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**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

FRIENDS OF ALASKA NATIONAL
WILDLIFE REFUGES, *et al.*,

Plaintiffs,

v.

U.S. ARMY CORPS OF ENGINEERS,
et al.,

Defendants.

Case No. 3:26-cv-00272-ACP

**MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

[EXPEDITED RULING REQUESTED BY AUGUST 31, 2026]

(Fed. R. Civ. P. 65)

Plaintiffs Friends of Alaska National Wildlife Refuges, et al. (collectively Friends)
request a temporary restraining order and preliminary injunction (TRO/PI) under Federal
Rule of Civil Procedure 65 to prevent the U.S. Army Corps of Engineers (Corps) from

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allowing the State of Alaska Department of Transportation and Public Facilities (AKDOT), including any contractors, operators, or anyone else, from engaging in any ground-disturbing activities in reliance on Corps Permit POA-2010-00286 (Permit), which authorizes construction of a road through a legally contested corridor of land within the Izembek National Wildlife Refuge (Izembek) and Wilderness, until this Court has adjudicated the merits of the case. Friends respectfully ask the Court to decide this motion by August 31, 2026, as construction activities are expected to begin the following day.

Counsel for Friends provided a copy of the Complaint by email to Daniel Martin, Laura Brown, Alexa Penalosa, and Mark Widerschein in the U.S. Department of Justice Environmental and Natural Resources Division, who represent Defendants, who stated that they oppose this motion. Counsel for Friends also provided a courtesy copy of the Complaint to Sean Lynch, attorney with the State of Alaska Department of Law, who represents the permittee, AKDOT, in related lawsuits.

INTRODUCTION

Friends seeks a TRO/PI to protect Izembek from the imminent harm of road construction. Following the U.S. Department of the Interior's (Interior) land-exchange agreement with the King Cove Corporation (KCC) and the execution of title documents, AKDOT applied to the Corps for a permit under Clean Water Act (CWA) Section 404 to

fill wetlands to construct a road between the communities of King Cove and Cold Bay.¹ The Corps granted the permit on July 9, 2026.² In the pending litigation challenging the unlawful land exchange, counsel for AKDOT originally notified the Court that construction would begin in 30 days,³ on August 8, 2026. On July 24, 2026, counsel for AKDOT filed an updated notice, stating that construction would not begin before September 1, 2026.⁴

Given the immediate likelihood of irreparable harm from road construction, Friends seeks an order from this Court prohibiting anyone from engaging in any ground disturbing activities in reliance on the Permit until the case is resolved on the merits. Friends meets the requirements for a TRO/PI because: (1) Friends is likely to prevail on their claims that the Corps failed to provide pivotal information during public comment and that its finding that the road is the least environmentally damaging practicable alternative (LEDPA) is arbitrary; (2) Friends' members' will be irreparably harmed by the imminent road construction activities; (3) the balance of equities strongly favors protecting Izembek while the case is resolved; and (4) the public interest heavily favors

¹ Ex. 1 (Public Notice of Permit Application).

² Ex. 2 (Permit).

³ State of Alaska & King Cove Corp.'s Notice of CWA 404 Permit Issuance & Updated Constr. Timeline at 3, *Friends of Alaska Nat'l Wildlife Refuges v. Burgum*, No. 3:25-cv-00318-SLG (D. Alaska July 17, 2026), ECF No. 39.

⁴ Supp. Not. of Construction Timeline, *Friends of Alaska Nat'l Wildlife Refuges v. Burgum*, No. 3:25-cv-00318-SLG (D. Alaska July 24, 2026), ECF No. 43.

protecting Izembek from road construction while the Court reviews the agency's decision.

BACKGROUND

There is litigation pending before this Court challenging an unlawful exchange agreement between Interior and KCC that traded away irreplaceable Izembek lands for the sole purpose of constructing a road.⁵ Izembek has been protected for decades because of its ecologically unique and irreplaceable habitat.⁶ Congress designated nearly all of Izembek as Wilderness.⁷

Izembek is one of the world's most important migratory bird habitats, supporting millions of migratory waterfowl and shorebirds in its coastal lagoons and freshwater wetlands complex.⁸ It also provides high quality brown bear, wolf, and caribou habitat,⁹ and is internationally recognized as a Wetland of International Importance, designated under the Ramsar Convention on Wetlands of International Importance in 1986, for its unique and ecologically significant wetlands.¹⁰

⁵ *Native Village of Hooper Bay v. Burgum*, No. 3:25-cv-00316-SLG (D. Alaska); *Friends of Alaska Nat'l Wildlife Refuges v. Burgum*, No. 3:25-cv-00318-SLG (D. Alaska); *Defenders of Wildlife v. Burgum*, No. 3:24-cv-00319-SLG (D. Alaska).

