



**KUUKPIK**  
corporation

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BLM AK SEP 11

**VIA Email to: [mcobbs@blm.gov](mailto:mcobbs@blm.gov)**

Molly Cobbs  
Regional Mitigation Strategy Coordinator  
222 West 7th Avenue, #13  
Anchorage, Alaska 99513

Re: Bureau of Land Management's Regional Mitigation Strategy for the  
Northeastern Region of the National Petroleum Reserve-Alaska

Dear Ms. Cobbs:

Thank you for allowing Kuukpiik Corporation to comment on the Bureau of Land Management's ("BLM's") Regional Mitigation Strategy ("RMS") for the Northeastern Region of the National Petroleum Reserve-Alaska ("NPR-A").

Kuukpiik Corporation ("Kuukpiik") is the Alaska Native Claims Settlement Act ("ANCSA") village corporation for Nuiqsut.<sup>1</sup> Kuukpiik, its shareholders, and other Nuiqsut residents and groups will be the stakeholders most affected by BLM's decisions on the proposed RMS.<sup>2</sup>

Nuiqsut is a predominately Inupiat community of about 450 residents located on the Nigliq Channel of the Colville River Delta. The village is located within National Petroleum Reserve - Alaska ("NPR-A"). Studies confirm that ancestors of Kuukpiik shareholders have used

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<sup>1</sup> 43 U.S.C. 1601, *et seq.* Kuukpiik is also one of the largest private landowners in NPR-A, having received title to approximately 74,000 acres of ANCSA surface estate in NPR-A.

<sup>2</sup> Kuukpiik does not speak for the City of Nuiqsut or the Native Village of Nuiqsut ("NVN"). We do, however, enjoy substantial overlap in our membership and have many shared concerns and goals. Approximately 90 percent of Nuiqsut residents are either Kuukpiik shareholders, are married to Kuukpiik shareholders, or are descendants of Kuukpiik shareholders. As a result of the overlap in constituencies and the corresponding common obligation to the community of Nuiqsut, the three organizations have formally discussed the Regional Mitigation Strategy on multiple occasions, not to mention informal discussions among representatives of each organization as they rub shoulders daily in a small community. Kuukpiik urges BLM to seek input directly from the City of Nuiqsut and the Native Village of Nuiqsut, but fully expects that many of the concerns and views expressed here by Kuukpiik will be shared by the City and the Native Village of Nuiqsut.

the Colville Delta and the area around it for more than 500 years, though our people, the Kuukpikmiut, think that it's been far longer than that.<sup>3</sup> Nuiqsut is also the community most impacted by oil development on the North Slope to date.<sup>4</sup>

Kuukpik has participated extensively for several decades now in the public planning process for oil development in the Colville River Delta and the NPR-A. Kuukpik takes seriously its obligation to protect the value of the land it obtained through ANCSA.<sup>5</sup> For over 14 years

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<sup>3</sup> "Ethnographic Study and Monitoring Methodology of Contemporary Economic Growth, Sociocultural Change and Community Development in Nuiqsut, Alaska" (National Technical Information Service, 1984, p. 8).

<sup>4</sup> Those impacts have been both onshore and offshore. Virtually all of the oil development on the North Slope over the past 45 years has occurred on Nuiqsut's traditional range. Nuiqsut is practically surrounded by oil field infrastructure. To the north and northwest are ConocoPhillips' Alpine and its three satellite oil fields and two more planned satellites, GMT1 and GMT2. To the east, northeast, and southeast are Mustang, Kuparuk, Tarn and Meltwater. Caelus already operates one offshore gravel island (Oooguruk) just off the mouth of the Colville River Delta, plus onshore facilities at Oliktok Point and has started construction on one drill pad and a road (Nuna 1) on the east bank of the Colville River and plans another drill pad and road even closer to Kuukpik's land and to Nuiqsut (Nuna 2). Prudhoe Bay, Kuparuk, Milne Point, and their many satellite oil fields lie almost entirely within Nuiqsut's traditional subsistence range. Alpine is only 8 miles from Nuiqsut and can be seen from the village, night and day. The Nanuq/CD-4 satellite pad is only four miles from Nuiqsut. By comparison, Barrow and Atkasuq are each over 130 miles away from the closest active commercial oil field. Residents from Barrow, Atkasuq and the other North Slope communities are also impacted by oil and gas development, but so far Nuiqsut's residents have borne by far the greatest brunt of those impacts. The impacts of this analysis therefore hit very close to home and are critical for our organizations and the people we represent.

<sup>5</sup> When ANCSA was passed in 1971, Congress intended to promote economic development of Native lands, but also intended to protect Native culture and lifestyles. By conveying the subsurface estate to the larger and region-wide regional corporations and the surface estate to the smaller, more locally-focused village corporations, Congress essentially appointed the village corporation the protector and conservator of local interest in the land and Native culture. ANCSA's legislative history reflects these purposes. As a result of that history and its location, Kuukpik has assumed that role of the protector and conservator of local interest as to all oil and gas development impacting Nuiqsut. So Kuukpik is uniquely positioned to vigorously protect our shareholders' and Nuiqsut's interests in Nuiqsut's traditional subsistence range, onshore and offshore.

now, Kuukpik has consistently submitted detailed and comprehensive written comments on virtually all of the project-specific development proposals in the Northeastern NPR-A (and nearby state lands and waters) and also on BLM's various, proposed NPR-A regional development plans.<sup>6</sup> Kuukpik has also defended Nuiqsut's right to exercise maximum local control and self-determination over the area and resources on Nuiqsut's traditional subsistence range, onshore and offshore. Since Nuiqsut could not long survive as a community without continuous access to healthy subsistence resources over a vast area, the reasons for Kuukpik's extensive involvement in the public planning and permitting process for oil development are obvious and self-apparent.

So it is with some trepidation and dismay that Kuukpik has watched the progression of BLM's development of a proposed Regional Mitigation Strategy for GMT-1 and for the Northeastern NPR-A. Kuukpik has participated with an open mind in every step of the RMS process and engaged extensively with BLM and with the City and Native Village of Nuiqsut to discuss ideas for carrying out the mitigation projects that we understood would be forthcoming as a result of CPAI's payment of a compensatory mitigation fee associated with GMT1. Over the course of the process, though, Kuukpik has developed serious concerns that the goals of the permit stipulation requiring compensatory mitigation—*i.e.*, “To off-set identified impacts, including major impacts to subsistence uses [caused by GMT1] that cannot be fully mitigated by avoidance and minimization...”<sup>7</sup>—are increasingly unlikely to be achieved as the proposals seem to be drifting away from the priorities and concerns voiced by the people of Nuiqsut.

