

No. 20-35224

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIVE VILLAGE OF NUIQSUT; ALASKA WILDERNESS LEAGUE;
FRIENDS OF THE EARTH; NATURAL RESOURCES DEFENSE COUNCIL;
and SIERRA CLUB,

Plaintiffs-Appellants,

v.

BUREAU OF LAND MANAGEMENT; DAVID BERNHARDT, in his official
capacity as Secretary of the Interior; CHAD PADGETT, in his official capacity as
Alaska State Director of the Bureau of Land Management; and
NICHELLE JONES, District Manager, Bureau of Land Management Arctic
District Office,

Defendants-Appellees,

and

CONOCOPHILLIPS ALASKA, INC.,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court
for the District of Alaska

APPELLANTS' SUPPLEMENTAL BRIEF

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July 12, 2021

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I. BLM issued a ROD for the 2020 IAP.

The Bureau of Land Management (BLM) issued a record of decision adopting the 2020 Integrated Activity Plan and Environmental Impact Statement (2020 IAP) on December 31, 2020. That plan has been challenged in litigation pending in the District of Alaska. That case has been stayed, in light of the new federal administration, to allow newly appointed “officials in the Department of the Interior the opportunity to review the 2020 Integrated Activity Plan.” *Nat’l Audubon Soc’y v. Haaland*, Case No. 3:20-cv-00206-SLG, ECF No. 32 at 1-2 (D. Alaska, July 9, 2021). The government has indicated its intent to “determine their next steps with regard to the [2020] IAP” by the end of August. *Id.*

II. 2020 IAP does not moot Plaintiffs’ claims.

The 2020 IAP does not moot this appeal because it changes nothing about BLM’s deficient approach to authorizing winter exploration in the National Petroleum Reserve-Alaska (“the Reserve”). Plaintiffs challenged BLM’s failure to perform required site-specific analysis in its 2018 Environmental Assessment (EA) for winter exploration in the Reserve. This failure reflects an ongoing, unlawful approach to the agency’s EA obligations under the National Environmental Policy Act (NEPA) and Alaska National Interest Lands Conservation Act, in which the agency promises in its programmatic documents a full project-specific review later, but then at that later stage, fails to assess fully the impacts of and alternatives to a

particular project. Instead, the agency largely points back to the programmatic analysis to satisfy its obligation to complete a project-specific assessment. The new programmatic document, like its predecessor, repeats the same promise of future project-specific analysis.

The 2020 IAP thus does not alter the application to Plaintiffs' challenge of the "capable of repetition, yet evading review" exception to mootness. *Shell Offshore, Inc. v. Greenpeace, Inc.* 709 F.3d 1281, 1287 (9th Cir. 2013). The exception has two prongs: "1) the duration of the challenged action is too short to allow full litigation before it ceases or expires, and 2) there is a reasonable expectation that the plaintiff will be subjected to the challenged action again." *Wildwest Inst. v. Kurth*, 855 F.3d 995, 1002 (9th Cir. 2017) (quoting *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1018 (9th Cir. 2012) (en banc)). In particular, the second prong requires only that "it is reasonable to expect that the [agency] will engage in conduct that will once again give rise to allegedly moot dispute." *Alaska Ctr. for Env't v. U.S. Forest Serv.*, 189 F.3d 851, 856 (9th Cir. 1999) (quoting *Miller v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 454 (9th Cir. 1994), *abrogated on other grounds by Winter v. Nat. Res. Def. Council, Inc.*, 557 U.S. 1,

22 (2008)); *see also Nat. Res. Def. Council, Inc. v. Evans*, 316 F.3d 904, 910 (9th Cir. 2003).¹

A. The challenged conduct can reasonably be expected to recur.

This Court has repeatedly emphasized that the repetition prong of the exception is focused on whether it is reasonable to expect the challenged agency *conduct* giving rise to the dispute to recur, not on whether it is reasonable to expect the specific facts of the dispute to recur. Indeed, a premise of this exception is that future actions or decisions might reasonably occur, potentially in different circumstances, but will present the same underlying problem. In *Alaska Center for the Environment v. U.S. Forest Service*, for example, the Court found the repetition prong satisfied despite the agency being unable to grant the one-year commercial helicopter permit at issue to the same entity again and despite the agency having, in fact, already granted a new, five-year permit with new NEPA analysis to that entity. 189 F.3d at 854 n.2, 856-57. The Court pointed to the agency’s conduct, finding that the relevant consideration was whether the agency would repeat its approach to its NEPA obligations when issuing one-year permits in the future. *Id.* at 856-57; *see also Karuk Tribe*, 681 F.3d at 1018 (“The controversy is capable of repetition because the Tribe has shown a reasonable expectation that the [agency]

¹ The issuance of the 2020 IAP does not change the fact that the timeframe for winter exploration in the Reserve remains too short to permit full judicial review. *See Reply Br.* at 3-4. This brief will focus on the second prong of the exception.

will engage in the challenged conduct again”) (internal citations omitted); *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1174 (9th Cir. 2002). And, relevant here, evidence that the disputed practice had continued after the challenged instance persuaded the Court. *Alaska Ctr.*, 189 F.3d at 857. The “challenged action” can thus recur even if the specific facts have changed, so long as the agency’s conduct repeats.

Critically, the 2020 IAP does not alter the framework underlying BLM’s unlawful approach to authorizing winter exploration in the Reserve. The genesis of the present dispute is BLM’s failure to perform the analysis required when authorizing winter exploration in the Reserve. Instead of meeting its legal obligations, *see* Opening Br. at 4-8, the agency consistently plays a shell game—promising at the programmatic stage that it will do a site-specific impact analysis later when a particular exploration project is proposed but then, at that later date, taking shortcuts and falling back on its earlier programmatic analysis. *See* Opening Br. at 18-21; Reply Br. at 1-2. The 2020 IAP changes nothing on this score. That document, like the 2013 Integrated Activity Plan (2013 IAP) before it, *see* II-ER-85, acknowledges that its impact assessment is programmatic and that future project-specific assessment will come later, setting the same stage for BLM to take the same approach to site-specific analysis in future winter exploration EAs. *See, e.g.*, Ex. 1 at 3 (“The impact analysis undertaken for the [Reserve] plan

and presented in the Final NPR-A IAP/EIS (with an October 6, 2020 errata) is suitably specific for broad-scale management decisions made in this ROD.

Additional site-specific analysis will occur when BLM receives an application to approve an action on the ground.”); Ex. 2 at 5 (“Future on-the-ground actions requiring BLM approval, including potential exploration and development proposals, would require further NEPA analysis based on the site-specific proposal.”).

For the same reason, any new assessment of programmatic impacts in the 2020 IAP does not alter the reasonable expectation that BLM will again engage in deficient conduct. Plaintiffs’ claims do not challenge the adequacy of the programmatic analysis for its own purposes, but rather the failure of BLM’s approach to analysis at the site-specific stage, where it takes shortcuts and inappropriately invokes tiering to substitute its programmatic analysis for the required project-specific assessment. BLM’s caribou analysis in the 2018 EA illustrates this. In that EA, the agency did not provide any statement of reasons why impacts to caribou from the exploration would be insignificant. *See* Reply Br. at 12-14. Instead, the agency purported to satisfy its site-specific NEPA obligations by pointing to the programmatic analysis in the 2013 IAP. *See id.* at 14-17. Like its 2013 counterpart, the 2020 IAP is programmatic and—according to its own description—does not contain the required site-specific analysis of

future exploration projects. As such, it cannot displace later site-specific analysis.²

Thus, regardless of the 2020 IAP, BLM remains free to repeat its inadequate analytic approach when authorizing future winter exploration in the Reserve.³

And there is ample evidence that BLM can be expected to continue this unlawful approach to site-specific analysis. *See* Reply Br. at 4-5; *see also Alaska Ctr.*, 189 F.3d at 857. Indeed, BLM's shell game approach has continued under the 2020 IAP. As noted, in that IAP, BLM again deferred site-specific analysis of exploration activities until the exploration plan permitting or authorization phase. *See supra* pp. 4-5. However, in the EA for the recently approved Peregrine winter exploration program, BLM relied almost entirely on tiering to the programmatic

² And likewise for the agency's other failures in this case. *See* Opening Br. at 38-57. Like the 2013 IAP, the 2020 IAP's programmatic alternatives do not substitute for alternatives to a particular exploration project. And, also similarly, its cumulative impacts analysis cannot predict the particular projects that may overlap with a future exploration proposal.