⁶ Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, § 303(3)(A), 94 Stat. 2371, 2390 (1980).

⁷ *Id.* § 702(6).

⁸ *See* Ex. 3 at 3 (2013 Record of Decision).

⁹ *Id.* at 8.

¹⁰ *Id.* at 5.

Interior has evaluated the effects of a road from King Cove to Cold Bay multiple times and, until recently, consistently declined to take action that would allow for a road because of the harmful impacts on Izembek.¹¹ During the first Trump administration, Interior tried twice to enter into a land exchange with KCC to allow for a road.¹² This Court vacated the first exchange because Interior had violated the Administrative Procedure Act.¹³ The incoming Biden administration withdrew from the second exchange agreement, resulting in the dismissal of litigation challenging it.¹⁴

In October 2025, the current administration entered into a third land exchange with KCC to allow a road through Izembek.¹⁵ Unlike the prior two exchanges, this time Interior and KCC executed the title documents to transfer the lands in conjunction with signing the exchange agreement.¹⁶ Two months later, on December 12, 2025, the Corps issued a public notice seeking comments on AKDOT's application for a Section 404 permit for construction of a road and provided for a 30-day comment period.¹⁷ The only

¹¹ *Friends of Alaska Nat'l Wildlife Refuges v. Bernhardt (Friends I)*, 381 F. Supp. 3d 1127, 1131-32 (D. Alaska 2019).

¹² *Id.* at 1133; *Friends of Alaska Nat'l Wildlife Refuges v. Bernhardt (Friends II)*, 463 F. Supp. 3d 1011, 1017 (D. Alaska 2020).

¹³ *Friends I*, 381 F. Supp. 3d at 1143-44.

¹⁴ *Friends of Alaska Nat'l Wildlife Refuges v. Haaland*, No. 20-35728, 2023 U.S. App. LEXIS 14927, at *4 (9th Cir. June 15, 2023).

¹⁵ Ex. 4 (2025 Land Exchange Agreement).

¹⁶ Ex. 5 (Patent); Ex. 6 (Warranty Deed).

¹⁷ Ex. 1.

information the Corps shared with the general public was a 27-page notice, consisting of a five-page narrative briefly describing the project and 22 pages of maps.¹⁸ Friends had to specifically ask the Corps for AKDOT's permit application and other supporting documents.¹⁹ A comment extension was initially granted for 30 additional days but was later revoked without reason.²⁰

Friends submitted extensive comments, including raising the lack of information on project design, baseline and site-specific information, direct and indirect impacts of the road, practicable alternatives, and mitigation measures.²¹ Friends also submitted an expert report from Dr. Siobhan Fennessy, who highlighted the lack of information in AKDOT's application and explained how this limited the ability to evaluate the project in terms of the Corps' regulatory mandates.²² In fact, the Corps implicitly acknowledged there was insufficient information for it to move forward on the application, stating in February 2026 — after the comment period had closed — that it did “not yet have sufficient information to analyze and decide[] if the proposed road would be the LEDPA.”²³ Information that the Corps had requested, and was still waiting for AKDOT

¹⁸ *Id.*

¹⁹ Ex. 7 (Request for AKDOT application materials).

²⁰ Ex. 8 at 1 (Friends Comments).

²¹ *Id.* at 11.

²² Ex. 9 at 2 (Dr. Siobhan Fennessy Comments).

²³ Ex. 10 (John Sargent, Corps, to Tyler Riberio, AKDOT regarding mitigation measures).

to produce, included an alternatives analysis, an environmental impact analysis, and mitigation information.²⁴

On July 9, 2026, the Corps issued the Permit authorizing construction of a road within Izembek.²⁵ The Corps simultaneously released a Memorandum for Record (Memo), which purported to explain its findings and justify its decision under the CWA.²⁶ Throughout the Memo, the Corps relied on information from AKDOT that was prepared after the comment period had closed, including: (1) a March 2026 report titled “Environmental Document;” and (2) a March 2026 report titled “Alternatives Analysis.”²⁷

The Permit allows construction of an approximately 19-mile gravel road, involving the discharge of 40,000 cubic yards of gravel into wetlands.²⁸ Construction of the road will permanently fill 4.58 acres of wetlands and 0.7 acres of streams.²⁹ The road also involves the placement of 85 culverts and one bridge.³⁰ The gravel for the road will

²⁴ *Id.* at 1.

²⁵ Ex. 2 at 1.

²⁶ Ex. 11 (Memorandum for Record).

²⁷ *Id.* at 71; *see also* Ex. 12 (Environmental Document); Ex. 13 (Alternatives Analysis).

²⁸ Ex. 2 at 1.

