



August 29, 2022

Ms. Stephanie Rice
Project Manager for Willow Project Remand & Additional NEPA Analysis
Bureau of Land Management Alaska State Office
222 West 7th Avenue, Mailstop #13
Anchorage, AK 99513

Submitted by e-mail to: srice@blm.gov

Re: Kuukpik Corporation Comments on the
BLM's Second Draft Supplemental EIS for the Willow MDP and
ANILCA Section 810 Analysis

Dear Ms. Rice:

These comments on the second Draft Supplemental EIS for the Willow Master Development Plan are submitted by Kuukpik Corporation ("Kuukpik") on behalf of Kuukpik, our board of directors, and our shareholders in Nuiqsut and beyond.

Kuukpik is the Alaska Native Claims Settlement Act ("ANCSA") village corporation for Nuiqsut, the village that will be most impacted by the Willow Project. In that capacity, Kuukpik's twin goals are protecting the subsistence lifestyle and culture of the Native residents of Nuiqsut, while also providing for long-term economic needs of our shareholders.¹ Kuukpik is also the only private landowner in the immediate Willow area. Nuiqsut's subsistence hunters have long relied on that privately-owned and managed land – much of which is situated between Nuiqsut and the Willow Project Area -- to feed the entire community, as well as our families and friends throughout the entire North Slope.² As you know, this proximity to the proposed Project

¹ We also wish to note that in 2021, Kuukpik accomplished its long-time goal of enrolling a new generation of shareholders into the corporation, thereby extending the number of individuals and families who can benefit from whatever economic success Kuukpik is able to achieve and participate in the governance of the corporation. The Draft SEIS should be updated to reflect that development (*see* Willow MDP Draft SEIS (2022), Vol. 1, p. 258). The data at Volume 1, page 249 suggesting that the number of households receiving dividends from Kuukpik is declining is also therefore almost certainly inaccurate and out of date.

² *See* Willow MDP Draft SEIS (2022), Vol. 1, p. 257:

The communities of the North Slope share a cultural identity and have close social and kinship ties, both within and between individual communities... Sharing is a key Iñupiaq value that strengthens social ties and promotes the continuation and transmission of cultural values and traditions. Many subsistence traditions, such as the bowhead whale hunt, are centered on the sharing and distribution of subsistence foods across communities and regions (*see* Section 3.16.1.2, Definition of Subsistence). The NSB's 2019 economic

has generated tremendous concern regarding Willow’s potential impacts on subsistence – and with it, the very fabric and culture of Nuiqsut.

As you and other representatives of BLM have heard loud and clear, Nuiqsut depends on its subsistence way of life not just for food, but for the kind of sustenance that can’t be found at the grocery store. The practicing of subsistence, the sharing of resources, the passing along of knowledge from one generation to the next, over and over again for millennia: these are the things that nourish our community, that bind us together and bind us to the land that, in return, nourishes our bodies.³

But the land cannot sustain our community if the community doesn’t do its part to protect our subsistence resources in the face of a seemingly never-ending effort to develop more, drill farther, build bigger. So Kuukpik – like the elders who settled Nuiqsut, and like all the residents who hold subsistence and all it brings to our community so dear – has dedicated itself to making sure that subsistence is at the forefront of every conversation regarding development that could affect our lifestyle and our community. No one should ever expect anything less from the people of Nuiqsut, or from Kuukpik.

The past four years have put these values to the test. Ever since the first project design was put forward in about 2018, Kuukpik has struggled to get comfortable with the Project. Located about 10 miles west of Kuukpik-owned lands, there has never been any doubt that the Project will impact Nuiqsut in countless and unpredictable ways. At the same time, Kuukpik has always believed that, if carried out responsibly, the Project could bring much-needed benefits to the community, the Borough, and the State of Alaska. So Kuukpik did what we’ve always done: analyzed the Project proposals, studied the environmental analysis, and tried to find constructive ways to reduce the Project’s impacts, increase its benefits, and develop a version of the Project that responds to the community’s concerns. Developing a version of the Willow Project that is balanced and responsible, that avoids as many unnecessary impacts as possible, and brings benefits to offset unavoidable impacts has always been Kuukpik’s goal.

To that end, we have spent four years exploring ways to improve the proposed Project and urging BLM to incorporate these suggestions into its alternatives analyses. Some suggestions, like eliminating the ill-fated Module Transfer Island, were adopted pretty quickly.

profile and census report documented that in 2019, 88% of households shared subsistence foods within their own community, 54% shared with other NSB communities, 52% shared with households in Anchorage, 30% with NANA communities, 26% with Fairbanks, and 22% with other Alaskan communities (NSB 2020). Thus, subsistence harvests on the North Slope are distributed widely throughout the State of Alaska.

³ See *id.*, p. 257.

Others, like relocating the northern drill site farther south and the southern drill site farther north, have taken more time. But that’s what the process is all about.

Kuukpik is pleased that Alternative E includes many of the concepts that we and other stakeholders have proposed during this process. As explained in more detail below, we believe Alternative E strikes a more appropriate balance between the need to develop oil and gas resources on the North Slope and the need to ensure that Nuiqsut residents can continue to practice a subsistence lifestyle for generations to come.

