

The Fiscal Year 2025 Budget: FY24 Legislative Intent Letter and Agency Responses



Legislative Finance Division

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ALASKA STATE LEGISLATURE

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Division of Legislative Finance

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MEMORANDUM

DATE: January 24, 2024

TO: Senator Lyman Hoffman, Senate Finance Co-Chair
Senator Donald Olson, Senate Finance Co-Chair
Senator Bert Stedman, Senate Finance Co-Chair
Representative Bryce Edgmon, House Finance Co-Chair
Representative Neal Foster, House Finance Co-Chair
Representative DeLena Johnson, House Finance Co-Chair
Representative Benjamin Carpenter, Legislative Budget & Audit Chair

FROM: Alexei Painter 
Director of Legislative Finance Division

SUBJECT: Agency Responses to FY24 Legislative Intent Language

This memorandum restates FY24 legislative intent (*italics*) for each agency and provides agency responses to our request for status reports. Responses indicating non-compliance, partial compliance, and indeterminate compliance have been identified using bold font and yellow highlighting.

This memo also includes follow-up on legislative intent from the FY23 budget for which compliance could not yet be determined when we sent the FY23 memo. Next year's memo will follow up on pending FY24 items.

DEPARTMENT OF ADMINISTRATION

1. Centralized Administrative Services / Personnel Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Division of Personnel set the job classification salary alignment to the 65th percentile.

When conducting job class studies that require market data analysis, classification aligns to the 65th percentile of market pay, which represents the salary figure where 65 percent of the rates are below it, and 35 percent of the rates are above it. As an aside, not all job class study alignments incorporate market data as internal alignment is still the State of Alaska's primary method of salary alignment.

2. Public Communications Services / Public Broadcasting - Radio Operating/Capital Budget (SCS CSHB 39(FIN) am S)

NON-COMPLIANCE DUE TO VETO

It is the intent of the legislature that the Department of Administration allocate funds for radio grants to rural stations whose broadcast coverage areas serve 20,000 people or less.

This funding was vetoed; no funding was allocated for this purpose.

3. Department of Administration / Statewide Salary Survey Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Statewide Salary Survey include benefits and salaries to ensure that comparisons more accurately represent compensation differences between employers.

A Request for Proposal (RFP) for the Statewide Salary Survey was initially issued on September 14, 2023 and closed on October 6, 2023. Due to issues with the responding bidders, the RFP was re-issued on October 12, 2023 and closed on October 24, 2023. The Proposal Evaluation Committee team worked with the Office of Procurement and Property Management (OPPM) to review the proposals submitted and selected the Segal Company to perform the study. The Department of Administration has commenced the project with the vendor as of December 15, 2023 and expect project completion by November 30, 2024.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

4. Community and Regional Affairs / Community and Regional Affairs Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the appropriation made to Community and Regional Affairs includes an amount to Palmer Emergency Food and Services Inc. (HD 25) as a grant under AS 37.05.316.

The Division of Community and Regional Affairs (DCRA) issued a grant to Palmer Emergency Food and Services, Inc. in the amount of \$125,000.00. DCRA submitted the award letter on July 18, 2023, and executed their 24-DO-007 Grant Agreement on September 6, 2023.

DEPARTMENT OF CORRECTIONS

5. Population Management / Institution Director's Office Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Corrections create a business plan to ensure the maintenance and replacement of equipment and infrastructure necessary for prison industry programs that does not rely on state general funds.

The Department of Corrections does not currently operate any prison industries programs. A business plan will be part of any future prison industries program prior to the establishment within the Department of Corrections.

6. Population Management / Inmate Transportation Operating/Capital Budget (SCS CSHB 39(FIN) am S)

UNABLE TO DETERMINE COMPLIANCE

It is the intent of the legislature that one-time funding for travel is specifically for costs related to inmate transportation due to the ongoing construction at the Lemon Creek Correctional Center.

The Department of Corrections (DOC) understands the Legislature's intent and funding was appropriated in the FY2024 operating budget as a one-time item. The DOC took this intent into account during the FY2025 budget development process.

<p>Legislative Fiscal Analyst Comment: DOC's response does not address whether this funding was restricted to use for inmate transportation relating to Lemon Creek Correctional Center.</p>

7. Population Management / Regional and Community Jails Operating/Capital Budget (SCS CSHB 39(FIN) am S)

PARTIAL COMPLIANCE

It is the intent of the legislature that funding for the Regional and Community Jails program be distributed in an equitable fashion that best meets the needs of the community. The Department of Corrections (DOC) shall restructure the allocation by developing a formula for jail operational costs and utilization for the redistribution of the funds. DOC should develop allowable standardized costs for jail operations to assist in providing a basis for the formula. DOC shall then submit a report to the Finance Co-chairs and the Legislative Finance Division by December 20th, 2023, that outlines the methods taken.

The Department of Corrections (DOC) is collaborating with the Alaska Municipal League (AML) and a small working group of regional and community jail participants representing both larger and smaller areas to assist in developing a formula for a more equitable funding distribution of annual funding allocations. After conferring with this working group of community jail representatives and the AML, it was recommended that the best course for the FY2024 funding is to allocate based on FY2023 distribution levels as that was how each regional and community jail built their current operating budgets, and any reductions in funding would be to the detriment to those budgets that would experience reductions.

The recommendation by this working group is for DOC to review and update the jail standards for each region and community to use to develop the FY2025 budget. Additionally, the working group is developing a standard budget template that identifies and addresses consistent and standard allowable costs. Once the standards are in place, and the allowable costs have been identified, each regional and community jail will be able to better prepare and submit a more equitable budget for an appropriate allocation of funding.

Legislative Fiscal Analyst Comment: A report was submitted on December 20, 2023 (**Attachment 1**), which includes a status update on the Department's work to revamp the formula. The Department began a process to determine a new formula but has not yet established one. Since the process is ongoing but not yet complete, at this point the agency is in partial compliance.

DEPARTMENT OF EDUCATION & EARLY DEVELOPMENT

8. Education Support and Admin Services / School Finance & Facilities Operating/Capital Budget (SCS CSHB 39(FIN) am S)

COMPLIANCE MAY BE DETERMINED AT A LATER DATE

It is the intent of the legislature that a school district report to the Department twice annually, once by the end of the count period set out in AS 14.17.500, and on February 1, 2024, the balance of each of the following funds: 1) school operating fund, 2) special revenue funds, 3) capital project funds, 4) other governmental funds. Additionally, each fund shall be reported based on the following classifications: 1) nonspendable fund balance, 2) restricted fund balance, 3) committed fund balance, 4) assigned fund balance, 5) unassigned balance. The Department shall provide these reports and associated data in electronic format to the Co-Chairs of Finance and the Legislative Finance Division by December 20, 2023 and by February 15, 2024.

The Department of Education and Early Development (DEED) shared the legislative intent language with school district superintendents and business managers during their summer meetings in July. This was the start of DEED's collaborative efforts to ensure accurate and timely Fund Balance reports to the Alaska Legislature.

The DEED created a reporting template to gather school district data. On September 22, 2023, DEED staff shared a draft reporting template with the Alaska Association of School Business Officials (ALASBO) leadership to see if potential improvements could be made. The intent was to make this reporting process as seamless as possible for school districts, while aligning with the legislative intent language.

On October 9, 2023, DEED presented an ALASBO Power Lunch to school district leadership, which covered (1) the basic requirements of the new Fund Balance report, (2) descriptions of the required fund/object codes, and (3) DEED's proposed timeline. Based on feedback received from school district leadership, the overall timeline was adjusted to align with school district payroll processes. For the first round of reporting, districts will report their Fund Balances as of October 31st (to be submitted to DEED by December 1, 2023 for submission to the Alaska Legislature by December 20, 2023). The second round of reporting will show Fund Balances as of December 31, 2023 (to be submitted to DEED by January 31, 2024 for submission to the Alaska Legislature by February 15, 2024).

On October 10, 2023, DEED shared the reporting template and presentation slides with all superintendents and business managers. In that communication, DEED stressed the importance of continued dialog to make this requirement manageable for school districts, while still accurate and timely for the Alaska Legislature.

A second DEED-led ALASBO Power Lunch was on November 6th to discuss the spreadsheet and answer district questions as they prepare the first Fund Balance submittal. Additionally, DEED will present a roundtable discussion during the ALASBO Annual Conference on December 4th.

Legislative Fiscal Analyst Comment: The Department submitted the initial report on December 19, 2023 (**Attachment 2**). The second report is due to the legislature by February 15, 2024.

9. Education Support and Admin Services / Student and School Achievement
Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that \$5,000,000 of the funds designated for the Alaska Native Science and Engineering Program within the student and school achievement allocation is a one-time item.

The Department of Education and Early Development (DEED) understands the Legislature's intent and funding was appropriated in the FY2024 operating budget as a one-time item. The DEED took this intent into account during the FY2025 budget development process.

10. Alyeska Reading Academy and Institute / Alyeska Reading Academy and Institute
Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the funds appropriated to the Alyeska Reading Academy and Institute are a one-time item.

The Department of Education and Early Development understands the Legislature's intent, and funding was appropriated in the FY2024 operating budget as a one-time item. During the FY2025 budget development process, an increment request for continued funding may be considered in order to continue Alaska Reads Act support for teachers and students in the following areas: K-3 multi-tiered systems of support (MTSS) plans; early literacy screeners; parent engagement; individual reading improvement plans; and reading interventions and supplemental programs.

11. Alaska Commission on Postsecondary Education / Washington, Wyoming, Alaska, Montana, Idaho (WWAMI) Medical Education
Operating/Capital Budget (CCS HB 281(brf sup maj fld H))

It is the intent of the legislature that the Department of Education and Early Development and the Alaska Commission on Postsecondary Education (ACPE) work with the University of Alaska and University of Washington School of Medicine to undertake a concerted effort to recruit students from Rural Alaska to apply to Alaska's medical school program. Because of the shortage of medical doctors in Rural Alaska it is imperative that more students from rural areas be admitted into medical school.

The Alaska WWAMI Education Program promotes recruitment of rural Alaskans to attend medical school through a number of programs.

The Della Keats Program, which is a long-standing program at the University of Alaska Anchorage (UAA) to increase early college success of rural Alaska Native and other underrepresented students in Science, Technology, Engineering, Mathematics, and health-related careers <https://www.uaa.alaska.edu/academics/college-of-health/give/della-keats.cshtml>, allows students from rural communities in Alaska a one month experience at UAA to learn what it is like to attend UAA and medical school. The Della Keats Program is returning again the summer of 2024.

Current Alaska WWAMI medical students reach out to students in high school across Alaska through Healthcare Education and Awareness through Role-modeling and Teaching (H.E.A.R.T.). H.E.A.R.T. has reached out to high school students across Alaska for many years. With the COVID-19 pandemic restrictions, medical students took the opportunity to expand their reach remotely and utilized Zoom to reach rural and off-road classrooms. This year the students reported: *“We had the most presentations given in any year since the service-learning project was founded! We were also able to reach out to 100% of the schools and/or school districts (school districts for the more rural parts of AK) across the state, which hasn't been done before either.”* This work involved half of the medical students who together provided over 70 hours of work reaching 375 individuals. They also reached out through the Lower Kuskokwim School District’s Health Career Camp in April 2023.

In addition, Alaska WWAMI hosts a pre-medical conference for any Alaskans interested in health care careers and in applying to medical school, including students from rural Alaska. The 2023 Alaska Health Education Summit had 165 registrants attend a wide array of talks, tours, and browse an information fair all highlighting the wide array of programs and opportunities at the University of Alaska Anchorage's College of Health. Of the 165 registrants, 42 were hosted virtually via livestream. Due to the hybrid design of the event, we were able to reach attendees from across Alaska, and even a small handful of registrants from out-of-state. Talks included our keynote address, *Approaching your Future Career with a Growth Mindset* with Dr. Shannon Uffenbeck, and attendees rotated through *Research and Research Opportunities* with Drs. Martinson, Howell, and Garcia, *Transitional Changes--Adapting to College Life* with Dr. Reed, and *AHEC: Building Stronger Community for a Brighter Future* with Dr. Wanner. Also, any Alaskan interested in applying to medical school can receive advising through the Alaska WWAMI program.

Current Alaska WWAMI medical students are from: Anchorage, Bethel, Chugiak, Cordova, Eagle River, Girdwood, Fairbanks, Goodnews Bay, Kodiak, Haines, Homer, Juneau, Kasilof, Ketchikan, Naknek, Nikolaevsk, Nome, North Pole, Palmer, Seward, Sitka, and Wasilla.

Graduates of the Alaska WWAMI program are currently practicing in: Anchorage, Bethel, Cordova, Fairbanks, Juneau, Kenai, Klawock, Kodiak, Nome, Palmer, Petersburg, Sitka, Soldotna, and Wasilla.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

12. Water / Water Quality, Infrastructure Support & Financing Operating/Capital Budget (CCS HB 281(brf sup maj fld H))

It is the Intent of the Legislature that \$1 million is appropriated for the purpose of the Department of Environmental Conservation to complete a feasibility study on the assumption of primacy of section 404 of the Clean Water Act. The report will be submitted to the four co-chairs of the Finance Committees and Division of Legislative Finance by February 1, 2023.

The feasibility study was submitted to the four co-chairs of the Finance Committees and the Division of Legislative Finance on January 31, 2023. **(Attachment 3)**

DEPARTMENT OF FAMILY AND COMMUNITY SERVICES

13. Alaska Pioneer Homes / Pioneer Homes Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Family and Community Services, Division of Alaska Pioneer Homes, provide a comprehensive report on the cost and benefits of either upgrading or replacing the Fairbanks Pioneer Home, and that the Department provide this report to the Co-Chairs of Finance and the Legislative Finance Division by December 20, 2023.

In 2022, the former Department of Health and Social Services (DHSS) initiated the project to evaluate potential options to replace or remodel the 55 year-old Fairbanks Pioneer Home. Since the reorganization of DHSS in July 2022, the Department of Family and Community Services has coordinated with a consultant team, led by architect Steve Fishbeck, on the project.

An excerpt from the Executive Summary of the November 14, 2023 draft *Fairbanks Pioneer Home- Program and Expansion Plan* summarizes the project findings as...

Ultimately the two approaches were investigated and diagrammed. There were obvious advantages and disadvantages to both approaches. The new building was roughly 89,790 square feet and met all the project goals and master plan objectives including minimizing disruption to the residents' quality of life. The negative aspects included the cost of the new building (\$127,668,734) and the question of what to do with the existing structure. The most obvious solution of simply removing the existing 60,000 square foot building that contained hazardous materials was expected to cost \$3,650,000. Alternatively, once the new building is complete and the existing building is empty it would be far simpler to renovate, but to what purpose?

In the case of the renovation, a 25 bedroom addition was required to move 25 residents from their existing rooms into new space that ideally fit the program, but the remaining 75 rooms required extensive demolition and reconstruction. Ultimately after weeks of working closely with the Home, the plan did come together in a 92,400 square foot, five phase project that is projected to cost \$151,499,155. This number is impacted by escalation over the 10 years it is expected to build all five phases and finish the full project. Both approaches result in modern, code compliant living environments that will serve senior Alaskans over the next 50 years.

The department expects to finalize the report in early 2024.

The full draft report is attached. **(Attachment 4)**

14. Children's Services / Children's Services Management
Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Family and Community Services, Office of Children's Services, conduct research on the Office of Children's Services' foster care programs and services that may be suitable for new or expanded private contracting, and that the Department provide the results of this research to the Co-Chairs of Finance and the Legislative Finance Division by December 20, 2023.

The Department of Family and Community Service, Office of Children's Services (OCS) has on-going efforts to identify programs and services that may be suitable for new or expanded private contracting. The programs and services under private contracts fall into multiple categories described below.

Current OCS contracts services to support foster care children and youth include:

- Public Consulting Group Inc. for Social Security Income (SSI) and Retirement, Survivors, and Disability Insurance (RSDI) for benefits, applications, and appeals.
- Multiple contracts with the school districts in Anchorage, Kenai, Mat-Su, and Fairbanks for transportation services to maintain school consistency.
- Facing Foster Care in Alaska for foster youth independence retreats and cash grant management.
- American Public Human Services Association for the National Electronic Interstate Compact Enterprise (NEICE) database supporting the Interstate Compact for the Placement of Children.

Current OCS contracts that serve OCS families include:

- Alaska Federation of Natives for facilitation services for the Alaska Tribal Child Welfare Compact.
- Bartlett Regional Hospital for the Plans of Safe Care Program.
- Beacon Hill in Anchorage for supervised family contact services.
- Additionally, OCS awarded Multiple contracts for family support service grants to Catholic Social Services in Anchorage, Resource Center for Parents and Guardians in Fairbanks, and Southeast Alaska Association for the Education of Young Children in Juneau.

Recent OCS made efforts to expand private contracting for foster care programs and services include:

- ASPS Toxicology Services and Coordination grant for toxicology services and coordination for OCS families.

- Alaska Children’s Trust for Alaska's April Child Abuse Prevention Month campaign coordination.
- Alliance for Hope International for research into the suitability of the creation of a Family Justice Center in Alaska.
- Denali Daniels and Associates for Alaska Citizens’ Review Panel coordination services.
- AEY, LLC. for Armed Security Services in Anchorage, Fairbanks, Kenai, Wasilla, and Juneau.
- AK Laser Printing and Mailing for confidential printing and mailing
- CGI Technologies and Solutions Inc. for Online Resource for the Children of Alaska (ORCA) database maintenance and operations.
- Interactive Voice Applications, Inc. for federal cost allocation for SmartRMS.

New opportunities for possible private contracting under consideration include:

- Foster care family recruitment and retention,
 - Identifying new populations for foster care applicants.
 - Attending community events to promote foster care homes.
 - Assisting applicants in navigating the foster care application.
- Interstate Compact for the Placement of Children (ICPC-in),
 - Assisting foster, adoptive, and guardianship families in completing applications and forms.
 - Contracting with vendor to perform homestudies.
- Conflict-Free Assessments for mental and behavioral health,
 - Vendors would not be different from the entity that is providing the recommended services.
 - Creating vendors potentially would also expedite mental and behavioral health assessments for families and children.
- Independent Living Program services,
 - Providing education to youth in preparing for adulthood.
 - Completing required credit checks on youth in care.
- Substantiations and appeals,
 - Contracting to review substantiations.
- Medical Mental Health Unit discharge planning and paperwork,
 - Managing records and providing referrals to providers when children are leaving custody.
 - Completing paperwork and working with families and providers to access needed services.
- ImageSource,
 - Contract services to scan paper files into electronic records to be uploaded into existing Document Management System.

- Family Meetings,
 - Facilitation of family meetings to keep case participants up to date.
- Commodities Needs Hotline,
 - Centralized hotline for requesting assistance in accessing goods for children in custody. Including, cribs, winter boots, etc.
- Moving the Tribal Compact Referral Unit.
 - Collect and provide referrals to Tribal Compact entities.
 - Facilitate communication between OCS and Tribes regarding contract services.

15. It is the intent of the legislature that the Department of Family and Community Services, Office of Children's Services, provide a comprehensive report on the potential costs of an overhaul or replacement of the Office of Children's Services' case management database to meet current federal requirements and best practices, and that the Department provide this report to the Co-Chairs of Finance and the Legislative Finance Division by December 20, 2023.

Beginning in 2022, the Office of Children's Services (OCS) contracted with BerryDunn to conduct an analysis of potential alternatives to upgrade or replace the division's Statewide Automated Child Welfare Information System (SACWIS) called the Online Resource for the Children of Alaska (ORCA). The project included a needs assessment, assessment of alternatives, the cost/benefit analysis of potential federal fund to support planning in implementation efforts.

The department received the final report in early November 2023 that identified a recommended alternative and cost estimates for each alternative. The report recommends the Alternative 4: the Accelerator Solution under which OCS procures a Comprehensive Child Welfare Information System (CCWIS) by implementing existing commercially available systems to manage child welfare information. BerryDunn estimates that Alternative 4 will have the lowest combination of design, development, and implementation and annual recurring maintenance and operations costs over an eight-year period. This is due to several factors such as the leveraged value of a commercially available product over a customized design, the ability to reuse select components from states. The report estimates the system development and maintenance cost of Alternative 4 at \$51,266.2 (thousands of dollars) over eight years. The CCWIS federal matching funding of 50 percent puts the State's net cost at \$25,663.1 over eight years.

The full report is attached. **(Attachment 5)**

DEPARTMENT OF HEALTH

16. Department of Health

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Health make after-school youth programs its first priority when allocating funding from the Marijuana Education and Treatment fund and provide for an order of operations for the distribution of the funding.

In FY2023, the Legislature passed budget intent language directing the Department of Health to prioritize after-school youth programming when allocating from the Marijuana Education and Treatment fund. The Division of Public Health, Section of Chronic Disease Prevention and Health Promotion funds after-school program grants through the Positive Youth Development Afterschool Program.

In FY2024, the division awarded grants to after-school program providers statewide to satisfy the statutory requirement to provide for a youth services grant program. Of the total amount allocated to the division from the Marijuana Education and Treatment Fund (\$3.06 million), over half of the fund (\$1.9 million) supports afterschool programs. Considering recent Marijuana Education and Treatment fund projections indicating declining cannabis tax sales revenue, the division made reductions to the overall program budget to prevent overspending. Reductions will not impact after-school program grants.

FY2024 Division of Public Health Grants	Amount
AHTNA' T'AENE NENE'	\$140,000.00
Anchorage School District	\$120,216.27
Boys & Girls Clubs of Southcentral Alaska	\$300,000.00
Nenana City School District	\$178,949.03
OPT-In Kiana	\$174,779.88
Project GRAD Kenai Peninsula	\$300,000.00
Rural Alaska Community Action Program, Inc.	\$299,814.41
United Way of Matanuska-Susitna Borough	\$180,000.00
Youth Advocates of Sitka	\$180,000.00
Total	\$1,873,759.59

Grants increase access to quality after school programs for youth entering grades 5-8. Funds are used for facilities, personnel, supplies, and activities. Funds are dispersed statewide through grantees to ensure programs respond to community needs. Grant activities align with Alaska's State health improvement plan.

The Division of Behavioral Health reviews the agency proposal description of the grant funded program and activities. If the activities meet the criteria for a specific fund source, the fund source is an option for that particular grantee. For the Marijuana Education and Treatment fund,

the priority is to allocate this fund source toward grant awards with agencies who offer after school programming for youth related to substance use disorder prevention. Next, the division selects agencies that are providing substance use prevention, early intervention, or treatment for youth and families. When the grant is awarded, the grantee is provided with a letter explaining the funding source.

17. Public Assistance

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the child care providers receiving additional grant funding provide an increase to employee wages.

The Child Care Program Office is partnering with Thread to offer a 2024 Alaska SEED ROOTS Award to support eligible professionals working in child care. The application opened Monday, November 27, 2023. Eligible individuals will receive a wage award early in 2024.

18. Medicaid Services / Medicaid Services

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

COMPLIANCE MAY BE DETERMINED AT A LATER DATE

It is the intent of the legislature that the Department of Health submit the Medicaid Services Projection Model and Summary Overview of UGF Medicaid Increments with year-to-date information for FY24 to the Co-Chairs of the Finance Committees and the Legislative Finance Division by December 15, 2023, and subsequently update the report before resubmitting it by February 14, 2024.

The Medicaid Services Projection Model and Summary Overview will be made available by December 15, 2023.

Legislative Fiscal Analyst Comment: The agency submitted the initial report on December 14, 2023. (Attachment 6)

19. Departmental Support Services / Commissioner's Office

Operating/Capital Budget (CCS HB 281(brf sup maj fld H))

COMPLIANCE MAY BE DETERMINED AT A LATER DATE

It is the intent of the legislature that Medicaid and AlaskaCare, along with Trustees and Retirees, convert claims data to a common layout and provide that data to the Department of Commerce, Community, and Economic Development.

The Department of Health has successfully converted Medicaid medical claims to a common data layout and is providing this feed to the Department of Commerce, Community, and

Economic Development. Medicaid behavioral health claims are scheduled to be delivered to the Department of Commerce, Community, and Economic Development in December 2023.

Legislative Fiscal Analyst Comment: On January 5, 2024, the agency confirmed that test data sets had been sent to the Department of Commerce, Community and Economic Development in December 2023, and that the full data load should be completed by January 31, 2024..

20. Medicaid Services

Operating/Capital Budget (CCS HB 281(brf sup maj fld H))

It is the intent of the legislature that the department submit the Medicaid Unrestricted General Fund Obligation Report for FY22 and the first half of FY23 to the co-chairs of the Finance Committees and the Legislative Finance Division by January 31st, 2023 and subsequently update the report as requested by the legislature.

Through collaboration and agreement between the Office of Management and Budget and the Legislative Finance Division, this intent language was replaced during the FY2023 legislative session with the Medicaid Services Projection Model and Summary Overview of UGF Medicaid Increments.

Legislative Fiscal Analyst Comment: The agency submitted the report on February 6, 2023. ([Attachment 7](#))

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

21. Employment and Training Services / Workforce Services Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Labor and Workforce Development leverage federal apprenticeship dollars to increase state capacity for expanding Career and Technical Education.

The Department of Labor and Workforce Development has and will continue to leverage federal apprenticeship dollars to increase State capacity for expanding Career and Technical Education. For example, the department has a federal State Apprenticeship Expansion Formula grant that it is currently using to have a full-time Program Coordinator implement activities including coordinating efforts with the Department of Education and Early Development and the Division of Employment and Training Services and partnering with the Office of Apprenticeship on aligning School to Work and Career and Technical Education (CTE) programming with Registered Apprenticeship Programs.

DEPARTMENT OF LAW

22. Department of Law

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

(a) The sum of \$5,000,000 is appropriated from the general fund to the Department of Law, civil division, for litigation relating to the defense of rights to develop and protect the state's natural resources, to access land, to manage its fish and wildlife resources, and to protect state sovereignty in the fiscal years ending June 30, 2024, June 30, 2025, and June 30, 2026.

(b) It is the intent of the legislature that funds from the appropriation made in (a) of this section may not be used for any action that may erode existing federal or state subsistence rights.

As the intent language indicated, none of the statehood defense multi-year funding has been spent on cases that relate to subsistence.

DEPARTMENT OF NATURAL RESOURCES

23. Fire Suppression, Land & Water Resources / Mining, Land & Water Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Natural Resources shall provide a report to the Co-Chairs of Finance and the Legislative Finance Division no later than December 20, 2023 that describes: The amount of acreage that has not yet been conveyed to a municipality or borough, as part of its land entitlement selections as described in state law; the date each municipality or borough was legally granted the right to state lands; for each municipality or borough, the amount of acreage specifically identified and selected but not yet conveyed by the state; for each municipality or borough, the amount of time that has passed since it identified some or all of the land selections currently pending with the Department of Natural Resources; for each municipality or borough, the reason(s) the Department of Natural Resources has not yet conveyed selected lands to that municipality or borough; the significant hurdles, legal or otherwise, to completing conveyances and the amount of funding necessary to complete all requested conveyances by 2026.

Summary of 2023 Department of Natural Resources Report on Municipal Entitlement Status

The Department of Natural Resources, in response to House Bill 39 (Ch. 1 FSSLA 2023) provides the following requested information:

1. The amount of acreage that has not yet been conveyed to a municipality or borough, as part of its land entitlement selections as described in state law:

This is a highly complex calculation as each municipality or borough are in different stages in their entitlement status. We have provided this information to the best of our abilities in Table 1.

2. The date each municipality or borough was legally granted the right to state lands:

Each municipality and borough throughout the state is unique and has received their statutory entitlement authority through a complex system of legislation, federal and state regulations and other methods. Due to the complex nature of this we have provided this information in Table 2.

3. For each municipality or borough, the amount of acreage specifically identified and selected, but not yet conveyed by the State:

Every selection for entitlements is in a variety of stages that may include, patented, approved, conditionally approved, or selected. Each of these stages have multiple substages as well. Due to the complex nature of the stages of individual selections we have provided this information in Table 1.

4. For each municipality or borough, the amount of time that has passed since it identified some or all of the land selections currently pending with the Department of Natural Resources:

Each municipality or borough throughout the state has a distinct timeline since the beginning of their selection following incorporation. We have provided this information in Table 2.

5. For each municipality or borough, the reason(s) the Department of Natural Resources has not yet

conveyed selected lands to that municipality or borough:

The Department of Natural Resources has not yet conveyed land to various municipalities or boroughs for reasons both inside and outside the State's control; see Section 6 and Table 1 for an accounting of the impediments to completing municipal entitlement conveyances.

6. The significant hurdles, legal or otherwise, to completing conveyances:

Each municipality or borough is unique, and entitlement conveyances are delayed due to a variety of factors including, but not limited to; land availability, state entitlement process, municipal planning efforts, new municipal entitlement selections, third-party interests, adjudication of selection, staff time, surveying, no land reselection or return process, conditionally approved lands, appeals, and iterative process. We have provided this information more in depth in our attached report.

7. The amount of funding necessary to complete all requested conveyances by 2026.

The amount of funding needed to complete requested conveyances by 2026 relies on complex factors better outlined in our attached report.

Legislative Fiscal Analyst Comment: The agency submitted the report on December 18, 2023. (Attachment 8)
--

24. Fire Suppression, Land & Water Resources / Fire Suppression Activity Operating/Capital Budget (SCS CSHB 39(FIN) am S)

COMPLIANCE MAY BE DETERMINED AT A LATER DATE

It is the intent of the legislature that the Department of Natural Resources, Division of Forestry provide to the Co-Chairs of Finance and the Legislative Finance Division at the conclusion of the calendar year 2023 fire season an estimate of supplemental funding needed for the remainder of FY 2024. At the time of the Governor's FY 2024 supplemental budget submittal, the Department should also provide to the Co-Chairs of Finance and the Legislative Finance Division the Fire Cost Summary report providing a detailed breakdown of actual and projected expenditures and reimbursements.

The Division of Forestry and Fire Protection will provide an estimate of supplemental funding needed for the remainder of FY 2024 and the Fire Cost Summary report in time of the Governor's FY 2024 supplemental budget.

(Attachment 9)

DEPARTMENT OF PUBLIC SAFETY

25. Village Public Safety Officer Program / Village Public Safety Officer Program Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Public Safety continue to support improvements to the Village Public Safety Officer (VPSO) program that include VPSO program grantee organizational structures that require, or will require as programs grow, layers of needed support, supervision, and ongoing training. The legislature encourages the Department to consider the Regional Public Safety Officer (RPSO) position type as described under AS 18.65.680 but no longer used by the Department for State employment to describe VPSO regional and supervisory roles needed for larger programs, using VPSO program grant funding.

Promoting layers of knowledgeable supervisory support for VPSOs in communities has been a challenge often lamented in the program. With the intent language provided by the Legislature in FY2023, the Department of Public Safety (DPS) has initiated discussions with grantees to recognize such advancement and professional growth within their organizations. The department has stimulated and assisted development of improved organizational structures that reflect these positions of support and supervision necessary for growing regional programs.

While supervisory VPSOs were never named in VPSO Program AS 18.65.670, it is fully understandable that VPSOs would require such positions. Grantees all agree repurposing the dormant RPSO position will strengthen their programs. Meeting together, the grantees and the department have collaborated on the development of training and experience standards and a salary schedule for DPS Commissioner approval.

Each grantee continues to prioritize the hiring of VPSOs. As their numbers continue to increase, they will need to weigh the importance of selecting necessary RPSOs to assure their VPSO workforces benefit from the supervisory positions made possible by this intent. The department anticipates the first few (<10) positions will be submitted for approval in Spring FY2024.

26. Alaska State Troopers

Operating/Capital Budget (CCS HB 281(brf sup maj fld H)) and Mental Health (CCS HB 282)

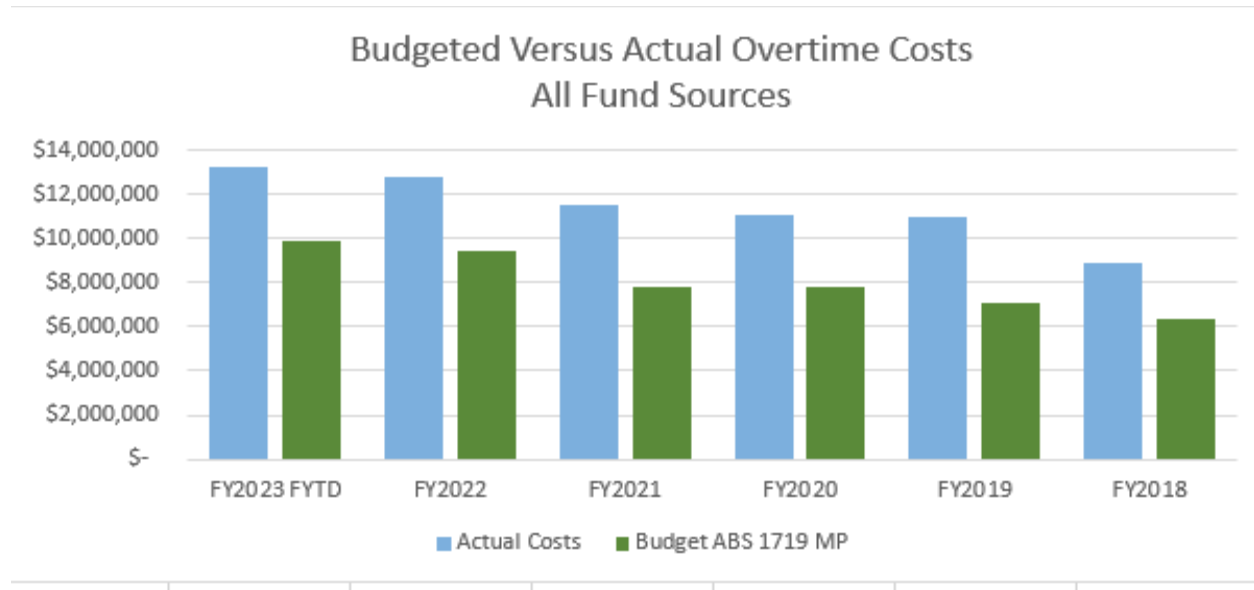
It is the intent of the legislature that the Department of Public Safety increase efforts to fill vacant positions within the Alaska State Troopers appropriation and reduce overtime in order to better manage within the authorized budget. The Department should provide two reports to the Co-Chairs of Finance and the Legislative Finance Division, the first no later than December 20, 2022, and the second no later than July 1, 2023, that detail monthly hiring and attrition, as well as premium and overtime costs by category, a comparison of actual outlays to budgeted amounts, a graph showing actual overtime outlays versus budgeted for the past 5 fiscal years, and a description of any contributing factors to the overtime amounts and actions taken to address those factors from the start of the fiscal year to the month preceding the due date of the report.

