

**NORTHWEST ARCTIC BOROUGH ASSEMBLY
RESOLUTION 23-22**

**A RESOLUTION OF THE NORTHWEST ARCTIC
BOROUGH ASSEMBLY AUTHORIZING EXECUTION OF A
COOPERATING AGENCY AGREEMENT WITH THE
BUREAU OF LAND MANAGEMENT FOR THE AMBLER
MINING DISTRICT SUPPLEMENTAL ENVIRONMENTAL
IMPACT STATEMENT, AND FOR RELATED PURPOSES.**

WHEREAS: the Bureau of Land Management (BLM) serves as the lead federal agency for development of the Ambler Mining District Industrial Access Project (Project) Environmental Impact Statement (EIS); and

WHEREAS: the Northwest Arctic Borough is a home rule regional government under the laws of Alaska authorized to enforce local permitting requirements and has special knowledge of the social, economic, natural, and other resources within the Borough; and

WHEREAS: the National Environmental Policy Act (“NEPA”) encourages federal agencies to involve local governments like the Borough to participate as cooperating agencies in the development of any EIS affecting the local government; and

WHEREAS: BLM acknowledges that the Borough has jurisdiction by law and/or special expertise applicable to the EIS effort, as defined by 40 CFR 1508.15 and 1508.26; and

WHEREAS: in 2017, the Northwest Arctic Borough Assembly adopted Resolution 17-31 authorizing a Memorandum of Understanding (MOU) with BLM for the Borough to participate as a cooperating agency for the Ambler Industrial Road Project EIS; and

WHEREAS: in September 2022, BLM initiated a 45-day public scoping process for a Supplemental Environmental Impact Statement (SEIS) for the Project to provide time for additional tribal consultation and consideration of subsistence concerns; and

WHEREAS: BLM requests that the Borough continue its participation as a cooperating agency through the completion of the SEIS, as outlined through an updated MOU; and

WHEREAS: the MOU describes the roles, responsibilities, and procedures for the cooperative working relationship for preparation of the SEIS; and

WHEREAS: participation as a cooperating agency will provide the Borough with a seat at the table and an opportunity to work directly with BLM to ensure a sound SEIS process that accounts for the needs and concerns of Borough residents.

NOW THEREFORE BE IT RESOLVED: the Northwest Arctic Borough Assembly approves execution of the attached Memorandum of Understanding with BLM to participate as a cooperating agency for the Ambler Industrial Road Project SEIS.

PASSED AND ADOPTED THIS 23rd DAY OF MAY 2023.



Nathan Hadley, Jr., Assembly President

PASSED AND APPROVED THIS 23rd DAY OF MAY 2023.



Dickie Moto, Sr., Mayor

SIGNED AND ATTESTED TO THIS 23rd DAY OF MAY 2023.



Stella Atoruk, Borough Clerk

ATTEST:



MEMORANDUM OF UNDERSTANDING
between
The U.S. Department of the Interior (DOI)
Bureau of Land Management
Alaska
and
The Northwest Arctic Borough (NAB)
concerning
Preparation of the
Supplemental Environmental Impact Statement
for the Proposed Ambler Mining District Industrial Access Project

I. INTRODUCTION

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Land Management's Alaska Office (BLM) and Northwest Arctic Borough (NAB) for the purpose of preparing the Ambler Mining District Industrial Access Project Supplemental Environmental Impact Statement (Ambler SEIS).

The BLM serves as the lead federal agency for development of the Ambler SEIS. The BLM acknowledges that the NAB has jurisdiction by law and/or special expertise applicable to the SEIS effort, as defined by 40 CFR 1508.1(n) and 1508.1(ee). This MOU describes roles, responsibilities and procedures agreed to by the NAB and the BLM.

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.8 and 1508.1(e)), and Department of the Interior NEPA regulations (43 CFR Part 46).

II. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to outline the terms of cooperation between, and the roles and responsibilities of, the BLM and the NAB (hereinafter the "Parties") with respect to the preparation of the Ambler SEIS.

