



**KAWERAK, INC. • P.O. Box 948 • Nome, AK 99762**

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SERVING THE  
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TELLER  
UNALAKLEET  
WALES  
WHITE MOUNTAIN

February 19, 2015

Elizabeth Appel  
Office of Regulatory Affairs and Collaborative Action  
US Department of Interior  
1849 C Street, NW  
Washington, DC 20240

Docket ID: BIA-2014-0005  
Submission: 1076-AF19

Re: Kawerak, Inc. Comments on the Tribal Transportation Program Regulations 25 C.F.R. Part 170 Proposed Rule

Dear Ms. Appel:

Kawerak, Inc. (Kawerak) hereby offers the following comments in response to the Bureau of Indian Affairs (BIA) Federal Register Notice of December 19, 2014 (Vol. 79, Number 244 Part V) regarding tribal consultation on the 25 CFR Part 170 Proposed Rule governing the Tribal Transportation Program. We begin with a brief overview of Kawerak and the conditions in which it operates its Tribal Transportation Program within the Bering Strait region of Alaska. We then provide an overall summary of our concerns regarding the proposed rule and the effect we believe the proposed rule, if adopted, would have in our region and for tribes throughout Alaska. Kawerak urges that the Final Rule be modified so that the new Part 170 regulations address the concerns that Kawerak sets forth below and that those regulations incorporate terms consistent with the proposed terms we offer in these comments.

Overview of Kawerak's Tribal Transportation Program and Conditions in the Bering Strait Region of Alaska:

Kawerak is a nonprofit corporation and tribal consortium authorized by Bering Strait Region tribes to administer certain programs of the BIA pursuant PL 93-638 and has compacted the FHWA Tribal Transportation Program (TTP) on behalf of 16 federally recognized tribes in this region. Kawerak has established its Transportation Program to fulfill the requirements under its compact with BIA and FHWA and to coordinate with all governmental entities within its consortium which have transportation roles and responsibilities.

Kawerak serves the Bering Strait region in western Alaska. Currently 17 communities occupy the Nome Census Area, of which Nome has the largest population at 3,700 and is the regional hub for medical and transportation facilities including a port and harbor, and other essential services for the region. The Bering Strait region is about the size of West Virginia with a population of over 9,900. Most of our villages lack basic infrastructure such as water and sewer, roads, ports and harbors. The situation can be compared to third world living conditions.

Unlike most areas in America, a road system does not exist throughout the Bering Strait Region. Within the region, two State roads connect Nome to the villages of Teller and Council, which are open in the summer months and closed during winter. Air transportation is the most common and reliable mode of transportation throughout the year which is expensive. Nome is a hub for ocean shipping—which handles community re-supply and destinational traffic. The conditions in this remote region of Alaska are unique—as are the needs with respect to development of transportation infrastructure.

#### Summary of Concerns:

Our opposition to specific provisions of the proposed rule regulations, and our suggested alternative approaches, as provided below, are based on the unique conditions we are faced with in developing our transportation infrastructure. It is critical that BIA/FHWA understand the disparate and devastating effect some of the proposed provisions may have on Kawerak's continued ability to develop transportation infrastructure for our tribes in this region. What works for the lower 48 tribes does not work for Alaskan tribes.

Kawerak is particularly concerned that tribal consultation – a critical tool for BIA/FHWA to gain understanding of our conditions – has been conducted without transparency and in a manner that was dismissive of concerns identified by Alaska tribes, including Kawerak. Although the Notice of Proposed Rulemaking states that the new terms in Section 170.443 were based upon the series of tribal consultation sessions held to address BIA/FHWA the treatment of proposed roads for Inventory purposes, the Agencies did not offer any summary of what issues were raised, what factors were taken into account or what considerations led the Agencies to reach the conclusions reflected in the new proposed roads requirements set forth in 170.443. The overly-burdensome requirements in the proposed section 170.443 will disparately and negatively impact tribal transportation infrastructure programs in Alaska. The discriminatory policy decision contained in the proposed rule varies significantly from the regulatory provision in place for more than ten years and the new proposed terms have no statutory justification. Rather, the provision appears to run directly counter to Congress' legislative intent. Nonetheless, the Agencies make no effort to explain their significant departure from existing law and regulation.

We are concerned that sections of the proposed rule identified below will:

1) Create undue hardships for tribes in Alaska in implementing Tribal Transportation Programs (25 CFR 170.443 and 170.446). As noted above, tribes in our region and throughout rural Alaska are operating in extremely poor conditions with limited resources. The transportation needs are immense. The new requirements contained in the proposed rule will have the effect of putting in place even greater obstacles to our ability to build roads. BIA/FHWA should be working in partnership with tribes in Alaska to find solutions to overcome existing obstacles to development of roads here, not creating additional obstacles through these proposed regulations.

2) Disparate impacts will further reduce funding to tribes in Alaska whose transportation infrastructure has the fewest existing roads and the greatest need. The federal MAP-21 law, as enacted, shifted the national allocation of tribal roads funding distribution away from "needs-based formulas" and toward a "population based formula" and that shift hurts sparsely populated, remotely located tribal communities like those which predominate in Alaska. As a result, Alaska tribal shares of the federal roads funding dropped. Kawerak has always sought amendments to MAP-21 that are designed to return the tribal transportation road program to an appropriately structured "needs-based" funding distribution formula. The Alaska region has some of the greatest needs in the United States with respect to building its infrastructure. Already, funding for tribal transportation in Alaska is expected to be reduced through the implementation of the funding allocation provisions of MAP-21. We expect funding will be further reduced by the terms of these proposed regulations. This will be devastating for our region, and is exactly the opposite of what the agencies should be doing for this area of the country with the least existing infrastructure. Kawerak's consortium since 2012 has lost \$422,992 under the funding formula. In 2016 we expect further loss of funding.

3) Take decisions regarding needs for development of roads away from tribes in Alaska and put them into the hands of agency staff who lack the experience or local knowledge to make such decisions (25 CFR 170.702-704). Provisions in the draft regulations create additional layers of oversight and additional hurdles for tribes in several areas as noted below, and at the same time do away with the ability of tribes to appeal agency staff decisions. The overall effect of the proposed rule is to substantially limit a tribe's ability to make its own decisions locally regarding what is important to the tribe in the development of its tribal infrastructure. Tribes are best suited to make such decisions, and the proposed regulation undermines the principles of self-governance through which the Tribal Transportation Program exists.

We are concerned with the proposed rule's terms addressing the way ISDEAA relates to FHWA program agreements. The proposed rule would expand federal authority to monitor tribal programs beyond that permitted under ISDEAA and would conflict with the authority of tribes to govern their program in accordance with ISDEAA. The rule for FHWA fails to incorporate the appeal rights and investigation and sanction limitations provided under ISDEAA.

General Comments regarding Process:

BIA/FHWA is proposing changes to 25 CFR 170 that are not statutorily justified nor were the regulations changed to reflect all aspects of the MAP-21 reauthorization. BIA/FHWA did not address many of the tribal comments that were provided during the review of the discussion draft of the proposed rule and the current notice of proposed rulemaking fails to make any effort to explain whether or how in developing the proposed the Agencies considered and evaluated tribal concerns and comments submitted on the discussion draft.

The appropriate mechanism to consider changes to the Tribal Transportation Program funding formula is through negotiated rulemaking. Although the President's tribal consultation policy (Executive Order 13175) suggests negotiated rulemaking where possible. The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) required a tribal/federal negotiated rulemaking committee to develop the current Part 170 regulations. Yet, the agencies declined, without explanation, not to utilize negotiated rulemaking for this proposed update of the existing regulations.

The proposed rule will require the TIP to be financially constrained. This was not addressed in the discussion draft of the proposed regulations. Under the existing regulations the TIP was expressly exempt from the financial constraint requirement. There is no statutory or policy justification for imposing constraints that will bind tribes and their transportation programs to including only facilities that a tribe can produce financial information to demonstrate that the projects can be implemented using committed, available, or reasonably available funds. This will artificially restrict and mischaracterize the actual needs for transportation infrastructure in Alaska and may hamper our ability to develop large projects that exceed the tribes TTP share and will require new funding to be located. This could adversely affect tribes if there are future large scale investments in infrastructure. For example, tribes would not have been able to have so effectively utilized American Reinvestment and Recovery Act (ARRA) funding if the regulations had required a fiscally-constrained TIP. Prior to ARRA, however, tribes had project plans on their TIPs and were able to promptly identify "shovel ready" projects that were eligible for ARRA funding.

#### Comments regarding Specific Provisions of the Draft Regulations:

We have comments and recommendations on the following sections:

Section 170.5 under the definition of National Tribal Transportation Facility Inventory (NTTFI) and Section 170.226 regarding what facilities are included in the NTTFI, include facilities "owned" by the BIA or a tribe. The last paragraph separately lists "primary access routes proposed by tribal governments... ." This creates unnecessary confusion because it could be interpreted as meaning that proposed roads identified in the last paragraph are not considered to be "owned" by the tribe because they are listed separately. Clarification is required to acknowledge that proposed roads are "owned" by tribes. To assert that a proposed road is not "owned" because it is not constructed is simply inaccurate. If this interpretation were to be applied, tribes will never be able to build new roads because "proposed routes" will not be considered "owned." The

definition of "owned" means having the authority to finance, build, operate or maintain a facility regardless of what stage of development the facility is in. "Owned" needs to include proposed roads eligible for funding. This could be clearly addressed by modifying paragraph (7) of the definition of NTTFI in Section 170.5 by adding a statement at the end that "Routes included within this paragraph are also considered to be routes owned by Indian tribal governments."

In Section 170.5 under NTTFI (5) clarify the definition of "exterior boundaries" to correspond to the Alaska Native Village service areas consistent with the service area boundaries established by the Indian Health Service and Regional Corporation boundaries under the Alaska Native Claims Settlement Act (ANCSA). This will clarify any ambiguous issues.

Under that same section of NTTFI (1) We are very concerned that BIA/FHWA is limiting the BIA System Inventory to the pre 2004 mileage. There is no reason for the regulation term to be so limited. We recommend the pre-2004 limitation be removed.

In Section 170.5 "Access Roads" are limited to 15 miles from the tribal boundary. This is an arbitrary and capricious agency interpretation of the statutory terms. Congress provided clear instructions regarding the length of primary access roads based on real world conditions. Under MAP-21 (and SAFETEA-LU), "a proposed primary access route is the shortest practicable route connecting 2 points of the proposed route." 23 U.S.C. § 202(b)(1)(C). Nowhere does Congress suggest boundary or mileage limitations. Those terms are inconsistent with the terms in the statute itself, which point out that such access roads include "roads **between** villages". 23 U.S.C. § 202(b)(1)(B)(iv). Indeed, when Rep. Young introduced the statutory language to include primary access roads, his intent and that of the Congress was to take into account the vital tribal transportation needs for access points to link Alaska villages and tribal communities to transportation facilities beyond tribal boundaries. Furthermore, we recommend that this limitation be deleted to comply with Alaska tribes' Constitutional definitions of Tribal Territories. The proposed terms are incompatible with the government to government relationship and undermine the geographic territory provisions of existing Tribal Constitutions that were adopted pursuant to federal law under the Indian Reorganization Act:

The Native Village of Teller's Tribal Constitution states: "*Article II-Territory and Jurisdiction. Section 1. Territory. The geographic territory of the Native Village of Teller shall consist of the depending Native Community of Teller, Alaska, all land acquired by the Teller Native Corporation under the Alaska Native Claims Settlement Act of 1971, all Native Allotments held by members of the Village. All such territory as described above shall be referred to as the "Indian Country" of the Native Village of Teller.*

The Native Village of Mary's Igloo Tribal Constitution states: "*Article II-Territory and Jurisdiction. Section 1. Territory. The geographic territory of the Native Village of Mary's Igloo shall consist of all land acquired under the Alaska Native Claims Settlement Act of 1971, all Native allotments held by members of the Village, and such*

*other territory as may be acquired by the Village. All such territory as described above shall be referred to as the "Indian country" of the Native Village of Mary's Igloo.*

The Tribes of Brevig Mission and Chinik Eskimo Community's Tribal Constitutions state:

*"Article II-Territory. The territory of the tribe shall consist of all Eskimo lands and waters within our Traditional Tribe boundaries and lands and waters hereafter acquired."*

Many Native Allotments are outside of village corporation lands, but are located within the ANCSA Regional Corporation land selections. Native allotment locations extend beyond 15 miles.