This fear was all but confirmed with the publication of the Draft Conceptual RMS (“CRMS”) on April 2016. We expected the CRMS to reflect the concerns expressed by residents throughout the long stakeholder engagement process BLM has conducted. Instead, it mostly reflects excessive influence from Outside groups who are not affected by GMT1 in any meaningful way. Worse still, it describes (vaguely) a decision-making process that does not include any direct control over compensatory mitigation actions by the people who are most affected. The people of Nuiqsut must have a substantial say in all the compensatory mitigation projects that are, according to the Record of Decision for GMT1, intended to “benefit subsistence

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<sup>6</sup> In fact, the Greater Moose's Tooth One (GMT1) project—the development that birthed this entire RMS process—will be developed just 11.5 miles from Nuiqsut. Kuukpik also owns probably a quarter to a third of the land on which ConocoPhillips Alaska, Inc. (“CPAI”) proposes to build the pipelines and road connecting the GMT1 satellite pad to CD-5 and to the Alpine Oil Field at CD-1. In addition, Kuukpik owns a substantial portion of the surface estate overlying the oil field which GMT-1 will tap.

<sup>7</sup> GMT1 Record of Decision (“GMT1 ROD”), p. 38.

users most directly impacted by the GMT1 project<sup>8</sup> because we are those affected subsistence users. Who better to decide what benefits Nuiqsut than Nuiqsut? But that is not the way the Draft Conceptual RMS seems to be headed.

Kuukpik has prepared these comments to summarize some of our major concerns with the Conceptual RMS. First, Kuukpik thinks the mechanism for managing compensatory mitigation funds and selecting appropriate projects is troubling because it grants BLM (and any outside groups who may have BLM's ear) far too much control over projects that are intended to benefit Nuiqsut residents.

Second, the list of 38 potential Mitigation Actions at Table 2 (p. 22) of the CRMS is itself problematic and should be deleted for the reasons stated below.

Third, the RMS must more carefully and thoroughly define what types of projects will require compensatory mitigation, taking into account that some types of development may benefit subsistence users and the community.

Fourth, the RMS should not apply to private lands or inhibit private landowners' rights to develop their own lands or to negotiate with oil companies for access or development rights.

Finally, the entire \$8 million compensation mitigation fund should be used to provide offsetting benefits, not used in part for essentially permit management and administrative purposes.

Kuukpik wants to make clear that these are not all our concerns. The Conceptual RMS document was just released on about April 15. Frankly, it is so different from what Kuukpik expected to see that it has taken considerably more time to read and digest than we expected. In addition to spring subsistence activities, many of Kuukpik's corporate officers, directors, and shareholders have been preparing for, traveling to, and participating in the annual shareholder meetings in Barrow and Nuiqsut this month, resulting in a lack of time to sufficiently discuss the Conceptual RMS among ourselves and with the City of Nuiqsut, the Native Village of Nuiqsut, elders and other residents. As a result, we will continue to discuss the CRMS during the next several weeks and expect to provide additional comments after those consultations have occurred. We trust that given Kuukpik and Nuiqsut's vital role and stake in this process, BLM will consider those comments as well.

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<sup>8</sup> GMT1 ROD, p. 40-41.

**A. Nuiqsut residents should determine what projects would provide the greatest benefits to the community.**

The Conceptual RMS does not clearly explain who will be making decisions about compensatory mitigation proposals, but it suggests that the community will not have the kind of direct role that will be required to ensure that the best projects are selected and funded. BLM previously assured us that Nuiqsut residents would have a significant role in evaluating and prioritizing proposed compensatory mitigation projects.<sup>9</sup> So we are troubled to see that the Conceptual RMS does not propose a mechanism for Nuiqsut residents to make that decision (or even to help BLM do so).<sup>10</sup>

In fact, we can't even tell who will be the ultimate decision maker. The CRMS states that BLM will "use two types of criteria [screening and ranking criteria]...to evaluate and select potential compensatory mitigation actions," suggesting BLM makes the final decision as to what projects are carried out to offset the impacts of a particular development. Subject to appropriate standards and criteria, the ultimate decision maker on which projects get funded should, in fact, be the community of Nuiqsut for GMT1 and future GMT1-related projects. The GMT1 ROD that initiated this process stated that the compensatory mitigation funds from the RMS are to "benefit subsistence users most directly impacted by the GMT1 project."<sup>11</sup> It should be for Nuiqsut, preferably through a non-profit entity created by the City of Nuiqsut, the Native Village of Nuiqsut, and Kuukpik, to decide what mitigation actions will best "benefit subsistence users most directly impacted by the GMT1 project."<sup>12</sup> Nuiqsut's choices can be constrained by criteria and standards approved by BLM, such as that which is discussed in Section B, below. Kuukpik doesn't think there's any reasonable basis to argue that any other agency, group or individuals are better positioned or more qualified to decide what mitigation projects will be funded than such a Nuiqsut-based organization.

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<sup>9</sup> See Workshop Summary, 11/9/15, p. 3 ("BLM is working directly with the community of Nuiqsut to identify how that funding should be used to address impacts to their community."), as well as numerous oral assurances from BLM staff.

<sup>10</sup> The CRMS does indicate that BLM would prefer to have "an independent third party" manage the funds. CRMS, p. 19. But managing the funds is not (or is not necessarily) the same as deciding which projects get funded. Section 6 references a management agreement between BLM, the permit applicant, and the third party, but again it doesn't say who decides what projects get funded.

<sup>11</sup> GMT1 ROD, p. 40-41.

<sup>12</sup> GMT1 ROD, p. 40-41.

That is why the Native Village of Nuiqsut, the City of Nuiqsut, and Kuukpik Corporation have already agreed by joint resolution (attached) to “work cooperatively to identify impacts created by oil and gas activity including the Greater Moose’s Tooth One project...[and] to identify the specific projects within the community that will provide mitigation for impacts created by Greater Moose’s Tooth One.” This Nuiqsut “Trilateral Group” also expressed its expectation that BLM “deploy compensatory mitigation funds associated with Greater Moose’s Tooth One for specific projects identified by the Native Village of Nuiqsut, the City of Nuiqsut and Kuukpik Corporation.” *Id.*

Given its capacity and willingness to represent the community of Nuiqsut in this RMS process, the Trilateral Group should be a cornerstone of BLM’s Regional Mitigation Strategy. To ignore this Group would be to decide that BLM believes it knows better than the community what projects would benefit local residents the most.<sup>13</sup>

BLM should therefore designate a non-profit corporate entity to be created by the City and Native Village of Nuiqsut and Kuukpik to serve as the “independent third-party” responsible for prioritizing and selecting mitigation projects, subject to approved criteria and standards, and for managing and dispensing compensatory mitigation funds.<sup>14</sup> From our perspective, only an entity comprised by and of the leaders of Nuiqsut has any business exercising decision making power over compensatory mitigation actions that are intended to offset impacts to Nuiqsut.<sup>15</sup> Any other approach is patronizing at best, and risks alienating (and failing) the community the RMS is intended to benefit.