The department provided the reports as requested. **(Attachment 10)**

Attracting and retaining State Troopers, Court Services Officers, and critical support staff to effectively carry out the public safety mission continues to be a top priority. The DPS is continuing to see interest from prospective applicants because of targeted recruitment events, advertising, and implementation of a financial hiring incentive for State Troopers.

As has been previously reported, reducing overtime costs remains a challenge given the reactive and often unpredictable nature of law enforcement work. DPS recognizes the importance of reducing overtime not only from a budgetary standpoint but from an employee wellness perspective in reducing stress, burnout, and compassion fatigue. Overtime is utilized by troopers for case investigation, court duties on days off, shift coverage, and call outs for after hours emergencies. Sergeants and troopers are by far the biggest contributors to overtime stemmed from requirements to meet the critical mission of the department and balancing vacancies. Extreme short staffing among emergency services dispatchers has created a need for overtime.

Below is a chart demonstrating budgeted vs. actual overtime costs provided in DPS’s report submitted to the Legislature on June 30, 2023. These costs included additional regular, allowances to employees, other premium pay, overtime, rural location expense offset, sea duty pay, and shift differential.



Premium pay is primarily utilized to comply with contractual requirements for pay for employees. There are a variety of premium pay designations such as field training, shift differential, stand by, pilot flight differential, special emergency reaction team, assignment incentive, and recall pay.

The department continues to identify areas that will assist in reducing overtime, such as:

1. Bolstering recruitment and retention - The department is committed to refining and enhancing current recruitment and retention efforts to ensure that there is sufficient

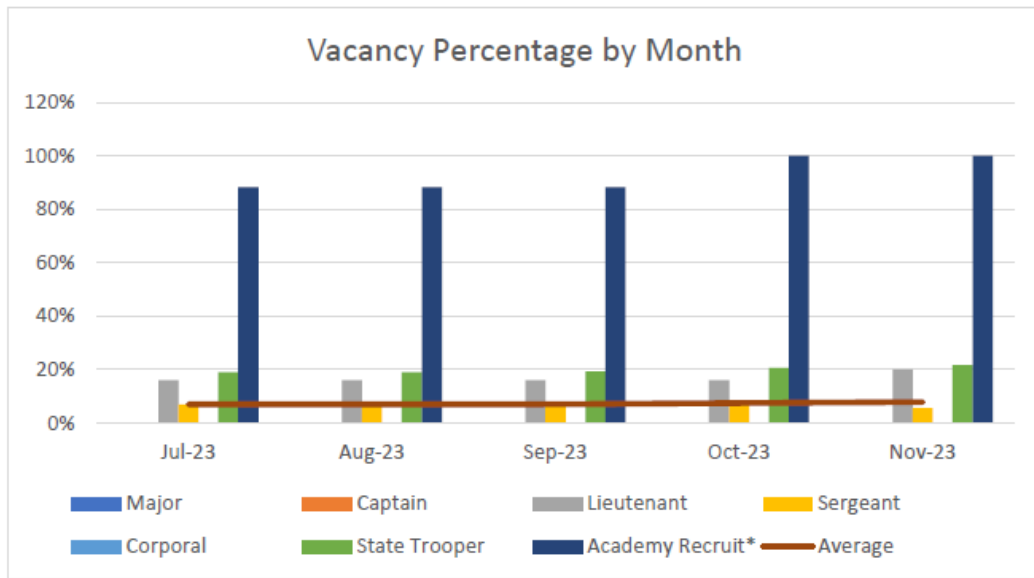
staffing to meet demand. A unit is dedicated to recruiting and processing trooper recruits, with a comprehensive hiring and screening process. A hiring incentive bonus program has helped recruit lateral transfers into Alaska. The department believes that incentives such as move reimbursement, State housing, a take home car, and a robust wellness program have contributed to trooper retention. Once staffing levels improve, less overtime will be utilized.

2. Troopers and supervisors routinely examine if overtime is necessary to complete the call for service or a specific task. Examples include passing a call to another on shift trooper, working with the Department of Law to minimize court appearances while on personal leave or days off, and maximizing efficiency through teamwork and sharing of responsibilities.
3. The department continues to explore and implement efficiencies that reduce trooper's workload. Examples include technology upgrades for digital evidence and the addition of new support positions for FY2024.
4. The department is committed to using data and reporting to manage staffing and lessen the demand for overtime wherever possible. Long work hours cause fatigue, injuries, burnout, and illness. It is important that supervisors have the information that they need to effectively manage overtime. Timely reports would help in the monitoring of excessive overtime. The department will address overtime through wellness campaign messaging to all staff.
5. The department's wellness unit has been tasked with addressing overtime from the perspective of maintaining and sustaining healthy employees. The U.S. Department of Justice provides officer safety and wellness resources such as articles, podcasts, infographics, trainings, and webinars.
6. To address the impact of overtime and fatigue on troopers, and to ensure that staff can be at peak performance in dangerous situations, the department continues to evaluate the types of calls that require immediate response verses calls that can wait for a trooper to return to their regularly scheduled shift.

Despite efforts to fill positions and retain current staff, high vacancy continues to be a reality for the department. As of November 2023, there are 73 vacant State Troopers, Sergeants, and Lieutenants. Below is a graph demonstrating that the fiscal year to date monthly vacant average is 68.

**Department of Public Safety
Budget Fiscal Year 2024 Vacancy Data by Month
Commissioned Positions (State Troopers)**

Position Titles	Budgeted Positions	Vacant Position Count by Month					YTD Average
		Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	
Major	3	0	0	0	0	0	0
Captain	10	0	0	0	0	0	0
Lieutenant	25	4	4	4	4	5	4
Sergeant	72	5	5	5	6	4	5
Corporal	5	0	0	0	0	0	0
State Trooper	296	56	56	57	61	64	59
Academy Recruit*	17	15	15	15	17	17	16
Total	411	65	65	66	71	73	68



Filled positions, data from DOP&LR monthly employee reports, compared to budgeted positions from the FY2024 Management Plan

Permanent full-time (PFT) positions only, excluding Division Directors

*Not included in totals, only filled during active Alaska Law Enforcement Training (ALET) training cycles.

DEPARTMENT OF TRANSPORTATION

27. Airport Improvement Program

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Transportation and Public Facilities submit a quarterly report of Federal Aviation Administration funding programmed through the Statewide Rural Airport System Overruns & Other Projects allocation to the Legislative Finance Division and the House and Senate Finance Committee chairs no later than 30 days after the end of each quarter. The legislature intends that this reporting will take place for the life of the allocation.

The Department of Transportation and Public Facilities provided the first quarterly report on October 31, 2023 and will continue to report on this item for the life of the allocation.

(Attachment 11)

28. Surface Transportation Program

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

It is the intent of the legislature that the Department of Transportation and Public Facilities submit a quarterly report of Federal Highway Administration funding programmed through the Surface Transportation Overruns & Other Projects allocation to the Legislative Finance Division and the House and Senate Finance Committees chairs no later than 30 days after the end of each quarter. The legislature intends that this reporting will take place for the life of the allocation.

The Department of Transportation and Public Facilities provided the first quarterly report on October 31, 2023 and will continue to report on this item for the life of the allocation.

(Attachment 11)

29. Department of Transportation and Public Facilities: Capital

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

(b) It is the intent of the legislature that the appropriation in (a) of this section be used to address snow removal and maintenance challenges in the Municipality of Anchorage by reducing departmental vacancies, adding additional positions as necessary, and paying competitive salaries to achieve these aims, including, if needed, incentive pay to match wages offered for like work at the Ted Stevens Anchorage International Airport.

The Department of Transportation and Public Facilities has used \$1.8 million to address snow removal in the Municipality of Anchorage. The department is continually monitoring vacancies and will allocate funds in the event an incentive letter of agreement is warranted based on vacancy rates in the Anchorage area.

OFFICE OF THE GOVERNOR

30. Office of the Governor

Operating/Capital Budget (SCS CSHB 39(FIN) am S)

NON-COMPLIANCE DUE TO VETO

(b) If the 2024 fiscal year-to-date average price of Alaska North Slope crude oil exceeds \$70 a barrel on December 1, 2023, the amount of money corresponding to the 2024 fiscal year-to-date average price, rounded to the nearest dollar, as set out in the table in (c) of this section, estimated to be \$1,000,000, is appropriated from the general fund to the Office of the Governor for distribution to state agencies to offset increased fuel and utility costs for the fiscal year ending June 30, 2024.

(d) It is the intent of the legislature that a payment under (b) of this section be used to offset the effects of higher fuel and utility costs for the fiscal year ending June 30, 2024.

This section of the bill was vetoed by the Governor; therefore, the intent language was nullified.

3 * Sec. 68. OFFICE OF THE GOVERNOR. (a) The sum of \$2,870,300 is appropriated from
4 the general fund to the Office of the Governor, division of elections, for costs associated with
5 conducting the statewide primary and general elections for the fiscal years ending June 30,
6 2024, and June 30, 2025.

7 ~~(b) If the 2024 fiscal year to date average price of Alaska North Slope crude oil~~
8 ~~exceeds \$70 a barrel on December 1, 2023, the amount of money corresponding to the 2024~~
9 ~~fiscal year-to-date average price, rounded to the nearest dollar, as set out in the table in (c) of~~
10 ~~this section, estimated to be \$1,000,000, is appropriated from the general fund to the Office of~~
11 ~~the Governor for distribution to state agencies to offset increased fuel and utility costs for the~~
12 ~~fiscal year ending June 30, 2024.~~

13 (c) The following table shall be used in determining the amount of the appropriation
14 made in (b) of this section:

15 2024 FISCAL

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December 13, 2023

The Honorable Lyman Hoffman
The Honorable Donald Olson
The Honorable Bert Stedman
Co-Chairs, Senate Finance Committee
Alaska State Legislature
State Capitol, Room 532
Juneau, AK 99801-1182

The Honorable Bryce Edgmon
The Honorable Neal Foster
The Honorable DeLena Johnson
Co-Chairs, House Finance Committee
Alaska State Legislature
State Capitol, Room 519
Juneau, AK 99801-1182

Director Alexei Painter
Division of Legislative Finance
430 Main Street
Juneau, AK 99801-1152

Sent via email: Senate.Finance.Committee@akleg.gov, House.Finance@akleg.gov, Alexei.Painter@akleg.gov

Dear Senators, Representatives, and Finance Director,

This letter serves as the Department of Corrections' (DOC) written response requested within the 2023 Intent Language report regarding the Regional and Community Jails program funding.

- It is the intent of the legislature that funding for the Regional and Community Jails program be distributed in an equitable fashion that best meets the needs of the community. The Department of Corrections (DOC) shall restructure the allocation by developing a formula for jail operational costs and utilization for the redistribution of the funds. DOC should develop allowable standardized costs for jail operations to assist in providing a basis for the formula. DOC shall then submit a report to the Finance Co-chairs and the Legislative Finance Division by December 20th, 2023, that outlines the methods taken.

The Department of Corrections (DOC) is collaborating with the Alaska Municipal League (AML) and a small working group of regional and community jail participants, representing both larger and smaller areas, to assist in developing a formula for distribution of the Fiscal Year (FY)2024 funding. After conferring with this working group of community jail representatives and the AML, it was recommended that the best course for this year's funding is to allocate the funding based on FY2023 distribution levels; as that was how each regional and community jail built their current budgets, and any reductions in funding would be to the detriment to those budgets that would experience reductions.

The recommendation by this working group is for DOC to review and update the jail standards for each region and community to use to develop the FY2025 budget. Additionally, the working group is developing a standard budget template that identifies and addresses consistent and standard allowable costs. Once the standards are in place and the allowable costs have been identified, each regional and community jail will be able to better prepare and submit a more equitable budget for an appropriate allocation of funding.

Overall Synopsis: July 2023 – December 2023:

In July, DOC personnel continued to engage in collaborative discussions with a representative sampling of community jail stakeholders. The working group expanded during this timeframe to include additional Chiefs of Police, Jail Administrators, and various City management personnel such as City Managers and Finance Directors and members of the AML. Over the past several months, participation has fluctuated due to competing priorities and changes in administrative personnel at the municipal level.

Early during this timeframe, the AML engaged in separate conversations with communities during which several members had proposed the notion of carrying over the prior year's budget formula into FY2024. DOC asked for AML's assistance in continuing their communication with constituent groups to confirm their request to continue with prior fiscal year funding formulas. This was quickly confirmed, and the working group immediately transitioned to a focus on streamlining the budget reporting and projection formats that each community was using.

New FY2025 Budget Template:

Each community has varying approaches in calculating their budget requests due to the differences in the makeup of their local jail facilities, staffing, and resources. These differences have significantly exacerbated DOC's ability to equitably compare proportional funding amounts across each community. The DOC working group established a framework to discuss the needs and limitations with participating partners in order to standardize the budget template across each community jail. An internal goal for establishing consistent budget proposal reporting was to establish transparency and equity across each community jail. In late November, this new template was shared with each community along with a request to submit FY2025 proposals using the updated format. Since that time the DOC Community Jail Team has been conducting individual meetings with each community to discuss each respective budget to ensure that both communities and DOC have a transparent understanding of needs and costs associated with running the program. Each community has been asked to return their budget proposals for FY2025 by the end of 2023.

So far, this process has proven effective in gaining a better understanding of local budgetary operations and needs, as well as notably highlighting the variations and limitations amongst the community jails, which had previously had little awareness of topics beyond their local circumstances. It was decided that with the recent accomplishment of creating an updated standardized budget the month of

December would largely be reserved for communities to compile and submit their proposals and meet with DOC independently to discuss them. This will allow DOC to conduct research to be adequately prepared to lead a multidisciplinary working group focusing on updating operational standards beginning in January 2024. The FY2025 Budget Proposal Template is attached for review.

Operational Standards Project – January 2024 until complete:

The DOC Community Jail Team intends to maintain weekly working group meetings allowing every community jail the opportunity to participate. This project is anticipated to be considerably in-depth as numerous significant impacts have adjusted correctional practices both nationally and within Alaska over the past thirty years. This effort is likely to address fundamental topics such as minimum staffing at each community jail along with operational practice involving federal programs such as Prison Rape Elimination Act and various other high priorities. It is predicted that updating operational standards will have some impact on future budgets, but the extent of which is difficult to ascertain at this point in time.

The DOC looks forward to sharing the results of the continued efforts of this working group to further inform the legislative discussion on the funding of community and regional jails. Thank you for your continued support of the Department of Corrections.

Sincerely,



Jen Winkelman
Commissioner
Department of Corrections

Enclosure: FY2025 Budget Proposal Template



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Education
& Early Development**

OFFICE OF THE COMMISSIONER

333 Willoughby Ave., 9th Floor, SOB
P.O. Box 110500
Juneau, Alaska 99811-0500
Main: 907.465.2800
TTY/TDD: 907.465.2815
Fax: 907.465.2806

December 19, 2023

The Honorable DeLena Johnson
Co-Chair, House Finance Committee
Alaska State Capitol Room 505
Juneau, AK 99801

The Honorable Bert Stedman
Co-Chair, Senate Finance Committee
Alaska State Capitol, Room 518
Juneau, AK 99801

The Honorable Bryce Edgmon
Co-Chair, House Finance Committee
Alaska State Capitol Room 410
Juneau, AK 99801

The Honorable Lyman Hoffman
Co-Chair, Senate Finance Committee
Alaska State Capitol Room 516
Juneau, AK 99801

The Honorable Neal Foster
Co-Chair, House Finance Committee
Alaska State Capitol Room 511
Juneau, AK 99801

The Honorable Donald Olson
Co-Chair, Senate Finance Committee
Alaska State Capitol Room 508
Juneau, AK 99801

Re: Legislative Intent Language – House Bill 39

Dear Finance Committee Co-Chairs:

Enclosed, please find the Department of Education and Early Development's response to the legislative intent language from House Bill 39 (Chapter 1, FSSLA 2023, Section 1, Pages 10-11, Lines 27-4) on school district balances for each of the following funds: 1) school operating fund, 2) special revenue funds, 3) capital project funds, and 4) other governmental funds.

Please feel free to contact me if we can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Deena M. Bishop".

Deena M. Bishop, Ed. D.
Commissioner

Enclosure (1) FY2024 Intent Language Fund Balance Report Final

cc: Alexei Painter, Director, Legislative Finance Division
Lacey Sanders, Director, Office of Management and Budget



Report to the Legislature

School District Fund Balances

as required by HB 39 (Chapter 1, FSSLA 2023)

December 19, 2023

Introduction

During the 2023 legislative session the 33rd Legislature included the following legislative intent language in the operating budget (Chapter 1, FSSLA 2023, Section 1, Pages 10-11, Lines 27-4 (HB 39)):

It is the intent of the legislature that a school district report to the Department twice annually, once by the end of the count period set out in AS 14.17.500, and on February 1, 2024, the balance of each of the following funds: 1) school operating fund, 2) special revenue funds, 3) capital project funds, 4) other governmental funds. Additionally, each fund shall be reported based on the following classifications: 1) nonspendable fund balance, 2) restricted fund balance, 3) committed fund balance, 4) assigned fund balance, 5) unassigned balance. The Department shall provide these reports and associated data in electronic format to the Co-Chairs of Finance and the Legislative Finance Division by December 20, 2023 and by February 15, 2024.

This language tasked the Department of Education and Early Development with collecting data from the 53 school districts regarding fund balances.

Report Sections

This report consists of:

1. District-provided data by each identified fund type, by the five classifications.
2. District-provided comments regarding the reported data.
3. Definitions of the Fund Types and Fund Balance Classifications.

Unreserved Fund Balance Reporting

This data collection is separate from the “unreserved” school district operating fund balance collections and reports. Audited fiscal year end fund balance data is submitted to the department under AS 14.17.505 and is defined by 4 AAC 09.160; this monitors the requirement for a district to not exceed a year-end unreserved operating fund balance of 10 percent of annual expenditures. The 10 percent fund balance limit was waived through the end of fiscal year 2025 (June 30, 2025), during which time a report on the forecasted unreserved operating fund balance is due to the legislature by February 15 (Chapter 2, SLA 2021, Section 10, Page 10, Lines 16-21 (HB 76)).

Data Variations

Due to the mid-fiscal year dates identified, the data can fluctuate between and within districts due to many reasons, including:

- Districts that receive Impact Aid have the balance of their current application receipts transfer from committed to unassigned at the beginning of the fiscal year.
- Municipal districts receive local contributions at different times, based on local processes. Some districts may receive a lump sum at the beginning of the fiscal year, some may receive monthly payments, and some may receive all or a portion of funds at different times of the year.
- Bulk purchases of fuel, food, etc. may occur at the beginning of the school year.
- The fund balance reporting will be impacted by budget true ups that occur as a result of the student count data reconciliation, projections to actuals.

Alaska Department of Education & Early Development
FY2024 School District OPERATING FUND: Current Fund Balance as of October 31, 2023

School District	Nonspendable Fund Balance	Restricted Fund Balance	Committed Fund Balance	Assigned Fund Balance	Unassigned Fund Balance	Total
Alaska Gateway	267,969	-	477,556	(1,661,842)	-	(916,317)
Aleutian Region	96,598	-	53,094	28,747	128,130	306,569
Aleutians East	505,803	-	561,969	56,166	823,709	1,947,647
Anchorage	4,270,366	29,119,270	-	95,165,820	31,767,704	160,323,160
Annette Island	30,468	-	-	1,284,804	-	1,315,272
Bering Strait	1,930,298	-	-	-	-	1,930,298
Bristol Bay	32,495	54,613	91,359	(322,829)	-	(144,362)
Chatham	244,724	-	-	1,308,046	(363,770)	1,189,000
Chugach	106,605	896,478	-	1,148,165	-	2,151,248
Copper River	156,351	535,148	-	-	-	691,499
Cordova	121,845	-	-	-	797,017	918,862
Craig	-	873,631	-	1,457,980	-	2,331,611
Delta/Greely	938,151	697,785	186,207	439,653	-	2,261,796
Denali	149,025	-	-	2,727,984	779,092	3,656,101
Dillingham	3,344	-	318,247	-	-	321,591
Fairbanks	999,483	1,951,302	-	8,345,451	-	11,296,236
Galena	251,154	8,245,171	-	612,335	5,578,048	14,686,708
Haines	-	-	251,070	705,679	-	956,749
Hoonah	21,111	-	-	824,159	-	845,270
Hydaburg	8,883	-	-	-	(110,782)	(101,899)
Iditarod	321,398	-	-	-	1,143,483	1,464,881
Juneau	382,461	253,035	17,890	3,028,014	-	3,681,400
Kake	8,409	-	-	337,335	-	345,744
Kashunamiut	512,330	-	-	3,093,291	-	3,605,621
Kenai Peninsula	2,000,320	2,916,112	4,225,327	2,877,353	16,696,081	28,715,193
Ketchikan	-	-	-	7,219,252	-	7,219,252
Klawock	735,885	593,239	-	-	345,440	1,674,564
Kodiak	362,173	-	1,500,000	5,466,780	5,209,606	12,538,559
Kuspuk	399,346	-	-	315,000	5,176,911	5,891,257
Lake and Peninsula	236,218	236,054	-	74,292	-	546,564
Lower Kuskokwim	10,263,501	-	-	8,487,117	11,507,238	30,257,856
Lower Yukon	1,154,503	-	-	-	17,045,963	18,200,466
Mat-Su	7,634,554	2,230,799	-	-	-	9,865,353
Nenana	93,720	1,273,962	-	-	1,397,001	2,764,683
Nome	421,555	-	-	183,073	2,518,196	3,122,824
North Slope	1,253,862	3,973,172	6,083,112	-	-	11,310,146
Northwest Arctic	1,520,272	-	8,395,071	-	-	9,915,343
Pelican	-	-	-	65,000	97,171	162,171
Petersburg	252,353	-	-	212,554	-	464,907
Pribilof	-	569,242	-	176,350	-	745,592
Saint Mary's *	*	*	*	*	*	-
Sitka	-	-	-	1,092,000	-	1,092,000
Skagway	10,617	-	-	-	1,900,930	1,911,547
Southeast Island	99,275	-	-	1,026,773	-	1,126,048
Southwest Region	1,350,636	-	-	5,900,672	1,554,211	8,805,519
Tanana	147,765	-	-	-	-	147,765
Unalaska	216	-	24,482	1,175,607	-	1,200,305
Valdez	-	-	-	-	-	-
Wrangell	198,035	-	-	513,806	-	711,841
Yakutat	-	-	-	529,989	(13,333)	516,656
Yukon Flats	228,903	-	-	-	548,349	777,252
Yukon Koyukuk	5,720,688	-	1,900,000	-	-	7,620,688
Yupitit	583,247	-	-	5,729,128	-	6,312,375
Total	46,026,915	54,419,013	24,085,384	159,623,704	104,526,396	388,681,411

* District did not respond to information requests as of 12/11/2023.

Alaska Department of Education & Early Development
 FY2024 School District **SPECIAL REVENUE FUNDS**: Current Fund Balance as of October 31, 2023

School District	Nonspendable Fund Balance	Restricted Fund Balance	Committed Fund Balance	Assigned Fund Balance	Unassigned Fund Balance	Total
Alaska Gateway	2,734,106	-	2,161,625	-	-	4,895,731
Aleutian Region	-	-	51,459	-	-	51,459
Aleutians East	-	-	-	1,889,047	844,480	2,733,527
Anchorage	2,865,782	7,037,971	-	8,703,059	-	18,606,812
Annette Island	5,251	-	1,320,340	18,533	(187,532)	1,156,592
Bering Strait	665,167	-	2,421,686	-	(279,054)	2,807,799
Bristol Bay	5,578	-	332,998	-	(4,783)	333,793
Chatham	17,578	-	342,413	-	(43,919)	316,072
Chugach	-	3,387	209,149	110,097	-	322,633
Copper River	-	-	(433,161)	-	-	(433,161)
Cordova	18,618	191,803	-	357,494	(10,494)	557,421
Craig	-	465,184	-	-	-	465,184
Delta/Greely	32,724	-	316,983	1,046,359	-	1,396,066
Denali	-	-	-	1,384,835	-	1,384,835
Dillingham	36,181	-	2,230,910	-	1,050,262	3,317,353
Fairbanks	1,108,453	4,744,881	-	3,116,458	-	8,969,792
Galena	-	-	282,000	-	-	282,000
Haines	-	-	170,137	61,653	(25,551)	206,239
Hoonah	47,431,636	6,236	55,253	-	-	47,370,147
Hydaburg	-	-	-	146,778	-	146,778
Iditarod	54,400	180,578	-	18,044	-	253,022
Juneau	31,324	-	984,024	3,046,115	-	4,061,463
Kake	15,811	-	-	15,512	-	31,323
Kashunamiut	-	115,485	87,476	74,901	(243,834)	34,028
Kenai Peninsula	345,069	1,022,056	4,099,928	752,620	(774,879)	5,444,794
Ketchikan	-	1,031,943	-	-	-	1,031,943
Klawock	61,585	143,910	665,480	49,775	-	920,750
Kodiak	-	1,508,707	-	-	-	1,508,707
Kuspuk	15,254	-	-	1,670,469	-	1,685,723
Lake and Peninsula	67,582	-	113,492	-	(329,264)	(148,190)
Lower Kuskokwim	-	-	-	-	-	-
Lower Yukon	-	-	-	-	(1,061,083)	(1,061,083)
Mat-Su	-	455,671	17,959,878	6,944,059	(2,639,592)	22,720,016
Nenana	-	-	-	13,430	-	13,430
Nome	2,475	381,230	2,270,891	221,845	(26,590)	2,849,851
North Slope	1,153,667	2,210,901	2,720,466	6,198,174	(1)	12,283,207
Northwest Arctic	-	585	-	189,536	(957,824)	(767,704)
Pelican	-	-	-	4,885	-	4,885
Petersburg	6,798	-	-	610,307	-	617,105
Pribilof	-	-	-	21,099	-	21,099
Saint Mary's *	*	*	*	*	*	-
Sitka	-	-	1,042,456	86,449	-	1,128,905
Skagway	-	-	-	633,771	667,371	1,301,142
Southeast Island	11,709	185,702	1,020,352	38,816	(60,399)	1,196,180
Southwest Region	278,054	-	1,233,795	-	-	1,511,849
Tanana	-	-	-	100,255	-	100,255
Unalaska	11,947	-	126,720	60,688	(149,933)	49,422
Valdez	25,859	-	-	1,027,506	-	1,053,365
Wrangell	-	378,000	342,428	-	-	720,428
Yakutat	-	-	96,666	119,822	-	216,488
Yukon Flats	-	-	-	-	161,944	161,944
Yukon Koyukuk	-	-	-	-	(81,585)	(81,585)
Yupitit	538,247	-	18,307	115	(339,262)	217,407
Total	57,540,855	20,064,230	42,244,151	38,732,506	(4,491,522)	154,090,221

* District did not respond to information requests as of 12/11/2023.

Alaska Department of Education & Early Development
 FY2024 School District CAPITAL PROJECT FUNDS: Current Fund Balance as of October 31, 2023

School District	Nonspendable Fund Balance	Restricted Fund Balance	Committed Fund Balance	Assigned Fund Balance	Unassigned Fund Balance	Total
Alaska Gateway	-	-	-	-	-	-
Aleutian Region	-	-	1,156,200	-	-	1,156,200
Aleutians East	-	-	-	1,263,996	-	1,263,996
Anchorage	-	-	24,958,101	56,242,623	-	81,200,724
Annette Island	-	-	7,446,869	4,650	(239,937)	7,211,582
Bering Strait	-	-	13,876,189	-	-	13,876,189
Bristol Bay	-	-	144,274	-	-	144,274
Chatham	-	-	154,350	-	-	154,350
Chugach	-	-	343,144	-	-	343,144
Copper River	-	-	792,269	-	-	792,269
Cordova	-	-	-	456,895	-	456,895
Craig	-	841,513	355,000	-	-	1,196,513
Delta/Greely	-	-	-	1,544,952	-	1,544,952
Denali	-	-	-	2,218,795	(1,956,800)	261,995
Dillingham	-	-	-	-	207,770	207,770
Fairbanks	-	474,718	-	-	-	474,718
Galena	-	-	12,421,374	-	-	12,421,374
Haines	-	-	539,244	19,611	7,882	566,737
Hoonah	-	-	721,902	-	-	721,902
Hydaburg	-	-	-	-	-	-
Iditarod	-	-	-	2,406,590	-	2,406,590
Juneau	-	-	-	-	-	-
Kake	-	-	-	172,797	295,887	468,684
Kashunamiut	-	-	-	221,822	-	221,822
Kenai Peninsula	-	-	-	-	-	-
Ketchikan	-	-	-	(506,748)	-	(506,748)
Klawock	-	-	1,229,603	-	-	1,229,603
Kodiak	-	-	1,235,437	-	-	1,235,437
Kuspuk	-	-	-	1,385,681	-	1,385,681
Lake and Peninsula	-	-	186,888	-	(34,200)	152,688
Lower Kuskokwim	-	-	50,901,509	-	-	50,901,509
Lower Yukon	-	-	-	3,053,262	-	3,053,262
Mat-Su	-	-	4,261,182	142,418	(1,058,515)	3,345,085
Nenana	-	-	-	-	-	-
Nome	-	-	3,334,071	-	(472,681)	2,861,390
North Slope	-	-	-	-	-	-
Northwest Arctic	-	53,385	-	2,971,774	(687,841)	2,337,317
Pelican	-	-	-	573,633	-	573,633
Petersburg	-	-	-	568,202	-	568,202
Pribilof	-	-	-	162,450	-	162,450
Saint Mary's *	*	*	*	*	*	-
Sitka	-	-	-	-	-	-
Skagway	-	-	-	117,277	-	117,277
Southeast Island	-	-	560,841	-	(1,069,019)	(508,178)
Southwest Region	-	-	936,469	-	-	936,469
Tanana	-	-	-	-	276,042	276,042
Unalaska	-	-	1,592,465	-	-	1,592,465
Valdez	-	-	1,405,304	-	-	1,405,304
Wrangell	-	-	-	1,349,065	-	1,349,065
Yakutat	-	-	1,257,044	-	-	1,257,044
Yukon Flats	-	-	-	3,389,958	-	3,389,958
Yukon Koyukuk	-	-	-	-	(1,398,560)	(1,398,560)
Yupitit	-	-	-	172,402	-	172,402
Total	-	1,369,616	129,809,729	77,932,105	(6,129,972)	202,981,477

* District did not respond to information requests as of 12/11/2023.

Alaska Department of Education & Early Development

FY2024 School District **OTHER GOVERNMENTAL FUNDS**: Current Fund Balance as of October 31, 2023

School District	Nonspendable Fund Balance	Restricted Fund Balance	Committed Fund Balance	Assigned Fund Balance	Unassigned Fund Balance	Total
Alaska Gateway	-	-	-	-	-	-
Aleutian Region	-	-	-	-	-	-
Aleutians East	-	-	-	-	-	-
Anchorage	-	-	-	-	(25,372,175)	(25,372,175)
Annette Island	-	-	-	-	-	-
Bering Strait	-	-	672,000	-	-	672,000
Bristol Bay	-	217,633	-	-	-	217,633
Chatham	-	-	-	-	-	-
Chugach	-	-	640,256	119,097	(486,672)	272,681
Copper River	180,357	103,405	282,957	-	-	566,719
Cordova	-	-	-	-	-	-
Craig	-	-	-	-	-	-
Delta/Greely	-	-	-	-	-	-
Denali	-	-	493,273	-	(450,840)	42,433
Dillingham	-	-	-	-	-	-
Fairbanks	-	-	-	-	-	-
Galena	-	-	-	-	-	-
Haines	-	-	-	-	-	-
Hoonah	-	-	-	-	-	-
Hydaburg	-	-	-	-	-	-
Iditarod	-	-	-	-	-	-
Juneau	38,257	-	-	-	(38,257)	-
Kake	-	-	-	-	-	-
Kashunamiut	-	26,005	-	-	-	26,005
Kenai Peninsula	-	-	-	-	-	-
Ketchikan	-	-	-	87,920	-	87,920
Klawock	-	-	-	-	-	-
Kodiak	-	-	-	-	-	-
Kuspuk	-	-	-	-	-	-
Lake and Peninsula	-	260,048	-	-	(2,706)	257,342
Lower Kuskokwim	-	-	-	1,413,761	-	1,413,761
Lower Yukon	-	-	-	-	-	-
Mat-Su	-	-	-	1,091,797	(466,536)	625,261
Nenana	-	-	-	-	-	-
Nome	-	-	-	-	-	-
North Slope	-	-	-	-	-	-
Northwest Arctic	-	-	-	-	-	-
Pelican	-	-	-	11,169	-	11,169
Petersburg	-	69,966	-	-	-	69,966
Pribilof	-	-	-	60,751	-	60,751
Saint Mary's *	*	*	*	*	*	-
Sitka	-	-	-	-	-	-
Skagway	-	-	-	-	-	-
Southeast Island	-	-	-	-	-	-
Southwest Region	-	-	-	-	-	-
Tanana	-	-	-	-	-	-
Unalaska	-	190,135	97,602	28,561	(149,582)	166,716
Valdez	-	-	-	-	-	-
Wrangell	-	-	-	-	-	-
Yakutat	-	-	-	-	-	-
Yukon Flats	-	-	-	-	-	-
Yukon Koyukuk	-	-	-	-	-	-
Yupitit	-	-	-	-	-	-
Total	218,614	867,192	2,186,088	2,813,056	(26,966,768)	(20,881,818)

* District did not respond to information requests as of 12/11/2023.

FY2024 HB 39 Fund Balance Report School District Comments

Alaska Gateway

No comments.

Aleutian Region

Special Revenue: This entire balance is related to student activity funds.

Capital: Funds committed to capital projects for deteriorating infrastructure.

Aleutians East

Operating: Fund balance could be needed, as the budget was based on an increase in the base student allocation (BSA).

Special Revenue: Special revenue fund balances to maintain programs.

Capital: Capital funds for future needs (old Sand Point School building and King Cove School playground).

Anchorage

Operating: Anchorage has two fund balance reservations that are included in the State's definition of unreserved but are classified elsewhere in compliance with GASB 54. The first is \$26.3 million that is restricted by the municipality of Anchorage to preserve the municipality's bond rating. The second item is \$32.5 million that is assigned for subsequent year's expenditures, or the amount of fund balance the board has authorized to use to balance the FY2024 budget.

Anchorage cautions users of this report against extrapolating the data for the entire year as there are a number of timing issues that significantly change the amount of fund balance available. A few examples are: 1.) The district does not receive any tax payments from the municipality until December. Not receiving payments in 12 equal installments will lend itself to underreporting of fund balance. 2.) The teachers payroll is paid from September through June with two additional payments being made in May which would lend itself to overreporting fund balance. 3.) The district will not receive any one-time funds until February or March and any adjustment to State revenue based on the OASIS count won't begin to be adjusted until April.

