission of Bid(s) for the Coastal Plain Alaska Oil and Gas Lease Sale 3 (Dec. 23, 2020) (Attachment 30).

tracts.⁴⁸ AIDEA entered into lease agreements for seven of those tracts, with the total expenditures for securing the leases coming to \$9,718,865.⁴⁹ Including the first-year lease payment, AIDEA initially spent \$12,802,615 to acquire the leases.⁵⁰

AIDEA's board approved two additional resolutions in 2021 for expenditures on Arctic Refuge oil and gas leases. The first, Resolution No. G21-18, authorized AIDEA to continue spending funds from the AIDF to contract for professional services and enter into leases and other agreements with government entities.⁵¹ The second, Resolution No. G21-33, authorized additional expenditures related to a lease payment.⁵² Both resolutions relied on AS 44.88.830 as the basis for AIDEA's purported authority to make those expenditures.

In December 2022, the AIDEA board adopted another resolution, Resolution G22-16, that again asserted AIDEA may use the AIDF to enter into lease agreements and engage in professional services under AS 44.88.830.⁵³ AIDEA claimed that opening "new areas in the Arctic for responsible oil and gas development is vital for the State's economy" and would "promote the sustainable utilization of Arctic infrastructure facilities."⁵⁴ In that resolution, AIDEA estimated that it would incur up to an additional \$6.8 million in "costs related to the preservation and prudent development of the [Arctic Refuge] Area Leases."⁵⁵ The board therefore authorized AIDEA to spend the full \$20 million amount shifted to the AIDF.⁵⁶ In the supporting memorandum for the resolution, AIDEA staff indicated that this amount was for \$6,000 in insurance and bonding costs, \$3,657,550 in annual lease payments, \$1.5 million in "pre-development activities," and \$1,139,159 to pay for AIDEA's hired attorneys for Arctic

⁴⁸ Bureau of Land Mgmt., U.S. Dep't of the Interior, 2021 Coastal Plain Lease Sale Bid Recap (Jan. 6, 2021), *available at* https://www.blm.gov/sites/default/files/docs/2021-01/BLM-Alaska_2021-Coastal-Plain-Sale-Bid-Recap_20210106.pdf.

⁴⁹ See AIDEA, Section 1002 Area, <https://www.aidea.org/Programs/Project-Development/1002-Area> (last visited Mar. 14, 2024). This figure includes the total amount AIDEA spent on the 7 leases plus one-fifth the bid amount for the two leases AIDEA did not sign, which AIDEA forfeited by law.

⁵⁰ AIDEA, Resolution No. G21-18: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Section 1002 Area Oil & Gas Leases Project to Conduct Certain Pre-Development Permitting Activities (June 23, 2021) (Attachment 31).

⁵¹ *Id.*

⁵² AIDEA, Resolution No. G21-33: Resolution of the Alaska Industrial Development and Export Authority Relating to On-Going Development of the Section 1002 Area Oil & Gas Leases Project and 2022 Budget (Dec. 1, 2021) (Attachment 32).

⁵³ AIDEA, Resolution No. G22-16: Resolution of the Alaska Industrial Development and Export Authority Approving a Calendar Year-2023 Budget and Project Plan for the Section 1002 Area Oil & Gas Leases (Dec. 19, 2022) (Attachment 33) [hereinafter Resolution G22-16].

⁵⁴ *Id.* at 2.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.* The \$6.18 million referenced in the resolution is the approximate difference between the \$13,822,130 in total costs AIDEA has spent to date and the \$20 million originally shifted to the AIDF for the Arctic Refuge leases in Resolution G20-31. See *id.* at 2–3.

Refuge-related litigation.⁵⁷ The expenses for “pre-development activities” were for AIDEA to procure professional services for the preparation and potential submission of permit applications for cultural and resource surveys and for a phased, multi-year seismic acquisition program.⁵⁸

As of the 2022 resolution, AIDEA had spent \$13,822,130 on the leases, which included the first year’s annual lease payment and expenses related to “pre-development activity.”⁵⁹ The Alaska Legislature never directly approved the expenditure of those funds through the budget process. There is also no third-party entity to which any funds have been loaned or that has any plans to advance development on the leases; it is solely AIDEA acting on behalf of itself to acquire and maintain the leases.⁶⁰ The only two other companies to bid on leases in the Arctic Refuge — neither one of which was a major oil company — walked away from those leases and requested the return of their payments, which BLM fully refunded.⁶¹

Last fall, due to legal defects with the leasing program for the Arctic Refuge, the Department of the Interior cancelled AIDEA’s leases and refunded AIDEA’s lease payments, which totaled \$12,801,425.⁶² However, AIDEA did not recover the money it had spent on pre-

⁵⁷ Memorandum from Morgan Neff, Interim Executive Director, to AIDEA Board Members re: Section 1002 Area (Coastal Plain) Oil & Gas Leases Budget 2023: Resolution No. G22-16, at 2, 4 & attach. C (Dec. 19, 2022) (Attachment 34).

