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U.S. Department of the Interior
Bureau of Land Management

*Via email to: s05mcint@blm.gov and
[BLM NPRA SpecialAreas@blm.gov](mailto:BLM_NPRA_SpecialAreas@blm.gov)*

Re: RFI: Special Areas in the National Petroleum Reserve in Alaska

Dear Ms. McIntosh:

Kuukpik Corporation submits these comments on behalf of itself, its Board of Directors and its hundreds of Alaska Native shareholders in Nuiqsut and beyond. BLM has announced it is “seeking written feedback and information from the public to inform whether to initiate a process to consider changes to the Special Areas identified in the current IAP.”¹

Kuukpik urges BLM not to initiate a process to consider changes to the existing Special Areas. Virtually no local stakeholders support the recently enacted Rule Regarding Special Areas within the National Petroleum Reserve in Alaska (“Special Areas Rule” or “Rule”). It is therefore hard to believe local stakeholders would support undertaking a process to implement that Rule, especially when it seems almost certain that any changes that result from this process would either expand the Special Areas, further restrict development in them, or both. None of those outcomes are likely to have broad local support either. In addition, initiating this process now is only likely to perpetuate and further increase confusion (and perhaps opposition) to the Nuiqsut-led effort to protect key areas around Teshekpuk Lake using Mitigation Measure No. 27 of the Willow Record of Decision (“ROD”) (“MM27”). Kuukpik appreciates BLM’s cooperation and support regarding MM27, which has been a community-led effort to accomplish a goal that Nuiqsut believes is important and justified. But Kuukpik continues to oppose the Special Areas Rule because the Rule was developed by Outsiders with little regard for the will of Nuiqsut, does nothing to help advance local control and self-determination, and is overly broad and not responsive to a particular need.

¹ Special Areas Within the National Petroleum reserve in Alaska, 89 Fed. Reg. 58182 (July 17, 2024).

We therefore urge the Bureau of Land Management not to initiate a process to explore changes to the Special Areas at this time.

1. Initiating a process to consider changes to the Special Areas would not be consistent with the generally cooperative approach Kuukpik has experienced with BLM under this administration.

Given the broad opposition to the Rule throughout the North Slope, Kuukpik worries that initiating a process to implement the unpopular Rule would be perceived by many as a slap in the face. Numerous organizations representing diverse constituencies and interests on the North Slope and throughout the State strongly oppose the Rule, including the NPR-A Working Group (of which Kuukpik is a member), the Voice of the Arctic Inupiat (of which Kuukpik and other Nuiqsut entities are *not* members), the North Slope Borough, and the State of Alaska. The latter three have even filed lawsuits to strike down the Rule.

Although Kuukpik is not participating in any of those lawsuits, we have expressed many similar concerns, including pointing out how unnecessarily restrictive and unbalanced the Rule is,² identifying the legal infirmities that we believe will likely lead the courts to strike the Rule down,³ and the challenges that would arise in trying to implement and administer the Rule if it were to be implemented.⁴

We acknowledge that BLM accepted several of Kuukpik’s suggested revisions to the Draft Rule, but our fundamental position has not changed: the Final Rule as a whole is not balanced or reasonable and is unlikely to facilitate outcomes that are best for Nuiqsut. Other North Slope entities that represent broader constituencies—but which do not experience the negative impacts of oil and gas development as directly as Nuiqsut—oppose the Rule even more strongly, in part at least because of the detrimental impact the Rule will have on the oil and gas development that contributes so much to the local taxbase and economy. Implementing the Rule over so much local, largely Alaska Native-led opposition does not demonstrate or reflect the kind of cooperative

² See, e.g., Kuukpik Corporation’s Comments (Dec. 7, 2023) on Proposed NPR-A Special Areas Rule, Management and Protection of the National Petroleum Reserve: Alaska, Proposed Rule RIN 1004–AE, 2 (herein “Kuukpik Comments”), p. 8 (“The clearest example is where the Proposed Rule essentially converts lands within Special Areas that are currently ‘available’ for leasing and new infrastructure to ‘unavailable’ for those activities. It does so by establishing a presumption that, as written, is either impossible to overcome or so subject to litigation as to be unworkable.”).

³ See, e.g., *id.* at 9 (“[U]nder the plain language of the statute, ‘maximum protection’ of Special Areas is to be assured ‘to the extent’ possible while nevertheless expeditiously developing the oil and gas reserves in those same Special Areas.”).

