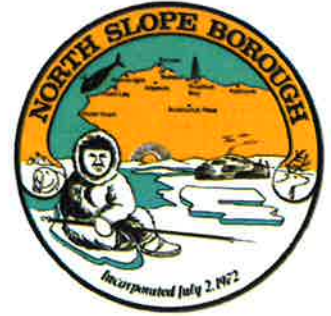


# North Slope Borough

## OFFICE OF THE MAYOR

P.O. Box 69  
Barrow, Alaska 99723  
Phone: 907 852-2611 or 0200  
Fax: 907 852-0337



*Harry K. Brower, Jr., Mayor*

November 5, 2021

Stephanie Rice, Natural Resource Specialist  
Bureau of Land Management, Alaska State Office  
222 West 7th Avenue, #13  
Anchorage, Alaska 99513-7599

Submitted via: [srice@blm.gov](mailto:srice@blm.gov)

Re: Comments of North Slope Borough on Willow Master Development Plan Supplemental Environmental Impact Statement

Dear Ms. Rice:

The North Slope Borough (Borough) appreciates this opportunity to provide comments to the Bureau of Land Management (BLM) on the development of a Supplemental Environmental Impact Statement (SEIS) for ConocoPhillips Alaska, Inc.'s (CPAI) Willow Master Development Plan (Willow).

The Borough renews its support for Willow as previously authorized by the BLM's Environmental Impact Statement (EIS) and subsequent Record of Decision (ROD). We understand that BLM is undertaking this SEIS effort in order to address the identified deficiencies in Willow's environmental review as set forth in Judge Sharon Gleason's August 2021 opinion.<sup>1</sup> As such, the Borough encourages BLM to limit its evaluation in this SEIS to those discrete issues, and not to reopen items outside the scope of those identified by Judge Gleason for reassessment in her vacatur and remand of BLM's approval of Willow.

Willow is not only a well-designed, but also a well-analyzed, project. BLM, the U.S. Fish and Wildlife Service (FWS), and the U.S. Army Corps of Engineers all conducted rigorous environmental reviews to ensure that associated development continues to be conducted in an environmentally responsible manner that appropriately protects the North Slope's resources.

---

<sup>1</sup> *Sovereign Iñupiat for a Living Arctic v. Bureau of Land Management*, No. 3:20-cv-00290-SLG (D. Alaska Aug. 18, 2021) ("Opinion").

The Borough participated as a cooperating agency with the federal government in the development of Willow's EIS. Through numerous meetings and workshops, we assisted in the development of the alternatives, lease stipulations and best management practices for Willow. BLM did an exceptional job throughout this process in its outreach to local entities. Furthermore, Willow is a great example of responsible oil and gas development. It is land-based development typical of the North Slope, which will be connected to existing infrastructure and the Trans-Alaska Pipeline System. This is not a risky project, and for all the reasons noted below, it will benefit the Borough and support our ability to maintain essential municipal services to our residents and communities. For these reasons, the Borough intervened in the legal challenges to Willow from outside groups that do not understand or appreciate the mitigation measures, planning and outreach that went into this project, as well as its importance to our residents.

The Borough offers the following comments to renew its support for the proposed development plan for Willow and to encourage BLM to preserve the years-long environmental review process—a process which involved substantial input from the local community—by limiting its reassessment of Willow to the narrow issues identified in Judge Gleason's decision.

### **North Slope Borough**

The Borough is the regional government for eight villages spread across northern Alaska. The Borough's jurisdiction stretches from the United States-Canada border across to the western border of Alaska, and its coastline extends across the Beaufort and Chukchi Seas. It is the largest municipality in the United States by size. The Borough's jurisdiction includes the Iñupiat villages of Anaktuvuk Pass, Atkasuk, Kaktovik, Nuiqsut, Point Hope, Point Lay, Utqiagvik (Barrow), and Wainwright, as well as the National Petroleum Reserve-Alaska (NPR-A).

