

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

COMMITTEE FOR SAFE COMMUNITIES

Plaintiff,

vs.

STATE OF ALASKA, DEPARTMENT OF  
TRANSPORTATION AND PUBLIC  
FACILITIES,

Defendant.

Case No. 4FA-23-02289CI

**MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW the Plaintiff, Committee for Safe Communities, (hereafter “CSC”) through undersigned counsel, Jason A. Weiner of Jason Weiner & Associates, P.C., and hereby moves for a preliminary injunction ordering Defendant to follow and enforce applicable state law and regulations, to abate an attractive public nuisance, to stop violating the Plaintiff’s and the public’s right of equal protection, and to stop violating AS 28.35.410 as an accomplice to negligent driving. This motion is supported by the affidavits of Keith Whitaker, Bill Ward, Chancer Shank, Sue Wilken, Jeffrey Jon Cook, Robert L. McHattie, P.E., and Barbara Schuhmann and the memorandum of counsel below.

**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

**I. BACKGROUND**

Plaintiff Committee for Safe Communities(CSC) is a group of Alaskans concerned with transportation safety on Alaska roads. The members live in the Tetlin to Fort Knox Corridor (hereafter referred to as “Corridor”), a mostly 2 laned road. The Alaska Department of Transportation and Public Facilities (ADOTPF) recently dubbed this the “Alaska, Richardson,

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Steese Corridor.” CSC is an Alaskan non-profit corporation formed under the laws of the State of Alaska and is a public interest litigant representing the rights of the general public to a safe community. In this matter CSC is concerned about the violations of law, safety concerns, and nuisance created by the Department of Transportation by failing to enforce its own laws and regulations, by ignoring an attractive nuisance, and by allowing an activity that endangers children without even implementing any of the safety recommendations made by the engineer hired to evaluate the project at issue in this case.

Defendant State of Alaska, Department of Transportation and Public Facilities (AKDOT) is a department within the State of Alaska tasked with maintaining and ensuring the safety of Alaska roadways and public facilities, including the safety of the public using the Corridor roads and highways.

Beginning in approximately 2021, Kinross Gold Corporation and Contango, ORE, Inc., operating as Peak Gold, LLC (Peak Gold) announced plans to extract gold ore at Manh Choh mine near Tetlin, Alaska. Peak Gold plans to haul ore from Manh Choh mine using 248 miles of public roads, to the Fort Knox Gold mine east of Fox in the Fairbanks Mining District (hereinafter referred to as the “Ore Haul Operation”).<sup>1</sup> The public roads Peak Gold plans to use for the Ore Haul Operation have not been designated by AKDOT for industrial use.<sup>2</sup> Peak Gold has not obtained any transportation special permits.<sup>3</sup> The distance of travel will be approximately a total 496-mile round trip on public roads. The roads it will use are the Alaska Highway from Tetlin to Delta Junction, the Richardson Highway from Delta Junction to the Mitchell Expressway, the Mitchell Expressway to Peger Road, Peger Road to the Johansen Expressway, the Johansen Expressway to the Steese Expressway, the Steese Expressway to the

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<sup>1</sup> See [safealaskahighways.org](http://safealaskahighways.org); Affidavit of Barbara Schuhmann, Exhibit 1.

<sup>2</sup> 17 AAC 25.011, 17 AAC 25.014,

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junction with the Elliott Highway, and the Steese Highway from the Elliott Highway junction to the Fort Knox Road junction. The trucks Peak Gold announced it will use are known as “B-Trains,” as they will consist of a tractor pulling two trailers. They will be 95 feet long and will weigh 30 tons unloaded and over 80 tons loaded. Peak Gold intends to run trucks directly through the heart of Fairbanks using Peger Road and Johansen Expressway to get from Tetlin to Fort Knox so as to avoid the bridge that traverses on the Steese Expressway to traverse the Chena River which has been found to be unable to support the weight of the trucks. Trucks will run every 12 minutes, 24 hours a day, 365 days a year for approximately five years or longer. Peak Gold’s current plan would start “trial runs” of this Ore Haul Operation in the fourth quarter of 2023, ramping up to 120 transits every day through Fairbanks by summer, 2024.<sup>4</sup>

AKDOT has announced publicly and on its website, that the Ore Haul Operation is appropriate and “legal.” AKDOT has not required Peak Gold to follow the requirements of 17 AAC 35 or 17 AAC 25 in designing this Ore Haul Operation. Nor has AKDOT required any special permit of Peak Gold to use public highways and bridges for the Ore Haul Operation. In approving a route for the Peak Gold industrial Ore Haul Operation, from Tetlin to Fort Knox, AKDOT has designated the Ore Haul Operation route to be an industrial road without following the requirements set out in its regulations at 17 AAC 35, 17 AAC 25.011 and 17 AAC 25.014, and in violation of the Administrative Procedures Act (APA), AS 44.62,

During the 2022-2023 school year, there were 86 school bus stops (requiring a full stop on the highway in both directions) on the Corridor route between Tetlin and Fox: 12 on the Alaska Highway near Tok, 27 on the Alaska and Richardson Highways near Delta Junction, 34 stops on the Richardson Highway near Salcha, and 13 on the Steese Highway near Fox. Kinney

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<sup>3</sup> See September 11, 2023 letter from AKDOT Commissioner Ryan Anderson. Exhibit 2.

<sup>4</sup> See [safealaskahighways.org](https://safealaskahighways.org); Exhibit 1.

Engineering, a company hired by AKDOT to analyze the Tetlin to Fort Knox route planned for the Ore Haul Operation, reported on these stops on July 26, 2023. It found that when there is ice, the Stopping Sight Distance for the Peak Gold trucks travelling the speed limit is inadequate for them to stop in time to avoid a collision with a stopped school bus at 35 of the 74 school bus stops directly on the Corridor route; 11 of the 27 school bus stops on the Alaska and Richardson Highways in the Delta/Greeley School District; 16 of the 34 school bus stops on the Richardson Highway in the Fairbanks School District; and 8 of the 13 school bus stops on the Steese Highway in the Fairbanks School District. The 12 school bus stops in the Gateway School District had adequate sight distances for the posted speed limits.<sup>5</sup>

To assist the Peak Gold Ore Haul Operation, on September 25, 2023, AKDOT issued an Invitation to Bid # 2524IH018 for brush cutting on the Alaska, Richardson and Steese Highways. The brush cutting work must be accomplished by Dec. 31, 2023, according to the contract document.

In early 2023, AKDOT announced that in order to facilitate the overlength and overweight Peak Gold trucks, which it referred to as “heavy freight haulers,” five bridges will need to be replaced. Passing lanes will need to be constructed. Road repairs and reinforcement will be required. The needed bridge replacement and upgrades will not be completed prior to the commencement of the Ore Haul Operation.<sup>6</sup> Peak Gold plans to start hauling ore in its B-trains by the end of October.<sup>7</sup> This is well before the Technical Advisory Committee, tasked to assist an independent engineer in conducting an impact study of the proposed Manh Choh ore haul, can

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<sup>5</sup> Jack Barnwell, *School Bus Contractor Addresses Kinross Ore Haul Concerns*, Daily News-Miner, September 8, 2023, Exhibit 3.

<sup>6</sup> See [safealaskahighways.org](http://safealaskahighways.org); Exhibit 1.

<sup>7</sup> Jack Barnwell, *Corridor Action Committee Review Bridges*, Daily News Miner, October 15, 2023, Exhibit 4; Exhibit 1.

formulate its recommendations.<sup>8</sup> This is also well before AKDOT can complete recommended improvements to corridor roads, replacement of bridges, or brush clearing to improve sight distances along the Alaska and Richardson Highways. Many projects announced by AKDOT are unfunded and not in an approved DOTPF budget.<sup>9</sup>

Bill Ward, a professional owner/operator of trucks and companies owning trucks over the last fifty years in the State of Alaska, discusses the characteristics of the B-trains that will run on the corridor highways. They are truck-double trailer combination where the axles of the lead trailer have a fifth wheel mounted on the lead trailer and the rear trailer hooks directly to the lead trailer via that fifth wheel hitch. The B-train was developed in Canada and the 8 axle 140,000 lbs GVW 8 Train is a standard across Canada. When Mr. Ward operated his B-trains from Canada to Alaska, he was required to lighten his loads to 105,000 GVW or extend his length using a long dolly to operate within standard Alaska highway safety limits. The B-trains acquired by Black Gold are modified to have a GVW capacity of 160,000 lbs GVW, which is higher than standard B-train tractor trailers.

The design for these modified B-trains is not proven by normal industry standard safety tests, and it is not clear, from a truck operators perspective, that the B-trains can be safely used on Alaska roads. Unique Alaskan factors that could affect safe operation of the modified Black Gold B-trains include: Rolling Drag Resistance which prevents the trucks from maintaining responsible highway speeds caused in part by the excess load weights, increased number of axels, unique tire specifications, winter road conditions, and surface road conditions/damage. It is more likely that not that the operation of the B-trains within the corridor will result in rolling traffic obstructions to non-B-train traffic. The B-trains will not be able to maintain an

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<sup>8</sup> Exhibit 1.

<sup>9</sup> Id.

operational posted highway speed limit of 65 mph because of a variety of factors, including excessive northbound loads unable to maintain planned operational speed on several of the up-hill stretches of the corridor, increased rolling drag resistance as discussed above, insufficient truck horse power to overcome rolling resistance and regain responsible highway speeds, untested modified driving techniques required to maintain safe control on highways and during turns and traffic congestion in urban and semi-urban communities of Tok, Delta Junction, North Pole and Fairbanks. The obstructions present a safety risk as non-commercial vehicles in the corridor will not understand the operational limits on these unique vehicles, particularly with overtaking and passing slow moving B-trains in single lane highways common between Tetlin and North Pole in the corridor.

The Black Gold B-train truck configuration uses a 3 axle power system and 3 & 4 axle trailer axle groupings. When trucks with these multi-axles turn, the tires are forced to slide across the asphalt (known as scrubbing) resulting in wear on the asphalt surface. During warm weather there is plenty of documented evidence of the asphalt being completely ripped off the highway where these truck combinations turn off onto driveways or secondary roads. This can happen all along the route and will become particularly evident in the urban streets in Fairbanks where sharp turns are required. In addition, the overall length, number and length of trailers and couplings, power system and axle groupings also limit the turning radius of the Black Gold B-trains, which will present difficulty in turning, with difficulty increasing with the increase in the turn angle. The greatest difficulty for the B-trains along the route will be the 90 degree turns on the urban streets in Fairbanks, where the B-trains will not be able to turn within a single lane except with

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great difficulty, which will present a safety risk to other traffic paralleling the B-trains in other lanes.<sup>10</sup>

Robert L. McHattie, P.E. is a licensed Registered Professional Civil Engineer (Lic. # AELC4744) and has been so licensed since June 11, 1979. The following statements are based upon education and over 40 years of research engineering experience in Interior Alaska. He is familiar with Black Gold's 95 foot, 164,000 pound, Double Trailer Long Combination Vehicle (LCV). He expects these vehicles to be inherently less stable during travel when empty ( $\approx$  64,000 pounds, i.e., 32 tons) than while travelling full of ore ( $\approx$  164,000 pounds, i.e., 82 tons). Friction that can be developed between the dry or icy road-surface and any individual LCV tire is directly proportional to the weight carried by that tire that acts perpendicular to the road surface. Very generally speaking, tire-to-surface "grab" (including braking friction) is expected to be reduced roughly according to the fraction:  $64,000 / 164,000 = 0.39$  --> or, very generally, to 39% of the tire friction that can be developed if the LCV were fully loaded. Therefore, as an engineer, it is Mr. McHattie's opinion that the empty Black Gold LCVs may exhibit less lateral stability, especially on icy roads, due to decreased friction development between the road surface and many of the LCV's tires.

Control of each Black Gold LCV is completely dependent on the skill, nerve, attentiveness, and reflexes of that LCV's driver regardless of road-surface conditions. The few calculation results discussed below certainly suggest that Black Gold is placing perhaps twice the safety responsibility on the shoulders of each of its drivers than would be the case for most large semi tractor-trailer ("18-wheeler") drivers in other states. The astounding amount of responsibility placed in the hands of each LCV driver can be emphasized by the realization that Black Gold's 164,000 pound LCV carries with it more than **twice the kinetic energy (Kinetic**

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Energy =  $\frac{1}{2} \times \text{mass} \times \text{speed}^2$ ) and twice the momentum (Momentum = mass x speed) of the normal, fully loaded, semi tractor-trailer hauler, at 80,000 pounds maximum, that would be Federally-legal on highways of other states. This holds true for vehicles traveling at the same speed.

In a crash situation, the relative amount of kinetic energy (or momentum) possessed by an involved vehicle, at the moment of impact, is expected to be generally related to its contribution toward impact-related damage/injury. Simple calculation indicates that, at 55 mph, the Black Gold LCV carries a kinetic energy of about 16.3 million foot-pounds, while an 80,000 pound vehicle would possess less than half that amount — or only about 8.0 million foot-pounds. Relative momentum would be in the same ratio. Looked at in a different way, the 80,000 pound truck would have to be travelling at almost 80 mph to generate the same crash-damage potential (using kinetic energy) as the Black Gold LCV travelling at only 55 mph.

The Black Gold LCV will consume far more (many times more) of the roadway pavement's available "life" than any other vehicles presently travelling the ore haul route. This is based on both the weight and travel frequency of Black Gold's ore hauling LCVs. Asphalt concrete pavements, such as those along the ore haul route are designed according to Alaska DOT&PF's Flexible Pavement Design Manual. Using that method, the thickness of an asphalt concrete pavement is designed to accommodate a specific number of vehicle-applied loads during the pavement's service "life." More specifically, pavement thickness is determined, according to the manual, to accommodate a design-specified number of Equivalent Single Axle Loads (ESALs) over the duration of its intended design life. Only transport-type trucks of various sizes are forecast by planners and considered in the pavement's design-life calculation (usually 15 to 20 years, to accommodate for example, 5 million ESALS total). Pavement-life design calculations are **not** based on smaller, lighter vehicles such as cars, SUVs, and pickup



trucks—vehicles that do not significantly bend or permanently deform the pavement structure. Also not considered in pavement design calculations are the few vehicles of extraordinarily heavy weight and /or unusual configuration that must be individually evaluated and permitted. Simply put, each truck-type included in the forecast design traffic mix is assumed to extract (consume) a bit of the new pavement's life with every pass of that truck type.

The amount of pavement life consumed by each pass of a specific truck type is its “damage factor” as defined by its known ESAL rating. ESAL ratings for normal truck types, from small through fully loaded “18 wheelers” at 80,000 pounds, generally run in the range of 1 to 2.5 ESALs. Double trailer rigs are far rarer but normally consume no more than about 2.5 to 4 ESALs of pavement life per pass down the roadway. Each pass of the Black Gold LCV has been rated by Kinney Engineering to consume 5.5 ESALs worth of pavement life.

Black Gold's loaded LCVs, each applying 5.5 ESALs worth of damage to the north-bound pavement every few minutes of every day of the year, will vastly shorten DOT&PF's originally intended pavement life compared to all other traffic traveling the same route. Those trucks will become the predominant determiner (almost the sole determiner) of pavement life in the north-bound direction of the ore haul route. Assuming 3 loads per hour, Black Gold's loaded LCVs will be extracting  $3 \times 24 \times 365 \times 5.5 = 144,540$  ESALs of pavement life per year. The original pavement design may have only assumed a few million ESALs for a period of, say, 15 or 20 years. Obviously, the nearly 14,000 ESALs per year is a **LOT** of pavement life loss per year to benefit only a single road user.

Extraordinarily heavy use of the public transportation system requires equally extraordinary care on the part of the user as well as those advising, monitoring and evaluating the user. Alaska DOT&PF's accommodation and encouragement of Black Gold to use the public highways with such singular and unprecedented intensity will create a public nuisance by

accelerated damage and degradation of the road surface to the detriment of other members of the motoring public.<sup>11</sup>

Keith Whitaker is a professional structural and civil engineer licensed in the State of Alaska, with 12 years of experience in Alaska. He has also worked in other states as a professional engineer and professional structural engineer. “Generally accepted engineering principles” means in compliance with standards set forth by the American Association of State Highway and Transportation Officials (AASHTO) and or National Bridge Inspection Standards (NBIS). Mr. Whitaker is familiar with the Alaska-Richardson-Steese Highways (ARS) corridor between Tetlin, Alaska and Fort Knox, Alaska. He is also familiar with the bridges along that route including the Johnson River Bridge, Gerstle River Bridge and the Roberston River Bridge. These three bridges have been found functionally obsolete and the Johnson and Gerstle River Bridges are structurally deficient and “load restricted” according to the Alaska Highway Bridge Replacement projects prepared by AKDOTPF.

A functionally obsolete bridge is one that was built to standards that are not used today. These bridges are not automatically rated as structurally deficient, nor are they inherently unsafe. Functionally obsolete bridges are those that do not have adequate lane widths, shoulder widths, or vertical clearances to serve current traffic demand, or that that may be occasionally flooded. A structurally deficient bridge is one whose components may have deteriorated or have been damaged, resulting in restrictions on its use. By itself, a determination that a bridge is “structurally deficient” does not imply that it is likely to collapse or that it is unsafe. It means the bridge must be monitored, inspected and maintained.

A bridge which is “load restricted” means that vehicles over 80,000 lbs Gross Vehicle weight (GVW) exceed the generally accepted capacity of the bridges. Load restrictions on

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bridges are designed to slow the deterioration of bridges, protect the public investment in transportation infrastructure, and provide safe travel across such bridges. The B-train vehicles associated with the Tetlin-Fort Knox ore haul have a GVW capacity of 160,000 lbs, which would be in excess of twice the GVW load limits for non-restricted bridges pursuant to generally accepted engineering principles.

Mr. Whitaker reviewed an internal Alaska Department of Transportation and Public Facilities email from Elmer Marx to Sarah Schacher.<sup>12</sup> Elmer Marx was Senior Bridge Engineer for the AKDOTPF Statewide Design and Engineering Services, since retired. The “FHWA formula” referenced in the email refers to the AASHTO (American Association of State Highway and Transportation Officials) and NBIS (National Builders Insurance Services) standards, which constitute the generally accepted engineering standards regarding highway and bridge construction, maintenance and operation. According to the email, Mr. Marx calculated that “the proposed truck (i.e. B-train) exceeds the inventory rating of 17 bridges (or 36 total) but does not exceed the operating rating of any of the bridges.” However, “five of the 17 bridges would require a reduction in the haul truck weight to keep it (sic) from exceeding the inventory rating factoring (the intent of the load posting process).”