²⁹ *Id.*

³⁰ *Id.*

be sourced from two new gravel mines and 14 other sites along the road.³¹ The total footprint of the road is 186 acres, and requires the placement of 1.2 million cubic yards of gravel.³² Construction activities can occur year-round,³³ and include “clearing, gravel fill, grading, and use of heavy machinery, including bulldozers, excavators, dump trucks, and road graders.”³⁴ Bridge construction activities include “clearing access paths, pile driving or excavating” and “erecting structural components.”³⁵

The Corps, following AKDOT’s lead, limited the overall project purpose to providing “surface transportation” (i.e., a road).³⁶ Based on this limited project purpose, the Corps only analyzed two surface transportation alternatives: (1) the Southern Route as proposed by AKDOT, which sited the road within the 490-acre corridor of land transferred to KCC via the unlawful land exchange agreement, and (2) the Northern Route, which sited the road on federal National Wildlife Refuge and Wilderness land.³⁷ The Corps did not analyze marine or air alternatives, asserting those alternatives would

³¹ *Id.*

³² Ex. 11 at 12.

³³ *Id.* at 2.

³⁴ Ex. 14 at 3 (Draft Compatibility Determination).

³⁵ *Id.* at 4.

³⁶ Ex. 11 at 9.

³⁷ *Id.* at 25.

not “meet the applicant’s need” for a road.³⁸ The Corps determined that the Southern Route was the LEDPA, in part because it traversed private land, and rejected the Northern Route because it is “largely in federally designated wilderness” and not available for a road.³⁹

LEGAL STANDARDS

The standards for a temporary restraining order and preliminary injunction are essentially the same.⁴⁰ Plaintiffs must establish: (1) likely success on the merits; (2) likely “irreparable harm in the absence of preliminary relief”; (3) “that the balance of equities tips in [their] favor”; and (4) “that an injunction is in the public interest.”⁴¹ A plaintiff can obtain a TRO/PI by showing that “serious questions going to the merits” were raised and the balance of hardships “tips sharply toward the plaintiff,” as long as the other factors are met.⁴² Serious questions are “substantial, difficult, and doubtful,” and require “more

³⁸ *Id.* at 24-25.

³⁹ *Id.* at 24-26.

⁴⁰ *See, e.g., Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017).

⁴¹ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

⁴² *Ariz. Mining Reform Coal. v. U.S. Forest Serv.*, 170 F.4th 879, 891 (9th Cir. 2026) (quoting *Bennett v. Isagenix Int’l LLC*, 118 F.4th 1120, 1126 (9th Cir. 2024)).

deliberative investigation.”⁴³ This is a lower bar than demonstrating likely success on the merits.⁴⁴

Courts “hold unlawful and set aside agency action, findings, and conclusions” if they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or if adopted “without observance of procedure required by law.”⁴⁵ Courts undertake a “thorough, probing, in-depth review” to ensure that the agency made a “rational connection between the facts found and the conclusions made.”⁴⁶

ARGUMENT

I. FRIENDS IS LIKELY TO SUCCEED ON THE MERITS.⁴⁷

Friends is likely to succeed on the merits of its claim that the Corps failed to provide pivotal information to the public, namely the Environmental Document and

⁴³ *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991) (quoting *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988)).

⁴⁴ *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024).

⁴⁵ 5 U.S.C. § 706(2)(A), (D).

⁴⁶ *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 960 (9th Cir. 2005).

⁴⁷ Friends’ motion presents a subset of claims; Friends does not waive any claims or allegations in the Complaint. *See, e.g., Morgan Stanley Smith Barney LLC v. Jacobs*, No. 2:19-cv-04540-ODW, 2019 U.S. Dist. LEXIS 92725, at *5 (C.D. Cal. June 3, 2019) (“Plaintiff is not required to demonstrate it is likely to prevail on all of its claims for the issuance of a preliminary injunction.”). Additionally, Friends’ related litigation challenging the land-exchange agreement is fully briefed and ripe for decision. Depending on the outcome of that case, Friends reserves the right to supplement this motion.

Alternatives Analysis, depriving Friends of an opportunity to provide meaningful input on the proposed road and its impacts to Izembek. That failure is amplified in the context of AKDOT's Alternatives Analysis because the Corps, relying on this document, improperly eliminated non-road alternatives from consideration. The Corps relied solely on AKDOT's Alternatives Analysis when it found that a road on the KCC corridor was the LEDPA, but that document is factually flawed and does not support the Corps' determination.