A non-profit corporate entity representing the public and tribal governments and the village ANCSA corporation would have instant legitimacy in the community and would be better able to evaluate compensatory mitigation proposals. This entity would evaluate the relative

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<sup>13</sup> The impacts sought to be mitigated here are sociocultural. Kuukpik is unaware of any particular expertise that BLM has in this area. The health of the community and its subsistence culture and lifestyle is a complex and interlocking ecosystem all its own, which is not particularly susceptible to BLM’s proposed screening and ranking criteria.

<sup>14</sup> CRMS, p. 19. As discussed by the City, NVN and Kuukpik, the non-profit would be governed by a nine person Board of Directors, with three Board members appointed by each of the three local entities—the City of Nuiqsut, the Native Village of Nuiqsut, and Kuukpik. This and another possible mechanism, setting up a separate department of NVN, were proposed at the April 22, 2016 meeting with BLM.

<sup>15</sup> Perhaps the Board could also include an observer from BLM, if BLM wants that in addition to getting reports the non-profits activities.

benefits and priorities of proposed projects, establish management and administrative criteria and benchmarks, and exercise final payment approval. Entrusting a Nuiqsut-based entity with management authority would give the most affected individuals the maximum possible direct control over the compensatory mitigation project that are intended to benefit us, while allowing BLM to retain oversight. It would also give the local community a real stake in the success of the program, and avoid a situation where the community feels like some Outside group is dictating “solutions” to us, rather than allowing the community to determine what is in its own best interest.

We cannot overstate the importance of giving the community real control in the decision making process. Decisions made by the community leaders themselves are much more likely to be based on the traditional Inupiat method of consensus building. Not only will such a process naturally filter out projects that have low community support and those that are unlikely to provide significant benefits, but it will also virtually eliminate the serious concerns raised in the RMS workshops that compensatory mitigation funds will be diverted away from their primary purpose of offsetting unavoidable impacts in Nuiqsut caused by GMT1—this diversion is the sort of “mission creep” that has delegitimized much of the federal NPR-A Impact Fund program in Nuiqsut because so much more of the funds are spent in Barrow or other communities less affected by oil development than are spent in Nuiqsut.

Avoiding this “mission creep” of compensatory mitigation funds is important for two reasons: first, it will better achieve the goals of the compensatory mitigation funds by facilitating projects that provide direct offsetting benefits. But equally important, it prevents the RMS and compensatory mitigation approval process from becoming the vehicle by which outside interest groups (whether national, State, or somewhat local), try to advance their pet projects in the NPR-A. The very fact that interested parties from all over the country have already inserted themselves into what, from Kuukpik’s perspective, is a local matter dealing solely with subsistence and other impacts in the immediate vicinity GMT1, confirms that this problem already exists. In fact, we think it threatens to derail the purposes identified in the GMT1 ROD.

Kuukpik understands that BLM wants and is required to be to be inclusive in its formulation of the RMS for GMT1.<sup>16</sup> But the reality is that GMT1 does not affect anyone else

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<sup>16</sup> Kuukpik also understands that BLM wants to create an RMS that can be used as a precedent and model used elsewhere in Alaska and the rest of the country. But BLM’s larger policy goals should not obscure the purposes of the RMS as identified in the GMT1 ROD. Setting a national precedent doesn’t help the community of Nuiqsut offset adverse impacts from GMT1 in the slightest. Nor is it even apparent that an RMS as adopted elsewhere in the country would be likely to be particularly similar to one developed for the North Slope. The RMS that is appropriate for a traditional Inupiat, subsistence-dependent community on the North Slope is

remotely as much as it does the 450 or so people who call Nuiqsut home. This affected community therefore needs to be able to exercise maximum control over the projects that are supposed to benefit it. Nuiqsut should also be able to do so in a way that doesn't require months of public hearings where every conservation group, every industry representative, and every anti-oil advocate from Anchorage to Washington D.C. gets the opportunity to argue in favor of projects that would not serve the actual needs of the Nuiqsut community.<sup>17</sup> NPR-A is not a symbol, and it's not a prize to be won by either industry or outside conservation groups. It is a real place populated by people who have real needs—needs that are supposed to be protected, in part, through the compensatory mitigation fund set up to mitigate impacts caused to subsistence users by GMT1. The best—and perhaps the only—way to make sure that goal is achieved is by empowering the Nuiqsut community to make as many of the decisions regarding compensatory mitigation projects as possible.

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going to be different from one that is appropriate for a desert in Nevada, which may or may not have a community in proximity to that desert and dependent on it. BLM needs to build enough flexibility into its model to make sure that it doesn't botch the experiment in Alaska while trying to create a national model. A “one size fits all” approach for the whole country isn't going to work here. If BLM wants the program to work on the North Slope, BLM needs to carefully consider the different circumstances and needs of what are, obviously, unique Native communities not representative of the lifestyles and needs of much of the rest of the country.

<sup>17</sup> Arctic communities have long complained that Outside groups seem to have a disproportionate influence on matters that impact the Inupiat people of the North Slope far more than they impact any members of those Outside organizations. For example, in 2012-2013, Arctic organizations including the North Slope Borough and Kuukpik Corporation complained that the NPR-A IAP had been hijacked by national organizations and that the document did not accurately reflect the positions of local stakeholders. Kuukpik Preliminary Comment Letter on Preferred Alternative B-2 of Draft IAP/EIS, Nov. 2, 2012, pp. 2-3 (“But B-2 then proceeds to go overboard in the direction of prohibiting oil and gas leasing and development, creating restrictions as to some lands that are unnecessary under BLM's own scientific wildlife data.”). Somewhat similarly, Kuukpik's comments on the Draft SEIS of GMT1 pointed out the absurdity of outside organizations (and even BLM) presuming to reach conclusions about the severity of impacts to subsistence that were fundamentally at odds with the views of the Native community. Kuukpik Comment Letter on GMT1 Supplemental EIS, April 22, 2014, pp. 2-3, 4-5 (“It appears patronizing, paternalistic and presumptuous for the Draft SEIS and its authors to reach conclusions about the likelihood and severity of impacts on the Native community that are so markedly different from the extensive Native testimony that BLM has gathered in the many public hearings on the Draft SEIS.”)

We ask BLM to respect the wishes of the community most affected by GMT1, and to respect the rights of our people to exercise the maximum amount of self-determination and local control as possible. This means deferring to the community as much as possible and empowering our residents to make our own decisions about what is best for us and for our community.