⁵⁸ *Id.* at 2; *see also* James Brooks, *AIDEA Approves More Spending as It Seeks to Open Arctic Refuge for Drilling*, ANCHORAGE DAILY NEWS, Dec. 29, 2022, <https://www.adn.com/politics/2022/12/29/aidea-approves-more-spending-as-it-seeks-to-open-arctic-refuge-for-drilling> (Attachment 35). The amount AIDEA committed for a multi-year seismic exploration program is just for the cost of retaining SAExploration to assist with permitting. The cost to actually do seismic exploration would likely run in the tens of millions of dollars. The cost of a similar proposal was estimated back in 2018 to be \$250 million. Steven Mufson & Juliet Eilperin, *Companies Take First Steps to Drill for Oil in Arctic National Wildlife Refuge*, WASHINGTON POST, June 1, 2018, https://www.washingtonpost.com/business/economy/companies-take-first-steps-to-drill-for-oil-in-arctic-national-wildlife-refuge/2018/05/31/8f133464-643a-11e8-a768-ed043e33f1dc_story.html (Attachment 36).

⁵⁹ Resolution G22-16, at 2. It is unclear what amount AIDEA has spent in furtherance of the leases since that time.

⁶⁰ *See, e.g.*, Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Section 1002 Area (Coastal Plain) Oil & Gas Leases (Rev. 1): Resolution No. G21-18, at 2 (June 23, 2021) (Attachment 37) (indicating AIDEA purchased leases on behalf of itself).

⁶¹ Alex DeMarban, *Another Oil Company Backs Out of Leases in Alaska’s Arctic National Wildlife Refuge*, ANCHORAGE DAILY NEWS, June 1, 2022, <https://www.adn.com/business-economy/energy/2022/06/01/another-oil-company-backs-out-of-leases-in-alaskas-arctic-national-wildlife-refuge> (Attachment 38); Alex DeMarban, *Private Company Gives Up Oil and Gas Lease in Arctic Refuge, Leaving Alaska Agency as Lone Leaseholder*, ANCHORAGE DAILY NEWS, August 22, 2022, <https://www.adn.com/business-economy/energy/2022/08/22/private-company-gives-up-oil-and-gas-lease-in-arctic-refuge-leaving-alaska-agency-as-lone-leaseholder> (Attachment 39).

⁶² Tommy Beaudreau, Deputy Sec’y of the Interior, Decision: Lease Cancellation (Sept. 6, 2023) (Attachment 40); Memorandum from Wayne Svejnoha, BLM Alaska, to

development activities or legal fees. AIDEA is also continuing to pay its lawyers to represent them in two pending lawsuits using these funds. Those lawsuits are aimed at restoring those leases and allowing it to conduct oil and gas activities in the Arctic Refuge.⁶³ AIDEA may also bid in another lease sale slated to occur later this year.⁶⁴

AIDEA's Legal Violations

AIDEA's actions are directly contrary to the Alaska Constitution, the principles of separation of powers it embodies, and the Executive Budget Act. Its actions are also beyond the scope of AIDEA's delegated statutory authority.

Article IX, Section 12 requires that the governor submit a proposed budget to the Legislature setting forth "all proposed expenditures and anticipated income of all departments, offices, and agencies of the state."⁶⁵ The Legislature then "has the responsibility to determine how much to spend and on what, and to pass appropriation bills that authorize that spending."⁶⁶ The Alaska Supreme Court has stated that the Legislature holds "the power to legislate and appropriate" and "that appropriation power resides in [the] legislature and cannot be delegated to [the] executive."⁶⁷ The "constitutional framers believed that the legislature would be required to decide funding priorities annually on the merits of the various proposals presented."⁶⁸

AIDEA is a division of the state and is not exempt from these constitutional requirements.⁶⁹ The fundamental constitutionality of the Legislature to establish public corporations, such as AIDEA and the Permanent Fund Corporation, rests upon there being significant ties and control between public corporations and the executive branch.⁷⁰ In creating

onrrrefundrequest@onrr.gov re: Notice of Lease Cancellation; Refund Authorization (Dec. 1, 2023) (Attachment 41).

