Alaska Federation of Natives

2009 Federal Priorities

Human Resources Committee
A standing committee of the
Alaska Federation of Natives Board of Directors

Alaska Federation of Natives

HUMAN RESOURCES COMMITTEE

Who We Are

The **Human Resources Committee** (HRC) was established by the **Alaska Federation of Natives** (AFN) Board of Directors, and functions as a standing committee of the Board. AFN is the largest Native organization in Alaska. Its membership includes 244 Native village tribes and corporations, 13 regional for-profit Native corporations (established pursuant to the ***Alaska Native Claims Settlement Act***) and 12 regional Native nonprofit tribal consortia.

The HRC is composed of the 12 regional tribal consortia representatives who serve on AFN's Board, along with representatives from the **Alaska Native Health Board, Alaska Native Tribal Health Consortium, Alaska Native Justice Center, First Alaskans Institute, Association of Alaska Regional Housing Authorities, RurAL CAP** and the **Alaska Inter-Tribal Council**.

The HRC promotes the self-determination of Alaska's federally recognized tribes and serves as an advocate for Alaska Natives on a wide variety of health, education and social issues impacting Alaska Natives, including tribal empowerment, education, health, public safety, economic and related services, employment and vocational training, technical assistance, co-management of natural resources and social services. The HRC promotes the protection and enhancement of the Alaska Native cultures and traditions through a working partnership with Alaska's tribal governments and with other statewide organizations serving Alaska Natives.

Much of the HRC's work is guided by resolutions passed at AFN's annual convention held in October of each year. The AFN convention is the largest representative annual gathering in the United States of any Native peoples, as well as the largest event held in Alaska each year. More than 4,000 Alaska Native delegates attend the convention each year, and live statewide television and radio broadcasts reach thousands of others, both Natives and non-Natives alike, across the nation's largest state. During the convention, the entire state of Alaska is blanketed with discussion of the most pressing current issues facing the Alaska Native community.

According to the 2000 Census, Alaska Natives numbered almost 120,000 people, or l9% of Alaska's total population. In the succeeding seven years, our population has risen to approximately 127,000.

Cover photo Nondalton Fish Camp, July 2008.
Nondalton is an Alaska Native Village located in Bristol Bay.

Our History

The **Alaska Federation of Natives** was formed in October, 1966, when more than 400 Alaska Natives representing 17 Native organizations (including what are now the regional nonprofit tribal consortia and statewide nonprofits that comprise the HRC), gathered for a three-day conference to address Alaska Native aboriginal land rights. From 1966 to 1971, AFN worked primarily to achieve passage of a just land settlement in the US Congress. On December 18, 1971, the ***Alaska Native Claims Settlement Act*** (ANCSA) was signed into law. When this goal was achieved, it was not the end of an era, but a new beginning.

After the passage of ANCSA, the regional for-profit corporations assumed responsibility for the management of the money and land received under the act. The corresponding regional Native associations for the 12 geographic regions listed in Section 7 of ANCSA, 43 USC 1601, turned their attention to the service delivery and community development concerns which plagued rural Alaska and which were not solved by the land claims settlement. These regional tribal consortia have been administratively determined to be tribal organizations eligible for grants and contracts under the ***Indian Self-Determination Act***. Today, the 12 regional nonprofits representing the 12 ANCSA regions are as follows:

1. Arctic Slope Native Association
2. Kawerak Inc.
3. Maniilaq Association
4. Association of Village Council Presidents
5. Tanana Chiefs' Conference
6. Cook Inlet Tribal Council
7. Bristol Bay Native Association
8. Aleutian/Pribilof Island Association
9. Chugachmiut, Inc.
10. Tlingit-Haida Central Council
11. Kodiak Area Native Association
12. Copper River Native Association

AFN, with the support and participation of the HRC, was instrumental in the development and passage of a number of federal laws, including the ***Alaska National Interest Lands Conservation Act*** of 1980 (ANILCA), and the 1988 Amendments to ANCSA (the "1991 legislation"). The HRC continues to play an active role in the legislative process—promoting laws, policies and programs in health, education, resource development, labor and government. More recently, AFN and the HRC have turned their attention to social, tribal and economic issues.

Our Mission

Alaska Native people began as members of full sovereign nations and continue to enjoy a unique political relationship with the federal government. We will survive and prosper as distinct ethnic and cultural groups and will participate fully as members of the overall society. The mission of the HRC and AFN is to enhance and promote the cultural, economic and political voice of the Alaska Native community. HRC's major goals are to:

- Advocate for Alaska Native people, their governments and their organizations, with respect to federal, state and local laws and policies.
- Foster and encourage preservation of Alaska Native cultures.
- Promote understanding of the economic needs of Alaska Natives and encourage development to meet those needs.
- Protect, retain and enhance lands owned by Alaska Natives and their organizations.
- Promote and advocate for programs and systems that instill pride and confidence in individual Native people.

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I. Federal Economic Stimulus Package

Federal Agency Administration of ARRA Funds

AFN is pleased that the ***American Recovery and Reinvestment Act of 2009*** (ARRA) provides funding for many tribal programs and creates many opportunities for job creation and infrastructure development in rural Alaska. Much of Alaska, like many reservations in the Lower 48 states, is economically underdeveloped with high poverty rates and few economic opportunities. Rural Alaska is particularly impacted by high energy costs, which have not gone down appreciably despite declining world oil prices.

However, there is a great deal of uncertainty about how particular federal agencies will administer the additional funds. The ARRA gives federal funding agencies considerable discretion as to how they administer the additional funding. Funds should be made available quickly with minimal red tape.

Key Recommendations

- Tribal consultation should take place early, prior to formal commenting periods. Tribes and Native organizations want the stimulus to work, recognize that stimulus programs may operate under tighter timeframes and oversight than typical programs, and are willing to help design programs that make sense. They should be considered partners.
- Funding for tribal infrastructure or other tribal programs should be in the form of grants, without a required match. Grants that require matching funds, and funding in the form of loans that must be repaid, are unlikely to be used in rural Alaska. Alaska tribes do not tax and most do not have unrestricted revenue that can be used for matching funds.
- The application process should be streamlined and easy to use. Further, while e-filing and e-reporting should be an option, web-based grant applications and reporting should not be mandatory because many areas do not have adequate and reliable internet connectivity.
- Reasonable administrative or contract support costs should be provided in the grant awards, and the agencies should recognize that these costs can be relatively high in remote, rural areas. Arbitrary caps on administrative costs end up requiring the tribe/tribal organization to subsidize the program and will starve the program of necessary support.
- If "tribe" is undefined for the particular program, the funding agency should defer to the definition in the ***Indian Self-Determination and Education Assistance Act***, 25 USC 450b, and consult with the **Department of the Interior** on its application in Alaska.
- In general, for infrastructure spending allocated on a formula basis it will be preferable to manage the funds at the federal regional office rather than the agency's central office. For any recovery of unused funds required by ARRA, the funds should be made available in the first instance for re-distribution within the same region.

Bureau of Indian Affairs Stimulus Funding—IRR and OIP Construction

The ARRA provides $310 million nationally to the **Bureau of Indian Affairs** (BIA) **Indian Reservation Roads** (IRR) program, and $450 million for the BIA general construction budget within the **Operation of Indian Programs** (OIP). Both of these appropriations have implementation issues affecting Alaska.

For the IRR program, the BIA has an established distribution method that allocates funds into tribal shares based on a formula. By statute and regulation, the tribes are beneficiaries of the program and have the right to contract to perform IRR program activities, within the amount of their tribal shares, via the ***Indian Self-Determination and Education Assistance Act*** (ISDEAA).

However, on February 9, 2009 the **Department of the Interior** (DOI) Inspector General issued a "Flash Report" concerning the IRR program in Alaska that was highly critical of the **BIA Alaska Regional Office** and recommended that DOI withhold stimulus funds and perhaps all future IRR funds from Alaska, because of alleged mismanagement by the BIA. The Inspector General's report lacks context and appears to misconstrue the structure and purpose of the IRR program. The BIA itself is not the beneficiary of the program, and the report does not explain any policy or legal rationale for depriving Alaska tribes of funding based on mismanagement by the federal government. Further, the stimulus legislation itself provides that 4% of the national allocation can be used for BIA program management, oversight, and project administration. It is unclear why the **Department of the Interior** would not simply provide Alaska additional administrative support as necessary to implement the program.

For the OIP funding, the BIA is given discretion to determine the funding allocation, but is directed to establish a prioritization process that focuses on job creation and creating lasting value to the American public, and to prioritize critical facility replacement, roads, schools, and detention facilities. For the OIP construction allocation, the BIA should develop a prioritization process that considers tribally-owned or controlled facilities on the same footing as BIA-owned facilities. About 40% of tribes nationally operate BIA programs through self-governance agreements negotiated pursuant to the ISDEAA, and many other tribes operate BIA programs under self-determination contracts. In the past 20 years, tribes and tribal organizations have built or assumed control of most of the facilities housing BIA-funded services in Alaska. Should the BIA allocate stimulus package construction funds only to "BIA facilities," it will artificially limit funding to its regional offices and to locations where the BIA still provides direct services to the tribes. This will preclude a substantial number of tribes from receiving the benefit of this funding.