**B. The community's evaluation criteria are more likely to generate effective compensatory mitigation projects.**

Empowering the community to make the decisions about compensatory mitigation projects will naturally lead to more effective and successful projects. At the same time, we understand that BLM seeks to establish formal criteria to evaluate proposed projects. To demonstrate the Trilateral Group's willingness and seriousness with regard to exercising control over the process, the Group has adopted proposed criteria that we believe should be used (and would be used by the proposed Nuiqsut non-profit corporation as recipient of the mitigation funds) when evaluating potential mitigation projects. For the most part, these criteria are simply more detailed and useful criteria than those proposed by BLM (at page 26 of the CRMS). The criteria adopted by Nuiqsut at a meeting in Nuiqsut on November 20, 2015 are as follows:

Overall benefit of project to community:

- a. Does the project benefit all members of the Nuiqsut community including those represented by the Tribe, the Village Corporation and the City?
- b. Does the project promote adaptation to changes in the environment including changes in climate or technology that benefit the residents of the community?
- c. Does the project support opportunities for quality education for residents of the community?

Subsistence Protection and Enhancement:

- a. Does the project assist in securing food resources for members of the Nuiqsut community?
- b. Does the project protect areas currently available for subsistence and will the project expand the areas currently available for subsistence?
- c. Does the project enhance access to subsistence areas currently available or that will be open for subsistence?

Cultural/Social Benefits:

- a. Does the project protect or enhance the Inupiaq culture and/or language?
- b. Does the project enhance or protect the history of Kuukpikmiut?

Economic Benefits:

- a. Does the project have a positive impact on the economic well-being of the members of the Nuiqsut community? Can the benefits of the project be quantified?
- b. Does the project have a positive impact on affordable quality housing and community facilities?

Evaluating projects under this framework will help the Nuiqsut non-profit select mitigation projects that are most useful and relevant to the community's needs. Each of these categories and questions goes directly to issues that need to be considered in determining whether a particular project offsets unavoidable major impacts to subsistence and other local resources caused by GMT1 and how and to what extent it benefits Nuiqsut. This is self-evident with regard to the "Subsistence" and "Cultural/Social Benefits" categories because these are two of the main impacts sought to be offset by compensatory mitigation. But those two issues are so fundamental to the well-being of the community that any project that provides "overall benefits" to the community can help offset impacts to subsistence and, with it, to Inupiat culture.

The point here is that impacts to subsistence can be offset in many ways. Many different types of benefits might help offset the negative impacts our community suffers as a result of nearby development. Projects that increase the quality of life in Nuiqsut can be very effective compensatory mitigation if they help residents lead healthy and fulfilling subsistence lifestyles in Nuiqsut. Increased educational opportunities, for example, help our younger generations develop the skills to obtain higher quality jobs, the income from which can help offset the increased costs of practicing subsistence in areas that are farther away from developments constructed near the village. Any projects that provide significant economic benefits in other fashions can likewise offset the increased costs of practicing subsistence when oil development projects push our people farther and farther from nearby hunting grounds, and can even help make up for (but not replace) lost subsistence opportunities.

The proposed criteria in the Conceptual RMS seem not to recognize these connections as well as the Trilateral Group's criteria. Nuiqsut residents do not have much disposable income. Many work seasonal jobs in order to make enough money to practice subsistence. This means they have limited funds to purchase fuel, ammunition, and other necessary supplies to practice

subsistence. Each mile traveled is therefore an additional cost our residents must bear personally. Any projects that put more income in the hands of those practicing subsistence in the shadow of GMT1 effectively offset impacts from oil development and should be seriously considered as a potential compensatory mitigation project.

Once this connection is understood and taken into account, a whole range of projects that put more money for subsistence into the pockets of residents both qualify and become attractive mitigation projects to offset impacts to subsistence that are not connected at first glance related. Cheaper and more abundant housing in Nuiqsut, a daycare that allows parents--especially mothers of young children-- more opportunities for paid employment, and a local greenhouse/hydroponic indoor growing conex (heated with Nuiqsut's free natural gas) that provides cheaper produce than the local store, all put additional cash in the pockets of local subsistence users that would allow them to travel farther to hunt and fish, to make up for developed areas that are no longer available. A daycare would enable both parents to small children more time to practice subsistence and potentially the time to travel further to replace subsistence areas that have been developed. The connections between such mitigation and GMT1 impacts are less apparent to someone sitting in Anchorage than they are in Nuiqsut, but are real, concrete and important offsetting benefits nonetheless.

Nuiqsut wants creative solutions that will help offset impacts in whatever way makes the most sense for the community and the developer. By way of example, consider the deal Kuukpik struck in 1997 when ARCO sought to develop the Alpine facility partially on Kuukpik land. Kuukpik negotiated for all residents of Nuiqsut and all local government, tribal and business users to receive free natural gas for at least 20 years, an arrangement which did not cost ARCO (now renamed ConocoPhillips Alaska, Inc.) any cash out of pocket (a benefit to it), but which allowed the community to pay far, far less for home heating and electrical power than residents of any other community in Alaska, including not only Anchorage, but also cities such as Juneau and Ketchikan that have much milder winters. This leaves money in the pockets of our residents to allow them to pursue subsistence and increase their own quality of life.

Increasing the overall quality of life in Nuiqsut will contribute to a much stronger social and cultural fabric within the community, and increases the physical and mental health of our families. Scientists have proven that decreased reliance of subsistence practices and diets negatively impacts physical and mental health, causing increased obesity and illness, depression, and drug and alcohol abuse. Thus, projects that promote healthy lifestyles, provide opportunities for social interaction and entertainment, and which provide increased time or financial resources for our residents to practice subsistence contribute very positively to offsetting the negative impacts caused by nearby developments.

The Trilateral Group's compensatory mitigation evaluation criteria recognizes the dynamic relationship between these factors far better than do those in the Conceptual RMS. In

particular, we are concerned that BLM's "Connection" screening criteria would eliminate from consideration many extremely valuable projects that the community would support and would benefit from, but which may not fall under BLM's current understanding in the CRMS of how an impact and mitigation action could be "connected".<sup>18</sup> Unless "connection" is defined broadly to include the types of complex relationships summarized above, some of the most valuable and effective of the proposed mitigation projects are unlikely to survive the initial screening phase.