⁴ See, e.g., *id.* at 12 (“This section also lacks detailed standards or guidance to determine whether an area’s resource values are ‘significant’ enough to qualify for special area status.... The Proposed Rule *does* define a standard for removing lands from a Special Area, but that definition is unworkable.”).

relationship that Kuukpik has enjoyed with the BLM over the past several years, or the respect that this Administration espouses towards Indigenous communities.⁵

This is especially true if the result of the process is to expand the existing Special Areas or further restrict the activities that can occur there. We are not aware of any local stakeholders who are asking for those outcomes.

Nor does it seem likely there is significant new information that would justify expanding the Special Areas that was not available just two years ago when the current Special Area boundaries and restrictions were established.⁶ A process that expands the Special Areas will therefore do little but increase local skepticism and resentment towards DOI and BLM. It will also make it more likely that a future, less conservation-minded administration will roll those changes back, reduce the existing Special Areas, or throw out the Rule (or the Special Areas, for that matter) altogether.⁷

Kuukpik therefore urges BLM not to initiate the process of evaluating changes to Special Areas. If anything, we encourage BLM to put the resources such a process would require towards working with local stakeholders to see if there is a version of this Rule that can gain *some* local support. It may be possible to craft a Rule that would codify some of the practices that BLM wants

⁵ See, e.g., Executive Order 14112, “Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination” (Dec. 6, 2023); U.S. Depts. of Agriculture, Interior, and Commerce, “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters” (Nov. 21, 2022).

⁶ NPR-A IAP ROD, April 2023, p. 2, 15, and 22. Reaching a decision to expand the Special Areas without sufficient new information since 2022 is likely to lead to further (potentially successful) legal challenges to *that* decision as well. Having said that, Kuukpik continues to believe that BLM incorrectly evaluated information in the 2013/2022 IAP when it included large areas of marginal, non-critical habitat in the Teshekpuk Lake Special Area. See Kuukpik Comments at 14. In our earlier letter, we urged BLM to review these areas before setting the Special Area boundaries under section 2361.20. See *id.* at FN 13:

Our position is that all of the 27 full or partial townships in the three southernmost rows south of Teshekpuk Lake (designated Townships 8 North, 9 North and 10 North) should be available for leasing. Specific protections and activity restrictions could be created for areas needing protection, such as the area of higher density Spectacled Eider use running north to south along the Ikpikpuk River (Map 3.3.8-1) or for some of the highest density Yellow-billed Loon areas (Map 3.3.8-4). Seasonal activity restrictions designed to avoid impacts on wildfowl species during the few months that they are present in these areas can be announced prior to leasing, and only those oil companies willing to operate within those constraints need bid on any tracts in those area. To us, such restrictions make far more sense than taking all of those lands off the table altogether.

We continue to believe it would be appropriate to eliminate those section from the TLSA if BLM goes through with this process, and that doing so would be justified despite a lack of new information because the data did not support the designation in 2013, and it doesn’t support it now.

⁷ *Id.* at 4-5.

to institutionalize, and which will provide some of the additional protections BLM seeks, but which would not be so objectionable to the people of the North Slope who will be most affected by it. Kuukpik urges BLM to focus its resources (and allow those of us who are affected by and must participate in these processes to focus *our* resources) on developing such a rule rather than proceeding any farther down this disfavored road.

2. Kuukpik does not support the Special Areas Rule because it has been developed and implemented in such different ways from Mitigation Measure No. 27, which we support wholeheartedly.

Kuukpik (and Nuiqsut) also has a unique interest in this issue that is entirely separate from its concerns regarding the Special Areas Rule itself. The release of the Special Areas Rule and the subsequent public outcry against it have greatly complicated our efforts to publicize and grow support for Nuiqsut and BLM's joint effort to implement Mitigation Measure No. 27 of the Willow ROD. Initiating a process to examine Special Areas is only likely to perpetuate, or even increase, misunderstanding regarding MM27.

MM27 is a Nuiqsut-led, community effort to limit oil and gas development in critical caribou and waterfowl habitat around Teshekpuk Lake. When MM27 is fully implemented, just over 1 million acres of the Teshekpuk Lake Caribou Herd's most important habitat within about 6 miles of Teshekpuk Lake will be set aside from oil and gas development unless local officials decide otherwise.