³ As discussed in Plaintiffs' Reply Brief, the principle articulated in *Ramsey v. Kantor*, 96 F.3d 434 (9th Cir. 1996) and the cases related to it are not to the contrary. *See* Reply Br. at 7. In those cases, it was not merely the occurrence of a new event that made the cases moot. Rather, the event forced the agency to alter the underlying conduct the court identified as unlawful. *See Ramsey*, 96 F.3d at 446 (finding the capable of repetition exception inapplicable where a court ordered an agency to use a different methodology in future actions); *see also Idaho Dep't of Fish & Game v. Nat'l Marine Fisheries Serv.*, 56 F.3d 1071, 1075 (9th Cir. 1995) (finding the exception inapplicable where the agency had superseded the analysis being challenged with a new approach). Here, by contrast, BLM remains free—and can be expected to—engage in the same conduct at the site-specific stage that led to the present dispute.

analysis in the 2020 IAP to fulfill its obligation to assess the specific impacts to caribou from the Peregrine winter exploration project and support its conclusion that the impacts would be minimal. *See* Ex. 3 at 4, 6, 9-18. There is thus ample evidence supporting an expectation that BLM will repeat the conduct that has typified their approach to approving winter exploration, giving rise—once again—to the present dispute.

Notwithstanding the 2020 IAP, this Court remains able to grant effective relief to the Plaintiffs by declaring unlawful and vacating BLM's record of decision and EA for the 2018 winter exploration. Though particular future winter exploration projects in the Reserve will be different and therefore may present some varying specifics, there is every reason to expect BLM's unlawful course of conduct when approving such projects to continue. *See Alaska Ctr.*, 189 F.3d at 856-57. By granting Plaintiffs the relief sought, this Court can correct this long-standing and ongoing problem.

Respectfully submitted this 12th day of July 2021.

s/ Jeremy Lieb

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**CERTIFICATE OF COMPLIANCE FOR BRIEFS
PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 32(a)
AND FORM 8**

9th Cir. Case Number: 20-35224

I am the attorney or self-represented party.

This brief contains 1,680 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

☐ complies with the word limit of Cir. R. 32-1.

☐ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

☐ is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

☐ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

☐ it is a joint brief submitted by separately represented parties;

☐ a party or parties are filing a single brief in response to multiple briefs; or

☐ a party or parties are filing a single brief in response to a longer joint brief.

☒ complies with the length limit designated by court order dated July 6, 2021.

☐ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature: *s/ Jeremy Lieb*

Date: July 12, 2021



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

National Petroleum Reserve in Alaska

Integrated Activity Plan Record of Decision

December 2020

Prepared by:

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

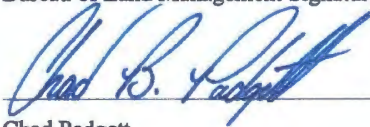
In Cooperation with:

Bureau of Ocean Energy Management
National Park Service
Iñupiat Community of the Arctic Slope
North Slope Borough
State of Alaska
U.S. Fish and Wildlife Service

Record of Decision

I hereby recommend adoption of Alternative E of the National Petroleum Reserve in Alaska Integrated Activity Plan Environmental Impact Statement as described further and modified herein, and subject to the lease stipulations, required operating procedures, and lease notices developed by the Bureau of Land Management for that alternative, as reflected in this Record of Decision.

Bureau of Land Management Signature:



Chad Padgett
State Director, BLM Alaska

I hereby adopt Alternative E of the National Petroleum Reserve in Alaska Integrated Activity Plan Environmental Impact Statement as described further and modified herein, and subject to the lease stipulations, required operating procedures, and lease notices developed by the Bureau of Land Management for that alternative, as reflected in this Record of Decision. My approval of this Decision constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR § 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Part 4.

Departmental Approval:



David L. Bernhardt
Secretary of the Interior

Though many stipulations and best management practices are common among the alternatives, where there are differences (e.g., wider river setbacks), Alternative B generally has the most protective measures.

In addition, Alternative B recommends Congressional designation of twelve suitable rivers or for addition to the National Wild and Scenic Rivers System. Consequently, Wild and Scenic designation under Alternative B would provide permanent protection to them and part of their riparian areas.

3. MANAGEMENT CONSIDERATIONS

The plan adopted in this ROD balances BLM's legislatively mandated goals of providing for the exploration and development of oil and gas in NPR-A while protecting surface values, taking into consideration public and agency comments and Native consultation. It makes approximately 82 percent of the lands within NPR-A available for oil and gas leasing and ensures that infrastructure applications, including those for community infrastructure, are allowed within the Reserve. At the same time, it provides protections for important surface resources and uses, particularly subsistence use. The ROD adopts this decision after BLM gave careful consideration to the oil and gas potential of the Reserve and neighboring offshore areas and to the environmental values of NPR-A. The impact analysis undertaken for the NPR-A plan and presented in the Final NPR-A IAP/EIS (with an October 6, 2020 errata) is suitably specific for broad-scale management decisions made in this ROD. Additional site-specific analysis will occur when BLM receives an application to approve an action on the ground. This will be done through subsequent NEPA reviews and analysis, which will be conducted before BLM issues permits or approvals for any ground disturbing activity.

It is the BLM's intent that the Final NPR-A IAP/EIS and this ROD will provide NEPA compliance for multiple lease sales. Prior to the second and any subsequent sales, the BLM will evaluate the IAP/EIS to determine whether it remains adequate or requires supplementation based on new circumstances or information, or substantial changes to the leasing program (see 40 CFR 1502.9(d)(1)² and 43 CFR 46.120(c)).

3.1 BLM's Legal Authorities and Responsibilities

Under the Naval Petroleum Reserves Production Act (NPRPA), the Secretary of the Interior is required to conduct oil and gas leasing and development in the NPR-A (42 USC 6506a). The Department of the Interior and Related Agencies' Fiscal Year (FY) 1981 Appropriations Act specifically directs the Secretary to undertake "an expeditious program of competitive leasing of oil and gas" in the Petroleum Reserve. The decision in this ROD makes approximately 82% of the Reserve available for oil and gas leasing, including lands near existing lease tracts and discoveries in the eastern part of the Reserve. By making these lands and their projected oil and gas available for leasing, the decision adopted in this ROD fulfills BLM's responsibility under the NPRPA to manage NPR-A to conduct oil and gas leasing and development.