A. The Corps Failed to Provide the Public with an Opportunity to Comment on Pivotal Information.

The Corps can only issue a Section 404 permit after the public is afforded notice and an opportunity to be heard.⁴⁸ The Corps can only publish notice after the “applicant submits all the information required to complete an application for a permit.”⁴⁹ An application is complete “when sufficient information is received to issue a public notice” under 33 C.F.R. §§ 325.1(d) and 325.3(a).⁵⁰ The Corps' regulation at 33 C.F.R. § 325.3(a) requires the public notice to contain “sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful

⁴⁸ 33 U.S.C. § 1344(a).

⁴⁹ *Id.*; see also 33 C.F.R. § 325.2(d)(1) (“The public notice will be issued within 15 days of receipt of all information required to be submitted ...”).

⁵⁰ 33 C.F.R. § 325.1(d)(10); see also *Ohio Valley Env't Coal. v. U.S. Army Corps of Eng'rs*, 674 F. Supp. 2d 783, 800 (S.D. W. Va. 2009) (“Completion and public notice are inextricably linked. A complete application is defined in terms of the sufficiency of the submitted materials to provide a meaningful opportunity for public comment.”).

comment[,]”⁵¹ including “available information which may assist interested parties in evaluating the likely impact of the proposed activity.”⁵² The Corps’ regulations “recognize[] public comment as essential to the permitting process” and require the Corps to “present for public scrutiny the rationale and pivotal data underlying its proposed action before” the comment period closes.⁵³

In both *Friends of the Earth v. Hall* and *National Wildlife Federation v. Marsh*, the court enjoined activities under a Section 404 permit after finding the agency had violated these public participation requirements.⁵⁴ In *Marsh*, the court found the Corps had relied on an important report containing new information and data that was prepared after the close of the public comment period.⁵⁵ The court reasoned that, because the new information was pivotal to the Corps’ decision, not sharing it “had the effect of shielding the essential data and the agency’s rationale from public hearing and comment.”⁵⁶ In

⁵¹ 33 C.F.R. § 325.3(a).

⁵² *Id.* § 325.3(a)(13).

⁵³ *Friends of the Earth v. Hall*, 693 F. Supp. 904, 947 (W.D. Wash. 1988) (quoting *Nat’l Wildlife Fed’n v. Marsh*, 568 F. Supp. 985, 994-96 (D.D.C. 1983)).

⁵⁴ 693 F. Supp. at 948 (“[T]he court concludes that both the language of the CWA and the results of traditional equity balancing require a permanent injunction to ensure compliance with statutory mandates.”); 568 F. Supp. at 988 (enjoining the Corps “from authorizing any activities under the permit until certain significant procedural defects associated with the granting of the permit are rectified”).

⁵⁵ 568 F. Supp. at 994-96.

⁵⁶ *Id.* at 994.

Hall, the court relied on the analysis in *Marsh* to find that the Corps violated public process requirements when it “prevented the public from commenting on the single most important feature” of the project at issue.⁵⁷

Similarly here, the Environmental Document and Alternatives Analysis contained pivotal data and information that was essential to the Corps’ decision but was shielded from public scrutiny. The Corps’ public notice only contained five pages of narrative discussing the proposed project.⁵⁸ It contained no information about impacts or practicable alternatives.⁵⁹ A month after the public comment period closed, the Corps told AKDOT it did not “have sufficient information to analyze and decide[] if the proposed road would be the LEDPA.”⁶⁰ Among the long list of materials it was still waiting for from AKDOT were the Environmental Document and the Alternatives Analysis.⁶¹

Accordingly, by the Corps’ own admission, the Environmental Document and Alternatives Analysis were essential to the Corps’ analysis and, therefore, to a meaningful opportunity for public comment. Neither the Corps nor the public could

⁵⁷ 693 F. Supp. at 948.

⁵⁸ Ex. 1.

⁵⁹ *Id.*

⁶⁰ Ex. 10 at 1.

⁶¹ *Id.*

determine whether the proposed road was consistent with the U.S. Environmental Protection Agency's Section 404(b)(1) Guidelines (a necessary determination for permit issuance) without this information.⁶² The Corps needed to wait to open a public comment period until these documents were received.⁶³

Collectively, the Environmental Document and Alternatives Analysis total hundreds of pages of information on environmental impacts, alternatives, and mitigation. In stark contrast, the documents available at the time of the public notice contained nothing on these topics, despite the fact that these topics were central to the Corps' and the public's ability to evaluate the proposed road.⁶⁴ The Corps' actions left these documents as one-sided statements from AKDOT. As a result, Friends has demonstrated that they are likely to succeed on the merits of their claims that the Corps failed to comply with its public participation requirements, or at least raised serious questions.

⁶² 40 C.F.R. § 230.12(a)(3)(iv).