⁶³ AIDEA received an adverse decision in its first lawsuit challenging the lease suspensions. *Alaska Indus. Dev. & Exp. Auth. v. Biden*, Case No. 3:21-cv-00245-SLG, 2023 U.S. Dist. Lexis 136474 (Alaska D. Ct. Aug. 7, 2023). As of the date of this letter, AIDEA may still timely appeal that decision. After Interior cancelled the leases, AIDEA also filed a second lawsuit challenging that decision in D.C. District Court. *See* Complaint, *Alaska Indus. Dev. & Exp. Auth. v. U.S. Dep't of the Interior*, Case No. 1:23-cv-03126-JMC (D.D.C. Ct. Oct. 18, 2023) (Attachment 42). That case has since been transferred and is now pending in the Alaska District Court (Case No. 3:24-cv-00051-SLG).

⁶⁴ *See* Pub. L. 115-97 § 20001.

⁶⁵ Alaska Const. art. IX § 12.

⁶⁶ Office of the Attorney General Legal Opinion re: FY20 Education Appropriation, 2019 WL 2112834 (May 8, 2019), *available at* https://law.alaska.gov/pdf/opinions/opinions_2019/19-001_FY20-Education-appropriation.pdf (Attachment 43); Alaska Const. art IX, § 13 ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations at the end of the period of time specified by law shall be void.").

⁶⁷ *Alaska Legis. Council v. Knowles*, 21 P.3d 367, 371 & n.21 (Alaska 2001).

⁶⁸ *Sonneman v. Hickel*, 836 P.2d 936, 938-39 (Alaska 1992).

⁶⁹ AS 44.88.020.

⁷⁰ *See, e.g., De Armond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962); 1982 Alaska Op. Atty. Gen. at 1 (Dec. 2, 1982), 1982 WL 43772 (Attachment 44).

AIDEA, the Legislature stated AIDEA “is a public corporation of the state and a body corporate and politic constituting a political subdivision within the Department of Commerce, Community, and Economic Development, but with separate and independent legal existence.”⁷¹ In a separate statutory section, the Legislature set out that AIDEA “may not be considered or constitute (1) a political subdivision of the state as the term is used in AS 37.10.085, (2) a municipal corporation or political subdivision of the state as the terms are used in AS 29, or (3) except as provided in AS 44.88.205, a state agency as the term is used in [the public finance provisions in] AS 37, but for all other purposes the authority constitutes a political subdivision and an instrumentality of the state as provided in this chapter.”⁷² None of those provisions exempt AIDEA from having to comply with the Alaska Constitution as a division of the state, as Attorney General Opinions have recognized for nearly forty years.⁷³

AIDEA’s expenditures detailed above did not go through the constitutionally mandated legislative budget process. Instead, AIDEA’s board of directors unilaterally approved the expenditures without them being presented to or approved by the Alaska Legislature. Its actions, therefore, violate Article IX, section 12 of the Alaska Constitution.

AIDEA is also subject to the Executive Budget Act, which further details the steps and requirements that must take place for there to be a valid agency expenditure. The Executive Budget Act specifically states that the actions of agencies are limited by executive decisions of the governor and appropriations by the Legislature.⁷⁴ Under the Executive Budget Act, the budget process begins annually on December 15th, when each agency is required to submit to the Office of Management and Budget (OMB) and the Legislature “the budget requested to carry out the agency’s proposed plans in the succeeding fiscal year.”⁷⁵ The Governor, with the assistance of OMB, must then “formulate the operating and capital budget . . . after considering the state agency proposed program and financial plans.”⁷⁶ The Governor’s recommended budget “must cover all estimated receipts, including all grants, loans, and money received from the federal

⁷¹ AS 44.88.020; *see also* Alaska Const. art. III, §§ 22, 24 (providing that all executive and administrative functions are to be placed within no more than 20 principal departments, and that each principal department must be under the supervision of the governor). Only regulatory, quasi-judicial, and temporary agencies are allowed to be outside of a principal department. Alaska Const. art. III, § 22.

⁷² AS 44.88.190.