As part of evaluating the impacts that the Willow Project is likely to have on Nuiqsut, Kuukpik initially proposed the idea of protecting Teshekpuk Lake in a manner that cannot be changed solely by administrative action. The Department of the Interior adopted Kuukpik's proposal as MM27 in the Willow ROD and initiated a process of working closely and collaboratively with the leaders of Nuiqsut to carry out this effort. Together, the City of Nuiqsut City Council, the Native Village of Nuiqsut's Tribal Council, and Kuukpik's Board of Directors—who collectively represent everyone in the village in at least one capacity—have created Nuiqsut Trilateral, Inc. (“NTI”),⁸ a non-profit corporation whose sole purpose is to obtain a Right of Way agreement by which BLM will convey a limited set of surface property rights to NTI that will effectively prohibit oil and gas activities in the million acres around the Lake unless NTI agrees that the activities can be carried out without harming the Herd. No other activities except oil and gas will be affected. The Right of Way will have no impact on residents' and community uses of

⁸ NTI's Board of Directors includes the City Mayor and Vice Mayor, NVN's President and Vice-President, and Kuukpik's President and Vice-President. The seventh board seat will be filled by someone who represents interests beyond Nuiqsut. Even though Nuiqsut will experience Willow's negative impacts most directly, and thus has the most direct interest in offsetting its impacts on the Teshekpuk Lake Herd, the community wants to ensure that other communities' concerns are represented on the Board. The seventh seat has initially been offered to the North Slope Borough Mayor or his designee. If the Mayor does not fill the seat, the other directors will appoint a seventh director to represent the interests of other North Slope residents.

the area, or any projects or infrastructure that are not associated with oil and gas activities, such as the Community Winter Access Trail (“CWAT”), community utilities, and the like. It will simply prevent oil and gas development from occurring in an area that has been recognized and set aside from development in some capacity since the 1970’s (and where no development is currently planned or expected) unless Nuiqsut—the community that is already experiencing the most direct negative impacts from oil and gas development—decides that the development should be approved.

Mitigation Measure No. 27 and Nuiqsut’s efforts to conserve one million acres at and around Teshekpuk Lake has nothing to do with the Special Areas Rule that so many entities on the North Slope oppose. On the contrary, we believe most local stakeholders should be able to support what Nuiqsut is trying to do. Unfortunately, Nuiqsut and BLM’s groundbreaking effort to prevent oil and gas development at the “crown jewel” of the North Slope ecosystem is consistently confused with BLM’s Special Area Rule. This confusion has required Nuiqsut to spend a considerable amount of time trying to explain what MM27 is and how it differs from the Special Areas Rule.

That said, Kuukpik continues to strongly support Mitigation Measure No. 27 even though we oppose the Special Areas Rule. The significant differences between the two efforts support this position. First, unlike the Special Areas Rule, MM27 is a completely community-led effort that BLM has adopted and supported from the ground up. The idea originated in 2022 when Kuukpik was considering the revised Master Development Plan for the Willow Project. Kuukpik had not supported any of the earlier proposals because we believed there were reasonable mitigation measures that would reduce impacts to caribou and subsistence users that were not being included in the Project. But the revised proposal (then known as Alternative E) included many of the mitigation measures for which Kuukpik had been advocating, reducing the likely negative impacts in ways that Kuukpik believed might be sufficient to allow Kuukpik to support the Project. However, Kuukpik understood that the Project would nevertheless negatively impact the Teshekpuk Lake Caribou Herd and, consequently, the subsistence users of Nuiqsut who so heavily depend on that Herd. Kuukpik therefore decided it could support the Willow Project if offsetting protections for the Herd were put into place. Kuukpik therefore proposed an additive, forward-looking mitigation measure that was carefully designed specifically to offset Willow’s likely impacts to the Herd by preventing oil and gas development during the life of the Willow Project in the core areas that were most vital to the Herd’s continued survival and success. MM27 was proposed by the community it affects most and is being implemented primarily *by* the community, with tremendous cooperation and support from BLM.

