Sierra Club * Wilderness Watch * Alaska Wilderness League * Friends of Alaska National Wildlife Refuges * National Wildlife Refuge Association[1]

October 29, 2026

Alaska DOT&PF
Division of Statewide Planning
P.O. Box 112500
Juneau, AK 99811–2500

Sent via email to dot.stip@alaska.gov

Re: Proposed FFY2027–2030 Statewide Transportation Improvement Program

On behalf of the above-listed organizations and our members, we provide the attached comments on the Alaska Department of Transportation and Public Facilities' (AKDOT) Proposed FFY2027–2030 Statewide Transportation Improvement Program (FFY2027-2030 STIP). For the reasons discussed in the attached comments, it appears AKDOT is rushing to develop the King Cove Road despite a lack of compliance with applicable federal and State laws. The inclusion of this road in the STIP would be fiscally irresponsible and not in the best interests of the State, and we urge AKDOT to withdraw it. If you have any questions or wish to clarify anything in our comments, please do not hesitate to contact Scott Lake at slake@trustees.org or Michelle Sinnott at msinnott@trustees.org. Thank you for your prompt attention to our comments.

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[1] Comments prepared by Trustees for Alaska.

Background

The Izembek National Wildlife Refuge and Wilderness has been protected since the 1960s. It contains one of the world's most important migratory bird staging and wintering habitats, and supports millions of migratory waterfowl and shorebirds. Izembek's heart is a narrow isthmus of rolling tundra, separating the Izembek Lagoon and Bering Sea from the Kinzarof Lagoon and Gulf of Alaska. The King Cove to Cold Bay Road (King Cove Road), STIP IDs 34992 and 34919, seek federal funding for a road that traverses directly through this heart and, per a recent decision from the Alaska federal district court, would violate federal law.

The Alaska National Interest Lands Conservation Act (ANILCA) governs the management of protected areas in Alaska, like Izembek, and crucially it establishes a mandatory statutory process and requirements for seeking authorization to build a road through them. The King Cove Road in the Proposed FFY2027–2030 Statewide Transportation Improvement Program (FFY2027-2030 STIP) is yet another iteration in a decades-long program to build a road through Izembek without following the mandatory statutory process outlined by ANILCA.

In addition, it is unclear that AKDOT has complied with the requirements of Section 4(f) of the Department of Transportation Act. The Section 4(f) process is mandatory, and it requires several substantive analyses that have not apparently been undertaken. Further, federal funds cannot be used for any activity that violates applicable federal or state law, including ANILCA, the Clean Water Act, Section 4(f), and NEPA.[2]

AKDOT may be utilizing previously allocated federal funds for the initial planning, mobilization, and construction phases of the Izembek Road, including but not limited to an approximately $10.7 million contract awarded for the "King Cove Material Stockpiling and Workforce Training Project."[3] Notably, while this contract states it was opened for bidding on August 17, there was no notice on the Alaska Online Public Notice System,[4] which raises significant questions as to whether AKDOT complied with State law governing agency contracts.[5]

I. The Entire King Cove Road Must Comply with Department of Transportation Act Section 4(f).

Section 4(f) is a mandatory, substantive provision of the Department of Transportation Act that

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[2] 23 U.S.C. § 114(a); *see also* 23 C.F.R. § 1.9(a).
[3] AKDOT, Construct Contract Award Status for Contract No. SSHWY00750 (last accessed on Sept. 9, 2026).
[4] State of Alaska, Online Public Notices (search for "invitation to bid") (last accessed on Sept. 9, 2026).
[5] AS § 36.30.130 ("Notice [of an invitation to bid] shall be posted on the Alaska Online Public Notice System"); *see also* AS §§ 36.30.100-.190 (requirements for competitive sealed bidding).

applies whenever federal funding is used or may be available for construction of a road.[6] It prohibits AKDOT from approving "any program or project … which requires the use of any publicly owned land from a … recreation area[] or wildlife and waterfowl refuge of national, State, or local significance" unless AKDOT first determines that "there is no feasible and prudent alternative," and "the program includes all possible planning to minimize harm" to the affected park or refuge.[7] As a National Wildlife Refuge, Izembek is a Section 4(f) property.[8]