Special Revenue: Includes Student Transportation, Food Service, and Student Activities Funds. Grants have been excluded as revenues are equal to expenditures and no net fund balance is reported.

Capital: Residual funds are mostly due to State Bond Debt Reimbursement that has been assigned to capital needs within the district.

Other Governmental: Debt Service Fund reduction is due the timing of bond payments and not receiving any tax payments from the municipality until December. Anchorage expects this fund to be positive by the fiscal year end.

Annette Island

Operating: FY2024 Budget is \$650k into fund balance, \$5.7 million of Impact Aid was moved into unreserved as of 7/1/2023.

Special Revenue: The committed fund balance is money designated for Early Education grades PreK-1.

Capital: \$4.2 million of the committed fund balance is for a facilities building.

Bering Strait

Operating: Higher unreserved fund balance due to committed Impact Aid monies received in FY2023 to be used in FY2024.

Bristol Bay

Operating: Borough appropriation does not arrive until November, assigned is negative due to deficit of revenue over expenses as of 10/31/2023.

Special Revenue: Food service fund negative at 6/30/2023 and costs will exceed revenue in FY2024.

Other Governmental: Student, sports, community, and scholarship funds.

Chatham

Operating: Cash Basis.

Special Revenue: Cash Basis.

Capital: Cash Basis.

Other Governmental: Cash Basis.

Chugach

No comments.

Copper River

Special Revenue: Transportation and Food Service.

Capital: Building Improvements.

Cordova

Operating: At the Cordova School District, Certificated Teaching salaries are distributed to staff between August and June, which causes an inflated position perspective when comparing the point-in-time General Fund balance to the annual budget. If operating costs and revenue flow according to the annual budget, the projected Fund Balance, as a percentage of current year budgeted expenses, drops below eight percent.

Special Revenue: The deficit in the Unassigned Fund Balance reflects costs that will be covered by transfers from the General Fund later in the year. Additionally, since the district was discouraged from reporting the deficit balances in their cost reimbursement grant funds, it should at least be noted that, while the district is waiting for reimbursement, cash needed to initially cover the costs incurred under those grants is provided by the General Fund balance. As of 10/31/2023, the General Fund - Due From

Other Funds balance related to those grants was \$153,306. This accounts for 20% of the point-in-time fund balance. This is but one example of why carrying a fund balance is crucial to district operations.

Capital: Around 80% of this balance is identified for future facility needs and major equipment replacements.

Craig

No comments.

Delta/Greely

Special Revenue: Removed the \$44,251 from the \$617,400 to get the assigned fund balance.

Capital: \$654,675 is from page 63 school replacement match combined with \$890,277 which is a capital project from FY2021.

Denali

No comments.

Dillingham

No comments.

Fairbanks

Operating: What appears as a large unreserved FY2024 fund balance as of 10/31/2023 is related to the Borough Appropriation of \$54 million being provided as a lump sum at the beginning of the school year.

Special Revenue: Assigned fund balance is related to transfers from the General Fund to the Transportation Fund in order to cover the cost of transportation that exceeds current State of Alaska Pupil Transportation Funding.

Galena

Special Revenue: Grants are usually zeroed out. \$282k is transfers to offset program shortages.

Capital: Estimated for projects in process or in planning.

Haines

Operating: Committed Insurance Expense.

Hoonah

No comments.

Hydaburg

No comments.

Iditarod

No comments.

Juneau

Operating: Fund Balance is committed based upon board approval. Juneau School District receives its local contribution in July.

Capital: No fund balance in Capital Funds.

Other Governmental: Nanny Dryden Permanent Fund.

Kake

No comments.

Kashunamiut

This is a snapshot in time and because the district does not perform a hard close each month, the following has *not* been adjusted/calculated because that is only done once a year at year-end when the district closes the books using the modified accrual basis of accounting. Small districts do not perform a hard close every month because that would require an additional staff member who did nothing but closing entries, etc. and the district does not have the budget for that. Therefore, interim fund balance reports have many assumptions and simplifications – such as:

- Special Education – the district does not know until the school year is underway what mandated services will be for the number of intensives students until count – that would also affect our fund balance if additional services are required for which the district has not budgeted because they were unknown at the time the budget was drafted.
- The district pays for the entire year's worth of software, auto, property, crime, liability insurance, worker's compensation insurance up front in July.
- Teachers are paid in 24 paychecks but work mid-August through May, so the district starts the year with a lag in expenses and then has large payrolls in May/June to pay the remainder of the teacher contracts. This increases the district's interim fund balance until payment occurs. Salaries/Benefits are 55% of the district's total budget.
- Fuel inventory – purchased in bulk up front but the majority of the bulk fuel purchased resides at the tank farm.
- Other lags in expenses – i.e. the district pays expenses after they are incurred so all food service, maintenance and operations (M&O) (General Fund), professional services, etc. are not paid until the district receives the services and the invoice and pays same; this results in what appears to be a higher fund balance.
- Kashunamiut School District performs a true-up on their current year budgets once they know all the newly hired staff salaries and health coverages chosen as well as any changes to revenues once the count period has concluded. This will affect the fund balance percent calculation.
- Impact Aid – the district has received minimal payments to date, but will likely receive the bulk in the winter/spring.
- Professional Services – the district has many professional service contracts that are not showing as encumbrances, however, the budget line item in which they will be paid is budgeted for those amounts and nothing more.

Special Revenue: Cash Basis.

Capital: Cash Basis.

Other Governmental: Cash Basis.

Kenai Peninsula

Operating: This calculation does not include salaries and benefits that are obligated and encumbered. In-kind budget is \$14,292,451 and is not encumbered. Utilities are not encumbered. This number is not an accurate representation of fund balance. It truly is a snapshot in time that does not take into account items like teachers' pay, that is earned and obligated, but will be paid later in the year. The Kenai Peninsula Borough School District's regular payroll runs happen on a monthly basis, so there are wages for all staff that was earned in the second half of October (10/16-10/31) that will not be paid until 11/30/2023. That is approximately 1,100 employees plus substitutes and temporary hires. Utilities that are owed but not paid as of the date of the report.

Ketchikan

Operating: The Ketchikan Gateway Borough (KGB) appropriated all required and approved discretionary funds at the beginning of FY2023-2024, which means the Ketchikan Gateway Borough School District (KGBSD) has access to those funds as of October 31, 2023. However, with a negative beginning fund balance and an approved budget that had only a slight excess of \$18,000, the reported fund balance (cash basis), is assigned for expenditures for the remainder of the fiscal year. Additional comment: Without the KGB appropriation being booked for the entire year, the district would be in a negative fund balance position as of October 31, 2023.

Special Revenue: The balance is the combined fund balances of Food Service and Student Transportation on a cash basis.

Capital: Amount represents, on a cash basis, unreimbursed expenditures for capital projects and major maintenance.

Klawock

Operating: Received 2024 Impact Aid in early October - \$497k.

Kodiak

Operating: \$2,544,144.86 of fund balance has been used to balance the FY2024 Budget.

Kuspuk

No comments.

Lake and Peninsula

Special Revenue: 6/30/2023 Food Service Fund Balance (\$135,433).

Other Governmental: Student, Community, Housing deposits, and Scholarships. New GASB rules changed these agency funds.

Lower Kuskokwim

No comments.

Lower Yukon

Special Revenue: Teacher housing, Residential, and Food Service.

Mat-Su

No comments.

Nenana

No comments.

Nome

Operating: Cash Basis. Additionally, budgeted expenditures will rise as the district has not yet submitted the FY2024 first budget revision to include the five percent salary schedule increase that went into effect after conclusion of negotiations, which was after the original FY2024 budget process. Additionally, a higher intensive student count means more needs for one-to-one teachers (more expense).

Special Revenue: Cash Basis.

Capital: Cash Basis.

North Slope

No comments.

Northwest Arctic

Operating: Nonspendable Fund Balance based on inventory. Unreserved is projected FY2024 fund balance. Committed fund balance is prior year fund balance, minus expenditures, plus revenue, minus nonspendable and unreserved. Committed by Board Approval of general funds for instructional purposes.

Pelican

No comments.

Petersburg

Operating: Cash Basis. Only encumbrances that the district has purchase orders open for are accounted for under the assigned fund balance.

Special Revenue: Cash Basis.

Capital: Cash Basis.

Other Governmental: Cash Basis.

Pribilof

No comments.

Saint Mary's

District did not respond to information requests as of 12/11/2023.

Sitka

Operating: Sitka receives \$641,000 monthly city contributions with the exception of two payments in May, which is for both May and June.

Special Revenue: Committed balances include student activities and other non-reimbursing grants.

Skagway

No comments.

Southeast Island

This is a snapshot in time and because the district does not perform a hard close each month, the following has *not* been adjusted/calculated because that is only done once a year at year-end when the district closes the books using the modified accrual basis of accounting. Small districts do not perform a hard close every month because that would require an additional staff member who did nothing but closing entries, etc. and the district does not have the budget for that. Therefore, interim fund balance reports have many assumptions and simplifications – such as:

- Special Education – the district does not know until the school year is underway what the mandated services will be for the number of intensives students until count – that would also affect the fund balance if additional services were required for which the district did not budget because they were unknown at the time the budget was drafted.
- The district pays for the entire year's worth of software, liability insurance, and worker's compensation insurance up front in July.
- Teachers are paid in 12 paychecks but work mid-August through May, so the district starts the year with a lag in expenses and then have large payrolls in May/June to pay the remainder of the teacher contracts. This increases the district's interim fund balance until payment occurs. Salaries/Benefits are 65% of the district's total budget.
- Fuel inventory – purchased in bulk up front for some site, but the majority of the bulk fuel purchased resides at the tank farm; the district budgets for what they have used historically with any increases based on the market.
- Other lags in expenses – i.e. the district pays expenses after they are incurred so all food service, pupil transportation, maintenance and operations (M&O) (General Fund), professional services, etc. are not paid until the district receives the services and the invoice and pays the bills; this results in what appears to be a higher fund balance.
- Districts usually perform a true-up on their current year budgets once they know all the newly hired staff salaries and health coverages chosen as well as any changes to revenues once the count period has concluded. This will affect the fund balance percent calculation.
- Timber Receipts – historically Southeast Island School District has received these funds in one lump sum in May or June.
- Professional Services – The district has many professional service contracts that are not showing as encumbrances, however, the budget line item in which they will be paid is budgeted for those amounts and nothing more.

Operating: One time negotiated rural pay differential not budgeted will reduce the fund balance as will additional special education services required to ensure the district is in compliance with Federal and State regulations.

Special Revenue: The district has applied for a housing grant and will need to match 15% which could be as much as \$400k.

Capital: Cash Basis.

Southwest Region

Operating: Working with a tight budget and not able to retain teachers with our beginning salary. Limited resources so no additional steps can be added to their current schedule.

Capital: Funds needed for aging infrastructure on eight schools and district office.

Tanana

Operating: Nonspendable is Inventory and Prepaid items.

Special Revenue: Assigned - Food Service and Activities Funds. The Tanana City School District historically did not participate in the National School Lunch Program; FY2024 is the first year.

Unalaska

Operating: June, July, and August (2023) Certified Staff payrolls are posted in June 2023 (FY2023). The same will happen for FY2024. This is a fourth of the budgeted certified salary that will only show as expenses in the end of FY2024. Budget revisions happen in December, so there are currently no changes in budgeted expenditures.

Valdez

No comments.

Wrangell

Operating: Wrangell receives two payments from the City, 50% of total city funding for FY2024 is included. Our payroll expenses lag by one month, so October time/contracts are not paid until November and are therefore not included. Our two principals are currently paid from ESSER III which expires at the end of FY2024, so the Unreserved Fund balance will be used in FY2025 against increased expenses (~\$290,000) in this area that is not budgeted in the General Fund in FY2024.

Special Revenue: Restricted balance is an Environmental Protection Agency (EPA) grant for a new, electric bus and cannot be spent on anything else. Committed balances include student activities and other non-reimbursing grants.

Capital: Funds for emergency repairs/maintenance, and also for grant matching for upcoming major capital projects.

Yakutat

Operating: Cash Basis.

Special Revenue: Cash Basis.

Capital: Both buildings are in need of repairs. The roof at the high school is in the process of being repaired/replaced.

Other Governmental: Cash Basis.

Yukon Flats

No comments.

Yukon Koyukuk

Operating: The district is finalizing their audit this week and will have updated numbers. Reported information is FY2022 audit numbers with an adjustment for current revenue and expenditures, and the capital commitment that has not been transferred.

Special Revenue: Expenditures exceed funds received.

Capital: Expenditures exceed capital funds received.

Yupiit

No comments.

Current Fund Balance Report - Fund Definitions

Fund Type	Definition
School Operating Fund	General Fund (School Operating Fund) is the fund used to account for all operations of the school district not required by law or administrative action to be accounted for in another fund. Fund code 100.
Special Revenue Funds	Special Revenue Funds are funds used to account for the proceeds of specific revenue sources (other than trusts or major capital projects) that are legally restricted or committed to expenditure for specified purposes other than debt service or capital projects. More than one special revenue fund may need to be established. Fund codes 200 - 399.
Capital Project Funds	Capital Projects Fund is a fund used to account for financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets (other than those or proprietary funds or trust funds). To account for resources used for acquiring capital facilities including real property, initial equipment, additions and major repairs or improvements to facilities. All projects funded by state construction grants, bonded indebtedness, and district designated capital projects. Fund codes 500 - 579.
Other Governmental Funds	Other Governmental Funds includes (1) Debt Service and (2) Permanent Funds. DEBT SERVICE FUND - A fund used to account for financial resources that are restricted, committed, or assigned to expenditures for principal and interest. Debt service funds should be used if legally mandated, as well as for the accumulation of resources for, and the payment of, general long-term debt obligations maturing in future years. Fund Code 400. PERMANENT FUND - A fund used to account for resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. Fund codes 580 - 599.
Excluded Funds	<i>Please EXCLUDE the following funds from this report. The previous version of this report inaccurately listed non-governmental funds in the Other Governmental Funds category.</i> ENTERPRISE FUND - A fund used to account for any activity for which a fee is charged to external users for goods or services. These funds are used to account for activities, that are self-supporting either on a short term or long term basis such as a swimming pool or a resale house construction project. More than one enterprise fund may need to be established. Fund codes 600 - 649. INTERNAL SERVICE FUND - A fund used to account for the financing of goods or services provided by one department or agency to other departments or agencies of the governmental unit, or to other governmental units, on a cost-reimbursement basis. Fund codes 650 - 699. AGENCY FUND - A fund used to account for assets held by the district acting as an agent for others. Fund codes 700 - 759. TRUST FUND - These funds account for assets held by a school district in a trustee capacity for others - e.g., members and beneficiaries of pension plans and other post employment benefit (OPEB) plans, external investment pools, or private-purpose trust arrangements - and that therefore cannot be used to support the school district's own programs. Trust funds include pension trust funds, investment trust funds, and private-purpose trust funds. More than one trust fund may need to be established. Fund codes 760 - 769.

Taken from: *Alaska Department of Education & Early Development, Uniform Chart of Accounts, 2018 Edition*

https://education.alaska.gov/publications/chart_of_accounts.pdf

Section: Fund Classifications

Current Fund Balance Report - Fund Balance Definitions

Category	Definition
Nonspendable Fund Balance	Nonspendable fund balance represents the amount of fund balance that cannot be spent because either (a) it is not in spendable form (most commonly evidenced by inventory, prepaid assets, and long-term portions of receivables); or (b) it is legally or contractually required to remain intact (most commonly evidenced by the nonexpendable principal in a permanent fund). There is an enforceable requirement that the money be maintained intact and thus cannot be used. This would include items that are not in cash or not expected to be converted to cash such as inventory, supplies, and prepaid amounts. It may also include the long-term amount of loans and receivables, as well as property acquired for resale and the corpus (principal) of a permanent fund. For example, a donation to the district that stipulates only the interest earnings on that donation can be spent would be considered as a part of "nonspendable" fund balance. Object code 810.
Restricted Fund Balance	Restricted fund balance should be reported to reflect legally enforceable constraints placed on the use of resources that are either (a) externally imposed by creditors (e.g., debt covenants), grantors, contributors, or laws or regulations of other governments or (b) imposed by law through constitutional provisions or enabling legislation. This would include an unexpended student allotment provided through a correspondence study program. Object code 819.
Committed Fund Balance	Committed fund balance represents formal constraints imposed through formal action at the district's highest level of decision making authority (generally the school district's governing board). Object code 820.
Assigned Fund Balance	Assigned fund balance represents intentional constraints placed on resources by the governing board or its appointees' intent to be used for specific purposes, but meet neither the restricted nor the committed forms of constraint. The creation of these constraints does not require formal action, although formal action to enact is not prohibited and formal action is not required to reverse that classification. Also, the assigned fund balance classification is the residual classification for the special revenue, debt service, capital projects, and/or permanent funds after nonspendable, restricted, and committed balances have been identified (unless the residual amount is negative, which would require presentation as unassigned fund balance). This would include encumbrances, Impact Aid advances, and self-insurance. Object code 830.
Unassigned Fund Balance	The unassigned fund balance classification is the residual classification, for the general fund only, after nonspendable, restricted, committed, and assigned balances have been identified. For the general fund, unassigned fund balance may represent either a positive or negative balance. In funds other than the General Fund, an Unassigned Fund Balance may be used only if their respective residual balances are negative. The unassigned fund balance classification is used for special revenue, debt service, capital projects, or permanent funds only if the residual amount of fund balance is negative. It is also used to report the residual amount for all other governmental funds after nonspendable, restricted, and committed balances have been identified, if the residual amount is negative. Object code 845.
Unreserved Fund Balance	Per Alaska Statute 14.17.505 (https://www.akleg.gov/basis/statutes.asp#14.17.505) and 4 AAC 09.160 (https://www.akleg.gov/basis/aac.asp#4.09.160)

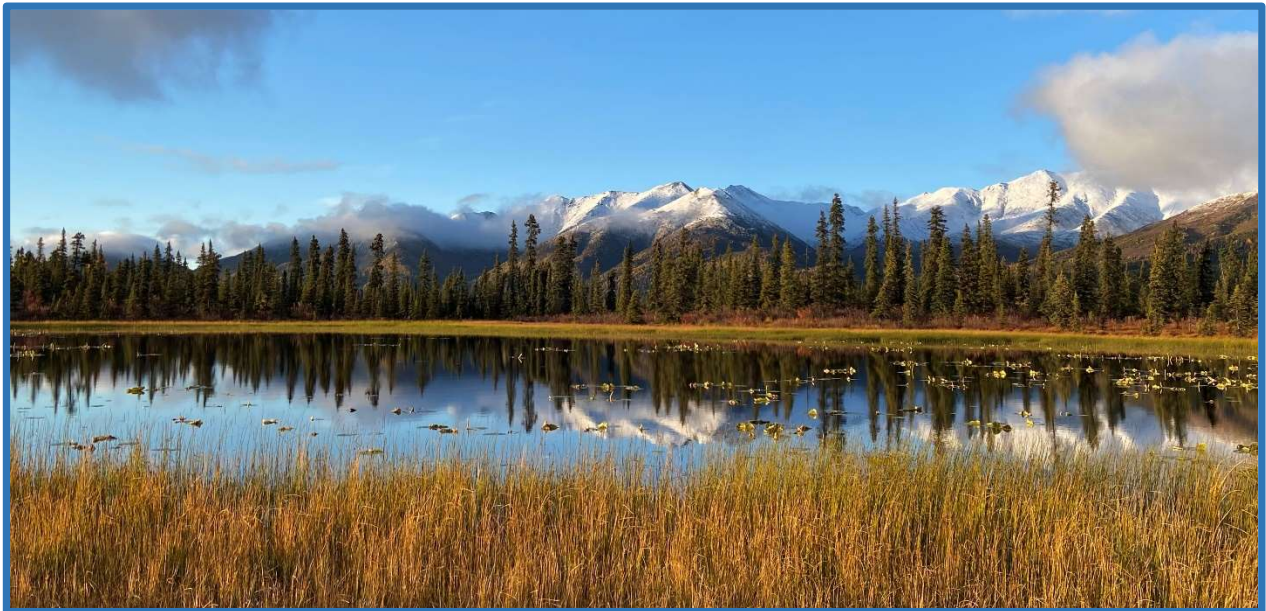
Taken from: *Alaska Department of Education & Early Development, Uniform Chart of Accounts, 2018 Edition*

https://education.alaska.gov/publications/chart_of_accounts.pdf

Section: Object Codes - Balance Sheet/Statement of Net Position

Clean Water Act Section 404 Dredge and Fill Program Assumption

Feasibility Report



Prepared for
Alaska Department of Environmental Conservation
Anchorage, Alaska

Prepared by Jade North, LLC
Anchorage, Alaska

January 25, 2023



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THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

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Dear Members of the Alaska Legislature:

I am excited to provide you with the Clean Water Act Section 404 Dredge and Fill Program Assumption Feasibility Study you directed the Department of Environmental Conservation (DEC) to complete during the 2022 Legislative session. The results of this study further demonstrate the necessity of the State to act expeditiously to take on these responsibilities from the U.S. Army Corps of Engineers by submitting an application to the Environmental Protection Agency (EPA). DEC looks forward to demonstrating the environmental and economic benefits State oversight of this program will bring to Alaska. After evaluating the results of this study, it is the Dunleavy Administration's intention to include funding for this effort in the Governor's amended FY24 budget slated to come out later this month.

Alaska has two-thirds of the country's wetlands and 43% of Alaska's land area is wetlands. I would like to highlight several items from this report. First, we have always said that Alaskans know more about protecting our wetlands than anyone from the Lower 48. Alaska does not have a shortage of wetlands with approximately 175 million acres, less than .1% of which have been developed to date. With the recent January 18, 2023, federal rule change that further expands the definition of regulated Waters of the United States, lands that will be subjected to 404 permits will only be increasing. It's the ideal time for Alaska to take this step and control environmental protection and economic development through the assumption of the 404 Dredge and Fill Program.

With support of the Alaska Legislature, we will make an Alaskan 404 Program as strong, or stronger than the requirements set out by the EPA. This is, in fact, a requirement of assuming the program. Permittees are required to compensate for unavoidable impacts to wetlands. We will have the opportunity to provide compensatory mitigation options that are presently not utilized and veer from the federal focus of restoring damaged wetlands, creating new wetlands, or putting lands into perpetual conservation easements as their primary mitigation options. Alaska has not lost wetlands like other states – there's little to restore; places where wetlands can thrive in Alaska are already a wetland; and many of Alaska's wetlands already have protection status as 88% are under public management (Alaska already has well over 150 million acres of lands set aside for conservation purposes). In short, the existing federal tools provided for mitigation do not maximize environmental benefit to Alaska. State implementation of the flexible compensatory mitigation requirements, however, could do just that: for example, the State could allow project developers to remediate contaminated sites that affect water quality in the watersheds of their activities. This is one example of how Alaska's oversight of this program could provide tremendous environmental and social benefits to communities and developers alike when Alaska gains oversight of this program.

By bringing this program under the State, Alaska will be in the position to take greater control of its destiny and not be subjected to changing federal administrations. Projects will benefit from increased coordination within the existing State regulatory framework as well as, in certain instances, avoid the huge cost and time burden of a NEPA analysis without decreasing environmental protection. Further, this tremendous opportunity will ensure that Alaskans can hold its State government accountable for actions far easier than holding Washington DC to task nearly 5,000 miles away.

The Lower 48 has lost well over 50% of its wetlands, a model Alaska will never follow. As we've heard time and time again, nobody does it better than Alaska. Given the expertise of our regulators and our ongoing commitment to setting the bar as high as possible, there is no better time than now to take over this program and ensure protection of our environment while providing the opportunity for responsible economic development to occur.

Once again, we look forward to speaking with you more about this amazing opportunity for Alaska. An Alaskan 404 Program will bring efficiencies to the process, decrease permitting timelines and associated costs of projects, while improving water quality and protecting the important ecological functions of wetlands in ways that reflect Alaska's priorities. Please don't hesitate to reach out to us if you have any questions and we look forward to your support of this critical work beginning with the FY24 budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason W. Brune".

Jason W. Brune
Commissioner

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ACRONYMS

Alaska District	U.S. Army Corps of Engineers, Alaska District
APDES	Alaska Pollution Discharge Elimination System (CWA Section 402 Program assumed by Alaska)
AJD	Approved Jurisdictional Determination
ASWI	Alaska Statewide Wetland Inventory
ASWM	Association of State Wetland Managers
CFR	Code of Federal Regulations
Corps	U.S. Army Corps of Engineers
CWA	Clean Water Act
CWA 404 or "404"	Federal program, Permits for Dredged or Fill Material, assumable by the State
CWA 402 or "402"	National Pollutant Discharge Elimination System (Wastewater Discharge) program, assumed by Alaska as the APDES program
DEC	Alaska Department of Environmental Conservation
DF&G	Alaska Department of Fish and Game
DNR	Alaska Department of Natural Resources
ECOS	Environmental Counsel of the States
EDMS	Environmental Data Management System (at DEC)
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
EPM	Environmental Program Manager
EPS	Environmental Protection Specialist
FDEP	Florida Department of Environmental Protection
FTE	Full-Time Equivalent
FY	Fiscal Year
G2G	Government-to-Government
GP	General Permit
ILF	In-Lieu Fee
IP	Individual Permit (or "Standard Permit")
IRT	Interagency Review Team
JD	Jurisdictional Determination
LOP	Letter of Permission
MOA	Memorandum of Agreement
MDE	Michigan Department of Environment, Great Lakes, and Energy
NACEPT	National Advisory Council for Environmental Policy and Technology
NEPA	National Environmental Policy Act
NJDEP	New Jersey Department of Environmental Protection
NPDES	National Pollutant Discharge Elimination System
NWP	Nationwide Permit
ORM-2	Operations and Maintenance Business Information Link Regulatory Mode (Corps data system)
PGP	Programmatic General Permit
PJD	Preliminary Jurisdictional Determination
RGP	Regional General Permit

SB	Senate Bill
SHPO	State Historic Preservation Office
SIRT	State Interagency Review Team
SP	Standard Permit (or, "Individual Permit")
SPGP	State Programmatic General Permit
USACE	U.S. Army Corps of Engineers or "Corps"
USFWS	U.S. Fish and Wildlife Service

EXECUTIVE SUMMARY

The federal Clean Water Act (CWA or Act) has two main programs: the Section 402 Program to control point-source pollution discharges to surface waters and the Section 404 Program to regulate the discharge of dredge or fill material into wetlands and other waters of the United States. The CWA states "it is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of [s]tates to prevent, reduce, and eliminate pollution." It is built on the principle of cooperative federalism, 33 U.S.C. Section 1251(b). Congress preserved for states like Alaska the "primary responsibilities and rights" to prevent water resources pollution, stating: "it is the policy of Congress that the states . . . implement the permit programs under sections [402] and [404]." *Id.* Section 1251(b). Alaska assumed the 402 Program in 2008, joining 46 other states that implement the program. This report reviews the feasibility for Alaska to assume the 404 Program.

With over 174 million acres of wetlands and vast amounts of other waterbodies, Alaska's stake in administering the Section 404 Program of the CWA is unlike that of any other state (see comparisons in Table 1. Historic Wetland Loss/Gain by State – Table and Graphs). A great proportion of Alaska's economy – construction projects, public works, roads, mines, residential properties, or oil development – affects wetlands and often requires a Section 404 permit from the U.S. Army Corps of Engineers (Corps).

Alaska	Acres	Percent of Surface Area
Alaska Wetlands Acreage	174,683,900	43%
Deepwater (lakes and coastal)	29,870,400	7.40%
Total	204,554,300	50.400%

Source: Status of Alaska Wetlands, U.S. Fish and Wildlife Service. 1994

An assumed 404 Program means the State, rather than the Corps would issue Individual Permits (IPs), referred to by the Corps as Standard Permits (SPs)¹ and General Permits (GPs) for the discharge of dredged or fill material into certain waters. While the State can assume dredge and fill permitting responsibility from the Corps for most areas, the CWA requires that the Corps retain permitting jurisdiction for certain "non-assumable" waters that must remain subject to federal purview (generally, waters used to transport interstate or foreign commerce). Waters where the State would assume responsibility and waters where the Corps would likely retain jurisdiction is explained in Section 4 and demonstrated in Figure 2. - Figure 5. However, as shown in this report we estimate that the State would assume responsibility for approximately 75% of the 404 permit actions the Corps currently administers in Alaska. The remaining 25% would remain with the Corps.

A state program cannot impose any less stringent requirements than those set forth in EPA's state assumption regulations (40 CFR § 233).² To assume the Corps' permitting responsibility over

¹ Individual Permit (a term generally used by states) and Standard Permit (a term used by the Corps) refer to a similar permit tool and only authorize one project. A General Permit may be used to authorize multiple projects.

² The regulations provide that state 404 Programs "shall, at all times, be conducted in accordance with the requirements" of Section 404 and the Section 404 State Program Regulations (40 CFR § 233). States are not allowed to "impose any less stringent requirements for any purpose."

assumable waters, the State must show that its program is at least as stringent as the current federal 404 Program and has sustainable funding. Therefore, State assumption of the Corps' program does not decrease environmental protection in Alaska. In many respects, Alaska's management of the 404 Program may result in increased environmental protection and better management of resources. State assumption of the 404 Program has other important advantages.³ These benefits are explained in detail in Section 2, and summarized here:

- **Program assumption will maintain or improve environmental protection.** State assumption of the 404 Program will increase State and local involvement in key decisions and will better reflect the environmental priorities and needs of the state. State dredge and fill permitting can be better targeted to represent Alaska's environment and better protect the unique characteristics of Alaskan conditions, which is different from elsewhere in the U.S. A State 404 Program can be coordinated with existing key State programs already in place, such as the Alaska Department of Environmental Conservation (DEC) Wetland Management Plan; Alaska's Water Quality Standards; water quality monitoring program; the biannual Water Quality Assessment and Monitoring Report (which identifies impaired waters that may benefit from compensatory mitigation required of some 404 permittees); State land management and permitting programs; State fish and game programs; and State coordination programs for projects requiring multiple permits, including other environmental permits.
- **Compensatory Mitigation.** Compensatory mitigation (compensating for impacted wetlands) may be the most significant issue associated with implementing State program assumption. A more flexible, State mitigation approach may allow Alaska to address more pressing water quality protection and restoration needs than the federal program that is focused on restoration and creation of new wetlands. Alaska has such a large percentage of undisturbed wetlands that the requirements set for the lower 48 states to restore or replace impacted wetlands may not be suitable for Alaska. Techniques used to avoid, minimize, and compensate for wetlands impacts may not work as well in Alaska. This issue provides an opportunity to work with EPA and the Corps to develop the required compensatory mitigation in a manner that is appropriate for Alaska. Developing a compensatory mitigation system that meets federal requirements, is efficient for project applicants, and is appropriate for Alaska, will be one of the greatest benefits from a State-assumed program. Importantly, federal law currently provides that, "to the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, *provide flexibility for regional variations in wetland*

³ "When States and tribes assume the Section 404 permit program, they protect the waters to the same level as the federal government and often increase efficiencies and remove redundancies in permitting processes." U.S. Army (2018, August 7). *Army Issues Memorandum to Empower States and Tribes in their Permitting Authority*. Retrieved December 28, 2022, from https://www.army.mil/article/209359/army_issues_memorandum_to_empower_states_tribes_in_their_permitting_authority

conditions, functions and values, and apply equivalent standards and criteria to each type of compensatory mitigation.”⁴

- **Opportunity to reduce the high costs and burdens of federal 404 permitting.** Applicants for 404 permits spend significantly on the permitting process. Any government actions that reduce the timeframe for issuing a permit (while still meeting all environmental protection needs) can represent a cost savings to permit applicants and the permitting agency. With Alaska's short construction season, a 2-month permit delay may mean delaying construction to the following year. Project delays almost always result in higher project costs, usually with no environmental benefit. State-assumed programs can create streamlined timelines by creating state-specific general permits, establishing more stringent statutory timelines, permit coordination and increasing program stability, among other options discussed in this report.
- **Assumption would increase Alaska's control over its economic future.** An important part of Alaska's history is the fight to obtain more State control over Alaska's resources from the federal government. The Corps' wetland permit is the remaining, frequently used permitting authority retained by the federal government over State and private land. Assuming control would allow Alaska to coordinate permitting for projects, including control over scheduling, and priorities. Assuming permitting control over much of the State's wetlands would be a major increase in State control over development in Alaska.
- **State government is closer and more accountable to Alaskans than the federal government.** State leadership employees are accountable to the legislature, which is closer to individual Alaskans than the federal government. The DEC budget and description of agency services and progress reports go through the legislature, with public review, every year. It is easier for the State to craft solutions for Alaska's unique wetland, social, and economic circumstances than it is for the Corps, which must be concerned about how these may or may not apply to other states. DEC can prioritize resources and schedules to respond to Alaska priorities, whereas the federal government must adhere to national priorities. An obvious example of the better physical access Alaskans have to State government is that permittees and the public can meet with DEC employees and legislators in offices located around the state. It is easy to meet with a State employee, but to meet with the Corps in Alaska, one must gain access to a military base, which can be difficult.

⁴ See National Defense Authorization Act For Fiscal Year 2004, Pub. L. 108–136 § 314(b) (2003). Based on this congressional direction, in 2008, the Corps and EPA jointly issued regulations establishing standards and criteria for compensatory mitigation (“2008 Mitigation Rule”). See 73 Fed. Reg. 19593 (Jun. 9, 2008); 40 CFR Part 230, Subpart J. In doing so, the 2008 Mitigation Rule expressly required the Corps to account for “regional variations” when applying the standards and criteria. See 40 CFR § 230.91(a)(1) (“standards and criteria shall, to the maximum extent practicable . . . provide for regional variations in wetland conditions, functions, and values”). The preamble to the rule further clarified that the rule “does not prescribe a one-size-fits-all” approach to compensatory mitigation. 73 Fed. Reg. at 19616-17.