The Native Villages of Gambell, Savoonga and Elim own surface and subsurface of tribal lands. Gambell and Savoonga own St. Lawrence Island which comprises of 1.136 million acres. Elim owns over 350,000 square miles of tribal lands.

Section 170.5(7) The regulation should state that the examples given for primary access roads are for illustrative purposes and not intended to be an exclusive list. The current and proposed regulatory provisions are based upon statutory terms that provide examples of several types of primary access roads. In the past, these examples have been interpreted by the Agencies to be an exclusive list. If a road did not serve a purpose expressly identified in section 170.5(7), it has been denied "primary access" designation. As an example of how this has had and could continue to have a negative impact, in Alaska and other northern states, ice roads are constructed and are primary access roads that meet the statutory and regulatory definitions, even though they are not among the list of illustrative examples.

In Section 170.126 no roads can be built in areas designated as a roadless or wild area. For Alaska, this must be revised because federal law specifically authorizes the approval of projects on wildlife refuges where there is no prudent and feasible alternative and where planning minimizes alternative environmental impacts.

We understand that the Agencies' concerns may be based on a misreading of 23 U.S.C. § 138(a). That provision generally prohibits the Secretary from approving projects requiring the use of public land from a national wildlife refuge. Yet, that federal statute also contains an important exception that is applicable to the routes proposed by Alaska tribes that BIA may not have considered. The terms of 23 U.S.C. § 138(a) authorize the Secretary to approve of projects that use wilderness lands when:

- (1) "there is no prudent and feasible alternative to the use of such land, and
- (2) such program includes all possible planning to minimize harm to such [] wildlife and waterfowl refuge..."

23 U.S.C. § 138(a)(1)-(2). The proposed TTP inventory routes are a critical component of an extensive multi-agency effort to identify the most prudent and feasible relocation site for Alaskan villages. This process has involved the U.S. Army Corps of Engineers,

the Alaska Governor's Sub-Cabinet on Climate Change, the Alaska Department of Commerce, Community and Economic Development (DCCED) and the Immediate Action Workgroup (co-chaired by the Army Corps and DCCED, with participation of the Denali Commission and other state and federal agencies and the Village). A federal agency, the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), developed the relocation site recommendations. The U.S. Fish and Wildlife Service expressed a commitment to facilitate land-exchanges to enable village relocation to sites within lands of existing state and federal agencies. See, e.g., General Accountability Office (GAO) Report, "Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion" (June 2009).

Establishing primary access routes and appropriate community transportation systems has been an integral component of this inter-agency effort for the Alaskan villages for relocation. The routes Kawerak proposed to BIA have been selected in conjunction with the Alaska Department of Transportation in order to provide the most prudent and feasible routes, given there is no alternative but to use wilderness lands for Alaskan tribes to have access to natural resources to meet subsistence needs. Mitigation of environmental impact is central to this inter-agency relocation planning process. These unique circumstances of the Alaskan tribes' transportation routes trigger the narrow exceptions set forth by law in 23 U.S.C. § 138(a) and fully justify BIA's approval of Alaskan tribes TTP inventory submission for these routes.

The Alaska National Interest Lands Conservation Act (ANILCA) guarantees a right of access to landowners surrounded by National Conservation Areas. The Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. No. 96-487 (1980) [codified at 16 U.S.C. § 3101 *et seq.*]) established seven wilderness areas in Alaska, including the Bering Land Bridge National Preserve. The purpose of ANILCA was to preserve certain lands and waters in the State of Alaska that contain nationally significant natural scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational and wildlife values, for the benefit, use, education, and inspiration of present and future generations. ANILCA also provided for use of motorized vehicles and construction of cabins, fisheries and aquaculture facilities, and other structures in these wilderness areas, in recognition of the unique conditions in Alaska.

Significantly, Congress enacted terms protecting the access rights for those land-holders whose lands are located within or are effectively surrounded by any of the conservation areas established by ANILCA. See 16 U.S.C. § 3170(b)), which provides as follows:

***"Notwithstanding any other provisions of this Act or other law, in any case in which*** State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other ***valid occupancy is within or is effectively surrounded by one or more conservation system units***, national recreation areas, national conservation areas, or those public lands designated as wilderness study,

the State or private owner or ***occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land*** by such State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands."

(emphasis added).

Reasonable regulations, such as National Environmental Policy Act (NEPA) review, must be applied to appropriately balance access rights and other values of these lands with their environmental value under ANILCA. See, e.g., *Hale v. Norton*, 476 F.3d 694, 700 (9th Cir. 2007) (noting that even "if the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs."); See also National Park Service Special Considerations for NPS Units in Alaska (Section 16 of Director's Order and Reference Manual 53).

Among the values acknowledged by Congress through ANILCA is a high level of respect for Alaska Native subsistence practices. ANILCA's statement of purpose provides as follows:

"It is further the intent and purpose of this Act consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each conservation system unit is established, designated, or expanded by or pursuant to this Act, to *provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.*"

16 U.S.C. § 3101(c) (emphasis added). Moreover, with respect to Alaska Natives, Congress declared the opportunity for subsistence uses of Alaska Natives "essential to Native physical, economic, traditional, and cultural existence." 16 U.S.C. § 3111(1).

Alaskan communities, through the relocation site selection process, has been provided with lands within or surrounded by conservation areas. As a result, the Secretary has assumed a duty to provide "such rights as may be necessary to assure adequate and feasible access", subject to reasonable environmental regulation that takes into account Native subsistence requirements. BIA approval of the Alaskan tribes TTP inventory routes is wholly consistent with and necessary to the fulfillment of the access rights guaranteed to the Village by federal law.

ANILCA procedures allow for the development of transportation and utility Networks through Alaska Wilderness Areas and congress has enacted legislation authorizing specific access roads through Wilderness Areas. Even if Alaskan tribes were not an inholder under 16 U.S.C. § 3170(b) other ANILCA provisions in Title XI establish procedures that allow for the development of transportation and utility networks through

Alaska wilderness areas would be applicable. See 16 U.S.C. §§ 3164-3166. These ANILCA provisions establish an alternative basis and procedure for approval of the proposed TTP inventory routes proposed by for Shishmaref, which would be eligible for construction despite the wilderness status of the surrounding lands.

The standard and procedures set forth in 16 U.S.C. § 3164-3166 are triggered only where there is an absence of other applicable law "with respect to a transportation or utility system" through a conservation area. 16 U.S.C. § 3165. Under that circumstance, the head of the federal agency:

"within four months after the date of filing of any final Environmental Impact Statement, make recommendations . . . to grant such authorizations as may be necessary to establish such system, in whole or in part, within the conservation system unit concerned if he determines that—

- (1) such system would be compatible with the purposes for which the unit was established; and
- (2) there is no economically feasible and prudent alternative route for the system."

The complex process set forth by ANILCA, however, involves Presidential approval of the agency head's findings and further congressional action. See 16 U.S.C. § 3166. As a result, in situations similar to that of the Alaskan tribes relocation, other villages have collaborated with federal and state agencies to arrange land-exchanges and have benefitted from legislation exempting the lands from the scope of ANILCA altogether.

Among the examples where Congress has enacted legislation authorizing road access of Native Villages through designated wilderness areas independent of the ANILCA Title XI process are the following:

- Pub. L. No. 111-11 (2009), Title VI, Subtitle E (Providing for an access road from the Native Village of King Cove through the Izembek National Wildlife Refuge to Cold Bay)
- Pub. L. No. 108-129 (2003) (removing from Yukon Delta Wildlife Refuge the relocation site and access routes for the Native Village of Newtok)
- Pub. L. No. 99-96 (providing NANA Regional Corporation with a 24 mile transportation corridor across Cape Krusenstern National Monument)

Although obtaining such legislation is difficult and time consuming, Congress has found it appropriate in these cases to provide authority for the construction of transportation facilities that serve them to cross designate wildlife conservation areas. These Acts of Congress exempted these road construction projects from the cumbersome and complicated process set forth in ANILCA's transportation and utility system provisions (16 U.S.C. §§ 3164-3166). Kawerak does not suggest that either approach would be necessary or appropriate in the case of some Alaskan tribes, since BIA may rely on other legal authorities to approve the proposed routes for the TTP

inventory. Rather, we set forth alternative approaches that demonstrate that even if, for some unforeseeable reason, the exemption in 23 U.S.C. § 138 or the in-holder provisions of 16 U.S.C. § 3170(b) were rendered unavailable, ANILCA's transportation and utility system provisions and/or specific legislation would provide a viable alternative legal basis for the construction of the proposed TTP inventory routes.

**NTTFI Parts 170.442 - 170.446** The proposed rule requires tribes to provide documentation that identifies anticipated environmental impacts of the project, engineering, and construction challenges and the funding source for planning, design, construction and maintenance of the proposed facility. This would preclude the use of TTP funds to conduct archeological and environmental activities on projects that have not already been included on the tribes LRTP, NTTFI and the TIP and would require any proposed roads or facility "meet the eligibility requirements of the TTP".

- The Kawerak Transportation Program has completed Long Range Transportation Plans (LRTP) and Tribal Safety Management Plans for the communities of: Brevig Mission, Little Diomede, Elim, Gambell, Golovin, Koyuk, Mary's Igloo, Shaktoolik, Shishmaref, Solomon, St. Michael, Stebbins, Teller, Unalakleet, Wales and White Mountain. The LRTPs identify critical village transportation project needs and current and future construction projects. The majority of the roads in the LRTPs, including proposed roads, have already been accepted and are included within multiple State plans and documentation, including:
  - "State of Alaska's Northwest Area Transportation Plan" by the Alaska Department of Transportation and Public Facilities
  - "State of Alaska's General Land Status with RS 2477 Trails identified by the State of Alaska's Department of Natural Resources map
  - "State of Alaska Proposed Access Corridors with Significant Mineral Resource Area" map identified for natural resource development
  - "Western Alaska Access Planning Study Corridor Staging and Alternatives Report" by the State of Alaska Department of Transportation and Public Facilities DOTPF Project 60800 for intermodal connectivity and economic and natural resources development

Kawerak's proposed roads are well established and acknowledged in State plans, and there is no need to now arbitrarily subject these roads to unnecessarily burdensome documentation requirements.

We want to acknowledge working with Bob Sparrow and Brian Allen regarding the discussion draft of the proposed rule and the Agencies' reconsideration of paragraph 170.443(e) of the discussion draft rule. Kawerak proposed an alternative and more streamlined approach in our comments to the discussion draft and subsequent correspondence with the Agencies.

Kawerak recognizes that the proposed rule has eliminated terms in the draft rule regarding feasibility studies in 170.443(e) that would have made it absolutely cost-prohibitive to even consider adding proposed roads to the NTTFI. Even so, however, the requirements of 170.443 of the proposed rule are still overly burdensome and should not be adopted. Proposed roads should be subject to the same rules that have been in place since 2004 in the existing rule and be subject to the applicable minimum requirements for other NTTFI transportation facilities set forth in 170.466. Kawerak suggests, that if the Agencies determine to include the proposed version of 170.443 in the final rule, that these new requirements should ONLY apply prospectively and SHOULD NOT be required for proposed roads already in the inventory.

Moreover we question the lack of transparency of BIA/FHWA regarding the proposed road consultations. The proposed rule notes 13 consultation sessions but does not say explicitly what was said and what conclusions were reached that resulted in the proposed requirements now set forth in 170.443.

Section 170.443 establishes a BIADOT/FHWA Quality Assurance Team (QA Team) to which tribes must submit documentation in order to have a proposed facility "considered" for placement on the NTTFI. Nothing in MAP-21 authorizes a QA team to be established or to oversee this process and which would have authority to accept or reject proposed facilities for placement on the NTTFI. We object to arbitrarily subjecting such roads to a QA team. A QA Team comprised of federal employees approving the proposed roads may not be knowledgeable of rural Alaska and of our infrastructure needs or the means and methods of transportation in rural Alaska. At a minimum, we recommend that for the Alaska Region a tribal member with knowledge of rural Alaska transportation infrastructure needs be placed on the QA team.

The process in Section 170.443 also needs to have a well-defined and expedient appeal process that recognizes the intent of section 170.2 (h) & (i).