Key Recommendations

- ARRA funds for the IRR program should be distributed in Alaska on the same basis as in other BIA regions. If the Alaska Regional Office requires additional help to administer stimulus package funds, assistance should be provided by the BIA Central Office and paid for using stimulus package funds.
- The BIA should develop a prioritization process for the $450 million in OIP construction funds that treats tribally-owned or operated facilities on the same basis as BIA-owned facilities.

Broadband Infrastructure Funds in the Stimulus Package

The ARRA provides two major categories of funding for broadband infrastructure, $2.5 billion to the US **Department of Agriculture Rural Utilities Service** (RUS), and $4.7 billion to the **National Technology and Information Administration** (NTIA) within the **Department of Commerce**, of which $3.8 billion is directly available for broadband infrastructure. Additionally, the ARRA charges the **Federal Communications Commission** (FCC) with preparing a national broadband plan and submitting it to Congress by February 17, 2010.

Rural Alaska as a whole remains very poorly served by broadband. Broadband and other telecommunications in rural Alaska are provided through satellite links, and are highly expensive compared to urban America. As the bandwidth demands of common web applications increase, rural Alaska is actually falling further behind.

Local internet services are provided through local cable, wireless, or DSL networks, but the internet service provider itself is connected via satellite. Although existing subsidies through the **Universal Services Fund** (USF) have resulted in health care providers and schools in rural Alaska receiving better services than they would otherwise, those subsidies are not available to businesses, local governments, other nonprofits, or the general public. They do very little to promote economic development. Non-health organizations in the regional centers in Alaska have been quoted prices for T1 connectivity as high as $16,000 per month per site, or about 70 times the rate in Seattle. This is simply unaffordable.

The USF subsidies create a disincentive for the carriers to bring down costs to the general public. Rural Alaska is a relatively small market. Essentially, the USF subsidy ensures that the biggest internet consumers in rural Alaska get service at 90% subsidized rates, while the public at large has to pay prices set by a non-competitive "market." The USF subsidy amount is based on the difference between the local market costs and the closest urban rates, in Anchorage. The large carriers that provide the subsidized service to health facilities and schools have no incentive to reduce the market rate in rural Alaska, because doing so would just reduce the subsidy they receive for serving their biggest customers.

Although individual satellite dishes are a partial solution for households and businesses that can afford them, these services are not available everywhere and—because of limitations on upload rates—are inadequate for web-based businesses, offices with multiple users, and other high-use consumers. Alaska is also at the edge of the coverage area for these providers.

While the funding in ARRA for broadband deployment is exciting, if this funding is distributed in grants that merely upgrade local networks piecemeal or improve the existing satellite infrastructure system, an opportunity to make a giant leap forward may be lost. The agencies should approach broadband deployment as a national endeavor comparable to building the interstate highway system in the 1950s and 60's, and encourage large scale projects—such as deploying fiber optic cable up the coast of western Alaska or the development of microwave networks—that will link broad swaths of remote rural Alaska into the Anchorage network without depending on satellite technology.

Key Recommendations

- The RUS and NTIA should prioritize projects that will make major improvements over large areas, while avoiding the creation of private sector monopolies.
- In planning for broadband deployment the RUS, NTIA and FCC should encourage the creation of an "All Alaska" solution to extend high speed, ground-based broadband, such as fiber optic cable, into rural Alaska.

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II. Protection of Subsistence Hunting, Fishing and Gathering in Alaska

Federal Regulatory Protections for Subsistence Hunting and Fishing

The subsistence protections Congress intended in passing the ***Alaska Native Claims Settlement Act*** (ANCSA), and those specified in the ***Alaska National Interest Lands Conservation Act*** (ANILCA), are being weakened and may be in danger of failing entirely. AFN believes it is imperative that the federal government once again act to safeguard our villages' essential food resources and traditional way of life. Without adequate subsistence resources, most villages will not be able to feed themselves and will slowly disappear through out-migration. The cost of the resulting economic collapse and social dislocation would fall on every Alaskan—Native and non-Native, urban and rural—and state and federal agencies. Government has a vested interest in ensuring that the villages remain able to sustain themselves, rather than becoming more dependent on welfare.

Key Recommendations

- Consider regulatory and statutory changes that will protect our way of life, in light of growing urban pressures on finite resources. Several federal laws now provide a "Native" or "Native-plus-rural" or "Native-plus-local" subsistence priority in Alaska (e.g. for marine mammals, migratory birds, and under the ***Endangered Species Protection Act***).
- Defend the subsistence regulations adopted in January 1999 to implement the Katie John Decision. We urge the Secretary to interpret broadly the scope of federal jurisdiction to fulfill the federal government's trust responsibility to Alaska Natives.
- Amend Title VIII of ANILCA in order to exempt the membership of its Regional Advisory Councils from the requirements of the ***Federal Administrative Committees Act*** (FACA).
- Amend Federal regulations implementing the rural priority (50 CFR 100.15 and 36 CFR 242.15) to ensure that Saxman and other communities do not lose their right to subsistence priority based on questionable interpretations of socio-economic data.

Federal Migratory Bird Hunting and Conservation Stamps

Requiring Alaska Natives to purchase federal licenses—known as Duck Stamps—in order to hunt migratory waterfowl is inconsistent with the 1996 protocol amending the migratory bird treaty between the United States and Canada, and the ***Migratory Bird Treaty Act***, 16 USC 708, which implements the treaty. The protocol requires that any "regulations implementing the non-wasteful taking of migratory birds and the collection of their eggs by indigenous inhabitants of the State of Alaska shall be consistent with the customary and traditional uses of such indigenous inhabitants for their own nutritional and other essential needs." Alaska Native hunters have long viewed the subsistence harvest of migratory birds and their eggs as a community tradition, and not as an individual entitlement that can be reduced to a system of individual permits. Requiring the purchase of duck stamps is inconsistent with custom and tradition and therefore inconsistent with the Treaty protocol.

Key Recommendation

- Amend the ***Duck Stamp Act*** by adding an exemption for "eligible indigenous inhabitants of the State of Alaska engaged in the customary and traditional harvest of waterfowl and their eggs." We urge the **Department of the Interior** to support this amendment.

Migratory Bird Co-Management

The protocol in the amended treaties between the United States, Canada and Mexico recognizes the traditional subsistence harvest of migratory birds by indigenous inhabitants of Alaska and provides that they "shall be afforded an effective and meaningful role" in "the development and implementation of regulations affecting the non-wasteful taking of migratory birds and the collection of eggs" through their participation in co-management bodies. In 2000, the **Fish and Wildlife Service** established the **Alaska Migratory Bird Co-Management Council** and 12 regional management bodies. But neither the Council nor the regional bodies have been adequately funded.

Key Recommendation

- The Secretaries of State and Interior should support the implementation of the **Migratory Bird Treaty Act** and its co-management councils by including a treaty-implementation line-item in the appropriate agency budget. We also urge Congress to ensure adequate funding in the annual appropriations to the agencies to cover the costs of these co-management bodies.

Reauthorization of the Marine Mammal Protection Act

The Indigenous Peoples' Commission on Marine Mammals (IPCoMM), an AFN subcommittee, has negotiated amendments to section 119 of the MMPA with the federal agencies. Section 119 currently authorizes agreements between Alaska Native organizations and federal agencies in order to conserve marine mammals and to provide for co-management of their subsistence uses by Alaska Natives. It also authorizes funding for the Secretaries of Commerce and Interior each year to carry out these purposes. The proposed amendments would allow the agencies to develop harvest management plans within existing or newly developed cooperative agreements in coordination with Alaska Native organizations. These plans would implement measures taken by Alaska Native organizations and their member tribes to regulate the subsistence take of marine mammals prior to a finding of depletion. The proposed legislation also provides for an increase in the annual amount authorized for implementation of Section 119 to cover the funding needs of IPCoMM and Alaska Native organizations engaged in co-management of marine mammals.

Key Recommendation

- In the 110th Congress, Congressman Don Young introduced HR 5429, a stand-alone bill that incorporates a package of amendments to the MMPA that strengthen the co-management role of Alaska Native organizations engaged in co-management of marine mammals, and that enable the federal agencies and Alaska Native organizations to develop marine mammal conservation regimes collaboratively in order to avert management crises that can arise under the current system. AFN urges passage of similar legislation during the current Congress.

III. Federal Administrative Policy

Fostering Tribal Self-Determination and Self-Governance

The United States Constitution recognizes Indian Nations as sovereign governments. Hundreds of treaties and executive orders, federal laws and court cases have reaffirmed that Indian Nations retain the inherent power to govern themselves. Beginning in the 1970s, the ***Indian Self-Determination and Education Assistance Act*** (ISDEAA) began a process whereby tribes could take control of federal programs operated by the **Indian Health Service** (IHS) and the **Bureau of Indian Affairs** (BIA). Expansions of this law in subsequent years created the compacting mechanism whereby tribes could assume more management authority, including the ability to redesign programs, reallocate funds and create new programs within their funding base. Tribes seeking a change in the federal-tribal relationship opted to enter into these **Compacts of Self-Governance**, which enabled them to transfer control over government-funded programs from the monolithic Washington bureaucracy to their tribal governments and elected leaders.