For that reason, Kuukpik believes Alternative E should be carried forward as BLM’s Preferred Alternative. We also believe Alternative E is the only proposed alternative that would allow BLM to make the necessary findings to fulfill its responsibilities under ANILCA Section 810. BLM’s analysis demonstrates that Alternative E is the only currently proposed alternative that takes sufficiently “reasonable steps...to minimize adverse impacts to subsistence uses and resources.” Alternative E is therefore the only alternative that Kuukpik can support.⁴

Having said that, we are under no illusions that Alternative E will avoid all the impacts that Kuukpik has been concerned about all along. BLM’s analysis confirms that, concluding that Willow will impact Nuiqsut’s subsistence lifestyle no matter which alternative is selected.⁵ There is simply no way to build a Project this big, in this location, without causing impacts. Kuukpik understands that---we’ve always understood it. That’s why Kuukpik’s goal has never been to eliminate all impacts; we know that’s impossible. Rather, our goal has been to eliminate as many unnecessary impacts as feasible while still seeing the Project proceed. Because the world needs oil; the North Slope Borough and the State of Alaska need oil. For many years, Nuiqsut has endured the impacts of supporting those needs. And we can continue to do so with Willow, but only if the decisionmakers in Anchorage, Juneau, and Washington D.C. continue to listen to our community, continue to seek balanced and responsible oil development, and continue looking ahead and planning for the future.

I. Alternative E includes many elements that Kuukpik supports.

Having spent so much time urging BLM to analyze different alternatives and elements of the proposed project, we think it’s important to acknowledge how many of those elements are included in Alternative E. Kuukpik appreciate BLM’s effort to work with us to incorporate

⁴ This assumes that the major analyses and conclusions contained in the Draft SEIS do not change much in the Final SEIS, which we believe is a safe assumption.

⁵ See Willow MDP Draft SEIS (2022), Appx. G, ANILCA 810 Analysis, for example, which reaches essentially the same conclusions regarding impacts to subsistence for all primary action alternatives and the cumulative case (except Alternative D).

meaningful efforts to reduce the Project's impacts. We want to highlight the main elements that allow Kuukpik to support Alternative E.

A. Reduced number of drill sites and shorter gravel road system

The most obvious and defining difference between Alternative E and all prior alternatives is the proposal to develop Willow with three or four drill sites instead of five. Kuukpik has advocated for this change specifically. In our December 13, 2021, letter to BLM (p. 6), we asked BLM to analyze

[A] consolidated development option that would involve either 3 or 4 total drill sites, with the northernmost drill site farther south than previously envisioned and, potentially, the southernmost drill site farther north. Kuukpik has provided extensive information demonstrating why those alternatives might be preferable from a subsistence perspective and why they should therefore be examined in the upcoming second supplemental DEIS.

That's exactly what Alternative E is. It would move the northernmost drill site about 5 miles to the south and the southernmost drill site about 2 miles to the north, reducing the overall north-south road from about 38 miles to about 31 miles. BLM succinctly summarized some of the benefits that flow from that change as follows:

Under this alternative, there would be 43,040 fewer ground traffic trips and 100 fewer helicopter trips than Alternative B. Alternative E would have a total of 7.1 fewer miles of gravel road, 64.0 fewer miles of ice road, a 51.1-acre-smaller footprint, and 1 fewer year of construction as compared to Alternative B, with the majority of the decreases occurring in the TLSA. The decrease in the length of the northern infield road relative to Alternative B would lower the amount of direct habitat loss, decrease the potential displacement of caribou near the road, proportionally lower the possibility of vehicle-wildlife collisions, and would lower the potential for alterations of caribou movements. Fewer caribou would encounter the shorter road and because the road is shorter, it would be easier for caribou that did encounter the road to divert their movements around the north end of the road rather than cross it.⁶

These are the exact reasons Kuukpik has long urged BLM to develop an alternative that would reduce the north-south barrier associated with the original five drill site alternatives:

Kuukpik is deeply concerned that the proposed ... road extending directly north-south in this area will be a major deterrent to migrating caribou, particularly those

⁶ Willow MDP Draft SEIS (2022), Vol. 1, p. 305.

moving from Teshekpuk Lake in the west to areas east of Nuiqsut. These are the animals that are most important for Nuiqsut hunters because they pass closest to the village and are therefore more accessible and abundant in areas Nuiqsut hunters use the most. We fear that an elevated north-south road and pipeline directly perpendicular to the majority of the migration could deter and deflect the migration far away from Nuiqsut.⁷

Alternative E responds to these concerns. BLM’s analysis confirms that Alternative E would reduce (but not eliminate) the likelihood of the extreme deflection that Kuukpik has been concerned about:

This alternative also moves BT5 farther east which would reduce the length of the BT5 road. Overall, Alternative E would include fewer miles of gravel and ice roads than Alternative B thus reducing habitat loss and linear infrastructure which could deflect or delay caribou movement into the community’s hunting area.⁸

So even though Alternative E doesn’t eliminate as much gravel road as Kuukpik would have liked,⁹ it is a significant improvement over Alternative B and strikes an acceptable balance.

Part of this balance is due to the fact that Alternative E includes *some* additional gravel roads (which facilitates subsistence access), but not as much as was originally called for (thereby reducing the picket fence barrier). This approach will cause less impacts than Alternative B, but provide more access than alternatives like C and D. We still don’t know how many subsistence users will drive all the way to the end of these roads unless game is scarce closer to Nuiqsut (which will continue to be a possibility), but at least hunters will have the option if they want or need it.¹⁰ The combination of reduced impacts in the most critical northern areas of the Project

⁷ See Kuukpik’s September 28, 2018 Letter to BLM, p. 7.

⁸ Willow MDP Draft SEIS (2022), Vol. 1, p. 288.

⁹ *Id.*, p. 289:

However, despite the decrease in infrastructure within the TLSA, caribou that migrate through this area during the fall migration will likely still encounter road infrastructure, including the pinch point where the access road intersects with infield roads. This is because Alternative E, like Alternative B, includes gravel road connections between all drill sites and to the existing development at GMT-2.