Eliminate section 170.443(c). The proposed language would require our tribes to modify the plans of the Development of Transportation of the State of Alaska, Bureau of Land Management, National Park Service and agencies of the Department of Defense to name a few. Most of these plans are updated once every five to 10 years. In addition, the update processes do not or are not required to take into consideration Indian self-determination and self-governance.

Technical issues: The inventory and coding guide needs to be updated to reflect that proposed roads are fully funded. GPR's need to reflect construction costs in each region in Alaska based on the ANCSA boundaries.

We very much appreciate your consideration of Kawerak's comments regarding the proposed draft revisions to 25 C.F.R. Part 170, and look forward to working in partnership with FHWA and BIA to establish regulatory processes that will provide the tribes in our region the tools with which to successfully develop our transportation infrastructure needs.

Sincerely,  
KAWERAK, INC.

*M. Bahnke*

Melanie Bahnke  
President

MB/DM

cc: File

# 2015

## KAWERAK, INC.

### FEDERAL LEGISLATIVE PRIORITIES

Working for the 20 Tribes of the Bering Strait Region.

Chinik Eskimo Community | King Island Native Community | Native Village of Brevig Mission | Native Village of Council | Native Village of Diomede | Native Village of Elim | Native Village of Gambell | Native Village of Koyuk | Native Village of Mary's Igloo | Native Village of Saint Michael | Native Village of Savoonga | Native Village of Shaktoolik | Native Village of Shishmaref | Native Village of Teller | Native Village of Unalakleet | Native Village of Wales | Native Village of White Mountain | Nome Eskimo Community | Stebbins Community Association | Village of Solomon |



*Camp-Igaliq 2014. Photo by Meghan Tapkok.*



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ITE MOUNTAIN

February 24, 2015

The Honorable Senator Lisa Murkowski  
The Honorable Senator Dan Sullivan  
The Honorable Congressman Don Young

Subject 2015 Federal Legislative Priorities for Kawerak, Inc.:

Enclosed you will find a copy Kawerak, Inc.'s 2015 Federal Priorities Packet. This packet contains information on our primary issues of concern at the federal level. We request your assistance in ensuring the needs of residents of the Seward Peninsula are addressed during this Congress. In summary, we are encouraging Congress and the Administration, as appropriate:

### **KAWERAK LEGISLATIVE PRIORITIES**

#### **Department of Commerce:**

- Requests the improvement of water and sewer in all Bering Strait communities

#### **Department of Defense**

- The State of Alaska and the U.S. Army Corps of Engineers (USACE) Reinstate the Immediate Action Work Group (IAWG) and complete 2009 Recommendations Report
- Fund the design and construction of the AK Deep Draft Arctic Port System in Nome

#### **Department of Homeland Security**

- Supports the establishment of an Arctic US Coast Guard Base
- Requests the ratification of the United Nations Convention on the Law of the Sea (UNCLOS).

#### **Department of Education**

- Requests the increase of funding for the American Indian Voc Rehabilitation Project

#### **Department of Housing and Urban Development**

- Requests the improvement of housing issues in all Bering Strait communities.

#### **Department of the Interior**

- Support the Tribal Self Governance Act of 2015 Title IV Amendments, S. 286
- Support the passage of S.1574 & H.R. 5671 to ensure the permanency of Public Law 102-477

**Department of Transportation**

- Requests a legislative fix to the applicable statutory provision which would allow Diomede to be eligible for the Basic Essential Air Service Program
- Support the Reauthorization of the Federal Highway Transportation Bill

Thank you for your leadership and tireless efforts in helping to meet the needs of rural Alaskans. We appreciate your assistance as we seek to improve the lives of those we serve. *Quianna!*

Sincerely,

KAWERAK, INC.



Melanie Bahnke  
President

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**In summary, Kawerak, Inc., requests: The improvement of water, sewer and sanitation issues in all Bering Strait communities**

Kawerak is the regional nonprofit representing the twenty tribes of the Bering Strait Region of Northwest Alaska. Back in 1995, then Governor Tony Knowles set a ten-year priority to retire the honey bucket. Many Bering Strait villages still self-haul honey buckets to sewage lagoons. To keep good health and to prevent disease, solid waste management, adequate sanitation and safe drinking water are needed. We have compiled information on sewer and water issues of concern to the Bering Strait Region and respectfully request your assistance in ensuring that the needs of our rural Northwest Alaska residents are addressed.

**Needs:**

- A. No water and sewer service is available in 5 communities** - Residents utilize the washeteria for washing clothes, showers, and drinking water.
  1. **Diomede** – only school, clinic, washeteria and teacher housing have service. Currently Diomede is working with ANTHC to develop a grant for a new water tank. The construction of a new 325,000 gallon water storage tank was scheduled for 2014 but has been delayed until all grant requirements are met. Must conserve water at certain times of the year due to old water tank not holding water. Water is derived off the mountainside and has some issues due to the water source, sea air (salt) and bird droppings (nitrates). Honeybuckets are disposed of at the designated dump site which is located on the ocean as there is no landfill or sewage lagoon due to the rocky terrain. Trash bins are located at same designated site. Many make their own water from snow. The construction of a new 325,000 gallon water storage tank was scheduled for 2014 but has been delayed until all grant requirements are met.
  2. **Wales** – only school, washeteria and teacher housing have service. The washeteria is old, small and has limited hours of operation (very crowded). The city closes the washeteria to conserve water. Designs for a new washeteria/water treatment plant are underway but awaiting construction funds. Residents self haul water/ice from creeks/lakes. City honey bucket haul system is limited forcing residents to have disposal issues as site is some distance away from the village. In 2011 there was an issue with low levels of radiation in the water, so a change was made in the water source this year. The clinic has no sewer or water due to damaged system, the pipes and septic system needs to be replaced.
  3. **Shishmaref** – only school, clinic, washeteria and teacher housing have service. Some homes have internal flush/haul systems, most self haul water and there are city honeybucket bins available around town. The City uses an ATV vehicle and a snow machine with trailer and pump to haul honeybucket bins to the sewage lagoon; currently both machines are in full working order. Residents obtain their water from the washeteria and river water during the summer months and haul ice in the winter. Residents must conserve water at certain times of the year. Increasing fall storms could put the sewage lagoon and water source at risk from flooding. The washeteria washing machines and dryers have routine maintenance repairs to keep them running. Funding for a new project to repair/replace water transmission mains and improve the water reservoir has been secured and design work is pending.
  4. **Stebbins** – only school, clinic, washeteria and teacher housing have service. Stebbins has been working with ANTHC for a new water tank, which will be completed in

May. The City has a honey bucket haul system and a water truck to haul water. However several issues continue to be problematic, the road system to the sewage lagoon site is deteriorating and the City has a difficult time keeping drivers employed. Also, the sewage lagoon is close to the ocean with minimal barriers in place.

Residents must conserve water at certain times of the year. A new water treatment plant and water storage tank are under construction and project completion was scheduled for 2014, however a winter shutdown prior to completion is being assessed to mitigate risks associated with bringing the system on line late in the year. A few residents haul their own water/ice from a nearby lake. The washeteria continues to need major repairs. In 2010 a master plan was submitted that recommended a piped system but in August 2011 the State of Alaska sent notification the piped system was not approved.

5. **Teller** – only school and teacher housing have service. The clinic does not have service due to faulty lines. The school district currently manages the water system and water tank, but the city has begun phase one of taking over the management of the water system. Due to changes with the Bering Strait School District superintendent this fall, this phase one is temporarily on hold. Most residents are self haul water and the city provides a honey bucket haul service, residents must conserve water at certain times of the year. There are water safety issues due to a leaky system. A new sewage lagoon is in process at the landfill site.

***B. Limited water and sewer service available in 3 communities***

1. **Golovin** – 50% of the village still needs service, however the second phase of service is 65% complete. A new larger water storage tank has been obtained. A new water source is still high on the priority list. Residents without water and sewer haul their own honey buckets to the sewage lagoon and their water is obtained from the washeteria. Golovin is susceptible to storm surges and flooding that can damage water and sewer systems.
2. **Gambell** – 40% of the village still needs service, 5% of those with service are cut off due to non-payment or insufficient piped water and sewer system. There are no more community-wide water shortage issues due to a new water tank, however every year the roof and siding have to be repaired due to high winds. The community continues to experience sewer problems and freeze ups due to an insufficient water and sewer system. Maintenance costs have caused the user rates to go up drastically. Many people in town self haul water from various springs near the village as well as from the washeteria. Residents self-haul their own honeybuckets to the sewage lagoon.
3. **St. Michael** – most residents have access to water and sewer service, but about 30% of the residents are not hooked up because the monthly costs are so high or they owe too much. Last year monthly service costs were \$175 and will increase in March to \$250 which could result in an increase in residents that cannot afford the monthly service costs. The water tank is leaky and in need of replacement or major repairs and has not been repaired yet. Plans to hold until spring to make the repairs. The City has a honeybucket haul system for those residents not on water and sewer. Water is obtained from the city washeteria.

**C. Problems still need to be addressed in 7 communities**

1. **Elim** – older piped system, however approximately 2/3 of the pipes have been replaced. Residents must conserve water at certain times of the year due to the older piped system. The water tank is has been repaired. There is a need to hook up homes at the new Shelby subdivision and add water and sewer hookups for the new washeteria and multipurpose facilities so plans can move forward for construction.
2. **Koyuk** – less than 10 homes still need service, soft ground in some areas causes problems with pipes and freeze ups. Water plant needs major repairs and staff needs training. The washeteria has been closed for major repairs due to frozen sewer lines. Those residents not on the water and sewer system haul their own honeybuckets to sewage lagoon and obtain water from neighbors. Sanitization master plan identifies breach in berm of sewage lagoon that needs repairs or replacement.
3. **Savoonga** – most residents have service, residents must conserve water at certain times of the year. Above ground vacuum system makes navigation difficult, freeze ups do happen. System is above ground because the ground in Savoonga is unstable. Clinic sewer and water hook up complete. The entire island is suffering from an Economic Disaster which was declared by the governor in 2013, so some residents have water services cut off due to non-payment.
4. **Shaktoolik** – most residents have service. The location of landfill is a concern as it could harm water source. Leach fields on the septic system needs a gravel berm to protect it from storm surges. Water tanks needs to be reinsulated.
5. **Unalakleet** – approximately 10 current residents on the hillside outside of the city limits have no service. Some plans are underway for 43 new lots to be developed on the hillside area in the near future. There is local concern about water source adequacy, erosion issues and the age of the water transmission lines. They need to move forward with the plans for the new water source at North River. Residents must conserve water in summer due to the seafood plant water usage. There is some concern on water safety issues and compliance issues. Plans to construct a Public Safety Building which will house City Hall, Court System, Jail and Public Safety Department which will increase the need for additional water and sewer services. There is a need to protect the transmission lines from storm surges.
6. **White Mountain** – less than 10 homes still need service. Those residents get their water from the washeteria or from the river. No honeybuckets for those residents rather utilize “outhouses”. The water tank is over 30 years old and still needs major repairs or replacement. Small patches to temporarily fix water tank until funding obtained for major repairs.
7. **Brevig Mission** – a few homes still need water and sewer service. Those few homes haul their own water from the washeteria and the city has a honeybucket bin that is taken to the sewage lagoon weekly. The Public Safety Holding Cell does not have water and sewer. In 2011 there was a freeze that affected the entire village for a few days which resulted in a temporary honeybucket haul system until the lines were thawed out. The holding tank depletes sometimes if they must fight a fire, and the transmission lines are in poor condition and continue need repairs annually.