⁶³ Even if the Corps did not want to wait for AKDOT to submit this information prior to issuing the public notice, those two documents were sufficient to trigger the need for a supplemental notice. When the Corps receives new information that "is a change in the application data that would affect the public's review of the proposal," it must issue "a supplemental, revised, or corrected public notice." 33 C.F.R. § 325.2(a)(2).

⁶⁴ See, e.g., Ex. 9 at 4 ("Overall, there is a surprising lack of information on the potential impacts of this project, which makes a full evaluation of impacts as required by Section 404(B)(1) impossible."); Ex. 8 at 11-13, 18-20 (explaining how the Corps lacks sufficient information to evaluate the project, particularly regarding evaluating alternatives).

B. The Corps' LEDPA Finding Is Arbitrary and Factually Unsupported.

When the Corps determines that a project is not water dependent and the project would fill wetlands, there is a rebuttable presumption that there are practicable and environmentally preferable alternatives.⁶⁵ Practicable alternatives are those that are “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.”⁶⁶ The Corps is obligated to select the LEDPA unless the Corps demonstrates that it is impracticable.⁶⁷ “In order to determine whether an alternative is practicable, the Corps must first determine the overall project purpose.”⁶⁸ While the Corps has a duty to consider the applicant’s purpose, the “applicant may not define the project purpose narrowly ‘in order to preclude the existence of any alternative sites and thus make what is practicable appear impracticable.’”⁶⁹ Notably, an alternative does not have to “accommodate components of a project that are merely incidental to the applicant’s basic purpose.”⁷⁰

⁶⁵ 40 C.F.R. § 230.10(a)(3).

⁶⁶ *Id.* § 230.10(a)(1), (2).

⁶⁷ *Id.* §§ 230.10(a)(1), 230.12(a)(1); *Utahns v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1189 (10th Cir. 2002).

⁶⁸ *Friends of the Santa Clara River v. US. Army Corps of Eng’rs*, 887 F.3d 906, 912 (9th Cir. 2018) (cleaned up) (quoting *Jones v. Nat’l Marine Fisheries Serv.*, 741 F.3d 989, 1002 (9th Cir. 2013)).

⁶⁹ *Id.* (quoting *Sylvester v. U.S. Army Corps of Eng’rs*, 882 F.2d 407, 409 (9th Cir. 1989)).

⁷⁰ *Sylvester*, 882 F.2d at 409.

The Corps determined that “[t]he basic project purpose is to provide public transportation” between King Cove and Cold Bay, and, therefore, the project is not water dependent.⁷¹ The Corps accepted AKDOT’s narrowly defined overall project purpose of providing “surface transportation” between King Cove and Cold Bay.⁷² Because the overall project purpose was so narrowly defined, the Corps unlawfully dismissed non-road alternatives as not meeting that purpose.⁷³

As AKDOT itself conceded, the mode of transportation is “merely incidental” to the overall purpose of providing a safe, reliable transportation system between two communities. Whether marine, air, or surface routes would provide safe, affordable, and reliable public transportation between these two communities has been the central question on this issue for decades. Most recently, in 2013, the Secretary of the Interior found that at least three viable alternatives to a road exist: hovercraft, landing craft, and ferry.⁷⁴ The Corps itself conducted two analyses that considered non-road alternatives: the 2003 EIS prepared pursuant to the King Cove Health and Safety Act of 1999,⁷⁵ and a 2015 assessment of feasible non-road options, which included additional analysis of a

⁷¹ Ex. 11 at 9.

⁷² *Id.*

⁷³ *Id.* at 24-26.

⁷⁴ Ex. 3 at 20.

⁷⁵ Ex. 15 (Final Environmental Impact Statement, King Cove Access Project).

ferry option, as well as two air options: a new airport in King Cove and a helicopter.⁷⁶

Indeed, AKDOT included a ferry and a hovercraft alternative in its Alternatives Analysis, stating that both of these would meet the purpose of the project by creating a reliable connection between the communities of Cold Bay and King Cove, but dismissed them on conclusory and factually inaccurate grounds (see discussion below).⁷⁷ The Corps summarily ignored these potential alternatives in favor of accommodating AKDOT's preference for surface transportation.⁷⁸

As a result, the Corps only analyzed two road alternatives: (1) the Southern Route (AKDOT's proposed road on the KCC exchange lands) and (2) the Northern Route (on federal National Wildlife Refuge and Wilderness lands).⁷⁹ The Corps determined the Southern Route was the LEPDA because the Northern Route was not available on account of it being "largely in federally designated wilderness."⁸⁰ This is a Hobson's choice. The Corps considered only one alternative that it could deem practicable: AKDOT's proposed action.⁸¹

⁷⁶ Ex. 16 at 3 (King Cove-Cold Bay: Assessment of Non-Road Alternatives).

⁷⁷ Ex. 13 at 25-26.