Tribal self-governance works primarily because it allows funding and program implementation to be controlled, utilized and evaluated at the local service delivery level. Participating tribes and tribal organizations take primary responsibility for establishing local priorities and allocating resources as needed to address local needs and conditions. Local economies are simultaneously strengthened by the creation of jobs, and the building of administrative capacities and management expertise. Local tribal leaders and locally based staff care more about their communities than anyone else and are accountable to their own people. Self-governance provides the opportunity for tribal governments to exercise their sovereignty with minimal federal intrusion and involvement, while at the same time ensuring that the federal government continues to uphold its trust responsibility by dealing with tribes on a government-to-government basis.

The success of Tribal self-governance is reflected by the fact that it continues to expand. In 2008, 57% of federally recognized tribes participated in Tribal self-governance in the **Department of Health and Human Services** (DHHS), representing over $1 billion of the **Indian Health Service** budget. In addition, 40% of the recognized tribes nationally participate in self-governance in the **Department of the Interior** (DOI), representing over $300 million of the **Bureau of Indian Affairs** budget.

While the policy of Tribal self-governance has been a great success, in the last decade there has been increased resistance within the federal agencies to fully implementing self-determination and self-governance. The responsible offices within IHS and DOI have been buried within their respective agencies and have seen their policy influence diminished. In the budget formulation process, Indian programs are evaluated within the various **Office of Management and Budget** (OMB) Resource Management Offices, principally as part of "Natural Resource Programs." There is no office within OMB specifically charged with ensuring that tribal concerns and needs are fully considered or that the federal government is meeting its general trust responsibility to tribes.

Within DOI, new appropriations intended to benefit tribes and tribal communities have tended to remain under the control of the Washington bureaucracy, while the funding pool for tribal programs has stagnated. Increasingly, self-governance agreements are treated as traditional grants, with tribes expected to operate cookie cutter programs under directives from Washington rather than adapting programs to local needs.

In 2008, the **Department of Health and Human Services**, without tribal consultation, unilaterally directed that employment and training programs, subject to consolidation pursuant to PL 102-477 and administered by the BIA for many years via self-determination contracts and self-governance compacts, be pulled from such agreements and administered via grants. This not only violates existing agreements with the tribes, but violates the plain language of the ISDEAA as applied to self-governance compacts.

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Key Recommendations

- The Obama administration should issue a clear directive that it supports Tribal self-determination and self-governance, and undertake a review of DOI and DHHS policies and actions that constrain self-determination.
- The administration should create an Associate Director for Native American programs within OMB and reorganize the OMB structure to ensure the appropriate prioritization of Indian programs.
- The Secretary of the Interior should act immediately to elevate the **Office of Self-Governance** (OSG) so that it is within the DOI Office of the Secretary. Maintaining OSG within the Indian Affairs structure has contributed to micromanagement by the BIA and the inability of OSG to fully implement the ***Self-Governance Act***; thus undermining Tribal self-governance. The BIA should be prohibited from holding hostage the annual compact negotiations process in order to impose restrictions and directives upon tribal governments.
- The administration should elevate the position of the IHS Director to the level of Assistant Secretary for Indian Health. In 1954 the **Indian Health Service** was transferred to DHHS from the **Bureau of Indian Affairs**, where it had been headed by the **Assistant Secretary for Indian Affairs** (ASIA). The ASIA had direct contact with the DOI Secretary, but the transfer did not result in equivalent stature within DHHS. The appropriations for the IHS remained in the Interior Appropriations Subcommittees instead of the Labor, Health and Human Services, and Education Appropriation Subcommittees. The IHS, which comprises little more than one-half of one percent of the Department's total operating budget ($4.3 billion of a total $740 billion) is a unique direct service agency within DHHS carrying out critical trust functions, and has never received the Secretarial-level attention it deserves.
- DHSS should immediately rescind its policy directive taking PL 102-477 employment and training programs out of ISDEAA agreements.
- The administration and affected agencies should support the following self-governance improvements and expansions to the ***Indian Self-Determination and Education Assistance Act*** (ISDEAA):
  - Enactment of key amendments to Title IV of the ISDEAA so that the DOI self-governance initiative is strengthened and operates consistently with the more successful DHHS self-governance initiative carried out under Title V of the Act.
  - Expand Tribal self-governance in DHHS to include non-IHS programs under a demonstration project that was determined to be feasible in a study conducted by DHHS in 2003, as authorized by Title VI of the Act.

DOI and DOT Management Review of the IRR Program

The **Indian Reservation Roads** (IRR) program is a tribal program administered by the **Bureau of Indian Affairs** (BIA) from funds appropriated to the **Federal Highways Administration** (FHWA) and passed through to the BIA. FHWA retains some oversight of the BIA program. Under the ***Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*** (SAFETEA-LU), the transportation authorization enacted in 2005, a few tribes obtain funding directly from FHWA, but even for those tribes the **BIA Division of Transportation** (BIADOT) retains some functions.

The IRR program underwent major programmatic changes with the publication in 2004 of new regulations that had been developed through negotiated rule-making, and by statutory changes in SAFETEA-LU. The program shifted from a project-driven program to a tribal shares program whereby all tribes were able to program projects within their tribal shares, and contract or compact their share of funds pursuant to PL 93-638. Changes were also made to the IRR inventory system both in terms of regulations and in SAFETEA-LU. The statutory inventory language was intended to resolve some consistency and eligibility issues that the regulations had left unclear, and to give the FHWA oversight over the BIA's implementation of the inventory.

The BIADOT continues to have problems implementing the new regulations including:

1. The out-of-control IRR inventory system is neither consistent with the 2004 regulations nor with the intent of the inventory language in SAFETEA-LU.

   The major compromise that occurred in the negotiated rule-making and was incorporated into the regulations was that the inventory could be increased by the addition of "non-BIA" roads, but that roads not owned by the BIA or the tribes themselves would, with limited exceptions, only generate funding in the formula at the local match rate for federally assisted projects (generally 20% or less). While most roads in Alaska villages are non-BIA, Alaska tribes were protected by their ability to include proposed tribal roads that generate full funding. BIADOT, however, initially allowed the majority of roads added to the inventory to generate funds at 100%, and has only reduced this for some state-owned roads. The result has been a substantial reallocation of funds nationally towards roads that are the primary responsibility of entities other than the BIA or the tribes (e.g. state, other federal agency, county, or municipality). This was a much more significant change than intended.

   BIADOT could have used the SAFETEA-LU inventory language as defining a base inventory, and prioritized getting that base inventory uniformly implemented, but it did not do so.

   Nor has the BIADOT developed critical policy definitions that were left for future development at the time the new regulations were promulgated. These included items such as developing a system for adding non-traditional projects such as trails, boardwalks, or ice roads, to the inventory. While these can be added to the inventory by the regulations, no costs are yet associated with them and many tribal submittals of this type of project have simply not been processed. Another key policy issue left unresolved is the geographic constraints for qualifying routes. Implicit in the statutory language of the program is that IRR roads are roads within or serving particular geographic areas (e.g. reservations or Alaska Native villages). Some of the specifics of how this is applied on have never been defined.

   The result has been massive, essentially unconstrained growth of the inventory that has redirected funds to existing road infrastructure owned by other jurisdictions. This tends to benefit tribes that have the resources to continually work on the inventory, and has opened the door to "gaming the system." Inventory is the primary basis for allocating funds, and inequities in the system—even within Alaska—have been exacerbated rather than reduced.

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2. The **IRR Program Coordinating Committee** (IRRPCC) is rife with problems.

This is an advisory body created by the 2004 regulations to give the BIA and FHWA advice on implementing the IRR program. As implemented by BIADOT, the IRRPCC seems designed to fail. The composition of the IRRPCC is primarily of tribal program staff, rather than tribal political leaders, which makes it difficult for representatives to consider national or regional interests as opposed to their own program. The IRRPCC has not been given sufficient support such as professional facilitators, access to government attorneys, technical staff, or recorders for the work they are expected to do. It has adopted a consensus-based decision-making process, which has meant that any disagreement stops work on particular issues. Perhaps most problematic, the IRRPCC has been excessively deferred to by the BIA and FHWA, which fail to make policy decisions without formal IRRPCC agreement. This despite the fact that the IRRPCC is an advisory body, and has difficulty making decisions on controversial topics. As a result, there is a policy vacuum.

3. There are numerous other problems with the IRR inventory system, including:

- A failure to use hard data in determining construction costs specified by regulations.
- Inordinate delays during which submittals are held "pending" at BIADOT with no information provided to tribes about deficiencies in their proposals.
- Excessive concern over minor issues with submissions (e.g. formatting), as opposed to serious quality control (e.g. routes counted twice or a tribe submitting routes in another tribe's area).