Our residents offer a unique perspective on the North Slope of Alaska and its resources. Approximately three-quarters of the Borough's nearly 10,000 permanent residents are Native Alaskan Iñupiat. The Iñupiat have occupied and depended upon the subsistence resources of the North Slope's lands and waters for their physical health, cultural well-being, and survival for thousands of years. Over 98% of Iñupiat households utilize subsistence foods, and the social fabric of our communities revolves around subsistence traditions. The importance of this subsistence way of life to our communities goes beyond the need for food. Our unique Iñupiat culture, traditions, and links to our ancestors and history are tied to our subsistence lifestyle, to our custom of sharing with others, and to celebrating our connection to the North Slope.

Oil and gas resources developed on the North Slope come from our backyard—a place that has sustained our people for generations. The Iñupiat have strong cultural and subsistence ties to the areas where oil and gas development on the North Slope occurs. We consider ourselves to be the first and rightful stewards of these lands, and any form of development on this land demands careful stewardship. However, our lives are inextricably tied to responsible resource development, and the Borough relies on such development in order to support economic and infrastructure development opportunities, access to services, and the provision of employment and subsistence benefits for our residents.

## **BLM Should Limit the Scope of the SEIS to the Discrete Issues Identified for Reevaluation in Judge Gleason's Decision**

The current plan for Willow was created following a years-long environmental review process that includes and reflects significant input from local communities. Though the Plaintiffs in the lawsuits challenging Willow's environmental review raised myriad claims in their attempts to prevent the development of Willow from proceeding, Judge Gleason identified only a few discrete areas in which she deemed BLM's environmental review of the project insufficient for the purposes of the National Environmental Policy Act (NEPA) and the Endangered Species Act.<sup>2</sup> In accordance with the remand, BLM should limit its current supplemental environmental review to those issues, amending only the provisions of the EIS identified by Judge Gleason as requiring further analysis. These issues include the analysis of greenhouse gas emissions, certain aspects of the EIS alternatives analysis—specifically, BLM's authority over CPAI's lease rights and the evaluation of the Teshekpuk Lake Special Area—and BLM's reliance on FWS's Biological Opinion evaluation related to polar bear. It would be inappropriate for the agency to independently broaden the scope of this remanded environmental review beyond these enumerated issues. BLM should not needlessly reopen the evaluation of potential environmental impacts and toss aside its work—work that involved the dedicated efforts and local input of the people of the North Slope—that has been completed.

### *A. Greenhouse Gas (GHG) Emissions*

In order to address Judge Gleason's holding that BLM's analysis of GHG emissions was inadequate, BLM need not undertake the herculean task of quantifying the effects of consuming oil abroad in Willow's downstream emissions analysis. It is our understanding that currently available information and modeling tools are insufficient to support this analysis. Instead, BLM can simply provide a more robust explanation detailing *why* it cannot evaluate the impact of foreign GHG emissions.

To remedy the deficiencies in the foreign GHG emissions analysis identified by Judge Gleason, BLM must at least consider and respond to the studies that were submitted during public comments and in the agency's administrative record. In addition, BLM must address the studies of foreign GHG emissions that were at issue in the litigation on the Liberty project, as Judge Gleason's opinion specifically faults BLM for failing to consider these reports.<sup>3</sup> However, as Judge Gleason's opinion acknowledges, in some cases, quantification of foreign GHG emissions may not be feasible. If the estimated effects of these foreign GHG emissions cannot be

---

<sup>2</sup> Specifically, Judge Gleason rejected Plaintiffs' claims relating to the Teshekpuk Caribou Herd, finding that BLM took the requisite "hard look" required by NEPA at the potential impacts of Willow on the herd. Opinion at 41-48. She similarly rejected Plaintiffs' claims that BLM lacked sufficient baseline information necessary to take a hard look at Willow and found that BLM adequately considered Willow's potential cumulative impacts. Opinion at 48-66. Judge Gleason also determined that, contrary to Plaintiffs' claims, the U.S. Army Corps of Engineers' review of Willow and subsequent issuance of a Clean Water Act (CWA) permit for the project complied with the CWA. Opinion at 67-88.