The email recommends posting load restrictions on the Johnson River bridge of GVW (Gross Vehicle Weight) of 69 tons (138,000 lbs). The email recommends posting load restrictions on the Sawmill Creek bridge of GVW of 78 tons (156,000 lbs). The email recommends posting load restrictions on the Chena River Flood Channel bridge of GVW of 72 tons (144,000 lbs). The email recommends posting load restrictions on the Badger Loop bridge of GVW of 78 tons (156,000 lbs). The email recommends posting load restrictions on the Robertson River Bridge of GVW 61.5 tons (123,000 lbs). The email recommends further study

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and posting load restrictions on the Robertson River Bridge of GVW to be announced. Mr. Whitaker is unaware that load limit posting has been determined for the Robetson River Bridge. It is clear that B-train use of these five bridges would exceed recommended posting load limits in compliance with generally accepted engineering principles.

Mr. Marx's recommendations to post load limits on these bridges are consistent with generally accepted engineering principles, and would prohibit, without a special permit, the use of the bridges by fully loaded B-trains. As indicated in the attached email from Sarah Schacher on January 24, 2023, AKDOT rejected Mr. Marx's recommended posting of load limits on these bridges.<sup>13</sup> As a result of Mr. Whitaker's review and his personal familiarity with the Alaska-Richardson-Steese Highway (ARS), the rejection of Mr. Marx's recommendations and allowing unrestricted use of the corridor by fully loaded B-trains will more likely than not accelerate the deterioration of bridges; undermine the public investment in the ARS Corridor transportation infrastructure; and compromise safe travel across such bridges until such time that the five bridges are replaced or repaired.<sup>14</sup>

Chance Shank was born on December 22, 1998, and has resided in the village of Dot Lake, Alaska ("Dot Lake") for most of his life. He purchased a home in Dot Lake shortly after he graduated from the local village school, and the home in Dot Lake has been his primary residence to this day. Dot Lake is a small tribal community located on the Alaska Highway between Delta Junction and Tok and is 155 road miles southeast of Fairbanks, Alaska. Mr. Shank is the Vice-President of Dot Lake Village, a federally recognized tribe. In his official capacity with the Tribe, Mr. Shank is very familiar with the Tribe's Tribal Transportation Plan,

<sup>12</sup> Exhibit 7, October 7, 2022 email from Elmer Marx to Sara Schacher.

<sup>13</sup> Exhibit 8, January 24, 2023 email from Sarah Schacher to Andrew Crook, et.al.

<sup>14</sup> Exhibit 9, Affidavit of Keith P. Whitaker, P.E.

and the Tribe's interface with the AKDOTPF's Alaska- Richardson-Steese Corridor Plan and the Kinross-Black Gold ore haul plan.

Mr. Shank routinely drives the ARS Corridor, and has done so most of his life. He has put about 150,000 driving miles on the vehicles he has owned throughout the years, the majority of which from driving on the Alaska Highway. Many of these miles were during the daylight, but a good chunk of them were at night or in difficult weather conditions. Mr. Shank is very familiar with the numerous curves in that road, the scenery, and especially which spots that are dangerous at certain times of the year.

Mr. Shank has never seen Alaska DOTPF allow industrial use of the ARS Corridor by trucks the size of the Black Gold B-trains, nor in the volume planned by Kinross/Black Gold. He believes that Alaska DOTPF is relaxing normal operating restrictions within the ARS Corridor to attract Kinross/Black Gold to use the ARS Corridor for its unconventional ore haul plan in support of mining operations in and around Tetlin, Alaska.

Alaska DOTPF's encouragement of the Kinross/Black Gold ore haul plan creates a public nuisance to the residents of Dot Lake as discussed below. The only road access to Dot Lake is off the Alaska Highway, and the Alaska Highway provides critical access for the residents of Dot Lake to medical services, ambulance services, air service, public safety, fire service, groceries, and dry goods, which are available in Tok, Delta Junction or Fairbanks. Dot Lake lies between the Robertson River Bridge and the Johnson River Bridge on the Alaska Highway. The Robertson River Bridge is between Dot Lake and Tok. The Johnson River Bridge & Gerstle River Bridge are between Dot Lake and Delta Junction. It is common knowledge in the area that all these bridges are structurally deficient, and functionally obsolete and are planned for replacement. If prior to replacement, one or more of the bridges are damaged or rendered non-functional, the loss of either bridge will dramatically and adversely impact the ability of the

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residents of Dot Lake to access the critical services necessary to the village. Persons using the Alaska Highway will encounter one B-train every 12 minutes on average.

Driving between Dot Lake and Tok takes forty-six (46) minutes along a two-lane undivided highway, which means that residents of Dot Lake traveling to Tok will encounter approximately four (4) B-trains per trip. Driving between Dot Lake and Delta Junction takes sixty-three (63) minutes along a two-lane undivided highway, which means that residents of Dot Lake traveling to Delta Junction will encounter approximately five to six (5-6) B-trains per trip. Driving between Dot Lake and Fairbanks takes one hundred fifty eight (158) minutes along a mostly two-lane undivided highway, which means that residents of Dot Lake traveling to Tok will encounter approximately thirteen (13) B-trains per trip.

Trucks smaller than the B-trains will kick up lots of snow driving along the Alaska Highway in winter, which can cause white-out conditions for motorists driving in both directions as motorists encounter B-trains along the ARS Corridor. The larger the truck the greater the white-out conditions created by a passing truck. Passing tandem trailer trucks, like the B-trains will be difficult year round, but will be very difficult in the winter because of white-out conditions caused by the trucks.

Dot Lake salvages moose meat from Alaska Highway vehicle/moose collisions, so the Tribe is very aware of the timing and cause of such collisions. White-out conditions along the Alaska Highway is a major cause of vehicle/moose collisions along the Alaska Highway, so that increased white-out conditions caused by B-train traffic in the winter will substantially increase such vehicle/moose collisions in our area endangering the lives of motorist using the Alaska Highway. Pulling over is not a viable option to use now because the planned 12 minute intervals between the B-Trains means would take too long to allow the white-out conditions to dissipate.

Thus, during the winter, the B-train ore haul will monopolize the Alaska Highway and render the

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Alaska Highway unusable to other motorists, and will likely cause white-out conditions for B-trains that follow each other in the planned 12 minute intervals.

Mr. Shank obtained a video<sup>15</sup> of an ore truck passing at slow speeds on a curve outside of Tetlin. This demonstrates that the trucks have a hard time actually staying in a single lane while traveling on undivided highways in the area. The inability of these trucks to stay in designated lanes even while traveling at slow speeds demonstrates the hazard these B-Trains present to other motorists.

The Johnson River, Robertson River, and Gerstle River bridges are very narrow, and B-Trains driving on these bridges leave very little room for other motorists to use the bridges while in use by the B-Trains crossing from opposing direction. Moreover, it is not uncommon for heavy trucks to drive in the center of the bridge to reduce the weight loads on the sides of bridges. As a result of these factors, it is not uncommon for vehicles facing on-coming heavy truck traffic at the bridges to stop and wait at one end of the bridge so that they do not have to risk a mid-bridge collision. This safety practice will substantially increase delays of all traffic along the Alaska Highway.

Tribal Members of Dot Lake attend funerals and traditional potlatches in the nearby communities of Tanacross, Healy Lake, Tetlin, and Northway. For cultural and religious reasons, it is very important that a person be buried in the village in which he resided at his death, or in his ancestral/family cemetery. When a body is brought back from Fairbanks there is a caravan of cars which escort the body to the appropriate cemetery. Per cultural protocol this is preferably done while the sunlight is still out. The B-train ore haul will adversely impact bringing the tribe's deceased people home one last time along the proposed trucking route.

For example, one family from Dot Lake has an Indian Cemetery located upon their native allotment (US Survey 03618, Native Allotment # F012836) where they bury their loved ones. There is also another Indian Cemetery on a native allotment towards Delta Junction, near the Little Gerstle River, (US Survey 05095A, Native Allotment # F030788A) where another village buries some of their Tribal Members. Both native allotments are located directly off of the Alaskan Highway along the proposed trucking route. The proposed trucking plan being encouraged by the AK DOTPF will adversely impact Dot Lake Tribal members and the members of other neighboring tribes use of these cemeteries.

There are multiple Native allotments that front on the Alaska Highway, several of which are in Dot Lake, but many more along the Alaska Highway between Tetlin and Fairbanks. The proposed trucking plan being encouraged by the AK DOTPF will adversely impact Dot Lake Tribal members and the members of other neighboring tribes use of these Native allotments where access is right off the highway.

Dot Lake does not have an airport, so that most medivacs out of the village to Fairbanks must be done by ambulance using the Alaska Highway. However, if the emergency is very serious an air-medivac is necessary, in such cases, the medivac aircraft will land on the Alaska Highway. B-train's passing Dot Lake every 12 minutes will necessarily negatively impact such medivacs.<sup>16</sup>

Jeffrey Jon Cook resides off College Road in Fairbanks, Alaska and at Harding Lake in Salcha, Alaska, forty-five miles to the east and south of Fairbanks, off the Richardson Highway. He has driven the Richardson Highway between Salcha and Fairbanks for 64 years and is very familiar with the dangers of driving on the Richardson.

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<sup>16</sup> Exhibit 11, Affidavit of Chance Shank.  
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Between Eielson Air Force Base (“Eielson”) and Delta Junction, Alaska, the Richardson is a two-laned, rural road. Many driveways, homes, churches, schools and businesses have direct access onto the Richardson. It is a vital connector that communities east of Fairbanks use to get to Fairbanks for food, supplies, services, doctors, a hospital and an airport. When there is an accident on the Richardson, it often stops traffic in both directions for hours. There have been recent examples of this. When a school bus stops on the Richardson, traffic must stop in both directions. The Kinross ore haul will interfere with school bus operations and military convoys and make driving more dangerous for all users of the public highway.

Cell phone connections are limited on sections of the Richardson, impeding emergency calls. The Richardson has few shoulders and pull-offs, few passing lanes, no run-away lanes, and many hills, curves, bumps and blind corners. There are 34 school bus stops directly on the Richardson in Salcha. Buses transport students to Salcha School, which is directly on the Richardson. Going north toward Fairbanks, the school and its driveway are hidden behind a hill. The sight distance is inadequate for a Kinross ore haul truck to stop once it sees a stopped school bus at the school entrance, particular in winter snow and ice conditions. Salcha school holds events where cars are parked along the Richardson for a quarter of a mile from the school.

Mr. Cook believes that Kinross ore trucks will block access on the Richardson between Fairbanks and his home in Salcha. It will increase accidents. It will increase the times that all traffic must stop. It will increase the times the highway is blocked. The ore haul will make the journey unreasonably dangerous and challenging, and therefore unreasonably interfere with Mr. Cook’s, and those similarly situated, access to their property.<sup>17</sup>

Finally, there is Sue Wilken. She lives off Peger Road in Fairbanks. She has lived in Fairbanks for 64 years. She is very familiar with the proposed ore haul rout as she has used it

most of her life accessing property at Harding Lake as well as frequent summer trips to Valdez. Ms. Wilken served six years on the Fairbanks North Star Borough School Board, two years as the President. She has closely followed school district issues over the years and has studied the school bus routes that were in place during the 2022-2023 school year.

Ms. Wilken has become extremely concerned about the plan of Kinross Gold to begin an industrial ore haul using public highways that service school bus routes. The full “red light” bus stops, in both directions, are where children wait for a bus and often cross the street to go to or from their homes at their respective bus stop. Ms. Wilken believes that an industrial ore haul route is incompatible with pre-existing uses of this highway route, one of those being school bus transportation every day of the 180-day school year.

During the 2022-2023 school year, there were 48 school bus stops (requiring a full stop on the highway from both directions) in the Fairbanks North Star Borough on the Richardson and Steese Highways. At these bus stops there are two bus serves provided each day at different times (elementary and secondary). Each of these routes will pick-up and return students, therefore there will be 48 x 4 (192) times) a school bus will stop on a two-lane highway, requiring a full stop on the highway in both directions. There are 24 times (2 x.12) the buses will stop on the Alaska Highway (Alaska Gateway School District), and (32 x 2) 64 buses stopping on the Alaska and Richardson Highways near Delta Junction (Delta-Greely School District). In summary, there are 280 times a school bus will be stopping on a two-lane highway on the Kinress Gold ore haul route every school day for nine months out of every year in the sub-arctic conditions of darkness, ice and snow. Because of variables of bus driver shortage, combined stops, enrollment, the number of stops may change slightly during the school year.

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A study is being performed by Kinney Engineering hired by the Alaska Department of Transportation and Public Facilities to analyze the Tetlin to Fort Knox route as planned for the Kinross Gold ore haul. Kinney has reported that when there is ice and/or snow and ore trucks traveling the speed limit, there is inadequate stopping sight distances for the Kinross Gold trucks for 35 school bus stops directly on the Corridor route from Fairbanks to Delta Junction. Eleven of the 27 sight restricted school bus stops are on the Alaska and Richardson Highways in the Delta/Greely School District. Sixteen of the 34 are on the Richardson Highway south of Eielson Air Force Base in the Fairbanks School District. Eight of the 13 school bus stops are north of Fairbanks on the Steese Highway also in the Fairbanks School District.

Ms. Wilken uses the Peger Road/Phillips Field Road intersection every day, most days multiple times. She has but one access point to Peger Road and that is this busy intersection. The Kinross ore haul trucks will present unreasonable dangers and obstacles to her unfettered access to and from her home. The trucks will not be able to reach a reasonable speed when climbing onto the Johansen Expressway to travel east from Peger Road. The trucks will take an unsafe and unreasonable amount of time and length to stop. Any problem they have on Peger Road in her vicinity will block her access into and out of her neighborhood. Intersections on Ms. Wilken's vicinity will also be blocked and will become more dangerous.<sup>18</sup>

## II. DISCUSSION

### A. Violation of 17 AAC 25.011 – Overlength B-Trains

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<sup>18</sup> Affidavit of Sue Wilken, Exhibit 13.  
Committee for Safe Communities v.  
Alaska Department of Transportation  
and Public Facilities  
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The trucks on the proposed ore haul route will exceed the length limits of 17 AAC 25, particularly on Peger and Johansen, and so are not allowed without special permits or a change to the regulations.<sup>19</sup> The first limitation set out in 17 AAC 25 is (emphasis supplied):

17 AAC 25.011. Prohibited vehicles and loads Except under a permit issued under this chapter, or a traffic control plan approved, as part of a construction contract, by the department within the limits of a highway construction project, a vehicle, including load, that exceeds the size or weight limitations set out in this chapter, 17 AAC 28, or 17 AAC 35 may not be driven or moved upon the state highway system. A vehicle that is owned by the state and operated by a department employee acting within the scope of departmental employment is not subject to the provisions of this chapter.

Therefore a vehicle, including load, that exceeds the size or weight limitations of any of Chapters 25, 28 and 35, Title 17, may not be driven or moved on the state highway system without a permit. Ignoring the 102” width limit (17 AAC 25.012(a)), the 15’ height limit (17 AAC 25.012(b)), weight limits of 17 AAC 25.013 and provisions for buses in 17 AAC 28, the regulations address vehicle lengths on both the National and Alaska Highway Systems. 17 AAC 25.012(c)(4) establishes the length limit on the National Highway System at 75’ for a truck tractor and two cargo-carrying vehicles, like Kinross says the trucks will be and what has been observed on the highways. The same 75’ length limit for a truck tractor and two cargo-carrying vehicles applies to the state highway system. 17 AAC 25.012(d)(3). Seventy-five feet (75’) is the limit, unless there is an exception.

Kinross says its trucks will be just 1.5 inches less than 95’. That means Kinross hopes to meet the limitations of Long Combination Vehicle (LCV) exceptions in regulations, which apply only to certain listed highways, not including Peger Road and Johansen Expressway.

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<sup>19</sup> Permits could be issued under 17 AAC 35.010 *et seq* “Toll Highways” or 17 AAC 25.320, “Permits for Oversize or Overweight Vehicles”.

17 AAC 25.014(a) allows Long Combination Vehicles (LCVs) up to 95' long, but only if traveling on certain listed highways and if individual trailers do not exceed 48' in cargo-carrying length. This section, along with subsections (c)(3)(A) and (f)(5), would allow 95' LCVs to travel on parts – but not all - of the proposed Kinross route:

- 1) The Alaska Highway<sup>20</sup>, AK-2, from Tetlin to the junction with the Richardson Highway, AK-4, in Delta Junction (17 AAC 25.014(a)(3));
- 2) The Richardson Highway<sup>21</sup>, AK-2, from Delta Junction to the junction with the Mitchell Expressway, AK-3, in Fairbanks (17 AAC 25.014(a)(5));
- 3) The Mitchell Expressway<sup>22</sup> (Parks Highway, AK-3) to Peger Road, if the lead trailer in a truck tractor, two-trailer LCV is not greater than 53' and the total cargo carrying length including the connecting device, does not exceed 95 feet. 17 AAC 25.014(a)(4);
- 4) The Steese Expressway<sup>23</sup>, (AK-2) from the junction with the Mitchell Expressway, AK-3, in Fairbanks to the junction with the Dalton Highway, Alaska Route 11 (AK-11). (17 AAC 25.014(c)(3)(A)); and
- 5) The Steese Highway<sup>24</sup>, Alaska Route 6 (AK-6), from the junction with the Elliott Highway, AK-2, in Fox to Milepost 30, if the vehicle is accessing or returning from terminals or facilities for fuel, servicing, delivering or receiving cargo, or food and rest for the vehicle's operator.<sup>25</sup> (17 AAC 25.014(f)(5)).

Missing from these approved LCV routes are Peger Road<sup>26</sup> and Johansen Expressway<sup>27</sup>.

Since they are not included in the list of specific roads on which LCVs are allowed, LCVs are not allowed to use these two roads as a regular route. At most, vehicle length is limited to 75' on both Peger<sup>28</sup> and Johansen.

17 AAC 25.012(f) allows a detour from LCV routes specified in 17 AAC 25.012(c) (Federal Highway System), but with three important conditions:

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<sup>20</sup> The Alaska Highway is part of the National Highway System (NHS).

<sup>21</sup> The Richardson Highway is part of the NHS.

<sup>22</sup> The Mitchell Expressway is part of the NHS.