Key Recommendations

AFN recommends that DOI and DOT conduct an in-depth management review, with outside resources, of BIADOT's implementation of the IRR program and of the FHWA's oversight of the BIA, to include:

- Investigating whether the current inventory system and the massive data collection it entails is necessary and cost effective for the administration of the program. The inventory serves only two real purposes in the IRR system: it determines the national funding allocation and it identifies those routes or transportation facilities where IRR funds can legally be spent. Yet it has transformed into something close to a compilation of actual engineers' estimates of the costs of building or improving every route segment or facility in the system. It was conceived as a compilation of "projects" and simply doesn't work on a national scale. While this system may have made some sense at one time for a project driven program with fewer routes, the IRR is now a tribally directed, tribal shares program, and the inventory increases in size every year. The inventory data is not used to plan actual projects. The inventory data will always be inaccurate at the level of actual project costs because construction costs vary from year to year, and a given route may be on the inventory for years or decades before it is actually improved. Additionally, there are routes in the inventory that are adding to the cost total, but may never be improved beyond routine maintenance. The inventory has never been uniformly updated nationally with accurate routes and construction cost information; it is always a work in process.

  A much simpler system based on road miles and cost averages might meet the actual needs of the program, without changing the funding formula itself, and at far lesser administrative cost to the BIA and the tribes.

- Investigating whether the IRRPCC should be restructured or abolished. An alternative model that might be considered is that of the DOI and IHS Self-governance Advisory Committees, whose members are typically elected tribal leaders supported by a technical workgroup made up of tribal staff whose travel costs for meetings are paid.

- Investigating whether to realign the supervisory authority so that the regional transportation offices are under BIADOT rather than the Region Directors.
- Investigating whether the BIADOT Central Office is adequately staffed, and supervised.
- Investigating whether the program management funding available to the regional offices adequately reflects workload. In Alaska, it is particularly important that staff be available to administer dozens of PL 93-638 contracts over a huge geographic area.
- The BIADOT (and FHWA) should thoroughly review whether existing practices follow the actual law and regulations that govern the program. To the extent that the BIA is doing something other than what the regulations provide, it must either conform its practices to the existing regulations or change the regulations via the appropriate processes for doing so, which for some topics might require reconvening a negotiated rule-making process.

DHSS Review of the Older Americans Act Elders Nutrition Program in Alaska

The **Alaska Department of Health and Social Services** (AK DHSS) operates elders programs with funding provided by the **US Department of Health and Human Services** (DHHS), pursuant to the ***Older Americans Act***. Among these programs is the **Nutrition, Transportation and Support Service** (NTSS) program, which provides funding for congregate and home-delivered hot meals and other support services for seniors. For many years AK DHSS has awarded NTSS grant funding to local programs, principally senior centers. Although some tribes and some Native regional organizations receive recurring NTSS grants, historically much of Native, rural Alaska has not been served, particularly villages outside of the regional centers. The villages typically have no senior centers.

The ***Older Americans Act*** requires that the NTSS program target those seniors whose health and welfare is most at risk, specifically those who are frail, over 80, disabled, minority and low income. The Act also requires that special emphasis be given to rural areas and that the geographic and economic impacts associated with rural living be taken into account.

In 2007, AK DHSS adopted a new "State Plan for Senior Services" for the period 2008-2011, which was approved by DHHS on June 26, 2007. Among the changes affecting the NTSS program was the reallocation of funds within the state by region, based on senior population. The effect and apparent intent of this change was to reallocate resources to urban areas and away from rural programs, even though much of rural Alaska already suffered from a lack of services. Most existing rural providers had their funding reduced. The program change also resulted in grant applicants within particular regions of the state competing against each other for a capped regional pool, rather than competing for a statewide pool. This appears to disregard the fact that most rural Alaska communities are not road connected, and that an elder in a village may have no more access to a senior center 100 miles away in a regional hub community than to a senior center in Anchorage.

The "State Plan for Senior Services" does not appear to follow the ***Older Americans Act's*** emphasis on serving rural areas, on taking into account geographic and economic problems, nor on serving minorities and particularly disadvantaged seniors. Rural Alaska is suffering an economic crisis because of high fuel prices, and rural Alaska Native seniors are perhaps the most vulnerable population in the state.

Key Recommendation

- The **Department of Health and Human Services** should immediately review the "Alaska State Plan for Senior Services" for compliance with the language and intent of the ***Older Americans Act***, and require AK DHSS to make appropriate changes to better serve rural Alaska's seniors.

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IV. National Indian Country Legislative Issues

Resolution of the Cobell Trust Litigation

The "*Cobell*" litigation is a class-action lawsuit, pending for more than twelve years, involving the **Bureau of Indian Affairs'** inability to properly reconcile thousands of trust accounts belonging to individual Indian people. The accounts are the repository of revenues from oil, gas, timber, minerals, agriculture leases and other revenue sources from trust land. Similar litigation is pending involving tribal trust land.

It is widely agreed, even by the **Department of the Interior**, that the federal government did not properly account for funds and that the discrepancies date back for generations. Although there is wide disagreement between the *Cobell* plaintiffs and the government about how much may be owed, in 2006 the Senate Committee on Indian Affairs determined, based on evidence, that $8 billion would be a fair settlement of the *Cobell* claims. A recent federal district court decision estimated accounting errors of $455 million, but excluded interest and uncollected payment.

It is past time to fairly and equitably settle the *Cobell* claims. The court-ordered accounting alone is costing the federal government about $100 million per year, which comes from Indian programs. Continued litigation will be extremely expensive and could easily last beyond the lifetime of most class members. Additional Congressional appropriations will likely still be required to pay any final court judgment. In the meantime, *Cobell* has absorbed such an enormous amount of attention, time and energy from senior DOI officials over the last decade that it has diverted attention from Indian programs and been a significant obstacle to necessary policy-making. It has led to an adversarial mindset that hinders dialogue and undermines the federal-tribal relationship.

Key Recommendation

- The Obama administration should support, and Congress should enact, a legislative settlement of the *Cobell* trust litigation within the current Congress.

Indian Health Care Improvement Act

Reauthorization of the ***Indian Health Care Improvement Act*** has been a national tribal priority for several years, and there is broad consensus on the content of the reauthorization. In the last two Congresses, the reauthorization nearly passed but was blocked at the last minute by objections from the administration. Because of its importance to Indian Country, the health care reauthorization has created a bottleneck in key Congressional committees, delaying work on other important Native American legislation. The Indian Health reauthorization is being reworked and will be reintroduced in the 111th Congress. Some key provisions in the bill were included in stimulus package legislation, which should make the remaining bill easier to pass.

Key Recommendation

- The Obama administration should support, and Congress should swiftly pass, the ***Indian Health Care Improvement Act*** reauthorization.

Transportation Act (SAFETEA-LU) Reauthorization

The current version of the federal transportation act, the ***Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users*** (SAFETEA-LU), expires at the end of FY 2009 and will likely be reauthorized in the 111th Congress. A Tribal Joint Task Force of the **National Congress of American Indians** (NCAI) and the **Intertribal Transportation Association** (ITA) has developed amendments to the sections of the legislation affecting Native Americans, for inclusion in the reauthorization. The Tribal Joint Task Force operates under a consensus process and only posits amendments that have broad support within Indian Country. The tribal amendments would:

- Increase funding to existing tribal transportation programs including the **Indian Reservation Roads** (IRR) program, the **IRR Bridge** program, and the **Tribal Transit** program.
- Establish a $50,000 minimum IRR share per tribe.
- Create a new **Tribal Traffic Safety** program.
- Create tribal set asides in various other programs that now only go through the state.
- Expand flexible financing opportunities of tribal transportation projects.
- Make technical improvements to the language authorizing tribal contracting from the **Bureau of Indian Affairs** and the **Federal Highways Administration**.

Key Recommendation

- Congress should include the Tribal Joint Task Force amendments in the reauthorization of SAFETEA-LU, or if the reauthorization of the general highway bill is delayed, enact the tribal amendments as stand-alone legislation.

Self-Governance Legislation

Tribal self-governance has proven to be one of the most successful polices ever enacted for Native people. It has allowed tribes and tribal consortia to assume and manage federally-funded programs, services, functions and activities at the local level. However, after enjoying great progress during its first 15 years, the self-governance movement has stalled.

Self-governance began with the 1988 amendments to the ***Indian Self-Determination and Education Assistance Act***, PL 93-638, which added Title III of the Act and created a limited demonstration project for tribes to assume control of **Bureau of Indian Affairs** (BIA) and **Indian Health Services** (IHS) operations. This was expanded and made broadly available to tribes for BIA programs with the enactment in Title IV in 1994, and then a more comprehensive Title V for IHS programs was added in 2000. Additionally, in 2000 a Title VI was added that directed the **Department of Health and Human Services** (DHHS) to conduct a feasibility study to expand self-governance to non-IHS programs within DHHS. The study was completed in 2003, and concluded that expansion was feasible. The DHHS report identified several candidate programs for inclusion.

During the last two Congresses, legislation expanding self-governance to include non-IHS programs within DHHS has been a priority for tribal leaders, as has revising Title IV for BIA programs to update it and make it consistent with Title V for IHS programs. Despite support in Congress, these efforts did not gain traction due to opposition by the Bush administration and the energy absorbed by other priorities such as the Indian Health Care reauthorization and the *Cobell* trust litigation.