- **State courts are more knowledgeable about Alaska’s unique conditions than are federal courts.** Lawsuits contesting Corps-issued permits are litigated in federal courts, including the possibility for challenges to permitting decisions to occur in federal courts as far away as Washington, D.C. Most (but not all) lawsuits contesting a DEC permit would be litigated in Alaska State courts where many Alaskans have more familiarity with the applicable procedures. For example, obtaining legal representation in federal courts can be more costly and specialized than in State courts in some instances. State courts tend to be more familiar with Alaska conditions and issues than courts hearing cases outside of Alaska.
- **Some projects may not be subject to federal NEPA review.** Congress has established that the National Environmental Policy Act (NEPA) only applies to “major federal activities” and not to state actions like issuance of state 404 permits. Likewise, Congress has directed that EPA approval of state 404 Programs is not subject to NEPA. The Corps’ wetland permit is frequently the federal action that requires federal NEPA review – an Environmental Assessment (EA) or the longer Environmental Impact Statement (EIS). Under a state-assumed program, projects that are not on federal land, do not involve federal funding, or that lack another federal nexus may not require federal NEPA review. Eliminating federal NEPA review would not impact many of the smaller projects in Alaska but could significantly decrease costs and accelerate the timeline for some of the larger Alaska projects, without compromising State agencies’ ability to protect the environment.
- **State assumption provides opportunities for permit streamlining.** Permit streamlining can result in cost savings for permittees and regulators.⁵ DEC could accelerate wetland permitting in several ways. For example, State assumption will eliminate the requirement for DEC to certify that the Corps’ permit meets Alaska water quality standards. Thus, rather than the need for two separate regulatory actions (with the chance for similar but slightly different required conditions) for the same activity, the separate certification would be eliminated. State assumption may also mean faster agency coordination. In addition, the State could make greater use of General Permits and delegate some activities to Alaska’s larger local governments. Likewise, for 404 purposes, EPA has utilized programmatic consultation approaches under the Endangered Species Act that provide for more streamlined review of species impacts.
- **The State could make more use of Alaska-specific policies and procedures.** Alaska agencies are better situated to craft policies and procedures that work for Alaska’s diverse geography and climate. Alaska could develop policies for different eco-regions of the

⁵ "Many States have determined that State and tribal implementation of the Section 404 permit program saves substantial money as they are able to incorporate the review process into their existing program. This action supports infrastructure investment as removal of redundancies in State/tribal and federal reviews will help provide more timely completion of permit review requirements." U.S. Army (2018, August 7). *Army Issues Memorandum to Empower States and Tribes in their Permitting Authority*. Retrieved December 28, 2022, from [https://www.army.mil/article/209359/army_issues_memorandum_to_empower_states_tribes_in_their_permitting_a
uthority](https://www.army.mil/article/209359/army_issues_memorandum_to_empower_states_tribes_in_their_permitting_authority)

state without having to worry about national effects. Alaska may be better situated to craft Alaska-specific mitigation policies.

- **The State program would have a more inclusive and more predictable appeals process.** Under the Corps' program, only an applicant (or owner of the permitted property) may administratively appeal a federal wetlands permit. The federal appeals process has no firm deadline and can extend for a long time. Individual citizens must go to federal court. Under a State-assumed program DEC should use its existing appeals process, which is open to Alaska citizens that participated in the permit process, allows for an informal review by the Water Division Director, and an administrative appeal to the DEC Commissioner with firm deadlines, and allows unsatisfied appellants to generally go to State court. The faster, more predictable, more open appeals process has advantages for both industry and ordinary Alaskans.
- **The State program has the potential to be more stable and predictable to applicants than the federal program.** It is expected that the State program will provide more stability and predictability than the federal program. Recent experience with numerous changes to the federal definition of Waters of the United States (WOTUS) and the extent of the Corps' jurisdiction have caused confusion to agencies and applicants.⁶ Michigan and some other states have provided a more stable and predictable program than the Corps' program, as their regulatory programs cover both WOTUS and non-WOTUS locations. The multiple federal boundary changes between WOTUS and non-WOTUS are less disruptive in states with programs that cover both. Under the 404-oversight process, Alaska will have one year to update existing state regulations to reflect changes in federal regulations (or two years, if a statutory change is required), providing more time to inform permittees of coming changes.

State assumption of the 404 Program would require overcoming some challenges. These are explained in Section 3 and summarized below.

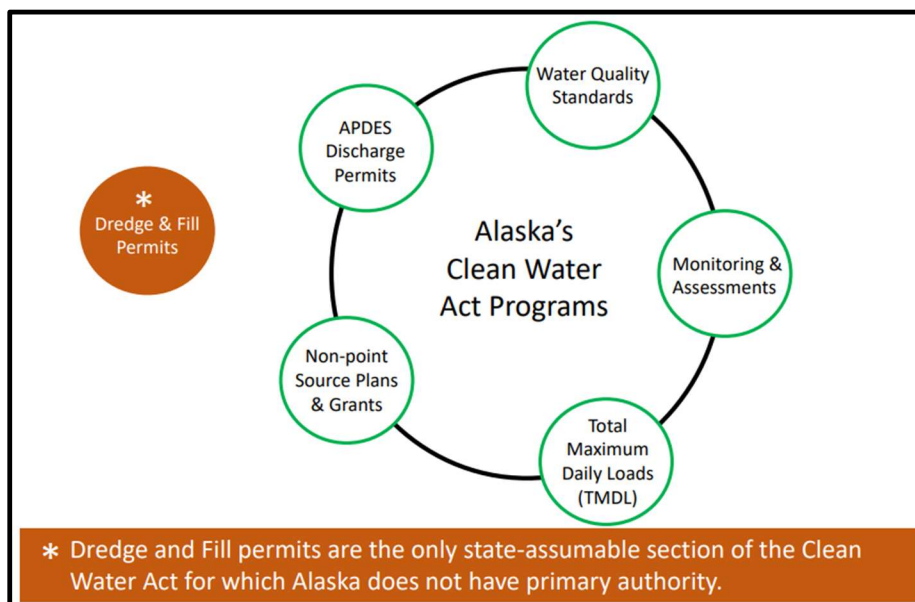
- **Cost.** Based on current estimates, development of the application to EPA to assume the 404 Program, drafting regulations and program tools, along with staff hiring and training would require ramping up over two years. We estimate that, during the first year, these efforts would require bringing on 28 positions and \$5.0 million. The second year (and program implementation beginning in the third year and beyond) would require 32 permanent positions and cost the State approximately \$4.8 million per year. The State could pay for this program through General Funds, fees, or a combination of these. The estimated costs of the assumed program and potential funding mechanisms are explored in Sections 5.3 through 5.4 of this report.

⁶ The definition of WOTUS was changed again during the writing of this report. The EPA December 30, 2022 announcement and a link to the revised definition can be found at: [Revising the Definition of "Waters of the United States" | US EPA](#). This new definition is scheduled to become effective 60 days after publication of the new definition in the Federal Register.

- **Clarifying Responsibility between Federal and State Agencies.** The CWA does not allow the State to assume permitting responsibility for all waters and wetlands in Alaska. While the Department of Environmental Conservation (DEC) would likely issue 75% of dredge and fill permits, the Corps would still have authority for the other 25%. Some projects would require only a State permit, some a federal permit, and some might cross boundaries and involve permits from both the Corps and DEC. Section 4.6 discusses options for projects which cross the boundary of assumable waters. Different states have handled this issue in different ways. In any case, the State would need clear maps and guidelines to avoid potential permittee confusion.
- **Environmental Review.** Under a State-assumed program, DEC would have to conduct the environmental review currently conducted by the Corps. This includes writing decisions consistent with federal regulations (known as the "404(b)(1) guidelines ") which give direction to the dredge and fill permitting process required for a federal wetlands decision. This review may involve other agencies: working with the U.S. Fish and Wildlife Service on endangered species, and work with the State Historic Preservation Office (SHPO) on cultural resources issues. Finally, because federal NEPA review may not be required for some projects, DEC's environmental review guidelines (that must be at least as stringent as the Corps' 404(b)(1) guidelines) supporting a permit decision may receive more public interest.
- **EPA Oversight.** EPA has a history of close oversight over state programs which assume portions of the CWA regulatory authority. Experience in Alaska's 402 wastewater discharge program assumption process indicates that significant time and effort will be required to work with EPA to ensure that the agency's oversight is appropriate and allows DEC's assumed 404 process to remain efficient and not burden permittees with responsibilities beyond what the law requires. DEC can expect to develop a series of MOUs with EPA to address program issues. While EPA has the right to review the State's decisions, experience with other states that have assumed the 404 Program indicates that once the State assumes the program, formal EPA objections to State permits are rare. Where concerns arise over particular projects, the Corps, EPA, and the state are usually able to work cooperatively to resolve issues and move forward.
- **Tribal involvement.** Tribal governments enjoy a government-to-government relationship with the federal government and may express concerns about loss of this relationship when a federal program is assumed by a state, however, Alaska governors have issued Administrative Orders over the years to support consultation between State agencies and tribes. DEC has an "ADEC Tribal Consultation Policy" that applies to the agency's work, including work under assumption of a program from the federal government. Concerns over the potential loss of involvement by tribal governments was expressed during State assumption of the 402 wastewater discharge permitting program. To address those concerns for the 402 Program, DEC developed a guidance document "APDES Guidance for Local and Tribal Governments." The same tribal concerns should be anticipated in the 404-assumption process and can be addressed by developing similar program guidance.

The recommended program.

The 404 dredge and fill program is the only CWA program available to states for which Alaska does not have authority (see figure below). The Corps' wetlands permit is the remaining major permitting authority retained by the federal government over development on state and private land in Alaska. Given the benefits to the environment and economy of the state, DEC should take the necessary steps to assume the 404 Program from the Corps. Assuming the Corps' 404 permitting program will allow the State to issue approximately 75% of the 775 annual permit actions currently issued by the Corps (about 580 actions per year). See Table 2 Comparison of Corps Program Staffing Size to Proposed Alaska Program Staffing that describes estimated actions/year based on a five-year average. With full program funding, the quickest possible timeframe to achieve program assumption approval is about two years. The first year would require 28 FTE and \$5.0 million, ramping up to an ongoing program in the next year with 32 FTE and a budget of \$4.8 million (the cost decreases somewhat in the second year because one-time office equipment and supplies are purchased for 28 FTE during the first year). Based on regional workload, the 32 staff required to maintain the program would be allocated with approximately 14 staff in Anchorage, 12 staff in Fairbanks, and 6 staff in Juneau. Section 5.4 of this report describes different methods to fund the cost.



1. INTRODUCTION AND BACKGROUND

1.1 Introduction

In 1972, the U.S. Congress passed the historic law which has come to be known as the Clean Water Act (CWA). The act prohibits discharge of pollutants into waters of the U.S. (WOTUS) without a permit from the U.S. Environmental Protection Agency (EPA) (Section 402) and prohibits the addition of dredged or fill material into WOTUS without a permit from the U.S. Army Corps of Engineers ("the Corps") (Section 404). Throughout this report, the required permit may be referred to as a "404 permit" or the commonly used term, "wetlands permit" even though the permit is required for the addition of dredged or fill material to WOTUS, not just "wetlands." As described in Section 4, WOTUS includes certain wetlands. WOTUS also includes most rivers, creeks, lakes, swamps, estuaries, or any perennially wet areas. In Alaska, these waters make up almost half of the state's surface area. Section 404 results in an often-onerous permitting process for the discharge of dredged or fill material into WOTUS, including wetlands.

The CWA also provides that individual states can assume primacy over Section 402 and Section 404 permitting. All but three states have assumed 402 permitting, but only three other states have successfully assumed the 404 Program: Florida, Michigan, and New Jersey. Part of the reason that fewer states have chosen to assume 404 permitting is that wetlands average only 5% of the surface area of the lower 48 states.⁷ This report analyzes the feasibility of Alaska assuming the 404-permitting process from the Corps and provides information to assist the State with program assumption.

1.2 Background

Section 404 of the CWA regulates the discharge of dredged or fill material into the nation's waters and wetlands, requiring a Section 404 permit issued by the Corps before dredged and fill material may be discharged in waters of the U.S. While Section 404 is often described as a wetlands program, it applies to all waters of the U.S., not just wetlands.

In 1977, Congress amended the federal CWA to provide a legal mechanism for states to assume the Act's Section 404 dredge and fill permit program. With more coastline than the rest of the country combined, and over 174 million acres of wetlands in Alaska (many of them unique to the state such as permafrost and tundra), Alaska's stake in administering the Section 404 Program of the CWA is unlike that of any other state (see Figure 1. Alaska Wetlands Compared to Lower 48 Wetlands). In Alaska, almost every development project affects WOTUS, and therefore, Alaska has a unique interest in ensuring that the permitting process protects Alaska resources, while encouraging and streamlining responsible development. Given Alaska's size, high percentage of wetlands, and climactic diversity, our state is ideally suited to assume the 404-permitting program and can serve as the model for other western states considering primacy.

⁷ Dahl, T.E. 1990. Report to Congress: Wetlands Losses in the United States 1780's to 1980's. U.S. Department of Interior, Fish and Wildlife Service, Washington D.C., 13 pp. Table 1, page 6.

DEC has broad authority to regulate pollutant discharges to the lands and waters of the state but does not directly regulate dredge and fill activities affecting Alaska waters. While the State does not currently issue permits for these activities, it has significant expertise in the program. Under CWA Section 401, the State has the obligation to review applications for the Corps of Engineers 404 permits and to determine whether the permitted activity will comply with State water quality standards. DEC must issue what is essentially a second authorization for the proposed activity. Thus, the DEC has many years of review and participation in the issuance, modification, or denial of 404 permit applications.

In 2013, the legislature passed, and the governor signed, SB 27 directing DEC and the Alaska Department of Natural Resources (DNR) to evaluate the potential benefits, costs, and consequences to the State of assuming primacy for regulating dredge and fill activities under 33 U.S.C § 1344. The bill directs the agencies to take reasonable steps to assume primacy and provides broad authority to take actions, including adoption of regulations necessary to obtain federal approval of a State program and to implement the program.

In 2014, DEC conducted an analysis of the workload, potential costs, staffing needs, budget, and timeline for assuming the program from the Corps and for implementing the program. Recent federal actions have made it more conducive now for states to assume the 404 Program. For example, EPA approved Florida's 404 Program in December 2020. Alaska can refer to Florida's experience and application to help with Alaska's effort to prepare a program that fits Alaska's unique circumstances. Also, the 2018 EPA-Corps MOA⁸ concerning mitigation in Alaska provides mitigation flexibility that the State could duplicate in an EPA-State MOA if it operated the program (the "2018 MOA," see Appendix 1. 2018 MOA Between Corps and EPA Regarding Mitigation Sequence in Alaska).

Subsequent to the passage of SB 27, the legislature removed funding for DEC to continue its work towards program assumption. In the FY 2023 budget, the legislature approved funding to explore assumption and included intent language stating:

"It is the Intent of the Legislature that \$1 million is appropriated for the purpose of the Department of Environmental Conservation to complete a feasibility study on the assumption of primacy of Section 404 of the Clean Water Act. The report will be submitted to the four co-chairs of the Finance Committees and Division of Legislative Finance by February 1, 2023."

This report is in response to the legislature's intent language. It updates work conducted in 2014, including a workload analysis (wetlands determinations, jurisdictional determinations (JD's), permitting, mitigation, compliance review, and enforcement) using the Corps' most recent five years of data, staffing, and budget needs. In addition, this report details the benefits of a State-administered 404 Program, challenges with program development and implementation, and includes a discussion on the waters that would likely fall under a State program. It further makes

⁸ MEMORANDUM OF AGREEMENT BETWEEN The Department of the Army AND The Environmental Protection Agency CONCERNING Mitigation Sequence for Wetlands in Alaska under Section 404 of the Clean Water Act. Copy at Appendix 1. 2018 MOA Between Corps and EPA Regarding Mitigation Sequence in Alaska

recommendations throughout the report based on a review of Alaska's experience obtaining primacy for the CWA Section 402 wastewater discharge permitting and on the experience of other states that have assumed the Section 404 permitting program (Michigan, New Jersey, and most recently, Florida).

1.3 404 Assumption Standards vs. Corps' Regulatory Program Standards

It is important to keep in mind that under the 404 Program assumed by the State of Alaska, EPA may exert greater control than they do over the Corps while implementing similar standards. While similar work will be required of the State, the EPA focus and effort expended on CWA programs at the State-level is likely to be different, primarily due to greater EPA oversight and involvement. While EPA can veto a Corps-issued permit, EPA cannot remove program operation authority from the Corps either at the headquarters or regional level. EPA retains the authority to oversee a state-assumed program and the State should anticipate a significant amount of EPA oversight, particularly early in the State's operation of the program.

In addition to being the authority to approve a state program (determining the state program is at least as stringent as the federal program), under Section 404(j) EPA can review and potentially object to any permit a state program proposes to issue, if EPA does not believe the permit complies with the 404(b)(1) guidelines. The state is prohibited from issuing the permit until EPA's objections are resolved. When Alaska took on the CWA Section 402 (wastewater discharge permitting program), EPA oversight was significant during the early years, including requests to the State to be more restrictive on permittees than the program formerly operated by EPA. DEC was able to work cooperatively with EPA to resolve those concerns. While creating an increased workload for the State, EPA only conducted one formal objection to a State-proposed permit. The issue was resolved in the State's favor, further indicating State competency in implementing a program assumed from the federal government. In the other states that have assumed 404 primacy, formal EPA objections are a relatively rare occurrence, based on discussions with other states with 404 Program assumption. For example, EPA has objected to 17 permits in Florida's two years of operating the program (just over 1% of all GP authorizations and IPs) and only federalized one permit. New Jersey has only had 1 EPA objection.

Additionally, EPA retains authority to revoke a state program (under 40 CFR § 233 State Program Regulations Subpart F – Federal Oversight) if the state is failing to meet the requirements of the approved program (or is operated inconsistently with the federal regulations, including updating the state program over time to remain consistent with revisions to the federal program after a state-assumption). There is a process for a state to rectify any deficiencies prior to revocation. EPA has not revoked any state 404 Programs, although there are only three state-assumed programs so far. EPA has similar authority to revoke delegation to states of other CWA programs but has rarely attempted to exercise that authority.

Below is a general summary of Corps and EPA responsibilities under the Corps-administered 404 Program:

Corps' Responsibilities

- Administers the day-to-day program, including Standard (Individual) Permits, Regional General Permits (RGPs), and General Permit decisions.
- Conducts, verifies, and approves Jurisdictional Determinations (JDs)⁹ based on the current definition of Waters of the United States (WOTUS).
- Develops policy and guidance supplying guidance in the form of Regulatory Guidance letters, Engineer Forms, and Special Public Notices.
- Enforces Section 404 provisions of CWA permits.
- Completes coordination with state and Federal agencies on Nationwide General Permits (NWP) reauthorizations (typically every five years).
- Completes Compensatory Mitigation Bank authorizations. The Corps leads the State Interagency Review Team (SIRT) for compensatory mitigation bank completeness review, approvals, and denials.
- The Corps is the lead or cooperating agency on major federal permit actions for Section 404 permits requiring an EIS.
- The Corps is responsible for maintaining the U.S. Army Corps of Engineers, Alaska District (Alaska District) web site updating guidelines, policy and issuing Public Notices. The web site is also the portal for submittal of permit applications and information requests.

EPA's Responsibilities

- Develops and interprets policy, guidance and environmental criteria used in evaluating permit applications for the CWA.
- Determines scope of geographic jurisdiction and applicability of exemptions. Develops CWA and WOTUS regulation and policy.
- Approves and oversees state and Tribal assumption.
- Reviews and comments on Individual Permit (IP) applications.
- Can elevate specific cases (Section 404(q)). Recommend permit denial or special conditions. Comments on all 404 Public Notices
- Enforces Section 404 provisions
- Can veto a 404 permit decision under 404(c) due to unacceptable adverse effects.
- Participate as a SIRT member.

Only three other states have assumed the 404 Program, as compared to 47 states that have assumed the 402 Program. There are a number of reasons for this. One significant reason is that, unlike 402 Program delegation which gives program approval for all waters of the United States located within the state, the CWA does not provide for state 404 permitting assumption for all WOTUS and retains some WOTUS in Corps' jurisdiction (non-assumable waters). So, if the State assumes 404 permitting, the Corps will still have permitting jurisdiction over some

⁹ Jurisdictional Determination is the process for delineating which wetlands fall under the Corp's regulatory jurisdiction and which don't.

WOTUS. This is a significant challenge to State 404 assumption and will be discussed in more detail later in this report.

1.4 Program Assumption in Other States

Only three other states have successfully assumed the 404 Program: Florida, New Jersey, and Michigan:

Michigan. Michigan assumed the 404 Program in 1984. Michigan has 6.5 million acres of wetlands (approximately 10% of its surface area). Michigan's budget for its 404 Program is \$12.3 million and includes 82 staff in 10 offices.

New Jersey. New Jersey assumed the 404 Program in 1994. New Jersey has 915,000 acres of wetlands (approximately 16% of its surface area). New Jersey's budget for its 404 Program is \$14.5 million and includes 176 staff.

Florida. Florida assumed the 404 Program in 2020. Florida has approximately 10 million acres of wetlands (approximately 24% of its surface area). Florida's budget for its 404 Program is \$11.3 million and includes 170 staff.

In addition to these three states, Nebraska, Oregon, and Arizona have engaged in efforts to assume the 404 Program. Nebraska is in the process of developing its application to the EPA, and Oregon abandoned its effort and chose to focus on its state wetlands permitting process instead. Arizona undertook an extensive stakeholder review of potential program assumption and while that effort produced significant information, they abandoned the effort in April 2020. In the last several years, EPA has made it easier to delineate between assumable and non-assumable wetlands, and this should make it more feasible for more states to assume 404 (See Section 4).

2. BENEFITS OF ALASKA 404 ASSUMPTION

2.1 Program assumption will improve environmental protection

A State-assumed wetlands program will provide better environmental protections for Alaska's unique wetlands. First, the EPA will not allow a state to assume a 404 wetlands permitting program unless it can demonstrate that it can provide environmental protections at least as stringent as the federal program. Second, State assumption of the 404 Program will increase State and local involvement in key decisions and will better reflect the environmental priorities and needs of the state. State wetland permitting can be better targeted to represent Alaska's environment and better protect the unique characteristics of Alaskan conditions, which are different from elsewhere in the U.S.

A state 404 Program can be coordinated with existing permitting programs, ensuring that all the environmental protections in all the other state and federal permits are considered in the context of Alaska's unique environmental conditions. Other existing state programs that can be coordinated with a 404 program include the DEC Wetland Management Plan; Alaska's Water Quality Standards; water quality monitoring program; the biannual Water Quality Assessment and Monitoring Report (which identifies impaired waters that may benefit from compensatory mitigation required to 404 permittees); State land management and permitting programs; State fish and game programs; and State coordination programs for projects requiring other environmental permits.

2.2 Compensatory Mitigation Flexibility

Compensatory mitigation is the primary means of the 404 Program's contribution to the national goal of "no net loss" of wetlands. Under the 404(b)(1) Guidelines, "compensatory mitigation" is defined as "the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved."¹⁰ There are three mechanisms for providing compensatory mitigation: mitigation banks, in-lieu fee programs, and permittee-responsible mitigation (listed in order of preference as established by, and defined in, the 404(b)(1) Guidelines).¹¹

¹⁰ 40 CFR § 230.92.

¹¹ Compensatory mitigation for impacts to WOTUS can be accomplished by using an In-Lieu Fee program, a mitigation bank, or through permittee-responsible mitigation, defined in 33 CFR § 332.2 and copied below:

In-lieu fee program means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

Thus, under federal law, unavoidable impacts to wetlands associated with a 404 permitted activity must be mitigated. In other states, this is commonly accomplished by restoration of formerly impacted wetlands. Alaska is in a different situation with respect to wetlands than the rest of the U.S. In Florida, a state with a great quantity of wetlands, fully half of the wetlands had disappeared as of two decades ago.¹² California has lost more than 90% of the wetlands which once spread across the state.¹³ Alaska is different. Our vast wetland acreage remains intact. Alaska has yet to lose 0.1% of its wetlands and over 88% are under public management.¹⁴ This puts the state in a distinct position compared to the rest of the country (see Table 1. Historic Wetland Loss/Gain by State – Table and Graphs). In many areas, the state lacks degraded wetlands to be rehabilitated. Rehabilitating degraded wetlands within a permittee-impacted watershed, a common and realistic mitigation practice elsewhere in the U.S., is frequently not a realistic option in Alaska.

Further, wetlands are just more common in Alaska: 43% of Alaska is wetlands (not counting lakes, rivers, streams, and coastal waters which add another 7%). In Utah, vegetated wetlands account for only 1% of the land area, with rivers and ponds accounting for 2-3% more, most of that being in the Great Salt Lake.¹⁵ Wetland mitigation techniques that are common and realistic elsewhere in the U.S. are often not suited to Alaska's situation.

As noted, compensatory mitigation must be considered for any remaining unavoidable impacts in order to replace lost aquatic functions and values. In 2004, Congress directed the Corps to update the Guidelines and issue regulations establishing standards and criteria for the compensation component of the mitigation sequence. Congress explicitly instructed: "To the *maximum extent practicable*, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, *provide flexibility for regional variations in wetland conditions*,

Mitigation bank means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Permittee-responsible mitigation means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

¹² U.S. Fish and Wildlife Service. Florida's Wetlands, An Update on Status and Trends 1985 to 1996. <https://www.fws.gov/wetlands/documents/Floridas-Wetlands-An-Update-on-Status-and-Trends-1985-to-1996.pdf>

¹³ U.S. Fish and Wildlife Service. <https://www.fws.gov/wetlands/data/Water-Summary-Reports/National-Water-Summary-Wetland-Resources-California.pdf>

¹⁴ "The U.S. Fish and Wildlife Service estimates that during the 200-year period between 1780 and 1980, approximately 1/10 of a percent of the original wetland acreage in Alaska was lost (Dahl 1990)." Status of Alaska Wetlands. 1994.

¹⁵ Utah Geological Survey. <https://www.fws.gov/wetlands/data/Water-Summary-Reports/National-Water-Summary-Wetland-Resources-California.pdf>. For information on all states, see Table 1.

functions and values, and apply equivalent standards and criteria to each type of compensatory mitigation" (emphasis added).¹⁶

Based on this direction, in 2008, the Corps and EPA jointly issued regulations establishing standards and criteria for compensatory mitigation ("2008 Mitigation Rule"). In doing so, the 2008 Mitigation Rule expressly required the Corps to account for "regional variations" when applying the standards and criteria.¹⁷ The preamble to the rule further clarified that the rule "does not prescribe a one-size-fits-all" approach to compensatory mitigation.¹⁸

For nearly 30 years, the Corps and the EPA have recognized that compensatory mitigation in Alaska presents unique complexities because, as a state dominated by pristine wetlands, opportunities for compensatory mitigation in and adjacent to a project area are frequently limited or nonexistent.¹⁹ See Alaska Wetlands Initiative (May 13, 1994).²⁰ Based on this recognition, EPA and the Corps have developed Alaska-specific guidance for mitigation sequencing under Section 404. (see Appendix 1. 2018 MOA Between Corps and EPA Regarding Mitigation Sequence in Alaska). With the 2018 MOA, the EPA and Corps reiterated their understanding that mitigation in Alaska is unique. It repeats the agencies' continuing acknowledgement that "[r]estoring, enhancing, or establishing wetlands for compensatory mitigation [in Alaska] may not be practicable due to limited availability of sites and/or technical logistical limitations." *Id.* at 2.

¹⁶ See National Defense Authorization Act For Fiscal Year 2004, Pub. L. 108–136 § 314(b) (2003) ("NDDA").

¹⁷ See 73 Fed. Reg. 19593 (Jun. 9, 2008); 40 CFR Part 230, Subpart J and 40 CFR Part 230.91(a)(1) ("standards and criteria shall, to the maximum extent practicable . . . provide for regional variations in wetland conditions, functions, and values").

¹⁸ See 73 Fed. Reg. at 19616-17. "With respect to providing flexibility for regional variations in wetland conditions, functions and values, as previously noted, we believe that today's rule achieves the proper balance of binding requirements and flexibility necessary to ensure that compensatory mitigation decisions are reasonable and based on case-specific circumstances. An adequate degree of flexibility is necessary for this rule because practices for restoring, establishing, and enhancing aquatic resources vary by resource type and by geographic region. For example, today's rule does not proscribe a one-size-fits-all set of ecological performance standards to evaluate the success of all compensation projects. Instead, the rule recognizes that ecological performance standards will vary depending upon aquatic resource type, geographic region, and compensation method but requires that they be based the best available science that can be measured or assessed in a practicable manner. Thus, consistent with the NDAA, today's rule provides flexibility for regional variations in wetland and aquatic resource conditions, functions and values to the maximum extent practicable."

¹⁹ See also Memorandum of Agreement Regarding Mitigation under CWA Section 404(b)(1) Guidelines (Feb. 6, 1990) ("[T]here are certain areas where, due to hydrological conditions, the technology for restoration or creation of wetlands may not be available at present, or may otherwise be impracticable. In addition, avoidance, minimization, and compensatory mitigation may not be practicable where there is a high proportion of land which is wetlands").

²⁰To further understand how to best apply the Guidelines in Alaska, EPA and the Corps convened a detailed study—the Alaska Wetlands Initiative—with a broad range of stakeholders, including the State. The Alaska Wetlands Initiative resulted in several policy refinements and goals, the most relevant of which was the intent to issue a "written statement that recognizes the flexibility to consider circumstances in Alaska in implementing alternatives analyses and compensatory mitigation requirements under the Section 404 regulatory program," which was intended to provide "greater predictability to the Section 404 program." The statement was attached to the Summary Report, and "recognize[d] that . . . restoring, enhancing, or creating wetlands through compensatory mitigation may not be practicable due to limited availability of sites or technical or logistical issues." Copy at [Alaska's Wetlands](#).

While the 2018 MOA provides significant flexibility, it could be argued that it has not been exercised to the extent agreed to. With 404 Program assumption, Alaska has the opportunity to develop a mitigation system that reflects Alaskan conditions and potentially expands the types of projects that can be considered as compensatory mitigation for permitted activities. The 404(b)(1) guidelines that direct DEC's permit approval process provide significant flexibility for evaluating projects and determining mitigation needs. With Alaska's vast wetlands resources and limited development there are few opportunities for "traditional" mitigation projects that seek to restore damaged resources, and little need to "lock up" areas and protect them from future development. Accordingly, Alaska needs to have a greater range of mitigation options that make more critical improvements to habitat or water quality but don't specifically replace an acre of wetlands filled with a new acre of similar type wetlands. Those opportunities could include restoration of impacted wetlands in other watersheds; cleanup of orphan contaminated sites that affect water bodies/wetlands; replacement of perched culverts that prevent fish passage to spawning areas; elimination of invasive aquatic species; projects that reduce contamination in urban runoff or other sources of non-point source pollution (such as impermeable surfaces and rain gardens); placement of sewage pump-out facilities in harbors, or even projects for villages which have the effect of improving water quality (such as lining landfills). For examples of potential mitigation projects that can improve water quality, see projects previously funded by DEC's Alaska Clean Water Act Grants.²¹ If allowed by federal authorities, projects such as improvements in sewage lagoons and better solid waste disposal facilities (alternatives to using a tundra pond) benefit Alaska's rural villages which are in desperate need of improved infrastructure and have limited opportunities for restoring damaged wetlands. The State could also work to bank mitigation projects ahead of time that enhance critical habitat for Endangered Species.

Thus, DEC has the opportunity under an assumed 404 Program to develop an approval program for mitigation banks and ILFs that better reflect Alaska's water protection and restoration needs.

The State will need to describe how they intend to evaluate the success of mitigation.²² For example, New Jersey's program relies on the use of best professional judgement to evaluate the success of mitigation sites, which provides significant flexibility.

²¹ Information on previously funded projects can be found at: [Map of Previously Funded ACWA Projects \(alaska.gov\)](http://alaska.gov).

²² During the CWA 404 program assumption process, Alaska could seek to maximize the use of the 2018 MOA while also attempting to gain EPA support for other approaches that comply with the Guidelines' inherent flexibilities. For example, Alaska could also try to harness the allowance for "other suitable metric" under 40 CFR § 230.93(f) for purposes of Alaska and note that, based on such metric, mitigation ratios of less than one-to-one could be appropriate in particular circumstances. EPA has expressed openness to flexible approaches. In the preamble to the 2008 Mitigation Rule, EPA and the Corps suggested that the "other suitable metric" language was added to the rule to increase flexibility in determining necessary compensatory mitigation requirements. 73 Fed. Reg. at 19621 (adding the reference to "other suitable metric" in response to comments because "there are a variety of methods that can be used to determine the number of credits provided by a compensatory mitigation project").

State 404 permit conditions and decisions will have to address compensatory mitigation for those impacts to wetlands that cannot be avoided or minimized according to the Mitigation Rule.²³ This effort will include evaluating mitigation options, requiring mitigation, monitoring compliance, and documenting the required type and amount of compensatory mitigation for each authorization issued. EPA may provide more oversight to Alaska's implementation of compensatory mitigation than the Corps, at least initially. While the State is likely to be able to address and resolve EPA requests, those efforts do require staff time to address. The State can anticipate significant EPA oversight of a State managed mitigation program, indicating the State needs to develop a program that is as stringent as the 404(b)(1) guidelines but streamlined to focus on Alaska-specific wetland types and creative mitigation opportunities.

2.3 Opportunity to reduce the high costs and burdens of federal 404 permitting.

According to a 2002 study cited by the Supreme Court in *Rapanos v. United States*, nationally, applicants for a USACE individual permit spend, on average, 788 days and \$271,596 to complete the 404 permit process, while an applicant for a nationwide permit spends, on average, 313 days and \$28,915—not including the costs of mitigation or design changes.²⁴ In Alaska, the Corps' permit timeframes are currently much shorter, but continuous improvements to permitting timelines can reduce permittee costs. The timeline for these permits can be “guided by . . . time limits” set in 33 CFR. § 325.2(d), but is often extended due to litigation, inter-agency disputes, or additional federal processes (e.g., NEPA review, etc.). All of these can contribute to extended timelines as well as additional costs to both the applicant and the agency. The 2002 study cited in *Rapanos* also found as follows:

The acreage of waters of the United States impacted by a project has a statistically significant effect on the cost of both nationwide and individual permit preparation costs. Utilizing the survey data, we determined a statistical relationship between these factors for both types of permits. For individual permits, application costs were measured as \$43,687 plus \$11,797 for each acre of impact. For nationwide permits, costs were measured as \$16,869 plus \$9285 for each acre of waters of the United States impacted.

²³ Department of Defense, U.S Army Corps of Engineers, 33 CFR § 332 and Environmental Protection Agency 40 CFR § 230, Subpart J, June 2008. Compensatory mitigation is described at [33 CFR 332.1 Purpose and general considerations](#). "(a) **Purpose.** (1) The purpose of this part is to establish standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized through the issuance of Department of the Army (DA) permits pursuant to section 404 of the Clean Water Act ([33 U.S.C. 1344](#)) or sections 9 or 10 of the Rivers and Harbors Act of 1899 ([33 U.S.C. 401, 403](#)). . ."