III. OBJECTIVES

The primary objective of the BLM and the NAB through this MOU is to ensure an accurate, thorough and robust analysis of information based on the best available science, which is best achieved in a cooperative and collaborative environment. It is to the benefit of the Parties and the public that the BLM and the NAB cooperate and coordinate efforts under this MOU in order to maximize use of available resources and special expertise and minimize duplication in those areas of overlapping responsibilities.

IV. AUTHORITY

A. BLM enters into this MOU under the authority of and in compliance with the following acts:

1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)

B. Regulations implementing the above authorities:

1. Council on Environmental Quality regulations (40 CFR 1500 et seq.)
2. Department of the Interior NEPA regulations (43 CFR Part 46)

C. NAB authorities relevant to this MOU include, but are not limited to:

1. Its authority as a municipal government representing the native villages of Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, and Selawik. The NAB has tribal knowledge about subsistence use, important ecological areas and resource development opportunity areas in the region.

V. RESPONSIBILITIES

A. Joint responsibilities of the Parties:

1. The Parties agree to jointly review all substantive documents pertaining to the primary phases of SEIS preparation, including:
 - a) Preliminary Draft SEIS; and
 - b) Preliminary Final SEIS.
2. The Parties agree to participate in the SEIS process in good faith and make all reasonable efforts to resolve disagreements.
3. Each Party agrees to fund its own expenses associated with the SEIS process.
4. Within five working days of the date of execution of this MOU, both Parties will notify the other in writing of one individual who shall serve as the Point of Contact (POC) for performing the duties set forth in the MOU.
5. Each Party's POC shall serve as the day-to-day liaison and/or contact person for the SEIS. POCs must be available for frequent contacts, including phone calls, emails, and meetings, and shall coordinate/facilitate within their respective agencies, as the SEIS is developed and completed.

B. BLM Responsibilities

1. The BLM is the lead federal agency for the SEIS as set forth in 40 CFR 1501.7 and 1508.1(o). As lead agency, the BLM retains final responsibility for the content of all NEPA documents, which include the Draft SEIS, the Final SEIS, and the BLM Record of Decision (ROD). The BLM's responsibilities include determining the purpose of and need for the SEIS, identifying and documenting issues associated with the proposed

action provided by the proponent, developing alternatives for analysis, identifying effects of the alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.

2. The BLM shall establish an interdisciplinary team (IDT) consisting of various individuals employed by the DOI with subject matter expertise in matters related to the preparation of the Ambler SEIS. The IDT shall be responsible for preparing, reviewing and commenting on various documents in connection with the Ambler SEIS. If Cooperating Agencies have staff with technical expertise to bring to the IDT and the topic addressed by the IDT is relevant to any of the Cooperating Agencies' various authorities, the BLM may invite the Cooperating Agencies to participate in the IDT.
3. The BLM will consider the comments, recommendations, data, and/or analyses provided by the NAB in the SEIS process, giving particular consideration to those topics on which the NAB is acknowledged to possess jurisdiction by law or special expertise.
4. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the NAB with copies of documents underlying the SEIS relevant to the NAB's responsibilities, including a preliminary range of alternatives to the proposed action, technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final SEISs.
5. The BLM will describe the roles and responsibilities of the NAB as a cooperating agency in the Draft SEIS and Final SEIS.
6. The BLM will invite the NAB Point of Contact (POC)(s) to cooperating agency meetings.
7. The BLM will consult with the NAB on developing the alternatives to be analyzed in the SEIS, and timelines for cooperating agency review.
8. The BLM will engage the NAB when a decision is required regarding substantive work or material to be included in the SEIS. In all instances involving questions concerning the content or relevance of any material (including all data, analyses and conclusions), BLM will make the final determination on the inclusion or deletion of any such material.
9. The BLM and the NAB shall collaborate in their efforts, with the intent that the Final SEIS meets the NAB's requirements to comply with its relevant authorities referenced in Section III. C, above.
10. Where the BLM and the NAB disagree on substantive elements of the SEIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the NAB's views in the Draft SEIS and the Final SEIS.