Eliminating such Nuiqsut proposals is not only inappropriate given the interconnectedness of lifestyle and cultural impacts and benefits, but would also effectively tend to elevate the attractiveness of projects that fit within BLM or the conservation community's preconceived notion of traditional compensatory mitigation even if such projects would provide much less tangible benefit for Nuiqsut residents.<sup>19</sup> This includes many of the proposed mitigation actions in the "ENVIRONMENTAL" category of Section 8 of the CRMS (pp. 22-23). Creating easements, buying back oil leases, and studies of various non-subsistence species sound like expensive pet projects that Nuiqsut neither generated nor sees as a high priority. To be sure, some of these may have a role to play in providing compensatory mitigation. But these types of projects should not become the default options just because it is easier to explain why a conservation easement is "connected" to development impacts than is cheaper and more abundant local housing or a daycare where children can be cared for and educated while their parents practice subsistence. Again, the RMS must focus on providing benefits to the affected community, which should depend largely on the community's opinion, not that of every NGO or interest group interested in the NPR-A.<sup>20</sup>

The RMS' other ranking criteria seem better suited to determining which projects look good on paper than the ones that will actually provide meaningful benefits to the community. None of these criteria, for example, ask specific questions about the benefits sought to be achieved (*i.e.*, facilitating access to subsistence areas, increasing the subsistence, health, or

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<sup>18</sup> CRMS, p. 26.

<sup>19</sup> Bear in mind that traditional Clean Water Act compensatory mitigation is addressing impacts to wetlands, a natural resource. The RMS here is addressing impacts to people and a community. BLM should not simply mimic the existing 404 program, but create a program of mitigation actions that actually addresses the problems that the RMS is designed to mitigate.

<sup>20</sup> Another CRMS criteria is "additionality." Yet some of the listed entries on the proposed Mitigation Action list are not "additional." CRMS, p. 22. For instance, the 13<sup>th</sup> entry would "[c]ontinue monitoring of the annual survival of the Spectacled Eider on the North Slope." *Id.* By law, that is an existing U.S. Fish & Wildlife task, which the FWS is presumably doing and for which the FWS has a budget. BLM should not consider taking compensatory mitigation funding intended for the community to fund ordinary and routine FWS operations.

financial resources available to residents, *etc.*). Rather, they would evaluate, for example, a project's "risk," "feasibility," "timeliness", and "durability."<sup>21</sup> These are the kinds of questions agencies may have to consider, but they don't fundamentally address the type or magnitude of the potential benefits, or even explain what the benefits might be.<sup>22</sup> Rather, it seems like all that analysis would be subsumed under the broad "effectiveness" category.

We therefore recommend all of these categories be broken down to ask more specific questions about the tangible benefits offered by each proposed compensatory mitigation project. The Trilateral Group's evaluation criteria forms a good starting point, but could be supplemented with criteria that BLM needs to consider for its own administrative purposes. Given the importance of this topic, we think further discussions are justified before setting any formal criteria.

**C. It is unnecessary and impossible to evaluate the proposed projects identified in the RMS at this time.**

Other sections of the document need further discussion as well. Kuukpik was extremely surprised to see a list of proposed mitigation actions in the RMS, especially one that is so vastly different from the one the Nuiqsut Trilateral Group has developed. Kuukpik has been involved with the RMS process since the beginning, so we know there has been a lot of discussion about which mitigation projects might ultimately be selected. But including a list like the one in Table 2 in the RMS will cause more problems than it will solve by sharpening the debate over which projects to choose at a time where the framework for decision making is not even complete yet.

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<sup>21</sup> The remaining two ranking criteria, "importance" and "effectiveness" are important, but seem to be the ultimate questions, not just criteria. The Trilateral Group's more specific criteria are intended to ask the necessary questions that would help determine whether proposed projects are "important" to the community and would be "effective" to provide mitigation.

<sup>22</sup> We note that the GMT1 ROD stated that the RMS would be designed to "result in outcomes that benefit subsistence users most directly impacted by the GMT1 project, including members of the Native Village of Nuiqsut." GMT1 ROD, pp. 40-41. The CRMS changes this goal ever so slightly by explaining that the screening and ranking criteria are intended to "help prioritize the mitigation actions and locations that would be most effective in addressing impacts." The change may not seem like much, but it reflects a subtle shift in control and responsibility for evaluating each project. Plainly, Nuiqsut residents themselves are best positioned to determine what projects "benefit subsistence users most directly," as the GMT1 ROD instructed. But the Conceptual RMS seems to suggest that BLM is better positioned to evaluate what projects would be "most effective" from an objective standpoint. This again puts BLM in the driver's seat in an area not seemingly within its expertise, at the expense of the community that is supposed to be benefitted.

It simply doesn't make sense to create a list and start debating which projects to fund before finalizing the criteria that are supposed to be used to make that decision in the first place.

BLM should therefore not include the proposed projects as part of the RMS. Including a list of proposed projects in a planning document that, at least from Kuukpik's perspective, is intended to *generate* the list of proposed projects suggests that the outcome of the whole process is already pre-determined to some extent.<sup>23</sup>

Moreover, the list is not even particularly helpful. The one and two line descriptions are so vague that it is impossible to know what they mean, what they might cost, and who proposed or supports each of them. Kuukpik has attended all of the Workshops and met directly with BLM, the City of Nuiqsut, and NVN on multiple occasions, and, still, Kuukpik does not know where some of the proposed Mitigation Actions came from and what they would entail. We do know, however, that the vast majority of the 38 listed mitigation actions didn't originate from, and don't have significant support, in Nuiqsut. The Mitigation Actions should be selected by the community, not outsiders and not BLM.

Substantively, the list includes so many proposals that would not achieve the purposes of compensatory mitigation that it, again, is simply not helpful. Some of these proposals would never be acceptable to applicable federal agencies and/or in Nuiqsut.<sup>24</sup> Others are clearly the responsibility of public agencies, not a mitigation fund.<sup>25</sup> The community should benefit directly from all mitigation projects—which only makes sense since it was impacts to subsistence and Nuiqsut which prompted the RMS payments from ConocoPhillips.

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<sup>23</sup> Even including proposals as an appendix would be preferable to the current draft because including proposed projects in the plan itself conveys the impression that the *de facto* universe of potential projects is already established.

<sup>24</sup> For instance, Mitigation Action No. 22 would “Restore/maintain water flow volume, protect surface water quality...” At the April 22, 2016 meeting, a Kuukpik representative asked how this would be done and understood BLM to suggest dredging the Colville River. Aside from major and probably insuperable permitting problems with such a concept, a dredging operation would likely consume the entire \$8 million to be collected and then some, let alone the \$7 million actually available.

<sup>25</sup> One of the BLM's own criteria is whether the proposed action provides “additionality.” Some of the proposed Mitigation Actions are not additional. See Mitigation Action No. 13, for example. Spectacled Eiders are managed by the USFWS, a federal agency with its own budget and responsibility for carrying out this exact task. Likewise, Number 17 is entirely within BLM's existing authority and responsibility. Why would BLM consider taking money designated for impacts to the community to perform this work?