Two federal laws mandate protection for surface values in the NPR-A. Under the Federal Land Policy and Management Act (FLPMA), the Secretary has broad authority to regulate the use, occupancy, and development of public lands and to take whatever action is required to prevent unnecessary or undue degradation of the public lands (43 USC 1732). The NPRPA provides that the Secretary "shall assume all responsibilities" for "any activities related to the protection of environmental, fish and wildlife, and historical or scenic values" (42 USC 6503(b)) and authorizes the Secretary to "promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve." (The NPRPA's implementing regulations are found at 43 CFR Part 2360.) In addition, the NPRPA, as amended, authorizes the Secretary to designate lands "containing any significant subsistence, recreational, fish and wildlife, or historical or scenic value" and requires that in these lands activities "shall be conducted in a manner which

² Reference is to current CEQ NEPA regulations.



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

National Petroleum Reserve in Alaska

Integrated Activity Plan and Environmental Impact Statement

FINAL

Volume I: Executive Summary, Chapters 1-3, References, and Glossary

June 2020

Prepared by:

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

In Cooperation with:

Bureau of Ocean Energy Management
National Park Service
Iñupiat Community of the Arctic Slope
North Slope Borough
State of Alaska
U.S. Fish and Wildlife Service

Estimated Lead Agency Total Costs
Associated with Developing and
Producing this Final IAP/EIS:

\$3,489,000



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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JUN 23 2020

Dear Reader:

I am pleased to announce the completion of the National Petroleum Reserve in Alaska (NPR-A) Final Integrated Activity Plan/Environmental Impact Statement (IAP/EIS). This Final IAP/EIS addresses a list of issues and contains a range of five alternatives for the Bureau of Land Management's (BLM's) future management of nearly 23 million acres of public lands in the NPR-A. Decisions to be made as part of this plan include oil and gas leasing availability, special area boundaries, and consideration of new or revised lease stipulations and required operating procedures.

The alternatives discussed in the IAP/EIS include lease stipulations and required operating procedures designed to mitigate impacts on natural resources and their uses. All future on-the-ground actions requiring BLM approval, including potential exploration and development proposals, will require further National Environmental Policy Act analysis based on the site-specific proposal.

The analysis of the preferred alternative and other alternatives was conducted based on public input gathered from the extended 75-day comment period of the Draft EIS. In December 2019 and January 2020, the BLM held public comment meetings on the Draft EIS in Anchorage, Anaktuvuk Pass, Atkasuk, Fairbanks, Nuiqsut, Point Lay, Utqiagvik and Wainwright. The BLM received written comments by mail, fax, email, online submission from ePlanning, as well as by handwritten and verbal testimony at public meetings. Modifications to the Draft EIS were made based on public comment, cooperating agency coordination, tribal and Alaska Native Claims Settlement Act corporation consultation, and the BLM's internal review of the Draft EIS.

Consistent with 43 CFR 1503.4, the BLM has responded to substantive comments provided during the public comment period and prepared this Final EIS. This Final EIS provides the scientific basis for the BLM's management decisions in the NPR-A. The BLM has developed and identified Alternative E as the preferred alternative in the Final EIS. This alternative offers the opportunity to lease over 18 million acres in the NPR-A while providing protections for the many important resources and uses identified through scoping and public comments within the planning area. In addition to applicable lease stipulations, over 40 required operating procedures would be applied to post-lease oil and gas activities to reduce potential impacts.

INTERIOR REGION 11 • ALASKA

Exhibit 2, page 2 of 5

You may access the Final EIS on the internet at www.blm.gov/alaska/NPR-A-IAP-EIS or request a digital copy from Stephanie Rice, Project Manager, BLM Alaska State Office, 222 West 7th Avenue, Anchorage, AK 99513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1 (800) 877-8339 to contact Stephanie Rice during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

A Record of Decision will be signed no sooner than 30 days after publication of the Final EIS Notice of Availability in the *Federal Register*.

Thank you for your continued interest in the NPR-A Integrated Activity Plan EIS. We appreciate the information and suggestions you contributed to the planning process. For additional information or clarification regarding this document, please contact Project Manager Stephanie Rice at (907) 271-3202.

Sincerely,



 Chad B. Padgett
State Director

For a summary of other applicable federal, state, and local laws and regulations, as well as international agreements, refer to **Appendix D**. The BLM will continue to consult with regulatory agencies, as appropriate, during the NEPA process and before activities are authorized, to ensure that all requirements are met.

1.7 PLANNING PROCESS

The NPR-A IAP/EIS process began with the Notice of Intent to prepare the IAP/EIS, followed by the formal scoping period (see **Section 1.5**). After the scoping period and after receiving additional input from the public, the BLM consulted with the cooperating agencies, tribes, and Alaska Native Claims Settlement Act corporations; researched information on the resources and uses of the area; developed a range of reasonable management alternatives; and analyzed the impacts of those alternatives. The following are participating in the NPR-A IAP/EIS as cooperating agencies: the Bureau of Ocean Energy Management, Iñupiat Community of the Arctic Slope, National Park Service, North Slope Borough, State of Alaska, and U.S. Fish and Wildlife Service. These analyses underwent review within the BLM and among the cooperating agencies, resulting in publication of the Draft IAP/EIS, the second major public step in the EIS process.

The U.S. Environmental Protection Agency published the Notice of Availability of the Draft IAP/EIS in the *Federal Register* on November 25, 2019, initiating a 60-day public comment period. The Draft IAP/EIS comment period was extended 15 days to February 5, 2020, for a total of 75 days. In December 2019 and January 2020, the BLM held public meetings to receive comments on the Draft IAP/EIS in Anaktuvuk Pass, Anchorage, Atkasuk, Fairbanks, Nuiqsut, Point Lay, Utqiagvik, and Wainwright. The BLM received written comments by mail, fax, email, online comment form via ePlanning, and handwritten and verbal testimony at public meetings. Comments received covered a wide spectrum of thoughts, opinions, ideas, and concerns. A total of 82,791 comment letter submissions were received; 294 of these were considered unique submissions and 82,497 were part of form letter campaigns. Overall, more than 4,000 scoping comments were identified (see **Appendix Z**). The BLM will not issue its decision on the IAP, called the ROD, until at least 30 days after the U.S. Environmental Protection Agency publishes the Notice of Availability of this Final IAP/EIS in the *Federal Register*.

1.8 REQUIREMENTS FOR FURTHER ANALYSIS

NEPA documentation is required before the BLM can authorize actions that affect the environment. Actions that could individually or cumulatively have a significant effect on the environment would be authorized only after completion of an EIS. Actions that are not anticipated to have a significant effect on the environment could be authorized after completion of an environmental assessment. Actions having no new significant effects could be analyzed in an environmental assessment tiering to and/or incorporated by reference in an existing EIS, including this IAP/EIS. Actions that have been shown not to have the potential for individual or cumulative significant impacts can be authorized using categorical exclusions.

The decision regarding oil and gas leasing resulting from this plan may authorize multiple lease sales. The first lease sale based on this plan and associated ROD most likely would occur in 2020, with subsequent annual lease sales. For impact analysis purposes, this plan assumes that all lands that the ROD determines to be available for leasing would be offered in the first and subsequent lease sales, though lands with the proposed 5-year and 10-year deferrals (Alternative B) and 10-year deferral (Alternatives B and E) would not be offered until after the deferral expires.

Readers should bear in mind, however, that the first sale, and any subsequent sale, might offer only a portion of the lands identified in the ROD as available, making possible a phased approach to leasing and

development. The area offered in the first sale would be within the area identified in this IAP's ROD as available and not deferred for leasing. The timing of and the lands offered for lease in the second and subsequent sales, if any, would depend in part on the response to the first sale and the results of the exploration that follows.