⁷⁸ Ex. 11 at 25.

⁷⁹ *Id.*

⁸⁰ *Id.* at 26; *see also* 16 U.S.C. § 1133(c) (preventing permanent roads in Wilderness).

⁸¹ *Supra* note 64 (explaining presumption that practicable alternatives exist where a project is not water dependent).

Moreover, to the extent the Corps considered the ferry and hovercraft alternatives discussed in AKDOT's Alternatives Analysis, it did not have sufficient information on those alternatives to make a determination that they were impracticable. The Corps discussion on alternatives in the Memo is based solely on information in AKDOT's Alternatives Analysis.⁸² However, AKDOT's document presents conclusory statements about the practicability of these two alternatives that are not factually supported. For example, AKDOT asserted that a ferry was not practicable because of cost, which it asserted was \$81.3 million.⁸³ However, almost half of that total cost (\$37.5 million) was identified as necessary for upgrades to the Cold Bay dock.⁸⁴ AKDOT failed to disclose that the U.S. Department of Transportation has already allocated \$43.4 million to upgrade the Cold Bay dock facilities, in part to address the need for emergency medical transportation between the communities, and the State is moving forward with that project.⁸⁵ When these expenses are removed, a ferry alternative would be much less costly. Indeed, a prior environmental analysis determined that the capital cost for a ferry would be \$27.1 million.⁸⁶ That is significantly less than the capital cost for the proposed

⁸² Ex. 11 at 23-26.

⁸³ Ex. 13 at 26.

⁸⁴ *Id.*

⁸⁵ Ex. 17 (AKDOT, Statewide Design & Engineering Services, 203 PIDP Grant Application, Cold Bay: Failing Dock Infrastructure Replacement, <https://dot.alaska.gov/stwddes/alaskapidp.shtml>).

⁸⁶ Ex. 18 at 3 (Excerpts, Draft Supplemental Environmental Impact Statement)

road, which the Alternatives Analysis claims would be \$68 million.⁸⁷ Instead of conducting its own analysis or subjecting any analysis to public scrutiny, the Corps relied solely on information in AKDOT's flawed Alternatives Analysis, which is insufficient.

The Corps impermissibly narrowed the overall project purpose, excluded non-road alternatives as not meeting that purpose, and determined marine alternatives were impracticable by relying on the unverified and factually flawed information provided by AKDOT. As a result, Friends is likely to succeed on the merits of its claim that the Corps' LEDPA finding is unsupported and arbitrary, or at least raised serious questions.

II. FRIENDS WILL SUFFER IRREPARABLE HARM.

"Environmental injury, by its nature, ... is often permanent or at least of long duration, *i.e.*, irreparable."⁸⁸ Izembek and its aquatic and wildlife resources, as well as Friend's members' interests in and use of Izembek, will be irreparably harmed by AKDOT's imminent road construction.⁸⁹

⁸⁷ Ex. 13 at 23. To be sure, the cost of the road has also been a topic of significant question and dispute and AKDOT's estimate needed to be independently verified by the Corps and subject to public scrutiny.

⁸⁸ *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987); *see also Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) ("Ongoing harm to the environment constitutes irreparable harm warranting an injunction. When a project may significantly degrade some human environmental factor, injunctive relief is appropriate." (quoting *Se. Alaska Conservation Council v. U.S. Army Corps of Eng'rs*, 472 F.3d 1097, 1100 (9th Cir. 2006))); *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1124 (9th Cir. 2005) ("[O]nce the desert is disturbed, it can never be restored.").

⁸⁹ Because of these harms, Friends have standing. *See Students for Fair Admissions, Inc.* cont...

The Corps permit allows construction of an approximately 19-mile gravel road, that would cover 186 acres and require 1.2 million cubic yards of gravel to construct.⁹⁰ Construction would involve the discharge of 40,000 cubic yards of gravel into wetlands, as well as the clearing of wetlands and waterways.⁹¹ The gravel will permanently fill 4.58 acres of wetlands and 0.7 acres of streams and require the mining of gravel from 2 mines and 14 other sites along the road corridor.⁹² The project also involves the placement of 85 culverts and one bridge.⁹³ Interior has acknowledged that road construction would have long-term or permanent impacts, i.e., irreparable impacts, on numerous resources.⁹⁴ This Court has also recognized that the construction of roads constitutes irreparable injury.⁹⁵

The mining and permanent placement of gravel to build the road will destroy wetlands and tundra and harm aquatic and terrestrial wildlife. Dr. Siohban Fennessey, an expert on wetland ecosystems, explained that roads in general are very impactful to

v. President & Fellows of Harv. Coll., 600 U.S. 181, 199 (2023) (stating standing test); *see also* Exs. 19-24 (standing declarations).