In order to ensure Nuiqsut benefits directly from the mitigation funding and actions, the community should be responsible for selecting all projects—including generating the current shortlist of projects to be considered for approval.<sup>26</sup>

**D. The RMS should much more clearly define what projects are subject to compensatory mitigation requirements.**

Kuukpik's comments so far have focused on how to select projects that should be funded with compensatory mitigation funds. That is intentional because that is probably the most immediate issue right now and arguably the only issue that BLM should be considering.<sup>27</sup> However, the Conceptual RMS addresses issues beyond that scope, including rudimentary guidance on what projects will be subject to compensatory mitigation requirements in the future and the mechanisms for calculating the appropriate amount thereof. Kuukpik strongly believes these issues should be substantially clarified before any RMS document is finalized.

It is all but impossible to determine from the existing Conceptual RMS the real scope of the projects that will require compensatory mitigation. It also appears that BLM is poised to impose mitigation requirements where it probably has no right to do so and/or could do harm to Nuiqsut by doing so. The document must therefore be amended in consultation with affected landowners to better define what projects will and will not be subject to compensatory mitigation requirements.

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<sup>26</sup> The Trilateral Group's shortlist of proposed Mitigation Actions includes the following:

Colville River Access Road  
Cultural/Heritage Center  
Daycare/Nuiqsut Early Learning Center  
Teen Center  
Greenhouse  
Road to shareholder lots

<sup>27</sup> Recall that the issue that is supposed to be in front of BLM is what to do with a specific amount of compensatory mitigation funds that are being provided in order to facilitate direct benefits to Nuiqsut to offset impacts caused by GMT1. Somehow, that spawned this months-long process to plan a "roadmap" for any future developments where similar payments might be required. We'll address this topic further below, but suffice to say that Kuukpik disagrees with the entire concept of applying GMT1-generated mitigation funds to planning what to do with money that might be received years in the future as a result of foreseeable developments, some of which are almost entirely speculative at this point.

1. *What projects will require compensatory mitigation?*

This is the first question everyone who reads the RMS will ask. Yet the answer is far from clear. According to the Conceptual RMS, “The RMS will apply to development projects within the region shown on Map 1 that are enabled or assisted by the existence of GMT1.”<sup>28</sup> The obvious question becomes the definition of “development projects” that are “enabled or assisted” by the existence of GMT1. These terms must be well-defined in order to provide developers, BLM, and everyone else with a clear standard to determine whether compensatory mitigation is required. Without such clarity, every decision made under the RMS will risk being perceived as arbitrary and capricious, and may in fact be deemed so if these terms are not defined in a way that provides a definite standard for future application.

There is no easy answer at this time. Is a “development project” only one that involves oil production, or does it include other types of projects? Is it limited to permanent (or relatively permanent) construction projects, or would exploration-only activities require compensatory mitigation as well? Does “enabled or assisted” mean the “development” must be physically connected to GMT1 by a road or pipeline? Or does it include developments that aren’t physically connected, but which share some common resources with GMT1? Would a construction project in this area be considered “enabled or assisted” by GMT1 if flights stopped at both locations just to drop off or pick up people or supplies? If the Nuiqsut Spur Road were permitted today, would the Spur Road, which is itself a form of mitigation for GMT1 and other oil development,<sup>29</sup> be required to provide compensatory mitigation under the RMS?<sup>30</sup>

The Conceptual RMS doesn’t ask these hard questions. Rather, it simply seems to assume that any oil development that ties into or uses GMT1’s infrastructure will be “enabled or assisted” by it.<sup>31</sup> Kuukpik agrees the RMS would apply to such oil developments on BLM land

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<sup>28</sup> CRMS, p. 5.

<sup>29</sup> The Spur Road’s primary purposes are increasing subsistence access to the Fish Creek area, creating greater Nuiqsut employment opportunities at Alpine and its satellites, and emergency access to the Alpine airfield when the Nuiqsut airport is weathered in.

<sup>30</sup> A separate but related question, which is discussed in detail below, is the applicability of such requirements to projects on private land—which the CRMS seems to propose.

<sup>31</sup> See CRMS p. 7 (“This RMS must address ‘land uses that are enabled or assisted by the presence of GMT1,’ primarily oil development, that may impact resources, values, and functions in the region.”—underlining added). The remainder of the Reasonably Foreseeable Development Scenario discussion does not mention *any* developments other than oil production facilities. But the use of the term “primarily oil development” leaves open the door for any type of other project

under the currently proposed standards, but cannot tell whether other developments would be included as well. The only “reasonably foreseeable developments” identified in the Conceptual RMS are “GMT2 and the two additional production pads” (GMT2 is in the permitting stage and the other two are hypothetical, or at least, not publicly announced). The failure to mention any other “reasonably foreseeable developments” suggests that the RMS would only apply to GMT1, GMT2, the hypothetical additional production pads, and their related infrastructure.<sup>32</sup>

But that is unlikely to be all the “development projects” that are “enabled or assisted by GMT1” over the thirty or more years the RMS is likely to be used in connection with GMT1-facilitated developments (assuming at least 4 developments occur under its auspices). As Greater Moose’s Tooth and Bear Tooth Unit satellite drilling pads are constructed and their oil pumped back to Alpine for processing, it is likely that roads will be built to connect some or all of them to the Alpine road system, and therefore, to Nuiqsut (*via* the Spur Road). The Nuiqsut community may therefore come to rely on these roads, and may even find ways to use them for beneficial purposes. For example, Kuukpik constructed a pad at the intersection of the Spur Road and the CD5 to use for its own purposes. Would BLM consider a similar pad somewhere along the GMT/Alpine satellite roads a “development project,” subject to RMS compensatory mitigation? What about ramps and other improvements that are integrated into future projects to aid the community? And, again, what about the Spur Road, if permits were being sought for it now?

In short, we can’t tell if BLM would require compensatory mitigation to be provided for developments (or discreet parts of developments) that either are not oil-related at all, or which are intended to benefit the community. We don’t think BLM could legally apply the RMS to oil developers only, so we are concerned that any entity conducting any activity that is “enabled or assisted” by GMT1, however tangentially, is potentially subject to compensatory mitigation requirements. Depending on how broadly those terms are defined, it’s possible that any type of construction project could be considered “enable or assisted” by GMT1 just because it shares air support services or is connected by a road to GMT1. The RMS should not be so broad, and should include mechanisms for taking subsistence or other community benefits into account.

2. *The inclusion of private lands in RMS compensatory mitigation potentially interferes with Kuukpik’s rights as a private landowner.*

While not stated as explicitly as one would expect for so fundamental a proposition, BLM

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to be subject to the RMS.