## Kawerak's concerns and recommendations:

- **Assistance and Education** – Due to the danger of health and safety issues, impoverished rural families need assistance to obtain safe adequate storage for water and more sanitary household honeybucket systems to use until water and sewer systems are developed in their communities. Additional need for adequate sewage lagoon systems for those communities without water and sewer systems. More education is needed to assure proper sanitation is maintained in at-risk communities.
- **Water Testing Compliance Costs and Training Needs** – Cities need more funding to ensure water is treated and tested regularly. Cities struggle to provide the funds to inspect and repair water plant equipment and water transport systems. Training is costly to ensure the certification of water plant workers and qualified candidates are hard to find in the local communities. In cooperation with Norton Sound Health Corporation, the Environmental Services Department has training funds for certification of water plant workers, limited water testing funds and limited repair of equipment funds available for all villages within this region.
- **Assistance to Cities** – Minimum sanitation involves substantial costs to electricity, labor, fuel, equipment, utility management and personnel training. Due to the poor economy, cities need more funds to provide support services to deliver water, provide honeybucket haul services, and to maintain washeterias. New water source planning is needed for growing communities. Water storage tank capacity needs to be evaluated annually to ensure it is adequate. Villages still on honeybucket haul systems have a very limited number of vendors available to replace aging bins used for hauling sewage. Sewage lagoons are aging and being used well beyond the intended lifespan. Many communities need assistance to replace systems before a crisis develops.
- **Erosion and Relocation Issues** – Many coastal communities face serious erosion issues that threaten the water and sewer plans or systems. Also, Shishmaref is in a situation of no progress and no support to current systems due to their relocation plans. The state and federal government needs to help this large community meet its safety and sanitation needs.
- **Improved planning processes** – The state and federal governments need to work with collaborative partners and communities in overcoming the development barriers so progress can be made on the planning process and construction of water and sewer systems in un-served or underserved rural communities. Due to the high cost of water and sewage systems rural communities need alternative lower cost ideas.
- **Cost and Energy Efficiency** – The city of Nome estimates that the average family of four uses 1000 gallons of water per month. This varies depending on how conservative individual are with water. Water and sewer costs in the Bering Strait region run from \$60 to \$161 per household for those on a piped system, or higher for those using washeterias and haul systems. Many residents are at a disadvantage due to the transportation costs of hauling their own water and sewage.

**In Summary, Kawerak, Inc., Requests:**

**-The State of Alaska and the US Army Corps of Engineers Reinstate the Immediate Action Workgroup (IAWG) and fund and complete the 2009 Recommendations Report**

The IAWG of the Governor's Executive Subcabinet on Climate Change was established to address known threats to communities caused by coastal erosion, thawing permafrost, flooding and fires. Shishmaref, Unalakleet and Shaktoolik were identified facing imminent threats of loss of life, loss of infrastructure, loss of public and private property, or health epidemics.

The IAWG is an exemplary model of success involving State, Federal and Local leaders that prioritized projects, prepared recommendations for an oversight planning body and authority to provide successful coordination between these communities and all appropriate state and federal agencies and to leverage resources and ideas resulting from the Workgroup's collaboration.

Kawerak requests that the Governor and the US Army Corps of Engineers reinstate the IAWG to complete the tasks identified in the 2009 Report Recommendations and that the Governor, Alaska State Legislature and Congressional Delegation provide funding to complete the projects.

**Shishmaref**

The USACE has been working diligently on the design and construction of the final 550 feet revetment to protect the community's sewage lagoon and washeteria. The USACE has \$11 million for the construction and design work.

**Kawerak requests that the State of Alaska provide a local match for the construction in the amount of \$3.5 million; or that the federal government provide a match waiver and fund the full \$11 million.**

**In Summary, Kawerak, Inc., Requests:**

**The USACE and State of Alaska fund the construction of the City of Nome's Port as a Arctic Deep Draft Port**

Kawerak, Inc., requests support from the Congressional delegation, the State of Alaska, the Alaska Legislature, the Department of Defense/NORTHCOM and the US Army Corp of Engineers (USACE) to extend the existing Nome Causeway to -35' MLLW and provide funding for the design and construction of the extension as part of the Arctic Deep Draft Port System in Nome, Alaska. This is a national security issue and national priority for the United States and the State of Alaska.

Extending Nome's Causeway out to -35' MLLW will meet increased demands for ocean-going commerce, scientific research, economic and resource development activities, but most importantly, provide a strategic location to position assets to strengthen homeland security, national defense and create a presence for enforcement as well as Arctic stewardship and environmental response.

We wish to demonstrate the effectiveness and efficiency of development dollars in this region by soliciting investment in the Port of Nome first. Nome is able to support the development to show a return on investment quickly. Resource development will become more economical for the private sector's operations, effectively saving several days of sailing. An immediate and vital benefit of this investment will be the increased efficiency in logistical support throughout the Bering Sea and Arctic Ocean.

The Port of Nome, due to its geographic location, is a strategic transportation hub that meets the needs of the President's National Strategy for the Arctic, the Department of Defense's Arctic Strategy, The Committee on Marine Transportation's US Arctic Marine Transportation Priorities, the US Coast Guard's Arctic Strategy, NOAA's Arctic Vision and Strategy and the Arctic Marine Assessment Report 2009 Recommendations for Arctic infrastructure and the Alaska Arctic Policy Commission Implementation Plan recommendations.

Other countries such as Russia and Canada are established Emergency Response Centers along their coastline. The US has not established any Emergency Response Centers and administrative support for the Northern Sea Route operations. The Port of Nome can meet the needs.

Currently, no other medium draft port infrastructure capabilities exist from Northwest Alaska to the Canadian border. The Port has completed many improvements to the facility with multiple public-private partnerships. The Port of Nome's existing Causeway is dredged to -22.5' MLLW with a 270' spur at the end, and a 3,025' protecting breakwater to the east. Extending the already proven port facility to deeper water makes sense when compared with higher costs, lower return options.

The USACE/DOTPF Arctic Deep Draft Port System design for Nome will accommodate line haul fuel barges, tankers, ice breakers, USCG Cutters, Navy ships, NOAA and foreign scientific research vessels, oil & gas support vessels, as well as larger cruise ships, landing crafts and tugs.

The Bering Strait has seen an increase in ocean vessel traffic due to the opening of the Arctic, with economic development opportunities in resource development along with International scientific research and tourism. The Marine Exchange of Alaska began recording traffic data in 2009 as reflected below:

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Total transits recorded through the Bering Straits	277	338	239	316	344	390
Northern Sea Route transits	0	4	34	46	71	53
Port of Nome Vessel Calls	301	296	271	444	449	446

The City of Nome has community infrastructure in place to support the increase in Arctic shipping; a new hospital, cross wind runway, daily flights to Anchorage, stores for resupply of perishables and dry goods, restaurants, hotels and a multitude of activities to occupy passengers and crew while staging for vessel transfers.

Kawerak supports infrastructure development across the entire Alaska Arctic. The City of Nome has regional support from Kawerak, Inc. (representing 18 of the 20 tribes in the Bering Strait region), Nome Eskimo Community, Nome Chamber of Commerce, and Sitnasuak Native Corporation.

Throughout the Bering Strait Region's waters:

- Norton Sound Economic Development Corporation's fishing fleet has vessels in the Norton Sound waters at Unalakleet, Elim, Golovin, Shaktoolik, and Savoonga. Many of these vessels are 20 to 30 miles out in the ocean.
- At anytime time there are 3 to 10 small skiffs for subsistence activities from the surrounding villages in the Norton Sound and Bering Sea waters.
- Adventure tourism has increased with kite boarders, jet skiers, swimmers, kayakers, and winter ice driving expeditions making attempts to cross the international border between the Diomede Islands and mainland Russia and Wales.

There have been a few near misses; a fuel barge broke loose during high seas last summer. The fuel company was prepared and was able to dispatch a second barge to bring it under control from Nome and a tug boat ran aground in the St. Michael waters.

Kawerak requests the State of Alaska, the Alaska State Legislature and the United States Congress to fund the design and construction of the Arctic Deep Draft Port System in Nome extending the Causeway to -35' MLLW to ensure and preserve the United States' presence in the Arctic.

## **In Summary Kawerak, Inc., supports the establishment of an Arctic US Coast Guard Base**

Kawerak supports the State of Alaska's Northern Waters Task Force and the Alaska Arctic Policy Commission's recommendations calling for an Arctic US Coast Guard Base in the Bering Straits.

The closest USCG base is in Kodiak, Alaska, over 800 miles away from the Bering Strait Region. It takes over a day of ocean travel by a cutter, 2 hours of flight time by a C-130, and 5 hours by a HM-65 helicopter to access the Bering Strait Region. Compare the lower 48's western coastline to ours, there are numerous bases and stations between Washington State and California, and we view this as the same coverage area as Western Alaska's coastline from Kodiak to the Canadian border. If we don't include Nome, Alaska, there is a huge gap in adequate response time for the Northern Bering Sea, Norton and Kotzebue Sound waters. Nome is a prime location to allow the USCG to respond more quickly to enforcement issues, emergencies and to monitor environmental concerns.

In 2014 and beyond, the oil and gas industry will restart exploration in the Chukchi Sea. At the 2012 Arctic Imperative Summit, it was reported that there were 95 vessels off the Chukchi and Beaufort Seas, with over 1000 personnel engaged in OCS activities. All these vessels have to traverse through the Bering Strait. These offshore activities will create another huge increase in traffic if they are successful in obtaining their permits.

The United States Department of the Army, Corps of Engineer and Alaska Department of Transportation's Arctic Deep Draft Port System Study identifies Nome as part of this system and has plans to extend the Port of Nome's Causeway out to deeper water to accommodate larger vessels.

The Bering Strait has seen increased ocean vessel traffic due to the opening of the Arctic with economic opportunities in resource development along with international scientific research and tourism. Marine Exchange of Alaska started recording traffic data in 2009:

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Total transit recorded through the Bering Straits	277	338	239	316	344	390
Northern Sea Route transits (increased 10 fold)	0	4	34	46	71	53
Port of Nome Vessel Calls	301	296	271	444	449	446

The Port of Nome has seen an increase in ocean vessel traffic as documented in statistical data. In 1990, there were a mere 30 port calls consisting of mostly cargo barges and a few fishing trawlers. In 2013 this increased more than ten-fold with 449 port calls using Nome not only as a discharge/loading point for transshipment of commodities throughout the region, but also as a resupply location for fuel and personnel transfers. This includes fuel, bulk cargo, gravel and equipment barges, medium foreign flagged and large cruise ships, pleasure crafts and yachts, government ships, and research and exploration vessels.

The modern day gold rush is on with the price of gold averaging \$1200/ounce and the successful airing of "Bering Sea Gold" and "Under the Ice-Bering Sea Gold" on the Discovery Channel. The City is faced with increased activity in State waters in front of Nome. In 1996 there were only 3 dredges operating off shore, for the 2013 mining season there were 100 dredges with 30 support vessels and 3 mining research vessels. There is an immediate need for USCG personnel in Nome for boating safety requirements, environmental enforcement and drug enforcement.

With the increase in ocean activities, harmful social issues, such as heroin and meth use, are now present in Nome. There is only two ways to bring drugs into Nome, by air and sea. We request assistance in drug enforcement at the Port of Nome.

Additional ocean vessel traffic throughout the Bering Strait Region's waters include:

-Norton Sound Economic Development Corporation's fishing fleet has vessels at Unalakleet, Elim, Golovin, Shaktoolik, and Savoonga. Many of these vessels are 20 to 30 miles out in the ocean.

-At anytime, there are 3 to 10 skiffs from the surrounding villages in the Norton Sound and Bering Sea waters that travel significant distances from shore for subsistence activities.

-Adventure tourism has increased with kite boarders, jet skiers, swimmers, kayakers, and winter ice driving expeditions, making attempts to cross the international border between mainland Russia, the Diomede Islands and mainland USA at Wales.

There have been a few near misses with a fuel barge breaking loose during high seas. The fuel company was prepared and was able to dispatch a second tug from Nome to bring it under control. Adventure kayakers and personnel walking across the Bering Straits require assistance. Small skiffs disappear and run aground in rough seas and lives are lost. While conducting traditional whaling, one boat out of Gambell disappeared in rough seas. This is a dangerous region that needs a USCG presence.

Kawerak recommends that the US Coast Guard identify Nome for a Seasonal Forward Operating Base/Location. A USCG FOB located in Nome will provide the Nation with critical nodes for Homeland Security/National Defense and allow an increased security presence in the Arctic for national security. Nome is a prime location to allow timelier emergency/search and rescue response and to monitor environmental concerns.

## In Summary,

### **Kawerak, Inc., requests the ratification of the United Nation's Convention on the Law of the Sea (UNCLOS).**

The United Nations Convention on the Law of the Sea permits member nations to claim within the exclusive economic zone out to 200 nautical miles from shore, with an exclusive sovereign right to explore, manage, and develop all living and non-living. For the US it would extend up to 600 miles beyond the Coast of Alaska.