¹⁰ See Kuukpik’s December 13, 2021 Letter to BLM, pp. 14-15, where we described why many subsistence hunters may not utilize the roads all the way to the farthest drill sites (then-BT4 and BT5). The Draft SEIS (at Vol. 1, p. 294) confirms Kuukpik’s point: “subsistence hunters generally do not travel farther than necessary due to the high cost of travel.” *But see* Willow MDP Draft SEIS (2022), Vol. 1, p. 284: “[W]hen caribou do not migrate toward the community at the expected times, hunters use the road system to access herds instead. In this sense, access to the road is important in mitigating the impacts of

area, *some* additional road access, and the three proposed subsistence use boat ramps¹¹ results in a more balanced alternative that reduces impacts but facilitates access to new areas that may become increasingly more important if caribou movement and hunter access are impacted elsewhere.

B. Reduced impacts within the TLSA

Kuukpik has also argued that none of the prior alternatives went far enough in implementing BLM’s legal obligation to assure the maximum protection of caribou within the TLSA. The TLSA (and Teshekpuk Lake Caribou Habitat Area, the “TLCHA”) were set aside because of the importance of these northern coastal areas to migrating caribou. Although development in these areas is not prohibited, Kuukpik continues to believe that the burden should always be on the applicant to justify building permanent facilities in these extremely sensitive and important areas. If placement within the Special Areas so is truly unavoidable, the applicant can still be required to make significant project changes in order to provide “maximum protection” for caribou and the subsistence users who depend on them.¹²

Alternative E is the first formal alternative that makes real strides towards that goal. By consolidating BT4 and BT2 into a single drill site, the day-to-day impacts that come with constructing and then operating a drill site in the TLSA will be cut in half. The change also eliminates 45.37 acres of gravel fill (43% of the total) in the TLSA compared to what was

the road on caribou availability.” In short, roads are a double-edged sword and another factor to be balanced in the overall effort to design a responsible project. That said, we want to highlight BLM’s point that although providing access to new areas helps put meat in the cellars, it doesn’t replace the cultural connection associated with hunting in more traditional areas. See *id.*, p. 337:

The mitigative benefits of using roads for subsistence hunting does not account for the negative sociocultural impacts associated with changes in hunting methods and areas, resulting loss of traditional knowledge, increased impacts associated with hunting in proximity of development, and direct loss of traditional hunting areas. Thus, roads may mitigate the impacts of development but may not provide a net benefit to communities in regard to subsistence.

¹¹ Willow MDP Draft SEIS (2022), p. 285:

[T]he boat ramps could have substantial benefits to some users. The use of Fish (Iqalliqpik) Creek for subsistence purposes has declined in recent years, with residents citing fuel costs and difficult travel and navigation conditions (e.g., shallower waters near the mouth of Fish [Iqalliqpik] Creek) for the decline in use. Northern Economics Inc. (2019) reports that for summer and fall caribou hunting, trips to Fish and Judy Creek were among the most expensive, at an estimated \$157.80 per trip. A boat ramp on the Ublutuoch (Tijmiasiuġvik) River could facilitate access to this traditionally important subsistence harvesting area.

¹² 42 U.S.C.S. § 6504(a).

proposed under Alternative A,¹³ which is significant by itself, but even more so because the avoided impacts are farther north, closer to the coast, where the impacts would be most severe.¹⁴ These changes make Alternative E vastly preferable to Alternative B.

The difference between the two alternatives is occasionally lost in the Draft SEIS's discussion of "direct" versus "indirect" impacts. An example is the following:

An analysis of subsistence uses specific to the TLSA vis-à-vis the alternative analysis areas shows that, in terms of direct impacts to Nuiqsut hunters, the reduction in infrastructure in the TLSA under Alternative E will not result in a substantial reduction in direct impacts on Nuiqsut subsistence harvesters compared to the other action alternatives. The area of reduced infrastructure will occur in an area that sees less harvesting activity relative to the rest of the alternatives analysis area.¹⁵

The Draft then goes on to cite statistics showing that there are not many caribou caught in the area that would be directly impacted (*i.e.*, gravel on the tundra) in the TLSA under Alternative B but *not* under Alternative E. Although the passage concludes by acknowledging that there are significant reductions in *indirect* impacts under Alternative E,¹⁶ the lengthy discussion on *direct* impacts may leave the reader with the impression that there is little difference between the two alternatives.

We want to be very clear that Kuukpik believes the reduction in *indirect* impacts is significant enough to weigh very heavily in favor of Alternative E despite what, on paper, may appear to be only modest reductions in *direct* impacts to hunter success. The number of caribou caught in the undeveloped area isn't the determinative factor here; the fact that tens of thousands of caribou will more freely bare calves and have the opportunity to migrate through an

¹³ Willow MDP Draft SEIS (2022), Vol. 1, p. 207.

¹⁴ *Id.*, p. 288:

As described in Section 3.12.2.6, *Alternative E: Three-Pad Alternative (Fourth Pad Deferred)*, Alternative E would reduce gravel infrastructure within the TLSA by 43% and would move infrastructure farther from high-density calving areas and preferred mosquito-relief habitat. The amount of pipeline within 500 feet of gravel roads, which increases the likelihood of caribou displacement or deflection, would decline by approximately 30%. In particular, the reduction in roads and other infrastructure to the north of Fish (Uvlutuuq) Creek would reduce potential obstructions during the fall migration, when Nuiqsut residents hunt caribou as they migrate south and east toward the Colville River.

¹⁵ *Id.*, p. 289.

¹⁶ *Id.*: "[W]hile the reduction of infrastructure in the TLSA under Alternative E will not result in a substantial reduction in direct impacts on Nuiqsut subsistence harvesters, as discussed above, it does lessen the potential for indirect impacts to resource availability."

undeveloped area towards Nuiqsut is. The decreased impacts on the herd as a whole are much more important than impacts on hunter success in the TLSA itself. That said, if hunters begin to use the road to BT2 to access the areas north of there more than they have historically, then there may in fact be more benefit than the Draft EIS acknowledges to leaving more of that area undeveloped.