<sup>32</sup> BLM’s description of how the RMS will be employed in the review process for an Application for Permit to Drill seems to support the conclusion that only oil developments are subject to the RMS as well. But BLM leaves this door open by suggesting that the process could also be triggered by unidentified “other similar development authorization request.” CRMS, p. 30.

expects private lands to fall within the RMS compensatory mitigation analysis. In its discussion of how the amount of required compensatory mitigation will be calculated, the Conceptual RMS includes the statement that: “It should be noted that the base fee will be applied to the entire impacted area regardless of land ownership.”<sup>33</sup> (Underlining added) It appears as though BLM intends to use its permitting and RMS process to exact compensation for perceived impacts to privately-owned land. Specifically, the Conceptual RMS proposes to consider impacts to private lands when analyzing whether and in what amount compensatory mitigation should be required for any “development project” that is “enabled or assisted by GMT1.”<sup>34</sup>

As one of the largest private landowners in the NPR-A, Kuukpik has some serious concerns about this part of the proposal. Not only would this requirement give BLM a significant interest in activities occurring on ANCSA land that does not belong to BLM, it would potentially impact one of the most important tools Kuukpik has to defend both its own interests as a landowner and Nuiqsut’s interests as a community. Several examples may help explain why. When ARCO began planning to construct Alpine and its satellites, it approached Kuukpik to negotiate terms for ARCO’s use of Kuukpik surface lands to construct significant portions of the necessary infrastructure. In addition to some rental payments, advance reviews of draft permit and environmental standards, and remediation requirements specific to Kuukpik, Kuukpik ultimately also obtained two major benefits for the entire community of Nuiqsut as a result of these negotiations: (1) free natural gas from Alpine to use as a heating source and for generating electricity in Nuiqsut, and (2) partial funding (\$5 million) for what would ultimately become the Nuiqsut Spur Road.<sup>35</sup> Kuukpik obtained these benefits for the community at considerable cost to Kuukpik in terms of other lost consideration because oil companies, as any business would,

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<sup>33</sup> CRMS, p.15. The map on page 9 of the CRMS (showing the “Area For Reasonably Foreseeable Future Development”) also shows tens of thousands of acres of Kuukpik-owned land as within the area that BLM seeks to apply the RMS in the future. The map seems to exclude State lands beyond the boundary of NPR-A and all other lands outside of NPR-A. Note that there are some partially State-owned subsurface lands inside of NPR-A that would be included within the mapped RMS area.

<sup>34</sup> As Kuukpik noted above, this rule may not apply just to oil development projects. So unless the Conceptual RMS is clarified and amended, the final RMS may require compensatory mitigation to be paid by anyone who carries out any project vaguely associated with GMT1 whether the impacts occur on BLM or private land, including Kuukpik’s.

<sup>35</sup> As noted above, the Spur Road is a new road connection between Nuiqsut and the Alpine road system that will provide many benefits to the residents of Nuiqsut for decades to come. The primary purposes are increasing subsistence access to the Fish Creek area, creating greater Nuiqsut employment opportunities at Alpine and its satellites, and emergency access to the Alpine airfield when the Nuiqsut airport is weathered in.

weigh the total cost of all their expenses against the project's profitability—and more permitting-related costs potentially means less available consideration to a landowner and the community.<sup>36</sup>

In years since the Alpine negotiations, Kuukpik has negotiated for and secured other benefits for the community. In 2009, Kuukpik secured an additional \$3 million of funding from ConocoPhillips to promote improved subsistence access through construction of the Nuiqsut Spur Road. From 2004 and after, Kuukpik secured mitigation payments for the community of Nuiqsut that stand at \$200,000 per year and are expected to increase by another \$100,000 if or when GMT1 and GMT2 are built.<sup>37</sup> How those mitigation funds are spent in Nuiqsut is determined by a three-person committee, with the City of Nuiqsut, NVN, and Kuukpik each appointing one member. The City administers and disburses the funds at the direction of the committee. It is self-apparent that the community would prefer to have sole control of how such monies are spent through this local committee, rather than to have a federal agency applying a federal Screening and Ranking of projects that may or may not actually reflect local priorities.

The Conceptual RMS would potentially make it harder for Kuukpik to secure such payments or benefits for Nuiqsut in the future if oil companies that are currently actively exploring the Colville River Delta area ---Brooks Range, Caelus, Armstrong, ASRC, CPAI, or others—announce proposed developments.

The Conceptual RMS proposes to turn this ANCSA-generated role for Kuukpik, or at least part of it, over to BLM. Rather than oil companies compensating landowners and the community directly for impacts, BLM proposes instead to collect that money itself and decide what to do with it using a bureaucratic "Strategy" that no one yet understands yet. And make no mistake: oil companies will not make both payments without relating or offsetting one against the other. Oil development negotiations are generally a zero-sum game. A cost paid to one entity reduces an oil company's willingness and ability to pay another, especially in the current low oil price environment. If CPAI or another oil company is forced to pay a per-acre

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<sup>36</sup> Kuukpik understood and expected at the time that more benefits to Nuiqsut meant fewer benefits available to Kuukpik—a zero sum game in other words. The same concern applies where BLM might extract benefits for impacts on private, Kuukpik land and then expend them on some "mitigation" that is not necessarily a priority to Nuiqsut—but which would have the result of decreasing the total benefits which the project and the developer could afford to concede. BLM, in other words, might well deprive Kuukpik or Nuiqsut of some compensation for impacts to Kuukpik's own lands.

<sup>37</sup> The initial \$50,000 was secured for a period of 10 years for CD-4. The Oooguruk development pays another \$50,000 for the life of the field, plus the dismantling period, adjusted for inflation. CD-5 and its accompanying Nigliq Bridge each pay \$50,000 per year (\$100,000 total) for the life of each, plus the dismantling period, also adjusted for inflation.

compensatory mitigation fee to BLM, it is going to strongly resist paying money or some other in-kind consideration to Kuukpik for the benefit of the community for the same impacts.<sup>38</sup> And frankly, Kuukpik doubts that BLM could ever have secured a benefit such as free natural gas for Nuiqsut, so some benefits or types of benefits would simply be lost if BLM effectively took negotiating leverage away from Kuukpik.

In short, the proposal to exact compensatory mitigation fees for impacts to private lands has the potential to undermine a landowner's ability to negotiate with developers.<sup>39</sup> It also has the potential to appropriate as community impact funds some amounts for damages and impacts that may actually belong more to the private landowner as a landowner.<sup>40</sup>

Potentially even worse, the existing CRMS would potentially limit a private landowner's ability to develop its own land. The Conceptual RMS suggests that any impacts to private land are potentially subject to compensatory mitigation requirements and the base fee will apply "regardless of land ownership."<sup>41</sup> Presumably this rule is at least intended to be restricted by the limits of BLM's permitting authority, so a purely private development that does not involve BLM land should not be subject to compensatory mitigation because (or perhaps, *so long as*) BLM has no authority over such a project. But even this logical restriction is not explicitly stated in the Conceptual RMS. This needs to be corrected to make clear that a private development, such as the Nuiqsut Spur Road, on non-BLM land is **NOT** subject to compensatory mitigation

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<sup>38</sup> Kuukpik would be hard-pressed to successfully argue that CPAI should agree to other compensation or benefits to be made expressly for the community because CPAI would simply point to BLM's decision under the RMS stating that impacts to Kuukpik's land are valued at a particular dollar amount which already has to be paid to BLM as compensatory mitigation.