Key Recommendations

- Congress should enact amendments to Title IV of the ISDEAA to make it consistent with Title V for IHS programs. Proposed legislation to do this has been developed in prior Congresses.
- Congress should amend the ISDEAA to expand self-governance to include non-IHS programs with DHHS, as suggested by Title VI of the ISDEAA and the subsequent DHSS report.

American Challenge Demonstration Project Act

America's Native peoples—American Indians, Alaska Natives and Native Hawaiians—continue to suffer disproportionately high rates of unemployment and poverty, poor health, substandard housing, and associated social ills when compared to any other group in our nation. Although there has been steady improvement in absolute terms, particularly in the area of health, the fact remains there has been little progress in the last 30 years towards closing the gap between Native peoples and the American public at large in most indicators of well-being. The Demonstration Project would re-invigorate Native economies by building on the concepts and principles of the Millennium Challenge Corporation, and using a compacting model to channel development funds to locally designed economic development strategies. The Project's objectives are to:

- Enhance long-term job creation and revenue generation potential of Native economies by creating investment-favorable climates.
- Increase Native productivity.
- Improve the effectiveness of existing Federal economic development assistance by encouraging the integration and coordination of such assistance for the benefit of Native economies.

Key Recommendation

- Congress should enact the proposed ***Native American Challenge Demonstration Project Act*** as part of its efforts to stimulate the economy and revitalize rural areas. This legislation was introduced as HR 3351 in the last Congress, and in a slightly different form as S 2232 ***Foreign Aid Lessons for Domestic Economic Assistance Act*** of 2007.

  As initially proposed, the project would authorize $100 million over five years, for disbursement to a total of five pilot projects; one each in Alaska and Hawaii and three in the Lower 48 states. The legislation could be expanded to include overseas territories of the United States, and additional tribes.

Amend No Child Left Behind Act

Alaska's public education system is failing Alaska Native children. While Natives account for almost one of every four children enrolled in K-12 schools, they are dropping out of school at a rate of 7.8%, which is twice the rate of other students. Native youth are graduating from high school at a rate of only 47%. In the past several years, regions with Native enrollments greater than 80% often had the lowest proportion of schools meeting the Adequate Yearly Progress (AYP) benchmarks under the ***No Child Left Behind Act*** (NCLB), and the percentage of Native students passing the reading, writing and math benchmark exams is below all other students statewide.

These statistics compel us to seek a new approach to education for Alaska Natives. Part of the reason for poor academic achievement among Native students is the lack of culture-based programs. Federal law must give us the flexibility to integrate Native culture into the curriculum in our schools.

Key Recommendations

- Amend the requirements for school accountability and teaching credentials in Title I of the ***No Child Left Behind Act*** to ensure that these requirements do not eclipse implementation of the culturally based educational approach embodied in Title VII. Congress should amend the NCLB to:
  - Include goals and accountability measures within Title I (AYP benchmarks) that measure school development and implementation of culture-based educational approaches for Native youth.
  - Include a mechanism within Title VII that aligns all of the NCLB titles to meet the unique needs of Native students.
- Amend the definition of "High Quality Teachers" in the ***No Child Left Behind Act*** to take into account the need for educators who are experts in local Native languages and cultures and to help develop future educators from local Native communities. Providing opportunities for Native educators to work in their own communities offers the additional benefit of reducing teaching turnover in remote rural communities, which is a systemic problem in Alaska.

Telecommunications

AFN is pleased with the increased funding for broadband access in the stimulus package, and that the FCC has been charged with developing a national broadband plan. In order to meet the objectives that the Obama administration has set for broadband deployment, however, Congress should revisit the statutory framework under which telecommunications grants and subsidies are provided.

The need for greater access in our Native communities cannot be overstated. The ongoing revolution in communications holds the promise of integrating even the most remote places into a world economy and information system. Yet in rural Alaska the current range of grants and subsidies has done little to promote economic development by bringing down broadband access costs for businesses, local governments, or the general public. Although health care providers, schools and libraries are eligible for subsidized services through the **Universal Service Fund** (USF), costs remain high for everyone else. Alaska tribes and Native organizations that provide essential human services do not qualify for the USF subsidy. If anything, the USF subsidy appears to be a disincentive to reducing costs in rural Alaska because lowering the "market" rate would reduce the subsidy.

Grant programs through the **US Department of Agriculture Rural Utilities Services** (RUS) have such restrictive requirements—there must be no other broadband service in the area at all—as to be unavailable to local Internet Service Providers (ISPs).

The resulting situation in rural Alaska is that large telecommunication companies receive the benefit of the federal USF subsidies for health care, and have used federal subsidy funding to develop the necessary infrastructure to provide those services. They rake in enormous revenues from providing ongoing subsidized services, while the general public is left with extremely high-cost services, because the USF subsidy does not bring down general market costs. Although USDA grants might be available to local ISPs in areas with no broadband service at all, there are no federal subsidies available to competing ISPs in areas that are merely under-served or high cost.

The high cost of telecommunications technology in rural Alaska has prevented competition between ISPs and has forced some of them to cease rural operations entirely. Lack of competition among ISPs has resulted in gross disparities between communities that have access to terrestrial lines and internet, and those that do not—the latter having no choice but to tolerate substandard, high-cost service.

Key Recommendations

- Congress should revisit the ***Telecommunications Act*** and existing grant programs. And should develop a better means of supporting broadband expansion. In small rural communities it makes little sense to massively subsidize services for health care or any other targeted service without also making the service available to the community at large. Although the ***American Recovery and Reinvestment Act*** stimulus legislation appears to correct some of these problems, changes need to be incorporated into the authorizing legislation for telecommunications programs.
- Broadband deployment should be considered a federal responsibility comparable to the interstate highway system, and federal programs should promote the expansion of terrestrial infrastructure projects, such as fiber optic networks, even if they have higher front-end costs. In the long term such deployment would be less expensive than continuing existing subsidies with limited beneficiaries.
- Any solution should avoid establishing private sector monopolies with federal funds.
- If the USF subsidy is to be continued it should at least be expanded to include nonprofit, tribal, and other local government service providers in addition to health care providers, schools and libraries.
- Congress should also focus on the telecommunications network for judicial systems, particularly on reservations and in states such as Alaska with a large Native population. Congress is urged to provide modern, effective telecommunications systems for judicial proceedings in remote Native American communities nationwide. Using modern telecommunications services, such as video transmissions during criminal prosecutions, would greatly improve the efficiency of the court systems operating in remote areas. Often in rural Alaska judges, attorneys, witnesses, interpreters, and even the defendant have to be flown in from different places to hold a trial. While pre-trial hearings are often conducted by teleconference, that can be confusing at best. Modern communications would make the judicial process more transparent to the families and peers of the people charged. For decades, the judicial process has been largely a mystery to Natives in Alaska's villages—it is time this changed.

Amend the Indian Child Protection and Family Violence Prevention Act

The ***Indian Child Protection and Family Violence Prevention Act*** (ICPA), 25 USC § 3207, was enacted in 1990 to address child abuse in Indian country by requiring character and criminal background investigations of current and prospective employees whose jobs involve regular contact with or control over Indian children, among other provisions. The Act requires that any Indian tribe or tribal organization that receives funding from the federal government under the ***Indian Self-Determination and Education Assistance Act*** must conduct such background investigations. AFN member tribes have reported that background investigations have forced them to turn away individuals convicted of felony or misdemeanor offenses that did not involve children or sexual crimes; that some disqualifying crimes occurred many years ago or arose out of youthful indiscretions; and some former offenders have since become model citizens in their communities. Nevertheless, under ICPA, such individuals cannot be hired to fill covered positions. For tribes and tribal organizations in rural areas with small populations, it can be difficult to find individuals who do not somehow fall within the ICPA prohibitions. Having some measure of discretion to consider mitigating circumstances and retain certain individuals in covered positions would be helpful.

AFN and its member organizations fully support the goals of protecting Native children and providing them with a strong measure of safety in their Native communities as provided under the ICPA. Any changes made to ICPA should be narrowly drafted to preserve the overall goal of reducing child abuse and protecting Indian children from harm.

Key Recommendation

- Amend the ***Indian Child Protection and Family Violence Prevention Act*** of 2007 to allow consideration of mitigating circumstances in limited situations.

  This amendment should not change the ICPA limitations on persons who have committed sexual assaults. Such persons should continue to be forbidden employment in covered positions regardless of mitigating circumstances. Language implementing the proposed increase in discretion for the hiring body would not undermine the key policy objective of the ICPA, but would streamline the framework for conducting background investigations and create flexibility in a very narrow set of circumstances for remote and rural tribal communities.

Native Hawaiian Recognition

For many years AFN has supported efforts of the Native Hawaiian community and the Hawaii Congressional Delegation to secure federal political recognition. Senator Daniel Akaka of Hawaii has introduced S 381 in the 111th Congress, with Senators Daniel Inouye, Mark Begich, Lisa Murkowki, and Byron Dorgan as co-sponsors. The bill delineates United States policy toward Hawaiian Natives and provides for the reorganization of the Native Hawaiian government and recognition of that government. A companion bill, HR 862, has been introduced in the House of Representatives by Congressman Neil Abercrombie, with 7 co-sponsors including Congressman Don Young.