⁹⁰ Ex. 11 at 1-2.

⁹¹ Ex. 2 at 1.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Ex. 18 at 4-8 (geology and soils), 9-12 (hydrology and hydrologic processes), 13-17 (terrestrial and aquatic plant communities), 18-22 (wetlands), 23-32 (fish and fish habitat), 33-38 (birds), 38-40 (tundra swans), 40-42 (brant), 42-43, 45-46 (caribou), 43-46 (brown bear), 47-49 (visual resources), 50-54 (Wilderness).

⁹⁵ *Se. Alaska Conservation Council v. U.S. Forest Serv.*, 413 F. Supp. 3d 973, 981 (D. Alaska 2019).

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wetlands because they “function as lateral dams” disrupting the natural flow of “water, sediment, and biota” across a hydrologically connected landscape.⁹⁶ A road blocks surface and groundwater, which can cause “water to pool on the uphill side of the embankment with lower water levels (drying) on the downhill side.”⁹⁷ As Dr. Fennessey explained, “[i]t is critical to emphasize that, while the physical footprint of roads may be relatively small, their adverse impacts are disproportionate to their acreage, with impacts extending to an area many times wider than the road itself.”⁹⁸ According to Dr. Fennessey, even when culverts are fully functional, “they do not eliminate all adverse impacts” and can also cause impacts, including the disruption of water flow, sedimentation, and impacts to fish and invertebrate movement.⁹⁹ The Corps is allowing AKDOT to determine the specific location of the culverts during construction, which Dr. Fennessey explains “means the Corps has not assessed or determined where culverts need to be placed in order to maintain the hydrology of the area.”¹⁰⁰ Dr. Fennessey described other harms from road construction as well, including fugitive dust and the transportation of sediment downstream into Kinzarof Lagoon, which can have significant impacts on eelgrass.¹⁰¹ Dr. Fennessey concluded that due to “[t]he direct loss of wetlands and the

⁹⁶ Ex. 25 ¶ 13 (Fennessey Declaration).

⁹⁷ *Id.*

⁹⁸ *Id.*; Ex. 9 at 7-8.

⁹⁹ Ex. 25 ¶ 14.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* ¶¶ 11-12, 16.

indirect impacts to even more wetlands ... construction of the permitted road will cause irreparable harm to the aquatic environment, including wetlands, stream and rivers, floodplains, and the diversity of functions and species they support.”¹⁰²

Road construction will also harm Friends’ members’ use and enjoyment of Izembek and its resources. For example, Brianne Rogers lives in Cold Bay for three to four months each year, working as a hunting guide and hunting upland birds and waterfowl in Izembek.¹⁰³ The road would fragment the habitat that Ms. Rogers guides and hunts in.¹⁰⁴ She explains that a road through the isthmus would impact the wildlife she hunts and views in Izembek and “degrade the remote, untouched nature of Izembek.”¹⁰⁵ Among other harms, the road would impact the wetlands habitat used by Steller’s eiders, harming Ms. Rogers’ ability to view them.¹⁰⁶ Ms. Rogers explains how the road would lead to increased illegal all-terrain vehicle (ATV) use, harming Izembek’s tundra, wildlife, and Wilderness, and her enjoyment of the area.¹⁰⁷ She also describes how illegal ATV use increases the potential for poaching, which harms wildlife and her ability to view them.¹⁰⁸

¹⁰² *Id.* ¶ 17.

¹⁰³ Ex. 19 ¶¶ 2, 7, 9 (Rogers Declaration).

¹⁰⁴ *Id.* ¶ 10.

¹⁰⁵ *Id.* ¶ 15.

¹⁰⁶ *Id.* ¶ 13.

¹⁰⁷ *Id.* ¶ 16-20.

¹⁰⁸ *Id.* ¶¶ 21-22.

Douglas Damberg has lived in Cold Bay and recreated and worked in Izembek.¹⁰⁹ As Mr. Damberg described, ATV use on the Refuge and Wilderness has increased since the road from King Cove to the Northeast Terminal was completed.¹¹⁰ This has “resulted in significant illegal ATV use in the adjacent Wilderness, leaving many scars on the tundra” that have permanently harmed wildlife and habitat.¹¹¹ Mr. Damberg explained that a road through the isthmus would lead to increased ATV use and exacerbate harm to the tundra and wetlands.¹¹² Mr. Damberg also explains how a road would lead to visual impacts throughout the area, including Wilderness, and degrade the wetlands and lagoons that he otherwise uses and enjoys.¹¹³ These harms to Friends’ members’ ability to use and experience Izembek and its Wilderness in a truly wild state, without a road, constitutes irreparable harm.¹¹⁴

¹⁰⁹ Ex. 20 ¶¶ 13-17 (Damberg Declaration).