²⁴ 547 U.S. 715, 721 (2006) (citing Sunding & Zilberman, *The Economics of Environmental Regulation by Licensing: An Assessment of Recent Changes to the Wetland Permitting Process*, 42 *Natural Resources J.* 59, 74–76 (2002)). A copy of this 2002 journal article is available at <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1523&context=nrj>. If adjusted to today's dollars, these estimates may exceed \$400,000. We are not aware of a more recent study of this nature. Also, note the timing and costs associated with 404 permitting in this study likely underestimate current timing and costs because it was done prior to *Rapanos* decision, which introduced a much more technically complicated significant nexus test for jurisdiction under the Clean Water Act.

Thus, permitting costs have statistically significant fixed and variable components and permits are more expensive to obtain for larger projects.²⁵

Although state-assumed 404 Programs must still be as stringent as the federal program, the localized nature of a state program as well as key features of the assumption process provide opportunities for increased efficiency and cost savings. State-assumed programs can create streamlined timelines by creating state-specific general permits, establishing more stringent statutory timelines, and increasing program stability, among other things.

2.4 Increased control over the State's economic future

Alaska is a resource state, rich with fish, minerals, oil and gas, and other natural resources. An important part of Alaska's history is the fight to obtain State control over Alaska's resources from the federal government. Alaska currently administers programs to control air emissions and water discharges, fish habitat within streams, dam safety, water rights, and spill control and response, among its other authorities. The Corps' wetlands permit is the remaining major permitting authority retained by the federal government over development on state and private land.²⁶ Assuming permitting control over much of the state's wetlands would be a major increase in State control over development in Alaska.

Having multiple governments with control over permitting makes it difficult to establish priorities or control schedules for significant permitting actions. The benefits of having a single point of access for complex permitting actions have long been recognized in Alaska. DNR's Office of Program Management and Permitting (OPMP) is premised on this idea. OPMP offers a voluntary coordinating function for State, but not federal, permitting activities. Almost all large developers in the state have made the voluntary decision to pay OPMP to provide complex project permitting coordination, which is evidence that industry values the idea of strong permit coordination. While OPMP has no independent permitting authority, it requires coordination between State agencies, can hold agencies accountable to schedules, and ensure that resources are focused on significant issues. Unfortunately, it cannot provide that function for federal permitting activities, of which the Corps' wetlands program is the most influential. Allowing Alaska to set priorities and focus resources on important State actions is a huge, if difficult to quantify, benefit for Alaska economic development.

Fractured control over the permitting process can undermine a state's ability to attract investment. The Fraser Institute, a Canadian policy institute, surveys worldwide mining executives on their opinions about different states and countries approach to mining. While the results are specific to mining, they provide some insight into how Alaska is perceived. The 2021

²⁵ 42 Natural Resources J. at 74. Based on this study, \$50,000 per acre would be a conservative estimate of costs associated with obtaining an individual Section 404 permit from the Corps. Adjusted to present dollars, that figure would likely exceed \$80,000 per acre today.

²⁶ The federal government retains control over activities on federal land, and to some extent over federally financed activities. In addition, if the state assumed the 404 Program, federal agencies would still retain some authority over activities on state and private land such as NMFS and USFWS authorities under the Endangered Species Act, NMFS authority over essential fish habitat, and Federal Energy Regulatory Commission authority over certain energy projects.

survey shows that 48% of executives believed that “uncertainty concerning environmental regulation” is a mild or strong determinant of investment. A similar percentage, 45%, said that “regulatory duplication and inconsistencies” were similarly discouraging. Having the State be the dominant permitting authority over much more of the state will improve certainty about processes, scheduling, and priorities for permitting significant projects, and will reduce regulatory duplication, which should help to improve these discouraging percentages.

2.5 State government is closer and more accountable to Alaskans than the federal government

State government agencies are accountable and responsive to the legislature and are closer to individual Alaskans than the federal government. The State is better positioned to craft policies and procedures to address Alaska’s unique wetland, social, and economic circumstances than the Corps, which must be concerned about how new policies and procedures may or may not apply to other states. DEC can also prioritize resources and schedules to respond to Alaska priorities, whereas the federal government must adhere to national priorities.

A State-administered program ensures accountability to permittees, Alaskans, and the Alaska legislature. Alaska permittees and the public have ready access to their legislators and the DEC budget, services, and progress reports go before the legislature, with public review, for approval every year. This increased accountability will result in a continuous drive to improve environmental protection as well as permitting efficiency and timelines.

Under 404 Program assumption, the State would have flexibility in development of policies and procedures that are best suited to Alaska, provided that the base federal requirements are met. Specifics concerning mechanisms by which DEC can craft a more Alaska-specific wetland program are discussed later in this section.

Permittees and the public have better physical access to DEC employees, to the Commissioner of DEC, and to legislators in offices located around the state. It is easy to meet with a State employee. To meet with the Corps, one must gain access to a military base, requiring special logistics.²⁷ Finally, the Corps is a military agency where rotation of both enlisted and non-civilian employees is routine. Longer term Alaska residents are more likely to understand the unique circumstances about Alaska and Alaska wetlands.

2.6 State Courts are more familiar with Alaska’s unique conditions than courts located outside Alaska

Lawsuits contesting a federal wetlands permit are litigated in federal court. If the State assumes the program, challenges to State permits would primarily occur in State court. Federal court

²⁷ It is a complex process with many opportunities for delay. If you are a member of the public that does not already have military base access, to get on base requires having someone with base access sponsor you, bringing your driver’s license and vehicle registration and proof of vehicle insurance to the visitor center, and waiting in line behind others trying to access the base. Access is granted if your sponsor did everything correctly and the person at the visitor center receiving your sponsor’s information did everything correctly so that the person on duty at the gate when you arrive at the visitor center is aware you’re coming. If not, you may need to wait for someone on base to pick you up from the visitor center.

jurisdiction is warranted for claims that a state program is being implemented in a manner that is inconsistent with federal law or possibly for constitutional claims. Experience with DEC's primacy over the federal 402 Program, and DNR's primacy over the federal coal regulatory program shows that the vast majority of lawsuits over State permits in these programs are decided in State, not federal court.

Federal courts are less knowledgeable of Alaska's unique conditions than Alaskan courts, which results in frequent, bipartisan reversal for the few cases that make it to the U.S. Supreme Court. Having more permitting litigation decided in State court is viewed by many as a significant advantage due to the State court's familiarity with Alaska's needs, including the need for balancing development and environmental protection.

2.7 State assumption will allow some projects to avoid federal NEPA review

In general, any project involving a major federal action that significantly affects the quality of the human environment ("major federal action") requires the federal government to perform a review under the NEPA. This review results in the preparation of a Finding of No Significant Impact (FONSI), Environmental Assessment (EA), or an EIS. The EIS is an expensive and time-consuming process.

The "major federal action" that triggers the need for a NEPA review in Alaska is typically:

- Federal funding
- Projects on federal land
- Projects requiring a federal approval of some sort, such as a Corps' wetlands permit.

The Corps' wetlands permit is the most frequent trigger for a NEPA review for projects that are not federally funded or not on federal land. This is because 43% of the state is wetlands and almost all large projects affect wetlands. If the State assumes the program, there would be a significant category of projects that affect State-assumable wetlands but not retained federal wetlands. These projects, assuming they are not federally funded nor on federal land, might not require a federal permit. These would lack the federal trigger for NEPA review or subsequent EIS. Examples could include State roads, energy projects, oil and gas development, mines, or other projects. Avoiding the federal NEPA analysis would dramatically decrease the cost and time required for project development.

The proportion of federal NEPA analyses which involve the multi-year EIS has increased, and the process has become lengthier over recent years. Recent examples include the proposed Donlin Gold Mine which required six years (July 2012 through August 2018), and the Ambler Road Project that was applied for almost six years ago and is still on-going (application June 2016 with no final decision). There are economic benefits to avoiding the costly, time-consuming, and rigid EIS process while still assessing environmental impacts and ensuring appropriate mitigation measures. These benefits include greater schedule certainty and avoiding delay. A shorter process imposes lower development costs. Further, Alaska competes for investment dollars with other international locations, many of which have a much shorter project

development time. Shortening Alaska's project development time, even for a portion of Alaska's projects, may be an important method of increasing our share of world investment dollars.

A federal NEPA document such as an EIS or an EA is not an authorization. Completing one does not authorize a project to undertake any activity. These are solely public disclosure documents that describe the impacts. The authorization to begin an activity is in the State or federal permit. The suite of State permits is relatively comprehensive, and even without NEPA analysis, the permits would still address the major environmental impacts: wetlands, discharge to air, water, stream impacts, etc. In addition, many State authorizations, especially the 404(b)(1) analysis required for a State wetland permit on assumable wetlands, or a State best interest finding, require a publicly available description of impacts.

NEPA is also identified as a State assumption challenge in Section 3 below.

2.8 Permit Streamlining: the potential for faster processing times

In 2010, the Association of State Wetlands Managers (ASWM) wrote in their report, CWA Section 404 Program Assumption, A Handbook for States and Tribes: "State permit programs are often more timely than federal programs. In Michigan, for example, actions must typically be taken on completed permit applications within 90 days, and the average permit processing time is approximately 60 days (less for general or minor permits). In New Jersey, generally permit decisions are made in 60 days on average while wetland boundary verifications generally are completed in 90 days and IP decisions take less than 180 days."

Florida assumed 404 permitting in 2020 and their average permit issuance time is 61 days.²⁸ Oregon operates a State program with requirements similar to the federal program and they issue permits in about half the time it takes the Corps.

The Alaska District issues GP authorizations in an average of 44 and 46 days – Regional General Permits (RGPs) and Nationwide Permits (NWPs) respectively. SPs are issued in an average of 158 days (Appendix 2. Timeframe for Corps' Actions).

A cost analysis conducted by DEC for the 402-primacy workgroup for a hypothetical new mining project indicated that under primacy an APDES permit issued six months quicker could save the company millions of dollars over the life of the project. Given Alaska's short construction season, that alone could mean a permit delay could result in delaying a project for up to a year. Presumably, faster 404 permit issuance at the State level could allow a large project to realize similar savings, no longer leaving Alaska dependent on the Corps to permit important projects for the State.

With respect to Standard Permits (SP's or "individual permits"), the Corps of Engineers has a reasonably good record of timeliness in Alaska. However, Alaska has the potential to improve overall timelines for permits 1) by using Alaska-specific guidance documents providing better targeting of Alaska conditions; 2) because a State permit for assumable waters will eliminate one State approval: the 401 certification; 3) through faster and better agency permit coordination; 4)

²⁸ Personal communication of report authors with Florida Department of Environmental Protection.

through increased use of General Permits tailored for Alaska conditions; and 5) by delegating some permit authority to qualifying local governments (e.g., the Municipality of Anchorage). Additional permit streamlining ideas are included in Appendix 3. Recommendations for Related Program Coordination to Improve Alaska Permitting Efficiency.²⁹

Finally, as noted in Section 2.10, Alaska is likely to have a significantly faster appeals process than the Corps.

2.8.1 Alaska-specific guidance documents

The Corps and EPA develop guidance documents based on their national perspective. A potential benefit of State program assumption would be guidance documents that are prepared for the specific needs of Alaska permittees and facilities, considering Alaska's unique environmental conditions. Additionally, posting fact sheets, frequently asked question summaries, and other guidance documents on the State web site would improve access and transparency for permittees, stakeholders, and the public. This would give the applicants greater direction in applying for permits and ultimately result in quicker processing times.

2.8.2 Reduced bureaucracy: eliminating the 401 certification

Under a Corps-led program, the Corps issues a permit for a dredge/fill activity. However, under Section 401 of the CWA, DEC must review and certify (referred to as a "401 certification") that the Corps' permit will result in a project that complies with Alaska's water quality standards. Federal regulations recently changed, and the Corps has changed their 404 permitting process – they no longer coordinate the permit application and issue a joint public notice with DEC. To compensate, DEC has developed an online 401 certification application that now essentially duplicates the Corps' application (unnecessary redundancy). The Corps doesn't share their permit conditions prior to the State issuing the 401 certification with conditions. This may result in having similar Corps and DEC permit stipulations that are slightly different, but enough so that it may cause confusion for the permittee. Therefore, there are two approvals for the same project for the same activity: dredge and fill in wetlands. There are also potentially two rather than one opportunities for project opponents to appeal a project, creating unnecessary project delays. The 401 certification can, for some projects, be a lengthy, complex analysis. The State's 401 certification for the proposed Donlin Gold Mine was prepared after the Corps' wetland permit. It required a separate analysis and was separately appealed within DEC and separately litigated.

Under State assumption, the State issues the wetland permit for assumed waters, and there is no separate 401 certification. State assumption eliminates one certification and one potential appeal. Note that the State will continue to issue 401 certifications for Corps permits in retained waters.

Assumption brings three streamlining benefits – a single application for the permittee, elimination of redundant (but possibly slightly different) permit stipulations (resulting in more clarity), and a single public review and appeal process.

²⁹ Other recommendations, based on review of other assumable programs and other states with 404 Program assumption can be found in Appendix 4. Other Programmatic Recommendations.

2.8.3 Faster agency coordination

State agencies are accustomed to coordinating with one another under deadlines. The Corps does not establish deadlines for sister federal agencies to provide comments on dredge and fill applications. This can delay the Corps' processing. According to State of Florida officials, Florida was able to establish reasonable timeframes for federal agencies to provide comments on state 404 permits, as part of Florida's 404 assumption application. In particular, for a permit application, EPA agreed to notify Florida Department of Environmental Protection (FDEP) within 30 days from the date of receipt of a permit application whether EPA "intends to review the permit application..." EPA also agreed that it "may notify FDEP within 30 days of receipt that there is no comment," although EPA generally reserves the right to raise an objection within 90 days of receipt of the permit application based on "any new information" identified during the comment period. Florida also negotiated an MOU with the FWS to establish timeframes for ESA review by the FWS. Alaska may be able to negotiate a similar feature in its assumption.

The State of Alaska has developed a robust coordination system for resource development projects. DNR's Office of Project Management and Permitting has the statutory authority (AS 38.05.020(b)(9)) to "lead and coordinate all matters relating to the state's review and authorization of resource development projects." Also, the State Pipeline Coordinator's Section has statutory authority under AS 38.35 to coordinate pipeline projects. These systems have been used by Alaska for decades and have been proven to be very effective.

2.8.4 Greater use of General Permits

A General Permit is a single permit covering similar activities of similar size in similar types of waterbodies or regions of the state. They contain standard conditions that the project must adhere to. The General Permit goes through a public notice and comment period, but project-specific approvals do not. Each General Permit can specify the approach to streamline State approval, depending on the environmental risk or complexity associated with the proposed activity. For example, the following three types of General Permits are like those which exist within the existing national wetlands program.

- For small, low risk, "simple" activities, a General Permit could require that the permittee merely notify the state a permit-specified number of days prior to undertaking a project under the General Permit. This simple "registration" approach allows the state to know when and where these projects are occurring, so spot-check compliance inspections could be undertaken on a certain percentage of the projects. For extremely simple activities with minimal disturbance, the State could establish permit-by-rule, which allows the activity to occur without notifying DEC.
- A "medium complexity" General Permit might require a simplified project description and a general approval to begin work within a specified time period (30 days for example), whether the permittee has heard back from DEC or not. For example, Oregon uses "general authorizations" where the applicant sends in notice 30 days prior to work and can start work even if they don't receive a response from the state.

- A "higher complexity" General Permit might require a more detailed project description and a specific written DEC approval to the permittee before work can begin under the terms of the General Permit.

Each of these approaches reduces the level of effort by the permittee and the State, while still protecting water resources.

General Permits specific to Alaskan projects and conditions allows the State to be more nimble than complex Nationwide General Permits issued by the Corps that must address a huge range of environments and impacts across the country. State assumption allows the State to focus on General Permits that are specific to Alaska conditions without the need for national applicability.

Alaska is a large state with diverse conditions, many of which only exist in part of the state. Examples include permafrost wetlands of the North Slope or forested wetlands of southeast Alaska. While the Corps has the ability to be specific to particular regions of Alaska, it also has national priorities. Accordingly, it is much easier for the State, which focuses only on Alaska.

2.8.5 Use of delegated authority to local governments

A state with an assumed 404 Program may have more incentive to regionalize permitting, whereas the Corps is incentivized to follow national priorities. A state 404 Program can issue a General Permit to a local government to cover specific types of local projects, based upon a local wetlands conservation plan. The local government then issues project approvals under authority granted by the state's General Permit. The local government must first have a local wetlands conservation plan that can be used to guide development for projects with specified requirements to protect waterbodies. States have more interest in reducing the permitting burden, and are closer to local businesses, the economy, and local governments than the Corps, so DEC would have more incentive to issue this type of delegation to local government. The municipality of Anchorage currently administers some wetland authorizations under delegated authority from the Corps. While DEC could make greater use of this approach, because of the complexity, it is likely to only be used by Alaska's larger cities.

2.8.6 Statewide Programmatic General Permits (SPGPs)

Statewide Programmatic General Permits (SPGPs) are issued by the Corps and administered by the state. They are for specific types of activities: those that are standard, similar in nature, and cause minimum environmental impact individually and cumulatively; and where use of the SPGP reduces duplication of regulatory control by the state and the Corps.

SPGP agreements may be negotiated today; they are not dependent on a state assuming the 404 Program. Prior to state program assumption, SPGPs can be used to cover specified activities in any WOTUS (including waters that would be retained by the Corps after program assumption). They are complex agreements (permits) but provide an opportunity for states to gain more expertise in the 404 Program. After State assumption, DEC could develop SPGPs for State implementation of certain activities in Corps-retained waters. This would increase the amount of 404 permitting brought under the State umbrella.

2.9 Alaska-specific Policies and Procedures

One of the most obvious benefits to assuming the Corps' wetland program is the ability to create policies and procedures that work for Alaska's diverse geography and climate. Alaska is home to a variety of wetlands and conditions which do not exist in the rest of the United States.

Construction and development seasons are much more compressed in Alaska than in other states. From the forested wetlands of southeast Alaska to permafrost wetlands of the North Slope, Alaska is just different. While the Corps' policies and procedures do recognize the difference, there is much more potential to create policies and procedures which recognize the diversity within Alaska. Under 404 Program assumption, Alaska would have flexibility in development of policies and procedures that are best suited to the state, provided that the base federal requirements are met.

2.9.1 Wetlands Delineation

As part of a 404-program assumption application, a state must demonstrate that it has the methodology and capacity to make wetlands delineation decisions. Currently, the Corps relies on the 1987 Wetlands Delineation Manual and the 2007 Alaska Regional Supplement. Alaska is not one eco-region; it is many and the differences between regions within the State are greater than they are across all of the lower 48 states. If superimposed over the lower 48, Alaska would stretch from coast to coast and from the Canadian border to the Mexican border. It is the only arctic state in the nation. Alaska, under an assumed program, could start with the 1987 Wetlands Delineation Manual and the 2007 Alaska Regional Supplement, and could later choose to develop delineation guidance that is more specific to ecoregions, climate, and topography, such as permafrost or forested wetlands areas, so long as it continues to include all State-assumed WOTUS. DEC can use functional assessment procedures specific to the ecological types of wetlands present within specific regions of the State. These Alaska-specific ecoregion manuals do not have to be complete prior to program assumption and can be worked on over time and adopted as amendments to the approved program.

Having Alaska-specific delineation has the potential to make delineation easier for applicants. It also has the potential, by recognizing areas of different importance, to make distinctions which increase resource protection in Alaska.

2.10 A more inclusive and predictable appeals process

The DEC administrative appeals process has some noticeable differences from the Corps administrative appeals process that could provide significant advantages to the public and to applicants under a State-assumed 404 Program.

A Corps-issued federal wetlands permit may only be appealed by an affected party³⁰ (generally, the permit applicant). The public has no opportunity to appeal except through a federal court appeal, a complex and expensive undertaking. This limitation is inconsistent with DEC

³⁰ § 331.2 Definitions. Affected Party: means a permit applicant, landowner, a lease, easement or option holder (*i.e.*, an individual who has an identifiable and substantial legal interest in the property) who has received an approved JD, permit denial, or has declined a proffered Individual Permit.

regulations, which provide for DEC administrative appeal process (18 AAC 15 Administrative Procedures) for members of the public who participated in the public review process of the draft permit and are directly and adversely affected by the permit's issuance. To be consistent with State law and for administrative efficiency, the State should use the informal review and adjudicatory hearing process similar to that already used by DEC for 402 (and other environmental) permits found at 18 AAC 15.185-340. The 402 administrative appeals process only allows appeals from the applicant and the public that commented or participated in a hearing on the draft permit; allows for an informal review by the Water Division Director and an adjudicatory hearing before the DEC Commissioner, prior to a State court appeal; limits issues in a GP authorization that can be appealed; and does not automatically stay the permit during the appeal. Using the Chapter 15 DEC administrative appeals process requires concerned Alaskans and permittees to first engage the agency for decisions they are concerned about, rather than going directly to a State court appeal.

While expanding the public's right to appeal a 404 permit under a State-assumed program provides advantages to Alaska citizens, it may concern applicants. However, there are other significant differences from the federal process that may render the State's process more efficient than that used by the Corps, benefitting permittees:

- As previously explained, State assumption eliminates the separate state 401 certification, which limits the opportunities for appeal. Under the current system, groups that wish to delay a project have two opportunities to appeal: one appeal to the Corps under the 404 permit, and one appeal to the State under the 401 certification. State assumption means that there would normally only be a single appeal -- to the State for permits issued in assumed waters.
- The federal system requires someone who objects to a decision (other than the applicant) to go directly to federal court. The obvious advantage of the State's appeals system to citizens is that they do not need an attorney and can engage the agency without going to court. The State's appeal system requires that the citizen (or permittee) inform DEC about potential issues with a permit (through informal review or adjudicatory hearing) before they sue. DEC can amend the decision if appropriate. However, if the agency upholds the decision, the review provides an opportunity for DEC to learn about issues that may be litigated and to augment the administrative record before the issues reach the court. The advantage to the agency and applicant is that it results in more defensible decisions if the issue does eventually end up in court.
- The federal appeals process has no firm deadlines. The State's Chapter 15 appeals process includes deadlines that provide certainty to the applicant.
- In the federal appeals process, decisions are made in federal court. Under the State's system, decisions are made by the Commissioner of DEC and appealable to State court. This keeps the decision with an official who is concerned about its effect on Alaska policy and is accountable to the Alaska public.

Using DEC’s administrative appeals process has significant advantages over the federal process for both citizens and applicants.

2.11 A State program may be more stable

The Corps’ 404 Program has been subject to significant changes over the last few years. These changes have caused confusion and uncertainty among agencies and applicants. The last three federal administrations have amended the definition of WOTUS. In addition, two Supreme Court cases have also affected the definition of WOTUS, and the court recently heard one additional case, though it has yet to announce a decision. These regulations and court cases have expanded and contracted the Corps’ jurisdiction over wetlands and other waters. The changing jurisdiction has led to significant applicant and agency confusion. Each time applicants have had to understand which waters require a Corps permit and which are exempt.³¹

If the State were to assume the program and comprehensively regulate both WOTUS and non-WOTUS, it would largely eliminate confusion among applicants about the changing Corps’ definition and requirements. If the fill was regulated in either case, the applicant could largely ignore the definitional change. While extending the State’s program to non-WOTUS Waters of the State could impose an increase in the regulatory burden on applicants and DEC, the non-WOTUS are more likely to be regulated through a General Permit (GP) or through a permit-by-rule.³² If the State puts an emphasis on using GPs and permits-by-rule, there is potential to insulate applicants from the changing federal definition, but to do so in a manner which does not greatly increase the regulatory burden on either applicants or DEC.

The State of Michigan took this approach and reported significant advantages for the State and applicants. According to the Association of State Wetland Managers (ASWM),³³

“Experience in Michigan indicates that its wetland regulatory program requirements have remained much more stable and predictable over the past 18 years than the 404 permit program administered by the Corps of Engineers in most states. There are two reasons for this stability. First, because Michigan’s program relies on State, rather than federal law, it is not impacted by changes in the federal program unless those changes render the State program inconsistent with the federal program [i.e., Michigan requires an application regardless of WOTUS status]. Therefore, numerous changes that have resulted in a significant degree of controversy and confusion at the

³¹ EPA and the Corps published new WOTUS regulations on January 18, 2023 (effective March 20, 2023). (See Appendix 5. State of Alaska Comments to the Proposed Rule Redefining WOTUS for State comments on the proposed rule.) However, on October 3, 2022, the U.S. Supreme Court heard arguments in a case that is expected to provide the Court’s interpretation of the allowable definition of WOTUS in regulation (Sackett vs Environmental Protection Agency). The Supreme Court is expected to rule in spring 2023.

³² Permit-by-rule spells out situations where an activity such as minor fill of certain types of wetlands can occur without the need for a specific permit authorization. DNR provides an excellent example of permit-by-rule by setting out Generally Allowed Uses where activities can occur on state lands without a permit (11 AAC 96.020). A permit-by-rule may still impose stipulations that an activity must follow.

³³ Expanding the States’ Role in Implementing CWA § 404 Assumption, ASWM, 2010, L. Stetson and J. Christie.

federal level have not directly impacted Michigan's program (e.g., early revision of the delineation manual and regional updates, rule changes following the Tulloch decision, and, most recently the SWANCC and Rapanos decisions)...Thus, the combination of elements of the State and federal programs has served to temper changes in State regulation and policy, and has led, overall, to a more stable, predictable dredge and fill permitting program that has existed in most states over the past decade."

Adopting a program that includes all wetlands (WOTUS and non-WOTUS) has two other advantages. First, it would reduce or eliminate the need for a "jurisdictional determination" which is frequently a first step in the Corps' process. In this step, an applicant must not just determine if they are proposing fill within a wetland but also what type of wetland (i.e., whether it is water of the state (WOTS), or WOTUS and therefore under the Corps' jurisdiction). This can be an expensive and time-consuming step. Second, extending the program to WOTS might allow EPA to grant more flexibility to Alaska's program. If the State were regulating non-WOTUS locations, then EPA may be more comfortable with lesser oversight over the State's WOTUS/non-WOTUS determinations, because it does not make the difference between regulation or non-regulation. Instead, it just changes the type of regulation.

A state program that includes non-WOTUS in Alaska would increase regulation of industry in locations that are currently unregulated. However, the State can avoid any significant increases in the regulatory burden by emphasizing General Permits and Permits-by-Rule for these waters.

3. CHALLENGES WITH ALASKA 404 ASSUMPTION

3.1 State Costs

While a State assumed 404 Program may ultimately result in cost savings through efficiency, a State 404 Program will nevertheless require the creation of a new unit of State government, which will have upfront costs to create. The federal government does not provide funding to operate a state-assumed program, and currently only provides very small grants for wetlands program development activities. Section 5.2 of this report estimates that operating the 404 Program for assumable waters will require 32 permanent positions and cost the State \$4.8 million per year. The State could pay for this program through General Funds, fees, or a combination. The funding requirement and mechanisms are discussed in Sections 5.3 and 5.4 of this report. Public acceptance of the program costs will hinge, in part, on an understanding of the benefits of a State-run program.

The State is in the process of garnering multi-state support for federal funding for state 404 Programs, including possibly presenting another resolution to the Environmental Council of States (ECOS) to specifically urge EPA to provide funding for state 404 Program implementation.

3.2 Clarifying Responsibility between Federal and State Agencies

Unlike 402 primacy, 404 assumption does not give the State authority over all 404 permitting. Some waters would be under State authority, and some areas would remain under Section 404 permitting authority of the Corps. The State would likely issue approximately 75% of Alaska's wetland permits, and the Corps would issue the remaining 25%. Some projects would require only a State 404 permit, some would require a Corps 404 permit. Section 4 discusses options for projects which cross the boundary of assumable waters. The State could offer a variety of options to these applicants so that State assumption does not increase permitting difficulty. However, it is critical that the State create guidelines and detailed maps to clearly delineate which wetlands are under Corps' authority, and which are under DEC authority.

3.3 Environmental Review

As explained in Section 2.7, the Corps' 404 Permit is a trigger for federal analysis under the NEPA. For projects that are not federally funded or located on federal lands, the need for a Corps' 404 permit is often the only "major federal action" that triggers a need for NEPA review. Importantly, most projects permitted by the Corps are authorized with only limited analysis for purposes of NEPA: a categorical exclusion from NEPA or a finding of no significant impact. However, some larger projects have often required either a longer Environmental Assessment (EA) or a much longer and more expensive EIS. If the State assumes the 404 Program, an EA or EIS may no longer be required for activities that are neither federally funded nor on federal land and that impact only State-assumed waters.

In the last five years, 2017-2021, the Corps was the lead agency for four EISs for projects located in Alaska.

Eliminating some NEPA analyses may concern some people, but it does not eliminate any permit. It does not eliminate or even lessen any government jurisdiction over environmental impacts. It does not eliminate any environmental protection. Where NEPA analysis is eliminated, it eliminates a document that brings together a description of environmental impacts for the public and agencies to use. However, some or all of the same information concerning environmental impacts of a project are available elsewhere, such as in state permits and, under 404 Program assumption, in the 404(b)(1) analysis for the permit.

Currently, the Corps prepares an EA for every standard permit (SP) it issues, more than 50 per year. These assessments are usually relatively short. Many are quite short: three to five pages. The Corps combines these with the analysis under 404(b)(1) that it must complete to issue the permit. They are combined because the required 404(b)(1) analysis is comprehensive enough to effectively substitute for or cover the same subjects as a short EA. Under the State assumed program, DEC will still be required to write the 404(b)(1) analysis for each SP. Therefore, there will be little loss for eliminating NEPA requirements for those projects which require an EA.

3.3.1 404 (b)(1) Guidelines

The 404(b)(1) Guidelines, found at 40 CFR §230 include over 50 pages of federal regulations describing the permit process. These guidelines describe the analysis required before the Corps may issue a permit to authorize placing dredged or fill material into WOTUS. They require the Corps to evaluate a project's impacts on the physical, chemical, biological, and human use characteristics of the aquatic environment and special aquatic sites. They also require analysis of compensatory mitigation. A state program must use these guidelines or a set of guidelines that EPA determines is equivalent. DEC could adopt the federal rules by reference (ensuring they are equivalent to the federal program), then amend them over time to "Alaskanize" them. Alternatively, DEC could develop its own regulations with program assumption. The State adopting its own version will be more challenging to demonstrate equivalency to EPA.

3.3.2 Endangered Species Act

Program Assumption. Section 7 of the Endangered Species Act generally requires federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) to ensure that a permitting action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat. EPA has determined that "approval of state and tribal requests to assume a CWA section 404 program is a discretionary action," and that EPA "should consult with the Services under section 7 of the Endangered Species Act if a decision to approve a state or tribal CWA section 404 program may adversely affect ESA-listed species or designated critical habitat..."³⁴ As part of the State 404 assumption process, DEC will work with EPA and the USFWS to ensure that Alaska wetland permitting procedures provide ESA protections. It is anticipated that Alaska will need to prepare a biological assessment for submittal to EPA in conjunction with the 404-assumption application process. Alaska would coordinate with EPA and the USFWS on obtaining a biological opinion

³⁴ <https://www.epa.gov/cwa404g/consultation-cwa-section-404-program-requests-endangered-species-act-and-national-historic>

from the UFWs concerning the potential for impacts to species and measures to minimize any such impacts.

Program Implementation. Alaska will need permitting procedures that ensure protection of federally listed threatened and endangered species and their critical habitat. Nebraska intends to have a Nebraska State biologist within their agency to produce a biological assessment for potential impacts to threatened and endangered species. They have an electronic tool to determine if a project would impact State-listed threatened and endangered species and BMPs to protect them, but it will have to be updated to incorporate federal threatened and endangered species. They consult with Nebraska Game and Parks when the database triggers a threatened and endangered species review.

Florida consults directly with the USFWS as a part of its process. Florida developed a Memorandum of Agreement (MOA) with USFWS to set out the consultation process. This MOA has timelines that the federal agency must adhere to in providing comments to Florida's wetland agency. Florida views this as a significant improvement over the federal process as the USFWS does not have a time deadline to respond to the Corps, and an untimely response delays the Corps' permit process.

To gain EPA's approval of a State program, DEC will need to develop an MOA with the federal ESA agencies or use another mechanism to ensure adequate protections for federally listed threatened and endangered species. The MOA may provide benefits to Alaska by ensuring strict time requirements, using the local expertise of the Alaska Department of Fish and Game (DF&G) in the process, or by some other mechanism.

3.3.3 National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires federal agencies to consider the effects of their undertakings on historic properties, and to give the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. Formal consultation under the National Historic Preservation Act is not required under an assumed program. However, Alaska has a State Historic Preservation Office (SHPO) within DNR. SHPO currently has the ability to comment on State permit actions. It will perform the historic preservation role under an assumed wetland program. DEC should commit to working with SHPO and could choose to develop an MOA with SHPO to ensure protection of cultural resources. Using the State rather than federal agencies to protect our important cultural resources is another method of moving responsibility for the development and protection of the State resources from the federal government to the State.

3.4 EPA Oversight

EPA Region 10 has a history of close oversight over state programs implementing the CWA. Since no Region 10 states have assumed the 404 Program, DEC can expect EPA to apply its current program resources to oversight of DEC's implementation of 404. DEC has an opportunity to "fence" EPA involvement by negotiation through the MOU to limit their routine oversight of

DEC 404 permit actions to only those that are required by federal regulation.³⁵ Under this regulation, EPA cannot waive review of:

- (1) Draft General Permits;
- (2) Discharges with reasonable potential for affecting endangered or threatened species as determined by FWS;
- (3) Discharges with reasonable potential for adverse impacts on waters of another State;
- (4) Discharges known or suspected to contain toxic pollutants in toxic amounts (Section 101(a)(3) of the Act) or hazardous substances in reportable quantities (Section 311 of the Act);
- (5) Discharges located in proximity of a public water supply intake;
- (6) Discharges within critical areas established under State or Federal law, including but not limited to National and State parks, fish and wildlife sanctuaries and refuges, National and historical monuments, wilderness areas and preserves, sites identified or proposed under the National Historic Preservation Act, and components of the National Wild and Scenic Rivers System.

The shorter the list of routine EPA reviews, the faster the State can issue permits. Note, however, that EPA will likely retain authority to review most State permits. A formal objection to a State permit under CWA Section 404(j) is likely to cause a delay in permit issuance as the State cannot issue the permit until the objection is resolved. Even with this additional scrutiny, when DEC took over the 402 Program, EPA only objected to one State permit action, and the issue was eventually resolved in DEC's favor (the State agency decision was sound). EPA has objected to 17 wetlands permits in Florida's two years of operating the program (just over 1% of all GP authorizations and IPs) and only federalized one permit. New Jersey has only had 1 EPA objection.

The MOU can also be used as a vehicle to ensure EPA review is done in conjunction with the State's permitting timeframe and process to avoid permitting delays.