The reduced direct impacts to goose hunting in the area north of BT2 should not be overlooked either.¹⁷ Although impacts to goose hunting are far more likely to be temporary than impacts to caribou populations or movements, spring goose season is a time-honored and cherished tradition for the community. The reduced impacts to goose hunting under Alternative E is therefore another point in its favor.

C. Developing the Project in Two Phases

Kuukpik commends BLM for developing a responsive solution to several concerns Kuukpik previously raised. One concern we had with the proposal Conoco put forward in response to Judge Gleason’s decision was the possibility that the remand – driven largely by the need to explore ways to reduce the project’s impacts – would result in a Record of Decision that approved four drill sites instead of the three that were approved in the 2020 ROD.¹⁸ Since that would have represented a “step back” rather than an improvement, we urged BLM to consider authorizing three drill sites now, but defer consideration of any others. Kuukpik has also suggested throughout this post-remand NEPA process that analyzing and approving Willow in phases would allow stakeholders to observe and respond to impacts over time.¹⁹

¹⁷ See Willow MDP Draft SEIS (2022), Appx. G, ANILCA 810 Analysis, p. 37-9.

¹⁸ See Kuukpik’s March 9, 2022 Letter to BLM:

So in some ways, the three drill site Willow Project that was approved in BLM’s ROD – standing alone, and without taking into account the other two drill sites that could have been approved later – may actually be preferable to the four drill site Alternative BT2N Conoco is suggesting now. It would be ironic (and bad form) if the court’s remand and instruction to develop a new alternative focused on reducing impacts in the TLSA resulted in BLM approving an alternative that includes more drill sites than the previous ROD, not less, one of which is in a more sensitive area farther north than the previously approved northernmost site.

¹⁹ See Kuukpik’s December 13, 2021 Letter to BLM:

Another option is to authorize Willow in phases. For example, the core Willow facilities and 2-3 drill sites could be approved in the next 12-24 months and construction carried out over the next few years. Kuukpik would then want to see a meaningful delay (at least 3-5 years after Phase 1 construction was complete) before any additional drill sites are constructed to allow time for Willow’s impacts to become better understood, both through scientific studies and traditional knowledge and local observation.

We are therefore pleased that BLM has adopted that suggestion and is using it to address Kuukpik’s concern regarding the total number of drill sites. By proposing to authorize only three drill sites under Alternative E, BLM ensures that this remand does not result in an arguably *more* impactful project than the 2020 ROD. And while we recognize that the fourth drill site will likely be authorized and constructed eventually, Alternative E essentially eliminates the possibility that a *fifth* drill site will ever be constructed in the northern Project area. The 2020 ROD adopting Alternative B never included any such assurance even though the fourth and fifth drill sites were not approved at that time. Both drill sites probably would have been approved, and maybe even without much delay. Permanently eliminating the fifth drill site under Alternative E is preferable to simply delaying its approval under Alternative B. Phasing the construction also spreads impacts out in a way that Kuukpik had not previously considered, but which seems beneficial.

In addition to decreasing the intensity of construction impacts, phasing approval and construction of BT2 will give stakeholders time to observe and study Willow’s impacts on caribou and subsistence. We should also use this time to think creatively about other ways to offset whatever impacts do occur. Willow is a project unlike any we have seen since Alpine and its early satellites. No matter which Willow alternative is selected, we all need to prepare for the possibility that caribou herds and migrations will change in potentially dramatic ways over the coming decade due to the cumulative impacts of development, climate change,²⁰ and other factors that we may not be anticipating yet. Kuukpik nevertheless supports Alternative E but hopes stakeholders will continue to work together to incorporate adaptive mitigation and management strategies that can be applied to the analysis of BT2 and beyond.

D. Other Elements That Have Been Included in the Project

Kuukpik has also worked directly with ConocoPhillips and the North Slope Borough to incorporate operational requirements beyond those contained in BLM’s ROPs and lease stipulations. In particular, as part of the North Slope Borough rezone process, Kuukpik advocated for measures in addition to those proposed by the Borough that we believed would

²⁰ Willow MDP Draft SEIS (2022), Vol. 1, p. 263 (internal citations omitted):

Climate change has affected subsistence harvesting activities through changes in the timing of freeze-up and breakup, lack of ice and snow, the strength and frequency of storms and winds, reduced water levels and increased sedimentation in lakes and rivers, coastal and river erosion, changes in resource behavior including the timing and location of resource migrations, the health and abundance of subsistence resources, warmer temperatures which affect food processing and storage methods, and melting permafrost which affects access to ice cellars. Changes in snow, ice, and river conditions can affect residents’ ability to travel safely to subsistence harvesting areas at times when resources are available in those areas.

reduce impacts to caribou, the natural environment, and other resources, and provide mitigation or offsetting benefits to the community.²¹ Additional requirements contained in the NSB rezone ordinance include the following:

1. Required use of insulation to reduce road height and gravel use while protecting permafrost.
2. Development of a Good Neighbor Policy on caribou to assist hunters if caribou harvests are impacted by the project.
3. Reduced the airport runway length (from 6,200 feet to 5,700 feet)²² and received commitments not to use the largest and most disruptive cargo planes.
4. Development of vehicle and air traffic plans that would be designed to reduce impacts during sensitive periods (*e.g.*, caribou calving, bird nesting, and peak caribou subsistence activity), all to be updated regularly as needed.
5. Development of a plan to reduce diesel use associated with the Project (use of which should eventually be nearly eliminated when high line power becomes available).²³
6. Incorporation of the Willow Project into an Oil Spill Mitigation Fund Agreement.
7. Payments to an NSB-administered subsistence impact mitigation fund.
8. Consultations with the community regarding concurrent use and avoiding unreasonable interference with subsistence harvests or subsistence resources.
9. Carrying out various studies to track baseline environmental conditions and impacts over time and making this data available to the public.²⁴

²¹ See *id.*, p. 245 and Appx. E.14. Kuukpik’s copies of the Draft SEIS do not include the full text of the Rezone ordinance at Appendix E.14, which appears to be an inadvertent omission that should be corrected in the Final SEIS. In particular, we urge the inclusion of Exhibit 4 of that ordinance in the Final SEIS so that stakeholders can review the items that the Borough assembly adopted based on extensive input from Kuukpik board members. Note also that a future BT2 site is not covered by the current rezone ordinance. *Id.*, p. 245.