<sup>23</sup> The Steese Expressway is part of the NHS.

<sup>24</sup> The Steese Highway, AK-6, is part of the Alaska Highway System.

<sup>25</sup> I assume that the delivery of the ore to Fort Knox meets the requirements of 17 AAC 25.014(f)(5).

<sup>26</sup> Peger Road is not part of the Alaska or the National Highway System. The regulations only allow LCVs on the National and Alaska Highway Systems. As such, LCVs should not be permitted to use Peger Road at all.

<sup>27</sup> Johansen Expressway is part of the National Highway System.

<sup>28</sup> I have not been able to determine whether a different length limit applies to Peger Road as a "minor arterial road" that is not part of the National or Alaska Highway System. For now, I assume a 75' length limit.

- 1) vehicles must meet the length limitations set out in 17 AAC 25.012(c): 75', or as much as 95' if on approved LCV routes;<sup>29</sup>
- 2) the purpose of the detour is to access or return from terminals or facilities for fuel, servicing, delivering or receiving cargo, or food and rest for the vehicle's operator;
- 3) the distance traveled off approved LCV routes is no more than 5 miles.

17 AAC 25.012(f) provides:

(f) Vehicles within the limitations set out in (c) of this section may move to and from routes specified in (c) of this section to access or return from terminals or facilities for fuel, servicing, delivering or receiving cargo, or food and rest for the vehicle operator. A vehicle must use the most direct interconnecting truck route wherever possible when moving to or from the specified routes. Vehicle movement off the state highway system is subject to local ordinance. A vehicle moving to or from specified routes may not travel further than a five-mile distance from these routes, except if using roads identified in 17 AAC 25.014(f)(10) – (7).

Similarly, 17 AAC 25.014(f) allows a detour from the specific LCV routes listed in 17

AAC 25.014(a)-(d) if:

- 1.) The vehicle meets the requirements of section 17 AAC 25.014 (length not exceeding 95', individual trailers do not exceed 48');
- 2.) The purpose of the detour is to access or return from terminals or facilities for fuel, servicing, delivering or receiving cargo, or food and rest for the vehicle's operator;
- 3.) The vehicle uses the most direct interconnecting truck route; and
- 4.) The vehicle may not travel further than a five-mile distance from the specified routes, unless using the longer portions of roads specified in 17 AAC 25.014(f)(1)-(10). Subpart (f)(5) allows a detour that meets the other requirements to go as far as Milepost 30 on the Steese Highway from Fox.

The Kinross trucks do not meet the purpose, or the distance conditions outlined, to enable it to use Peger or Johansen as a detour from approved LCV routes, for its 95' LCVs. First, Kinross's purpose in using Peger Road and Johansen Expressway would not fall within the limited purposes allowed. Kinross would use Peger and Johansen as part of its regular route

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<sup>29</sup> There are additional length limitations: the length of the power vehicle may not exceed 45 feet a semi trailer used in combination may not exceed 53'. 17 AAC 25.012(c) and (e).

from Tetlin to Fort Knox, not as a detour “to access or return from terminals or facilities for fuel, servicing, delivering or receiving cargo, or food and rest for the vehicle operator.” The “detour” would not be a detour at all. In effect, Kinross would route its LCV’s to operate on roads not approved for LCVs, at least 120 times per day, every day of every year. This violates the letter and spirit of the regulations allowing LCVs only on certain specified routes. Kinross’s use of Peger and Johansen as its regular route does not fall within the purpose requirement -- to access certain services or cargo. For this reason, Kinross cannot make use of the “no more than 5 mile” detour provision of the regulations, and cannot use Peger or Johansen for 95’ LCVs.

In addition, the distance to be traveled off the approved LCV highways exceeds the “no more than 5-mile” distance limitation. The Peger/Johansen “detour” would be a distance in excess of 5 miles from the approved LCV routes. From the Steese Highway, it is at least 3.1 miles on the Johansen to Peger Road. It is at least 2 miles on Peger Road from the Johansen to the Mitchell Expressway. This totals at least 5.1 miles, which is more than the 5 miles allowed. Five miles off the approved highways is all that is allowed. This reason also would prohibit the use of the Peger/Johansen “detour” to be used as part of the regular Kinross route through Fairbanks.

In summary, truck length on Peger Road and Johansen Expressway is at most 75’. (17 AAC 25.012(d)(3)). Kinross’s 95’ LCVs cannot use Peger Road or Johansen. Kinross is seeking to use the Peger/Johansen as LCV regular routes when they are not designated for use by LCVs. The “Not more than 5-mile” detour exception does not apply to Kinross’s use of Peger/Johansen, as the purposes allowed for such a detour cannot be met and the length of the detour exceeds the allowed 5-mile distance.

**B. Violation Of 17 AAC 35, “Toll Highways,” the Administrative Procedure Act and Due Process Requirements.**

AKDOTPF is designating a route for an industrial ore haul between Manh Choh mine and Fort Knox Mine without taking the steps required by 17 AAC 35, "Toll Highways." The regulation wisely requires different treatment for industrial road use (like Kinross's ore haul) than for personal or commercial use. The DOTPF can, by regulation, designate a specified highway as an industrial use highway if it can accommodate long or heavy loads. Long or heavy vehicles then must obtain permits to use the industrial highway.<sup>30</sup> None of the roads Kinross plans to use is designated for industrial use. DOTPF is designating this route without following the steps required by its own regulations.

To obtain an industrial use designation for its route, Kinross must petition the commissioner, in writing. The petition must include: the proposed use that dictates designation for industrial use, the condition of the facilities; design changes and improvements needed and their cost; the economic, environmental and social impact of such a designation; how much such use and designation will improve the general welfare of the people of the state; and various means of financing the cost of the facility changes necessary.<sup>31</sup> Kinross has yet to request an industrial designation for the roads it wants to use.

Any industrial use designation is "dependent upon" a DOTPF study of: (1) the ability of the route to handle the loads, (2) the safety of the long or heavy loads and their impact upon users of the route, (3) design changes necessary, maintenance operations requirements, traffic engineering including the location and proposed design of vehicle pullouts, passing lanes, and other improvements for the route, (4) the economic, environmental, and social impact and the degree to which designation as an industrial use highway will improve the general welfare of the people of the state, and (5) the various means of financing the costs of the changes to the route



to enable it to accommodate long or heavy loads.<sup>32</sup> The state can make the road length and weight limits more stringent. And it can repeal a designation upon a finding that continued industrial use of the route is not in the public interest.<sup>33</sup>

After an industrial designation, a permit is required for vehicles over regular lengths and weights.<sup>34</sup> The permit application requires disclosure of information the public has asked Kinross to provide: the vehicles to be used, horsepower rating, number of axles, braking power, the GVW, length and load for each vehicle, the number of movements, and additional information requested by the department.<sup>35</sup> The DOTPF can either grant or deny the permit, and impose limitations in the state's best interests, including to ensure safety of other users of the route and to require that operations occur during off-peak hours. The permit is valid for 365 days unless some shorter period is stated.

The permit can be revoked for non-payment of fees; or if vehicle operations are not as specified in the permit, cause excessive damage to the roadway, or represent an unacceptable risk to other users; or if continued use is not in the state's best interest. A permit fee "will be" charged based upon each vehicle Equivalent Axle Load, calculated to offset the state's costs to maintain the roadway surface and structures to accommodate the loads, and administrative permitting costs.<sup>36</sup>

State regulations limit industrial use of public roads, and regular routes of long combination vehicles. Kinross should follow the state's regulatory scheme and request

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<sup>30</sup> 17 AAC 35.010(a)-(b).

<sup>31</sup> 17 AAC 35.010(c).

<sup>32,33</sup> 17 AAC 35.010(d).

<sup>33</sup> 17 AAC 35.010(e) and (f).

<sup>34</sup> 17 AAC 35.020.

<sup>35</sup> 17 AAC 35.030.

<sup>36</sup> 17 AAC 35.050-050.

designation of its route for industrial use, and plan on paying for any needed improvements to the route to accommodate its industrial use. Before designating new roads as LCV regular routes or any roads for industrial use, the state should follow its regulations. Because Kinross's plan presents unacceptable safety risks to other users and to the state's road and bridge infrastructure, its proposed ore haul should not be permitted on Alaska's public highways and streets.

By designating this route as industrial without taking the steps required by the regulations, DOTPF is violating its own regulations, and exposing the public to unreasonable safety risks. DOTPF is also violating the Administrative Procedure Act by in effect changing its regulations without the proper and constitutional due process requirements. It is favoring one user over all others, denying equal protection of the laws to all users.

**C. AKDOT's Actions Create An Unreasonable Risk To Public Safety and Constitute An Attractive Public Nuisance.**

The leading case on a public nuisance claim against the Alaska Department of Transportation is *Friends of Willow Lake v. State, Dep't of Transp. & Pub. Facilities, Div. of Aviation & Airports*, 280 P.3d 542 (Alaska 2012) (citing Trs. for Alaska, 736 P.2d at 327). DOT issued a plan for summer use of Willow Lake upon which the State operated a float plan facility. Similar to this case, the nuisance was not AKDOT operations, but rather the use of the lake by Willow Air, a private company. Local residents who used the lake for other uses filed a suit which included a public nuisance abatement claim. The residents claimed that Willow Air's use of high-performance propellers on its aircraft, with DOT & PF's authorization, created a public nuisance. FOWL sought declaratory and injunctive relief.

DOT's plan in *Friends of Willow Lake* did not violate any regulations and the Court held that the adoption of the plan did not require compliance with Alaska's Administrative Procedure Act. The court did not address the merits of the plaintiff's claim, but rather focused on

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“standing,” since the trial court had dismissed the case on lack of standing. In holding that the plaintiff had standing, the Court observed that “a public nuisance claim encompasses factual issues, primarily whether Willow Air's aviation operation creates “an unreasonable interference with a right common to the general public,”<sup>37</sup>. Also interesting is that the Court noted that individual residents living along Willow Lake did not need to testify, because “the record will likely center around the study assessing aircraft noise at Willow Lake and potential mitigation measures.”<sup>38</sup>

While not legal precedence, a second unreported case is helpful - *Budd v City of Houston*, 2000 WL 34545798 (Alaska, March 22, 2000). In this case, plaintiffs alleged that the city had created an “attractive public nuisance” by allowing unrestricted public access to a dedicated right of way next to a lake near Budd's home. The principal holding of the case is that the suit was not barred by a statute giving the city immunity from damages; i.e. the Court held that the suit sought abatement of the nuisance (an injunction) and was therefore not barred. More importantly, the Court held<sup>39</sup> that “private parties may be held liable for the nuisance based upon acts of third parties.”<sup>40</sup>

It noted that courts and legal authorities agree that a municipality may be held liable on the same basis.<sup>41</sup> For example, in *Maday's Wholesale Greenhouses, Inc. v. Indigo Group, Inc.*, the City of Port Orange owned a dedicated road and other property that a developer had elevated, thereby channeling surface waters across appellant's property.<sup>42</sup> A Florida appeals court

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<sup>37</sup> *Friends of Willow Lake v. State, Dep't of Transp. & Pub. Facilities, Div. of Aviation & Airports*, 280 P.3d 542 (Alaska 2012) citing RESTATEMENT (SECOND) OF TORTS § 821B(1) (1979) (defining public nuisance).

<sup>38</sup> *Id.* at 548.

<sup>39</sup> *Budd v City of Houston*, at 4

<sup>40</sup> *Id.*

<sup>41</sup> *Citing* Restatement (Second) of Torts § 824 cmt. b (1965) (liability arises where “one person's acts set in motion a force or chain of events resulting in the invasion”).

<sup>42</sup> 692 So.2d 207, 208 (Fla.App.1997).

recognized that the city was potentially liable for nuisance, even though it had not participated in building the roads or elevating the property.<sup>43</sup>

*Friends of Willow Lake and Budd* provide some guidance in the standards and factors necessary to consider a public nuisance claim. As noted above, the *Willow* court noted that the primary test is whether operation creates “an unreasonable interference with a right common to the general public.” In contrast, *Budd* defined a nuisance as “a substantial and unreasonable interference with the use and enjoyment of property.”<sup>44</sup> A public nuisance includes any “conduct regarded as so inimical to so many people” that government units are entitled to enjoin the conduct through criminal prosecution or through abatement to “protect the general welfare.”<sup>45</sup>

An important difference between *Friends of Willow Lake and Budd* was *Friends of Willow* was based upon common law definition and principles of public nuisance. In contrast, *Budd* emphasized that the public nuisance claim was defined under specific and particular statutes; i.e. AS 09.45.255<sup>46</sup> and AS 46.03.810(a)<sup>47</sup> This is an important distinction in this case because it is likely Plaintiff’s nuisance claims arise under common law principles because Alaska does not have a statutory definition of public nuisance arising out of the use of public highways. Rather, the common law establishes the operative standards and factors to be considered

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<sup>43</sup> *Id.*, at 209-210

<sup>44</sup> Citing A.S. 09.45.255 (general definition of real property nuisance) and AS 46.03.810(a) (an environmental nuisance) --

<sup>45</sup> *Budd*, at 3 citing

<sup>46</sup> Defining nuisance as “a substantial and unreasonable interference with the use or enjoyment of real property, including water”.

<sup>47</sup> Defining nuisance as “allowing to be placed or deposited upon any premises owned by the person or under the person's control garbage ... or any other matter or thing that would be obnoxious or offensive to the public or that would produce, aggravate, or cause the spread of disease or in any way endanger the health of the community.” NOTE: There are a number of specific nuisance statutes which are not generally applicable to CSC’s claims. See AS 03.05.050 (agricultural or fishing products); 03.30.030 (wire fences); 09.50.170-.240 (bawdy houses); 16.05.800 (fishing equipment); 16.05.880 (construction in specified waters); 19.25.150 (advertising signs); and 19.27.060-.080 (junk yards).

regarding public nuisance claims arising out of the use of public highways,<sup>48</sup>

As noted above, common law defines a public nuisance as “an unreasonable interference with a right common to the general public,”<sup>49</sup> Similarly, the Court in *Taha v State* defined a public nuisance citing Black's Law Dictionary (10th ed.2014),<sup>50</sup>

[a]n unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property.

Plaintiff's nuisance claims include:

- 1) Obstructing highways (Impeding traffic)
- 2) Unreasonable risk to safe use of highways and adjacent lands/property
- 3) Endangering children on school buses at school bus stops.
- 4) Safe bridge operation.
- 5) Increased number of vehicle collisions (quantitative).
- 6) Increased damage from B-Train & other vehicle collisions (qualitative)
- 7) Restriction of access to property (b-train volume and size create chilling effect as to use of highways by the general public

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<sup>48</sup>*Taha v State*, 366 P.3d 544, 547 (Alaska, 2016) (common law defines public nuisance respecting vehicle impoundment even where a municipal statute defines public nuisance but lacks standardized, objectively ascertainable criteria) *Compare Central Monofill Services, Inc. v. Matanuska-Susitna Borough*, 2015 WL 1984238 (Alaska, April 29, 2015) (enforcing municipal ordinance defining junk yard as public nuisance)

<sup>49</sup> *Friends of Willow Lake*, at 280 P.3d at 548 citing RESTATEMENT (SECOND) OF TORTS § 821B(1) (1979) (defining public nuisance).<sup>49</sup> Specifically,

- (1) A public nuisance is an unreasonable interference with a right common to the general public.
- (2) Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:
  - a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
  - b) whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
  - c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

<sup>50</sup> *Friends of Willow Lake*, at 280 P.3d at 548 citing RESTATEMENT (SECOND) OF TORTS § 821B(1) (1979) (defining public nuisance).

<sup>50</sup> *Taha v. State* 366 P.3d at 548.

- 8) Restriction of access to critical services (health, police, food supplies, etc) (variation of chilling effect and impeding traffic)
- 9) Noise
- 10) Air Quality (rubber degradation)

As explained in *Taha v State*,<sup>51</sup> “the obstruction of a highway is (by definition) a public nuisance,” citing to the 10<sup>th</sup> edition of Black’s Law Dictionary.

[a]n unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property.

Clearly, the volume (every 12 minutes) and size of the trucks will result in obstructions. DOT will argue that the trucks will be timed with space between them, but over much of the ore haul there will be bridge and road construction, which will result in “bunching” or the creation of a truck “train.” Moreover, the volume and size of the trucks will be an intimidating presence on the road. For example, road travel between North Pole and Fairbanks is 23 minutes, meaning that an average drive will encounter at least 2 B-trains. Delta Junction to Fairbanks is one hour and 40 minutes, which means that drivers will encounter 8-9 b-trains on the drive, the majority of which is a two lane highway.

Unreasonable risk to the safe use of highways and adjacent lands has several different aspects, all set forth above. There is the school bus concern. There is no regulation of the placement of school bus stops. There is a general statute that prohibits the overtaking of a school bus that has stopped and is “flashing red lights”. Like the “impeding traffic” statute, it only makes it a traffic violations and does not define violation of the statute as a nuisance. However,

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<sup>51</sup> *Id.* at 547.

as will be set forth below, the very engineer that AKDOT hired demonstrates that there many of the school buses have sight distance deficiencies. Endangering children speaks for itself.

There is the concern about the bridges. Two of the bridges are from the Second World War. Even AKDOT's own employee had concern about the bridges. Keith Whitaker has concerns about the bridges. FHWA standards place the maximum weight on the bridges at 80,000 pounds. The B-trains are going to be over 160,000 lbs – double the weight! Should one of these bridges fail, the entire road will be unusable until they can be repaired, which easily could take a year given the harsh winter environment on the interior.

There is the concern regarding increased vehicle collisions. AKDOT's engineer, Kinney, estimates that there will be a 4% increase in the number of collisions/death in the haul road corridor due only to the increased traffic flow. This is basically the argument used by Ford Motor Company regarding the Ford Pinto.<sup>52</sup> In summary, Ford came to the flawed conclusion that it was cheaper to just leave a fatal flaw (the gas tank was in the very back of the vehicle and when it was hit from behind would explode) in the vehicle and pay the damages for people hurt by the flaw than to fix it. Forget about the \$500,000,000 in repairs and improvements necessary to address the problems created by the ore haul. How much would it cost if an entire school bus full of children is flattened by a 180,000 pound truck? And who is going to pay for that? Kinross likes to argue it can shift the blame to its subcontractor, Black Gold. Black Gold can then go bankruptcy, and maybe even try to shift blame to its subcontractors.<sup>53</sup> And what about the State of Alaska? After all that has been written and all the citations to AKDOT ignoring the dangers of the ore haul plan and its own regulations, does the State really think it can avoid liability for the death of a school bus full of children? Highly unlikely.