Federal recognition of Native Hawaiians is long overdue. The (Native) Kingdom of Hawaii was internationally recognized prior to its being overthrown by agents and citizens of the United States and Hawaii's subsequent annexation by the United States. Native Hawaiians have never relinquished their inherent sovereignty. Federal recognition will confirm the federal-Native Hawaiian trust relationship.

Key Recommendation

- Congress should speedily enact Native Hawaiian recognition legislation, S 381 and HR 862.

Tribal List Act—Technical Correction

In 1994, Congress enacted the ***Federally Recognized Indian Tribe List Act*** (Tribal List Act), PL 103-454, to prohibit the **Department of the Interior** from derecognizing Indian tribes. The Committee on Natural Resources explained that DOI's attempts to derecognize tribes, combined with its attempt to "differentiate between federally recognized tribes as being 'created' or 'historic'" prompted the introduction of PL 103-454. See HR 103-781, at 3-4. That same year, Congress enacted 25 USC § 476(f) to prohibit the federal government from classifying, diminishing or enhancing the privileges and immunities available to a recognized tribe relative to those privileges and immunities available to other Indian tribes.

The principle means of tribes obtaining recognition is through the federal acknowledgement process at Part 83 of Title 25 of the Code of Federal Regulations (the Part 83 process). However, there are other methods for obtaining recognition such as recognition by the courts, Congressional recognition, the ***Indian Reorganization Act*** (IRA) process implemented through Part 81 of Title 25 of the Code of Federal Regulations, and the more informal decision-making by the **Department of the Interior** that has occurred from time to time. The Alaska-specific language in the IRA allows groups of Natives to organize provided they have a "common bond of occupation, or association, or residence within a well-defined neighborhood, community or rural district." 25 USC § 473a.

When the list of recognized Alaska tribes was first published in 1993, the list included tribes that were either ANCSA villages or tribes with IRA constitutions (or both).

Astonishingly, the **Department of the Interior** is using the Congressional findings section of the List Act to draw distinctions between tribes restored to federal recognition, and to preclude administrative methods other than the Part 83 process from establishing recognition. Responding to requests that DOI not diminish the rights of tribes restored to recognition by administrative action outside the Part 83 process, the Department stated: "[C]ongress in enacting the ***Federally Recognized Indian Tribe List Act*** of 1994 identified only the part 83 procedures as the process for administrative recognition. See Notes following 25 USC 479a. ...*Omitting any other avenues of administrative acknowledgment is consistent with the notes accompanying the List Act that reference only the part 83 regulatory process as the applicable administrative process.*" 73 Fed. Reg. 29363 (May 20, 2008) (emphasis added).

This DOI interpretation has come up in other contexts as well, despite the fact that it effectively repeals the IRA method of achieving recognition. Several Alaska tribes have used the IRA process since the 1993 list was published, or are pursing IRA-based recognition now. The new DOI interpretation may raise questions concerning the validity of any tribal recognition that occurred outside the Part 83 process since the ***Tribal List Act*** was enacted in 1994. A technical amendment to the ***Tribal List Act*** would make clear that the **Department of the Interior** has and can acknowledge Indian tribes through means other than 25 CFR Part 83 and prohibit the Department from distinguishing tribes recognized through those means from other federally recognized Indian tribes.

Key Recommendation

- Congress should enact the following amendment to the ***Federally Recognized Indian Tribe List Act***:

  (3) Indian tribes ~~presently~~ may be recognized **or restored** by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations; by **the Alaska Indian Reorganization Act; by other official action of the Secretary or his/her designee;** ~~denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;~~or by any final decision of a the United States courts;

  * * * *

  (5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, ~~and~~ has actively sought to restore recognition to tribes that previously have been terminated, **and pursuant to 25 USC. 476(f) Congress has prohibited departments or agencies of the United States from enhancing or diminishing the privileges and immunities available to a restored Indian tribe based on the manner of restoration;**

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V. Alaska-Specific Legislative Priorities

Rural Energy Crisis

Current winter heating costs for rural Alaska families can be thousands of dollars in regions that have the highest poverty rates in the state. The cost of energy is causing serious hardship for many Alaskan families. If left unaddressed, this energy crisis threatens the long-term economic and social fabric of rural Alaska, and in particular villages in Western and Interior Alaska, which are among the most economically depressed communities in the country. The crisis is exacerbated by higher electricity costs, also driven by oil prices, higher air travel costs, increasing prices for food and basic supplies, and higher gasoline prices at the pump. Inflated fuel prices put a tremendous squeeze on already economically depressed communities, from businesses to government offices and service agencies, as well as families. It is critical for the continued viability of rural communities that this energy crisis is addressed. Dependence on petroleum must be reduced. Local power generation must shift to alternative energy sources, and a variety of conservation methods must be adopted.

Key Recommendations

- ♦ Establish and fund an Alaska Native Energy program within the **Department of the Interior** or the **Department of Energy** to develop energy resource centers in rural Alaska.
- ♦ Appropriate at least $5 million per year to establish energy resource centers that will:
  - Serve as clearing-houses for information regarding potential energy sources and alternative energy options that work in rural Alaska, energy use and cost reduction strategies, and best practices.
  - Provide technical assistance tailored to rural communities and aimed at increasing successful energy projects and proposals.
  - Conduct outreach and training in regard to conservation.
- ♦ Fund a Rural Alaska Energy Initiative to identify and implement appropriate alternative energy resources and projects. Congress, through a state-federal partnership, should provide the capital funding to transition rural Alaska communities within 20 years to alternative energy sources for electric power generation, wherever it is feasible to do so.

Restore Authority to Alaska's Tribes to Control Alcohol and Illegal Drugs

The issue of more effective alcohol and drug control at the local level has long been and continues to be a top priority for AFN. For more than a decade, AFN has sought to bring attention, understanding and solutions to the problems of substance abuse and associated violence among Alaska Natives. Some Alaska Native villages may face the highest alcohol abuse and family violence rates in the country. Yet many remote rural residents in Alaska lack a law enforcement presence in their communities, and the Alaska judicial system is spread very thin and has not added magistrate courts in decades. Authority must be restored to Alaska's tribal governments to enact and enforce laws regulating the sale, importation and possession of alcohol and illegal drugs within the boundaries of their respective villages.

Key Recommendation

- ♦ Congress should enact, on a pilot basis, legislation giving authority to participating Alaska Native villages to enact and enforce local alcohol and interdiction ordinances within the boundaries of their respective villages. We believe the solution to this systemic problem can only be addressed effectively at the local village level.

Alaska Federal Lands Management Demonstration Project

While remarkable gains in tribal self-determination and economic improvement have been made over the last 20 years, some of those gains have bypassed rural Alaska, particularly in the development of rural economies. One of AFN's priorities has been to open the possibility for tribes to compact for providing additional federal programs within Alaska, particularly with regard to the federal land management agencies.

One of our great disappointments with Title IV of the ISDEAA is that a provision that authorized compacting of non-**Bureau of Indian Affairs** (BIA) programs within the **Department of the Interior** (DOI) has never been fully implemented. The authorization for such compacts was left up to the discretion of various DOI agencies. Efforts to expand non-BIA compacting within DOI nationally appear to be stalled. However, AFN continues to support such efforts and believes that a carefully tailored demonstration project for such compacting would work within Alaska.

In the 109th Congress, Congressman Don Young introduced a bill, the ***Alaska Federal Lands Management Demonstration Project Act*** (HR 1810), directing the Secretary of the Interior to implement sections 1307 and 1308 of ANILCA and to enter into demonstration projects with no less than six eligible Alaska Native Tribes or tribal organizations.

Key Recommendation

- AFN urges Congress to enact legislation like HR 1810 from the 109th Congress, directing the Secretary of the Interior to implement sections 1307 and 1308 of ANILCA and to enter into demonstration projects with no less than six eligible Alaska native tribes or their organizations. We also request the **Department of the Interior** to lend its full support to passage of such legislation. Enactment of this bill would further the Obama administration's economic agenda by creating jobs and expanding economic opportunities for Native Americans.

Federal Erosion and Flood Control Assistance for Alaska Native Villages

Seventy-five percent (184 of the 244) of communities in rural Alaska are affected by serious erosion and flooding, and must address threats to community health and well being as a result. Yet federal erosion/flood prevention and control programs utilize cost/benefit analyses that fail to take into account the unique geographic, climatic and economic circumstances of the villages, with the result that few projects are funded. At least four of these villages are in imminent danger of destruction by flooding and erosion and must relocate as soon as possible. There is also an immediate need to assist other affected communities to undertake preventive measures that will mitigate future damage and restore infrastructure that is critical to their health and safety. A well-coordinated approach to mitigate current and future damage is essential.

Decades ago, the federal government prompted the development of permanent communities in many of the places that are now at risk. Traditionally, most Alaska Natives moved seasonally within their territory according to their subsistence needs and the availability of resources. When the government built schools it effectively selected the site of the permanent community and eliminated the option of seasonal movement.