C. NAB Responsibilities

1. The NAB is a cooperating agency for the SEIS as set forth in 40 CFR 1501.8 and 1508.1(e).
2. The NAB will attend and participate in the cooperating agency meetings, as desired by the NAB and when invited by the BLM, either physically or via teleconference.
3. The NAB shall provide the BLM with copies of all NAB local codes, rules or ordinances relevant to the Ambler SEIS within fifteen working days of the BLM's request. The NAB will advise the BLM on NAB's statutory and regulatory responsibilities under State law and Northwest Arctic Borough regulations relevant to the scope of the Ambler SEIS and shall assist the BLM in preparing text regarding these requirements for inclusion in the Ambler SEIS.
4. The NAB will review preliminary draft and preliminary final SEIS documents in an expeditious manner, recognizing that the mission requirements, funding, personnel, and other priorities of the Cooperating Agencies may affect their ability to fully implement all provisions identified in this MOU. Such reviews will be conducted in accordance with applicable laws and regulations. It is the BLM's expectation that the NAB will focus their review and support on those issues and resources on which they have special expertise or jurisdiction by law, on those issues which may affect resources for which they are responsible, or on the issues as they pertain to the individual agency's decision making process. The BLM will solicit input from the NAB, and the NAB will decide whether to review a document or to participate in a meeting.
5. The NAB acknowledges that the documents and deliberations associated with this project are confidential, and pursuant to 43 CFR 46.225(d) shall not be distributed to any individuals or entities who are not parties to this MOU, except as required by law.
6. Provide a single consolidated set of written comments to BLM on the preliminary Draft SEIS and the draft Final SEIS within the time period established by BLM and NAB. Comments will be provided directly to the BLM within established timeframes, which may be adjusted based on constraints such as competing agency priorities, limited budget and staffing levels, or the need to review more than one document simultaneously.
7. Invite the BLM to participate in meetings to be held by the NAB concerning the Ambler SEIS, where appropriate.

VI. ADMINISTRATION

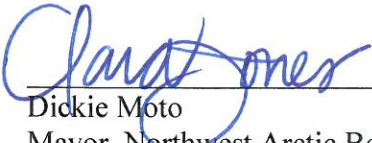
- A. This MOU does not alter the responsibilities of the Parties under Federal or State law. Nothing in this MOU will be construed as affecting the authorities of the Parties or as binding beyond their respective authorities.
- B. Nothing in this MOU, in and of itself, obligates the Parties to expend appropriations or incur other financial obligations. Any transaction involving the transfer of funds between the Parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

- C. The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the Ambler SEIS. Questions regarding potential conflicts of interest should be referred to the Office of the Regional Solicitor for resolution.
- D. Any information furnished to the BLM under this agreement is subject to the Freedom of Information Act (5 U.S.C. 552).
- E. The Parties shall not distribute any documents or information shared pursuant to this MOU, except as required by law or by written consent of the other party. The Parties will coordinate with each other prior to the release of information associated with this NEPA effort pursuant to information-sharing laws and regulations. Each Party will follow its own information-sharing regulations as well as all applicable laws and regulations.
- F. Modifications within the scope of the MOU shall be made by mutual consent of the Parties, in writing, signed and dated by both Parties.
- G. This MOU is not intended to create any right, benefit, trust, responsibility, substantive, procedural, or enforceable law or equity, by any party against the United States, its agents, officers, assigns, or employees. This MOU does not direct or apply to any person outside of BLM and/or the NAB.
- H. This MOU is effective as of the date of the last signature below and will expire upon BLM's issuance of the Final SEIS, unless extended by written agreement or terminated by written notice. A Party may terminate its participation in this MOU at any time by providing written notice to the other Party at least thirty (30) days in advance of the desired termination date.

APPROVED:

Geoff Beyersdorf
Fairbanks District Manager
Bureau of Land Management, Alaska

Date



Dickie Moto
Mayor, Northwest Arctic Borough
Kotzebue, Alaska

23 MAY 23

Date