²² Compare Willow MDP FEIS (2020), Vol. 1, p. 13 and Willow MDP Draft SEIS (2022), Vol. 1, p. 14.

²³ Kuukpik will be encouraging Conoco to make progress integrating electric vehicles into its truck fleet to replace outdated diesel models. We understand Conoco has been studying the feasibility of electric vehicle use for many years, but as far as Kuukpik knows, little progress has been made. Specific requirements to use EV’s were rejected in the GMT2 ROD (Appx. C) on the basis that such vehicles were “not yet engineered to perform in Arctic conditions.” And while EV’s still may not be uniformly feasible in the coldest days of winter, nothing stands in the way of significant EV use in the summer and shoulder seasons. A group of 10 electric vehicles recently completed a drive all the way from Fairbanks to Oliktok Point (<https://www.arcticroadrally.com>). All the vehicles performed capably as far as Kuukpik knows. This helps demonstrate even more concretely that required use of electric vehicles should be part of the mitigation landscape, particularly in the summer and shoulder months when there is plenty of industry vehicle traffic in and around Nuiqsut, the Alpine field, and eventually Willow. Kuukpik intends to encourage Conoco to quickly phase in more electric vehicles across their Western North Slope operations, particularly closer to Nuiqsut where concerns about air quality are pervasive.

²⁴ NSB Rezone Ord., p. 31-33, Sec. 3.A.d and others.

10. Year-round use of subsistence representatives.

Although these elements are not as significant as the major design changes proposed in Alternative E, they are particularly valuable for another important reason: they were driven by the people of Nuiqsut. Over the course of several difficult days at the Borough Planning Commission and Assembly in December and January of 2020-21, Kuukpik and other representatives of Nuiqsut worked at a very local level to negotiate and insert these requirements into the Project because the community continued to have concerns that had not yet been adequately addressed. The specific and community-focused commitments in Exhibit 4 of the Rezone Ordinance will not only help reduce impacts from the Project, they represent real changes that the people of Nuiqsut effected on a Project over which many residents have felt they had little control. So even though these may not all seem like significant requirements from BLM’s perspective, they are important because they are responses to very local concerns and affirmed the community’s ability to influence the activities going on around it.

II. ANILCA 810 Determinations

The items listed above also reflect additional reasonable measures to reduce impacts to subsistence that have been incorporated into the proposed Project since the previous Record of Decision. Kuukpik has repeatedly emphasized BLM’s earlier ANILCA 810 findings that Willow will likely cause reductions in availability of resources and limitations on access for Nuiqsut’s subsistence users. We didn’t focus on that point because we opposed the Project (which has never been Kuukpik’s position), but merely to emphasize that BLM is obligated in light of its findings under ANILCA Section 810 to take additional steps to eliminate unnecessary impacts, decrease the size of the project to the “minimal” amount necessary to accomplish its purpose, and to take “reasonable steps” to minimize adverse impacts to subsistence uses and resources.²⁵

Our point throughout this process has been that Alternative B *didn’t go far enough in fulfilling BLM’s ANILCA 810 obligations* because it contained impacts that were reasonably

²⁵ See Willow MDP Draft SEIS (2022), Appx. G ANILCA Section 810 Analysis, p. 68:

ANILCA Section 810(a) provides that no “withdrawal, reservation, lease, permit, or other use, occupancy or disposition of the public lands which would significantly restrict subsistence uses shall be effected” until the federal agency makes the three determinations required by ANILCA Sections 810(a)(3)(A), (B), and (C). The three determinations that must be made are:

1. That such a significant restriction of subsistence use is necessary, consistent with sound management principles for the utilization of the public lands.
2. That the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other such disposition.
3. That reasonable steps will be taken to minimize adverse impacts to subsistence uses and resources resulting from such actions.

avoidable (as proven by, for example, the now smaller airstrip and the consolidated drill sites, among other things). The other previous alternatives suffered the same problem because they deferred too much to Conoco’s proposed version of the project (particularly with respect to the proposed pad locations, which never meaningfully changed until Alternative E was developed) and failed to include more creative elements that, from Kuukpik’s perspective, were “reasonable”, would have “minimized” the amount of land needed for the project, and would have eliminated impacts that were not “necessary.”

But as a result of the changes, big and small, that have been introduced in Alternative E, this iteration of the Project is the first alternative that Kuukpik believes can support the findings that BLM is required to make under ANILCA 810. It bears repeating that there may be no version of the Willow Project that could avoid “significantly restricting” subsistence uses for Nuiqsut while still accessing a sufficient amount of the available oil, including Alternative E. But the measures that have been incorporated into Alternative E, in Kuukpik’s view, are generally “reasonable” when compared to the prior alternatives. This isn’t to say that Kuukpik still wouldn’t prefer a smaller project or less infrastructure or operational changes to reduce impacts (like a diesel pipeline all the way to project site).²⁶ But while we believe some such changes should also be considered “reasonable”, we acknowledge that Alternative E contains enough measures intended to minimize adverse impacts to subsistence that BLM can safely make the required determinations under ANILCA 810.²⁷

III. Mitigating Unavoidable Impacts

All that said, we urge BLM and all other cooperating agencies to consider creative options *now* to mitigate the unavoidable impacts that the Project, and oil and gas development

²⁶ An issue that hasn’t been discussed at much length is the need to consider developing a new landfill west of Nuiqsut, closer to the Willow Project than Deadhorse, in order to reduce the amount of waste material trucking that will be needed to support construction and operations at Willow. *See* NSB Willow Rezone Ord. (75-06-75), p. 24:

[T]he real issue at hand is the increasing distance from of the Deadhorse Regional Landfill and the need to create a new solid waste disposal facility closer to the new oil developments that are occurring and will continue to the West of the Colville River. The disposal methods that were used in the early days of Alpine are too limited to address the growing solid waste disposal needs of this region of the North Slope and as such, CPAI needs to engage the NSB and BLM on developing a regional solid waste solution for the Greater Colville area.