⁷³ *See, e.g.*, 1984 Alaska Atty. Gen. Op. at 3 n.3 (1984) (recognizing that, even if AIDEA was authorized generally in its statutes to do studies or develop other information to develop a finance plan for the Red Dog Mine Road, “[t]he use of general assets assumes, of course, that the underlying appropriation of the general assets authorizes expenditure of the funds for such purpose”) (Attachment 45); *cf.* 2000 Alaska Op. Atty. Gen. 1, 11 (Jan. 12, 2000) (stating that, “[w]hile AIDEA funds are not considered money of the state (AS 44.88.190), we believe that its funds would be classified as public funds for purposes of article VII, section 1 because AIDEA is a public corporation of the state (AS 44.88.020)” and the “provisions of Article VII, Section 1 would be implicated in any transaction in which AIDEA funds may be expended”) (Attachment 46).

⁷⁴ AS 37.07.014(f), 37.07.080(a).

⁷⁵ AS 37.07.050(a)(9); *see also* AS 37.07.080(b) (each agency must “prepare an annual plan for the operation of each of its assigned programs”).

⁷⁶ AS 37.07.060(a).

government and *all proposed expenditures of the state government.*”⁷⁷ The Governor presents this recommended budget to the Legislature for approval.⁷⁸ After the Legislature approves the annual budget,⁷⁹ an agency cannot “increase the salaries of its employees, employ additional employees, or expend money or incur obligations except in accordance with law and a properly approved operations plan.”⁸⁰

AIDEA has not received approval for its expenditures for the Ambler Road or the Arctic Refuge leases through these processes, and AIDEA cannot authorize these expenditures unilaterally. It is contrary to the Alaska Constitution and the Executive Budget Act for AIDEA to usurp the Alaska Legislature’s authority to oversee and approve these expenditures.

To the extent AIDEA claims under AS 44.88.205 that its obligations under the Executive Budget Act are limited to only operating budget expenditures, such a reading is contrary to the Alaska Constitution.⁸¹ The constitution does not distinguish between operating or capital expenditures, and requires the governor to set forth “all proposed expenditures” of all departments, offices, and agencies of the State. AIDEA’s expenditures are not exempt from this constitutional mandate and any interpretation or application of AS 44.88.205 to the contrary would be at odds with that constitutional mandate.

AIDEA’s actions are also contrary to principles of separation of powers. The separation of powers doctrine prohibits one branch of government from encroaching on and exercising the powers of another branch and is implicit in Alaska’s Constitution.⁸² Article IX, Section 12 of the Alaska Constitution vests the Alaska Legislature — and only the Alaska Legislature — with the authority to appropriate funds.⁸³ Principles of separation of powers dictate that the appropriation authority cannot be delegated from the legislative branch to the executive branch.⁸⁴ Even to the very limited extent the Alaska Supreme Court has indicated there may be narrow and heavily circumscribed circumstances where authority might be delegated to the executive branch to adjust spending levels, AIDEA’s actions here go well beyond that and instead fully usurp the Legislature’s appropriations authority.⁸⁵

⁷⁷ AS 37.07.020(a) (emphasis added).

⁷⁸ AS 37.07.060(b); AS 37.07.070 (provision governing legislative review of the Governor’s recommended budget); AS 37.07.014(c) (“The legislature shall analyze the comprehensive operating and capital improvements programs and financial plans recommended by the governor.”).

⁷⁹ AS 37.07.014(d) (“[T]he legislature shall authorize the comprehensive operating and capital improvements programs and financial plans.”).

⁸⁰ AS 37.07.080(d).

⁸¹ See AS 44.88.205 (“The operating budget of [AIDEA] is subject to AS 37.07 (Executive Budget Act).”).

⁸² *Bradner v. Hammond*, 553 P.2d 1, 5 (Alaska 1976); *State v. Williams*, 681 P.2d 313, 315 n.2 (Alaska 1984).

⁸³ See, e.g., Alaska Const. art. IX § 12; AS 37.07.010–.130.

⁸⁴ *Alaska Legis. Council*, 21 P.3d at 371 & n.21 (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”).

⁸⁵ See, e.g., *State v. Fairbanks N. Star Borough*, 736 P.2d 1140, 1142–43 (Alaska 1987).

It is also contrary to principles of separation of powers for an agency to act beyond the scope of its delegated authority.⁸⁶ Here, AIDEA's actions are well beyond the boundaries of its statutory authority. AIDEA claims to have acted pursuant to its authority under the AIDF for both the Ambler Road and Arctic Refuge oil and gas lease expenditures. But the AIDF does not delegate authority to AIDEA to make these expenditures, and there are numerous legal problems with AIDEA's reliance on those provisions.