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<sup>52</sup> Exhibit 14, *The Ford Pinto, The American Museum of Tort Law*.  
Committee for Safe Communities v.  
Alaska Department of Transportation  
and Public Facilities  
Case No. 4FA-23-2289CI

Kinny has acknowledged that vehicle collisions and damage from such collisions correlate to the size of vehicles, but has not been able to find comparable data due to the unique nature of these vehicles. The B-Trains will be the longest, heaviest vehicles ever to travel Alaska's Highways. While we have no accidents with a truck of this length and weight to compare, common sense dictates that the damage from an accident with one of these monstrosities will be catastrophic.

There will be a clear Restriction of Access to Property (b-train volume and size create chilling effect as to use of highways by general public. This is related to people not wanting to encounter the b-trains due to safety concerns and electing to not access their property (particularly recreational property) along the ore haul route. This is also related to the increased amount of time it will take to get to their property as they are maneuvering around these lumbering trucks. There will also be restriction to access to critical services under the same premise.

Noise will be an issue. There is not general noise statute, but there are noise ordinances in the City of Fairbanks. As stated by Sue Wilken, there is great concern about not only the size of these trucks, but how frequently the trucks will be passing through residential neighborhoods and the hours (the middle of the night) they will be passing through the neighborhoods.

The Alaska Pattern Jury standards suggest factors in claiming a nuisance claim seeking damages. These include:

A public nuisance exists where:

- 1) the defendant interfered with a right that is common to the general public;
- 2) the interference was [intentional and unreasonable] [negligent] [reckless];

<sup>53</sup> Exhibit 15, *Canadian Gold Company Distances Itself From Deadly Ghana Explosion*, January 22, 2022, The Canadian Press.



- 3) the interference was a legal cause of significant harm to the plaintiff; and
- 4) the harm to the plaintiff was different in kind than the harm to the general public.<sup>54</sup>

As stated above, the listed nuisances created by the ore haul soundly fit within the elements set forth in the instruction. The ore haul plan is an attractive nuisance and needs to be stopped by this Court.

**D. Imminent Danger to Transportation of Children To and From School –  
Accomplice to Negligent Driving Under AS 28.35.410 *per se***

An article in the Daily News-Miner on September 10, 2023 stated that “Anchorage-based Kinney Engineering has been conducting an analysis on bus stops as part of an overall corridor action plan for the Alaska, Richardson, and Stees highways. As more information becomes available, he said, Durham will start meeting with Black Gold.” A report by Kinney Engineering indicates that there are 86 bus stops on the corridor between Tok and Fox. Sue Wilken also discusses the number of bus stops along the corridor and the concerns she has for the safety of school children riding the bus.

Kinney has only conducted an “initial ‘Stop Sight Distance’ analysis, which takes into consideration reaction distance and braking distances for both large and small vehicles. Other factors include both summer and winter road conditions, such as ice and rain and overall road features.” Kinney’s initial report “indicated that 35 of the 86 bus stop locations did not have appropriate stopping sight distance features for large vehicle operation during icy road conditions. Based on the article, route risks have yet to be fully studied and identified. Such route risks exist based on the simple fact that 35 of the 86 bus stop locations did not have appropriate stopping sight distance features.

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Some precautionary measures have been suggested such as cutting brush along the highway to improve site distances and installing GPS trackers in the school buses so that the ore haul trucks will know when a bus is ahead. Brush cutting is not scheduled to be completed until the end of 2023. There is no timeline for installation of GPS trackers on the buses that will enable trucks to track the school buses. There is no plan to improve site distances for those school bus stops that have site distance issues due to the grade of the road.

Under AS 28.35.410, “a person who drives a motor vehicle in the state in a manner that creates an unjustifiable risk of harm to a person or to property and who, as a result of the creation of the risk, actually endangers a person or property is guilty of negligent driving. An unjustifiable risk “is a risk of such a nature and degree that a failure to avoid it constitutes a deviation from the standard of care that a reasonable person would observe in the situation.” Legal accountability for the conduct of another constituting an offense occurs if “with intent to promote or facilitate the commission of the offense, the person...(B) aids or abets the other in planning or committing the offense.” Under AS 11.16.110.

AKDOT has been advised of the minimum measures that would need to be taken to ensure the safety of school buses along the Corridor, yet it is facilitating the Ore Haul Operation prior to the implementation of the minimum recommended measures. AKDOT also has not instituted an approved solution for school bus stops that lack adequate site distances due to the grade of the road. AKDOT is aiding and abetting the negligence of truck drivers by authorizing the ore haul plan that it knows will endanger school buses due to insufficient sight distances and prior to any precautionary measures being taken. The ore haul plan must be stopped immediately before a school bus full of children get seriously hurt or killed.

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<sup>54</sup> Pattern Jury Instructions 13.09 citing *Snyder v. Kelter*, 4 Alaska 447 (Alaska 1912); Restatement (Second) of Torts §821B and C, comment b (1979); *Maier v. Ketchikan*, 403 P.2d 34, 38 (Alaska 1965).

### E. Standard and Need for A Preliminary Injunction

A preliminary injunction may be granted under the “balance of hardships” standard or the “probable success on the merits” standard.<sup>55</sup> The former applies when the movant faces irreparable harm; otherwise, the latter applies.<sup>56</sup> Irreparable harm is an injury that “should not be inflicted and [that], ‘because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress.’”<sup>57</sup>

Under the balance of hardships standards, a preliminary injunction is warranted when:

- 1) the movant is faced with irreparable harm,
- 2) the non-movant is adequately protected, and
- 3) the movant has raised non-frivolous issues in the case.<sup>58</sup>

If these elements are met, the court balances the harm the movant would suffer without the injunction (assuming the movant would ultimately prevail) against the harm the injunction would impose on the non-movant (assuming the non-movant would ultimately prevail).<sup>59</sup> If the movant does not face irreparable harm, the probable success on the merits standard applies. Under that standard, the movant must make a “clear showing of probable success on the merits.”<sup>60</sup>

Applying either standard to these facts, a preliminary injunction is warranted and the Court should grant Plaintiff’s motion. The dangers of the ore haul plan are numerous. There is the risk to the motoring public. There is the risk to the highways themselves. There is the risk to the bridges. There is even the risk to Kinross, Contango, and the State of Alaska who could face millions in liability should the ore plan continue, not to mention the costs of maintaining the road

<sup>55</sup> *State v. Galvin*, 491 P.3d 325, 332 (Alaska 2021)(citing *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014); *State v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005); *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 540 (Alaska 1970), *modified in other respects*, 483 P.2d 198 (Alaska 1971).

<sup>56</sup> *State v. Arctic Vill. Council*, 495 P.3d 313, 319-20 (Alaska 2021).

<sup>57</sup> *Galvin*, 491 P.3d at 333 (quoting *Kluti Kaah Native Vill of Copper Ctr.*, 831 P.2d at 1273 n.5).

<sup>58</sup> *Id.* (quoting *Alaska Pub. Utilities Coomm’n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975)).

<sup>59</sup> *Id.* (quoting *Alsworth*, 323 P.3d at 54).

<sup>60</sup> *Id.* (quoting *Alsworth*, 323 P.3d at 54 n.14).

after overlength and overweight trucks pass on them 120 times a day. Finally, there is the risk to children who ride on school buses along the corridor. There really is nothing right about the ore haul plan. The “Ford Pinto” line of thinking was found to be flawed in the 20<sup>th</sup> century, and remains flawed in the 21<sup>st</sup> century. A preliminary injunction is necessary to protect lives and prevent the State of Alaska from making the same mistake Ford did.

### III. CONCLUSION

This Court should grant Plaintiff’s Motion for Preliminary Injunction. The trucks are on the roadway right now. They are too long. Roads are icy. They will be too heavy for the roadway and the bridges. School is in session. People are afraid and angry. It is just a matter of time, and not a lot of time, before a motorist and/or their passengers and/or school children get seriously hurt by these monstrosities of the road who are violating Alaska laws with the permission of AKDOT.

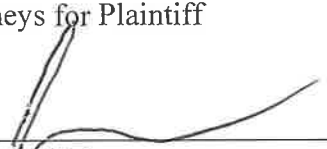
Public opinion has not stopped AKDOT from approving this project in spite of its own regulations forbidding trucks of this size and weight from using the Tetlin to Fairbanks highway corridor without special study, review, and permitting (if at all). It also has not stopped AKDOT from ignoring its own engineers and studies which indicate numerous problems with the ore haul plan that need to be addressed before it is allowed. AKDOT also ignored the vote of the Transportation Advisory Committee to suspend the ore haul plan until the plan can be further studied and additional safety measures are implemented.

This lawsuit is all that stands in the way of protecting the public, and particularly our children, from a dangerous experiment that all studies suggest is doomed to fail, and fail with the death of a motorist or child. The Court should enter a preliminary injunction in this case until a trial on the permanent injunction can be held to determine what procedures Alaska Department

of Transportation should have and must follow before allowing the ore haul plan to move forward, and whether the ore haul plan can ever go forward in light of public nuisance laws, general public safety, and particularly the safety of our children.

DATED on the 31<sup>st</sup> day of October, 2023, at Fairbanks, Alaska.

JASON WEINER & ASSOCIATES  
Attorneys for Plaintiff



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Jason A. Weiner  
ABA No. 9906031

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

COMMITTEE FOR SAFE COMMUNITIES

Plaintiff,

vs.

STATE OF ALASKA, DEPARTMENT OF  
TRANSPORTATION AND PUBLIC  
FACILITIES

Defendants.

Case No. 4FA-23-02289 CI

AFFIDAVIT OF BARBARA SCHUHMANN

State of Alaska                    )  
  ) ss  
4<sup>th</sup> Judicial District            )

Barbara Schuhmann, being first duly sworn, deposes and says:

1. I am the current president of the Plaintiff Committee for Safe Communities, (CSC) an Alaska non-profit corporation, dedicated to promoting safety in Alaska communities and on our highways. We are opposed to the proposed Manh Choh ore haul using public roads and highways, because it jeopardizes public safety and the state's infrastructure, will cost Alaskans dearly in terms of injuries and deaths and will cost the state hundreds of millions of dollars in capital and maintenance costs, among other concerns.
2. I am also a member and current spokesperson for the Advocates for Safe Alaska Highways (ASAH). ASAH is a group of Alaskans who live along the Tetlin to Fort Knox highway corridor, who oppose the proposed Manh Choh ore haul using public roads.
3. I have researched the Manh Choh ore haul proposal for approximately two years, and have obtained documents from ADOTPF through an Open Records Act request.
4. In 2015, Peak Gold, LLC, (Peak Gold) was formed and registered with the Alaska Corporations Division. Peak Gold is a Delaware company, with a Denver physical

address. After some ownership changes, KG Mining (Alaska), Inc. owns 70% of Peak Gold, and Core Alaska, LLC owns 30%. I assume these owners are subsidiary companies of Kinross Gold Corporation (Kinross) of Toronto, Canada, (70%) and Contango ORE, Inc. (30%) respectively. Peak Gold is the operator and owner of the Manh Choh Mine in Tetlin, which claims to hold a valid lease with the Tetlin Tribal Council.

5. I believe that in approximately 2021, Kinross approached ADOTPF seeking approval to haul ore on public roads and streets from Peak Gold's Manh Choh Mine in Tetlin to the Fort Knox Mine for processing and dumping of the tailings.
6. In the fall of 2021, members of the Fairbanks, North Pole and Delta Junction communities began to oppose the proposal, and to ask ADOTPF not to approve it. In early 2022, two other representatives of ASAH and I attended a meeting in Juneau with the Governor and his staff, the Commissioner of the ADOTPF, Kinross representatives including its lobbyist, and two state legislators.
7. At that meeting, the parties agreed that ADOTPF would pay for an independent, peer-reviewed study of the Manh Choh ore haul plan and route, including the public safety, infrastructure, socio-economic and environmental impacts of the ore haul. The independent contractor conducting the study would work with a committee on which ASAH would sit. The deliberations and recommendations of the Tetlin to Fort Knox committee would be conducted under the Open Meetings Act.
8. In December 2022 ADOTPF issued a Request for Proposal for the ore haul study to be done. ADOTPF hired Randy Kinney, of Kinney Engineering, to conduct the study. ADOTPF selected members of the Tetlin to Fort Knox Committee and meetings began in earnest in 2023.
9. I am a member sitting on the Tetlin to Fort Knox Corridor advisory committee, which the ADOTPF now calls the "Technical Advisory Committee" (TAC). Recently, ADOTPF changed the "Tetlin to Fort Knox" Corridor name to the "Alaska Richardson Steese" Corridor. ADOTPF also has eliminated its "Tetlin to Fort Knox" website and replaced it with an "Alaska Richardson Steese Highways Corridor Action Plan" website.

10. On October 12, 2023, I attended the meeting of the TAC. Among other persons in attendance was a representative of Kinross, Derek Lakey, and at least four representatives of ADOTPF. Both Mr. Lakey and representatives of ADOTPF at that meeting admitted that as of that time, Kinross, Peak Gold, and their contractor, Black Gold Transit, are running empty 95' double Long Combination Vehicles on Peger Road, Johansen Expressway, and as far away as Tetlin.
11. I asked Mr. Lakey, on the record, when the Kinross/Black Gold trucks would begin to haul Manh Choh ore to Fort Knox. He replied they would begin before the end of October 2023.
12. That time frame will be well in advance of the time the TAC can formulate recommendations for road improvements and steps to improve safety along the Tetlin to Fort Knox corridor. The current schedule of the TAC calls for work to be completed by the end of 2023, or early 2024.
13. Despite the 2022 agreement and despite state regulations which I believe require ADOTPF to complete a study, determine how improvements will be paid for, and build safety improvements before allowing a new industrial use of public roads that is incompatible with existing uses, ADOTPF has announced that it has approved the Manh Choh ore haul as "legal" without the need for any permit. Kinross has stated that ADOTPF has directed it to use the route for the industrial ore haul.
14. The TAC has reviewed statistics and the current use of the Manh Choh ore haul route but has not yet begun its deliberations on recommendations. Several problems and concerns have been shown to exist on the route ADOTPF has designated. Yet, none of the issues will be addressed before the announced start of the Manh Choh ore haul before the end of October 2023. My understanding is that a budget for additional maintenance of the route has not yet been developed, and funding for all 5 announced bridge replacements is not approved.
15. ADOTPF cannot complete recommended improvements to corridor roads, replacement of bridges, or even brush clearing to improve sight distances along the Alaska and Richardson Highways until well into the future. Many projects announced by ADOTPF to help deal with safety issues on the Corridor route are unfunded and not in an approved ADOTPF budget.



16. Two of the projects ADOTPF deemed critical to accommodate the Kinross/Peak/ Black Gold ore haul trucks are the replacement of the Chena Flood Control bridge (northbound) and the Steese Highway bridge over Chena Hot Springs Road. Neither of these bridge replacement projects has been approved for construction by the local Fairbanks Area Surface Transportation planning office, a necessary step for federal funding of projects. Both projects are within the Fairbanks and North Pole serious non-attainment areas. This designation requires that steps be taken to bring air quality within federal guidelines. Given the constraints currently being discussed to bring these areas into compliance with federal and state environmental laws, it is expected that the U.S. Environmental Protection Agency may order construction activities within the serious non-attainment area to be curtailed. Because of the lack of current approval for the funding of construction for these bridges, and because of constraints on new construction that are being discussed, neither of these bridge replacement projects will be completed in the next four to five years, which is the term announced for the Manh Choh ore haul. The ore haul will be over before these bridges can be replaced unless the ore haul is delayed or stopped.
17. One prediction Kinney Engineering has made is that we should expect 10 additional crashes per year with the addition of the Manh Choh ore haul traffic. "Crashes" are accidents involving personal injury or property damage. I have learned that crashes involving large trucks like those of Peak Gold and smaller vehicles are often deadly for those in the smaller vehicle. The safety features of the smaller vehicle do not meet any bumper on the large truck. The tendency is for the large truck to override, cut off, or crumple the smaller vehicle at the windshield level, with deadly consequences for the occupants.
18. In my view, the ADOTPF's decision to allow the Manh Choh ore haul to proceed before the TAC report is completed, and before safety measures can be designed, paid for, and completed, exposes Alaskans to an unreasonable risk to public safety and to their lives.
19. At the Oct. 19, 2023 meeting of the TAC, its members voted to ask ADOTPF formally why and who at ADOTPF decided that the Manh Choh ore haul could proceed before the work of the TAC has been completed. The TAC also voted to ask ADOTPF to pause the

ore haul until the work and the recommendations of the TAC are complete, and the ADOTPF has implemented the safety recommendations.



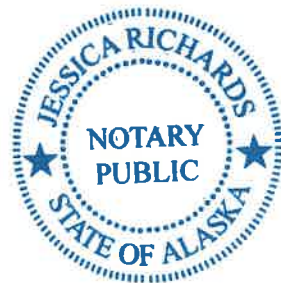
Barbara Schuhmann

Subscribed and sworn before me this 30 day of October 2023



Notary Public for the State of Alaska

My Commission expires 2-22-25





THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

## Department of Transportation and Public Facilities

OFFICE OF THE COMMISSIONER  
Ryan Anderson, P.E., Commissioner

PO Box 112500  
Juneau, Alaska 99811-2500  
Main: 907.465.3900  
dot.alaska.gov

September 11, 2023

Jason Weiner  
Jason Weiner & Assoc., P.C.  
1008 16<sup>th</sup> Ave., Ste. 200  
Fairbanks, Alaska 99701

Re: Alaska/Richardson/Steese Highway Corridor Action Plan  
Notice of Intent (dated September 1, 2023)

Dear Mr. Weiner:

Thank you for the comments provided in your letter of September 1, 2023, addressing the Alaska/Richardson/Steese Highway Corridor Action Plan (A/R/S CAP). The A/R/S CAP is an on-going planning effort funded by the Alaska Department of Transportation & Public Facilities (DOT&PF) to analyze the potential implications of the proposed Manh Choh ore haul to roadway infrastructure and safety. Details of the planning efforts and timelines, along with a list of the transportation stakeholders included in the Transportation Advisory Committee (TAC) is available online through the Alaska DOT&PF website.