<sup>3</sup> Opinion at 30-31.

summarized or estimated based on accurate or credible scientific information, the agency then “must thoroughly explain why such an estimate [of foreign GHG emissions] is impossible.” Accordingly, on remand, BLM should provide a thorough explanation of why—without further credible scientific data—further analysis necessary to produce an estimate of the effects of foreign GHG emissions is infeasible and speculative.

## *B. Alternatives Analysis*

### *(1) BLM’s Authority to Restrict ConocoPhillips’ Lease Rights*

Judge Gleason found that BLM acted contrary to law by developing its alternatives analysis based on the agency’s purported lack of authority to restrict CPAI’s lease rights.<sup>4</sup> Though Judge Gleason rejected Plaintiff’s assertion that BLM’s lack of authority was the primary reason for not considering certain alternatives in the EIS, she speculated that “it certainly appears to have been a significant reason.”<sup>5</sup> BLM must explain in the SEIS that it did not unduly rely on its supposed lack of authority to restrict CPAI’s lease rights in choosing not to consider additional alternatives in the EIS.

Specifically, BLM must clarify its consideration and acknowledgement of CPAI’s lease rights in structuring its NEPA analysis did not improperly constrain its selection of alternatives under the EIS. In particular, BLM should explain that its conclusion that infrastructure would be required in the Teshekpuk Lake Special Area (TLSA) did not presuppose BLM’s preclusion of any alternative development scenarios within the TLSA based on CPAI’s lease terms. Similarly, BLM should explain how its determination that infrastructure would be required within the TLSA in order to achieve Willow’s primary purpose did not lead BLM to improperly discard consideration of these potential development scenarios with modified or no infrastructure in the TLSA. BLM must elaborate on how the alternatives selected for detailed consideration were sufficient for informed decision making by the agency and participation by the public, and that these selections do not rely upon BLM’s lack of authority to restrict CPAI’s lease rights.

In short, BLM should clarify that it did not restrict its selection of alternatives based on a lack of authority to regulate CPAI’s design of Willow, and should reiterate the myriad ways in which BLM did assess alternatives that proscribed the bounds of Willow.

### *(2) Teshekpuk Lake Special Area*

Judge Gleason held that BLM acted contrary to law in its alternatives analysis for the Teshekpuk Lake Special Area (TLSA) by failing to consider the statutory directive that BLM give “maximum protection” to surface values in that area.<sup>6</sup> She determined that BLM failed to provide an adequate explanation for its elimination from more detailed study of an alternative with modified or no infrastructure in the TLSA.<sup>7</sup> To remedy this issue, BLM must proffer a more robust

---

<sup>4</sup> Opinion at 35-38, 109.

<sup>5</sup> Opinion at 38.

<sup>6</sup> Opinion at 38-39, 109.

<sup>7</sup> Opinion at 39-40.

explanation for its decision not to consider an alternative with modified or no infrastructure in the TLSA. Further, BLM must clarify its intention when it described the TLSA as “only an administrative boundary.” BLM should also acknowledge that TLSA’s designation as a “special area” brings with it the additional statutory and regulatory requirements that BLM assure “maximum protection” of surface values within the special area.

Rather than focusing on the distinction (or lack thereof) between lands within and directly outside the TLSA, BLM should explain how the approved plan for Willow—including its conditions, lease stipulations, required operating procedures, and other mitigation measures—meets the statutory directive to provide for maximum protection of surface values within the TLSA. This explanation could include an explanation of how protective measures in force outside the TLSA contribute to the protection of the TLSA.

### *C. Reliance on FWS Biological Opinion for Polar Bear*

Judge Gleason held that the incidental take statement in the U.S. Fish and Wildlife Service’s (FWS) Biological Opinion (BiOp) was legally insufficient for lacking requisite specificity of mitigation measures for the polar bear, and because the incidental take statement’s take finding concerning polar bears was arbitrary and capricious. Therefore, she held that BLM’s reliance on the BiOp was unlawful.