First, AIDEA's authority under the AIDF is limited to financing. Financing means the issuance of loans or bonds, subject to the strict parameters allowed by the state Legislature.⁸⁷ AIDEA's expenditures on both the Ambler Road and Arctic Refuge oil and gas leases do not qualify because they do not directly involve financing.⁸⁸ AIDEA is not making a loan or issuing bonds; it is spending state funds outright.⁸⁹ In the case of the Arctic Refuge oil and gas leases, AIDEA expended those funds without there even being an oil and gas company or other entity involved who is interested in developing the leases or who would repay those expenditures — it is solely AIDEA, acting on behalf of AIDEA.⁹⁰

⁸⁶ See, e.g., *Alaska Pub. Int. Rsch. Grp. v. State*, 167 P.3d 27, 35 (Alaska 2007) (indicating it violates separation of powers for one branch of the government to encroach on the authorities of a separate branch); *State v. Herbert*, 743 P.2d 392, 394 (Alaska Ct. App. 1987) (indicating a state agency exceeds its statutory mandate “either by pursuing impermissible objectives or by employing means outside its powers”); see also *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014).

⁸⁷ 3 AAC 103.020; AS 44.88.830(a)(1) (providing that AIDEA may “use the Arctic infrastructure development fund (AS 44.88.810) to finance Arctic infrastructure development, insure project obligations, guarantee loans or bonds, and establish reserves”); AS 44.88.900(7) (defining “development project financing” as “money loaned by the authority or a guarantee of a loan, note, debt, or other financial obligation issued by the authority to fund or assist in funding a development project the authority does not intend to own and operate”); AS 44.88.840 (limiting AIDEA's financing authority under the AIDF).

⁸⁸ 3 AAC 103.020 (setting out what constitutes an “[e]ligible project” under the AIDF, stating “[t]he authority may make a loan or issue a bond, or guarantee a loan or bond, under this chapter to finance an Arctic infrastructure development”); AS 44.88.800 (“The Arctic infrastructure development program is created in the authority to promote and provide financing for Arctic infrastructure development.”).

⁸⁹ 3 AAC 103.040 (defining “[e]ligible applicants”).

⁹⁰ See *supra* discussion at nn.60–61; see also Tegan Hanlon, *Drilling Boosters, Opponents Consider Next Steps After First Arctic Refuge Lease Sale*, ALASKA PUBLIC MEDIA, Jan. 11, 2021, <https://alaskapublic.org/2021/01/11/drilling-boosters-opponents-consider-next-steps-after-first-arctic-refuge-lease-sale> (Attachment 47) (indicating AIDEA bid in the lease sale as a “backstop” in case industry did not show up and that AIDEA would likely need to partner with industry to explore for or develop oil); Tegan Hanlon, *Alaska's State Development Corporation Approved to Spend Up to \$20M on ANWR Oil Leases*, ALASKA PUBLIC MEDIA, Dec. 24, 2020, <https://alaskapublic.org/2020/12/24/alaskas-state-development-corporation-can-now-spend-up-to-20m-on-anwr-lease-sale> (Attachment 48) (indicating that AIDEA decided to bid on tracts to “make sure the land is set aside for oil development in case no one else bids on the leases” and that, if AIDEA wins the tracts, it would then “partner with companies to do the actual drilling”).

Second, AIDEA's actions are beyond the scope of its statutory authority to finance infrastructure; AIDEA's expenditures should have been approved by the Legislature prior to AIDEA making them. AIDEA relied in part on the board's purported authority to transfer funds into the AIDF under AS 44.88.810 as one of the bases for spending money from the AIDF.⁹¹ Alaska Statute 44.88.810 states that the AIDF is a fund established in AIDEA that "consists of appropriations made to the fund by the Legislature, money or other assets transferred to the fund by a majority vote of the members of the authority under AS 44.88.050 from any other fund controlled by the authority, and unrestricted loan repayments, interest, or other income earned on loans, investments, or assets of the fund."⁹² While this provision may authorize the board to transfer money into the AIDF from its other funds, it is not a broad delegation of appropriations authority by the Legislature to AIDEA's board to spend from that fund — nor could it be without running afoul of the Alaska Constitution. AIDEA's resolutions also repeatedly point to AS 44.88.830 and specifically subsection (a)(6) as the basis for its authority to make expenditures toward these projects. Alaska Statute 44.88.830(a)(6) provides that AIDEA may "contract for services with a professional advisor, including an attorney, bond counsel, engineer, or other technical expert necessary to fulfill the purposes of the program." But this authority is subject to the provisions in AS 44.88.840, which indicates that legislative approval under the program is required for any loan that would amount to more than one-third of the capital costs of the infrastructure development or any loan guarantee if the amount of the guarantee exceeds \$20,000,000.⁹³ Here, AIDEA is not making loans or loan guarantees consistent with the scope of the program contemplated in the AIDF — it is making outright expenditures for projects on its own behalf. The AIDF also does not provide an open-ended spending authorization for things like contracts for professional services. Because AIDEA is not making loans or guarantees, it is misinterpreting and misapplying its authority under AS 44.88.830(a)(6).