This IAP/EIS is intended to fulfill NEPA requirements for lease sales conducted at least through December 2039 and potentially thereafter. Before it conducts the second and each subsequent lease sale, the BLM will evaluate the adequacy of the IAP/EIS in light of new information and circumstances to determine whether it requires supplementation or revision in order to comply with NEPA.

Future on-the-ground actions requiring BLM approval, including potential exploration and development proposals, would require further NEPA analysis based on the site-specific proposal. Applicants would be subject to the terms of the lease, including lease stipulations in effect at the time the lease is issued or renewed, and required operating procedures adopted in the ROD for this IAP/EIS; however, the BLM Authorized Officer may require additional site-specific terms and conditions before authorizing any oil and gas activity based on the project-level NEPA analysis.

1.9 ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT SECTION 810 EVALUATION

Section 810 of the Alaska National Interest Lands Conservation Act focuses on issues related to the effects of proposed activities on subsistence use. An Alaska National Interest Lands Conservation Act Section 810 notice and public hearing process is required if a proposed action may significantly restrict subsistence uses and needs. **Appendix E** provides a final evaluation and finding of effects on subsistence uses and needs from actions that could be undertaken under the five alternatives considered in this IAP/EIS. The preliminary evaluation, published with the Draft IAP/EIS, found that Alternatives A, B, C, and D and the cumulative case met the "may significantly restrict" threshold for the communities of Anaktuvuk Pass, Atkasuk, Nuiqsut, Point Lay, Utqiagvik, and Wainwright; therefore, it made a positive finding pursuant to Alaska National Interest Lands Conservation Act Section 810. As a result, a public subsistence hearing was held in the potentially affected communities of Anaktuvuk Pass (January 15, 2020), Atkasuk (December 17, 2019), Nuiqsut (January 8, 2020), Point Lay (December 10, 2019), Utqiagvik (December 16, 2019), and Wainwright (January 14, 2020) in conjunction with the Draft IAP/EIS public meetings.

The final evaluation made the same findings as the preliminary evaluation, concluding that Alternatives A, B, C, and D, and the cumulative case presented in the Draft IAP/EIS met the "may significantly restrict" threshold for the communities of Anaktuvuk Pass, Atkasuk, Nuiqsut, Point Lay, Utqiagvik, and Wainwright. The final evaluation also concludes that the new alternative (Alternative E) presented in the Final IAP/EIS met the "may significantly restrict" threshold for the communities of Anaktuvuk Pass, Atkasuk, Nuiqsut, Point Lay, Utqiagvik, and Wainwright.



Environmental Assessment

DOI-BLM-AK-R000-2021-0003-EA

**Emerald House LLC
P.O. Box 112212
Anchorage, Alaska 99511-2212**

FF097644/AA095397/AA095605

Chapter 1 Introduction

1.0 Overview

This Environmental Assessment (EA) has been prepared in compliance with the National Environmental Policy Act (NEPA) to disclose and analyze the environmental consequences of granting a five-year Right-of-Way (ROW) (Case File Number FF097644) and approving two Application Permits to Drill (APDs) (Case File Numbers AA095397 and AA095605) originally proposed by Accumulate Energy Alaska Inc. (AEA). Emerald House LLC (EH) is the lease holder and has since become the applicant replacing AEA. The Bureau of Land Management (BLM) follows the procedures contained in the agency's NEPA handbook (H-1790-1), which was issued January 2008.

EH has applied for permits and/or posted notices to access and drill on valid oil and gas leases during a five-year winter exploration and appraisal program in the National Petroleum Reserve-Alaska (NPR-A). EH has named their lease tracts within the NPR-A the Peregrine Lease Block and subsequently named the project the Peregrine Exploration Program (PEP). To avoid confusion PEP and EH are used interchangeably in this document. The objective of their proposal is to explore and appraise oil and gas potential in two distinct Plays¹: Harrier Play and Merlin Play.

Details of the activities that would be conducted if the ROW and APDs were to be granted/approved may be found in Section 2.1. A map of the proposed project area is shown in Figure 1 and the legal description is located in Appendix A.

1.1 Purpose and Need for the Proposed Action

Under the Naval Petroleum Reserves Production Act (NPRPA) of 1976, the BLM is required to conduct oil and gas leasing and development in the NPR-A (42 USC Section 6506a). The Department of the Interior and Related Agencies' Fiscal Year 1981 Appropriations Act directs the Secretary to undertake "an expeditious program of competitive leasing of oil and gas" in the Petroleum Reserve. Specifically, the NPRPA, as amended, encourages oil and gas leasing in the NPR-A while requiring protection of important surface resources and uses.

The need for the action is established by the BLM's responsibilities under the NPRPA, the 2020 Integrated Activity Plan Record of Decision, and contractual exploration rights EH has acquired under NPR-A leases, to respond to EH's request for exploratory drilling and access via a BLM ROW.

The proposed action helps satisfy the purpose of the NPRPA to explore and develop oil and gas resources in the NPR-A. The Winter Exploration Project helps satisfy the purpose to develop oil and gas resources in the NPR-A by responding to EH's application for a ROW, drilling permits and other approvals necessary to carry out exploration of EH oil and gas leases in the NPR-A.

¹ A petroleum play, or simply a "play," is a group of prospects in the same region that were formed and are controlled by the same set of geological circumstances. The term is widely used in the discussion of exploration of hydrocarbon-based resources.

Alternatives to the proposed project would be evaluated on the basis of their effectiveness in meeting these objectives.

1.2 Related Statutes, Regulations, Policies, and Programs

The 2020 Integrated Activity Plan/Environmental Impact Statement (IAP/EIS) (USDOI BLM 2020a) and associated Record of Decision (ROD) (USDOI BLM 2020b) was completed to fulfill the BLM's responsibility to manage lands in the NPR-A under the authority of the: Naval Petroleum Reserves Production Act, as amended, Federal Land Policy and Management Act of 1976 (FLPMA), National Environmental Policy Act, and the Alaska National Interest Lands Conservation Act (ANILCA). The Supplemental Environmental Impact Statement for the Alpine Satellite Development Plan for the Proposed Greater Mooses Tooth 2 Development Project (USDOI BLM 2018a) and associated Record of Decision (USDOI BLM 2018b) was completed in 2018 to evaluate the development of oil and gas production at the Greater Mooses Tooth 2 location. Findings in the 2020 IAP/EIS and the 2018 EIS decisions reflected in the RODs were based on an open and collaborative public process, as well as experience with multiple exploration programs previously completed in the NPR-A. EH's leases were issued under the 2012 National Petroleum Reserve-Alaska Integrated Activity Plan (USDOI BLM 2012) and 2013 Record of Decision (USDOI BLM 2013), therefore the lease stipulations and requirements from these documents are applicable to the corresponding APDs.

1.2.1 Federal Laws and Regulations

The proposed action must comply with numerous Federal laws and Executive Orders (EO) that apply to activities on public lands, including those listed above. Key Federal and State controls associated with the proposed action were described in the 2020 IAP/EIS (USDOI BLM 2020). The proposed action is in conformance with the NPR-A IAP/EIS (2020), NPRPA, FLPMA, ANILCA, National Historic Preservation Act (NHPA), Endangered Species Act (ESA), Marine Mammal Protection Act, Sustainable Fisheries Act, EO 11988, and EO 11990.

Mitigation measures called Lease Stipulations and Required Operating Procedures (ROPs) were developed through the BLM planning and NEPA process for the NPR-A 2020 IAP/EIS and are found in Appendix A of the 2020 ROD and Appendix B of this EA. An applicant proposing to conduct activity within the NPR-A must meet the objectives of these ROPs and stipulations.