On remand, BLM should coordinate with FWS on its analysis of potential impacts to the polar bear, working to ensure that FWS’s analysis includes and considers Willow’s location, design elements, mitigation factors, and other specifics when evaluating Willow’s effects. Early communication and coordination with FWS will be key to ensuring that the supplemental environmental review process for Willow moves forward in a timely manner. As such, BLM should coordinate at the earliest possible stages with FWS as the agencies revise their respective analyses.

### **BLM Should Complete the SEIS Expeditiously to Ensure Willow’s Benefits to Borough Residents Are Not Unduly Delayed**

The Borough encourages BLM to expeditiously complete its SEIS process. Every delay of development of the Willow project consequently delays the project’s economic, social, and infrastructure benefits for the people of the North Slope.

Responsible oil and gas development is essential to the economic survival of the Borough and its residents. It is the primary economic generator for our region, and taxes levied on oil and gas infrastructure—such as processing equipment, pipelines, and other facilities—are by far the most significant source of funding for the Borough’s community services and infrastructure. For example, for Fiscal Year 2021, oil and gas property taxes accounted for 95% of the Borough’s total property tax receipts. BLM has estimated that, over its 30-year development life, Willow will generate \$1.23 billion in Borough property tax revenues.

Property tax revenues collected by the Borough for almost 50 years have enabled the Borough to invest in public infrastructure and utilities (including reliable sewer, water, and heat)

and to provide essential services to the eight Iñupiat villages on the North Slope. Oil and gas tax revenues support education (e.g., Alaska's only tribal college), health (e.g., clinics in each village, hospitals, schools, and increased sanitation), and emergency services (e.g., aircraft and crew that conduct regular medevac and search and rescue operations throughout the North Slope). These revenues support our Department of Wildlife Management, through which we deploy significant biological and traditional expertise to protect our residents' cultural and subsistence resources in the context of proposals to develop oil and gas resources. In addition to providing these services, the Borough creates employment opportunities for local residents and entities. The local government sector (primarily, the Borough government) is the largest employer of North Slope residents.

In addition to tax revenue, the Borough and its residents benefit from the generation of royalty revenue sharing available to fund the NPR-A Impact Grant Program, which administers grants from federal royalties, which are used to offset development impacts or improve communities impacted by development. Such grants are available to North Slope municipalities, including both the Borough itself and its incorporated cities. These grants are of significant benefit to the local communities. Over the past ten years alone, the Borough has received almost \$30 million in NPR-A Impact Grants, which it used to fund dozens of projects related to safety, local government, infrastructure, wildlife management, environmental health, workforce development, subsistence, planning, and social and cultural programs. A few highlights of these NPR-A Impact Grant-funded projects include:

- \$8,707,798 – Community Winter Access Trails: to design, construct, monitor, and maintain the North Slope Borough Community Winter Access Trails; includes support for a travel safety and inspection program within the NPR-A villages, documentation of data needed to support lower cost connectivity for village residents to the state road system, and quantifying the potential benefits of establishing seasonal trails for all NPR-A communities.
- \$2,750,000 – Naval Arctic Research Laboratory Road: to relocate a portion of Stevenson Road which provides access from the core Barrow area to the Naval Arctic Research Laboratory area complexes, including Illisagvik College and subsistence sites beyond.
- \$1,187,500 – Area-Wide Air Quality Study: to focus on several aspects of air quality and air quality monitoring by collecting baseline data in the NPR-A impacted communities.
- \$1,400,000 – NPR-A Village Comprehensive Land Use Plans: to create and update comprehensive plans that serve as a guide to the local governments when they are making decision on budgets, ordinances, capital improvements, zoning, and subdivision matters related to the community.
- \$1,174,100 – EMS Equipment Upgrades & Emergency Training Equipment: to support emergency medical services, fire protection, and search and rescue capabilities.
- \$682,000 – Iñupiat Language Revitalization: to assist through strategic planning, revitalize, save, and sustain the Iñupiatun dialect by building greater awareness of the status of North Slope Iñupiatun, conduct community gatherings in the NPR-A villages, develop after-school language programs, quarterly seminars supporting Iñupiatun fluency, and develop assessment tools to measure language learning and language loss.