The Bering Strait has seen an increased in ocean vessel traffic due to the opening of the Arctic with economic development opportunities in resource development along with international scientific research and tourism. Marine Exchange of Alaska started recording traffic data in 2009:

	2009	2010	2011	2012	2013	2014
Total transits recorded through the Bering Straits	277	338	239	316	344	390
Northern Sea Route transits	0	4	34	46	71	53
Port of Nome Vessel Calls	301	296	271	444	449	446

The State of Alaska's Legislature passed HJR 22 in 2009 and HJR 19 in 2011 urging the United States Senate to ratify the United Nations Convention on the Law of the Sea. Kawerak, the Alaska Federation of Natives, The City of Nome and the Alaska Municipal League in 2011 and 2012 followed suite and passed resolutions supporting ratification of UNCLOS. The Alaska Arctic Commission's Implementation Plan calls for ratification of UNCLOS.

UNCLOS establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas, and creates a legal regime for controlling mineral resources exploitation in deep seabed areas beyond national jurisdiction.

167 nations have ratified UNCLOS and the United States became a signatory in 1994 but has not ratified the treaty, the United States is the only Arctic Nation that has not ratified the treaty. Other nations are conducting resource research north of the 200 mile EEZ of the coast of Alaska that is connected to the United States continental shelf.

Until the United States ratifies UNCLOS the United States may not have the authority to promote its claims to an extended area of the continental shelf, refute the claim of authority by other nations to exercise greater control over the Arctic, or take a permanent seat on the International Seabed Authority Council. Until the United States ratifies UNCLOS, the United States cannot participate in deliberations to amend provisions of the Convention that relate to:

- 1) Mineral resources in the Arctic Ocean, 2) Conducting essential scientific research, 3) Right of the US to the use of the seas, 4) Navigation and transit regime, 5) Effect of the use of the seas in world economic development, and 6) Environmental protection.

UNCLOS will not interfere with the intelligence-gathering efforts of the United States or the navigational freedom of the United States military; and

**Kawerak requests that the Alaska Congressional Delegation and the Chairman of the US Senate Committee on Foreign Relations and President Obama and his administration make it a priority to ratify UNCLOS. This will create jobs, protect our waters and lessen the dependence on other countries for oil and gas.**

**In Summary, Kawerak, Inc., Requests: The U.S. Department of Education's Rehabilitation Services Administration (RSA) increase the funding of the American Indian Vocational Rehabilitation Services (AIVRS) Project.**

Kawerak requests the Rehabilitation Services Administration under the U.S. Department of Education increase the funding of the American Indian Vocational Rehabilitation Services Project to ensure our mission to continue to serve tribal VR consumers with disabilities. There are only 85 programs currently serving the needs of thousands of Alaska Natives/American Indians with a disability. The Kawerak, Inc. Vocational Rehabilitation (KVR) Program is one of those 85 programs. Under current budget plans, there will only be enough funding to see a maximum of the continuation of 75% of the current and previously funded AIVRS Programs. We are concerned for the consumers of the 25% of programs that may not be funded. Therefore, we are compelled to bring a number of current funding and grant competition issues to your attention.

We request your assistance in resolving them before they severely impact our mission to serve tribal consumers with disabilities. Although tribes in Alaska have made some progress in addressing enormously inadequate public services that many Alaskans routinely take for granted, tribal governmental services, including the AIVRS Programs, are still experiencing what the US Commission on Civil Rights called "a quiet crisis" of federal funding and unmet needs. Congress and the Administration have expressed strong support for Alaska Native self- determination and fulfilling the trust responsibility. We urge you to exercise your fiduciary responsibility by making a formal inquiry to Commissioner Janet LaBreck, Rehabilitation Services Administration (RSA) at the U.S. Department of Education.

These are our requests:

1. Increase the set aside for AIVRS Programs to the full 1.5% of the amount appropriated for Title I programs in FY2015-2016. This increase will meet the current statutory amount of 1.5% as appropriated under Section 100(b)(1) of the Rehabilitation Act of 1973 as amended.
2. RSA work with the Consortia of Administrators for Native American Rehabilitation (CANAR) to develop a plan of action to ensure the equitable treatment and care of AIVRS consumers when a program ceases to receive funding.
3. Once AIVRS Programs attain funding they should continue to be funded based on decisions from monitoring and technical assistance, rather than re-competing for funding every five years. Implementing this change would ensure Tribal VR Programs are treated the same as State VR Programs because they do not have to re-compete for funding ever five years.

We are proud that the KVR Program overcomes the most challenging obstacles with few resources. The KVR Program has shown a high rate of success as compared to the Alaska Division of Vocational Rehabilitation. This is accomplished despite the higher rates of disability, the difficulty accessing State VR services, the astronomical unemployment rates, the extreme poverty, and the lack of access to medical rehabilitation services.

Numerous treaties and laws have created a fundamental contract between tribal nations and the United States. Part of this trust responsibility includes basic governmental services for tribal citizens, funding for which is appropriated in the discretionary portion of the federal budget. The federal budget for tribal governmental services reflects the extent to which the United States completes its promises to Alaska Native /American Indian people.

Kawerak requests the increase of funding for the American Indian Vocational Rehabilitation Services Project to ensure our mission to continue to serve tribal VR consumers with disabilities.



## CONSORTIA OF ADMINISTRATORS FOR NATIVE AMERICAN REHABILITATION, INC.

January 22, 2015

The Honorable Commissioner Janet LaBreck  
Department of Education/OSERS  
Rehabilitation Services Administration  
Lyndon Baines Johnson (LBJ)  
Department of Education Building  
400 Maryland Ave, SW  
Washington, DC 20202

Dear Commissioner LaBreck:

On behalf of the Consortia of Administrators for Native American Rehabilitation (CANAR), I would like to thank you for continuing to consult with, and work with, Tribal programs on important administrative and budget issues affecting the American Indian Vocational Rehabilitation Services (AIVRS) Program. CANAR is committed to working in partnership with you and your staff to address these and the many other challenges that hinder American Indians with disabilities from achieving gainful employment. CANAR's vision *is a world of full inclusion for American Indians and Alaskan Natives with disabilities*. For this reason we are compelled to bring a number of current funding and grant competition issues to your attention, and request your assistance in resolving them in advance before they severely impact the good work being done across Indian Country through AIVRS.

- 1.) Increase the set aside for AIVRS Programs to the full 1.5% of the amount appropriated for Title I programs in FY2015-2016.
- 2.) RSA develop a plan of action to ensure the equitable treatment and care of AIVRS consumers when a program ceases to receive funding.

As you know, there are 25 currently funded AIVRS Programs from the set aside that will be submitting applications and reapplying for funds during the FY2015-2016 grant competition. In addition, in a meeting with AIVRS Directors in Florida in November, Dr. Thomas Finch stated he expected applications from the six programs that were not refunded in the FY2014-2015 competition that was conducted last fall. We agree with his assessment. Dr. Finch went on to explain that he expected applications from another three (3) programs that were funded from non-AIVRS Title 1 funds. That equals 34 current and previous AIVRS programs that we anticipate will apply for full funding for the FY2015-2016 grant competition. This does not account for the potential 4-6 new Tribes that apply for initial awards each grant cycle.

Further, during the December 2014 RSA and 121 director's call, RSA officials stated that there are really only enough funds to make awards to 25 AIVRS programs. Conservatively we estimate as many as 40 Tribal communities will submit applications for funding consideration for the 2015 round of competition. Essentially it appears that there will **only be enough funding to see a maximum of the continuation of 75% of the current and previously funded AIVRS Programs** that are active and serving American Indians with disabilities. Of grave concern for CANAR is what happens to the consumers of the 25% of programs that may not be afforded the opportunity to be funded even though they may have fundable grant applications?

During Dr. Finch's presentation in Florida, he also stated that there are no longer unused funds under Section 121, in contrast with past years. The fact that there were unused funds in the past has been cited as the reason for funding the program at the low end of the set aside allowed by 29 U.S.C. Section 730(c). We have provided the language in Section 730(c) for your reference:

***(c) Funds for American Indian vocational rehabilitation services***

***(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section 720 (b)(1) of this title for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part C of this subchapter.***

***(2) The sum referred to in paragraph (1) shall be, as determined by the Secretary—***

***(A) not less than three-quarters of 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for fiscal year 1999; and***

***(B) not less than 1 percent and not more than 1.5 percent of the amount referred to in paragraph (1), for each of fiscal years 2000 through 2003.***

We ask that you revisit the funding decision for the AIVRS Program and take action to increase the amount of the set-aside to the full 1.5% of the amount appropriated for Title I programs in FY2015-2016. Based on the current year's Title I funding of \$3,091,613,598.00 that would amount to more than \$46.3 million for AIVRS Programs. We believe that set aside would be sufficient to fund all of the Tribal VR programs that merit grant awards.

We recently received an update through a State VR source that stated you, “*... opted to increase the AIVRS set-aside a bit to help to offset the reduction in AIVRS grant funds due to the new section 121 reservation for the Training and Technical Assistance Center. This will move approximately \$1.6 million from the VR funds to the AIVRS program within title I.*” We have not been made aware of this decision directly. Please let us know if you have already taken steps in this direction. However, given the current situation, we do not believe that this effort will be a big enough patch in the funding shortfall.

CANAR is very proud of the accomplishments of the AIVRS Programs who operate in some of the most challenges settings and overcome these barriers with few resources. Our programs are able to succeed despite the higher rates of severe disability, the difficulty accessing State VR services, the astronomical unemployment rates, the extreme poverty, and the lack of access to medical rehabilitation services. We recognize the hope AIVRS Programs bring to our communities. We do know at this point that this year's competition will result in the loss of access to culturally relevant vocational rehabilitation services for several hundred current consumers and thousands of Native people with disabilities will continue to be without access. To assume that the state VR programs can absorb and fully serve AIVRS consumers who lose funding would be grossly inaccurate. Several of these states are in Order of

Selection and would not have the capacity to provide culturally centered services, if any vocational rehabilitation services at all.

On behalf of CANAR, I ask that you work with us to insure that successful AIVRS programs continue to be funded, and that new and worthy projects are awarded secure funding, to provide reliable and high quality services to American Indian and Alaska Native consumers with disabilities that are equitable to those provided to State VR consumers. Thank you for your consideration and attention to this critical funding issue for Tribal AIVRS programs. We recognize the trickle down affect it will have across all our programs, the consumers, their families and their communities. We hope to hear from you soon about how we might work together to address these issues.

Sincerely,



Lyle Cook  
President

cc:

CANAR Board  
CANAR Membership  
CSAVR  
Jodi Gillette, White House  
Senate HELP Committee  
Senate Committee on Indian Affairs  
House Committee on Education and the Workforce  
House Subcommittee on Indian Affairs  
National Congress of American Indians  
National Indian Education Association  
National Indian Health Board

**In summary, Kawerak, Inc., requests: The improvement of housing options in all Bering Strait communities**

Kawerak assists the Bering Strait tribes with long range planning and is aware of housing needs. We respectfully request your assistance in ensuring that the needs of our rural Northwest Alaska residents are addressed during the 2015 legislative session. Recognizing that Alaska is facing enormous challenges, Kawerak's recommendations are focused on meeting these important needs.

**Needs:**

- **Housing Needs Are the Top Priority** – Kawerak assists the 20 tribes in this region with the development of long range community plans. Housing has been the top priority for this region for the last 10 years or more. Housing is a critical basic necessity. Many of the current housing in rural Alaska are not energy efficient and are sub-standard or over-crowded. While some assistance is available for the low income families, elderly, disabled, veterans, and teachers housing, there is very little assistance to build housing in rural communities for law enforcement officers or health care workers. There are very few programs to assist medium income families. Alaska Natives in rural communities face the highest cost of living, the fewest local job opportunities, and face many other social, economic, health, and physical challenges. Due to the rising costs and the short construction season in Alaska, housing development is difficult even with available assistance programs. Most rural communities see fewer than 10 new homes built in a five year period, yet the populations are growing. When there is a housing shortage, the most highly skilled residents move away to find work and adequate housing elsewhere. These are the people who are sorely needed in the rural community.

All of the tribes in the Bering Strait regularly update their local economic development plans (LEDPs) or strategic plans every five years. All of the tribes have identified housing as important and 18 of 20 have placed this need in the top priority list. The four tribes in Nome placed housing as number 1 in their combined local economic development plan (LEDP) in 2008. Each of these tribes has since developed individual plans.

Individual community plans can be found at  
<http://www.kawerak.org/cpd.html>.

- **Increasing Population** – The 2012 estimated population of the region at 9,915 with significant increases in each census year since the 1980's. New housing units are not keeping up with the population growth.