1.2.2 Required Permits, Licenses, Authorizations, and Approvals

A number of Federal, State, and local permits and approvals must be obtained before the applicant could conduct the proposed activity. Primary regulatory authorizations for the proposed project are listed in Appendix C.

1.2.3 Related Environmental Analyses

An environmental assessment is prepared for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown (Council of Environmental Quality (CEQ) NEPA Regulation 40 Code of Federal Regulation (CFR) §1501.5(a)). An EA shall (1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (§1501.5(c)(1)) and (2) briefly discuss the purpose and need for the proposed action, alternatives as required by section

102(2)(E) of NEPA, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted (§1501.5(c)(2)).

The CEQ NEPA regulations encourage agencies to tier their environmental impact statements (EIS) and environmental assessments (EA) where it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review. Whenever an agency has prepared an EIS or EA for a program or policy and then prepares a subsequent EIS or EA on an action included within the entire program or policy (such as a project or site-specific action), the subsequent EIS or EA need only summarize the issues discussed in the broader EIS and incorporate discussions from the broader EIS by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available (40 CFR 1501.11 (a)).

Tiering may also be appropriate for different stages of actions (40 CFR 1501.11(a)). *Tiering* refers to the coverage of general matters in broader EISs or EAs (such as national program or policy statements) with subsequent narrower EISs or EAs (such as site-specific assessment) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared (43 CFR 1508.1(ff)). Tiering is appropriate when the sequence from an EIS or EA is from a programmatic plan, or policy EIS or EA to a program, plan or policy EIS or assessment of lesser or narrower scope or to a site specific EIS or EA ((40 CFR 1501.11 (c)(1)). Agencies shall incorporate material into environmental documents by reference when the effect will be to cut down the bulk without impeding the agency and public review of the action (40 CFR 1501.12).

Finding of no significant impact (FONSI) is a document by a Federal agency briefly presenting the reasons why an action, not otherwise categorically excluded (§1501.4(l)) will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. (15 08.1(l)). A finding of no significant impact other than those already disclosed and analyzed in the EIS to which an EA is tiered may also be called a “finding of no *new* significant impact” Id. (emphasis in original) (FONNSI).

In accordance with 40 CFR 1501.11, 1501.12, and 43 CFR 46.140, the analysis for this EA is tiered off the NPR-A IAP EIS (USDOI BLM 2020a), and ROD (USDOI BLM 2020b), the 2018 Supplemental Environmental Impact Statement for the Alpine Satellite Development Plan for the Proposed Greater Mooses Tooth 2 Development Project (USDOI BLM 2018) and Record of Decision (USDOI BLM 2019) which are incorporated in entirety by reference in accordance with 40 CFR 1501.12. The conditions and environmental effects described in the EIS are still valid.

Appendix D provides information related to BLM evaluation of Oil and Gas related activities, via the NEPA process in the NPR-A from 1998 to 2020.

1.3 Decision to be Made

The EA assists the BLM in project planning by evaluating the potential significance of environmental impacts. BLM evaluates the significance of effects according to 40 CFR

Table 1.1 Issues Considered in Evaluating Impacts

Resources Considered	Determination	Location of Tiered Information (2020 IAP/EIS)	Basis of Determination (See Note 1)
Air Quality	Minimally Impacted	2020 IAP EIS §3.2.2,	Air resources or issues would not be affected to a degree requiring further analysis because the expected impacts from either the proposed action or alternative would be minimal. Refer to Section 2.1.9.
Cultural and Paleontological Resources	Not Affected	2020 IAP EIS §3.4.2,	The APE has been adequately surveyed in recent years (see Mobley 2020). Unidentified cultural or paleontological resources (including potential Historic Properties) are unlikely located in Project area. Overland travel and surface operations are unlikely to impact buried cultural or paleontological materials. Given the ubiquity of the surrounding landscapes (flat, featureless terrain dominated by tussock tundra) and lack of indications of cultural or paleontological resources at both proposed well locations, and difficulties for conducting systematic subsurface testing in these remote locations dominated by underlying shallow permafrost, it is unlikely that either well cellar location contains reasonably discoverable buried cultural or paleontological materials. The Project would avoid by 500 or more feet all Historic Properties and paleontological resources, and most identified, unevaluated (NRHP) cultural resources, including TLUI sites. Given temporary, short-term, winter Project timing, the Project is unlikely to adversely impact or affect these resources and Historic Properties. The timing of and conditions for winter overland travel would prevent anticipated adverse effects to overlapping Historic Property HAR-00173 resulting from the Project. As neither UMI-00209 nor UMI-00210 are historic or likely of exceptional importance, any unanticipated impacts on either of these properties would not constitute an adverse effect. There are no anticipated adverse impacts to cultural or paleontological resources by the proposed Project. There are no anticipated adverse effects to Historic Properties or potential Historic Properties by the proposed Project. Protection provided by NHPA, ARPA, AHPA, Antiquities Act, NAGPRA, EO 13007, PRPA, Mitigation ROPs C-2, E-11, and I-1.
Economy	Minimally Impacted	2020 IAP EIS, §3.4.11	Minor short-term impacts to the local economy are expected from the proposed action. Impacts to furbearer harvest may reduce the opportunity for local hunters to sell furbearer pelts and there may be some local employment opportunities in the community of Nuiqsut related to ice road construction.

Resources Considered	Determination	Location of Tiered Information (2020 IAP/EIS)	Basis of Determination (See Note 1)
Non threatened and endangered mammals	Minimally Impacted	2020 IAP EIS §3.3.5	Caribou, grizzly bear, wolf, wolverine and small mammals (weasel, rodents, and shrews) may inhabit the proposed project area. Only minor impacts would be expected, and these impacts were covered in the 2020 NPRA IAP/EIS. The proposed action could disturb and displace wildlife from the immediate area of activities but would not reduce population levels or distribution during the winter season. Mitigations provided in the 2020 ROD by ROPs A-4 through A-6, C-1, F-1, F-2, F-3, I-1, H-5, L-1, and M-1, and by NPR-A 2013 ROD lease stipulation D-2.
Vegetation/Soils	Minimally Impacted	2020 IAP EIS §3.3.1 and 3.2.9	Mitigations provided by ROPs C-2 and M-2 (NPRA 2020 IAP/EIS and 2020 ROD) and Lease Stipulation D-1 (NPR-A 2013 ROD). Minor impacts from ice-road and pad construction are expected, and impacts are covered by the 2020 NPRA IAP/EIS. Additional mitigation provided by ice/snow road building objectives.
Visual Resource Management	Minimally Impacted	2020 IAP EIS §3.4.9	Mitigations provided by 2020 NPR-A ROPs K-3, A-1 through A-6, A-8, A-9, B-1, B-2, C-1 - C-4, F-1, F-2, H-3, I-1, M-2, M-3 and lease notice 1 and 3
Water Resources	Minimally Impacted	2020 IAP EIS §3.2.11	Mitigations provided by 2020 NPR-A ROD ROPs A-2 through A-5, A-8, B-1, B-2, and C-2 through C-4; 2013 NPR-A ROD Lease Stipulation D-1; additional permit stipulations required by this EA; and required permits issued by EPA, ADEC, ADFG and ADNR.
Waste (Hazardous/Solid)	Minimally Impacted	2020 IAP EIS §3.2.12	Mitigations provided by ADEC waste storage permit, EHs Waste Management Plan, Oil Discharge Prevention and Contingency Plan (ODPCP), and Spill Prevention Countermeasures and Control (SPCC) Plan. Other protections provided by ROPs A-1 through A-5.
Wild & Scenic Rivers	Not Present	2020 IAP EIS §3.4.7	Not Applicable
Wilderness Characteristics	Minimally Impacted	2020 IAP EIS §3.4.8	Mitigations provided by 2020 NPR-A ROPs K-3, A-1 through A-6, A-8, A-9, B-1, B-2, C-1 - C-4, F-1, F-2, H-3, I-1, M-2, M-3 and lease notice 1 and 3, additional permit stipulations required by this EA (2, 8 and 13).