Your letter states that implementation of the A/R/S CAP will violate numerous regulations regarding vehicle length and toll highways. The A/R/S CAP is an on-going planning study, that will provide recommendations on roadway infrastructure and safety. A planning study does not bind any agency or regulated entity to the recommendations from the study, and the TAC and DOT&PF have no authority to allow violations of regulations. If a deviation from the regulations is proposed by industry, a permit from DOT&PF is required per 17 AAC 25.011. A planning study recommendation does not constitute a permit authorization.

Your letter also questions DOT&PF's compliance with federal National Environmental Policy Act (NEPA) requirements and federal Statewide Transportation Improvement Program (STIP) planning processes and states your client's intent to initiate litigation to mandate enforcement of those federal requirements.

Presently, the STIP is a draft document, with the public comment period having recently closed on September 3, 2023. After DOT&PF considers public input provided by your client and others, it will prepare the final STIP. This finalized document is not effective until approved by the Federal Highway Administration and the Federal Transit Administration. 17 AAC 05.180(b); 23 C.F.R. 450.220. Any federal decision concerning the STIP is not considered a federal action subject to review under NEPA. 23 C.F.R. 450.224; 42 U.S.C. 4336(a)(2). Within 10 days after a

*"Keep Alaska Moving through service and infrastructure."*

federal approval of the STIP, DOT&PF will provide public notice of its adoption of the final STIP, 17 AAC 05.180(b).

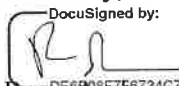
State regulation outlines the procedure for lodging a protest to the STIP:

**17 AAC 05.185. STIP protests.**

An interested person aggrieved with the evaluation of projects under 17 AAC 05.180 may, within 15 days after the release of a notice of adoption under 17 AAC 05.180, file objections with the commissioner. The commissioner may issue a decision on the objections. If the commissioner does not issue a decision on any timely filed objections within 45 days after their receipt, the objections will be considered denied and the project will be considered in the next evaluation cycle under 17 AAC 05.175. The commissioner's action sustaining or denying an objection is the final agency action on the issue raised. Absent a court order, a pending appeal does not stay the execution of the STIP.

In light of the foregoing information, I respectfully submit that your client's proposed effort to seek a preliminary injunction is, at a minimum, premature. In lieu thereof, it may wish to await DOT&PF's adoption of the federally approved STIP. If your client remains dissatisfied, then it may avail itself of the protest procedure noted above.

Sincerely,

DocuSigned by:  


DE6908E7F8734C7  
Ryan Anderson, P.E.  
Commissioner

[https://www.newsminer.com/news/local\\_news/school-bus-contractor-addresses-kinross-ore-haul-concerns/article\\_29c13ed4-4cf2-11ee-a67c-3b54f90d9eaf.html](https://www.newsminer.com/news/local_news/school-bus-contractor-addresses-kinross-ore-haul-concerns/article_29c13ed4-4cf2-11ee-a67c-3b54f90d9eaf.html)

## School bus contractor addresses Kinross ore haul concerns

Jack Barnwell

Sep 8, 2023

1 of 2



Durham School Services image

Durham School Services, the bus contractor for the Fairbanks North Star Borough School District, plans to start more meetings with Black Gold Transport as the North Pole-based trucking company nears the start of its ore hauling operations next year, according to a Durham senior official.

Will Zimmerman, Durham's northwest regional manager, provided an update during Tuesday's regular board of education meeting, along with general bus schedule and route updates.

"We do have contact with a former employee of ours who works at Black Gold in a management capacity, so we have that open line of communication between our general manager [in Fairbanks] and the company," Zimmerman said.

Zimmerman noted that Anchorage-based Kinney Engineering has been conducting an analysis on bus stops as part an overall corridor action plan for the Alaska, Richardson and Steese highways. As more information becomes available, he said, Durham will start meeting with Black Gold.

Kinross Alaska selected Black Gold Transport in September 2022 as the contractor who will haul gold ore from Manh Choh Mine near Tetlin to Kinross Fort Knox near Fox.

The trucking operation will involve 95-foot long-combination vehicles weighing just over 81 tons when fully loaded on 247 miles of the Alaska, Richardson and Steese highways over the next four to five years.

Kinross has stated up to 60 round trips will occur 24 hours a day, seven days a week when its full ramp-up starts in the second half of 2024.

However, the trucking plan has drawn sharp criticism from residents who live and work along the route, including the group Advocates for Safe Alaska Highways. ASAH has compiled several resources on the safety concerns linked to bus routes.

A report by Kinney Engineering, the lead consultant on a state-funded corridor analysis of Alaska, Richardson and Steese, shows that there are 86 bus stops on the corridor between Tok and Fox. Of those, 47 are used by FNSBSD, including 34 stops on the Richardson Highway and 13 on the Steese Highway north of Farmers Loop Road.

Kinney Engineering also conducted an initial “Stopping Sight Distance” analysis, which takes into consideration reaction distance and braking distance for both large and small vehicles. Other factors include both summer and winter road conditions, such as ice and rain and overall road features.

The report indicated that 35 of the 86 bus stop locations didn’t have appropriate stopping sight distance features for large vehicles operated during icy road conditions. Eleven of the sites were located within the Delta/Greely School District in Delta Junction and 24 are used by the Fairbanks North Star Borough School District.

During a July 17 meeting between Kinney Engineering and FNSBSD officials, the school district noted that there are no incidents or accidents for busses operating on the Steese or Richardson highways, while passenger vehicles have rear-ended buses in the urban areas.

The district added that calls from the public “about bus operations are infrequent and handled when they arise.”

The district added that most stops on the Richardson and Steese highways are located at residential driveways, while stops on collector roads are in turnouts that aren’t on the roadway.

“New stop locations are reviewed by transportation supervisor to ensure buses can safely access,” Kinney Engineering’s report states.

Kinney Engineering proposed some mitigations, such as clearing any obstructions, installing better lighting, relocating or removing some bus stops or establishing no-passing zones.

School board member Tim Doran asked Zimmerman if Durham has any plans to talk with Kinross Fort Knox, who contracted with Black Gold.

Zimmerman said Durham’s conversations will be more with the trucking company, with regular conversations likely starting in 2024 as the company ramps up hauling.

“Since it’s Black Gold who is operating the trucks, we would communicate with them on a daily basis,” Zimmerman said. “It actually benefits us because they will be running 24/7 and we will get weather reports a little earlier.”

Doran recommended starting conversations a bit earlier as Black Gold may start some trucking activity as early as October. Kinross and Black Gold are planning to conduct “dry runs” when they receive more of the long-combination vehicles to see how they operate on the route.

Zimmerman said Durham plans to be in conversation with Black Gold “to mitigate any route risk that has been identified.”

Doran asked about possible safety apps Black Gold may develop and whether Durham could benefit from those. Zimmerman said it’s a possible discussion point that could be brought up in the future, but noted he isn’t sure if it would be compatible with Durham’s own GPS tracking software.

He added Durham would communicate directly with the district every morning to determine whether buses would run based on severe weather conditions.

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Contact reporter Jack Barnwell at 907-459-7587 or [jbarnwell@newsminer.com](mailto:jbarnwell@newsminer.com).

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jbarnwell



[https://www.newsminer.com/news/local\\_news/corridor-action-committee-reviews-bridges/article\\_66286b4a-6a11-11ee-8a4c-bb4d0e907ffc.html](https://www.newsminer.com/news/local_news/corridor-action-committee-reviews-bridges/article_66286b4a-6a11-11ee-8a4c-bb4d0e907ffc.html)

## Corridor action committee reviews bridges

Jack Barnwell

Oct 15, 2023



Jack Barnwell/News-Miner

Residents earlier this week check out a 95-foot-long ore haul vehicle being used by Black Gold Transport to haul gold ore from Manh Choh Mine near Tetlin to Kinross Fort Knox.

The independent stakeholder committee set up to spearhead a corridor study of the Alaska, Richardson, and Steese highways between Tetlin and Fort Knox touched base on bridge replacements Thursday.

The independent technical advisory committee was by the Alaska Department of Transportation to look over short and long range improvements to the corridor, including projects and safety impacts.

While the corridor action plan was initially launched as a concern over plans by Kinross Alaska to haul ore from the Manh Choh gold mine in Tetlin to Kinross Fort Knox, it has broadened to include the corridor's future.



## Bridges

Randy Kinney of Kinney Engineering, the firm hired to conduct the corridor analysis, provided a review of five aging bridges that could be impacted.

He reiterated that the Steese Highway Mile 5 bridge over Chena Hot Springs Road, identified in August by DOT as an issue, cannot handle the B-train trucks used by Black Gold to haul the ore.

"It is not a bridge that will handle northbound traffic," Kinney said. "There is an option for the trucks to use the ramps and roundabouts ... while waiting for final construction."

Construction is slated to start in 2024 and would cost \$12.7 million.

The B-train trucks, the 16-axle 95-foot-long double trailer trucks, will haul gold ore on 240 miles of public highway between Tetlin and Fort Knox. Fully loaded, the trucks will weigh as much as 82 tons and fill make 60 round trips a day.

"It may be legal load but it has higher pavement impact," Kinney said.

The bridges over the Chena Flood Control near North Pole will need to either be replaced or rehabilitated to accommodate a fully loaded B-train, or 82.5 tons. Construction is planned for 2025 and would cost \$30.9 million.

Kinney noted the current bypass for the bridge won't safely handle the B-train traffic.

"Until that bridge is replaced or another diversion put in place, the trucks are simply going to have to reduce their weight," Kinney said.

Leslie Daugherty, DOT's chief bridge engineer, added the Chena Flood bridges need to be replaced because they are seismically vulnerable and are well past their lifespan.

Jackson Fox, executive director of Fairbanks Area Surface Transportation Planning, noted both Chena Hot Springs and the flood gate bridges are on hold until the Federal Highway Administration makes a final ruling.

DOT included both bridges in its State Transportation Implementation Program document without consulting FAST Planning first as required by federal law.

"At this time they are on indefinite hold," Fox said.

Alaska DOT has plans for safety enhancements along the corridor, including brush clearing to improve visibility for drivers and pedestrians, installing signs near bus stops to warn commercial traffic of their locations and building long-term infrastructure upgrades such as passing lanes and bridge replacement.

Other bridges set to be replaced include the Alaska Highway Robertson, Gerstle and Johnson rivers. The Robertson has a \$64.1 million price tag slated for 2030 replacement.

The Johnson is anticipated to cost \$38.1 million and is planned to start construct next year. The Gerstle is scheduled for 2025 or 2026 \$68.1 million.

"At this point, they are being replaced because of their age and desire of DOT to upgrade them to current standards," Kinney said. "As presently constructed, the B-trains can be accommodated by these bridges."

Daugherty noted the Bipartisan Infrastructure Law opened up new funding opportunities.

“A large amount was set aside for bridges, along with grant opportunities,” Daugherty said. “We have money we did not have in the past, which makes looking at bridge replacements more attractive.”

### Trucks start rolling

Patrick Filban, who represents Kinross Alaska on the committee, noted Black Gold Transport is already conducting trial runs with the B-train trucks on the route. The number runs between five and eight on the road per day.

“It varies based on schedule and what we are working on,” Filban said. “Some of the trucks are going down to Tetlin and working there.”

Filban added that Black Gold will start hauling ore from Manh Choh to Kinross Fort Knox by the end of the month.

Kinross Fort Knox confirmed in June that it would begin hauling ore late in 2023 at a low rate following driver training and trial runs completion. The goal would be to slowly ramp up transportation through the second half of 2024.

Jennifer Campbell, representing Advocates for Safe Alaskan Highways, challenged the fact that trucks were already operating.

“Let the record reflect that DOT knows the trucks are running and we have not begun to finish our work here and improvements that are necessary and a little safer are not going to be done before the ore haul starts,” Campbell said.

Contact reporter Jack Barnwell at 907-459-7587 or [jbarnwell@newsminer.com](mailto:jbarnwell@newsminer.com).

jbarnwell

Affidavit of Bill Ward

State of Alaska        )  
                                  ) ss  
4th Judicial District    )

After being duly sworn, I Bill Ward, state as follows:

- 1) I am professional Owner/Operator of Trucks and companies owning trucks over the last fifty (50) years in the State of Alaska.
- 2) In that capacity, I have owned and driven multiple tandem-trailer trucks, including having owned and operated B-Train vehicles within Alaska and Canada.
- 3) B-Trains are a truck-double trailer combination where the axles of the lead trailer have a fifth wheel mounted on the lead trailer and the rear trailer hooks directly to the lead trailer via that fifth wheel hitch.
- 4) The B-train Semi Truck/Trailer was developed in Canada and the 8 axle 140,000 lbs GVW B Train is a standard across Canada.
- 5) Historically, B-trains in Canada can and normally operate on Canadian highways at the 140,000 lbs GVW load capacity. Canadian roads and bridges allow for B-train operations at that GVW load with fewer axles and shorter WB lengths than is common in Alaska.
- 6) In operating my B-trains to/from Canada and Alaska, I was required to lighten my loads to 105,000 lbs GVW or extend my length using a long dolly to operate within standard Alaska highway safety limits.

- 7) The B-trains acquired by Black Gold Transportation, and planned for operation along the Alaska-Richardson-Steese Highway Corridor between Tetlin, Alaska and Fort Knox, Alaska are modified from the standard B-train.
- 8) Specifically, the Black Gold B-trains have GVW capacity of 160,000 lbs GVW, which is higher than standard B-train tractor-trailers.
- 9) The design for these modified B-trains is not proven by normal industry standard safety tests, and it is not clear, from a truck operators perspective, that the B-trains can be safely used on Alaska roads.
- 10) Unique Alaskan factors that could affect safe operation of the modified Black Gold B-trains include: Rolling Drag Resistance which prevents the trucks from maintaining responsible highway speeds are caused in part by the excess load weights (i.e. 160,000 vs 140,00 lbs GVW), increased number of axels, unique tire specifications, winter road conditions (snow, ice, freezing rain), surface road conditions/damage (pot-holes, ruts etc).
- 11) It is more likely than not that the operations of the B-trains within the ARS corridor will result in rolling traffic obstructions to non-B-train traffic.
- 12) These obstructions will occur because in my experience the B-trains will not be able to maintain an operational posted highway speed limit of 65 mph because of a variety of factors, which include
  - a. Excessive northbound loads unable to maintain planned operational speed on several of the up-hill stretches of the corridor
  - b. Increased rolling drag resistance discussed above

- c. Insufficient truck horse power to overcome rolling resistance and regain responsible highway speeds.
- d. Untested modified driving techniques required to maintain safe control on highways and during turns.
- e. Traffic congestion in urban and semi-urban communities of Tok, Delta Junction, North Pole and Fairbanks.

13) The obstructions present a safety risk as non-commercial vehicles in the corridor will not understand the operational limits on these unique vehicles, particularly with overtaking and passing slow moving B-trains in single lane highways common between Tetlin and North Pole in the ARS corridor.

14) This Black Gold B-train truck configuration uses a 3 axle power system and 3 & 4 axle trailer axle groupings. When trucks with these multi-axles turn, the tires are forced to slide across the asphalt (known as scrubbing) resulting in wear on the asphalt surface. As a point of reference, Canada routinely uses tri-drives and multi-axle trailers. During warm weather there is plenty of documented evidence of the asphalt being completely ripped off the highway where these truck combinations turn off onto driveways or secondary roads. This can happen all along the route and will become particularly evident in the urban streets in Fairbanks where sharp turns are required.

15) In addition, the overall length, number and length of trailers and couplings, power system and axle groupings also limit the turning radius of the Black Gold B-trains, which will present difficulty in turning, with difficulty increasing with the increase in the turn angle.

16) The greatest difficulty for the B-trains along the route will be the 90 degree turns on the urban streets in Fairbanks, where the B-trains will not be able to turn within a single lane except with great difficulty, which will present a safety risk to other traffic paralleling the B-trains in other lanes.

*Bill D. Ward*

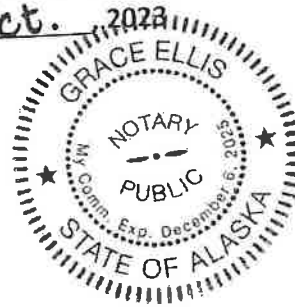
Bill D. Ward

Signed and subscribed before me this 12th day of Oct., 2022

*Grace Ellis*

Notary Public for the State of Alaska

My commission expires December 6, 2025





**Affidavit Robert L. McHattie, P.E.**

State of Alaska                    )  
  ) ss  
Fourth Judicial District        )

I Robert L. McHattie, affirm, subject to the penalty of perjury, that the following statements are true to the best of my knowledge,

- 1) I am a licensed Registered Professional Civil Engineer (Lic. # AELC4744) and have been so licensed since June 11, 1979. The following statements are based upon education and over 40 years of research engineering experience in Interior Alaska
- 2) I am familiar with Black Gold's 95 foot, 164,000 pound, Double Trailer Long Combination Vehicle (LCV): I expect these vehicles to be inherently less stable during travel when empty ( $\approx 64,000$  pounds, i.e., 32 tons) than while travelling full of ore ( $\approx 164,000$  pounds, i.e., 82 tons).
- 3) Friction that can be developed between the dry or icy road-surface and any individual LCV tire is directly proportional to the weight carried by that tire that acts perpendicular to the road surface. Very generally speaking, tire-to-surface "grab" (including braking friction) is expected to be reduced roughly according to the fraction:  $64,000 / 164,000 = 0.39$  --> or, very generally, to 39% of the tire friction that can be developed if the LCV were fully loaded. Therefore, as an engineer, it is my opinion that the empty Black Gold LCVs may exhibit less lateral stability, especially on icy roads, due to decreased friction development between the road surface and many of the LCV's tires.
- 4) Control of each Black Gold LCV is completely dependent on the skill, nerve, attentiveness, and reflexes of that LCV's driver regardless of road-surface conditions. The few calculation results discussed below certainly suggest that Black Gold is placing perhaps twice the safety responsibility on the shoulders of each of its drivers than would be the case for most large semi tractor-trailer ("18-wheeler") drivers in other states.
- 5) The astounding amount of responsibility placed in the hands of each LCV driver can be emphasized by the realization that Black Gold's 164,000 pound LCV carries with it more than twice the kinetic energy (Kinetic

**Energy =  $\frac{1}{2} \times \text{mass} \times \text{speed}^2$ ) and twice the momentum (Momentum = mass x speed) of the normal, fully loaded, semi tractor-trailer hauler, at 80,000 pounds maximum, that would be Federally-legal on highways of other states. This holds true for vehicles traveling at the same speed.**

- 6) In a crash situation, the relative amount of kinetic energy (or momentum) possessed by an involved vehicle, at the moment of impact, is expected to be generally related to its contribution toward impact-related damage/injury.
- 7) Simple calculation indicates that, at 55 mph, the Black Gold LCV carries a kinetic energy of about 16.3 million foot-pounds, while an 80,000 pound vehicle would possess less than half that amount — or only about 8.0 million foot-pounds. Relative momentum would be in the same ratio.
- 8) Looked at in a different way, I calculated that the 80,000 pound truck would have to be travelling at almost 80 mph to generate the same crash-damage potential (using kinetic energy) as the Black Gold LCV travelling at only 55 mph.
- 9) I am of the opinion that that the Black Gold LCV will consume FAR more (I estimate many times more) of the roadway pavement's available "life" than any other vehicles presently travelling the ore haul route. This is based on both the weight and travel frequency of Black Gold's ore hauling LCVs.
- 10) Asphalt concrete pavements, such as those along the ore haul route are designed according to Alaska DOT&PF's Flexible Pavement Design Manual. Using that method, the thickness of an asphalt concrete pavement is designed to accommodate a specific number of vehicle-applied loads during the pavement's service "life." More specifically, pavement thickness is determined, according to the manual, to accommodate a design-specified number of Equivalent Single Axle Loads (ESALS) over the duration of its intended design life. Only transport-type trucks of various sizes are forecast by planners and considered in the pavement's design-life calculation (usually 15 to 20 years, to accommodate for example, 5 million ESALS total).
- 11) Pavement-life design calculations are not based on smaller, lighter vehicles such as cars, SUVs, and pickup trucks—vehicles that do not significantly bend or permanently deform the pavement structure. Also not considered in pavement design calculations are the few vehicles of extraordinarily heavy weight and /or unusual configuration that must be individually evaluated and permitted.