**Census Pop. % of increase**

1980	6,537	13.7%
1990	8,288	26.8%
2000	9,196	11.0%
2010	9,492	3.2%

\*Est. 2012                    9,915            4.5%

\*U.S. Decennial Census 2012 Estimate

- **Need for Affordable Housing Rentals** – Rental homes or apartments do not exist in most rural communities and are in great demand by middle income families which do not qualify for assistance and yet do not make enough to qualify for housing loans.

- **Need for Housing for Professionals** – Many rural communities have difficulty obtaining Village Public Safety Officers, medical staff and other professionals due to housing limitations.

- **Overcrowding** – Often multiple generations of Alaska Native families are living in 2 and 3 bedroom homes in rural communities. Limited housing availability causes some families to leave the community. Many who leave are the young potential future leaders of a community.
- **Aging Homes** – Impoverished families do not have the resources to maintain aging homes. Also these older homes are not energy efficient and greatly increase the monthly expenses. These homes are fire hazards or easily damaged in the increasing fall storms that this region experiences.
- **High Construction Costs and Freight** – Traditional housing funding sources have remained constant or declined over the years, but housing costs and freight have increased. Consequently, fewer houses are being built.
- **Strain on Existing Utility Systems** – Water and sewer planning needs to be taken into account to allow for housing growth. Some newer homes are not hooked to sewer and water systems due to the inability of the system to handle the needs.

**Kawerak's concerns and recommendations:**

- **Need for Creative Solutions** – The high cost of energy and construction means that the state should support research that explores innovative alternative solutions to reduce construction costs and increase energy efficiency in housing in the Arctic environments.
- **Education, Technical Assistance and Coordinated Housing Planning** – Rural communities have limited personnel to navigate complex housing development issues. The state should increase outreach and assistance to rural communities so they can begin to address the great need.
- **Weatherization** – Current weatherization programs require difficult to obtain assessment processes and up-front out of pocket expenses that impoverished families cannot afford. The state needs to examine the process to make it easier for needy families to obtain assistance, because this could extend the life of older rural houses, improve the quality of life, and lower monthly expenses.



February 3, 2015

Senate Committee on Indian Affairs  
United States Senate  
838 Hart Senate Office Building  
Washington D.C., 20510

**Re: Department of Interior Tribal Self Governance Act of 2015 Title IV Amendments, S. 286**

Dear Chairman Barrasso, Vice-Chairman Tester, and Members of the Senate Committee on Indian Affairs:

We write today to express our support and gratitude for your efforts in introducing the Department of Interior Tribal Self Governance Act of 2015, S. 286, on January 28, 2015, through this Committee. We especially thank the co-sponsors, including our own strong advocate regarding Alaska Native issues, Senator Murkowski, for moving this bill forward.

Kawerak, Inc. is a Native non-profit consortium of tribes located in the Bering Strait region of Alaska, comprised of 20 federally recognized tribes. Kawerak was one of the original Native organizations choosing to compact through P.L. 93-638, and has successfully provided services to the region through its compact since 1993. As we have demonstrated, self-governance works, and is the most successful Indian policy in the history of government to government relations between tribes and the United States government. The amendments to Title IV provided in S. 286 will streamline the self-governance process with the Department of Interior by adding provisions similar to Title V of P.L. 93-638 that have been in place with demonstrated success for years in the compacting process between tribes and the Indian Health Service. In addition to Kawerak, Title IV amendments have been a top legislative priority for the 261 self-governance tribes for more than 15 years.

Our understanding is that this Committee will mark-up S. 286 on Wednesday, February 4, 2015. We urge the SCIA to pass S. 286 out of Committee and send the bill to the Senate floor. Thank you for the important work you continue to do on behalf of Indian Country.

Sincerely,  
KAWERAK, INC.



Melanie Bahnke  
President

CC: Senator Dan Sullivan  
Congressman Don Young



**KAWERAK, INC.** • P.O. Box 948 • Illoolik, AK 99762

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STEBBINS

ST. MICHAEL

TELLER

UNALAKLEET

WALES

WHITE MOUNTAIN

November 13, 2014

The Honorable Senator Lisa Murkowski  
United States Senate  
709 Hart Senate Office Bldg.  
Washington, DC 20510

Dear Senator Murkowski,

Kawerak, Inc. would like to thank you and your staff for your leadership in introducing S. 1574 on behalf of Indian Nations, Tribes and Tribal organizations, and for your advocacy in moving this critical bill through the legislative process. We write to you to ask for your leadership in securing final enactment before the end of the session.

Passage of S. 1574 will ensure permanency for the Public Law 102-477 initiative. It will continue to assist us in reducing administrative costs, duplication of services, streamline the approval process, and improve and simplify accounting procedures and reporting processes. Just as importantly, passage of S. 1574 will clarify Congress's support for tribal comprehensive program plans within multiple funding agencies, with plans that are designed by the Tribes to meet the individual needs of Tribal communities in a culturally appropriate manner.

S. 1574 will ensure Tribal Authority within the government to government framework so that Tribes can better manage and operate federal programs under a single comprehensive plan. At the same time, it will lay to rest many issues that have impeded full realization of the opportunities, efficiencies and advantages this unique initiative offers.

Thank you in advance for your efforts to secure prompt enactment of S. 1574 and its companion bill H.R. 5671.

Sincerely,

Melanie Bahnke, President



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UNALAKLEET  
WALES  
WHITE MOUNTAIN

November 13, 2014

TEL: (907) 443-5231 • FAX: (907) 443-4452

The Honorable Don Young  
United States House of Representatives  
2314 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Chairman Young,

On behalf of Kawerak, Inc., we thank you and your staff for your leadership in introducing H.R. 5671 on behalf of Indian Nations, Tribes and Tribal organizations, and for your advocacy in moving this critical bill forward. We write to ask for your leadership in securing final enactment before the end of the session.

Senator Murkowski's identical companion Senate bill is S. 1574, and that bill has been favorably reported out of Committee and is ready for passage in the Senate this month. These bills will ensure permanency for the Public Law 102-477 initiative. They will continue to reduce administrative costs, reduce duplication of services, streamline the approval process, and improve and simplify accounting procedures and reporting mechanisms. Just as importantly, these bills will clarify Congress's support for tribal comprehensive program plans within multiple funding agencies, with plans that are designed by the Tribes to meet the individual needs of Tribal communities in a culturally appropriate manner.

In short, these bills will ensure Tribal Authority within the government to government framework so that Tribes can better manage and operate diverse federal employment assistance and related programs under a single comprehensive plan. At the same time, they will lay to rest many issues that have impeded full realization of the opportunities, efficiencies and advantages that the unique "477" initiative offers.

Thank you in advance for your efforts to secure prompt enactment of H.R. 5671 and S. 1574. If at all possible, we respectfully request that you work with House leadership to hold S. 1574 at the desk so that this important and long-awaited legislation can become law this year.

Sincerely,

Melanie Bahnke, President

**In Summary, Kawerak, Inc. requests: a legislative fix to the applicable statutory provision, 49 U.S.C. §41731, which would allow Diomede to be eligible for the Basic Essential Air Service Program.**

Kawerak, Inc. requests your assistance in obtaining a legislative amendment that would allow Diomede to be eligible for Essential Air Service program status which would enable Diomede to have regular scheduled air carrier services without the uncertainty that exists now each year. This is a matter of critical importance to this remote community that fundamentally affects the health, safety and welfare of every resident of this community.

**Background:**

For three years Kawerak, Inc. has assisted the Native Village of Diomede in the Essential Air Service (EAS) program on their behalf in order for Diomede to receive scheduled air service to the island. The U.S. Department of Transportation (DOT) provides 50% of the funding for the EAS program, but requires a 50% match. The State of Alaska provides the other 50% match through a Designated Legislative Grant. Continued funding through the State is not certain as the State is experiencing significant fiscal problems in which many State funded programs will have to be cut.

There are two EAS programs. The “Basic Essential Air Service” program provides guaranteed scheduled air carrier service to eligible communities, with full funding and no match requirement. Communities not eligible for the Basic EAS program may qualify for an alternative EAS program that subsidizes scheduled air carrier services to the extent the community is able to obtain them, and also requires a 50% match for the EAS funding. Diomede is not eligible for the Basic EAS program due to the statutory eligibility requirements. Diomede has been able to qualify for the alternative subsidized EAS program but has had to provide the match each year since it entered the EAS program in 2012.

Diomede is the only remaining community in the EAS program that is not eligible for the Basic EAS program, and that must still provide a 50% match to receive the EAS subsidy through the alternative program. In recent years, other communities have been able to become eligible for the Basic EAS program or to have the match requirement in the alternative subsidized program waived for them, through legislative amendments to the applicable statutes.

**Request for Legislative Fix to the EAS Statute:**

Kawerak is requesting that our congressional delegation provide a simple legislative “fix” to the applicable statutory provision, 49 U.S.C. §41731, which would allow Diomede to be eligible for the Basic EAS Program. Attached as Appendix A is the specific proposal for the legislative fix to 49 U.S.C. §41731. This fix would make Diomede permanently eligible for the EAS program without a subsidy match requirement, and would correct the inequity of the current situation when Diomede is clearly one of the most remote communities in the US and most in need of such services.

**Please see Addendum A for our specific proposal to amend the EAS legislation and other attached documents which provide further background and context for our request.**

**Addendum A**  
**To Native Village of Diomede and Kawerak, Inc.**  
**Request for Legislative Amendments regarding**  
**Eligibility for Basic EAS Service**

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The Essential Air Service (EAS) statutes provide for two levels of EAS service. “Basic Essential Air Service” under 49 U.S.C. §§41731 and 41732, means that the community is entitled to guaranteed scheduled air carrier service, and that there is no subsidy match requirement. A community that cannot meet the requirements to obtain Basic EAS Service may still be eligible under 49 U.S.C. §41736 for “Air Transportation to Noneligible Places.” A community eligible under this provision is not guaranteed scheduled air carrier service (funding is provided but service is not guaranteed) and there is a subsidy match requirement. Diomede is currently eligible under §41736 and receives a 50% match from DOT for essential air services. Diomede subsidizes this with 50% state funding.

In recent years, three communities that were otherwise not eligible for EAS have successfully managed to have amendments enacted to the EAS statutes which have allowed these communities to be included as eligible communities under the statutory EAS scheme, presumably through their congressional representatives. Amendments to 49 U.S.C. §41731 allowed two of the three other communities that were in this situation to be included as eligible for Basic Essential Air Service. One of the three communities was eligible under 49 U.S.C. §41736 for EAS Services for Noneligible Places and was eligible to have the subsidy match requirement waived through an amendment to that statutory provision. Diomede is the only remaining community in this program that still is not eligible for Basic Essential Air Service, and that is still required to provide the 50% match.

Kawerak and the Native Village of Diomede seek to have Diomede become eligible for Basic Essential Air Service. There is apparently no statutory or regulatory mechanism built into the EAS system to accept a new community that is otherwise not eligible under the existing scheme, nor are there waiver or exemption provisions. The only way in which Diomede will be eligible is to amend the current legislation. As noted above, there is precedent with three other communities to amend the EAS legislation in order to correct an inequity in which those communities would have remained permanently ineligible.

The cleanest way to amend the legislation, and the approach that would be most beneficial for Diomede, is to amend 49 U.S.C. §41731(a)(1)(A), and the definition of “eligible place” within

that statutory provision so that Diomede would be eligible for Basic Essential Air Service. Within that provision, (i)(I) through (III) are the original requirements in the statute which did not allow any of the other three communities, or Diomede, to be eligible under this definition. The statute was amended to include an alternative to those requirements in (A)(ii), which opened up eligibility for two of the communities:

...Or

[W]as determined, on or after October 1, 1988, and before the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century, under this subchapter by the Secretary of Transportation to be eligible to receive subsidized small community air service under section 41736.

Two of the three other communities became eligible with this amendment to §41731. Diomede has been eligible for and has received subsidies through the “small community air service under section 41736” since a contract was signed and flights began in late November, 2012. Therefore, the following amendments to §47731 (a)(1)(A)(ii) would allow Diomede to be eligible:

...Or

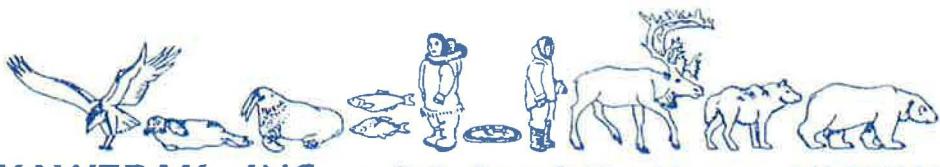
[W]as determined, on or after October 1, 1988, ~~and before the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century, and before December 1, 2012~~, under this subchapter by the Secretary of Transportation to be eligible to receive subsidized small community air service under section 41736.