Third, the Arctic Refuge oil and gas leases do not qualify as Arctic infrastructure development for purposes of the AIDF.⁹⁴ The AIDF is to be used to finance "Arctic infrastructure development."⁹⁵ Alaska Statute 44.88.830(a)(4) limits AIDEA's ability to enter into lease agreements under the AIDF to only "qualified Arctic infrastructure development[s]." "Arctic infrastructure development" is defined to mean "the construction, improvement, rehabilitation, or expansion of a *facility* (i) in the Arctic to aid in development or meet emergency response needs; or (ii) in the state if the construction, improvement, rehabilitation, or expansion supports or furthers the development of a facility in the Arctic"⁹⁶ Acquiring

⁹¹ See, e.g., Memorandum re: Resolution G22-03, *supra* note 31, at 5.

⁹² AS 44.88.810.

⁹³ AS 44.88.840(a).

⁹⁴ AS 44.88.820 (stating the authority may use the money in the AIDF for Arctic infrastructure development); AS 44.88.830 (setting out AS 44.88.900(2) (defining "Arctic infrastructure development").

⁹⁵ AS 44.88.820; AS 44.88.830(a) (setting out AIDEA's authorities for advancing "Arctic infrastructure development"); AS 44.88.830(a)(4) (stating, "subject to AS 36.30.085(e), enter into lease agreements, sales-lease-back agreements, build-operate-transfer and operate transfer agreements, or any similar project financing agreement *for a qualified Arctic infrastructure development*" (emphasis added)).

⁹⁶ AS 44.88.900(2); AS 44.88.900(12) (defining "facility" to mean "real property, whether above or below mean high water, or an interest in it, and the buildings, improvements, and structures constructed or to be constructed on or in it, and may include roads, fixtures,

Arctic Refuge oil and gas leases as the lessee does not involve the construction, improvement, rehabilitation, or expansion of a facility and thus does not qualify as an “Arctic infrastructure development” appropriate for financing under the AIDF. AIDEA did not have the authority to spend state funds or to obtain the Arctic Refuge leases pursuant to the AIDF. AIDEA disregarded these limitations and acted beyond the scope of its statutory authority in spending those funds under that program and without a legislative appropriation.

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Thank you for your prompt attention to this matter, which is of significant importance to the public. Please direct any questions regarding this complaint to Suzanne Bostrom, Senior Staff Attorney at Trustees for Alaska, at sbostrom@trustees.org or (907) 433-2015.

Sincerely,

Suzanne Bostrom
Senior Staff Attorney

Enclosures (*Attachments as Cited Herein*)

machinery, and equipment on it or in it, and tangible personal property, regardless of whether the tangible personal property is attached to or connected with real property, if the owner has agreed not to remove the tangible personal property permanently from the state for the period the authority sets; “plant” or “facility” does not include work in process or stock in trade”).