12) Simply put, each truck-type included in the forecast design traffic mix is assumed to extract (consume) a bit of the new pavement's life with every pass of that truck type. The amount of pavement life consumed by each pass of a specific truck type is its "damage factor" as defined by its known ESAL rating. ESAL ratings for normal truck types, from small through fully loaded "18 wheelers" at 80,000 pounds, generally run in the range of 1 to 2.5 ESALs. Double trailer rigs are far rarer but normally consume no more than about 2.5 to 4 ESALs of pavement life per pass down the roadway. Each pass of the Black Gold LCV has been rated by Kinney Engineering to consume 5.5 ESALs worth of pavement life.

13) I am of the opinion that Black Gold's loaded LCVs, each applying 5.5 ESALs worth of damage to the north-bound pavement every few minutes of every day of the year, will vastly shorten DOT&PF's originally intended pavement life compared to all other traffic traveling the same route. Those trucks will become the predominant determiner (almost the sole determiner) of pavement life in the north-bound direction of the ore haul route! Assuming 3 loads per hour, Black Gold's loaded LCVs will be extracting  $3 \times 24 \times 365 \times 5.5 = 144,540$  ESALs of pavement life per year. The original pavement design may have only assumed a few million ESALs for a period of, say, 15 or 20 years. Obviously, the nearly 144thousand ESALs per year is a LOT of pavement life loss per year to benefit only a single road user.

14) In Conclusion: As a Civil Engineer, extraordinarily heavy use of public's transportation system requires equally extraordinary care on the part of the user as well as those advising, monitoring and evaluating the user. Accordingly, the Alaska DOT&PF's accommodation and encouragement of Black Gold to use the the public highways with such singular and unprecedented intensity will create a public nuisance by accelerated damage and degradation of the road surface to the detriment of other members of the motoring public.

Robert L. McHattie  
Robert L. McHattie, P.E.

Oct. 12<sup>th</sup> 2023

Signed and Subscribed before me this 12<sup>th</sup> day of Oct. 2023

[Signature]

Notary Public for the State of Alaska  
My Commission expires on: 4/21/2024



From: Marx, Elmer E (DOT)  
To: Schacher, Sarah E (DOT)  
Cc: Owen, Larry M (DOT); Daugherty, Leslie K (DOT)  
Subject: Mahn Choh Ore Truck Configuration  
Date: Friday, October 7, 2022 3:33:38 PM  
Attachments: 17AAC25.pdf  
FHWA bridge formula.pdf  
image002.png

Hello Sarah,

We have examined most of the bridges on the proposed haul route for the Mahn Choh ore truck – see table below.

We have a few “To Be Determined” bridges that will take additional time to evaluate that can be run, if requested, but as you can see, five bridges would require a reduction in the proposed haul truck weight to remain below the posting/inventory/legal limit.

#### BACKGROUND AND DISCUSSION

The “strength” of a bridge is calculated and reported in terms of the “inventory rating factor” and the “operating rating factor.” The factors are the ratio of the bridge’s “strength” to the live load that can cross the bridge under various conditions. The inventory rating is the live load that can cross the bridge as frequently as desired without the need for an overload permit (i.e., no traffic restrictions). An inventory rating factor of 1.0 implies that the bridge can safely accommodate legal highway loads. The operating rating is the heaviest load that the bridge can carry on an infrequent basis (i.e., overloads). Bridges that cannot accommodate legal highway loads must be load posted. A bridge’s load posting is based upon the lowest inventory rating of the deck, girder, truss or other load-carrying component.

An overload permit is required for any vehicle that exceeds (a) the legal highway truck weight or (2) the posted load weight for the bridge.

In general, the inventory rating factor of a bridge should be at least equivalent to HS20 (the legal highway load where rating factor = 1) for moment and shear.

Based

upon DOT policy, if the inventory rating factor is less than 0.75 then a load posting analysis is performed. The posting analysis examines “common Alaska trucks” crossing the bridge in an unrestricted manner (e.g., in multiple lanes of mixed highway traffic at full highway speed). If the posting vehicles do not require a reduction

in legal weight, then no load posting sign is required. But if the posting vehicles exceed the bridge’s inventory rating then a load posting sign is installed so that the posting vehicle does not exceed the bridge’s “inventory strength.” None of the bridges on the proposed haul route have load posting (restriction) signs.

There are algebraic formulas that can be used to evaluate a truck’s axle weight and spacing to determine if it is a “legal load” – that is, if it is equivalent to HS20 or less. Most all states use the FHWA bridge formula as the basis for legal truck weights (see attached file). Alaska 17 AAC 25.013(a) defines legal highway loads in a

#### DOT&PF (03/01/23)-0007

similar manner but with a few significant differences:

1. The FHWA formula limits legal loads to 80,000 pounds whereas the Alaska formula has no upper limit. There are a few states that allow for loads over 80,000 pounds but Alaska is the only state with no upper limit.
2. The Alaska formula allows somewhat heavier axle group weights and overall gross vehicle weights than does the FHWA formula.
3. Most importantly, the FHWA formula includes provisions that examine the various axle load combinations within a single truck that is not explicitly examined in the Alaska formula. This “inner bridge” part of the formula prevents heavy axles from being spaced closely to each other resulting in forces that can exceed the HS20 legal load force effects. In 1993, the Bridge Section examined the consequences of the Alaska formula’s lack of “inner bridge” check and was able to develop a legal load that resulted in force effects over HS35 (nearly 75% heavier than the legal HS20 live load). Attempts were made to change the statute but were unsuccessful. As noted in the table above, the proposed haul truck is resulting in force effects up to HS35 on some of the bridges (e.g., Sawmill Creek Bridge moment). The use of the FHWA bridge formula would not allow such a heavy, short load or high HS-value.

As noted in the table, the proposed truck exceeds the inventory rating of 17 bridges (of 36 total) but does not exceed the operating rating of any of the bridges.

Note

that at this time, only five of the 17 bridges would require a reduction in the haul truck weight to keep it from exceeding the inventory rating factor (the intent of the load posting process).

Please feel free to contact Leslie, Larry or me if you would like to discuss in more detail or have any questions.

Best regards,

Elmer

HA Byr Main Byr	Location	Westbound K-500 HS (Tons)	Two-way K-500 HS (Tons)	Central K-500 HS (Tons)	Flanagan K-500 HS (Tons)	Westbound K-500 HS (Tons)	Eastbound K-500 HS (Tons)
507	Yerrick Creek	HS 35.4	HS 24.4	HS 72.6	HS 50.0	no post	HS 29.8
508	Cathedral Rapids No 1	HS 32.2	HS 21.1	HS 70.3	HS 46.1	no post	HS 22.5
510	Cathedral Rapids No 2	HS 32.2	HS 21.1	HS 70.3	HS 46.1	no post	HS 22.5
511	Cathedral Rapids No 3	HS 32.2	HS 21.1	HS 70.3	HS 46.1	no post	HS 22.5
509	Robertson River	HS 17.2	HS 38.2	HS 45.0	HS 106.7	TBD	HS 31.2
506	Yerrick Creek	HS 35.4	HS 24.4	HS 72.6	HS 50.0	no post	HS 29.8
508	Cathedral Rapids No 1	HS 32.2	HS 21.1	HS 70.3	HS 46.1	no post	HS 22.5
510	Cathedral Rapids No 2	HS 32.2	HS 21.1	HS 70.3	HS 46.1	no post	HS 22.5
511	Cathedral Rapids No 3	HS 32.2	HS 21.1	HS 70.3	HS 46.1	no post	HS 22.5
509	Robertson River	HS 17.2	HS 38.2	HS 45.0	HS 106.7	TBD	HS 31.2
517	Dry Creek	HS 15.7	HS 21.4	HS 46.5	HS 63.3	no post	HS 19.2
518	Johnson River	HS 15.7	HS 31.2	HS 43.1	HS 85.4	69 Tons	HS 31.2
520	Gerstle River - Truss	HS 22.7	HS 19.1	HS 98.5	HS 82.8	no post	HS 31.2
520	Gerstle River - Floorbeam	HS 16.3	TBD	HS 115.7	TBD	no post	HS 19.2
521	Sawmill Creek	HS 38.0	HS 27.4	HS 89.8	HS 61.7	78 Tons	HS 34.8
531	Moose Creek East Bound (empty)	HS 31.1	HS 27.4	HS 81.9	HS 72.0	no post	HS 27.1
1832	Moose Creek West Bound (full)	HS 31.1	HS 27.4	HS 81.9	HS 72.0	no post	HS 27.1
1364	Chena Flood Chanl - N.B. (full)	HS 22.5	HS 13.7	HS 52.4	HS 32.0	72 Tons	HS 22.9
1866	Chena Flood Chanl - S.B. (empty)	HS 22.2	HS 13.5	HS 51.7	HS 31.4	71 Tons	HS 22.9
1767	Badger Loop Rd U.C.	HS 29.9	HS 19.7	HS 80.3	HS 53.1	78 Tons	HS 33.3
231	Chena River (Steele Hwy)	HS 24.0	HS 15.9	HS 52.6	HS 38.8	TBD	HS 26.5
1342	Chena Hot Springs UC	HS 21.8	HS 15.6	HS 61.5	HS 44.1	68 Tons	HS 29.5

## Schacher, Sarah E (DOT)

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**From:** Schacher, Sarah E (DOT)  
**Sent:** Tuesday, January 24, 2023 4:26 PM  
**To:** Andrew Crook; Daugherty, Leslie K (DOT)  
**Cc:** Khorasani, Milad; Yu, Matthias; Bryan Hudson; Derek Lakey; Patrick Filbin; Owen, Larry M (DOT)  
**Subject:** RE: DOT/Kinross Bridge Rating Discussion

Hi Andrew,

DOT&PF responses in **bold** below.

**From:** Andrew Crook <[Andrew.Crook@Kinross.com](mailto:Andrew.Crook@Kinross.com)>  
**Sent:** Monday, January 23, 2023 7:32 PM  
**To:** Schacher, Sarah E (DOT) <[sarah.schacher@alaska.gov](mailto:sarah.schacher@alaska.gov)>; Daugherty, Leslie K (DOT) <[leslie.daugherty@alaska.gov](mailto:leslie.daugherty@alaska.gov)>  
**Cc:** Khorasani, Milad <[milad.khorasani@hatch.com](mailto:milad.khorasani@hatch.com)>; Yu, Matthias <[matthias.yu@hatch.com](mailto:matthias.yu@hatch.com)>; Bryan Hudson <[BHudson@pndengineers.com](mailto:BHudson@pndengineers.com)>; Derek Lakey <[Derek.Lakey@Kinross.com](mailto:Derek.Lakey@Kinross.com)>; Patrick Filbin <[Patrick.Filbin@Kinross.com](mailto:Patrick.Filbin@Kinross.com)>; Owen, Larry M (DOT) <[larry.owen@alaska.gov](mailto:larry.owen@alaska.gov)>  
**Subject:** RE: DOT/Kinross Bridge Rating Discussion

Hi Leslie,

Hatch provided the following summary of our conversation and actions from Wednesday 18<sup>th</sup>. Could you please review, confirm, and provide follow up as needed?

- 1) The deterioration/deficiencies of the bridges are either incorporated in the load ratings or if not included, ALASKA DOT views deterioration as minor/not critical. ALASKA DOT agreed to look further into this and confirm.

**DOT&PF Response:**

**See the Bridge Manual 27.1.5 Item 3 that allows an increase of concrete strength for the load rating. This increase is not used if any deterioration or cracking is present. Minor cracking is not accounted for in load ratings. More serious cracking is addressed on a case-by-case basis.**

- 2) Foundations are generally assumed to be in good condition and the load rating is not governed by foundation capacity. ALASKA DOT to confirm. DoT expressed some concerns on the piles of some of the prestressed concrete bridges, however, no further information was provided.

**DOT&PF Response:**

**No bridges on the route have substructure load ratings.**

- 3) Currently, ALASKA DOT does not plan/intend to load post any of the bridges as they are all above HS15 inventory rating limit, unless issues/deterioration appears in the bridges in future or regulation changes.

**DOT&PF Response:**

**Correct, this is current practice per our Bridge Manual Section 27.2.**

- 4) ALASKA DOT has a plan to replace Chena Hot Springs, Chena Flood Chanl - N.B, Gerstle River, Johnson River, Robertson. The decision to replace these bridges are not because of Kinross operation and it is mainly based on the conditions of those bridges and past issues that ALASKA DOT had with those bridges.

**DOT&PF Response:** We have a plan to replace the above mentioned bridges. The decision to replace these bridges is based on a number of factors including condition rating, restrictions to commerce particularly for heavy haul operations, prominence of routes for interstate and intrastate commerce, and inability to rehabilitate the bridges to a state of value-added load capacity. These bridges lie on the interstate route from Canada to the Interior and to the North Slope which are routes critical for all Alaskans as they connect communities, move people and goods, and deliver essential services. We also have a historic funding opportunity through the Infrastructure Investment & Jobs Act to address bridges in poor to fair condition. While commerce and proposed development needs can shift (and historically have shifted) DOT&PF priorities for planned infrastructure projects, these bridges have had conditions of concern for some time and do not meet modern design standards. Replacement will restore structure capacity to these bridges, which fall on routes essential to Alaska commerce.

- 5) Alaska DoT is open to considering pre-emptive strengthening of the two bridges that will not be replaced (e.g. Geist road and Badger loop) if independent engineers can prove the strengthening options work/practical and cost effective/feasible.

**DOT&PF Response:**

We are open to such a proposal but as noted would first need to see calculations and understand the benefit gained.

Regards,  
Andrew Crook  
1-647-209-6794

-----Original Appointment-----

**From:** Andrew Crook

**Sent:** Thursday, January 12, 2023 1:08 PM

**To:** Andrew Crook; Schacher, Sarah E (DOT); Daugherty, Leslie K (DOT); Owen, Larry M (DOT)

**Cc:** Khorasani, Milad; Yu, Matthias; Bryan Hudson; Derek Lakey; Patrick Filbin

**Subject:** DOT/Kinross Bridge Rating Discussion

**When:** Wednesday, January 18, 2023 9:00 AM-10:00 AM (UTC-09:00) Alaska.

**Where:** Microsoft Teams Meeting

Hi Sarah, Leslie,

Updating to 9 AM Wednesday as requested. Agenda as discussed.

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## Microsoft Teams meeting

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 239 314 320 91

Passcode: 2BcjNv

[Download Teams](#) | [Join on the web](#)

**Join with a video conferencing device**



Affidavit of Keith Whitaker

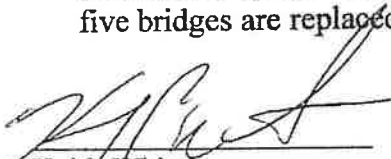
State of Maine        )  
                                  )ss  
Plymouth                )

After being duly sworn, I, Keith Whitaker, state as follows:

- 1) I am a professional structural and civil engineer licensed in the state of Alaska, with 12 years of experience in Alaska.
- 2) I have also worked in other states as a professional engineer and professional structural engineer.
- 3) Attached is a true and accurate copy of my resume.
- 4) As used in this affidavit, the term ‘generally accepted engineering principles’ as applied to highway and bridge construction, maintenance and operations means in compliance with standards set forth by the American Association of State Highway and Transportation Officials (AASHTO) and or National Bridge Inspection Standards (NBIS).
- 5) I am familiar with the Alaska-Richardson-Steese Highway (ARS) Corridor between Tetlin, Alaska and Fort Knox, Alaska.
- 6) I am familiar with the bridges along that route including the Johnson River Bridge, Gerstle River Bridge and the Robertson River Bridge.
- 7) I have reviewed the attached summary of the Alaska Highway Bridge Replacement projects prepared by AKDOTPF, which indicates that these three (3) bridges are functionally obsolete, and that the Johnson and Gerstle River Bridges are structurally deficient and “load restricted”.
- 8) A functionally obsolete bridge is one that was built to standards that are not used today. These bridges are not automatically rated as structurally deficient, nor are they inherently unsafe. Functionally obsolete bridges are those that do not have adequate lane widths, shoulder widths, or vertical clearances to serve current traffic demand, or those that may be occasionally flooded.
- 9) A structurally deficient bridge is one whose components may have deteriorated or have been damaged, resulting in restrictions on its use. By itself, a determination that a bridge is “structurally deficient” does not imply that it is likely to collapse or that it is unsafe. It means the bridge must be monitored, inspected and maintained.
- 10) A bridge which is “load restricted” means that vehicles over 80,000 lbs Gross Vehicle Weight (GVW) exceed the generally accepted capacity of the bridges.
- 11) “Load restrictions on bridges are designed to slow the deterioration of bridges, protect the public investment in transportation infrastructure, and provide safe travel across such bridges.
- 12) The B-Train vehicles associated with the Tetlin-Fort Knox ore haul have a GVW capacity of 160,000 lbs, which would be in excess of twice the GVW load limits for non-restricted bridges pursuant to generally accepted engineering principles.
- 13) I have reviewed the attached internal Alaska Department of Transportation and Public Facilities email from Elmer Marx to Sarah Schacher.
- 14) I am familiar with Elmer Marx, who was, at the time of the above email, Senior Bridge Engineer for the AKDOTPF Statewide Design and Engineering Services, since retired.