Our understanding is that there are no other communities currently in the program that would become eligible with such an amendment, nor would there be future communities eligible after the cut-off date of December 1, 2012, so it does not appear this would open a door to a massive influx of other communities becoming eligible. According to DOT, Diomede is the only community that is in this program and in this situation.

There do not appear to be other statutory or regulatory provisions that would be affected by either of these amendments.<sup>1</sup> We are also not aware of any obstacle to amending §41731.

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<sup>1</sup> 14 C.F.R. 271.2 does provide a definition of “eligible place” that seems to contradict even the existing definition of eligible place under 49 U.S.C. §41731(a)(1)(A). Our understanding from DOT is that this provision has been superfluous and contradictory to the statute for several years, and work is underway to have it removed. And of course to the extent it contradicts the statutory provisions, the statutory provisions supersede the regulation.



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February 18, 2015

Congressman Don Young  
United States House of Representatives  
2314 Rayburn HOB  
Washington D.C. 20510

**Re: Native Village of Diomede and Kawerak, Inc. Request for Legislative Amendments regarding Eligibility for EAS Service**

Dear Congressman Young:

The leadership of the Native Village of Diomede (Diomede) and Kawerak, Inc. write to you today to request your assistance in obtaining a legislative amendment that would allow Diomede to be eligible for Essential Air Service program status which would enable Diomede to have regular scheduled air carrier services without the uncertainty that exists now each year. This is a matter of critical importance to this remote community that fundamentally affects the health, safety and welfare of every resident of this community.

**Background:**

For three years Kawerak, Inc. has assisted the Native Village of Diomede in the Essential Air Service (EAS) program on their behalf in order for Diomede to receive scheduled air service to the island. The U.S. Department of Transportation (DOT) provides 50% of the funding for the EAS program, but requires a 50% match. The State of Alaska provides the other 50% match through a Designated Legislative Grant. Continued funding through the State is not certain as the State is experiencing significant fiscal problems in which many State funded programs will have to be cut.

There are two EAS programs. The "Basic Essential Air Service" program provides guaranteed scheduled air carrier service to eligible communities, with full funding and no match requirement. Communities not eligible for the Basic EAS program, may qualify for an alternative EAS program that subsidizes scheduled air carrier services to the extent the community is able to obtain them, and also requires a 50% match for the EAS funding. Diomede is not eligible for the Basic EAS program due to the statutory eligibility requirements. Diomede has been able to qualify for the alternative subsidized EAS program but has had to provide the match each year since it entered the EAS program in 2012.

Diomede is the only remaining community in the EAS program that is not eligible for the Basic EAS program, and that must still provide a 50% match to receive the EAS subsidy through the alternative program. In recent years, other communities have been able to become eligible for the Basic EAS program or to have the match requirement in the alternative subsidized program waived for them, through legislative amendments to the applicable statutes.

**Request for Legislative Fix to the EAS Statute:**

The leadership of Diomede and Kawerak are requesting that our congressional delegation provide a simple legislative “fix” to the applicable statutory provision, 49 U.S.C. §41731, which would allow Diomede to be eligible for the Basic EAS Program. Attached as Appendix A is the specific proposal for the legislative fix to 49 U.S.C. §41731. This fix would make Diomede permanently eligible for the EAS program without a subsidy match requirement, and would correct the inequity of the current situation when Diomede is clearly one of the most remote communities in the US and most in need of such services.

**Critical Importance of Regularly Scheduled Air Carrier Service through the EAS Program:**

The EAS program, to the extent Diomede has been able to be involved in it, has drastically improved the quality of life in Diomede. It allows residents to travel for medical purposes, to attend training for business, and for pleasure. It has greatly improved access for health care, providing services such as law enforcement, emergency services, etc. The EAS program and the subsidy allows for more reliable access to goods and services. More Diomede representatives were able to travel for various important meetings.

The Diomede clinic is staffed by a health aide who deals with many types of health care issues and medical emergencies. For those needing follow-up health care at the Norton Sound Health Corporation in Nome, having weekly helicopter services has decreased the need for medical emergencies, allows for medication to be delivered to patients and also minimizes the expense for those medical emergencies.

It is important that the Alaska State Troopers have access to regular air services, as Diomede does not have a public safety officer. Many times in the past, criminal cases and accidental deaths had to wait for an expensive chartered helicopter flight to Diomede to bring possible suspects and remains of deceased persons to Nome. Child abuse cases might have taken weeks to get children off Diomede for their protection and to receive supportive services. It also takes weeks for investigators to interview and investigate child abuse and neglect cases on the island. With scheduled air service, the appropriate agencies do not have to wait for weeks to respond to these crisis situations.

There are groceries on the shelves in the store with regular air service. Maintenance staff for several entities (school, tribe, Village Corporation, power plant and communication systems maintenance) is able to provide more consistent and preventative maintenance. Staff is not stranded for weeks once in Diomede or waiting for weeks to get maintenance to those organizations with regular service.

Teachers, health aides, board members, service providers, residents and guests have more opportunities to travel back and forth without fear of getting stranded either in Wales or extended stays in Diomede. Waiting for air service in Wales creates hardships on the village of Wales. In 2010 teachers had to be brought to Diomede by small skin boat which took 36 hours due to weather and rough seas. Without the support of EAS, travelers in either direction could be stranded for weeks or months without a way to get home. It is much more beneficial to residents and providers to plan for being gone a week or staying just a week in Diomede.

Kawerak and Diomede leadership strongly urge our Congressional delegation to assist Diomede by obtaining a legislative fix to the EAS statute that would make Diomede eligible for permanent fully funded EAS status, because it is important to the health and well being of the community. Without your support and a legislative fix, Diomede will always face uncertainty as to whether it will have continued funding and thus continued regularly scheduled air carrier service. Diomede could face problems similar to the disaster situation in 2010 when there was not regular access for many months, affecting all aspects of the life in the small community. Recently Diomede has submitted a disaster declaration due to poor walrus hunting because lack of ice conditions and lack of food on the grocery shelves at the Native Store. Their situation is being monitored by several entities, as only through regular air flights, goods are being delivered to their community.

Please see Appendix A for our specific proposal to amend the EAS legislation, and other attached documents which provide further background and context for our request, including the State of Alaska grant award and the commitment from the US Department of Transportation. Thank you for your support and assistance in helping Diomede obtain permanent Basic EAS program status.

Sincerely,

*Robert Soolook*  
Robert Soolook, President  
Native Village of Diomede

*Andrew Milligrock*  
Andrew Milligrock, Mayor  
City of Diomede

*Vera Ozekna*  
Vera Ozekna, Member  
Diomede Native Corporation

*M Melanie Bahnke*  
Melanie Bahnke, President  
Kawerak, Inc.

CC: Brandon Belford, Deputy Assistant Secretary for Aviation and International Affairs, US Department of Transportation

## Three Weeks, No Flights: Diomede Residents Stranded without Mail, Food Deliveries

By [Matthew F. Smith](#), KNOM News Reporter, February 11, 2015



*Little Diomede in April 2008. Photo: Susanne Thomas, Bering Strait School District. Used with permission.*

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**THE ONLY AIRCRAFT** flying to one of Alaska's most remote communities has been down for maintenance for nearly three weeks—leaving residents of the Bering Strait community of Little Diomede with empty mailboxes, bare grocery store shelves, and no way on or off the island.

Andrea Okbealuk works at the Diomede school, and on Tuesday afternoon she was escorting children to lunch. The kids were eating alongside classmates, but also other members of the community, parents and aunties and grandfathers. No mail or cargo deliveries since Jan. 22 has left store shelves empty, and with no checks coming in the mail, wallets are thin and essentials hard to come by. So the school has opened

its doors, serving nearly 300 lunches and dinners to Diomede residents since Saturday.

"In our store, it's pretty bare. We do have a bunch of food here at the school, which will last for a while," Okpealuk said. Hunters have been on the ice daily, she said, but strong winds, rough water, and poor ice conditions have made catching game difficult. "In our home," she added, "I think the hardest part is having milk for the babies."

Even with the school sharing its food, Okpealuk said, for mothers with young babies, no new stock on the shelves means there are few alternatives.

"It is hard when there's no milk," she said. "When you've switched your baby to regular canned milk to whole milk, to nonfat milk, to two percent milk, and then to nonfat milk again, and then now to powdered milk, it upsets the baby's stomach." She sighed. "A couple of us are going to that now."

The needs go beyond the right food on the shelves. Late Friday night and into Saturday morning, an Army National Guard Blackhawk had to be dispatched to medevac a pregnant 18-year-old from Diomede to Nome's Norton Sound Regional Hospital. While on the ground the Blackhawk crew and four medical providers were alerted to a two-month-old with an airway issue. That infant was identified as a "critical patient" and medevaced to Nome as well.

Diomede's remote location means there are not many options when it comes to passenger and freight service to the island. Its unique geography—set along the shore of an island that's little more than a mountain jutting sharply from the Bering Sea—means there's no runway, save for the occasional ice runway that can be carved into the sea ice.

That leaves just one company, Oregon-based aircraft operator Erickson Aviation, that provides helicopter service to Diomede. That service is paid for with a \$337,520 subsidy of federal and state dollars under the Essential Air Service program set up in 1978. Under the program, the federal Department of Transportation pays \$188,760 for the helicopter service, with the rest of the money coming through Bering Strait regional nonprofit Kawerak.

Erickson's program director Chris Schuldt said the company only keeps a single helicopter—a twin-engine Bölkow BO-105—for service to Diomede. That helicopter has been down for routine maintenance in Anchorage since its last flight to Diomede in January.

"We've had some maintenance on the aircraft, but the goal is to return it to service in the next one to two days," Schuldt said Tuesday. "Pending weather, [the helicopter] will return to Nome and begin operations as soon as that's complete, [and] make sure our aircraft are in the top condition before we begin flying passengers and cargo again."

Shuldt said Erickson's customers, including DOT, are aware of the company's maintenance status and plans to return to service this week. Erickson also contracts with the U.S. Postal Service for weekly mail service to Diomede.

According to Kawerak's Pearl Mikulski, who worked on the EAS contract for the nonprofit in the past, the contract requires Erickson to make a certain number of trips each year, but otherwise allows the company to set its own schedule when it comes to flights, as well as stoppages for weather and repairs.

Kawerak can do little, Mikulski said, beyond cautioning Erickson to use the funds in such a way as to ensure flights last all year. That's an especially difficult proposition during winters with poor ice conditions, Mikulski added, as the contract assumes an ice runway for part of the year. Last winter, that ice around Diomede wasn't thick enough to support a runway.

Andrea Okpealuk said, for her and the residents of Diomede, every day without a helicopter means people are closer to not having what they need.

"Some of us do have meds that were supposed to come a couple weeks ago," she said. "I've had meds that I ordered a couple weeks ago, and I just ran out."

She sighed again. "Hopefully, in the next few days, we'll get chopper service here."

This isn't the first time Diomede has been without air service. Late applications for the Essential Air Service Grant caused service to lapse for more than two weeks in July.

You can listen to a Profile with Erickson's Diomede helicopter pilots in KNOM's archive.

**In Summary Kawerak, Inc., supports the reauthorization of the Federal Highway Transportation Bill - Supports AFN and NCAI's Resolutions of The Tribal Transportation Unity Summit Recommendations**

Transportation infrastructure is critical to the basic quality of life and economic development for Indian Tribes. However, almost 80% of all roads in the TTP Inventory are not improved, earth or gravel roads and many resemble third-world conditions. As a result, Native communities continue to lag behind the rest of America in livability and economic vitality.

Equitable construction of modern tribal transportation systems would allow for safe access to vital health, education, and economic resources. Federal funding for tribal transportation has not kept pace with the money devoted to other aspects of the national transportation network. There are 566 sovereign tribes within the geographic borders of the United States, and 229 of these tribes are located in Alaska.