Key Recommendations

- Congress, recognizing the special trust relationship between the federal government and Alaska tribal communities, should take the lead and establish a coordinated effort to relocate villages that must be relocated, and to mitigate flooding and erosion in others. A 2003 **Government Accountability Office** report on the problem included four recommendations to lower barriers that villages face in obtaining federal assistance:
  - Expand the role of the **Denali Commission** to include responsibility for managing a flooding and erosion assistance program.
  - Direct the **US Army Corps of Engineers** and the **Natural Resources Conservation Service** to consider social and environmental factors in their cost-benefit analyses for projects requested by Alaska Native villages.
  - Waive the federal cost-sharing requirement for flooding and erosion programs for Alaska Native villages that do not have matching resources.
  - Combine funds from various agencies to address flooding and erosion problems in Alaska Native villages.

Amend CERCLA—Remove Restrictions on Alaska Tribes

The ***Comprehensive Environmental Response, Compensation, and Liability Act*** (CERCLA), commonly known as the Superfund law, is the authorizing legislation not just for the Superfund remediation program but for the **Environmental Protection Agency's** (EPA) **Brownfields** program which provides grants for assessing and cleaning up contaminated sites.

Although Alaska tribes and tribal organizations have increasingly taken the lead in rural Alaska on environmental issues and receive EPA general assistance grants and EPA **Brownfields** "State and Tribal Response" grants, they are hampered from actually doing cleanup work because Section 104(k)(1) of CERCLA specifically excludes Alaska tribes—and only Alaska tribes—from **Brownfields** assessment and cleanup funds. While other tribes nationally and ANCSA corporations are eligible, Alaska tribes are excluded.

There is no valid policy basis for excluding Alaska tribes—cleaning up a site may involve acquiring site control but does not involve broader jurisdictional issues. The tribes are the village entities most likely to be operating environmental programs.

Key Recommendation

- CERCLA Section 104(k)(1) should be amended to eliminate the exception that makes Alaska tribes ineligible for funding.

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VI. Funding Requests For Existing Programs

Bureau of Indian Affairs—Tribal Government Funding

For the last several budget cycles President Bush's budget requests called for a net reduction in Tribal Priority Allocation (TPA), which is the part of the **Bureau of Indian Affairs** (BIA) budget that funds service programs to Native American people, and which is often administered by tribes pursuant to PL 93-638. In Alaska, nearly all BIA service programs are performed by tribes and tribal organizations under PL 93-638 contracts and compacts. The president's budget request for FY 2009 would have slashed TPA programs by 8.3%.

TPA funding has been essentially static for more than a decade, with a few increases for some programs and decreases for other programs. The BIA did not request full funding for fixed or uncontrollable costs (e.g. pay costs, leases, etc.) during most of the Bush administration. Due to dramatically increased energy costs, skyrocketing health insurance costs for employees, and ordinary inflation, Alaska Native contractors and compactors—and tribes nationally—have had to absorb millions of dollars in cost increases. This translates directly into cuts to services and program operations.

Furthermore, the budget priorities advanced by the BIA have at times been inconsistent with the needs of the Native community. Our communities have a great need for "people" programs for which the prior administration proposed drastic cuts or elimination:

- $22 million cut from welfare assistance
- $12.5 million cut from roads maintenance
- $10.6 million cut from self-governance compacts
- $5.9 million cut from scholarships and adult education
- $2.3 million cut from tribal courts
- $989,000 cut from ***Indian Child Welfare Act*** services

Two key programs important to the welfare and education of our people—the **Housing Improvement Program** (HIP) and the **Johnson O'Malley** program—were slated for outright elimination, as was program funding for new and expanded self-governance compacts.

Key Recommendations

- ♦ Congress and the Obama administration should turn the page on a decade of neglect of Indian programs. TPA funding is particularly critical because tribes have the flexibility to use TPA funds for the unique needs of their communities. They are the main resource use by tribes in exercising self-determination. Congress should increase TPA funding by at least 10% over FY 2008 levels.
- ♦ The BIA, HIP and **Johnson O'Malley** program education grants should be fully funded.
- ♦ Congress should direct the BIA to revise its funding distribution process for HIP to take into account increased construction costs and the need for energy efficient home construction in Alaska. The current HIP funding allocation for a home construction project does not nearly cover the actual costs of building a house in most parts of Alaska.
- ♦ Funding for new and expanded compacts should be restored.

Contract Support Costs

Contract support is the funding tribal contractors receive to cover the direct and indirect administrative costs related to operating a contract or compact. Although contract support is a provision of the ***Indian Self-Determination Act***, it has not historically been fully funded. For years, Congress itself has imposed caps on contract support in the appropriations bills. Shortfalls in contract support essentially require tribes to pay administrative costs out of direct program funds, or to find other revenue sources to pay them, which is not typically an option for Alaska tribes. As a result, some trust programs are reduced. Shortfalls in contract support penalize tribes for exercising their determination rights. Chronic shortfalls also skew the federal system for determining indirect cost rates, which assumes indirect costs will be fully recovered.

Key Recommendation

- ♦ Provide full funding for contract support costs.

Funding for the Indian Health Service

Alaska Native tribes and organizations are at the forefront of the Native self-determination movement, administering 99% of the **Indian Health Service** (IHS) funds in Alaska. Through the authority of the ***Indian Self-Determination and Education Assistance Act*** (ISDEAA), Alaska Native health organizations administer the Alaska Native Medical Center in Anchorage, seven additional hospitals throughout the state, 25 health centers, and 176 village clinics. Through this network of facilities and the use of telemedicine, Alaska Native access to health care has increased. Progress is being made through compacting and ongoing initiatives designed to improve the health of Alaska Natives, but funding levels remain inadequate. There have been significant increases in rates of diabetes and obesity. Almost 40% of Alaska Natives smoke and deaths from cancer are on the rise. Substance abuse rates among Alaska Natives are very high, which contributes to myriad physical health problems, as well as child abuse and neglect, violence, sexual assault and suicide. The IHS budget must be increased to take into account all of these health concerns. The budget needs to reflect population growth, inflation and other built-in costs that are not subject to rescission and provide for full funding of contract support costs.

Although the ARRA stimulus package contained one-off increases for IHS, permanent increases should be built into the annual appropriations.

Key Recommendations

- ♦ Increase the IHS budget to fully take into account population growth, medical inflation, non-medical inflation, required pay raises and other built-in costs. Do not subject the IHS budget to rescission. Adding $666 million to the IHS budget over the FY 2008 level—a 20% increase—would restore a significant amount of the unfunded fixed costs since FY 2000. According to IHS' conservative estimates, tribal and IHS health programs absorbed $738 million in unfunded fixed costs from FY 2000 through FY 2006.
- ♦ Fully fund IHS contract support costs. Provide full funding for contract support costs—at least a $100 million increase—and require IHS to utilize the authorized funding under the Indian Self Determination Fund ($5 million currently) for new and expanded funding agreements.
- ♦ Fully fund **Substance Abuse and Mental Health Services Administration** (SAMHSA) Behavioral Health Services Grants for American Indians and Alaska Natives at $15 million.
- ♦ Increase funding for urban Indian health programs in FY2010.

Funding for Native American Housing

Alaska Native Housing Authorities have made great progress, but overcrowding remains a problem in rural areas and Native communities still lack adequate housing. Even in urban areas there are still too many who cannot find affordable housing. A great deal of home repair has been accomplished throughout the state but there are still too many living in sub-standard housing or without running water or septic systems. Needs vary across the state and include new housing, rental units, water and septic systems and assistance to families to achieve homeownership. Several **Department of Housing and Urban Development** programs are essential to our continued progress in alleviating the overcrowding, lack of sanitation and other housing and infrastructure needs in Native communities.

While AFN welcomes the additional funds in the ***American Recovery and Reinvestment Act***, adequate funding levels should be maintained in the annual appropriations as well.

Key Recommendations

- ♦ Increase funding to the ***Native American Housing Assistance and Self-Determination Act***, which funds **Native American Housing Authorities** through the **Indian Housing Block Grant** (IHBG) program. **Native American Housing Authorities** have thus far been grossly under-funded, leaving them unable to meet demonstrated critical housing needs in Alaska. Appropriations should continue at no less than the FY 2008 level of $630 million, plus amounts as required to maintain real purchasing power.
- ♦ Provide additional resources to address the energy crisis, including:
  - A special appropriation or set-aside for housing authorities to fund alternative energy pilot projects for homes or facilities.
  - Direct access by housing authorities to other federal programs that promote reduced energy consumption.
  - A federal subsidy for fuel surcharges on transportation. Surcharges have increased dramatically in the past year.
  - A 50% federal match to the **Renewable Energy Grant Program** within the **Alaska Energy Authority**. This program provides funding for renewable energy projects in Alaskan communities.

Funding for the Denali Commission

The **Denali Commission**—a unique, federal-state-Native Alaskan partnership to address the needs of Alaska's distressed communities—is an important agency for both Alaska Natives and for Alaska's rural communities. Not only does the Commission endeavor to enhance the economies of our villages, but it is also tasked as one of the entities responsible for building and ensuring the adequate maintenance of Alaska's basic infrastructure. The Commission's programs, including its various infrastructure programs and its planning and community support activities for economic development, job training, education, and capacity building must receive adequate funding in order to provide critical utilities, infrastructure, and economic support to economically distressed communities throughout Alaska.