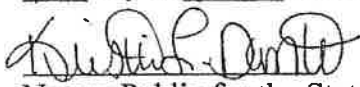


- 15) The "FHWA formula" referenced in the email refers to the AASHTO and NBIS standards, which constitute the generally accepted engineering standards regarding highway and bridge construction, maintenance and operation.
- 16) According to the email, Mr. Marx calculated that "the proposed truck (i.e. B-train) exceeds the inventory rating of 17 bridges (of 36 total) but does not exceed the operating rating of any of the bridges", however, "five of the 17 bridges would require a reduction in the haul truck weight to keep it (sic) from exceeding the inventory rating factor (the intent of the load posting process.)"
- 17) The email recommends posting load restrictions on the Johnson River bridge of GVW of 69 tons (i.e. 138,000 lbs)
- 18) The email recommends posting load restrictions on the Sawmill Creek bridge of GVW of 78 tons (i.e. 156,000 lbs)
- 19) The email recommends posting load restrictions on the Chena River Flood Channel bridge of GVW of 72 tons (i.e. 144,000 lbs)
- 20) The email recommends posting load restrictions on the Badger Loop bridge of GVW of 78 tons (i.e. 156,000 lbs)
- 21) The email recommends posting load restrictions on the Chena Hot Springs UC bridge of GVW of 61.5 tons (i.e. 123,000 lbs)
- 22) The email recommend further study and posting load restrictions on the Robertson River Bridge of GVW to be announced.
- 23) I am unaware that load limit posting has been determined for the Robertson River Bridge.
- 24) It is clear that B-train use of these five bridges would exceed recommended posting load limits in compliance with generally accepted engineering principles.
- 25) Mr. Marx's recommendations to post load limits on these bridges are consistent with generally accepted engineering principles, and would prohibit, without special permit, the use of the bridges by fully loaded B-trains.
- 26) As indicated in the attached email from Sarah Schacher, AKDOTPF rejected Mr. Marx's recommended posting of load limits on these bridges.
- 27) As a result of this review and my personal familiarity with the Alaska-Richardson-Steese Highway the rejection of Mr. Marx's recommendations and allowing unrestricted use of the corridor by fully loaded B-trains will more likely than not accelerate the deterioration of bridges, undermine the public investment in the ARS Corridor transportation infrastructure, and compromise safe travel across such bridges, until such time that the five bridges are replaced or repaired.

  
Keith Whitaker

Signed and Subscribed before me this

10<sup>th</sup> day of Oct, 2023.



Notary Public for the State of Maine. My commission expires on

12/27/2025

KRISTIN L. DUNTON  
Notary Public, State of Maine  
My Commission Expires Dec. 27, 2025

Jason Weiner

---

**From:** Barbara Schuhmann <barbaraalaska1@gmail.com>  
**Sent:** Sunday, October 22, 2023 5:24 PM  
**To:** Jason Weiner; Tracy Charles-Smith; chance shank; Alan Faulkner  
**Subject:** Fwd: Today in Tetlin

Is this the Video clip to attach to Chance's affidavit? -barbara

----- Forwarded message -----

From: <[ridge@gci.net](mailto:ridge@gci.net)>  
Date: Tue, Oct 10, 2023 at 2:15 PM  
Subject: Today in Tetlin  
To: Jason Weiner <[jweiner@fairbankslaw.com](mailto:jweiner@fairbankslaw.com)>, Michael Walleri <[walleri@gci.net](mailto:walleri@gci.net)>, Lael Echo-Hawk <[lael@mthirtysixpllc.com](mailto:lael@mthirtysixpllc.com)>, Barbara Schuhmann <[barbaraalaska1@gmail.com](mailto:barbaraalaska1@gmail.com)>, Cary Fremin <[cary.fremin@dotlakevillage.org](mailto:cary.fremin@dotlakevillage.org)>  
Cc: Alan Faulkner <[alan.faulkner@dotlakevillage.org](mailto:alan.faulkner@dotlakevillage.org)>

[Download Attachment](#)  
[Available until Nov 9, 2023](#)

Sounds loud to me

Click to Download

RPreplay\_Final1696975940.mov  
0 bytes

Sent from my iPhone

--  
Barbara Schuhmann  
520 Marshall Drive  
Fairbanks, AK 99712  
[barbaraalaska1@gmail.com](mailto:barbaraalaska1@gmail.com)  
H: 907/328-0401  
C: 907/322-1680

Affidavit of Chance Shank

State of Alaska                    )  
  ss  
Fourth Judicial District        )

After being duly sworn, Chance Shank, state as follows:

- 1) I was born on December 22, 1998, and have resided in the village of Dot Lake, Alaska (“Dot Lake”) for most of my life.
- 2) I purchased a home in Dot Lake shortly after I graduated from the local village school, and the home in Dot Lake has been my primary residence to this day.
- 3) Dot Lake is a small tribal community located on the Alaska Highway between Delta Junction and Tok and is 155 road miles southeast of Fairbanks, Alaska.
- 4) I am the Vice-President of Dot Lake Village, a federally recognized tribe.
- 5) In my official capacity with the Tribe, I am very familiar with the Tribe’s Tribal Transportation Plan, and the Tribe’s interface with the AKDOTPF’s Alaska- Richardson- Steese Corridor Plan and the Kinross-Black Gold ore haul plan.
- 6) I routinely drive the ARS Corridor, and have done so most of my life. I have put on about 150,000 driving miles between the vehicles I have owned throughout the years, the majority of these miles driving on the Alaska Highway. Many of these miles were during the daylight, but a good chunk of them were at night or in difficult weather conditions.
- 7) I am very familiar with the numerous curves in that road, the scenery, and especially which spots that are dangerous at certain times of the year.
- 8) Before I was able to drive, I routinely traveled the ARS Corridor with my mom.

- 9) In my experience, I have never seen Alaska DOTPF allow industrial use of the ARS Corridor by trucks the size of the Black Gold B-trains, nor in the volume planned by Kinross/Black Gold.
- 10) It is clear that Alaska DOTPF is relaxing normal operating restrictions within the ARS Corridor to attract Kinross/Black Gold to use the ARS Corridor for its unconventional ore haul plan in support of mining operations in and around Tetlin, Alaska.
- 11) Alaska DOTPF's encouragement of the Kinross/Black Gold ore haul plan creates a public nuisance to the residents of Dot Lake as discussed below.
- 12) The only road access to Dot Lake is off the Alaska Highway, and the Alaska Highway provides critical access for the residents of Dot Lake to medical services, ambulance services, air service, public safety, fire service, groceries, and dry goods, which are available in Tok, Delta Junction or Fairbanks.
- 13) Dot Lake lies between the Robertson River Bridge and the Johnson River Bridge on the Alaska Highway. The Robertson River Bridge is between Dot Lake and Tok. The Johnson River Bridge & Gerstle River Bridge are between Dot Lake and Delta Junction. It is common knowledge in the area that all these bridges are structural deficient, and functionally obsolete and are planned for replacement. If prior to replacement, one or more of the bridges are damaged or rendered non-functional, the loss of either bridge will dramatically and adversely impact the ability of the residents of Dot Lake to access the critical services necessary to the village.

- 14) I understand that the B-trains plan to make 60 round trips per day, which will mean that persons using the Alaska Highway will encounter one B-train every 12 minutes on average.
- 15) Driving between Dot Lake and Tok takes forty-six (46) minutes along a two-lane undivided highway, which means that residents of Dot Lake traveling to Tok will encounter approximately four (4) B-trains per trip.
- 16) Driving between Dot Lake and Delta Junction takes sixty-three (63) minutes along a two-lane undivided highway, which means that residents of Dot Lake traveling to Delta Junction will encounter approximately five to six (5-6) B-trains per trip.
- 17) Driving between Dot Lake and Fairbanks takes one hundred fifty eight (158) minutes along a mostly two-lane undivided highway, which means that residents of Dot Lake traveling to Tok will encounter approximately thirteen (13) B-trains per trip.
- 18) In my experience, trucks smaller than the B-trains will kick up lots of snow driving along the Alaska Highway in winter, which can cause white-out conditions for motorists driving in both directions as motorists encounter B-trains along the ARS Corridor. In my experience, the larger the truck the greater the white-out conditions created by a passing truck.
- 19) Passing tandem trailer trucks, like the B-trains will be difficult year round, but will be very difficult in the winter because of white-out conditions caused by the trucks.
- 20) Dot Lake salvages moose meat from Alaska Highway vehicle/moose collisions, so the Tribe is very aware of the timing and cause of such collisions.

- 21) In my experience, white-out conditions along the Alaska Highway is a major cause of vehicle/moose collisions along the Alaska Highway, so that increased white-out conditions caused by B-train traffic in the winter will substantially increase such vehicle/moose collisions in our area endangering the lives of motorist using the Alaska Highway.
- 22) In the past, when vehicle caused white-outs occur while I was driving behind a semi-truck I would just pull over at a pull-off and wait forty minutes or so and get back on the road. I do not think that is a viable option to use now because the planned 12 minute intervals between the B-Trains means that I would be unable to wait the customary 40 minutes to allow the white-out conditions to dissipate.
- 23) Thus, during the winter, the B-train ore haul will monopolize the Alaska Highway and render the Alaska Highway unusable to other motorists, and will likely cause white-out conditions for B-trains that follow each other in the planned 12 minute intervals.
- 24) I am aware that not all drivers observe my practices and will drive in white-out conditions, which is very dangerous. The increase in B-train caused white-outs will present a serious danger to other drivers.
- 25) I have attached a video of an ore truck passing at slow speeds on a curve outside of Tetlin, which demonstrates that the trucks have a hard time actually staying in a single lane while traveling on undivided highways in the area. The inability of these trucks to stay in designated lanes even while traveling at slow speeds demonstrates the hazard these B-Trains present to other motorists.

26) The Johnson River, Robertson River, and Gerstle River bridges are very narrow, and B-Trains driving on these bridges leave very little room for other motorists to use the bridges while in use by the B-Trains crossing from opposing direction. Moreover, it is not uncommon for heavy trucks to drive in the center of the bridge to reduce the weight loads on the sides of bridges. As a result of these factors, it is not uncommon for vehicles facing on-coming heavy truck traffic at the bridges to stop and wait at one end of the bridge so that they don't have to risk a mid-bridge collision. This safety practice will substantially increase delays of all traffic along the Alaska Highway.

27) Tribal Members of Dot Lake attend funerals and traditional potlatches in the nearby communities of Tanacross, Healy Lake, Tetlin, and Northway. For cultural and religious reasons, it is very important that a person be buried in the village in which he resided at his death, or in his ancestral/family cemetery. When a body is brought back from Fairbanks there is a caravan of cars which escort the body to the appropriate cemetery. Per cultural protocol this is preferably done while the sunlight is still out. The B-train ore haul will adversely impact bringing our deceased people home one last time along the proposed trucking route.

28) For example, one family from Dot Lake has an Indian Cemetery located upon their native allotment (US Survey 03618, Native Allotment # F012836) where they bury their loved ones.

29) There is also another Indian Cemetery on a native allotment towards Delta Junction, near the Little Gerstle River, (US Survey 05095A, Native Allotment # F030788A) where

another village buries some of their Tribal Members. Both native allotments are located directly off of the Alaskan Highway along the proposed trucking route.

30) The proposed trucking plan being encouraged by the AK DOTPF will adversely impact Dot Lake Tribal members and the members of other neighboring tribes use of these cemeteries


31) I am also aware that there are multiple Native allotments that front on the Alaska Highway, several of which are in Dot Lake, but many more along the Alaska Highway between Tetlin and Fairbanks.

32) The proposed trucking plan being encouraged by the AK DOTPF will adversely impact Dot Lake Tribal members and the members of other neighboring tribes use of these Native allotments where access is right off the highway.

33) Dot Lake does not have an airport, so that most medivacs out of the village to Fairbanks must be done by ambulance using the Alaska Highway. However, if the emergency is very serious an air-medivac is necessary,, In such cases, the medivac aircraft will land on the Alaska Highway. B-train's passing Dot Lake every 12 minutes will necessarily negatively impact such medivacs.

  
Chance Shark

Signed and Subscribed before me  
this 12 day of October 2023

  
Notary Public for State of Alaska 4/21/2026  
My Commission Expires on





IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

COMMITTEE FOR SAFE COMMUNITIES

Plaintiff,

vs.

STATE OF ALASKA, DEPARTMENT OF  
TRANSPORTATION AND PUBLIC  
FACILITIES,

Defendants.

Case No. 4FA-23-02289 CI

AFFIDAVIT OF JOHN JEFFRY JOHN COOK


State of Alaska                    )  
  ) ss  
4<sup>th</sup> Judicial District            )

Jeffry Jon Cook, being first duly sworn, deposes and says:

1. My name is Jeffry Jon (“Jeff”) Cook. I reside off College Road in Fairbanks, Alaska and at Harding Lake in Salcha, Alaska, forty-five miles to the east and south of Fairbanks, off the Richardson Highway.
2. I have driven the Richardson Highway (“The Richardson”) between Salcha and Fairbanks for 64 years and am very familiar with the dangers of driving on the Richardson.
3. Between Eielson and Air Force Base (“Eielson”) and Delta Junction, Alaska, the Richardson is a two-laned, rural road. Many driveways, homes, churches, schools and businesses have direct access onto the Richardson. It is a vital connector that communities east and south of Fairbanks use to get to Fairbanks for food, supplies services, doctors, a hospital and an airport. When there is an accident on the Richardson, it often stops traffic in both directions for hours. A good example of this was an accident that happened this week off Johnson Road in Salcha. A military vehicle went off the road, killing two soldiers and

injuring many more. Because of the emergency services needed, the Richardson Highway was closed for a time. Similarly, when a schoolbus stops on the Richardson, traffic must stop in both directions. The Kinross ore haul will interfere with school bus operations and military convoys and make driving more dangerous for all users of the public highway.

4. On sections of the Richardson, one cannot connect to cell phone service. This is especially true when travelling through hilly portions of the highway. Emergency services on many portions of the Richardson are often far away from accidents that occur.
  5. Between Eielson and Delta Junction, the Richardson has few shoulders and pull-offs, few passing lanes, no run-away lanes, and many hills, curves, bumps and blind corners. These conditions make an industrial ore haul, like that proposed by Kinross Gold, a very dangerous proposal.
  6. There are 34 school bus stops directly on the Richardson in Salcha. Buses transport students to Salcha School, which is directly on the Richardson. Going north toward Fairbanks, the school and its driveway are hidden behind a hill. The sight distance is inadequate for a Kinross ore haul truck to stop once it sees a stopped school bus at the school entrance, particularly in winter snow and ice conditions.
  7. There was an area-wide cross-country meet held at Salcha School on September 21, 2023. That evening, cars were parked along the Richardson, for a quarter of a mile from the school. Thus, people going to the track meet parked and walked along the highway to get to Salcha School. In Salcha, the Richardson is a residential road, where people walk, ride bicycles, wait for school buses, pick up and deliver mail in mailboxes, and park for special events. It is not reasonable, safe or compatible with existing uses to allow industrial ore haul trucks to use the Richardson, and especially not in the numbers planned by Kinross (120 transits per day). If the DOTPF were concerned with safety, it would not allow Kinross to use the Richardson Highway for an industrial ore haul.
  8. I believe that the Kinross ore trucks will block access on the Richardson between Fairbanks and my home in Salcha. It will increase accidents. It will increase the times that all traffic must stop. It will increase the times the highway is blocked. Certainly, the ore haul will make the journey unreasonably dangerous and challenging, and therefore unreasonably interfere with my access to my property.
-

  
Jeffrey Jon Cook

Signed and Subscribed before me this 11 day of October, 2023



Notary Public for the State of Alaska

My commission expires on 4/21/2026



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

COMMITTEE FOR SAFE COMMUNITIES

Plaintiff,

vs.

STATE OF ALASKA, DEPARTMENT OF  
TRANSPORTATION AND PUBLIC  
FACILITIES,

Defendants.

Case No. 4FA-23- 2289 CI

AFFIDAVIT OF SUE WILKEN

Sue Wilken, being first duly sworn, deposes and says:

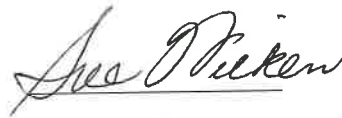
1. My name is Sue Wilken and I live off Peger Road in Fairbanks. I have lived in Fairbanks for 64 years.
2. I am very familiar with the proposed ore haul route as I have used it for most of my life accessing property at Harding Lake as well as frequent summer trips to Valdez.
3. I served six years on the Fairbanks North Star Borough School Board, two years as its President. I have closely followed school district issues over the years and have studied the school bus routes that were in place during the 2022-2023 school year.
4. I have become extremely concerned about the plans of Kinross Gold to begin an industrial ore haul using public highways that service school bus routes. These full "red light" bus stops, in both directions, are where children wait for a bus and often cross the street to go to or from their homes at their respective bus stop. I believe that an industrial ore haul route is incompatible with pre-existing uses of this highway route, one of those being school bus transportation every day of the 180-day school year.

5. During the 2022-2023 school year, there were 48 school bus stops (requiring a full stop on the highway from both directions) in the Fairbanks North Star Borough on the Richardson and Steese Highways. At these bus stops there are two bus services provided each day at different times (elementary and secondary). Each of these routes will pick-up and return students, therefore there will be  $48 \times 4$  (192 times) a school bus will stop on a two-lane highway, requiring a full stop on the highway in both directions. There are 24 times ( $2 \times 12$ ) the buses will stop on the Alaska Highway (Alaska Gateway School District), and ( $32 \times 2$ ) 64 buses stopping on the Alaska and Richardson Highways near Delta Junction (Delta-Greeley School District). In summary, there are 280 times a school bus will be stopping on a two-lane highway on the Kinross Gold ore haul route every school day for 9 months out of every year in the sub-arctic conditions of darkness, ice, and snow. Because of variables of bus driver shortage, combined stops, enrollment, the numbers of stops may change slightly during the school year.
6. A study is being performed by Kinney Engineering hired by the Alaska Department of Transportation and Public Facilities, to analyze the Tetlin to Fort Knox route as planned for the Kinross Gold ore haul. Kinney has reported that when there is ice and/or snow and ore trucks are travelling the speed limit, there is inadequate stopping sight distances for the Kinross Gold trucks for 35 school bus stops directly on the Corridor route from Fairbanks to Delta Junction: (1) 11 of the 27 sight restricted school bus stops are on the Alaska and Richardson Highways in the Delta/Greeley School District; (2) 16 of the 34 are on the Richardson Highway south of Eielson

AFB in the Fairbanks School District; and (3) 8 of the 13 school bus stops are north of Fairbanks on the Steese Highway also in the Fairbanks School District.