Key to Table 1.1:

ADEC	Alaska Department of Environmental Conservation	GMT2	Greater Mooses Tooth Two
ADFG	Alaska Department of Fish and Game	IAP/EIS	Integrated Activity Plan/Environmental Impact Statement
ADNR	Alaska Department of Natural Resources	LOA	Letter of Authorization
AHPA	Alaska Historic Preservation Act	NAGPRA	Native American Graves Protection and Repatriation Act
ANILCA	Alaska National Interest Lands Conservation Act	NHPA	National Historic Preservation Act
APE	Area of Potential Effect	NRHP	National Register of Historic Places
ARPA	Archaeological Resources Protection Act	NPR-A	National Petroleum Reserve in Alaska
BLM	Bureau of Land Management	PRPA	Paleontological Resources Preservation Act
BMP	Best Management Practice	ROD	Record of Decision
EA	Environmental Assessment	TLUI	Traditional Land Use Inventory
EH	Emerald House LLC	USFWS	United States Fish and Wildlife Service
EO	Executive Order		
EPA	Environmental Protection Agency		
ESA	Endangered Species Act		

Potentially Impacted: The proposed action or alternative could result in potential impacts to resource or issues to the level that additional mitigation may be required, or there is a need to evaluate potentially significant issues.

Minimally Impacted: Resources or issues would not be affected to a degree requiring further analysis because either the expected impacts from the proposed action and alternative would be minimal, or standard protections (e.g., ROPs and Stipulations from overriding BLM plans or other legal protections) would reduce impacts. Minimally impacted resources or issues will not be analyzed further in this EA.

Not Affected: Resources or issues are not expected to be affected by the proposed action or alternatives because activities would occur at a different time or place. Resource or issues not present will not be analyzed further in the EA.

Table 1.1 Notes:

1. Determination is determined from laws and regulations and is tiered to: 2020 IAP/EIS Vol. 1, Chapter 3 (USDOI BLM 2020a); 2020ROD (USDOI BLM 2020b.)

In summary, BLM resource specialists have identified the following issues for further evaluation in this EA: Subsistence, Sociocultural Systems, and Environmental Justice Resources.

Appendix L**Comment Response Table**

Comment Number	Comment	Comment Response
1	BLM failed to adequately consider the significance of the impacts that may occur as a result of AEA's exploration activities and to prepare an EIS	See responses below
2	BLM's impacts analysis in this EA is deficient in at least five areas: (1) cumulative effects	<p>Intensity of impacts including reasonably foreseeable effects for birds were not discussed as the resource was considered minimally impacted by the proposed action and so impact analysis was not required.</p> <p>Intensity of impacts including reasonably foreseeable impacts to caribou from winter exploration and other activities in the NPR-A have been previously analyzed and disclosed in the 2020 NPR-A Integrated Activity Plan Final EIS. No new significant impacts would be anticipated.</p> <p>Intensity of impacts including reasonably foreseeable effects for fish and water resources were not analyzed further because both resources were determined to be minimally impacted.</p> <p>Intensity of impacts including reasonably foreseeable impacts to wetlands and vegetation and soils have been previously analyzed in the 2020 NPR-A IAP EIS. With mitigations in place resources were determined to be minimally impacted.</p>
3	BLM's impacts analysis in this EA is deficient in at least five areas: (2) subsistence and sociocultural systems,	The EA has been updated to tier to the 2020 NPR-A IAP/EIS, and potential impacts to subsistence and sociocultural systems have been addressed in the EA.

Comment Number	Comment	Comment Response
4	BLM's impacts analysis in this EA is deficient in at least five areas: (3) caribou,	Direct impacts to caribou from the proposed action are likely to be minimal and short term overall. Intensity of impacts including reasonably foreseeable impacts to caribou from winter exploration and other activities in the NPR-A have been previously analyzed and disclosed in the 2020 NPR-A Integrated Activity Plan Final EIS. No new significant impacts would be anticipated.
5	BLM's impacts analysis in this EA is deficient in at least five areas: (4) hydrology and fish,	Potential impacts on hydrology and fish due to oil and gas exploration activities were thoroughly reviewed and analyzed in the 2020 NPR-A IAP/EIS (the document to which this EA is tiered to). The proposed action analyzed in this EA would adhere to ROPs and lease stipulations designed to be protective of fish and water resources. Further, additional permits/requirements by state and federal agencies would also be followed. As a result, the significance of impacts on hydrology and water resources was determined to be minimal.
6	BLM's impacts analysis in this EA is deficient in at least five areas: (5) polar bears.	The analysis of this EA is sufficient to provide an analysis of impacts of this project to polar bears because the EA for this project tiers off of an EIS which analyzed exploration activity impacts to polar bears. As stated in the EA: "The analysis for this EA is tiered off the 2020 IAP/EIS (USDOI BLM 2020a), which is incorporated in their entirety by reference in accordance with 40 CFR 1502.21. The conditions and environmental effects described in the EIS are still valid." Further, due to the inland worksite, the potential for incidental take and disturbance to polar bears is low because the use of these inland areas by polar bears is minimal compared to coastal regions.

Comment Number	Comment	Comment Response
7	Additionally, BLM's analysis fails to consider alternatives to the proposed action	NEPA directs BLM to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources. In addition, a range of alternatives need to explore alternative means of meeting the purpose and need for an action. Section 2.3.1 of the EA discusses previously proposed and considered alternatives that were eliminated from further consideration based on a variety of reasons. BLM believes the current alternatives are responsive to the issues as well as the purpose and need of the action (Chapter 2 - Alternatives).
8	The EA fails to analyze how impacts from the winter exploration program could cumulate with impacts from other past, present, and reasonably foreseeable activities.	Resources identified as not present, not impacted or minimally impacted in the EA (Table 1.1) would not be expected to be impacted to a degree that would contribute to incremental impacts from past, present or reasonably foreseeable activities (Chapter 3). Past, present and reasonably foreseeable impacts were analyzed and disclosed in the 2020 IAP which this EA is tiered to. Past, present and reasonably foreseeable impacts from the proposed action are discussed for those resources identified as "potentially impacted" (Table 1.1) in Chapter 3.
9	BLM ignores a range of cumulative impacts—including to subsistence users, and to caribou and other resources—and otherwise fails to explain why acknowledged impacts are not potentially significant	The EA was updated to address potential effects to subsistence resulting from the proposed action. Intensity of impacts including reasonably foreseeable effects to subsistence have been previously analyzed in the 2020 NPR-A IAP/EIS, which concluded that the incremental impacts from past, present or reasonably foreseeable scenario may significantly restrict subsistence access, the availability of resources in areas where they are traditionally harvested, and abundance of subsistence resources. No new significant impacts are anticipated as a result of the proposed action.