Key Recommendations

- ♦ Maintain **Denali Commission** funding at a minimum of $50 million annually to meet the energy and infrastructure needs of Alaska Native villages.
- ♦ Make the **Denali Commission** a key player within Alaska for any new Congressional initiative to stimulate the economy, improve infrastructure, and develop alternative energy.

Federal Funding for the Village Public Safety Officer (VPSO) Program

The **Village Public Safety Officer** (VPSO) program was implemented in 1981 as a way to provide rural, predominately Native villages in Alaska with a broad range of local public safety services. As such, the VPSO program is an integral component of law enforcement in rural Alaska. In its first ten years, the VPSO program grew from supporting 52 positions to supporting 125 positions with a budget of $6.5 million. However, over the last fifteen years, the number of funded VPSO positions has gradually decreased by almost half. Currently there are 130 rural communities without a VPSO or other law enforcement presence. Federal funds have been targeted to supplement state dollars and help support this critical program since 2004, but the Native regional nonprofits that operate the VPSO program have not been able to access these funds. The **Bureau of Indian Affairs** law enforcement program does not serve Alaska, and relatively little in **Justice Department** funds reaches Alaska.

Key Recommendation

- ♦ Congress should continue to provide federal funding for the VPSO program, but should also provide funding directly to the regional non-profits that operate the program.

Recommendations of the Alaska Rural Justice and Law Enforcement Commission

Congress established the **Alaska Rural Justice and Law Enforcement Commission*, Omnibus Appropriations Act*** of 2004 (PL 108-199), § 112, and asked that it review federal, state, local and tribal jurisdiction over civil and criminal matters in rural areas of Alaska, and make recommendations to Congress and the Alaska State Legislature on a variety of law enforcement, justice and public safety issues in rural Alaska.

In 2007, the **Justice Commission** released its "Initial Report and Recommendations." Given the relative lack of law enforcement in rural Alaska to enforce state and tribal orders related to child protection, child abuse, domestic violence and sexual assault, the Commission recommended that "federal funding be obtained for tribal law enforcement." Report at 41. The Commission also recommended that Congress provide additional federal funding to augment training and certification of rural police and public safety officers, to support the development of a statewide, uniform and tiered system of certification and training for police and public safety officers with a reasonable opportunity for advancement that could culminate in full APSC police officer certification.

Key Recommendation

- ♦ AFN and its member organizations support these and the many other recommendations of the **Justice Commission** designed to improve law enforcement and judicial services in rural Alaska, and call upon Congress to implement those recommendations.

Community Oriented Policing Services (COPS) Funding

Community Oriented Policing Services (COPS) grants are funded by the **US Department of Justice** to advance the practice of community policing as an effective strategy in communities' efforts to improve public safety. Community policing encourages the use of crime-fighting technology and operational strategies and the development of mutually beneficial relationships between law enforcement and the community. The COPS program not only provides grants to tribal governments, but also helps Alaska's local law enforcement agencies hire police officers, enhance crime-fighting technology and support crime prevention initiatives. There are currently five active 2007 **COPS Tribal Resources Grant Program** recipients in Alaska: Akiachak Native Community, Kasigluk Traditional Council, Pilot Point Tribal Council, the Native Village of Chuathbaluk and the Native Village of Karluk IRA Traditional Council. Total grant awards through this program amounted to $339,947 for the 2007 funding cycle. The total grant awards nationwide amounted to over $14 million. While the stimulus package includes funding for COPS, it is important it remain funded in the annual appropriations. President Bush's proposed budget for FY 2009 would have eliminated the program.

Key Recommendation

- ♦ Continue funding the COPS program to at least 2008 levels.

Department of the Interior Funding for Native Restricted Land Appraisals

There are more than 10,000 Native allotments and Native restricted townsite lots in Alaska that remain subject to **Bureau of Indian Affairs** (BOI) oversight. Many of these properties have multiple heirs, meaning there are thousands of owners of this restricted land. Much of the day-to-day BIA management related to restricted land has been taken over by tribal organizations pursuant to PL 93-638 contracts and compacts, but the BIA itself retains the final signatory or "review and approve" authority for federal decisions involving restricted land.

While gradually most of the problems associated with obtaining certificates of title have been overcome in the past 30 years, the BIA's inability to approve transactions in a timely manner has become a serious obstacle for the Native landowners. This is likely due to lack of funding and inadequate staffing levels at BIA. Almost all transactions involving restricted land—sales, leases, rights-of-way, some probates, and the division of allotments among heirs—require BIA approval, and appraisals. The appraisals are to ensure that Native landholders are receiving full value for their property. While the BIA currently contracts out the actual appraisal reports to licensed appraisers, they still have to be reviewed and approved by the BIA.

At any given time there is a backlog of more than 200 appraisals in the Alaska BIA system, and even appraisals identified as "top priority" can take more than a year to process. The BIA has requested tribal contractors prioritize requests, but that puts the contractor in the difficult position of weighing the relative importance of requests from various Native landowners who are all clients and beneficiaries. It also risks putting off "low priority" requests from year to year.

Key Recommendation

- ♦ Congress should provide a targeted increase of funding for **Department of the Interior** appraisal services for Native restricted lands.

Education of Alaska Native Students

Alaska's public education system is failing Alaska Native children. While Natives account for almost one of every four children enrolled in K-12 schools, they are dropping out of school at a rate of 7.8%, which is twice the rate of other students. Native youth are graduating from high school at a rate of only 47%. In the past several years, regions with Native enrollments greater than 80% often had the lowest proportion of schools meeting the Adequate Yearly Progress (AYP) benchmarks under the ***No Child Left Behind Act*** (NCLB), and the percentage of Native students passing the reading, writing and math benchmark exams is below all other students statewide.

These statistics compel us to seek a new approach to education for Alaska Natives. Part of the reason for poor academic achievement among Native students is the lack of culture-based programs. Federal law must give us the flexibility to integrate Native culture into the curriculum in our schools.

Key Recommendations

- Increase appropriations for the **Administration for Native Americans** (ANA) to ensure adequate funding for programs implementing the ***Esther Martinez Native American Languages Preservation Act*** of 2006. AFN joins the **National Congress of American Indians** (NCAI) in recommending a $10 million increase in funding for ANA to fund the Esther Martinez language programs, and an additional $6 million to the ANA for its existing programs, which promote self-sufficiency through competitive grants for community-based social and economic development.

- Substantially increase **Head Start** funding. Federal **Head Start** funds have remained static since FY 2002 which, when adjusted for inflation, has resulted in an overall real decline of 13% for FY 2008. Decreased funding has forced nine **Alaska Head Start** programs to cut 361 slots since FY 2003, while the number of eligible children has remained steady. We strongly urge Congress to increase the FY 2010 **Head Start** appropriation to support current program operations and the new mandates outlined in the 2007 ***Head Start Reauthorization Act***.

- Restore funding for the **Even Start** program. The **Even Start** program is a key program that supports early childhood development in some of the most remote regions of Alaska. The program provides participating families with an integrated program of early childhood education, adult basic skills training or secondary education and parent education. **Even Start** works with both parents and children to improve literacy skills and encourage reading at home. President Bush's 2009 budget called for elimination of this program. We urge Congress to retain the program and to restore funding to at least the FY 2004 levels.

- Continue funding for the ***Alaska Native Education Equity Act*** and the **Strengthening Alaska Native and Native Hawaiian-Serving Institutions** programs. President Bush's FY 2009 budget proposed eliminating funding for both of these programs. Yet these programs have enabled the five campuses of the **College of Rural and Community Development** to prepare hundreds of students who will be leaders of their own communities in the future. These programs have developed a variety of culturally appropriate courses, strengthened Early Childhood Education programs, developed Certificate programs in Tribal Management, Construction Trades and Para-Professional Education, provided faculty to teach in the Alaska Native-serving campuses, and established partnerships with regional organizations and businesses. It is imperative that these programs remain intact.

Funding for Rural Landfills

One of the biggest infrastructure needs in rural Alaska is for environmentally sound landfills. While there do not appear to be statewide statistics showing how many villages need new or upgraded solid waste disposal sites, it is likely that most have inadequate facilities. These are a health and safety hazard. Dumps that are too close to the village or the village airstrip, dumps adjacent to rivers or streams, and open dumps which attract bears and allow garbage to be blown with the wind are all common. Because of burning, village dumps often cause air pollution as the smoke blows over the village, and pollution of water resources is also common. While the **Alaska Department of Environmental Conservation** could, in theory, mount enforcement efforts against facilities that violate environmental regulations, that would not be a practical approach as the villages need some place to dispose of garbage. Closing existing facilities would be akin to mandating unregulated dumping.

While some funding for this purpose has been made available through the **Environmental Protection Agency** (EPA) and the **US Department of Agriculture** (USDA), these programs are inadquate and are primarily intended for facilities other than landfills. It does not appear that funds for landfills were specifically targeted in the stimulus legislation.

Key Recommendation

- Congress should appropriate significant new funding for landfills in rural Alaska, whether through USDA, **Economic Development Administration** (EDA) or some other agency.

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