"Use" of a Refuge occurs when, among other things, a project impacts wildlife viewing, "impairs esthetic features or attributes of a property", or "diminishes the value of wildlife habitat in a wildlife and waterfowl refuge adjacent to the project."[9] In addition, compliance with the National Environmental Policy Act (NEPA) is required before any project subject to Section 4(f) can proceed.[10] Critically, state and federal authorities cannot avoid these requirements by splitting a project into several segments.[11]

Further, federal funds cannot be used for any activity that violates applicable federal or state law, including ANILCA, the Clean Water Act, Section 4(f), and NEPA.[12] If FHWA determines that a state violated or failed to comply with state or federal laws in connection with a federally funded project, not only can it withhold payment to the State for that individual project, but it can also "withhold approval of further projects in the State."[13]

The King Cove Road would harm Izembek's internationally significant public lands. Izembek has been recognized for decades as an area with irreplaceable and diverse wildlife habitat that is virtually unparalleled in the Northern Hemisphere. As one of the world's most important migratory bird staging and wintering habitats, Izembek supports millions of migratory waterfowl and shorebirds, including the entire global population of Pacific black brant. Izembek also provides high-quality brown bear, caribou, and fish habitat. As numerous prior studies by the U.S. Fish and Wildlife Service have concluded, the proposed road would severely and irreparably harm these

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[6] 49 U.S.C. § 303, 23 U.S.C. § 138; *see also See La Raza Unida v. Volpe*, 488 F.2d 559, 560-62 (9th Cir. 1973); *N. Idaho Cmty. Action Network v. United States DOT*, 545 F.3d 1147, 1159 (9th Cir. 2008). FHWA has delegated its authority under Section 4(f) and NEPA to AKDOT pursuant to 23 U.S.C. § 327. *See* U.S. Dept. of Transp., FHWA, Welcome to the FHWA Alaska Division (last accessed on Sept. 11, 2026).

[7] 23 U.S.C. § 138(a)(3); 49 U.S.C. § 303(c).

[8] 49 U.S.C. 303(a); 23 U.S.C. § 138(a)(1); 23 C.F.R. § 774.17 (definitions)

[9] 23 C.F.R. § 774.15.

[10] 42 U.S.C. § 4332.

[11] *See e.g., N. Idaho Cmty. Action Network v. United States DOT*, 545 F.3d 1147, 1159 (9th Cir. 2008) ("[A]n agency is required to complete the § 4(f) evaluation for the entire Project prior to issuing its ROD. The Agencies concede that they have taken a phase-by-phase approach, that they have not completed the § 4(f) evaluation for the entire Project, and that they already have issued the ROD. The Agencies have accordingly violated § 4(f).").

[12] 23 U.S.C. § 114(a); *see also* 23 C.F.R. § 1.9(a).

[13] 23 C.F.R. § 1.36.

habitats and species, as well as Izembek's irreplaceable Wilderness values. Federally funded construction of the King Cove Road would impact Izembek and is thus a "use" that requires compliance with Section 4(f) and NEPA.

There is no indication that AKDOT has complied with Section 4(f) in connection with either the parent phase of the King Cove Road, STIP ID 34919, or Stage 1 of the King Cove Road, STIP ID 34992. This lack of compliance is troubling considering that construction of Stage 1 has already begun and may be nearing completion.[14] Nor is there any indication that AKDOT has conducted the environmental impact analysis required under NEPA. Any use of federal funding in connection with the King Cove Road, and particularly in connection with Stage 1 of the road, is therefore illegal unless and until AKDOT completes these mandatory processes. And if AKDOT, in it its haste to move forward with construction of Stage 1 of the King Cove Road this year, has used any federal funds in connection with activities that violate federal law, like Section 4(f), ANILCA, NEPA, or the Clean Water Act[15], or State law, like the competitive bidding and public notice requirements,[16] not only is the project itself ineligible for federal funding, but other federally funded projects across the State could be impacted as well.