¹¹⁰ *Id.* ¶ 27.

¹¹¹ *Id.* ¶¶ 27-28.

¹¹² *Id.*

¹¹³ *Id.* ¶ 30.

¹¹⁴ *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (recognizing harm to “members’ ability to view, experience, and utilize the areas in their undisturbed state” is irreparable harm (internal quotation omitted)).

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST STRONGLY FAVOR A TRO/PI.

In cases against the government, the balance of equities and public interest factors merge.¹¹⁵ A preliminary injunction serves to prevent irreparable harm “so as to preserve the court’s ability to render a meaningful decision on the merits. It often happens that this purpose is furthered by the status quo.”¹¹⁶ Courts have long held that injunctive relief is appropriate to avoid environmental degradation.¹¹⁷ Where environmental injury is “sufficiently likely, the balance of harms will usually favor” an injunction.¹¹⁸

As explained, road construction will irreparably harm wetlands, degrade habitat for fish and wildlife, and lead to an increase in unauthorized ATV use, all of which will impact Friends’ members’ use of the area and its resources. In contrast, preserving the status quo will ensure that a road is not built while this case is pending, thereby protecting Friends’ interests in protecting Izembek, and preserving Friends’ ability to obtain meaningful relief should the Court invalidate the permit. There is a well-

¹¹⁵ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

¹¹⁶ *Doe v. Trump*, 957 F.3d 1050, 1068 (9th Cir. 2020) (quoting *Golden Gate Rest. Ass’n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008)); see also *Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 704 (9th Cir. 1988) (explaining a preliminary injunction preserves the status quo).

¹¹⁷ See *Env’t Prot. Info. Ctr.*, 968 F.3d at 991; *All. for the Wild Rockies*, 632 F.3d at 1137; *Sierra Club v. U.S. Army Corps of Eng’rs*, 645 F.3d 978, 995 (8th Cir. 2011).

¹¹⁸ *Save Our Sonoran, Inc.*, 408 F.3d at 1125 (quoting *Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190, 1195 (9th Cir. 1988)).

established “public interest in preserving nature and avoiding irreparable environmental injury.”¹¹⁹ Ensuring that the Corps complies with the law is also in the public interest.¹²⁰

To the extent that road construction will provide economic benefits, those benefits will not be lost, only delayed during the case.¹²¹ A delay in realizing economic benefits does not overcome irreparable environmental harm.¹²² Additionally, any potential health, economic, or subsistence benefit from the use of the fully-constructed road will be impacted only minimally by extending the construction timeline because construction is slated to take at least three years and this case can be resolved more quickly.¹²³

Finally, this Court should decline to impose a bond under Federal Rule of Civil Procedure 65(c). Courts have considerable discretion in this regard,¹²⁴ and regularly do not require bonds in public interest environmental cases like this one.¹²⁵

¹¹⁹ *Lands Council v. McNair*, 537 F.3d 981, 1005 (9th Cir. 2008) (en banc).

¹²⁰ *Env’t Prot. Info. Ctr.*, 968 F.3d at 992.

¹²¹ *See League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 765-66 (9th Cir. 2014) (describing delay in moving revenues and jobs to future year as “marginal harm” and concluding irreparable injury to plaintiffs outweighs temporary delay in achieving economic benefits of project).

¹²² *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 738 (9th Cir. 2001).

¹²³ Ex. 11 at 2.

¹²⁴ *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999); *Cal. ex rel. Van De Kamp v. Tahoe Reg’l Planning Agency*, 766 F.2d 1319, 1325-26 (9th Cir. 1985).

¹²⁵ *See, e.g., All. for the Wild Rockies v. Gassmann*, 604 F. Supp. 3d 1022, 1037 (D. Mont. 2022); *W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019); *Cent. Or. Landwatch v. Connaughton*, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012).

CONCLUSION

For the foregoing reasons, this Court should enjoin the Corps from allowing anyone to engage in any ground disturbing activities in reliance on the challenged Permit until the case is resolved on the merits.

Respectfully submitted this 24th day of July, 2026.

s/ Michelle Sinnott
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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.4(a)(3), I certify that this memorandum complied with the type-volume limitation of 7.4(a)(1) because it contains 5,688 words, excluding the parts exempted by Local Civil Rule 7.4(a)(4).

s/ Michelle Sinnott

Michelle D. Sinnott

CERTIFICATE OF SERVICE

I certify that on July 24, 2026, I caused a copy of PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION to be electronically filed with the Clerk of the Court for the U.S. District Court of Alaska using the CM/ECF system.

For the parties who have not yet registered an appearance, a copy will be served, as agreed to by the parties, via email:

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s/ Michelle Sinnott

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