Attachments¹

Attachment Number	Title	Date
1	Thomas Michael Power & Donovan Power, Powers Consulting: An Economic Analysis of The Proposed Alaska Ambler Access Road.	2021
2	Memorandum from Ted Leonard, Executive Director, to AIDEA Board Members re: Resolution No. G14-02 Relating to Permits, an Environmental Impact Statement and other work on the Proposed Ambler Mining District Industrial Access Road.	Apr. 24, 2014
3	AIDEA, Resolution No. G14-02 Relating to Permits, an Environmental Impact Statement and other work on the Proposed Ambler Mining District Industrial Access Road.	Apr. 24, 2014
4	Office of Mgmt. & Budget, State of Alaska, Capital Appropriation Status Report 263.	Feb. 2, 2016
5	Memorandum from Tom Boutin, Executive Director, to AIDEA Board Members re: Predevelopment Work for Resource Access Roads and Resolution No. G19-21.	Oct. 23, 2019
6	AIDEA, Resolution No. G19-21: Resolution of The Alaska Industrial Development And Export Authority Relating to Predevelopment Work on Potential Access Road Projects.	Oct. 23, 2019
7	Elwood Brehmer, <i>Final Ambler Road Review Out; AIDEA Adds \$35M for Project</i> , ALASKA J. OF COMMERCE.	Apr. 1, 2020
8	AIDEA Predevelopment Projects Quarterly Report.	Mar. 1, 2023
9	AIDEA, Resolution No. G20-11: Resolution of The Alaska Industrial Development and Export Authority [Transferring] Funds to the Arctic Infrastructure Development Fund, Approving the Ambler Mining District Industrial Access Project as an Arctic Infrastructure Development, and Authorizing Expenditures from The Arctic Infrastructure Development Fund for Pre-Development Work on the Ambler Mining District Industrial Access Project (Draft).	Mar. 27, 2020
10	AIDEA, Resolution No. G20-11: Resolution of The Alaska Industrial Development and Export Authority [Transferring] Funds to the Arctic Infrastructure Development Fund and Approving the Ambler Mining District Industrial Access Project as an Arctic Infrastructure Development.	Mar. 27, 2020
11	AIDEA, Resolution No. G20-19: Resolution of The Alaska Industrial Development and Export Authority Relating to Predevelopment Work for the Ambler Access Project.	June 24, 2020

¹ The mailed version of this complaint includes a thumb drive with these attachments.

12	AIDEA, Resolution No. G20-29: Resolution of The Alaska Industrial Development and Export Authority Approving Intervention into Litigation Related to the Ambler Project and Appointing Litigation Counsel.	Oct. 28, 2020
13	Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Ambler Access Development Agreement with Ambler Metals LLC: Resolution No. G21-03.	Feb. 10, 2021
14	AIDEA, Resolution No. G21-03: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project.	Feb. 10, 2021
15	AIDEA, Resolution No. G21-09: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project to Conduct Certain Final Feasibility and Permitting Activities with Respect to the 2021 Field Season Plan and Budget.	Apr. 14, 2021
16	Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Ambler Access Project 2021 Field Season and Plan: Resolution No. G21-09.	Apr. 14, 2021
17	AIDEA, Resolution No. G21-10: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project with Respect to a Land Access Agreement with Doyon Limited to Conduct Pre-Development Activities.	Apr. 14, 2021
18	AIDEA, Resolution No. G21-22: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project with Respect to a Land Access Permit with NANA Regional Corporation to Conduct Certain Development Activities.	Sept. 30, 2021
19	AIDEA, Resolution No. G22-03: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project to Conduct Certain Final Feasibility and Permitting Activities with Respect to the 2022 Field Season Plan and Budget.	Jan. 27, 2022
20	Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Ambler Access Project 2022 Field Season Plan and Budget: Resolution No. G22-03.	Jan. 14, 2022
21	AIDEA, Resolution No. G22-06: Resolution of the Alaska Industrial Development and Export Authority Relating to Development of the Ambler Access Project to Conduct Technical Feasibility Studies of the Ambler Access Corridor and Proposed Tidewater Export Terminals.	Apr. 13, 2022
22	AIDEA, Resolution No. G23-07: Resolution of the Alaska Industrial Development and Export Authority Relating to the Development of the Ambler Project Through the Consolidation of Previously Approved Project Funding Resolutions G20-19,	Mar. 1, 2023