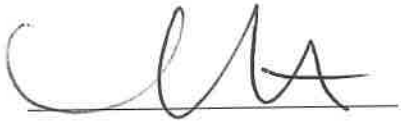
7. It should be noted a major safety exposure is presented when, on a four deliveries per hour schedule, a Kinross B-train will, when travelling the route either loaded or empty, pass by at any one of the school bus stops every 7 ½ minutes, and they too will be expected to stop. I can't help but be concerned, when I estimate it takes 2 – 4 minutes to load or unload at each bus stop, the backed up traffic in both directions will be a source of frustration to the ordinary driver and encourage bad driver decisions in order to break out of the delays caused by these stops every 7 ½ minutes.
8. I live off Peger Road in Fairbanks and use the Peger Road / Phillips Field Road intersection every day, most days multiple times. I have but one access point to Peger Road and that is this busy intersection. I believe that the Kinross ore haul trucks will present unreasonable dangers and obstacles to my unfettered access to and from my home. First, they will run every 7.5 minutes through this intersection (4 deliveries / hour). They will be 95' long and when loaded, will weight 82.5 tons or 164,900 pounds. Kinney reports they will not be able to reach a reasonable speed when climbing onto the Johansen Expressway to travel east from Peger Road. They will take an unsafe and unreasonable amount of time and length to stop. Any problem they have on Peger Road in this vicinity will block my access into and out of my neighborhood.
9. I'm also very concerned about other intersections in my vicinity which I use with great frequency. Travelling south from home, my family uses Peger Road to access the Peger Road / Airport Road intersection whenever we need to travel in that

direction for shopping (University & Fred Meyer malls) and accessing the 99709 post office, Fairbanks International Airport, and all that West Fairbanks has to offer. I have seen many collisions at this very busy intersections of these two major roads. An additional 192 ore haul B-Trains will only make this intersection that much more unsafe.



Sue Wilken

Signed and Subscribed before me this 11 day of Oct, 2023



Notary Public For the State of Alaska

My Commission expires on 4/21/2024



# Grimshaw v. Ford Motor Company, 1981

00:00

00:00

The Pinto, a subcompact car made by Ford Motor Company, became infamous in the 1970s for bursting into flames if its gas tank was ruptured in a collision. The lawsuits brought by injured people and their survivors uncovered how the company rushed the Pinto through production and onto the market.

In 1972, a Ford Pinto driven by Lilly Gray stalled as she entered a merge lane on a California freeway. Her Pinto was rear-ended by another car traveling about thirty miles per hour. The Pinto's gas tank ruptured, releasing gasoline vapors that quickly spread to the passenger compartment. A spark ignited the mixture, and the Pinto exploded in a ball of fire.

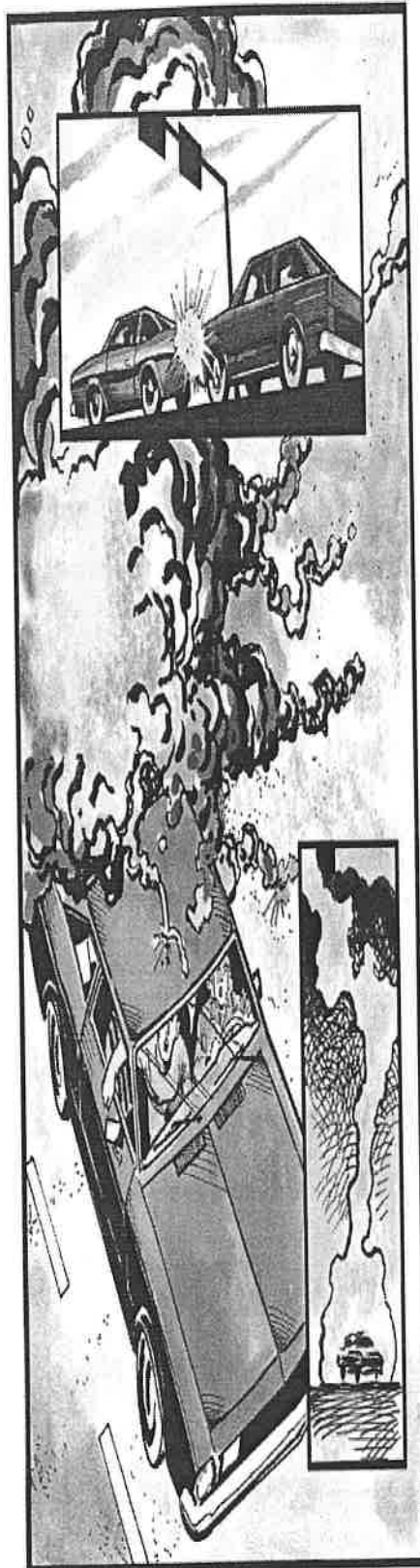
Gray died a few hours later. Her passenger, thirteen-year-old Richard Grimshaw, suffered disfiguring burns and had to endure dozens of operations. He underwent surgery to graft a new ear and nose using skin from the few unscarred portions of his body.

Grimshaw and Gray's family filed a tort action against Ford, and the jury awarded not only \$2.516 million to the Grimshaws and \$559,680 to the Grays in damages for their injuries, but also \$125 million to punish Ford for its conduct. Ford appealed the judgment, and the court reduced the award of punitive damages to \$3.5 million. However, the court denied Ford's request to have the punitive damages award thrown out entirely, finding that Ford had knowingly endangered the lives of thousands of Pinto owners.

[GRISHAM V FORD IN DEPTH](#)[view the exhibit](#)

Exhibit 14 page 1 of 8





(<https://www.tortmuseum.org/content/uploads/2016/06/Here-come-the-imports.png>)

Lee Iacocca, a rising star within Ford due to his success with the

(<https://www.tortmuseum.org/content/uploads/2016/06/pinto-crash-illustration.png>)

The Pinto was rushed through production in just twenty-five

(<https://www.tortmuseum.org/content/uploads/2016/06/for-too-much-safety.png>)

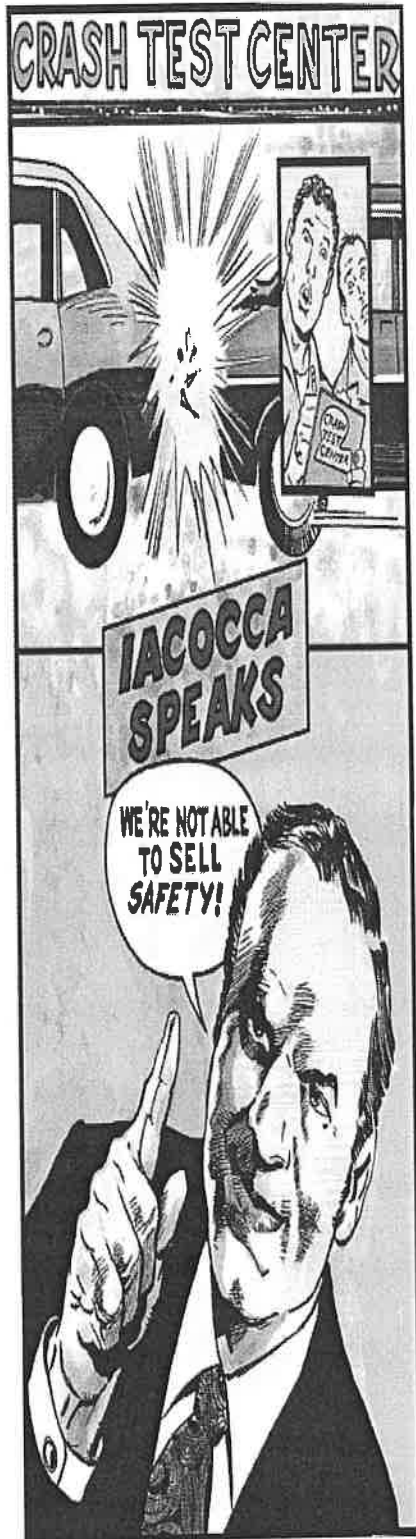
Ford engineers considered a number of solutions to the fuel

**Exhibit 14 page 2 of 8**

Mustang, argued that Volkswagen and the Japanese were going to capture the entire American subcompact market unless Ford produced an alternative to the VW Beetle. As Executive Vice President and later as President of Ford, Mr. Iacocca was the driving force behind the program to produce the Pinto.

months so it could be included in Ford's 1971 line of new models. The normal time span for production of a new car model was about forty-three months. During the accelerated production schedule, Ford became aware of serious risks associated with the Pinto's fuel tank.

tank problem, including lining the fuel tank with a nylon bladder at a cost of \$5.25 to \$8.00 per vehicle, adding structural protection in the rear of the car at a cost of \$4.20 per vehicle, and placing a plastic baffle between the fuel tank and the differential housing at a cost of \$2.35 per vehicle. None of these protective devices were used.



(<https://www.tortmuseum.org/content/uploads/2016/06/were-not-able-to-sell-safety.png>)  
 Ford proceeded with its manufacturing schedule. Ford

(<https://www.tortmuseum.org/content/uploads/2016/06/1.5-million-cars-recalled.png>)  
 In 1978, following a damning investigation by the National

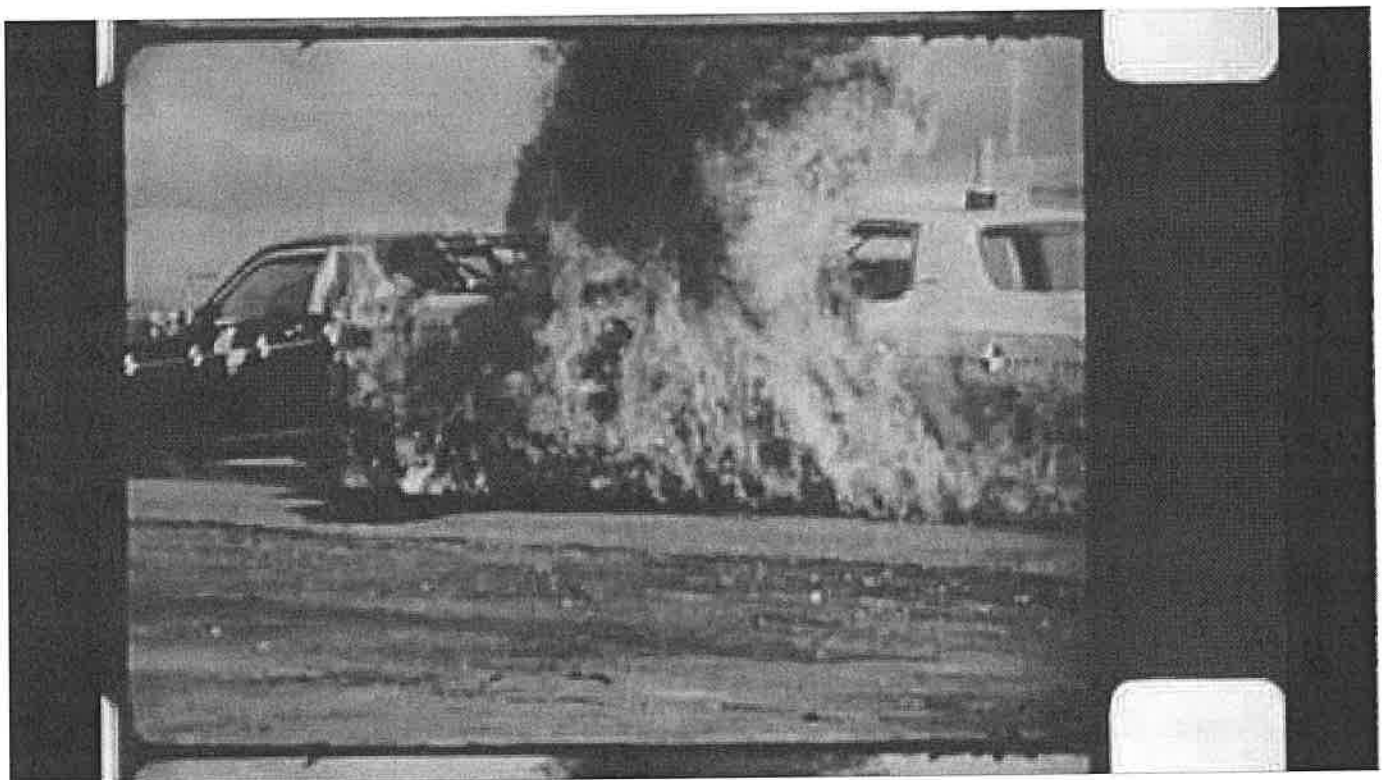
officials decided to manufacture the car even though Ford owned the patent on a much safer gas tank. Did anyone go to Mr. Iacocca and tell him the gas tank was unsafe? "Hell no," replied an engineer who worked on the Pinto. "That person would have been fired. Safety wasn't a popular subject around Ford in those days. With Lee it was taboo." As Lee Iacocca was then fond of saying, "Safety doesn't sell."

Highway Traffic Safety Administration, Ford recalled all 1.5 million of its 1971-76 Pintos, as well as 30,000 Mercury Bobcats, for fuel system modification. Later that year, General Motors recalled 320,000 of its 1976 and 1977 Chevettes for similar fuel tank modifications.

Internal company documents showed that Ford secretly crash-tested the Pinto more than forty times before it went on the market and that the Pinto's fuel tank ruptured in every test performed at speeds over twenty-five miles per hour. This rupture created a risk of fire.

Ford engineers considered numerous solutions to the fuel tank problem, including lining the fuel tank with a nylon bladder at a cost of \$5.25 to \$8.00 per vehicle, adding structural protection in the rear of the car at a cost of \$4.20 per vehicle, and placing a plastic baffle between the fuel tank and the differential housing at a cost of \$1.00 per vehicle. None of these protective devices was used.

Adding to the pressure to ignore these safety costs was Lee Iacocca's stated goal that the Pinto was not to weigh an ounce over 2,000 pounds and not to cost a cent over \$2,000. So, even when a crash test showed that a one-pound, one-dollar piece of plastic prevented the gas tank from being punctured, the alternative was thrown out as extra cost and extra weight.



When Ford was developing the Pinto, the company needed a low-priced car in a hurry to compete with Volkswagen and Japanese imports. Iacocca, a rising star at Ford due to his success with the Mustang, argued that Volkswagen and the Japanese were going to capture the entire American subcompact market unless Ford

Exhibit 14 page 6 of 8

produced an alternative to the VW Beetle. As Executive Vice President and later as President of Ford, Iacocca was the driving force behind the program to produce the Pinto.

The Pinto was rushed through production in just twenty-five months so it could be included in Ford's 1971 line; the normal time span for a new car model was about forty-three months. During the accelerated production schedule, Ford became aware of these serious risks associated with the Pinto's fuel tank but proceeded with its manufacturing schedule anyway. Company officials also decided to proceed even though Ford owned the patent on a much safer gas tank.

Did anyone go to Iacocca and tell him the gas tank was unsafe? "Hell no," said an engineer who worked on the Pinto. "That person would have been fired. Safety wasn't a popular subject around Ford in those days. With Lee it was taboo." Iacocca used to say, "Safety doesn't sell."

Why did the company delay so long in making these minimal and inexpensive improvements? Simply, Ford's internal "cost-benefit analysis," which places a dollar value on human life, said it wasn't profitable to make the changes sooner. Ford's cost-benefit analysis showed it was cheaper to endure lawsuits and settlements than to remedy the Pinto design.

Ford knew about the risk, yet it paid millions to settle damages suits out of court and spent millions more lobbying against safety standards. Pinto was a best-selling subcompact. By 1977, new Pinto models incorporated a few minor alterations necessary to meet federal standards that Ford had managed to hold off for six years.

The *Grimshaw* case was just one of more than one hundred lawsuits that were filed because of design flaws in the Pinto that resulted in fuel tank fires. Estimates by *Mother Jones* attribute between 500 and 900 burn deaths to Pinto crashes. These people would not have been killed or even seriously injured if the car had not burst into flames.

The *Grimshaw* case sent a message to automakers that if they chose to ignore safety considerations, it would be at their own financial peril. This case helped push the automobile industry away from "safety doesn't sell" and toward emphasizing new safety features in their marketing.

In 1978, following a damning investigation by the National Highway Traffic Safety Administration, Ford recalled all 1.5 million of its 1971–76 Pintos, as well as 30,000 Mercury Bobcats, for fuel system modification. Later that year, General Motors recalled 320,000 of its 1976 and 1977 Chevettes for similar fuel tank modifications. Burning Pintos had become a public embarrassment to Ford. Its radio spots had included the line: "Pinto leaves you with that warm feeling." Ford's advertising agency, J. Walter Thompson, dropped that line.

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BREAKING NEWS: Latest updates on the Israel-Hamas war

BUSINESS

### Canadian gold company distances itself from deadly Ghana explosion



In this Tuesday, July 22, 2014, file photo, gold bars are stacked in a vault at the United States Mint, in West Point, N.Y. (AP Photo/Mike Groll, File)

The Canadian Press  
Staff  
Contact

Published Jan. 22, 2022 9:36 a.m. AKST

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Kinross Gold Corp. says it didn't own or operate the truck involved in a deadly explosion in Ghana Thursday that was carrying supplies to the company's mine.

At least 17 people were killed when the truck, laden with explosives destined for Kinross's Chirano gold mine, blew up after colliding with a motorcycle in western Ghana.

Local officials say the explosion sent 57 people to health centres and caused massive damage to the village of Apiate.

Kinross spokesman Louie Diaz says the company extends its deepest condolences to all those affected by the tragic incident, adding it is providing support to the response efforts and relief items to those affected.

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He says the truck involved was under the supervision of MaxamCorp Holding, S.L., a Spanish-based explosives company with operations across the globe.

Maxam did not immediately respond to a request for comment.

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