Comment Number	Comment	Comment Response
10	BLM ignores a range of cumulative impacts—including to subsistence users, and to caribou and other resources—and otherwise fails to explain why acknowledged impacts are not potentially significant	Intensity of impacts including reasonably foreseeable impacts to caribou from winter exploration and other activities in the NPR-A have been previously analyzed and disclosed in the 2020 NPR-A Integrated Activity Plan Final EIS. No new significant impacts would be anticipated.
11	the EA concludes that important cumulative impacts “have been previously analyzed,” and that “[n]o new significant impacts would be anticipated.” This does not satisfy BLM’s obligation to consider the cumulative impacts of this action with all other past, present,	Actions having no new significant effects can be analyzed in an environmental assessment tiering to and/or incorporating by reference an existing EIS, including the 2020 IAP/EIS. This includes the analysis of past, present and reasonably foreseeable impacts. Resources identified as not present, not impacted or minimally impacted in the EA (Table 1.1) would not be expected to contribute to incremental impacts from past, present, or reasonably foreseeable activities (Chapter 3). Past, present, and reasonably foreseeable impacts from the proposed action are discussed for those resources identified as "potentially impacted" (Table 1.1) in Chapter 3.
12	As stated above, we agree with BLM that its analysis of AEA’s activities should be regulated by the 1978 regulations, which specifically define “cumulative impact” as “the impact on the environment which results from the incremental impacts of action when added to other past, present and reasonably foreseeable future action	Actions having no new significant effects can be analyzed in an environmental assessment tiering to and/or incorporated by reference in an existing EIS, including the 2020 IAP/EIS. This includes the analysis of past, present and reasonably foreseeable impacts. Resources identified in Table 1.1 would not be expected to contribute to impacts from past, present, or reasonably foreseeable activities (Chapter 3).

Comment Number	Comment	Comment Response
13	The EA fails to adequately consider how past, present, and future projects in the Reserve may significantly affect subsistence resources. BLM acknowledges “that the cumulative scenario may significantly restrict subsistence access and the availability of resources in areas where they are traditionally harvested,” and the “proposed activity would occur at the same time and place as other activities,” yet, BLM fails to quantify or discuss the specific potential for AEA’s Program to cumulatively affect the subsistence resources in the Reserve and the people who depend on them.	The EA has been updated to tier to the 2020 NPR-A IAP/EIS. Intensity of impacts including reasonably foreseeable impacts of winter exploration and other activities in the NPR-A may result in a significant restriction of subsistence user access, resource availability and resource abundance. No new significant impacts to subsistence are anticipated as a result of the proposed action.
14	ConocoPhillips Alaska, Inc.’s (ConocoPhillips) recently approved Willow Master Development Plan calls for transporting equipment across the Colville River near Ocean Point during winter months to production sites west of its Greater Mooses Tooth 2 (GMT2) development. It appears that, like in the Willow project, AEA plans to cross near Ocean Point, and then construct its Peregrine Snow Road each winter to extend south from the North Slope Borough’s Community Winter Access Trail (CWAT) 58 miles to AEA’s Merlin-1 drill pad. The EA does not consider the combined and synergistic effects of this continuous line of oil and gas infrastructure and disturbance on the Teshkepuk Caribou Herd , the birds and other wildlife that depend on the wetlands, rivers, and tundra of the Reserve, or the people of Nuiqsut who have already reported feeling effectively surrounded by oil and gas infrastructure in recent years.	Intensity of impacts including reasonably foreseeable impacts to caribou from winter exploration and other activities in the NPR-A, including such impacts as displacement and impacts on survival and productivity, have been previously analyzed and disclosed in the 2020 NPR-A Integrated Activity Plan Final EIS and associated 810 Analysis. No new significant impacts would be anticipated.

Comment Number	Comment	Comment Response
14	<p>ConocoPhillips Alaska, Inc.'s (ConocoPhillips) recently approved Willow Master Development Plan calls for transporting equipment across the Colville River near Ocean Point during winter months to production sites west of its Greater Mooses Tooth 2 (GMT2) development. It appears that, like in the Willow project, AEA plans to cross near Ocean Point, and then construct its Peregrine Snow Road each winter to extend south from the North Slope Borough's Community Winter Access Trail (CWAT) 58 miles to AEA's Merlin-1 drill pad. When these winter activities overlap—combined with existing infrastructure at ConocoPhillips' Alpine Satellite Development and existing use of the CWAT—a continuous line of snow road construction, traffic, and other noise and disturbance associated with these activities would extend from the Colville River Delta south to the end of the Peregrine Snow Road. The EA does not consider the combined and synergistic effects of this continuous line of oil and gas infrastructure and disturbance on the Teshekpuk Caribou Herd, the birds and other wildlife that depend on the wetlands, rivers, and tundra of the Reserve, or the people of Nuiqsut who have already reported feeling effectively surrounded by oil and gas infrastructure in recent years.</p>	<p>Few bird species inhabit the NPR-A during the winter snow road period and those that do are highly mobile and able to relocate away from any disturbance from the winter activities.</p>
15	<p>The EA does not, however, discuss how these added activities may combine with the deflection of caribou that is expected to occur as a result of AEA's Program; nor does the EA discuss how the AEA Program may increase the distance hunters must travel on top of distances already needed to travel from Nuiqsut to avoid existing development and production. The EA also does not discuss the increased risks, time, and costs involved with such further travel.</p>	<p>Impacts to subsistence users from deflection of caribou are likely to be minimal as the majority of caribou harvest in the project area occurs in the summer. Intensity of impacts including reasonably foreseeable impacts to subsistence users from winter exploration and other activities in the NPR-A are analyzed and disclosed in the 2020 NPR-A Integrated Activity Plan Final EIS.</p>

Comment Number	Comment	Comment Response
29	For example, the annual take-offs and landings associated with AEA's crew shuttle plans have the potential to, "[u]nder certain conditions ([such as] hard or deep snow cover)..., increase stress [in caribou], possibly leading to failed breeding or even death of animals."	Reasonably foreseeable impacts to caribou from exploration and related activities, including aircraft, have previously been analyzed and discussed in the 2020 NPR-A IAP Final EIS, and are likely to be minimal and short term overall.
30	AEA's proposed use of helicopters "has the most potential to disrupt subsistence." "Statements from local hunters, including direct complaints to the BLM and the North Slope Borough Department of Wildlife Management, indicate that helicopters frequently disrupt hunting parties by scattering and displacing caribou or other game."	Reasonably foreseeable impacts to caribou from exploration and related activities, including helicopters, have previously been analyzed and discussed in the 2020 NPR-A IAP Final EIS, and are likely to be minimal and short term overall.
31	The EA references these portions of the 2012 IAP EIS generally, and acknowledges that large game, such as caribou, "would likely be deflected from areas of exploration activity," that furbearers would likely be deflected, and that "[h]unters (mainly furbearer hunters) may avoid the area and may have to travel further and longer to harvest."	Direct impacts to caribou from the proposed action are likely to be minimal and short term overall. Intensity of impacts including reasonably foreseeable impacts to caribou from winter exploration and other activities in the NPR-A have been previously analyzed and disclosed in the 2020 NPR-A Integrated Activity Plan Final EIS. No new significant impacts would be anticipated.
32	The EA does not, however, consider the potential impacts of this specific winter exploration on the high densities of caribou that could be in the Program area during exploration activities spanning from November to May, and then again in August and September.	Seasonal distribution of caribou and reasonably foreseeable impacts from exploration activities on distribution have previously been analyzed and discussed in the 2020 NPR-A IAP Final EIS.
33	The EA relies on general BMPs included in the 2012 IAP EIS for the Reserve, which do not address the specific activities and conditions presented by AEA's proposed winter exploration.	The EA has been updated to tier to the 2020 NPR-A IAP/EIS.