	G21-09, and G22-03 in Order to Record Project Expenditures by Fund Source.	
23	Memorandum from Randy Ruaro, Executive Director, to AIDEA Board Members re: Resolution G23-07 Ambler Road Project Budget Reporting.	Mar. 1, 2023
24	Letter from Jeffrey San Juan, Interim Program Mgr., Ambler Access Project, to Randy Ruaro, Executive Director, AIDEA, and Ramzi Fawaz, President & Chief Executive Officer, Ambler Metals, LLC, re: Request for Task and Budget Changes for the 2022/2023 Field Season for the Ambler Access Project.	Feb. 14, 2023
25	AIDEA, Resolution No. G23-07A: Resolution of the Alaska Industrial Development and Export Authority Relating to the Development of the Ambler Project Through the Consolidation of Previously Approved Project Funding Resolutions G20-19, G21-09, and, G22-03 in Order to Record Project Expenditures by Fund Source.	Oct. 30, 2023
26	Nathaniel Herz, <i>Alaska Development Authority Signs Contracts with Ex-Dunleavy Aides, Paying Up to \$295/Hour</i> , ALASKA BEACON.	Mar. 19, 2024
27	AIDEA, Request for Proposals: State of Alaska Public Outreach and Community Liaison Professional Services: RFP 24046.	Aug. 18, 2023
28	Memorandum from Randy Ruaro, Executive Director, to AIDEA Board Members re: Ambler Access Project 2024 Field Season Plan and Budget: Resolution No. G23-07A.	Oct. 16, 2023
29	AIDEA, Resolution No. G23-08: Resolution of the Alaska Industrial Development and Export Authority Relating to the Approval of the Expenditure of Funds for the Purpose of Initial Planning and Analysis with Respect to Developing and Financing AIDEA Projects, Infrastructure Development, Energy Development Projects, Land and Project Site Development, and Intermodal Transportation, Industrial Transportation, Industrial Access Roads and Port(s).	Apr. 11, 2023
30	AIDEA, Resolution No. G20-31: Resolution of the Alaska Industrial Development and Export Authority Relating to the Evaluation and Potential Submission of Bid(s) for the Coastal Plain Alaska Oil and Gas Lease Sale.	Dec. 23, 2020
31	AIDEA, Resolution No. G21-18: Resolution of AIDEA Relating to Development of the Section 1002 Area Oil & Gas Leases Project to Conduct Certain Pre-Development Permitting Activities.	June 23, 2021
32	AIDEA, Resolution No. G21-33: Resolution of AIDEA Relating to On-Going Development of the Section 1002 Area Oil & Gas Leases Project and 2022 Budget.	Dec. 1, 2021

33	AIDEA, Resolution No. G22-16: Resolution of the Alaska Industrial Development and Export Authority Approving a Calendar Year-2023 Budget and Project Plan for the Section 1002 Area Oil & Gas Leases.	Dec. 19, 2022
34	Memorandum from Morgan Neff, Interim Executive Director, to AIDEA Board Members re: Section 1002 Area (Coastal Plain) Oil & Gas Leases Budget 2023: Resolution No. G22-16.	Dec. 19, 2022
35	James Brooks, <i>AIDEA Approves More Spending as It Seeks to Open Arctic Refuge for Drilling</i> , ANCHORAGE DAILY NEWS.	Dec. 29, 2022
36	Steven Mufson & Juliet Eilperin, <i>Companies Take First Steps to Drill for Oil in Arctic National Wildlife Refuge</i> , WASHINGTON POST.	June 1, 2018
37	Memorandum from Alan Weitzner, Executive Director, to AIDEA Board Members re: Section 1002 Area (Coastal Plain) Oil & Gas Leases (Rev. 1): Resolution No. G21-18.	June 23, 2021
38	Alex DeMarban, <i>Another Oil Company Backs Out of Leases in Alaska's Arctic National Wildlife Refuge</i> , ANCHORAGE DAILY NEWS.	June 1, 2022
39	Alex DeMarban, <i>Private Company Gives Up Oil and Gas Lease in Arctic Refuge, Leaving Alaska Agency as Lone Leaseholder</i> , ANCHORAGE DAILY NEWS.	Aug. 22, 2022
40	Tommy Beaudreau, Deputy Sec'y of the Interior, Decision: Lease Cancellation.	Sept. 6, 2023
41	Memorandum from Wayne Svejnoha, BLM Alaska, to onrrrefundrequest@onrr.gov re: Notice of Lease Cancellation; Refund Authorization.	Dec. 1, 2023
42	Complaint, Alaska Indus. Dev. & Exp. Auth. v. U.S. Dep't of the Interior, Case No. 1:23-cv-03126-JMC (D.D.C. Ct. Oct. 18, 2023).	Oct. 18, 2023
43	Office of the Attorney General Legal Opinion re: FY20 Education Appropriation.	May 8, 2019
44	Office of the Attorney General Legal Opinion re: Relationship of Alaska Permanent Fund Corporation to State.	Dec. 2, 1982
45	Office of the Attorney General Legal Opinion re: DeLong Mountain Transportation Project Appropriation.	1984
46	Office of the Attorney General Legal Opinion re: Religious Organizations Participating in AIDEA Programs.	Jan. 12, 2000
47	Tegan Hanlon, <i>Drilling Boosters, Opponents Consider Next Steps After First Arctic Refuge Lease Sale</i> , ALASKA PUBLIC MEDIA.	Jan. 11, 2021
48	Tegan Hanlon, <i>Alaska's State Development Corporation Approved to Spend Up to \$20M on ANWR Oil Leases</i> , ALASKA PUBLIC MEDIA.	Dec. 24, 2020