II. The King Cove Road Has Not Been Authorized Via ANILCA Title XI.

ANILCA Title XI provides the sole authority for any action by any federal agency related to the approval and authorization of transportation systems within conservation system units like Izembek.[17] Congress enacted Title XI "to minimize the adverse impacts of siting transportation ... systems within units established ... by [ANILCA] and to [e]nsure the effectiveness of the decisionmaking process."[18] To achieve this, Congress established "a single comprehensive statutory authority for the approval or disapproval of applications for such systems" and required that transportation systems, such as roads, "be approved or disapproved in accordance with the procedures set forth in this title."[19]

Section 1104 governs the approval process for roads subject to Title XI.[20] An applicant submits a consolidated application with every federal agency that has jurisdiction to make any decision related to the approval of a road, which triggers a public process.[21] Each federal agency must then

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[14] *Friends of Alaska National Wildlife Refuges, et. al. v. Burgum*, 26-6487, ECF 3.5, Declaration of David Lowell, at ¶4 (Oct. 6, 2026).
[15] 33 U.S.C. § 1344.
[16] AS §§ 36.30.100-.190.
[17] 16 U.S.C. § 3161(c); *see also id.* § 3102(4) (defining "conservation system unit" to include any "National Wildlife Refuge [and]…National Wilderness" in Alaska).
[18] 16 U.S.C. § 3161(c).
[19] *Id*. §§ 3161(c), 3162.
[20] 16 U.S.C. § 3164(b)-(g).
[21] *Id*. § 3164(b)-(f); *see also id*. § 3161(a) (finding "an orderly, continuous decisionmaking process involving the State and Federal Governments and the public" is needed). This process accounts for NEPA. *Id*. § 3164(e).

make detailed findings to approve a road, which address alternative routes to minimize impacts; whether impacts would affect the purposes of the conservation system unit; and the "social, economic, and environmental impacts of national, State, or local significance, including impacts on fish and wildlife and their habitat."[22]

For roads in Wilderness, Section 1106 applies and limits agencies' ability to act unilaterally.[23] A road is not allowed in Wilderness unless it is recommended by the President and approved by Congress.[24] Only after Congress approves the application can the agencies issue their authorizations.[25] These procedures reflect Congress' intent that "wilderness lands deserve a greater degree of protection."[26]

Congress was clear that "no action by any Federal agency under applicable law with respect to the approval or disapproval of the authorization, in whole or in part, of any transportation ... system shall have any force or effect unless the provisions of this section are complied with."[27]

The inclusion of the King Cove Road in the FFY2027-2030 STIP is part of yet another attempt to bypass the mandatory Title XI process for authorizing a road through Izembek. However, because the road would violate Title XI and other provisions of federal law, it is not eligible for federal funding and should not be included in the STIP.

III. Surface Transportation Block Grant Funding Is Not Generally Available for Local Roads

Funding for the King Cove Road is proposed under the Surface Transportation Block Grant. FFY2027-2030 STIP at V3-173. With certain exceptions, a surface transportation block grant project may not be undertaken on a functionally local road. 23 USCS § 133 (c). The proposed King Cove Road would be a functionally local road. It would not connect to any State or federal highways, meaning it may well not qualify for federal funding.

Additionally, Stage 1 of the King Cove Road is proposed as an advance construction project, meaning the State would be fronting the cost of the project and seeking federal reimbursement once it is concluded. 23 C.F.R. Part 630 Subpart G. If the Federal Highway Administration determines the King Cove Road is a functionally local road and therefore not appropriate for federal funding, the State will have no avenue to recoup the nearly $20,000,000 that has been allocated for Stage 1 of the King Cove Road. As such, the inclusion of this road in the STIP is fiscally irresponsible and not in the best interests of the State.

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[22] 16 U.S.C. § 3164(g)(2)(B), (D), (F).
[23] *Id*. § 3166(b)-(c).
[24] *Id*.
[25] *Id*. § 3164(c)(6).
[26] H.R. REP. NO. 96-97, pt. II, at 157 (1979).
[27] 16 U.S.C. § 3164(a).