3.5 Tribal involvement in assumed program

Tribal governments enjoy a government-to-government relationship with federal agencies, offering them a robust and early "seat at the table" than the public review process for proposed projects. This is a special relationship between the federal and tribal governments. During the DEC process, to assume 402 primacy, tribes expressed concern about the lack of formal government-to-government consultation with the State where Tribes provide traditional ecological knowledge and comment on the impact of the projects on subsistence resources before the public comment period. To address those concerns, DEC developed a [website](#)³⁶ to assist tribes with 402 permitting, which includes a guidance document, "[APDES Guidance for Local and Tribal Governments](#)."³⁷ This same concern should be anticipated in the 404 assumption process and can be addressed by developing similar program guidance. It will be critical for Alaska's wetlands program to ensure strong communications protocols with tribes. Notably, the

³⁵ 30 CFR § 233.51 Waiver of review.

³⁶ [APDES Information for Tribes \(alaska.gov\)](http://apdes.alaska.gov)

³⁷ <https://dec.alaska.gov/media/6836/apdes-guidance-for-local-and-tribal-governments-final.pdf>

Corps retains permitting authority for 404 projects located within “Indian country.”³⁸ In Alaska, that includes the Annette Islands Reserve.

³⁸ In this context "Indian country" is defined in 18 U.S.C. § 1151, i.e., “all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

4. SCOPE OF THE STATE PROGRAM – ACTIONS, ACTIVITIES, ASSUMABLE WATERS

4.1 Where a Dredge and Fill Permit is required: *WOTUS*

The CWA Section 404, authorizes the Corps to require permits for discharge of dredged or fill material into all Waters of the United States (WOTUS), including wetlands. Because wetlands are so abundant in Alaska, the requirement for a permit for the discharge of dredged or fill material in wetlands is an important and common permit for many development projects in the state. The timely and efficient processing of these authorization is important for the economy and well-being of Alaska.

Examples of activities that may require a permit include:

- Access dredging
- Boat ramp construction
- Bridge construction
- Channel relocation
- Commercial construction projects
- Culvert installation
- Dock construction
- Utility installation (e.g., fiber optics)
- Erosion control
- Housing pad installation
- Mining operations
- Oil and gas drilling pads installations
- Piling placement
- Pipeline construction
- Removal or filling activities
- Road construction
- Wetland enhancement

While 43% of Alaska is wetlands, all wetlands are not under the jurisdiction of the Corps. Only the discharge of dredged or fill material into those wetlands that meet the federal definition of WOTUS are subject to Corps' jurisdiction.³⁹ Wetlands that do not meet the federal definition of

³⁹ On December 30, 2022, EPA and the Corps announced a final revised definition of “waters of the United States” which takes effect 60 days following the announcement. The new definition can be found at Title 33 Section 328.3 for the Corps and Title 40 Section 120.2 for EPA). It reads:

"(a) Waters of the United States means: (1) Waters which are:

- (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (ii) The territorial seas; or
- (iii) Interstate waters, including interstate wetlands;

(2) Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5) of this section;

(3) Tributaries of waters identified in paragraph (a)(1) or (2) of this section:

- (i) That are relatively permanent, standing or continuously flowing bodies of water; or
- (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1) of this section;

(4) Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1) of this section; or (ii)

Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) of this section and with a continuous surface connection to those waters; or

WOTUS do not need a Corps' permit but may still be waters and wetlands. The State has an expansive definition of public waters and wetlands, rivers, and lakes that includes both WOTUS and non-WOTUS, and are referred to as Waters of the State (WOTS).^{40, 41}

4.2 The Regulation Defining Assumable Waters

CWA Section 404(g) authorizes states, with approval from EPA, to assume authority to administer the CWA 404 Program in some, but not all, WOTUS.

CWA Section 404(g)(1) states:

"The Governor of any State desiring to administer its own individual and general permit program for the *discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto)* [emphasis added] within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. . . ."

The CWA does not define state-assumable waters; rather, it describes waters that a state *cannot* assume: waters for which jurisdiction must remain with the Corps (i.e., retained waters or non-

(iii) Waters identified in paragraph (a)(2) or (3) of this section when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1) of this section;

(5) Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4) of this section:

(i) That are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3)(i) of this section; or

(ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1) of this section."

⁴⁰ The CWA definition of WOTUS has been controversial, and the last three federal administrations, have amended the regulatory definition. These amendments have expanded and contracted the definition of wetlands and therefore the Corps' jurisdiction. On December 30, 2022, EPA adopted changes to the definition. However, on October 3, 2022, the U.S. Supreme Court heard arguments in a case that is expected to provide the Court's interpretation of the allowable definition of WOTUS under the Clean Water Act (*Sackett v. Environmental Protection Agency*, (2022)). The Court's ruling could affect the legality of EPA's recently adopted regulation. The Supreme Court is expected to rule in spring 2023. See Appendix 5 for State of Alaska comments on the rule when it was proposed, and Appendix 6 for a description of the frequent changes in the WOTUS definition.

⁴¹ The State definition is significantly broader than the current definition of WOTUS. To address this discrepancy, for purposes of the 402 Program, DEC adopted a regulatory definition of "waters of the U.S." that tracks the federal definition. The State definition of "waters" at AS 46.03.900 states "(37) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under jurisdiction of the state."

assumable waters). State-assumed waters (or assumable waters), then, are all waters of the United States that are *not* retained waters. Project proponents within retained waters will continue to apply to the Corps for processing, and projects within State-assumed waters will go to the State for processing.

The Corps will likely retain permitting authority over:

- Marine waters (waters subject to the ebb and flow of the tide) and their adjacent wetlands.
- Waters in Alaska that the Corps has listed pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) and their adjacent wetlands, minus those waters listed solely based on historical use.⁴² The Corps has listed 47 Alaska Section 10 waters (see Appendix 7. Corps Identified Section 10 Waters) out of Alaska's more than 12,000 rivers and three million lakes greater than five acres.
- WOTUS within tribal lands. In Alaska, the Corps would retain permitting authority for the Annette Islands Reserve in Southeast, the only Native Reservation in Alaska where the Metlakatla Indian Community resides.
- Denali National Park and Preserve. EPA has previously taken the position (during Alaska's 402 Program assumption) that, pursuant to Section 11 of the Alaska Statehood Act, the United States has “exclusive jurisdiction” within the park, including for purposes of NPDES permits. 73 Fed. Reg. 66243, 66244 (Nov. 7, 2008) (notice of approval of Alaska NPDES delegation). Section 11 of the Alaska Statehood Act provides that “exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted.” Given that, DEC should expect the Corps to retain WOTUS in Denali National Park and Preserve.

If the State assumes responsibility for the Corps' 404 assumable waters, it must assume responsibility for all parts of the Corps' program.⁴³ Partial program assumption is not permitted under the current regulations so states must assume permitting authority over all WOTUS other than those retained by the Corps. EPA has drafted regulations revisions that could include partial program assumption, but those regulations are not scheduled for completion until October 2024.

⁴² This is the approach that a committee composed of a representatives from federal, state, and tribal governments, NGOs, and the regulated community agreed upon in *Final Report of the Assumable Waters Subcommittee (May 2017)*, available at https://www.epa.gov/sites/production/files/2017-06/documents/awsubcommitteefinalreprot_05-2017_tag508_05312017_508.pdf. This report's majority opinion was adopted by USACE in a Memorandum issued by the Corps in 2018, available at [525981.pdf \(army.mil\)](#).

⁴³ Current federal law requires an assuming state to take on the full 404 Program – partial program assumption is not allowed. This has been seen as a major drawback by states that are prepared to take on some, but not all, of the program. EPA proposed draft regulations in 2021 that would create a process for partial program assumption. Those regulations were supposed to be completed by December 2022. EPA has since delayed the regulations project until at least 2024. Therefore, at the current time, if DEC wants to assume the 404 Program, it must develop an application for the full program.

4.3 Experience of Other States

The experience of other states provide insights into how the assumable waters could be interpreted for Alaska, especially with respect to “adjacent wetlands:”

- Florida: Florida assumed the 404 Program in 2020. The administrative boundary demarcating the adjacent wetlands over which jurisdiction is retained by the Corps is a 300-foot guideline established from the ordinary high-water mark or mean high tide line of the retained water. Florida selected the 300-foot guideline based on negotiations with the USACE.⁴⁴ This approach also reflected EPA’s Final Report of the Assumable Waters Subcommittee that is described in Section 4.4.
- Michigan: Michigan assumed the 404 Program in 1984. The Corps' MOA delineates assumed and retained waters simply by stating that all waters within the State are assumed other than waters identified by the language in 404(g)(1) as identified by the RHA Section 10 list maintained by the Corps.⁴⁵ According to EPA, the list has been refined over time with the addition of some small tributaries and wetlands that are influenced by the water level of the Great Lakes.⁴⁶

Michigan appears to use a case-by-case approach where the State consults with the Corps if a “proposed project is in one of the Great Lakes, a tributary to a Great Lake, or in adjacent wetlands.”⁴⁷ The extent of included adjacent wetlands is determined by the Corps on a case-by-case basis – generally including wetlands in close proximity to Section 10 waters, and having a direct surface water connection to and within the influence of the ordinary high water mark of those waters.⁴⁸

- New Jersey: New Jersey assumed the 404 Program in 1994. The Corps' MOA delineates retained waters as wetlands that are “partially or entirely located within 1000 feet of the ordinary high-water mark or mean high tide of the Delaware River, Greenwood Lake, and all water bodies which are subject to the ebb and flow of the tide.”⁴⁹ This buffer is measured by superimposing head of tide data on the State’s freshwater wetlands quarter quadrangles that are at a scale of one-inch equals 1000 feet. A line was established parallel to and 1000 feet from the ordinary high-water mark or mean high tide of the waters and the Corps retains permitting authority over all wetlands that are waterward of, or intersected by, the administrative line.

⁴⁴ See FDEP, November 2, 2020 Letter from Noah Valenstein to the Honorable David P. Ross on Florida’s Request to Assume Administration of a Clean Water Act Section 404 Program (Nov. 2, 2020). Negotiations generally focused on the factors outlined in the Final Report of the Assumable Waters Subcommittee (May 2017), available [here](#).

⁴⁵ EPA, *Final Report of the Assumable Waters Subcommittee* (May, 2017).

⁴⁶ *Id.*

⁴⁷ USACE, *Jurisdiction, Wetland Delineations and Datasheets* (Oct. 26, 2016).

⁴⁸ EPA, *Final Report of the Assumable Waters Subcommittee* (May, 2017).

⁴⁹ NJDEP, *The United States Environmental Protection Agency and its relationship with the New Jersey Department of Environmental Protection & The Division of Land Use Regulation*.

4.4 Assumable Waters Subcommittee's Recommendation to EPA

In June 2015, EPA convened a workgroup to provide advice and develop recommendations for how EPA can clarify the waters for which a state may assume CWA 404 permitting responsibilities.⁵⁰ In the final 2017 report of the Assumable Waters Subcommittee, the report recommended an approach based on the waters regulated under Section 10 of the Rivers and Harbors Act (RHA). Specifically, the Subcommittee recommended that the Corps retain RHA waters plus all wetlands landward to a default 300-foot administrative boundary. The boundary may be adjustable to accommodate the unique regulatory, topographical, and hydrological needs of the state. In recommending this approach, the Subcommittee agreed that a distance of 300 feet is “fully adequate to protect federal navigation interests” and allows the state to protect wetlands and water quality as required by the CWA.⁵¹ On July 30, 2018, the Assistant Secretary of the Army for Civil Works accepted the Subcommittee's recommendations via memorandum.⁵²

The Subcommittee's Final Report provided other options for establishing the administrative boundary. Particularly, the Final Report provided that

"The actual boundary could be established to account for the expertise and comprehensive programs of a state or tribe, planning and regulatory authorities, regional or geographic differences, and other local conditions that may affect or complement the CWA Section 404 Program. *For example, the 300 foot National Administrative Boundary could be moved up to as close as 75 feet to match up with established building setback requirements, or as far away as 1,000 feet to match up with a broad state shoreland boundary.* [emphasis added] In the event that negotiations to establish an administrative boundary specific to that state or tribe are unsuccessful, the extent of USACE-retained wetlands default to the 300 foot National Administrative Boundary.⁵³"

The committee recommended against a case-by-case approach because it has the potential to cause greater confusion for permittees and delays caused by the time to make individual determinations via consultation between the state and the Corps. In addition, DEC should consider, in consultation with stakeholders, whether in certain areas of the state the

⁵⁰ See Final Report of the Assumable Waters Subcommittee (May 2017).

⁵¹ See *id.* at 27 and 33.

⁵² USACE, Memorandum for Commanding General, Clean Water Act Section 404(g), Non-Assumable Waters (Jul. 30, 2018), available [here](#) (noting that the report “provides considerations that may be useful to the state or tribe and the Corps as they evaluate the appropriate administrative boundary suited to the particular circumstances of the state or tribe, including state or tribal regulatory authority, topography, and hydrology.”)

⁵³ *Id.* at 28 (emphasis added).

administrative boundary for "adjacent wetlands" should be moved landward or waterward from the 300-foot default boundary to accommodate unique geographic/hydrologic features.⁵⁴

Note that there may be waters within the retained areas that do not fall under the definition of WOTUS but do fall under the definition of WOTS. Waters within the retained areas must also meet the definition of WOTUS for a Corps 404 permit to be required.

4.5 The Extent of Assumable Waters in Alaska.

The exact extent of waters assumed by the State of Alaska under a CWA 404-program and retained waters that remain under the jurisdiction of the Corps will not be clear until the State makes an application to the EPA and negotiates provisions of the assumed program.

Nevertheless, an approximate division can be estimated. Figure 2. Map of Potential Corps-Retained Waters in Alaska is a map of Alaska showing marine waters, Section 10 RHA rivers, those in Denali National Park, and those in the Annette Islands Reserve. These waters are likely to be waters retained by the Corps. Because of the scale of the map, it does not show waters and wetlands adjacent to these waters that would likely be retained by the Corps.

Figure 3. Example of a Corps-Retained Water and Adjacent Wetlands – Coastal shows a small portion of a coastal area to illustrate a 300-foot buffer in which marine waters and WOTUS adjacent wetlands are likely to remain under Corps' jurisdiction. Figure 4. Example of a Corps-Retained Water and Adjacent Wetlands – Lake is a similar example on a lake and Figure 5. Example of a Corps-Retained Water and Adjacent Wetlands – River is an example on a river. Note that these are estimates. Other sections of this report have provided reasons why waters of some Section 10 Rivers and some waters within the 300-foot buffer could be assumed. Further, it is possible that there could be some areas where other waters may be retained.

The areal extent of assumable waters is only one way to measure the effect of State assumption of the program. Section 5 of this report provides another method to estimate the effect. The Section estimates that 75% of the Corps' workload would be assumed by the State. This would be a significant change of control over economic activity within Alaska.

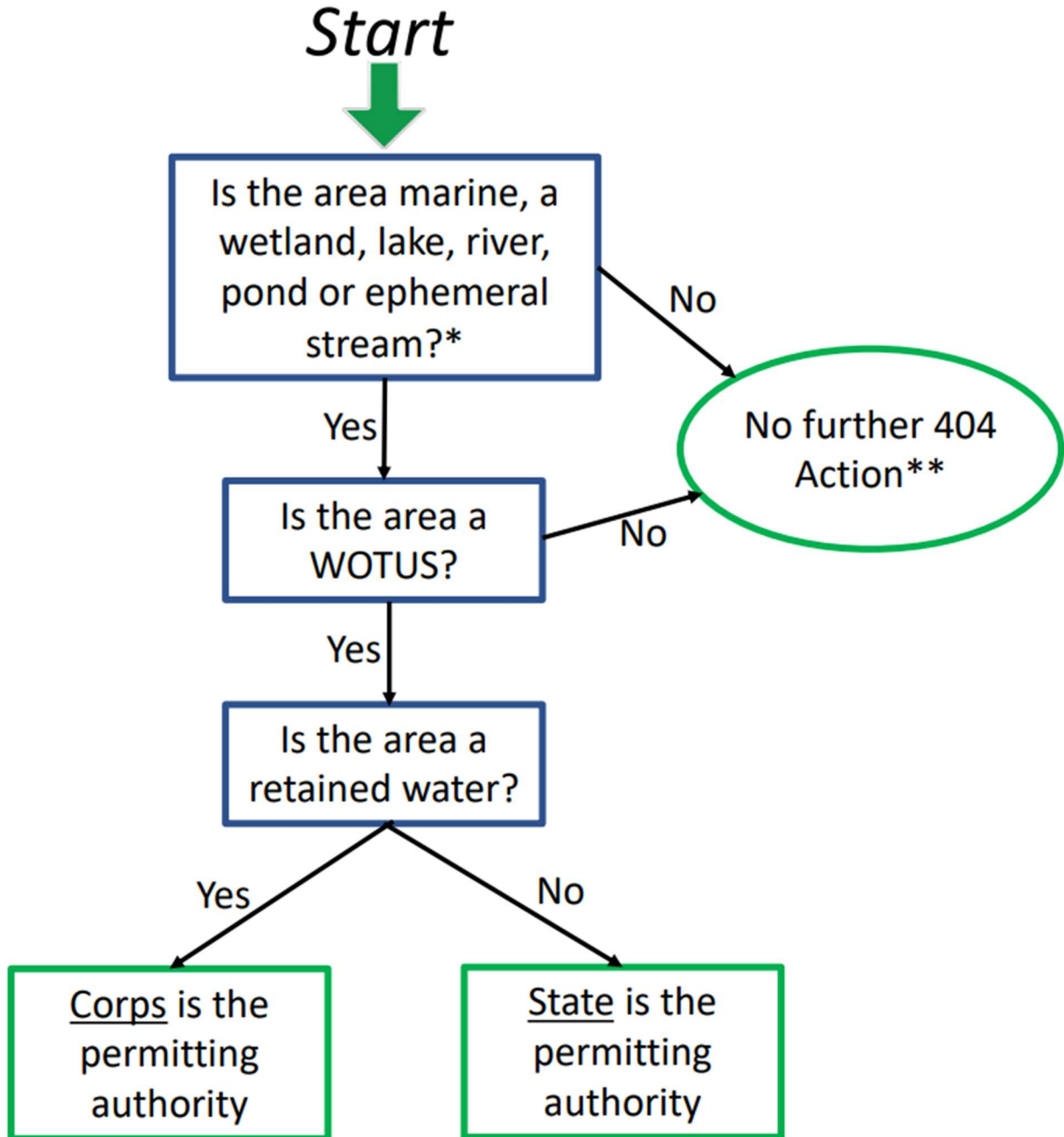
4.6 Options for Projects that Cross the Boundary Between Assumable and Retained Waters.

A permittee with an activity that cannot avoid a dredge or fill effect on a wetland or other water (including areas with ephemeral water), is confronted with this decision tree:

1. Is the area to be impacted marine, a wetland, lake, river, or pond (or similar water)?
2. If yes, does it meet the definition of WOTUS (i.e., federal jurisdiction). If so:
 - a. Is the area within the Corps' retained jurisdiction and regulation by the Corps.

⁵⁴ There may waters within the 300-foot boundary that do not meet the definition of WOTUS because they are isolated wetlands or for another reason. Placement of dredged or fill material into these locations, because they do not meet the WOTUS definition, would not need a 404 permit from the Corps.

- b. If the area meets the WOTUS definition but is not within the Corps' retained waters area, then the area is assumed by the State and regulated by DEC.
- 3. If the area to be impacted is not within the definition of WOTUS, it remains Waters of the State (WOTS). It is not regulated by DEC's assumed 404 Program (other rules, may, of course, apply).



*This step may require a jurisdictional determination.

**Other regulations and authorities may apply.

Some projects will inevitably cross the boundary between assumable and retained waters, and involve both wetlands under authority assumed by the State and wetlands that remain under the authority of the Corps. This will be the case for a project that involves discharges of dredged or fill material both waterward and landward of the 300-foot guideline. In this case, options for the State to consider include:

- the Corps retains jurisdiction to the landward boundary of the project for the purposes of that project only (approach adopted by Florida)⁵⁵
- the permittee is given a choice – they can request the entire project be permitted by the Corps or that the Corps' permit activities in retained area (waterward of the administrative boundary) and State issues the permit in assumed area (landward of the administrative boundary)
- a single permit is issued, signed by both the Corps and the State
- for clearly defined types of projects that straddle the administrative boundary, a General Permit (RGP) is developed by the Corps and the State, and the State issues authorizations under the General Permit

⁵⁵ FDEP, State 404 Program Applicant's Handbook at Section 2; *see also* Fla. Admin. Code R. 62-331.030 ("Terms used in this chapter are defined in section 2.0 of the 404 Handbook"). For purposes of the "300-foot guide line," the Corps would retain 404 permitting authority for projects that straddle both sides of the "guide line." However, a separate Environmental Resource Program permit would also be required.

5. RESOURCE NEEDS

5.1 Corps Alaska District – Permit/Activity Workload analysis

Alaska can expect to take on approximately 75% of the Corps' permitting workload under program assumption. The percentage may vary some depending on the outcome of negotiations with the Corps and EPA delineating retained and assumable waters.

An in-depth analysis was conducted on a five-year span (2018 to 2022) of the Alaska District regulatory permitting and related actions workload based on their Operations and Maintenance Business Information Link Regulatory Mode (ORM-2) database. The database identifies Corps' "actions" such as Jurisdictional Determination or Standard Permit and each action is tied to the federal authority for that action – Section 10 of the RHA, Section 404 of the CWA, or Section 10/404 (both). Numbers of actions were also identified that were not tied to federal authority, "No Authority Data."

To determine how many actions are attributed to Section 404 authority, all Section 10 authority actions were removed from the data-set since Section 10 permits will remain with the Corps. Section 10/404 authority actions were then removed, assuming if the action was in a Section 10 water the wetlands will be within the correct distance to be considered adjacent and will remain with the Corps. The "No Authority Data" actions (which represent about 30% of the actions) were also removed from the dataset. The remaining actions are likely assumable by the State and represent 83% of the Corps' workload. This doesn't account for the missing data – the actions where the authority was not identified. All but one action type can apply to section 10 or Section 10/404 so it was assumed that the same percentage of the "No Authority Data" actions would be assumable by the State (83%). When those actions are added to the State assumable workload, the overall State assumable workload is about 75% of the current Corps' workload.

Appendix 8. Corps' Data Workload Review, Methodology and Results provides a description of the Corps' actions tracked in ORM-2 and how the data was sorted and organized. The number of Section 404 actions rather than number of permits issued was used as it represents a more accurate predictor of workload. A summary and conclusions reached from reviewing the data are detailed in Appendix 9. Methodology to Evaluate Corps' Workload and State Workload under 404 Program Assumption. The full data set is available in the 404 Master Workbook and found in word tables and was provided to DEC.

The Alaska District data has limitations, since it only covers action types related to JDs and steps in permit issuance completed by the Alaska District. Information on other program areas such as compensatory mitigation and compensatory mitigation monitoring, development of General Permits, complexity of JDs, EIS workload, and enforcement is not available through ORM-2 data supplied by the Corps. That workload, however, is captured via the 48 Corps' staff focused on implementation of the full program.

Additionally, the data analysis does not provide a 100% accurate estimate of potential State permitting/decision workload because:

- A shoreward boundary for wetlands considered adjacent to retained waters has not yet been established,
- gaps in the Corps data system (primarily where the authority (Section 404 or Section 10) are not identified), and
- the time spent issuing GP authorizations does not include the time/effort to develop and renew the GP every five years.

The permit/activity workload analysis was based on the assumption that Alaska would assume all waters upland of a 300-foot administrative boundary from the mean higher high tide line for waters subject to the ebb and flow of the tide and the mean high water mark for the 47 Corps' Section 10 retained waters. Those geographic areas could change during MOA negotiations with the Corps and EPA. The analysis indicates the DEC would assume approximately 75% of the Corps' permitting (and related actions) workload (see Appendix 9. Methodology to Evaluate Corps' Workload and State Workload under 404 Program Assumption).

The analysis then compared potential State workload from the most recent 5-year period to the data set from the 2014 Cost Analysis for Operating a State-Assumed 404 Program⁵⁶ for the 2005-2013 timeframe. Both analyses arrived at a similar estimate -- that the State would assume approximately 75% of the Corps' workload.

5.2 Staffing Analysis

A comparison of the permit issuance data from the 2014 report and the 2018-2022 datasets indicate that the Corps now issues about 16% more permits/year than in 2005, with two fewer full time equivalent (FTE) staff. This is likely a reflection of greater use of GP authorizations, which are less time-consuming than issuing Standard Permits (SPs). This time "savings" has been used up by completing fewer, but more time-consuming actions. When looking at overall actions/year, there are actually fewer actions/year, but those actions have become more complex over time, requiring more time per action by the Corps. (See Appendix 10. Analysis of Changing Nature of Corps' Workload).

The data summarized in Appendix 10 indicates the overall annual Corps' workload has changed little since the 2014 analysis. This report assumes that the estimated necessary DEC staffing would remain about the same – 32 FTE, a little less than 75% of the current Corps' staffing level. We assume that this approximate level of staffing should be sufficient since the State will assume approximately 75% of the Corps' workload and the State already has more automations available for an assumed program and greater opportunity and incentive to operate a more streamlined program. See Table 2 Comparison of Corps Program Staffing Size to Proposed Alaska Program Staffing.

Current EPA staffing dedicated to work in Alaska is approximately 8 FTE. The split between workload is approximately 0.2 FTE for JDs, 0.5 FTE for enforcement, and 7.3 FTE for permit review. After 404 Program assumption by the State, EPA would continue to have 404 staff

⁵⁶ Cost Analysis for Operating a State-Assumed 404 Program, Alaska Department of Environmental Conservation, 2014.

dedicated to Alaska. Staffing now is distributed approximately 3 FTE in Alaska, 4 in Seattle, and 1 at EPA Headquarters.

5.3 State Program Position Summary and Projected Costs

The projected need for 32 staff for a State-assumed 404 Program can be "ramped up" over a two-year timeframe (see Section 8. Assumption Process and Timeline). Program and staff development, including the application for assumption, can begin in the first year (FY 24) with 28 staff and \$5.0 million. Full staffing, completing the assumption application and program/staff development, will be complete in FY 25 with 32 staff and \$4.8 million⁵⁷. Ongoing program implementation, beginning in FY 26 will continue with 32 staff and \$4.8 million. Budget details are shown in Table 3. DEC Budget Summary FY 24-FY 26+. The overall staffing and costs may need to be adjusted as DEC negotiates retained/assumed waters with the Corps.

5.4 Program Funding and Fee Structure Options

An ongoing barrier to state assumption is that there are no federal grant funds available to a state that assumes the 404 Program, even though it results in a cost savings to the federal government. There are small Wetland Program Development grants that can help support improvements to the state's wetlands management, but they are not available for 404 permitting implementation. As such, the State should assume the use of 100% General Funds (GF) will be necessary during program application, development, and the first year of implementation (approximately three years). GF can be partially offset by fees in out years and there are several potential approaches to fees.

The Corps does not charge fees for transferring a permit from one property owner to another, for Letters of Permission, or for any activities authorized by a general permit or for permits to governmental agencies. The Corps charges nominal fees, but only for two actions -- \$10 for non-commercial Standard Permit (SP or "Individual Permit") applicants and \$100 for commercial SP applicants. Neither of these fees contribute appreciably to the costs of running the program. Alaskan permittees would need to recognize the value of a State-assumed program if DEC were to consider a fee structure to cover a portion of the program. DEC faced a similar challenge when taking on the 402 permitting program but gained support for primacy when it became clear that the State could issue more timely permits, rely upon Alaska-specific guidance, and provide local knowledge value including ready access by permittees to State staff. DEC could gain support for a partially fee-supported 404 Program by including stakeholders in development of the program, program regulations, and the Program Description portion of the assumption application. The Alaska program will be 100% GF funded during the program development/application phase and while a permit fee structure can be instituted, the program over time may remain largely GF-funded as permitted projects support economic development in the State and the permits serve to protect water resources on behalf of all Alaskans.

⁵⁷ The State budget system accounts for one-time costs for each new employee during the first year (desk, computer, and related equipment). Those costs are backed out of the budget in the following year. Hence, FY 25, with four new staff is slightly smaller than FY24, as the one-time costs for the 28 positions hired in FY 24 are eliminated.

The states with 404 Programs or plans to assume the program have addressed funding in different ways. Nebraska conducted a funding analysis based on 75% and 100% fee support. Their legislature recently approved State 404 assumption with broad support, likely because their program will not rely on any General Funds, and permittees recognize the benefits of a State run program over the federal program. The recently approved Florida program is 100% fee supported.

Rather than to solely rely long term on State General Funds, the State should consider partially funding the program with fees or a combination of fee approaches. For reference, the 402 (wastewater discharge) permitting program operated by EPA did not charge permit fees. When the State took over the 402 Program, it began with a mix of approximately one-third General Funds, one-third federal grant funds (not available for 404), and one-third fees. DEC had "buy-in" for a partially fee-based program by establishing reasonable fees and clearly articulating the benefits of a State-managed program. Permittees supported the effort after deciding that paying for a State-issued permit had more value to them than a "free" permit from EPA. Different fee approaches to support a 404 Program are described below.

5.4.1 Impact fees

Alaska could consider an approach to charge a permit fee based on acres or lineal feet affected. This would be similar to emission fees in the Air Program which are designed to fully cover the program's costs. For an assumed 404 Program, this could potentially work for a partially fee-supported program. Permit fee "income" could vary significantly from year to year (unlike the fairly stable annual fees generated in the Air Program) and as such, is not a recommended approach. Additionally, permitted projects would vary greatly in their actual impact to wetlands/waters functions, even for projects that "affect" the same areal or lineal footage. Finally, some projects can be authorized under a General Permit which is less "expensive" to issue per permit, while others may have a similar impact but require a more costly IP. The State could not rely upon this approach for stable funding year to year.

5.4.2 Hourly Fees

Alaska could also consider an hourly fee which would be more equitable in that permittees are charged based upon the actual work conducted. More complicated projects, with greater environmental review and increased interest by other agencies and the public, would be charged commensurate with the State's level of effort. Downsides include a permittee not knowing, or being able, to plan for their permit fee as it would be unknown until the permit is issued. It also does not account for new, inexperienced staff, or staff unfamiliar with waters/wetlands in a geographic region taking longer to issue a permit than more experienced staff. Feedback from other agencies (or lack thereof) can also cause costs to vary, even for what appear to be similar projects. The hourly rate would be dependent upon the percentage of the program the fee is designed to support.

5.4.3 Fee for Specific State Actions

DEC could establish a fee for each specific service (JD, LOP, SP, GP authorization, etc.). The benefit is that this averages a cost over similar permittees which eliminates the problem

associated with a less experienced permit writer being assigned to a project (a problem with the hourly fee approach).

5.4.4 Recommendation

DEC should consider establishing a fee approach based on existing statutory authority at AS 44.46.025. Fees for Services⁵⁸ using a hybrid approach, similar to the fee structure already implemented for the CWA Section 402 Program which involves a flat fee for specific types of actions and authorizations under specific General Permits (with a published fee schedule) and a base fee for SPs with an hourly fee for time spent over the base fee. DEC could choose to start with lower fees for specific actions while it gains expertise, then revise the fees over time (as with Section 402 permits) to better reflect actual State costs (again, recognizing that State General Funds should continue to cover a significant portion of the program into the future).

⁵⁸ Note that DEC may need specific statutory authority (or regulations) to apply the fee structure at AS 44.46.025 (or a different fee structure) to dredge and fill permits. Section 404 permittee stakeholders may have similar interests as the Section 402 stakeholders: From the 402 Program stakeholder report: "Fees. HB 361 passed the legislature in 2000 setting state policy for fees charged by resource agencies, including DEC fees for wastewater discharge permitting. The law requires that fees be set in statute, regulation, or established in a negotiated services agreement. Wastewater fees can only include the direct costs of DEC permitting and compliance work and travel for inspections of businesses with more than 20 employees. (A facility with less than 20 employees that has a parent company with more than 20 would be charged for travel.) Fixed fees must be established for standard categories of General and Individual wastewater discharge permits. Negotiated service agreements can be used for complex projects where a set fee is negotiated between DEC and the permittee along with project milestones. Fees must be reviewed and updated every 4 years." Alaska Department of Environmental Conservation (2005, February 4). *National Pollutant Discharge Elimination System Primacy Workgroup Report*. Retrieved December 29, 2023, from <https://dec.alaska.gov/water/apdes-history/npdes-primacy-work-group>

6. PROPOSED STATE PROGRAM STRUCTURE

6.1 DEC Section 402 Structure/Recommended 404 Structure

The 404 Program structure will start with a significant policy group dedicated to the program assumption application and program development tools. Over time, most of those positions will transfer into program implementation. There will be a long term need to have 1-2 people remain in the 404 policy group to track changes in federal law that may affect the State's program and to guide regulations amendments and develop additional policy/procedures for the program.

The DEC structure in the Division of Water for the 402 Program is well thought out and readily scalable to accommodate 404 Program assumption. The most important aspect of this organizational structure is that program development (statutes, regulations, program policy, guidance development, and training) and program implementation (permitting, compliance, and enforcement) are housed within a single Division, reporting into the Director.⁵⁹ The Director's office prepares the annual budget and workplans, performance measures and reports, works with the Department of Law to draft legislation, reviews federal initiatives affecting the Division, promulgates regulations, approves program's implementation policies, and makes decisions on informal reviews of staff decisions (first step in the appeals process).

It makes sense to centralize staff in Anchorage or Juneau during early program development, assumption application development, technical staff training and capacity development, and program implementation during the first year or two. Based upon the geographic locations identified in the Corps' workload analysis, DEC program staffing should eventually be distributed statewide with primary staff located in Juneau, Anchorage and Fairbanks. (Table 4. Geographic Distribution of Workload and Staff (Corps' Actions)). Centralizing ongoing program development and management may mean retaining a higher percentage in either Anchorage or Juneau, based on DEC's selected approach. In the out years, DEC could move a few positions to the Soldotna and Wasilla offices to be more accessible to permittees as those areas have significant 404 permitting needs.

The current organizational structure at DEC ensures consistent program implementation and allows the Program Manager to assign work from one region to staff in another region as workload fluctuates between regions of the state. This flexibility ensures timely permitting and continues strong customer service across the state.

Based upon the success of other state 404 Programs and DEC's success with the 402 Program, the recommended organizational approach is to include pre-permit consultations and permittee technical assistance, JDs, GP development and authorizations, SPs (including mitigation plan

⁵⁹ In the past, DEC had three "regional offices" located in Anchorage, Fairbanks and Juneau with Regional Directors that reported separately to the commissioner's office and operated independently from the headquarters program development sections. This approach led to inconsistencies in program priorities and implementation across the regions, to the extent that permittees could "shop" between DEC offices to get a more favorable answer to their permit needs. The current structure where program development and implementation are housed within a division can lead to less communication across Divisions, but DEC has routine communications mechanisms in place to temper that.

approval), and data entry/permit management in the DEC Environmental Data Management System (EDMS) system in the existing Division of Water Permit program that already has significant experience permitting (see Figure 6. Division of Water Proposed Organization Charts). Alternatively, DEC could establish a separate 404 permitting program.