Kuukpik agrees with the proposal to explore options for a western North Slope landfill. As a major landowner in the area, we would also expect to participate in those discussions.

²⁷ One of the most important mitigation measures is the requirement to construct all new pipelines at a minimum elevation of 7 feet. BLM heard from many Nuiqsut residents who believe the 5-foot pipelines associated with Meltwater have been a primary cause of caribou deflection away from Nuiqsut. It is imperative that the 7-foot requirement be maintained and enforced throughout the entire Willow Project Area.

generally, will have on subsistence and Nuiqsut. The past two decades have seen a patchwork and inconsistent approach to managing the NPR-A. The use of NPR-A Integrated Activity Plans was intended to create a more durable planning and management strategy for the entire region but has only been marginally successful because each new Presidential administration has tossed out their predecessor's IAP in favor of one that advances their own priorities and agenda. Kuukpik therefore urges BLM to consider some larger scale mitigation measures that could permanently institutionalize certain management priorities and strategies into the decades long effort to balance subsistence and development on the North Slope.²⁸

A. Teshekpuk Lake and the critical areas around it deserve permanent protection.

It is time to find a way to permanently protect Teshekpuk Lake, a buffer around the lake, and the migration corridors to the east and northwest. These are the areas of the TLSA and TLCHA that are of most importance to maternal and migrating caribou of the Teshekpuk Caribou Herd – the herd that will be most impacted by Willow. These areas are so critical to the long-term health and survival of the herd that leasing and most non-subsistence surface activities were categorically prohibited in the area under the 2013 NPR-A IAP. Even the 2020 NPR-A IAP provided these areas with *some* surface protection, but these protections were subject to significant exceptions and always left open the option for a pipeline or road if it were deemed “essential”.²⁹ Even though the 2022 IAP ROD reinstated protective measures in these areas, the very fact that protections have changed twice so radically in a two year period demonstrates the need for a long-term, durable plan to protect these critical areas. In light of the impacts that the Teshekpuk Herd is likely to experience in the coming decade, opening this area to leasing and surface development whenever there is a change in administration does not provide the kind of long-term protection the herd---and the subsistence communities that depend on it---need in order to thrive.

Kuukpik therefore encourages BLM and Secretary Haaland to explore several options. First, although Kuukpik has never supported wilderness designation in NPR-A before, we would consider supporting such a designation if it were confined to the surface area of Teshekpuk Lake, a buffer along all shores of Lake, and the K-10 Caribou Movement Corridors/K-16 Deferral

²⁸ The NPRPA authorizes expansive mitigation measures related to oil and gas, directing the Secretary to “include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska” (42 USC § 6506a(b)). BLM has catalogued additional sources for this authority at GMT1 ROD, pp. 5, 14, and Appendix D, p. 58. So even though BLM may not be able to require or accomplish these proposals strictly within the context of a Willow Record of Decision, BLM has sufficient legal authority to support initiating these processes through other means, such as recommendations to the Secretary, Congress, or the President, for example, or requirements for future studies, creation of working groups, *etc.*

²⁹ See ROP's K-2 (surface occupancy restrictions for deep water lakes), K-6 and K-7 (relating to goose protection), K-9 and K-10 (surface protections for the Teshekpuk Lake Caribou Movement Corridor)

Areas (under the 2020 Alternative E). Although Kuukpik generally supports more adaptive management tools than the blunt instrument of wilderness designation, we can foresee no scenario in which development of surface facilities in the lakebed itself or the calving areas surrounding it would be justified. Likewise, there is no reason to leave open development options in the most sensitive migration corridors based on a hypothetical (and seemingly increasingly remote) possibility that an offshore pipeline will be needed sometime in the foreseeable future, much less the even more speculative notion that it must come on shore in this area.

Questions regarding wilderness designations were considered at some length during the 2008 and 2012 IAP processes.³⁰ The analysis of wilderness characteristics in the areas around Teshekpuk Lake strongly suggests that the area was, and should be, considered for this highest level of surface protection.³¹ In fact, the Obama administration appeared poised to move some portion of the Teshekpuk Lake Special Area at least towards permanent protection at that time, but was prevented from doing so by Congress.³²

Certainly the same thing may happen this time. Kuukpik understands that the Secretary cannot accomplish this goal by herself, or that gathering Congressional support for the most durable types of protections will be simple.³³ But the Secretary has discretionary authority to recommend wilderness designations to Congress, which would initiate a process and plan for advancing this concept for further consideration, at a minimum.³⁴ Given the national attention currently focused on development in the Arctic, there may be political appetite for such a designation.

Federal designation beyond the current “Special Area” may be the only way the current administration can protect Teshekpuk Lake and these critical migration corridors in a way that

³⁰ See, in particular, 2012-13 NPR-A IAP Final EIS, Vol. 1, pp. 449 – 458 describing the historical record on wilderness analysis in NPR-A.

³¹ *Id.*, p. 457.

³² See Secretarial Order 3310 and 3393.