<sup>39</sup> Kuukpik acknowledges that not all landowners have all of the rights that ANCSA created when it comes time to negotiate with an oil company. This is obviously the case when considering the CRMS as a model for mitigation outside of Alaska, since ANCSA doesn't apply outside of Alaska. Whether within or outside Alaska, of course, some landowners either have no such rights or would not effectively exercise the rights that they do have, so some private landowners might benefit from BLM's assumption of this role because they would otherwise be unable to extract such compensation themselves.

<sup>40</sup> This aspect of the CRMS also has the potential to reduce the value of Native lands. If land ownership is a bundle of rights and BLM appropriates one of those rights that normally belongs to the landowner, the value of what the landowner has is reduced. BLM needs to analyze the potential impacts to land values of its proposal and disclose that analysis to all potentially affected landowners.

<sup>41</sup> CRMS, p.15.

requirements even if it is “enabled or assisted” by GMT1.<sup>42</sup>

But even if the project occurs on BLM land (or involves enough BLM land to require the agency to grant some kind of authorization to carry out the project), we question whether BLM has authority to obtain compensation for impacts that occur on other people’s property or to their rights as property owners, as the Conceptual RMS suggests. Neither the GMT1 ROD nor the Conceptual RMS cite any legal authority allowing the federal government to collect fees for impacts to purely private lands. Kuukpik has not had enough time to analyze this legal issue in depth, but we recommend BLM consider very carefully whether it has such authority and, even if it does, whether it would be in the best interest of landowners and the community to exercise it.<sup>43</sup> Here again, Kuukpik believes local control—including the right of a landowner to determine an acceptable level of impacts to its own land, and to negotiate compensation if appropriate—would be more effective than handing that decision making authority over to a committee or agency, however well-intentioned it may be.

**E. BLM Should Use the \$1 Million in Planning Money to Fund Projects that Offset Impacts.**

BLM determined in the GMT1 ROD that the facility would likely cause “major impacts to subsistence uses that cannot be fully mitigated by avoidance and minimization.”<sup>44</sup> BLM then negotiated/imposed an \$8 million dollar fee that was supposed to be used “to off-set [those] identified impacts”. But instead of setting that money aside to be used to directly fund mitigation actions that offset impacts to the community, BLM first appropriated \$1 million for itself. All this money was supposed to benefit the community directly, but instead, a significant portion of it is going to BLM to, apparently, plan how to spend the rest of the money (*i.e.*, “to develop and implement a landscape-level RMS for the Northeastern NPR-A region...”<sup>45</sup>) and to establish a model for future RMS programs. In effect, BLM is charging the community 1/8th of the compensatory mitigation fund for impacts on Nuiqsut 1) to determine how to spend the fund and to administer its own permit condition, and 2) to develop a BLM policy objective and procedure.

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<sup>42</sup> If CD-5 geography had caused the Nuiqsut Spur Road to be built after GMT1 permitting instead of before it, a private road the three primary purposes of which are to offset impacts of oil development for the community of Nuiqsut would itself be subject to additional RMS compensation costs in a fashion that could well prevent such a road from ever being built.

<sup>43</sup> BLM should provide to the public and stakeholders its written analysis of the basis of its authority for the RMS program.

<sup>44</sup> GMT1 ROD 38.

<sup>45</sup> GMT1 ROD, p. 38.

Kuukpik objects to BLM taking \$1 million to fund its own planning and administration efforts. The federal government should not be funding its area wide (and arguably nation-wide) policy initiatives with the mitigation fees that were designated, paid, and intended to provide compensatory mitigation for the direct impacts of a particular project. Rather, BLM should use its own resources to carry out this broad governmental function.

Likewise, funds intended to provide compensatory mitigation should not be used for what appears to be overseeing and “administering” the GMT1 permit stipulations.<sup>46</sup> Carrying out these functions is BLM’s job and should be funded through the same sources as every other normal government service. BLM enjoys revenue from bonus bids, rents, and royalties. Future development of GMT1 and GMT2 (and possibly the two projected additional drilling pads) is likely to be very lucrative for the federal government. But the funds provided for compensatory mitigation should be used for precisely that: to mitigate and offset unavoidable impacts to affected communities, not pay for BLM’s programs and overhead.<sup>47</sup>

BLM vaguely acknowledges this problem in the Conceptual RMS (at footnote 3 of the CRMS), but fails to explain what justification there could be for using compensatory mitigation money “to cover administration, durability, monitoring, and reporting for the duration of the impacts.”<sup>48</sup> These activities are simply the specific acts required to enforce the GMT1 permit requirement to provide compensatory mitigation. Enforcement of permit stipulations is the definition of an “action that should be done by BLM.”<sup>49</sup> It makes no difference from a regulatory enforcement perspective that the permit stipulation to be enforced involves compensatory mitigation. No one who is intended to be protected by permit stipulations in any other context is required to essentially foot the bill for BLM to “plan” and “administer” that stipulation. (Nor for that matter is the permittee, to our knowledge.) It is therefore not appropriate for BLM to perform this function using money that is intended to provide mitigation projects to the community. All of the compensatory mitigation fees should be used to provide direct benefits to the community.

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<sup>46</sup> BLM has already openly discussed future projects and the fees that will attach to those projects, including Greater Moose's Tooth 2 (GMT2). Additionally, there is open discussion by BLM of possible future amendments to the RMS. BLM should not divert compensatory mitigation fees to perform its future area-wide planning and policy initiatives either.

<sup>47</sup> This also would avoid the appearance of a conflict of interest that exists when BLM negotiates a permit fee and takes part of the fee for itself.

<sup>48</sup> CRMS, p. 19.

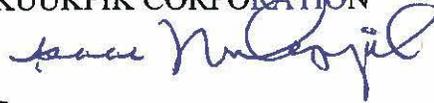
<sup>49</sup> CRMS, p. 3, note 3.

## Conclusions

Kuukpik plans to supplement these comments as its discussions internally, with the City of Nuiqsut, with the Native Village of Nuiqsut, and with elders and residents progress. Thank you for considering these comments. Kuukpik looks forward to discussing them with BLM further.

Sincerely,

KUUKPIK CORPORATION



By:

Isaac Nukapigak  
President

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