Comment Number	Comment	Comment Response
34	Neither the EA or the BMPs it cites discuss how five round trip flights per week in winter months—landing and taking off within areas where high densities of caribou may overwinter—along with helicopter activity during periods when caribou could be present, may significantly affect the caribou in the Program area and the people who depend on the caribou as an important resource.	Reasonably foreseeable impacts to caribou, including those from aircraft, have previously been analyzed and discussed in the 2020 NPR-A IAP Final EIS and are addressed in the ROP's.
35	In addition, while BLM acknowledges the Program site “is on the edge of the high use area for furbearer hunting and trapping,” it fails to discuss how AEA’s winter exploration activities will take place within high and medium use subsistence areas for the people of Nuiqsut.	Map T-4 in Appendix T of the 2020 NPR-A IAP/EIS is a map of overlapping use areas for all subsistence resources, including resources that are harvested in the summer and are therefore unlikely to be impacted by the proposed action. The high and medium use areas referred to in this comment are primarily used in the summer months.

Comment Number	Comment	Comment Response
36	<p>BLM has previously described the potentially significant effects of winter exploration on subsistence activities, explaining, “[l]ocal knowledge ... indicates that exploratory activity displaces resources from the area of effect,” “[e]ven if resources are not actually displaced, Inupiaq [sic] hunters avoid development areas, and [t]his displacement leads to hunters having to travel further to harvest resources.” These disruptions have long-term consequences. When subsistence users’ opportunities to engage in traditional activities are limited, transmittal of knowledge about those activities is reduced. Individuals and families’ loss of intimate familiarity with an area could constitute a permanent reduction in Nuiqsut’s subsistence use area, and residents have reported that oil development activities have led to a decline of hunting in areas east of the community. Again, here, BLM notes the likelihood of precisely those effects occurring from AEA’s winter exploration in this especially important subsistence use area: “Large game (subsistence resources) would likely be deflected from areas of exploration activity”; hunters “may avoid the area and may have to travel further and longer to harvest.”</p>	<p>The EA has been updated to tier to the 2020 NPR-A IAP/EIS and to include a section discussing potential impacts to subsistence users and resources. Impacts to subsistence users from deflection of caribou are likely to be minimal as the majority of caribou harvest in the project area occurs in the summer. The impacts resulting from the proposed action do not rise to the level of a significant impact, and significant impacts resulting from the incremental effect of the proposed action and other activity in the NPR-A has been analyzed and disclosed in the 2020 NPR-A IAP/EIS.</p>
37	<p>BLM also acknowledges significant sociocultural issues stemming from concerns within the community about the pace of development in the region. BLM notes Sociocultural issues likely to result from the proposed activity include stress over the pace of exploration, tensions and conflict related to the permitting process, lack of capacity to participate at levels desired, distrust of agencies and industry, lack of local control over the activity, and cultural (and subsistence) concerns associated with the southern location of the action with travel routes necessarily located between Nuiqsut and the project area.</p>	<p>The EA has been updated to tier to the 2020 NPR-A IAP/EIS and to include a section that analyzes potential impacts to sociocultural systems. Impacts to sociocultural systems are expected to be minor to moderate and short term as a result of the proposed action, and the contribution of the proposed action to cumulative community changes related to development generally has been analyzed and disclosed in the 2020 IAP/EIS.</p>

Comment Number	Comment	Comment Response
38	The proposed action will further displace resources, cause hunters to avoid an important traditional subsistence use area, and create additional burdens and stress on the community. These are potentially significant new impacts. At the same time, BLM failed to acknowledge potentially significant effects that may occur as a result of AEA's specific five-year winter exploration activities. BLM's suggestion that such impacts were discussed in prior EISs is incorrect; no prior NEPA document has assessed the specific impacts of this winter exploration program. BLM must therefore consider these potentially significant impacts in a full EIS.	The EA has been updated to tier to the 2020 NPR-A IAP/EIS and to include a discussion of potential impacts to subsistence resulting from the proposed action. Impacts to subsistence from the proposed action are anticipated to be minor to moderate and short term. The significant impacts associated with incremental exploration and development activity has been analyzed and disclosed in the 2020 IAP/EIS.
39	For many of the same reasons discussed above regarding potential impacts to subsistence and sociocultural systems, and cumulative impacts, BLM has failed to adequately consider potentially significant effects to caribou that may occur as a result of AEA's winter exploration. Winter oil and gas exploration activities can have potentially significant impacts on caribou: surface vehicular traffic, aircraft traffic, and drilling activities may disturb caribou, causing them to abandon the local area for the remainder of the winter.	Direct impacts to caribou from the proposed action are likely to be minimal and short term overall. Intensity of impacts including reasonably foreseeable impacts to caribou from winter exploration and other activities in the NPR-A have been previously analyzed and disclosed in the 2020 NPR-A Integrated Activity Plan Final EIS. No new significant impacts would be anticipated.
40	Increased movement due to disturbance uses scarce energy resources, which can result in a loss of body mass. This is of concern as winter body mass of female caribou is strongly correlated with the likelihood of calving success and survival.	Calving success and survival is most strongly correlated with maternal cow fall body condition (Cameron and Ver Hoef 1994; Cameron et al. 2000), therefore reproduction and overwinter survival for caribou cows are dependent on the amount of protein and fat reserves acquired during the summer and fall. Caribou also have a low energetic cost of locomotion (Fancy and White 1987) which allows them to travel long distances in order to balance seasonal tradeoffs between maximizing forage quality, quantity and availability, while minimizing predation risk and exposure to insect harassment. Direct impacts to caribou from the proposed action are likely to be minimal and short term overall.

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41	<p>AEA's Program includes annual construction and deconstruction of the Peregrine Snow Road, air traffic, drilling and associated noise, disturbance, and pollution, and other exploration activities that may disturb caribou in their winter habitat. BLM acknowledges that caribou "would likely be deflected from areas of exploration activity,"⁷⁴ and that the "proposed action could disturb and displace wildlife from the immediate area of activities." Yet BLM fails to address directly whether this action will result in significant new impacts to caribou and cursorily concludes that "[o]nly minor impacts would be expected" and that the proposed action "would not reduce population levels or distribution during the winter season." Activities in this local area within the Teshekpuk Lake Herd's winter range may have significant impacts on caribou that BLM must address in a full EIS.</p>	<p>Direct impacts to caribou from the proposed action are likely to be minimal and short term overall. Intensity of impacts including reasonably foreseeable impacts to caribou from winter exploration and other activities in the NPR-A have been previously analyzed in-depth and disclosed in full in the 2020 NPR-A Integrated Activity Plan Final EIS. No new significant impacts would be anticipated.</p>
42	<p>BLM proposes to authorize a withdrawal of 25 million gallons of water from four source lakes. Without conducting any apparent analysis, BLM and "AEA are assuming all lakes are sensitive fish bearing," and BLM concludes "[t]he proposed action would not alter the distribution, migration or location of fisheries resources that would impact birds feeding from lakes or river in the project area." Despite assuming these lakes bear sensitive fish species, the EA does not discuss the potential impacts of water withdrawal on sensitive fish species.</p>	<p>The assumption that all potential water source lakes are sensitive fish bearing is appropriate because this ensures the most conservative water withdrawal threshold is followed (i.e., 2020 NPR-A ROD ROP B-2a) in the absence of field data documenting fish presence/absence. This is out of an abundance of caution to protect fish species sensitive to low oxygen concentrations that may be present. Since the implementation of water withdrawal guidelines (for example, ROP B-2a through B-2d in the 2020 NPR-A ROD), all available scientific information supports the effectiveness of these management standards in minimizing impacts to fish and fish habitat.</p>