³³ We note that there are other options that could provide significant protection to the area if certain requirements are satisfied, such as National Monument, National Conservation Area, National Wildlife Refuge, and National Preserve designations. Some of these can be accomplished (or partly accomplished) without Congressional action. But any action that can be taken without Congressional action can also be undone or limited by future administrations. Congressional action in some form is therefore likely required to achieve the kind of permanent protection that Kuukpik is interested in exploring.

³⁴ The NPR-A is exempt from the more standard procedural path for wilderness designations (FLPMA section 603 (43 USC 1782)), but ANILCA Section 1320 (43 USC 1784) grants the Secretary discretionary authority to “identify areas in Alaska which he determines are suitable as wilderness” and states that the Secretary “may, from time to time, make recommendations to the Congress for inclusion of any such areas in the National Wilderness Preservation System.”

cannot simply be undone after a presidential election. Kuukpik is thus willing to consider supporting permanent designation of these vital caribou habitat and migration corridors despite our normal reluctance to embrace such restrictive measures being imposed from outside.

B. Local management of caribou

We now turn to something at the opposite end of the philosophical spectrum from having decisions regarding the NPR-A made in Washington D.C. As BLM knows, the management of fish and game with respect to subsistence has long been mired in the conflicting policies of the state and federal governments. This creates uncertainty and a lack of uniformity regarding caribou management, which of course migrate long distances without regard to lines on a map. There is also no single agency with decision making authority across these invisible boundaries, or which can respond to evolving data and local concerns efficiently. The result is that many of the decisions that primarily affect local Alaska Native residents on the North Slope are being made by outsiders, not locals---locals with generations of experience making their own decisions and managing subsistence resources for the long-term benefit of the community.

Kuukpik therefore urges BLM and other federal agencies to begin working with stakeholders to establish an Alaska Eskimo Caribou Commission. The Commission would perform generally the same type of information gathering, policy setting, and management functions as are currently performed on the North Slope for other important species and resources (*e.g.*, the Alaska Eskimo Whaling Commission, Alaska Beluga Whale Committee, Eskimo Walrus Commission, and the Alaska Nannut Co-Management Council). Nearly all stakeholders on the North Slope are familiar with at least some of these entities, which should contribute to local “buy in” for a Caribou Commission. In fact, several of these organizations, such as the AEW, have become high profile, gold standard examples of successful collaborative subsistence resource management. The success of these organizations demonstrates the potential for a Caribou Commission to meaningfully contribute to the effort to ensure that subsistence users are involved in the decisions that affect them more than anyone else.

The goal of the proposed Alaska Eskimo Caribou Commission is to establish a body that can collect data and traditional knowledge regarding caribou on the North Slope and make decisions based on that analysis that will help ensure the long-term health of these important subsistence resources. The NSB Department of Wildlife Management could be responsible for data gathering and analysis. Each commissioner would have special expertise in subsistence practices and needs regarding caribou on the North Slope. As with the AEW (and other bodies), the Commission would have the ability to take certain actions to protect caribou herds if the herds appeared to be declining or threatened. Management powers might include setting priority uses or users for a period of time, limiting or closing certain areas to hunting, or limiting certain activities in highly sensitive areas or seasons (such as calving season). The visible success of AEW carrying out these functions on behalf of the whaling community and NOAA

demonstrates how well such a program can function if it is empowered and given the right tools to succeed.

Caribou management would be particularly well-suited to this type of cooperative management because, like whales (and other marine mammals that are currently co-managed by the federal government and the subsistence community), caribou are a highly migratory species that sustain multiple communities and are affected by very different impacts over a wide area. Attempting to manage caribou based on land ownership and competing federal and state policies and regulations simply does not make sense because impacts on one side of an arbitrary boundary may greatly affect the population of caribou that move across the entire region. By including knowledgeable representatives from the communities that would be impacted by changes to the various herds, each community would have a meaningful voice in the management process.

This proposal is consistent with the cooperative management or co-management arrangements that are encouraged in Secretarial Order 3342, Joint Secretarial Order 3403, and elsewhere. One of the benefits to such an arrangement would be to introduce more local control into a process that mostly affects local residents. The Commission would be a federally approved and empowered body comprised of North Slope representatives that functions on a peer-to-peer level with other responsible agencies regarding certain decision-making responsibilities. Such an arrangement would be a powerful symbol and tool for subsistence communities throughout the region.

The other most important benefit would be that the Commission would operate continuously, with a mission to ensure the long-term survival of caribou across the entire North Slope, not just influencing elements of individual projects as they are proposed. Unlike the NEPA and other discrete permitting processes, the Commission's mission and process would not focus on any specific project or proposed project. Although there would undoubtedly be some Commission involvement in proposed development projects, its primary role would be monitoring the overall long-term health of the caribou herds and making decisions that either avoid problems before they start or attempt to address issues as they arise. This sets the Alaska Eskimo Caribou Commission apart from the other public processes that exist today, which are constrained by the fact that they are typically focused narrowly on a specific project, plan, or proposal, and by the fact that the process is essentially over after a project is approved and permitted. The Commission's ability to act in ways that are not related to a specific project proposal or timeline would make it a valuable tool in the effort to protect one of the North Slope's most important subsistence resources for all time.