- \$377,500 – Student Outreach/Science Education for NPR-A Villages: to enhance the critical education of students in the North Slope NPR-A villages regarding vital subsistence resources and scientific and traditional knowledge studies conducted by the NSB Department of Wildlife Management as a means of building much needed capacity in the NPR-A villages.
- \$300,000 – NSBPD Training & Personnel for NPR-A Impacted Communities: to provide police officers for the five NPR-A villages.
- \$300,000 – Health Impact Assessment – Mental Health: to provide baseline data for future mental health impact-related studies of residents across the North Slope Borough that are within the NPR-A communities.
- \$250,000 – Monitoring Teshekpuk Caribou Movements with Satellite Telemetry: to monitor the movement and seasonal distribution of the Teshekpuk caribou.

Willow is expected to generate an additional \$2.6 billion in royalty revenue sharing available to fund the NPR-A Impact Grant Program.

The benefits to the Borough and our residents from oil and gas development go beyond direct financial support from tax revenue and Impact Grants. Through coordination with local, state, tribal, and federal entities in decision-making processes regarding new oil and gas development, the Borough works to ensure that development provides ancillary benefits in the form of infrastructure and other benefits for our residents.

Infrastructure investments associated with oil and gas development often involve new roads and local facilities that provide tangible benefits to our residents. On the North Slope, access to subsistence areas and connectivity provided by roads is viewed by many residents as a significant benefit. For example, roads associated with industrial development have improved the ability of our residents to pursue subsistence opportunities.

Exploration and development activities increase employment opportunities for the residents of Borough villages. Currently, economic opportunities in our communities are limited due to their isolated locations. Development on the North Slope brings jobs to the Borough's communities, including for Borough residents. More than one-third of jobs held by Borough residents are directly or indirectly supported by the oil and gas industry.

Finally, oil and gas development and exploration serve as economic multipliers on the North Slope. First, oil and gas activities increase household income for local residents employed by industry. In addition, industry often contracts with Alaska Native corporations, and local shareholders of these Native corporations benefit from employment opportunities, dividend income, and the myriad investments of the Native corporations in the social, cultural, and economic welfare of the communities. For example, project developers have utilized local Alaska Native corporations to perform services ancillary to exploration and development projects on the North Slope, including Willow. Nanuq Inc. (a wholly owned subsidiary of Kuukpik Corporation, Nuiqsut's local village corporation established pursuant to ANCSA) employs Nuiqsut residents and serves as Willow's ice road construction contractor. In addition, staking and survey work for

ice roads is performed by UMIAQ Design, LLC (a subsidiary of Ukpeaġvik Iñupiat Corporation, Utqiagvik's local ANCSA village corporation).

Actions that unreasonably prohibit, restrict, or delay oil and gas development on the North Slope have significant negative impacts on the Borough's economy and our ability to generate tax revenue to provide critical services to our residents. The potential delay or loss of tax revenue and NPR-A grant funds would directly and significantly impair the Borough's ability to provide essential government functions, support and grow our economy, provide increased opportunities for our citizens, and provide for the health and well-being of our residents. Further, loss of economic activity on the North Slope means lost jobs and opportunities for our residents in an area of the country that already struggles with significant unemployment. BLM should act without delay to complete this supplemental review process and expedite the delivery of Willow's myriad benefits to the people of the North Slope.

### **Conclusion**

The Borough acknowledges that BLM must conduct this supplemental environmental review process in order to redress the deficiencies identified by Judge Gleason in her August 2021 decision, which vacated the federal approvals for Willow and remanded the action to the agencies for further consideration. And, the Borough supports BLM's efforts to ensure that this process is thorough and legally defensible. However, the Borough encourages BLM to focus its SEIS efforts on addressing the deficiencies identified in Judge Gleason's decision and not to unnecessarily reevaluate issues which were already addressed through the rigorous EIS process that reflected the efforts and voices of the North Slope's Iñupiat people.

The Borough welcomes the opportunity to submit comments to BLM on this SEIS, and we encourage BLM to continue to engage with the Borough as BLM moves forward through this process.

Sincerely,

  
Harry K. Brower, Jr.  
Mayor, North Slope Borough