The inspection/compliance/enforcement work and compliance data entry in EDMS should be integrated into the Division of Water Compliance Program (Figure 6). The main advantages to this approach are synergy between staff with similar training and duties; cost savings – for example, a 402 inspector can review 404-permitted sites when travelling to remote locations; and most importantly, significant enforcement cases will be handled by staff who are not also assigned permitting responsibilities, ensuring the permitting program can continue to timely issue permits while complex compliance work is conducted by other staff, which maintains permit schedule predictability. Permitting and compliance priorities can be considered jointly and established and managed separately. Each program's permitting and compliance program staff will need to coordinate closely on policies impacting both areas and on specific permits during the permitting process.

Both the permitting group and the compliance groups should include a mix of Environmental Protection Specialists 1-4, Environmental Engineers, and Environmental Program Managers. This allows DEC to "grow its own experts" and provides a career ladder for staff.

Any Water Quality Standards or anti-degradation requirements related to the 404 Program should continue to be addressed by the Water Quality Standards Program. The increased need for administrative support for the 404 Program should be integrated into the existing Administrative Support program that will handle federal grant applications, budget and spending plans, accounting, and administrative and human resources support. DEC should include one additional Analyst Programmer in the existing Water and Information Programs to incorporate updates to the EDMS system to support the 404 Program with maintenance of the data system.

6.2 Other State agencies

The level of effort (and internal organization) for permit review and comment functions by SHPO should not change with 404 assumption. The only change is that permits to be reviewed will still come from the Corps for projects in retained waters and from DEC for projects in State assumed waters.

DEC is likely to negotiate an MOU with U.S Fish and Wildlife Service (USFWS) for their review of projects with potential impacts to endangered or threatened species (including time limits for their review). DEC may want to engage the DF&G when USFWS expresses concerns with a project to ensure local knowledge and expertise is considered.

Both DNR and USFWS have completed some wetlands mapping for Alaska but there remains a significant need for wetlands mapping and funding for mapping. This current gap in data/mapping does not prevent State 404 Program assumption, but improvements to the mapping could assist a State program.

Finally, other State agencies may be involved in the environmental review for permits under the State's version of the 404(b)(1) guidelines. As this work would likely be funded by permit applicants, more work will be required, but the financial cost on the State will be small.

7. STATE PROGRAM CAPACITY DEVELOPMENT

DEC has extensive experience reviewing 404 permit applications and issuing 401 certifications for 404 permits but lacks technical expertise in many of the 404 Program activities (JDs, mitigation banks). DEC will need to hire and train most staff for the program and should, early during the first year, develop a programmatic training plan that describes the necessary knowledge and skills for entry level, mid-level, and experienced staff/managers. Every employee should have a position-specific training plan that should start with time set aside for onboarding new employees – introduction to the agency and time established to read the relevant parts of the CWA and federal regulations. Training plans should include wetlands program specific formal technical training, supervisory training (as appropriate) and specific training for subject matter experts. With a mostly new staff, DEC does not have institutional knowledge with the program or prior projects. To help alleviate this, the programmatic training plan should include development of a staff sharing agreement with the Corps, including Intergovernmental Personnel Agreement (IPA) staff to be loaned from the Corps to DEC as well as DEC staff loaned to the Corps via MOA. DEC staff working temporarily at the Corps can fill the staffing gap left by a Corps' employee coming to DEC and can learn the Corps' permitting process (temporary staff trades).

While the normal hiring process would be to select the managers first and have them hire the new staff under them, DEC's 2-year schedule to program assumption will necessitate simultaneous hiring efforts for managers and staff. DEC should also make use of single recruitments (advertising and interviewing) for multiple positions at the same time. Employees should initially be based in Anchorage/Fairbanks/Juneau while the program is young to ensure consistency in staff training and program implementation. By 2025 positions could migrate to the Wasilla and Soldotna offices, commensurate with regional workload.

DEC may wish to consider the establishment of term contractors (on board before/at program assumption) who can be tasked in the early years to assist with compliance reviews, JD reviews, and mapping accuracy. That approach could potentially provide additional technical capacity early on, while DEC is continuing internal capacity development.

8. ASSUMPTION PROCESS AND TIMELINE

Current federal law requires an assuming state to take on the full 404 Program – partial program assumption is not allowed. This has been seen as a major drawback by states that are prepared to take on some, but not all, of the program. EPA proposed draft regulations in 2021 that would create a process for partial program assumption. Those regulations were scheduled to be completed by December 2022. EPA has since delayed the rulemaking with a proposed rule now estimated to be issued in September 2023 and final rule issued in October 2024. Therefore, at the current time, if DEC wants to assume the 404 Program, it must develop an application for the full program.⁶⁰ Development of a State program assumption application and program implementation should stay continually focused on streamlining.

A 404 Program assumption application must contain a letter from the Governor, a complete program description, an Attorney General's Statement, an MOA with the EPA Regional Administrator, and MOA with the Secretary of the Army, and copies of all applicable State statutes and regulations. See Table 5. Required Elements of a 404 Program Assumption Application for a list of application elements and Appendix 11. Required Components of a State Assumption Application for a detailed description of each element. Appendix 12. Program Description Outline for 404 Program Assumption contains an outline for a major component of the assumption application, the Program Description. See also Appendix 13. Outline for MOA with the EPA Regional Administrator and Appendix 14 Outline for MOA with the Secretary of the Army.

The State assumption process and timeline are directly linked to program cost projections, legislative approval of the DEC budget request, and the DEC level of focus on hiring, training, and overall program and staff capacity development. The shortest possible timeframe would be two years to achieve program approval, but some states have spent many years working up to a program assumption application. The first 18 months will be two-fold: 1) focused on hiring staff and developing program tools; and 2) developing the 404 Program assumption application in close coordination with EPA. The following six months would primarily focus on: 1) building staff capacity in all disciplines necessary to implement the program; and 2) continuing to work with EPA on the application process to ensure a complete and thorough application for their timely review. Upon receipt of the final program assumption application, EPA will make a completeness determination within 30 days and a program approval decision within 120 days of submittal of the complete application (unless extended by the State).⁶¹

⁶⁰ Federal Section 404 regulations are silent on whether a state could apply to assume the full program but take on implementation over a period of several years – a "phased" approach. Under this scenario, EPA would approve the State to take on the full 404 Program (required), but phase it in over several years (for example, implement the program for a specific region of the State the first year; add another region during the second year; and add the final region in the third year. The State could evaluate this as a potential option during development of the MOA with EPA.

⁶¹ See CWA Section 404(h)(3) "If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved . . . "

When analyzing 402 primacy, DEC conducted a series of meetings with a stakeholder workgroup. The workgroup helped define what a State-led program should look like (program characteristics) and many of their observations and recommendations are applicable to 404 assumption and have been incorporated into this Feasibility Study. There are unique attributes to the 404 Program (dissimilar to other types of permits) and DEC could benefit from establishing a 404-stakeholder workgroup that could provide input on specific issues, as determined by DEC. Examples could include mitigation flexibility or establishment of ecoregions/areas of the state where the administrative boundary between State-assumed and Corps- retained waters is moved shoreward or further inland. DEC could also consider developing a list-serve, as Nebraska has done, to keep interested parties updated on the assumption progress.

The assumption timeline assumes full funding beginning in FY 24 (or sooner if a supplemental budget is sought) and that there is no litigation on the EPA approval of the State program. There is some probability that any EPA decision to approve State assumption, no matter how well supported, could be challenged in federal court. Such proceedings have the potential to delay program approval. The potential areas of vulnerability to program approval appeal could include any issue associated with the "challenges" identified in Section 3. The timeline also assumes some tasks will begin during the second half of FY 23. A list of tasks and timeframes is shown in Table 6. Tasks and Timeline for 404 Program Assumption.

9. CONCLUSION AND RECOMMENDATIONS

Alaska is 43% wetlands.⁶² In many Alaska locations, it is impossible to construct anything from a driveway to an oil platform without placing dredged or fill material into wetlands. How these activities are permitted greatly affects how Alaska is developed: how its citizens and industries both protect the environment and develop the state.

The imperative to affect dredge and fill policies is much less in other states. Within the lower 48 states, the average state is 5% wetlands.⁶³ At that small percentage, the need to influence permitting policies in these states is much less important than it is for Alaska.

It is often said that Alaska is different, and this is especially true for wetland management. Alaska's wetlands are different. From the forested wetlands of Southeast Alaska to the permafrost wetlands of the North Slope, wetlands in Alaska have ecological characteristics which are greatly different from those elsewhere in the U.S. Further, the lower 48 states have lost over half their original endowment of wetlands, where Alaska has lost 0.1%.⁶⁴ For these reasons, protection and mitigation policies that are appropriate elsewhere in the U.S. may not be suitable for Alaska. Policies that must fit the country nationally need to be tailored to protect Alaska ecosystems and benefit Alaska communities.

This feasibility study has described the advantages, challenges, administrative structure, cost of assuming 404 permitting in Alaska, and a path forward. The analysis leads to the conclusion that Alaska will have much greater say in schedules, priorities, and policies that protect the environment and allow responsible development of resources and communities if Alaska can work as a partner with EPA and the Corps by assuming the 404 Program rather than by remaining on the sidelines and relinquishing control to the federal government. Given the state's rights under cooperative federalism, the importance of the natural environment and natural resources to the people and economy of Alaska, the importance of wetland permitting in Alaska, and the potential for influencing resource protection and development policies, the recommended course of action is for the State of Alaska to assume the 404 Program over assumable WOTUS.

⁶² Status of Alaska Wetlands, U.S. Fish and Wildlife Service. 1994

⁶³ Dahl, T.E. 1990. Report to Congress: Wetlands Losses in the United States 1780's to 1980's. U.S. Department of Interior, Fish and Wildlife Service, Washington D.C., 13 pp. Table 1, page 6.

⁶⁴ Ibid.

10. REFERENCES

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Table 1. Historic Wetland Loss/Gain by State – Table and Graphs

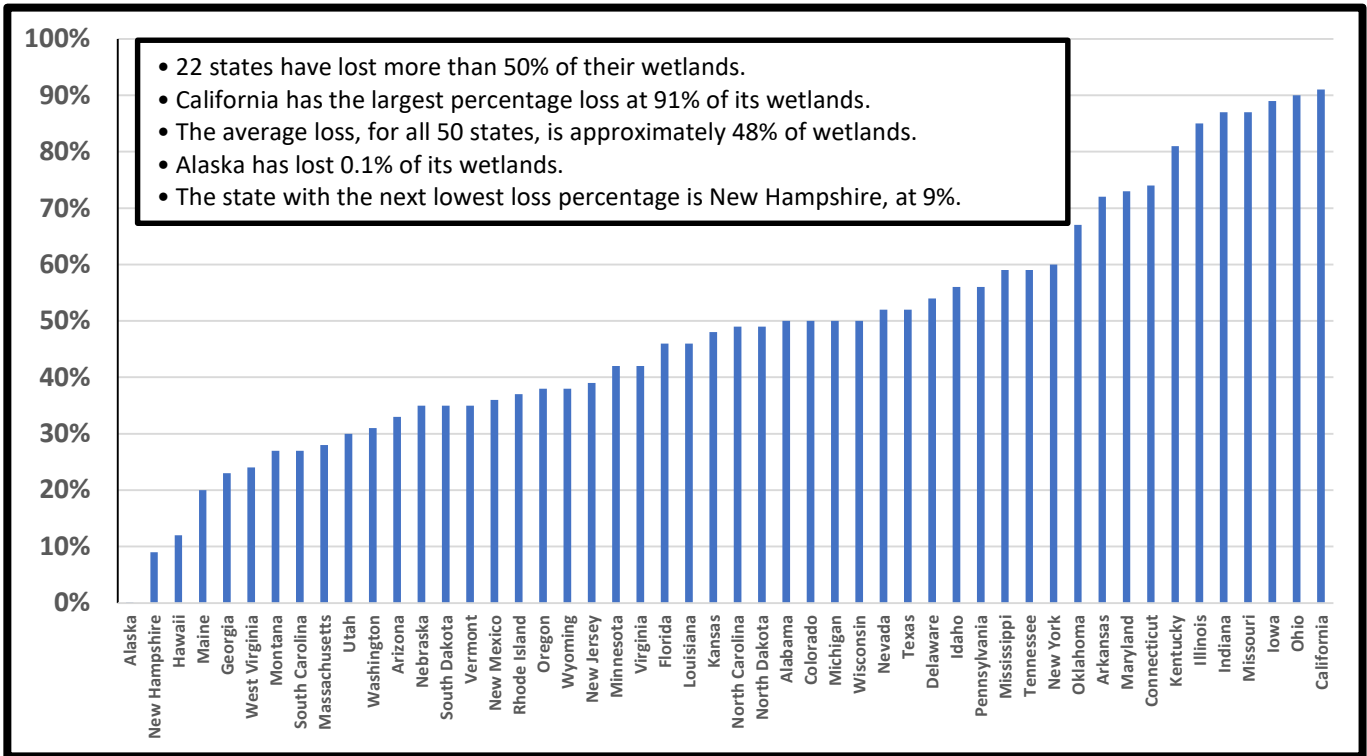
The table and the graphs on the following pages were taken from a 1990 report to Congress by the U.S. Fish and Wildlife Service. There are minor differences between the wetland acres in this report and those of more modern publications. This is due to better information and differences in how wetlands are counted. For example, this publication lists Alaska’s wetland percentage at 45.3% whereas the percentage listed in the main body of the report is 43%, based on a more detailed 1994 report by the U.S. Fish and Wildlife Service.

Wetland Acreage, Surface Percentage, and Loss by State

State	% of Surface Area		Wetland Acreage	State	% of Surface Area		Wetland Acreage
	1980s	% Lost	1980s		1980s	% Lost	1980s
Alabama	11.5%	50%	3,783,800	Montana	0.9%	27%	840,300
Alaska	45.3%	0.1%	170,000,000	Nebraska	3.9%	35%	1,905,500
Arizona	0.8%	36%	600,000	Nevada	0.3%	52%	236,350
Arkansas	8.1%	72%	2,763,600	New Hampshire	3.4%	9%	200,000
California	0.4%	91%	454,000	New Jersey	18.3%	39%	915,960
Colorado	1.5%	50%	1,000,000	New Mexico	0.6%	33%	481,900
Connecticut	5.4%	74%	172,500	New York	3.2%	60%	1,025,000
Delaware	16.9%	54%	223,000	North Carolina	16.9%	49%	5,698,500
Florida	29.5%	46%	11,038,300	North Dakota	5.5%	49%	2,490,000
Georgia	14.1%	23%	5,298,200	Ohio	1.8%	90%	482,800
Hawaii	1.3%	12%	51,800	Oklahoma	2.1%	67%	949,700
Idaho	0.7%	56%	385,700	Oregon	2.2%	38%	1,393,900
Illinois	3.5%	85%	1,254,500	Pennsylvania	1.7%	56%	499,014
Indiana	3.2%	87%	750,633	Rhode Island	8.4%	37%	65,154
Iowa	1.2%	89%	421,900	South Carolina	23.4%	27%	4,659,000
Kansas	0.8%	48%	435,400	South Dakota	3.6%	35%	1,780,000
Kentucky	1.2%	81%	300,000	Tennessee	2.9%	59%	787,000
Louisiana	28.3%	46%	8,784,200	Texas	4.4%	52%	7,612,412
Maine	24.5%	20%	5,199,200	Utah	1.0%	30%	558,000
Maryland	6.5%	73%	440,000	Vermont	3.6%	35%	220,000
Massachusetts	11.1%	28%	588,486	Virginia	4.1%	42%	1,074,613
Michigan	15.0%	50%	5,585,400	Washington	2.1%	31%	938,000
Minnesota	16.2%	42%	8,700,000	West Virginia	0.7%	24%	102,000
Mississippi	13.3%	59%	4,067,000	Wisconsin	14.8%	46%	15,331,392
Missouri	1.4%	87%	643,000	Wyoming	2.0%	38%	1,250,000

Source: Dahl, T.E. 1990. *Wetlands Losses in the United States 1780s to 1980s*. U.S. Department of Interior, Fish and Wildlife Service. Washington D.C. 13 pp. Report to Congress

Wetland Loss by State



Source: Dahl, T.E. 1990. *Wetlands Losses in the United States 1780s to 1980s*. U.S. Department of Interior, Fish and Wildlife Service. Washington D.C. 13 pp. Report to Congress

Percentage of Wetland Surface Area by State

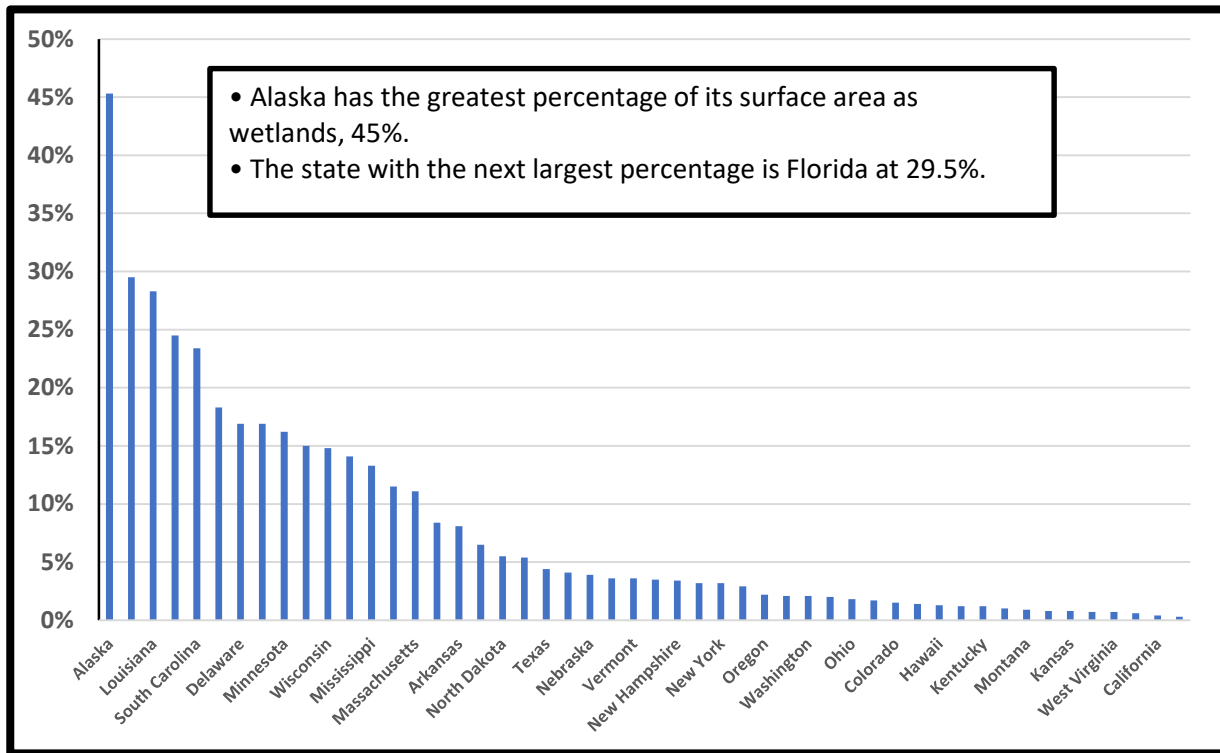


Table 2 Comparison of Corps Program Staffing Size to Proposed Alaska Program Staffing

It is challenging to provide a direct comparison between states regarding the number of permits issued/FTE, as a 404 program includes many types of actions associated with issuing permits, including jurisdictional decisions, permit modifications and transfers, and compliance and enforcement work. Some states may rely more on GPs (faster to issue), while others may issue a higher percentage of IPs (more complex permits). Some states include in their 404 permits, authorization under other (non-404) regulatory requirements. For these reasons, a comparison with staffing levels in other states is not provided. This table provides information that demonstrates that Alaska's proposed staffing level is generally similar to staffing in the Alaska District of the Corps.

Permit Actions/Year*	Corps in Alaska	Alaska - assumed program (75% of Corps work)
PJD - Preliminary Jurisdictional Determinations	197	148
AJD - Approved Jurisdictional Determinations	17	13
Operating Mitigation Banks	3	2
EIS - Environmental Impact Statements	2.4	2
NWP - Nationwide Permit Authorizations	283	212
Permit Modifications	98	74
Permit Transfers	40	30
RGP - Regional General Permit Authorizations	42	32
SP - Standard Permits	55	41
Enforcement - Unauthorized Actions	39	29
Enforcement - Noncompliance	9	7
Appeals	<1	0
No Data or Not Corps' Jurisdiction	168	126
TOTAL ACTIONS	775	581
Program FTE	48	32
Actions/FTE	16	18

*Based on a five-year average. Note that the Corps data system does not distinguish between permittee industry types.

Table 3. DEC Budget Summary FY 24-FY 26+

FY2024				
1000 - Personal Services				
Anchorage Step D	Range	Cost	Quantity	Totals
PX or Environmental Program Manager 3 - SS	23	\$160,997	1	\$ 160,997
Environmental Program Manager 2 – SS	22	\$151,852	1	\$ 151,852
Environmental Program Specialist 3/4 (budget at 4) – GP	20	\$126,802	2	\$ 253,604
Environmental Program Manager 2 – SS	22	\$151,852	3	\$ 455,556
Environmental Program Specialist 3/4 (budget at 4) – GP	20	\$126,802	14	\$ 1,775,228
Environmental Program Specialist 2 - GP	16	\$101,724	3	\$ 305,172
Administrative Officer I - SS	17	\$114,562	1	\$ 114,562
Administrative Assistant 2 - GP	14	\$90,160	3	\$ 270,480
Total Personal Services			28	\$ 3,487,451
2000 - Travel for technical staff				
Travel for management and technical staff		\$ 5,200.00	24	\$ 124,800
Total Travel				\$ 124,800
3000 - Contractual				
Allocated costs 6% of personal services			6%	\$ 209,247
Training for new technical staff		\$ 5,200.00	24	\$ 124,800
Contractors				\$ 250,000
RSA to Law				\$ 175,000
RSA to Department of Fish and Game				\$ 250,000
RSA to Department of Natural Resources				\$ 120,000
Total Contractual				\$ 1,129,047
4000 - Commodities				
1st year new employee costs		\$ 7,500.00	28	\$ 210,000
Office supplies		\$ 500.00	28	\$ 14,000
Total Commodities				\$ 224,000
FY2024 Total				\$ 4,965,298
FY2025				
1000 - Personal Services				
FY2024 Positions			28	\$ 3,487,451
New Positions Anchorage Step D	Range	Cost	Quantity	Totals
Environmental Program Manager 2 – SS	22	\$151,852	1	\$ 151,852
Environmental Program Specialist 4 – GP	20	\$126,802	3	\$ 380,406
Total New			4	\$ 532,258
Total Personal Services			32	\$ 4,019,709
2000 - Travel for new technical staff				
Travel for management and technical staff		\$ 5,200.00	4	\$ 20,800
Total Travel				\$ 20,800
3000 - Contractual				
Allocated costs 6% of personal services			6%	\$ 241,183
Training for new technical staff		\$ 5,200.00	4	\$ 20,800
RSA to Law				\$ 175,000
RSA to Department of Fish and Game				\$ 120,000
RSA to Department of Natural Resources				\$ 120,000
Total Contractual				\$ 676,983
4000 - Commodities				
1st year new employee costs		\$ 7,500.00	4	\$ 30,000
Office supplies		\$ 500.00	32	\$ 16,000
Total Commodities				\$ 46,000
FY2025 Total				\$ 4,763,492
FY2026 +				
FY2026 and Beyond				\$ 4,763,492

Table 4. Geographic Distribution of Workload and Staff (Corps' Actions)

Table 4 shows Corps' actions by borough for a five-year period. It demonstrates the location of projects for Corps' actions. It is not representative of the number of actions the State will assume but can be used to estimate overall workload by three main geographic areas, and DEC's main office locations. It provides a general distribution of the 32 staff needed to operate the State assumed 404 Program – 14 FTE in Anchorage, 12 FTE in Fairbanks, and six FTE in Juneau. This analysis can also be used as the State program matures to determine staffing for Wasilla and Soldotna.

Total Number of Actions in Each Borough/Census Area with Begin Dates from 2018-2022

Borough/Census Area	Section 10	Section 10/404	Section 404	No Authority Data	Grand Total	General DEC Geographic Area	Staff Distribution (32 total FTE)
Aleutians East Borough	14	5	1	19	39	Anc	
Aleutians West Census Area	8	11	11	67	97	Anc	
Anchorage Municipality	13	38	187	335	573	Anc	
Bristol Bay Borough	3	1	5	10	19	Anc	
Dillingham Census Area	8	14	13	29	64	Anc	
Kenai Peninsula Borough	315	84	381	682	1462	Anc	
Lake and Peninsula Borough	3	7	11	43	64	Anc	
Matanuska-Susitna Borough	21	39	274	276	610	Anc	
Valdez-Cordova Census Area	41	37	108	198	384	Anc	
Blank	1	7	20	222	250	Anc	
Kodiak Island Borough	14	17	26	87	144	Anc	
Total Corps' Actions, Percentage of Anchorage-based work, and total FTE					3706	46%	
Bethel Census Area	1	9	154	165	329	Fbx	
Denali Borough	2	4	45	46	97	Fbx	
Fairbanks North Star Borough	8	40	253	339	640	Fbx	
Kusilvak Census Area		5	51	32	88	Fbx	
Nome Census Area	4	27	90	140	261	Fbx	
North Slope Borough	8	67	345	363	783	Fbx	
Northwest Arctic Borough	4	9	42	72	127	Fbx	
Southeast Fairbanks Census Area		6	68	112	186	Fbx	
Yukon-Koyukuk Census Area	9	19	169	265	462	Fbx	

Total Corps' Actions, Percentage of Fairbanks- based work, and total FTE					2973	37%	12
Haines Borough	3	17	13	26	59	Jnu	
Hoonah-Angoon Census Area	18	18	29	27	92	Jnu	
Juneau City and Borough	19	61	103	104	287	Jnu	
Ketchikan Gateway Borough	69	36	60	205	370	Jnu	
Petersburg Borough	5	13	34	60	112	Jnu	
Prince of Wales-Hyder Census Area	53	20	57	133	263	Jnu	
Sitka City and Borough	25	31	29	24	109	Jnu	
Skagway Municipality	3	3	5	4	15	Jnu	
Yakutat City and Borough	3	5	5	4	17	Jnu	
Wrangell City and Borough	21	14	34	70	139	Jnu	
Total Corps' Actions, Percentage of Juneau- based work, and total FTE					1463	18%	6
Grand Total	696	664	2623	4159	8142		32

Table 5. Required Elements of a 404 Program Assumption Application

404 Program Application		
Element	40 CFR Section	Element Description
A		Governor letter requesting program approval
B	§233.11	Complete program description
	a	Scope and structure of state program
	b	Permitting, administration, & judicial review procedures
	c	State agency organization
	d	Funding and staffing description
	e	Estimated workload
	f	Permit application form, permit template, & reporting forms
	g	Description of compliance & enforcement & Coordination with EPA & Corps
	h	Description of waters in State vs. Corps jurisdiction
	i	BMPs for exempt provisions in 404(f)(1)(E)
C	§233.12	Attorney General's Statement
	a	Laws & Regulations provide proper authority
	b	Acknowledgement that tribal land is not a state assumption option
	c	Legal analysis of prohibition of taking private property without just compensation
	d	Multiple agency responsibility and authorities
D	§233.13	MOA with EPA Regional Administrator
	a	Identify permit applications which EPA will waive federal review
	b	Reports & files to be submitted to EPA
	c	Roles & coordination for compliance monitoring & enforcement
E	§233.14	MOA with Secretary of the Army
	a	Description of waters the Corps maintains jurisdiction over
	b	Procedures to transfer pending permit applications upon program approval
	c	Existing Corps general permits & how the state will administer them
F		Copies of all applicable state statutes and regulations

Table 1: Required Elements of a 404 Program Application

Table 6. Tasks and Timeline for 404 Program Assumption

Assumption process and timeline (tasks, task order, and timeline to be refined during program planning)

Task	Suggested Assignment	Start Date	Completion Date	Notes
Remainder of FY 23				
Develop and defend program budget	Director	2/1/2023	6/30/2023	
Update Wetland Management Plan	PM, Contractor			
Develop hiring plan and Position Descriptions for each position level	PM, PS, HR			
Initiate recruitment	PS, HR		Ongoing until complete	Recruitment can begin; positions can't start until 7-1
Draft RSA to DOLaw to develop regulations gap analysis, draft regulations, draft regulatory crosswalk with federal regulations (for assumption application AG Statement)	DEC AAG			Identify statutory gaps, if any
Prepare outline for PD	Contractor			
Develop outreach plan to include general public, stakeholders, tribes and rural governments; draft program assumption web page (live upon budget approval) include sign up for listserve	PM, IS			
Select stakeholder workgroup members	CO, Director			
FY 24				
Hiring; develop and initiate program and position specific training plans	PM	7/1/2023	6/30/2024	
Prepare initial draft regulations to meet all federal requirements	DOL/DEC			

Task	Suggested Assignment	Start Date	Completion Date	Notes
PD - Develop permit review criteria (404(b)(1) guidelines or equivalent	PM, DOL, PS			
PD - Draft rural and tribal participation plan guidance (similar to 402); update when permit process is refined	PS, Division of Water Local and Tribal Government Coordinator			
PD - Scope and organizational structure of State program including other agencies if appropriate; funding description	PM, PS			
PD - Define scope of regulated activities	PM, PS			
Stakeholder initial meeting - brief on 404 Program	PM			After initial "training" meeting, hold issue-specific meetings with stakeholder workgroup
Stakeholder meeting on mitigation	PM			
Develop mitigation approach/regulations compliant with 2008 rule - mitigation bank, ILF, functional assessment tools, credits	PM, DOL			
Develop procedures for compliance with (or alternatives to) project impacts, ESA, NHPA and any necessary MOA's	PM, PS			
Stakeholder meeting on specific issue - assumable waters	PM			
PD - Initiate discussion with the Corps; determine extent of State's jurisdiction and waters retained by the Corps, including a comparison of the State and Federal definitions of wetlands	Director, PM			

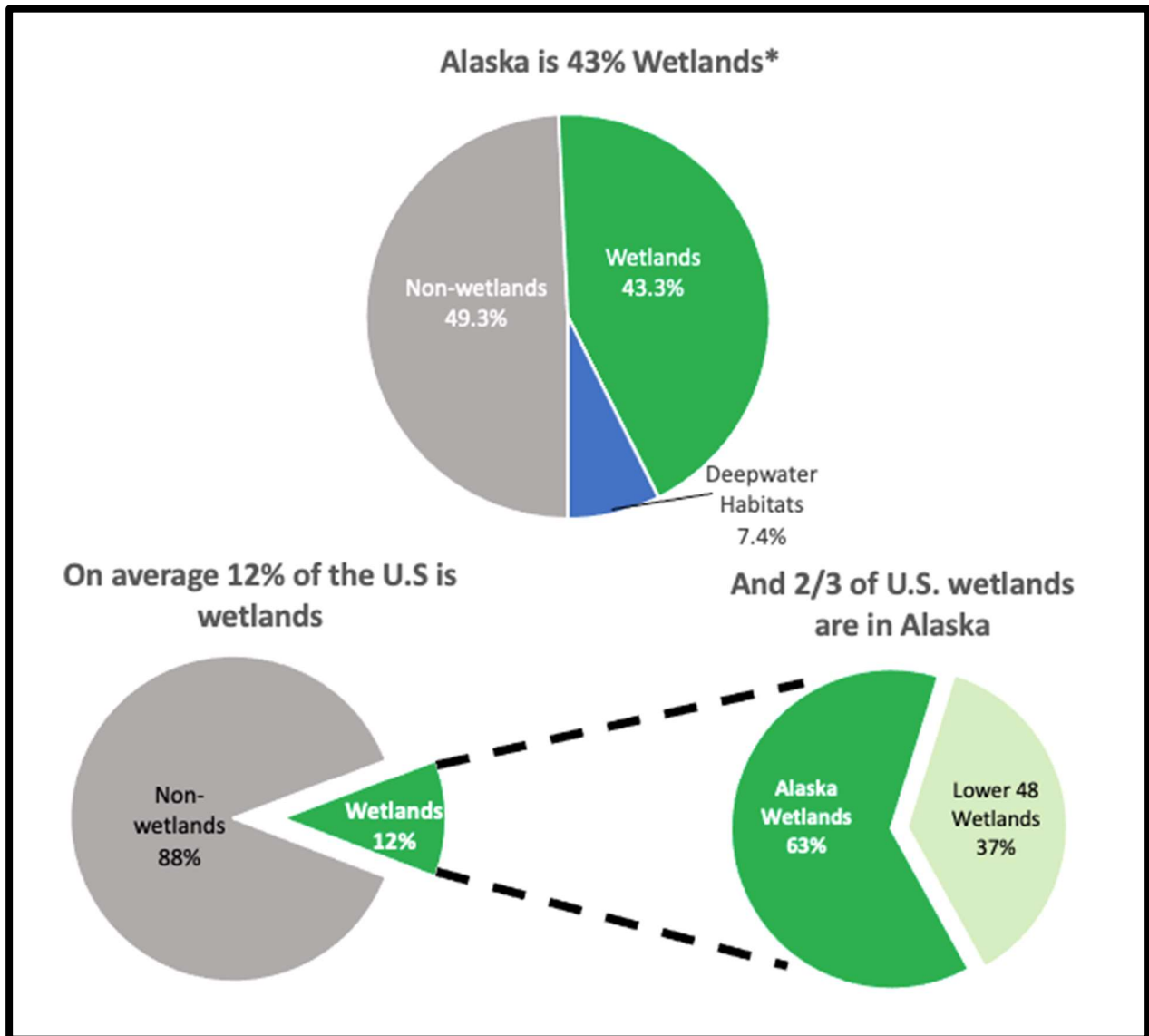
Task	Suggested Assignment	Start Date	Completion Date	Notes
Stakeholder meeting on regulations development	PM			
PD - Permitting procedures and administrative review/appeal process	PM, DOL			
PD - Interagency coordination	PM, PS			
PD - Anticipated workload - JDs, GPs and authorizations, SPs, mitigation, inspection and compliance	PS			
Develop and brief legislature on progress and any budget changes (the additional four staff)	Director			
PD - compliance evaluation and enforcement program, including coordination with Corps/EPA	PM, Compliance PM			
Draft and negotiate MOA with USFWS re: permit review/ESA	PM			
Regulations public notice	PS			
Develop SPGP(s) to gain program experience	PS			In coordination with Corps
Begin operating a JD program and issuing SPGP(s) authorizations	PS			
FY 25		7/1/2024	6/30/2025	
Hire remaining staff; continue training all staff	PS		ongoing	
PD - Develop program forms (permit applications, permit templates, standard letter templates i.e. JD decisions) and program into EDMS	PS, IS			
PD -Description of data management system and copies of all forms and model documents (JD's, permits, LOP)	IS			

Task	Suggested Assignment	Start Date	Completion Date	Notes
Draft and negotiate MOA with Corps; include retained waters; all GPs the State intends to administer; transfer of documents procedures	PM, PS			
Draft and negotiate MOA with EPA	PM, PS			
RSA to DNR for mapping assistance and mitigation bank development	PM, Contractor to do workplan			
Compile all applicable State statutes and regulations for program, including administrative procedures and appeals procedures	DOL			
Attorney General's Statement that State laws and regulations provide adequate authority to implement the program; must include takings analysis	DOL			
Draft Governor's cover letter	PM, CO			
Submit draft assumption package	Director		9/1/24	
Work with EPA and the Corps on their comments on the assumption application	PM, PS			
Prepare DEC webpages for assumed program (post upon approval)	PS, IS			
Begin issuing State authorizations under SPGP(s)	PS			
Compliance staff begin reviews/inspections of DEC certified permittees an SPGP-authorized projects; initiate enforcement as needed	PS			
Submit final assumption package	Director, CO		2/1/2025	
Convert/enter existing GPs into EDMS	PS			

Task	Suggested Assignment	Start Date	Completion Date	Notes
Public outreach on the final program/assist EPA with public review and comment period	PM, PS			
Outreach on State program for permittees/public	PM, PS			
FY 26		7/1/2025	6/30/2026	
Program Approval			7/1/2025	
Assign lower-level staff to GP approvals	PS			
Assign senior staff to SPs already in progress by Corps	PS			
Continue staff development and training	PM, PS			

CO - Commissioner's office
 Director - DEC Water Division
 Director
 PM -Dredge and Fill Program
 Manager
 DOL - Department of Law
 C - Contractor
 PS - Program staff, as assigned
 IS - Division of Water, Information
 Systems
 HR – Human Resources

Figure 1. Alaska Wetlands Compared to Lower 48 Wetlands



Source: U.S. Fish and Wildlife Service. Status of Alaska Wetlands 1994. Note that deepwater habitats are below tidal levels in enclosed marine areas such as inlets and fjords, or in deep areas of freshwater lakes.

