

From: [Hayes, Michael E](#)
To: [Boario, Sara D](#)
Subject: CPSEIS letter
Date: Thursday, May 4, 2023 11:10:09 AM
Attachments: [CPSEIS Response to NVK 5-3-23.pdf](#)

Sara,

I just wanted to double check with you that I should send the PDF of the CPSEIS (attached) over to Steve's office. I bounced it off of the one we sent (just to ensure that no alterations were made) and put your signature on. Once, I get the thumbs up from you, I'll date stamp it (at Michelle's request) and send it to them.

Respectfully,

Michael (Mike) Hayes
Executive Assistant, Regional Director's Office
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United States Department of the Interior

BUREAU OF LAND MANAGEMENT
U.S. FISH & WILDLIFE SERVICE



Native Village of Kaktovik
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SENT VIA EMAIL

Dear Mr. Rexford and Mr. Lampe:

We are writing to respond to the letter you sent regarding the Coastal Plain Supplemental Environmental Impact Statement (EIS) process. Thank you for clearly communicating your concerns and we look forward to continuing to engage with you on this important issue.

You asked in your letter for clarification regarding the legal deficiencies of the original EIS and to provide reasoning for expanding Indigenous Knowledge (IK) in the Supplemental EIS. The Department of the Interior Secretary's Order 3401, dated June 1, 2021, determined that:

- 1) The BLM did not adequately analyze a reasonable range of alternatives in the EIS, and
- 2) The Record of Decision (ROD) did not properly interpret Section 20001 of Public Law 115-97 (commonly known as the Tax Act).

A subsequent letter also on June 1, from the Principal Deputy Assistant Secretary for Land and Minerals Management to leaseholders in the Coastal Plain, further clarified both of those deficiencies (Items 1 & 2 below), identified other potential legal defects (Items 3 and 4 below), and addressed the potential need for further analysis and consultation (Item 5 below):

- 1) The Coastal Plain Leasing Program EIS failed to analyze a reasonable range of alternatives in that it did not analyze an alternative, besides the no action alternative, that involved fewer than 2,000 acres of surface development.
- 2) The Tax Act provides for authorization of *up to* 2,000 acres to be covered by "production and support facilities." However, inclusion of the phrase "up to" indicates that less than 2,000 acres may be authorized in appropriate circumstances, such as for alternatives that make large areas unavailable for leasing or surface development and thus may require fewer production and support facilities. The explanation in the ROD for not considering such an alternative – that the Tax Act provides a *mandate* to the BLM requiring it to approve production and support facilities up to that limit – is both implausible and contrary to Congressional intent, which is itself a legal error.
- 3) The EIS's treatment of foreign greenhouse gas (GHG) emissions, and
- 4) Compliance with section 810 of the Alaska National Interest Lands Conservation Act (ANILCA).

- 5) Further, any new NEPA analysis involving an additional alternative may also result in connected reviews, such as under section 106 of the National Historic Preservation Act and consultation under Section 7 of the Endangered Species Act.

While IK was not specifically determined to be deficient, further recent guidance from the White House, Department of the Interior, the Bureau of Land Management, and the Fish & Wildlife Service emphasize inclusion of IK into environmental analyses and decision making. The IK that your community shared in the first EIS process has not been lost and will be incorporated into the supplemental EIS process. We are working to build and expand upon the existing Indigenous Knowledge through the NEPA process. In addition, we are very interested in exploring additional methods for fully capturing IK as we strive to improve our process going forward. We invite your suggestions on how we can better improve our communications with your community and meet in a way that ensures that everyone has equitable access to the process and opportunities to participate.

Lastly, we'd like to respond to your concerns about inclusion of tribal input into the National Environmental Policy Act (NEPA) process. The development of this Supplemental EIS requires the engagement of tribes and the public-at-large in the decision-making process. Information generated through this exchange can include input about the potential environmental effects of proposed actions as well as identification of reasonable alternatives. As the lead federal agencies, a primary role of BLM and FWS is to ensure the fair and equitable treatment of all stakeholder input through incorporation of relevant information into the NEPA process. As the Native Village of Kaktovik has become a formal cooperating agency for the Supplemental EIS, we are committed to ensuring that NVK and all of the cooperating agencies receive the same opportunities to participate while receiving the appropriate information and updates throughout the remainder of the Supplemental EIS process.

We would like to thank you again for your patience and continued engagement as we work to improve our processes and our relationship. While we have ideas of how to better ensure equitable gathering and use of IK, we would like to hear your suggestions and work together to determine how best to go about this. We look forward to continuing to engage with you on appropriate and equitable methods for gathering and use of Indigenous and local knowledge as well as your thoughts on how to navigate a best path forward through the NEPA process.

Sincerely,



Steven M. Cohn
State Director
Bureau of Land Management Alaska



Sara Boario
Regional Director
U.S. Fish & Wildlife Service - Region 7