C. Mitigate impacts on communities in the NPR-A through economic and community planning efforts.

Kuukpik also encourages BLM to consider larger scale efforts to mitigate “residual” or unavoidable impacts caused by the Willow Project and others.³⁵ BLM noted in 2018 that a NEPA analysis should include a description of

[T]he residual effects of any adverse impacts that remain after mitigation measures have been applied....Residual impacts are those impacts that remain after all reasonable efforts are made to avoid, minimize, rectify, and reduce or eliminate impacts over time. Mitigation stipulations, which may include any combination of elements from the mitigation hierarchy, are unique for each approved development project, and are specified as a part of the decision that follows NEPA analysis.³⁶

Based on this requirement, BLM catalogued unavoidable impacts that GMT1 was expected to cause, including impacts to the natural environment and impacts to local culture due to adverse consequences on local subsistence practices.³⁷ According to BLM, these unavoidable impacts supported the need for BLM to explore additional measures that could be taken, outside the scope of the project itself, to offset unavoidable impacts.³⁸ The result was a requirement that Conoco contribute money to establish a compensatory mitigation fund, which eventually led to development of a regional mitigation strategy for the Northeastern NPR-A and some funding for projects in Nuiqsut that, while well-intentioned, have achieved varying levels of success.

We raise this issue now not because we recommend reviving the RMS specifically or more contributions to a compensatory mitigation fund. Rather, we raise it to emphasize the authority BLM has to attempt to address Willow’s unavoidable impacts at a larger scale, particularly in light of the unavoidable cumulative impacts Nuiqsut currently faces. The Draft SEIS notes numerous unavoidable impacts that, under the rationale articulated above, would

³⁵ The Final Regional Mitigation Strategy for Northeastern NPR-A (August 2018), pp. 3-5, describes the rationale for this type of analysis and supports the BLM’s legal authority to engage in this type of economic planning and mitigation to offset socio-economic and socio-cultural impacts from development on BLM-managed lands. To be clear, Kuukpik is not suggesting the RMS be revived precisely in its previous form. But we do think the concept of far reaching, out-of-kind mitigation and planning efforts has value and is legally within BLM’s authority, as the RMS explains.

³⁶ *Id.*, p. 4.

³⁷ *Id.*, p. 5. “The mitigation specified in the ROD included supplemental BMPs to be executed on-site, and compensatory mitigation designed to offset residual impacts to the natural environment of the Fish Creek and Tinmiaqsigvik (Ublutuoch) River setbacks and the cultural practices of the Iñupiat people that would be potentially affected by the GMT1 development.”

³⁸ The NPRPA provides BLM with additional mitigation authority specific to oil and gas operations in the NPR-A, directing the Secretary to “include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska....” (42 USC § 6506a(b)).

support additional efforts to improve the lives of affected local residents. We urge BLM to think creatively about ways to do exactly that.

In particular, Kuukpik urges BLM to explore ideas for expanding economic opportunities for North Slope residents. Better economic opportunities can help offset unavoidable financial impacts associated with development (such as increased hunting costs).³⁹ Furthermore, developing successful talent and small businesses can mitigate the negative psychological and socio-economic impacts that many residents are experiencing because of lost subsistence opportunities or traditions, conflict in the community, and other factors.⁴⁰ It is therefore appropriate to consider economic development opportunities as mitigation (or compensatory mitigation) in the context of specific development projects and for BLM’s larger and ongoing planning efforts in the NPR-A.

We certainly recognize that economic development efforts are harder to define and implement than other projects that have been put forward as compensatory mitigation. But the challenge shouldn’t stop us from exploring possibilities.⁴¹ It’s hard to look at indigenous economic development programs occurring in Southeast Alaska and with some Canadian First Nations and not wonder what the possibilities are for Nuiqsut and the North Slope. Just like young people elsewhere, Kuukpik’s shareholders and residents are interested in opportunities that are perceived to be modern and sustainable. This means looking beyond typical oilfield jobs and trying to foster small businesses and opportunities that are more consistent with Nuiqsut and Inupiat culture. With some programmatic guidance and support, Kuukpik believes many North Slope communities, and Nuiqsut in particular, could develop the kind of innovative, indigenous-led, sustainable economies---rooted in small businesses and our cultural connections to the land base around Nuiqsut---that are developing elsewhere. We look forward to working with BLM to explore these possibilities.

Conclusion

³⁹ See Willow MDP Draft SEIS (2022), Vol. 1, p. 286:

A recent economic study on subsistence impacts (Northern Economics Inc. 2019) analyzed the potential economic impacts of several different scenarios resulting from development of GMT-1. The study found that if the GMT-1 project results in residents having to travel 20 miles farther to harvest caribou, the economic impacts could be substantial, at an increase of more than \$45,000 in harvest costs. If, instead, residents increase their use of trucks and roads to hunt for caribou, residents would likely see a decrease in harvests costs of more than \$13,000.

⁴⁰ Willow MDP Draft SEIS (2022), Vol. 1, p. 304.

⁴¹ The reality is that some of the “traditional” compensatory mitigation projects, like the proposed Nuiqsut Piuraagvik, have ended up being fairly challenging to execute as well, despite best intentions on all sides. And while Kuukpik continues to support those projects (and in fact has supported the effort to advance the Piuraagvik in numerous ways), none of them have been a rousing success so far.

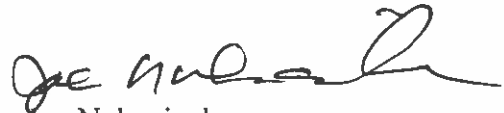
We want to thank BLM staff for their hard work during this long and challenging process. Kuukpik has not agreed with every decision that has been made along the way, but to a person, every BLM staff member that Kuukpik has worked with during this effort has been professional, helpful, and engaged in the process. We appreciate that.

Kuukpik has worked very hard for many years to try to develop a version of the Willow Project that we could support. BLM's new Alternative E accomplishes that. Kuukpik would therefore like to see it carried forward as the Preferred Alternative. But we urge BLM not to stop there and to work with us and other stakeholders to generate durable plans and policies to ensure the long-term health of Nuiqsut. Kuukpik will continue to do everything in our power to achieve that goal as well.

Sincerely,

KUUKPIK CORPORATION

By:



Joe Nukapigak
President

cc: Kuukpik Board of Directors
City of Nuiqsut
Native Village of Nuiqsut