The Special Areas Rule, on the other hand, seems to have been developed in Washington and imposed on the North Slope without much meaningful consultation or cooperation.⁹ We will

⁹ We want to emphasize that these critiques are aimed at the institutions, not the individuals who have been given the difficult job of defending the Special Areas Rule in meetings with local stakeholders. BLM Alaska staff have been nothing but professional, courteous, and as responsive to direct inquiries as we could

generally support “bottom-up” proposals that are supported by, and beneficial for, Nuiqsut, like MM27; we cannot say the same for “top-down” proposals like the Special Areas Rule.

Similarly, Kuukpik supports MM27 because it empowers the local community and gives Nuiqsut a real role in making decisions regarding oil and gas development that affect this community more than anyone else. As a result of MM27, no oil and gas development will occur within about 6 miles of Teshekpuk Lake unless the community decides otherwise. This is not a vague “consultation” requirement, or a check-the-box opportunity for public comment that may have little impact on the outcome. The Right of Way will create a property right held by NTI that carries with it the responsibility to consider the community’s best interest and the right to enforce NTI’s decision (consistent with the terms of the Right of Way). Conversely, the Special Areas Rule further entrenches decision-making authority with agency officials and bureaucrats, many of whom may be required to make decisions based on broader policy or political goals that have little to do with Nuiqsut. The Rule also creates ample opportunities for Outside interests to influence the outcome politically and legally (since, as we’ve pointed out before, this Rule creates numerous opportunities for lawsuits by Outsiders who simply oppose all development in the Arctic¹⁰) in ways that may not reflect Nuiqsut’s preferences or needs. Kuukpik supports more local control and tools that will facilitate self-determination, not less.

MM27 is also balanced and responsible in ways that the Special Areas Rule simply is not. MM27 will only affect oil and gas activity in a well-defined and limited area around Teshekpuk Lake, and it will do so only for as long as the Willow Project is operational and negatively impacting the Teshekpuk Lake Herd. It was carefully designed to provide a benefit to offset specific and identified negative impacts that the Willow Project is expected to have on Nuiqsut. In other words, it’s balanced. At the same time, MM27 recognizes that circumstances can change, and that the community may in the future decide that a particular oil and gas activity can occur without causing significant negative impacts. The solution is responsive to changing needs. It’s responsible.

The Special Area Rule is none of those. It is not narrowly tailored or designed in response to any specific impact or need. Although it purports only to affect management of Special Areas, the reality is that it is likely to affect development throughout the NPR-A. Indeed, even this RFI process implicitly invites comments and proposals for new Special Areas anywhere within the 23 million acre NPR-A. It is not geographically limited or focused. BLM also did not identify any specific impacts that the Rule was designed to offset or reduce, like MM27 was designed to do. Rather, the Rule is a blunt instrument that appears designed to advance a policy decision to limit further development in the Arctic. That is not the kind of regulation we can support.

hope for under the circumstances. Our issues are not with Director Cohn and his team, but rather with the policies they have been asked to defend and the process that we believe was largely developed in Washington and imposed on all of us here in Alaska.

¹⁰ Kuukpik Comments at 15.

Finally, Kuukpik supports MM27 but not the Special Areas Rule because the former categorically will *not* affect any activities except oil and gas. Community infrastructure like the CWAT, a future community road, or installation of public utilities, for example, would not be affected by MM27. Conversely, while the Special Areas Rule is not intended to affect activities other than oil and gas, it contains ambiguities that could nevertheless have that effect. Kuukpik and others pointed out several of those ambiguities and potential unintended consequences during the public comment period.¹¹ We appreciate the changes that BLM made to attempt to limit the likelihood that the Rule would prevent non-oil and gas activities that would benefit the communities of the North Slope. Nevertheless, the combination of an ambiguous and sprawling new regulation and a litigious bunch of interested Outsiders may still lead to unforeseen consequences for both individual users and the local communities and governments that would need to navigate the Rule in order to carry out projects in the NPR-A.

In light of all these differences, Kuukpik continues to oppose the Special Areas Rule even though we strongly support Mitigation Measure No. 27. And although we appreciate the BLM's intensive efforts to work with Nuiqsut to accomplish MM27, we urge BLM to direct similar effort towards improving the Special Areas Rule and building local support rather than initiating a process to carry out changes that appear to be objectionable to most of the people and entities that would be most affected by them.

We look forward to further discussions with BLM on these important matters.

Sincerely,

KUUKPIK CORPORATION

By:



George Sielak
President

¹¹ *See id.* at 16 (discussing how subsection 2361.40 may negatively affect community development projects).