MAP-21 reversed the slow progress toward equity made by prior transportation laws. And while President Obama's FY 2015 budget seeks to address transportation infrastructure deficiencies in Indian Country by increasing funding available to Tribes, broadening eligibility for direct tribal participation in federal transportation programs, and extending the Indian Self-Determination and Education Assistance Act (ISDEAA) to several of those programs, far more fundamental change is required. The statute must be amended to provide safe access to critical resources, to ensure that tribal stakeholders themselves shape how funding is distributed, to increase tribal transportation funding, to streamline program administration by tribes, and to require negotiated rulemaking procedures involving tribal representatives.

There are five top transportation priorities we request be adopted by Congress as statutory amendments in the reauthorization of MAP-21 to improve the delivery of transportation services by Tribes to our members and communities.

**1. REINSTATE TRIBAL NEGOTIATED RULEMAKING FORMULA**

MAP-21 replaced a relative needs funding formula, that had been crafted by a tribal negotiated rulemaking committee, with a new funding formula crafted by federal decision-makers which drastically cut funding to some Tribes, mostly small and remotely-situated, while dramatically increasing funding for others. MAP-21's formula had little rational connection to relative need. The delivery of transportation infrastructure is an essential governmental function that has a critical impact upon the health, safety and economic well-being of the Tribes and triggers the Department's obligation under Executive Order 13173. Allocation formula decisions should be made by the tribal stakeholders themselves. Our proposed amendment would reinstate tribal negotiated rulemaking for determining funding allocations and create a committee whose make-up would ensure that representation is fairly divided among small, medium and large Indian Tribes.

**2. RESTORE TRIBAL HIGH PRIORITY PROGRAM FUNDING**

Prior to MAP-21, the Tribal High Priority Projects Program received its funding separately from the highway trust fund. MAP-21 eliminated this separate funding by authorizing THPP funding from general appropriations. But no funds have been appropriated for THPP since the enactment

of MAP-21. THPP previously was used by Tribes to address emergency and other high priority projects that their annual allocation could not meet. This program, so crucial for health and safety purposes, should be restored.

### **3. REMOVE THE ANNUAL OBLIGATION LIMITATION THAT DIVERTS TRIBAL FUNDING**

Approximately 6-15% is deducted annually from the Federal-Aid Program and the Federal Lands Highway Program, which includes the Tribal Transportation Program, for federal-aid highway and highway safety construction programs. In prior years, the Federal Lands Highway Program was exempt from this obligation limitation annual deduction, thereby allowing Tribes access to their fully-authorized funding level. Statutory protection should be restored to tribal transportation funding as part of a national priority to help Indian Country catch up to the rest of America.

### **4. FOCUS UNUSED OBLIGATION AUTHORITY ON UNMET NEEDS OF INDIAN COUNTRY**

Each year, millions of dollars in unused national transportation funding is recaptured and re-obligated to state governments with shovel-ready projects. Rarely if ever do these funds help meet the unmet transportation needs of Indian Country, where many rural and remote tribal governments with shovel-ready projects lack basic access to critical services, such as health and education, and to job and trade markets. Our proposed amendment would authorize no less than ten percent (10%) of the nation's unused obligation authority as of each August 1 to fund a new Safe Access For Every Tribe competitive grant program. This SAFE-T program would fund shovel-ready tribal projects selected under a criteria-ranked matrix to construct safe access to essential goods, services, and markets. This program will help provide under-served Tribes the same degree of safety and access enjoyed by Americans in the rest of America.

### **5. PROVIDE FULL TRIBAL SELF GOVERNANCE AUTHORITY**

Public Law 93-638 authority should be fully extended to all aspects of tribal funding and services related to the Highway Trust Fund and administered by the U.S. Department of Transportation (DOT) and the U.S. Department of the Interior (DOI). The new law should clarify that this tribal authority is a mandatory obligation of both DOT and DOI, and is not subject to the discretion of DOT or DOI. It should also clarify that all Highway Trust Funds, including those used by the DOT or DOI to administer federally-funded transportation programs, are contractible and subject to Public Law 93-638 authorities.

The following items have been designated as top priority projects in each community in the Bering Strait Region based on an in-depth community planning process. The date signifies when the priorities were officially updated. *Kawerak's Community, Planning and Development update Feb 2015.*

<b>Brevig Mission (1/9/14):</b> <ul style="list-style-type: none"><li>1. Community Recreational Center</li><li>2. Tannery Building</li><li>3. New Housing/Apartments</li><li>4. Water/Sewer Upgrade</li><li>5. Roads</li><li>6. Teen Center/Café</li><li>7. Elder Care/Day Care Center</li><li>8. Elder/Youth Traditional Knowledge</li><li>9. Expand Multi-Purpose Building</li><li>10. Shelter Cabins</li></ul>	<b>Council (7/17/10):</b> <ul style="list-style-type: none"><li>1. Land Planning</li><li>2. Environmental Protection</li><li>3. Education, business training, and economic development</li><li>4. Energy programs</li><li>5. Elders, youth, and cultural activities</li><li>6. Dumpsite improvements</li><li>7. Road improvements</li><li>8. Fire safety and training/creating firebreaks</li><li>9. Community cooperation</li><li>10. Cemetery renovations</li><li>11. Equipment storage building</li></ul>
	

**Dionede (1/10/13):**

1. Transportation Improvements
2. Water and Sewer
3. New Housing and Improvement of Existing Structures
4. Public Safety
5. Elder Care Programs
6. Local Disaster Plan
7. Revive Tradition & Culture

**Elim (4/5/13):**

1. New Water Source
2. Develop Rock Quarry.
3. Water & Sewer to 4 New Homes
4. Community Building (Old High School)
5. Utilize our timber.
6. Build Small Boat Harbor.
7. Economic Development - Mineral, Geothermal, Hydrothermal
8. Teen Center
9. NSEDC Community Energy Fund (CEF)
10. Replace Old Bridge.



**Gambell (10/23/2012):**

1. Housing & Renewable Energy
2. Public Safety
3. Health Care
4. Transportation
5. Waste Management
6. Multi-purpose Building
7. Education
8. Economy
9. Processing Plant
10. Cultural Center
11. Storage & Workshop Facility

**Golovin (6/2/09):**

1. Water & sewer/year-round water source
2. Relocation of generator building/alternative energy.
3. Rock quarry/heavy equipment
4. Erosion control
5. Roads, including to subsistence areas
6. New store building
7. Small boat harbor
8. Own zip code/new post office
9. Recreational building/daycare
10. Crosswind runway

2014-2019 LEDP Top Priority List NOT officially adopted by resolution:

- Youth Center
- Alternative Energy
- Rock Quarry
- Housing
- Post Office & Zip Code
- Water & Sewer
- New Store
- Erosion Control
- New City Building
- Cross-wind runway
- 14(c)(3)
- New Dock & Barge Landing



**King Island (1/13/15):**



1. Community Hall
2. King Island Grant Writer
3. More Housing and Housing Improvements
4. Continue Road Project
5. Elders and Youth Services
6. Strengthen Cultural Activities
7. Encourage Technical and Trade Schools
8. General Assistance
9. Relocate Cape Wooley Camps
10. Transportation Services for Community Members

**Koyuk (10/9/14):**

- 1) Housing
- 2) Sanitation Facilities Improvement
- 3) Ambulance for the Clinic
- 4) Build a New Head Start School.
- 5) Youth/Cultural Center
- 6) Roads
- 7) Search and Rescue
- 8) Tribal Court
- 9) Law Enforcement (VPSO)
- 10) Developing Natural Resources



**Mary's Igloo (06/17/10)**

1. More job training to become certified in various fields.
2. Local job data base.
3. Alternative energy development projects.
4. Code red or firefighting equipment for upper and lower Teller sites.
5. Multipurpose building in Teller.
6. Re-establish the Tribe at Mary's Igloo.
7. Mary's Igloo runway.
8. New homes in Teller and Mary's Igloo for Mary's Igloo members.

**Nome (5/08)**

1. Address high housing energy/fuel costs.
2. Research and/or collaborate to develop alternative energy resources.
3. Help with renewable energy for office buildings and homes.
4. Provide housing opportunities to all members.
5. Research and/or collaborate to provide a homeless shelter.
6. Research and/or collaborate to provide an inpatient substance abuse treatment center.
7. Acquire a new tribal office building/hall/tribal court.
8. Research feasibility to provide internship opportunities.
9. Expand ANCSA curriculum at NPS. Include the difference between tribes, villages, and regional corporations.
10. Develop the 2 Eskimo Boys Project



**Saint Michael (1/23/12):**

1. Public Safety Building
2. Completion of the 14c Process
3. Local Bulk Fuel Tank Farm
4. Seawall Erosion Protection
5. Additional Water Storage Tank
6. Heavy Equipment Facilities
7. Reindeer Facilities
8. New Teen Center
9. Establish a Local Housing Authority
10. Another Store



**Savoonga (1/20/12):**

1. Clinic / 4-Plex Building
2. Safe & Reliable Water and Sewer
3. Economic Job Training for any age
4. Housing
5. Youth/Elder Community Center
6. By-pass Storage Facility
7. Breakwater/Barge Mooring
8. Meat Processing Plant
9. Airport relocation
10. Museum/Tourism
11. Recycling Center



**Shaktoolik (July, 2014):**

1. Emergency Road
2. Bulk Fuel Storage Facility/Power Plant
3. New Water Storage Tank
4. Multi-purpose Facility
5. Heavy Equipment Garage
6. Dust Control & Snow Fencing
7. New Clinic
8. Shaktoolik Boat Harbor
9. Fish Processing Plant/Buying Station
10. Early Childhood Education (ECE)



**Shishmaref: (5/2/14):**



1. Multi-purpose building
2. Cultural Center & Activities
3. Youth
4. Housing, Apartments, Rentals
5. Economic Development
  - a. Gift Shop
  - b. E-commerce
  - c. Etc.
6. Community & Regional Technical Training Center
7. Alternative Energy Development
8. Human & Health Services
  - a. Bullying
9. Water & Sewer

**Solomon (12/12/13):**

1. Community power/electricity (wind, solar, and diesel backup)
2. Emergency Communication
3. Waste Management
4. Salmon Enhancement
5. More Solomon Gatherings and Involvement
6. Full Operation at the B&B/Community Center
7. Assess Effects of Climate Change
8. Driveway Improvements to Campsites
9. Community Potable Water
10. Boat Harbor
11. Airstrip Improvement



**Stebbins (12/30/13)**

1. Water & Sewer
2. Suicide Prevention Program
3. Safe Homes
4. Housing Development
5. Yupik Language Program
6. Teach & Record Traditional Skills
7. Job Trainings
8. Build a Tannery
9. Multi-Purpose Evacuation Center
10. Fire Department



**Teller (6/12/14):**

1. Seawall
2. Water & Sewer
3. Evacuation Road
4. Tank Farm
5. Roads
6. More Housing
7. Weatherization
8. Crosswind runway
9. Emergency Equipment
10. Landfill
11. Multi-purpose Building
12. Reindeer Husbandry
13. Power Plant

**Unalakleet (February, 2014)**

1. Construct New Water Line.
2. Roads for Both Sub-divisions
3. Elders Assisted Facility
4. SAR and Fire Department Funding
5. Continued Monitoring of Contaminated Sites
6. More Homes for Families
7. Sub-regional Clinic Fully Staffed
8. Crab Processing/Holding/Value-added Seafood Facility
9. Replace Boat Ramps
10. Evacuation Center



**Wales (7/23/14):**

1. Bulk Fuel
2. New Clinic
3. HBH Lagoon/Dumpsite
4. Seawall Lagoon, Boat Harbor and Fishing
5. Cemetery
6. Repair Housing
7. Public Safety
8. Heavy Equipment/Storage
9. Water & Sewer Line
10. Renovate Church
11. Youth Center
12. Long & Short Term Housing
13. New Power Plant/Wind Solar Energy
14. Gravel Business
15. Grader
16. Snow Fencing
17. Tourism

**White Mountain (05/30/13):**

1. New Store
2. Firebreak Around Village
3. Gravel Source
4. Housing
5. Language Preservation
6. Environmental Program
7. New & Improved Roads
8. Elder & Youth Activities
9. Utility Upgrades
10. Tribal Healers
11. VPO
12. Enforce Subsistence Rights
13. Headstart Building
14. Enlarge Tribal Center
15. City Building Improvements
16. Funding Resources
17. Cultural Services



# Map of Alaska and the Bering Strait Region



## SIZE AND DISTANCE COMPARISON