Figure 2. Map of Potential Corps-Retained Waters in Alaska



Figure 3. Example of a Corps-Retained Water and Adjacent Wetlands – Coastal



Corps Retained Water and Adjacent Wetlands - Marine

404 Assumption Feasibility Report

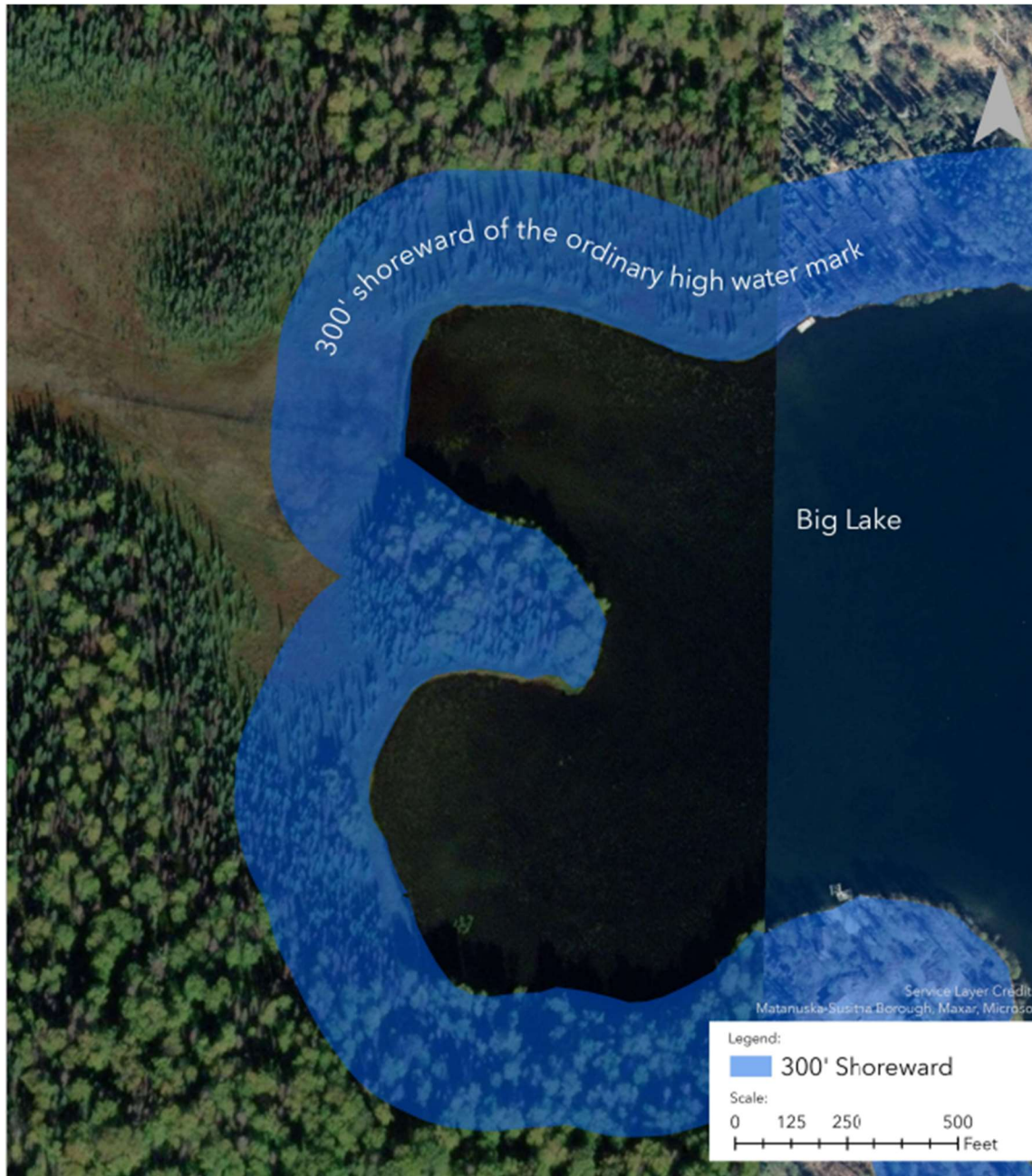
This map was generated as an example only, of what a Corps-retained marine water might look like under a state-assumed 404 Program.

The map assumes a Corps/State agreement to use a 300-foot administrative boundary between Section 10 Corps-retained waters and state-assumed waters. The map estimates the mean higher high water mark and a line 300 feet shoreward of the mean higher high water mark. The Corps would retain responsibility for 404 permitting within the shaded area and the State would assume 404 permitting for areas landward of the 300-foot administrative boundary.



Prepared by ADEC, GIS Coordinator - Rob Clark

Figure 4. Example of a Corps-Retained Water and Adjacent Wetlands – Lake



Corps Retained Water and Adjacent Wetlands - Lake

404 Assumption Feasibility Report

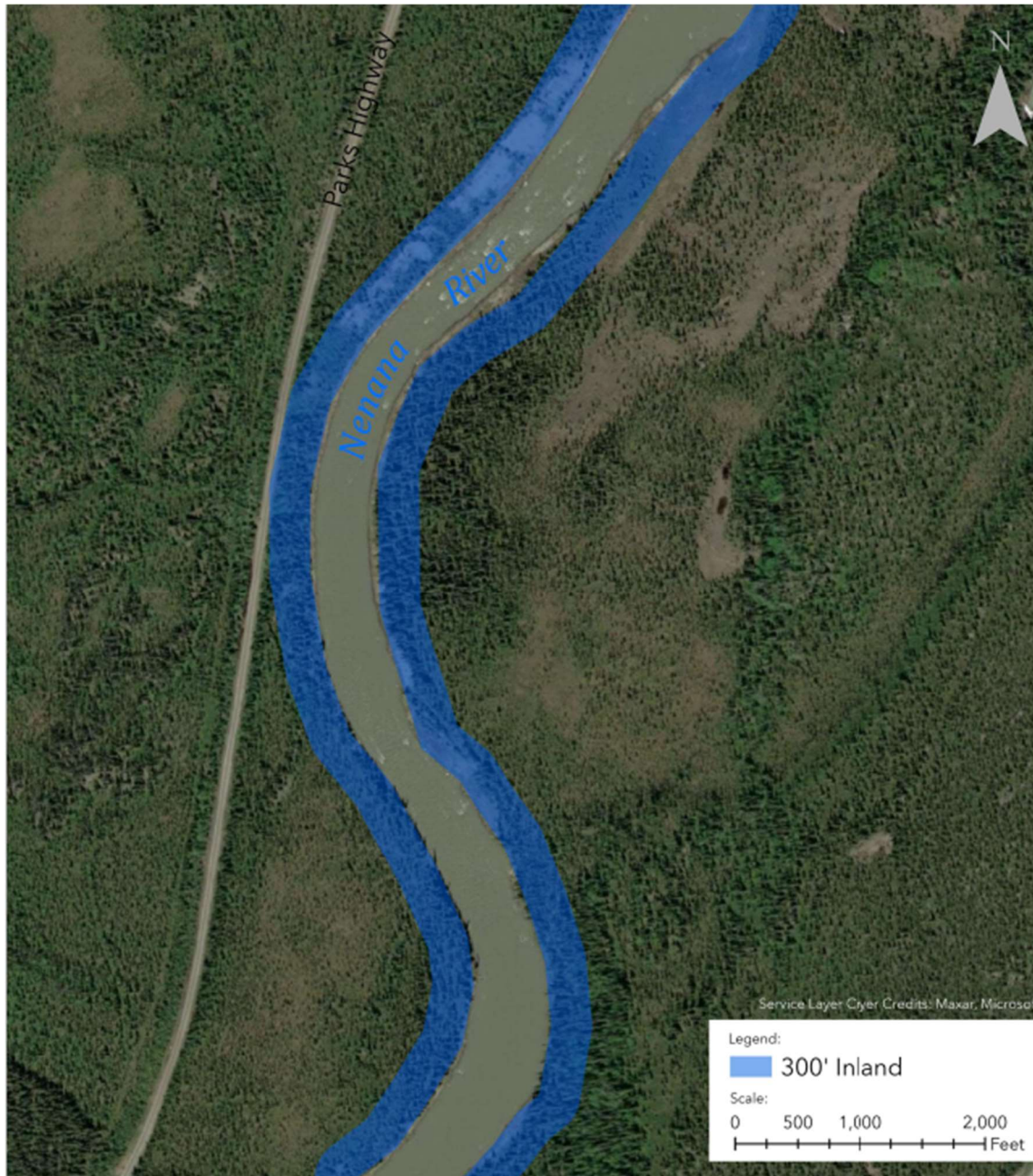
This map was generated as an example only, of what a Corps-retained lake might look like under a state-assumed 404 Program.

The map assumes a Corps/State agreement to use a 300-foot administrative boundary between Section 10 Corps-retained waters and state-assumed waters. Big Lake is one of few Section 10 Corps-retained lakes in Alaska. The map estimates the shoreline (ordinary high water mark) and a line 300 feet landward of the ordinary high water mark. The Corps would retain responsibility for 404 permitting within the shaded area and the State would assume 404 permitting for areas landward of the 300-foot administrative boundary.



Prepared by AJEC GIS Coordinator - Rob Clark

Figure 5. Example of a Corps-Retained Water and Adjacent Wetlands – River



Corps Retained Water and Adjacent Wetlands – River

404 Assumption Feasibility Report

This map was generated as an example only, of what a Corps-retained river might look like under a state-assumed 404 Program.

The map assumes a Corps/State agreement to use a 300-foot administrative boundary between Section 10 Corps-retained waters and state-assumed waters. Nenana River is one of few Section 10 Corps-retained rivers in Alaska. The map estimates the banks' ordinary high water mark and lines 300 feet landward of the ordinary high water mark on either side of the river. The Corps would retain responsibility for 404 permitting within the shaded area and the State would assume 404 permitting for areas landward of the 300-foot administrative boundary.

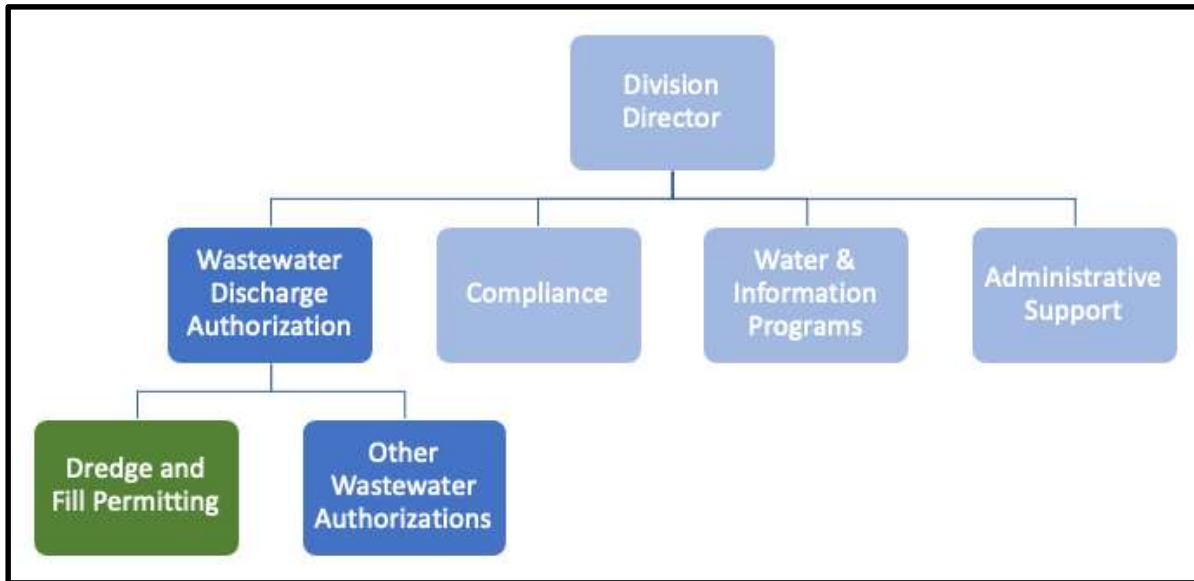


Prepared by ADEC GIS Coordinator - Rob Clark

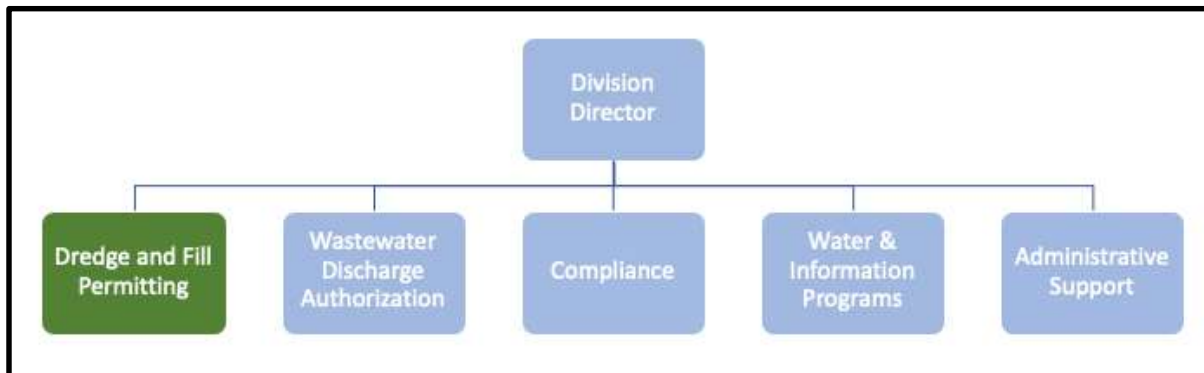
Figure 6. Division of Water Proposed Organization Charts

There are two practical options for locating the dredge and fill permitting authorities within the Division of Water. Option 1 includes a Dredge and Fill Permitting Section within the existing Wastewater Discharge Authorization Program, greatly expanding the span of control for the current manager. Option 2 makes the Dredge and Fill Permitting work a separate Program under the Water Division Director (expanding the Director's immediate span of control) and is preferable since this new program would be managed at a higher and more focused level.

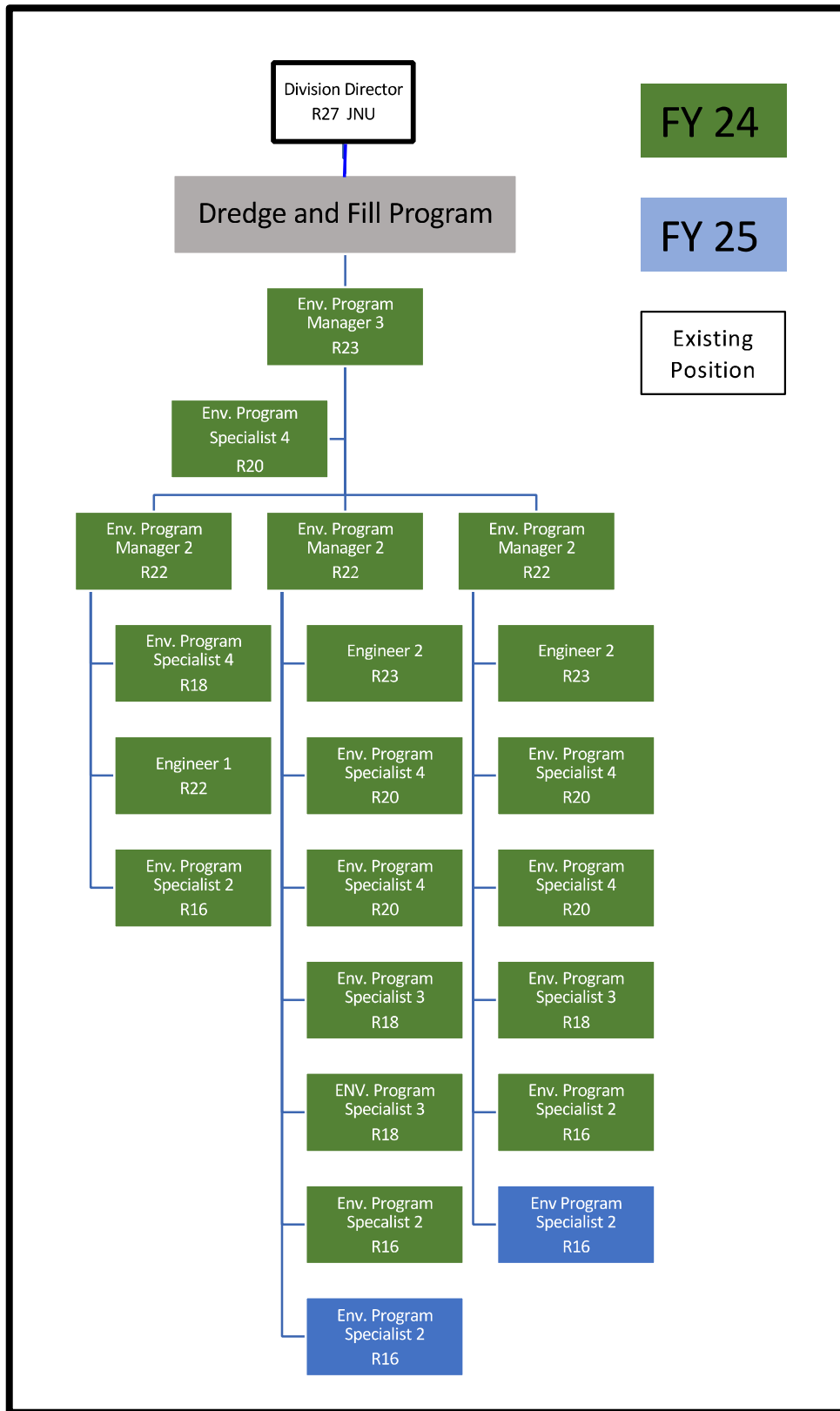
Option 1. As a Section within the Wastewater Discharge Program



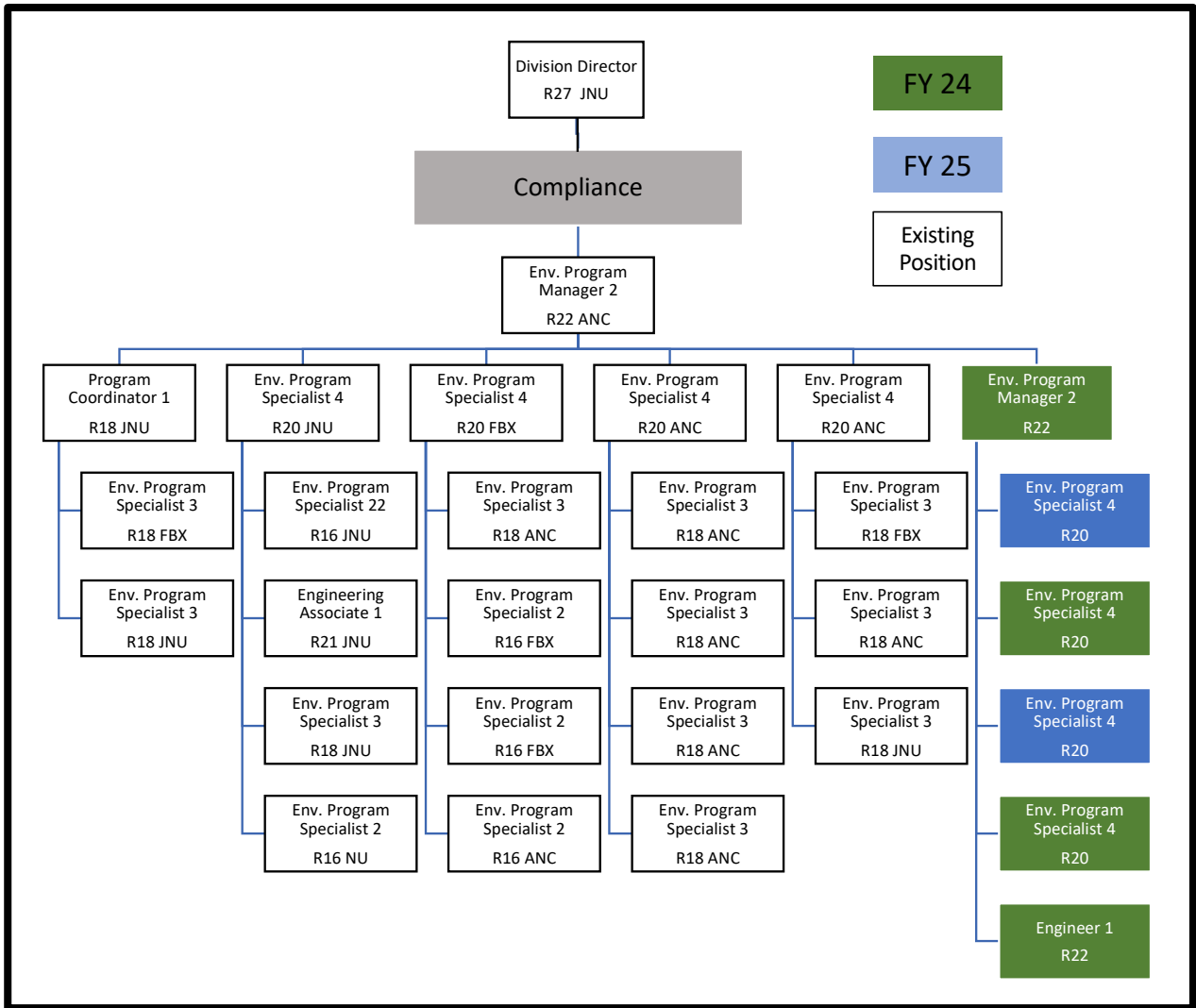
Option 2. As a separate Program within the Division of Water



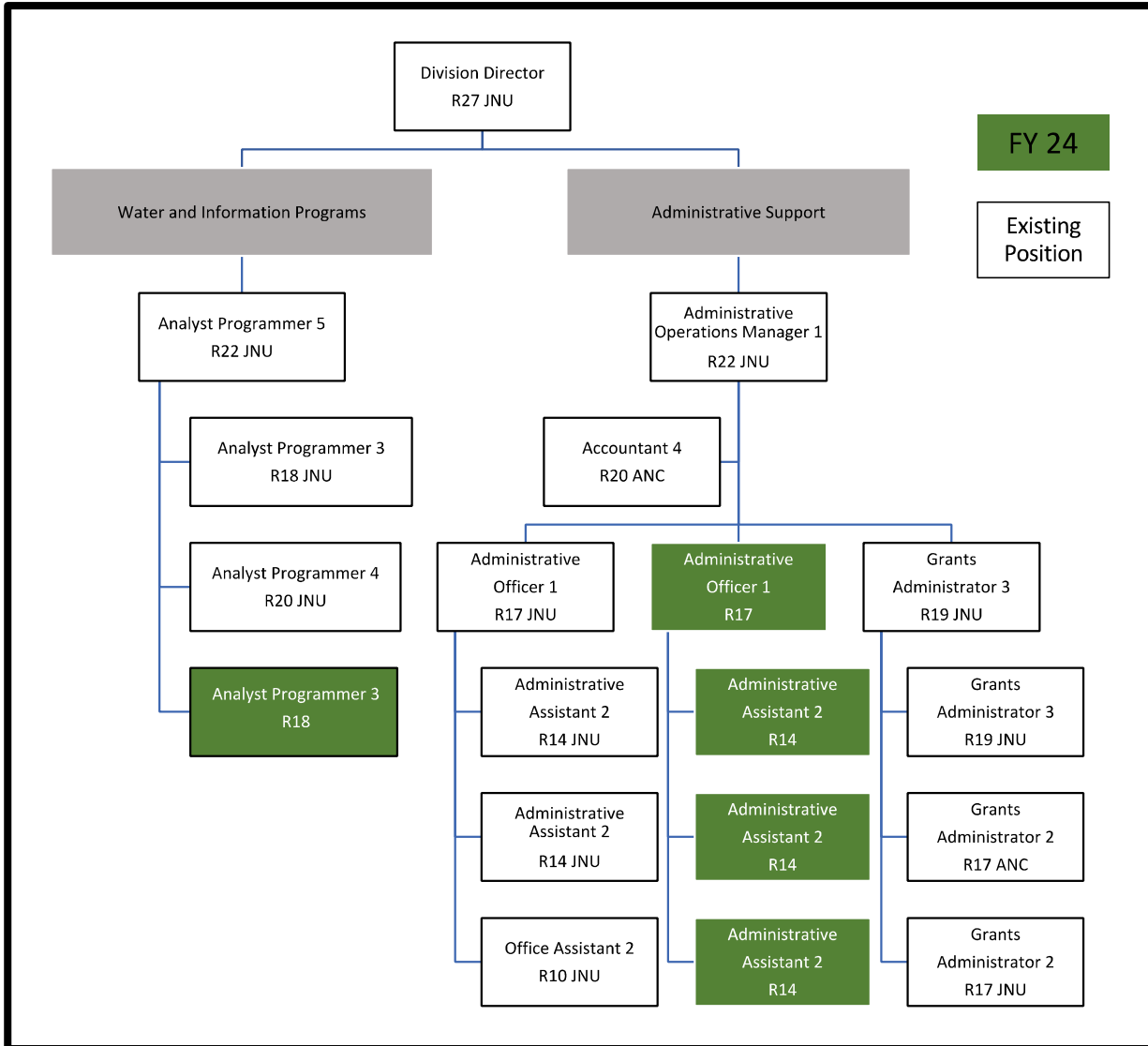
Proposed Staffing Chart for a Dredge and Fill Program within the Division of Water



Proposed staffing additions to the Compliance Program within the Division of Water



Proposed staffing additions to the Administrative Support Section and the Water and Information Programs within the Division of Water



Appendix 1. 2018 MOA Between Corps and EPA Regarding Mitigation Sequence in Alaska

Document begins on next page.



MEMORANDUM OF AGREEMENT

BETWEEN

The Department of the Army AND The Environmental Protection Agency CONCERNING

Mitigation Sequence for Wetlands in Alaska under Section 404 of the Clean Water Act

I. PURPOSE AND SCOPE

The United States Department of the Army ("Army") and the United States Environmental Protection Agency ("EPA") (together, the "agencies") hereby provide guidance regarding flexibilities that exist in the mitigation requirements for Clean Water Act Section 404 permits, and how those flexibilities can be applied in the state of Alaska given the abundance of wetlands and unique circumstances involved with Section 404 permitting in the state. This Memorandum of Agreement ("**MOA**") clarifies how existing national policies regarding practicability determinations and regulatory flexibility can be implemented in Alaska while ensuring sound environmental stewardship of the State's ecologically important wetland resources. This MOA updates and replaces the EPA and Army Memoranda entitled Clarification of the Clean Water Act Section 404 Memorandum of Agreement on Mitigation, dated January 24, 1992, and Statements on the Mitigation Sequence and No Net Loss of Wetlands in Alaska, dated May 13, 1994.

II. POLICY

A. Authority

This guidance is consistent with the agencies' regulations and policies including, but not limited to:

- Section 404 of the Clean Water Act (33 U.S.C. § 1344);
- Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230) ("Guidelines");
- Compensatory Mitigation for Losses of Aquatic Resources, dated April 10, 2008 (33 CFR Part 332/40 CFR Part 230) ("2008 Mitigation Rule");
- MOA between the Army and the EPA Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, dated February 8, 1990 ("1990 Mitigation MOA"); and
- The EPA and the Army Memorandum to the Field, entitled Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements, dated August 23, 1993 ("1993 Memorandum to the Field").

The Clean Water Act Section 404 regulatory program provides that the United States Army Corps of Engineers ("Corps") evaluates permit applications for the discharge of dredged or fill material into waters of the United States, including jurisdictional wetlands, in accordance with the Guidelines. The Guidelines are the substantive environmental criteria used in evaluating discharges of dredged or fill material into waters of the United States. The 2008 Mitigation Rule, which amended the Guidelines, revised and clarified requirements regarding compensatory mitigation for losses of aquatic resources (see 33 CFR Part 332 and 40 CFR Part 230, Subpart J). The 2008 Mitigation Rule did not alter the circumstances under which compensatory mitigation is required for Section 404 permits (see 33 CFR Part 332.1(b) and 40 CFR Part 230.91(b)). This rule did not alter the Corps' general policy that, for individual permits, all compensatory mitigation will be for significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment (see 33 CFR Part 320.4(r)).¹ For activities authorized by general permits, mitigation may be required to reduce the adverse impacts so that they are no more than minimal (see 33 CFR Part 330.1(e)(3)). The 1993 Memorandum to the Field clarified the appropriate level of analysis required for evaluating compliance with the Guidelines. The 1990 Mitigation MOA contains the policy and procedures that the agencies use in determining the type and level of mitigation necessary to demonstrate compliance with the Guidelines. The portions of the 1990 Mitigation MOA concerning the amount, type, and location of compensatory mitigation were superseded by the 2008 Mitigation Rule.

B. Guiding Principles

In this MOA, the agencies recognize that specific to the state of Alaska:

- a) Avoiding wetlands may not be practicable where there is a high proportion of land in a watershed or region which is jurisdictional wetlands;
- b) Restoring, enhancing, or establishing wetlands for compensatory mitigation may not be practicable due to limited availability of sites and/or technical or logistical limitations;
- c) Compensatory mitigation options over a larger watershed scale may be appropriate given that compensation options are frequently limited at a smaller watershed scale;
- d) Where a large proportion of land is under public ownership, compensatory mitigation opportunities may be available on public land;

¹This general policy is not a substitute for the mitigation requirements necessary to ensure that a Section 404 permit action complies with the Guidelines (see 33 CFR Part 320.4(r) n.1).

- e) Out-of-kind compensatory mitigation may be appropriate when it better serves the aquatic resource needs of the watershed; and
- f) Applying a less rigorous permit review for small projects with minor environmental impacts is consistent with the Section 404 program regulations.

III. Discussion - Mitigation Sequence

The Guidelines' mitigation sequence established a consistent approach to ensure that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems (see 40 CFR Part 230.10(a), (d)). The Guidelines define the term "practicable" as "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes" (see 40 CFR Part 230.3(1)). The first step in the mitigation sequence requires the evaluation of potential alternative sites to locate the proposed project so that aquatic impacts are avoided to the extent practicable. As the next step in the mitigation sequence, remaining impacts are to be minimized, by making changes in project design or construction methods that reduce overall project impacts. Last, after all practicable steps have been taken to avoid and minimize potential adverse effects, compensation for remaining unavoidable impacts may be required through such measures as wetlands or other aquatic resource restoration, establishment, enhancement, or, in certain circumstances, preservation in order to replace lost aquatic functions and values. Compensatory mitigation is required only to the extent that it is appropriate and practicable.

Given the unique climatological and physiographic circumstances found in Alaska, it is appropriate to apply the inherent flexibility provided by the Guidelines to proposed projects in Alaska. Applying this flexibility in a reasoned, common-sense approach will lead to effective decision-making and sound environmental protection in Alaska.

A. Avoidance

Avoiding impacts to wetlands may not be practicable in areas where there is a high proportion of land which is jurisdictional wetlands. Moreover, in some cases, the overwhelming majority of lands within a community's municipal boundary are considered jurisdictional wetlands, and the remaining non-wetlands areas may be undevelopable. As another example, on the North Slope, upland alternatives for siting oil and gas development are extremely rare given the abundance of wetlands in the area.

B. Minimization

Where wetlands have been avoided to the extent practicable, emphasis is placed on minimizing project impacts to wetlands by reducing the footprint of the project, using co-location of facilities whenever possible, implementation of best management practices to reduce environmental impacts, seeking to locate the project in wetlands with lower functions and values, or other appropriate measures. With respect to the mitigation sequence, where neither avoidance nor compensatory mitigation is practicable, minimizing impacts will be the primary means of satisfying compliance with the Guidelines. In Alaska,

minimization of impacts has been in many circumstances the only mitigation required.

C. Compensatory Mitigation

Compensatory mitigation is provided in the Guidelines in order to offset unavoidable losses of aquatic functions and values associated with the permitted destruction and/or degradation of wetlands and other aquatic resources under the Section 404 regulatory program. It is also the primary means of the Section 404 regulatory program's contribution to the national goal of no overall net loss of wetlands. However, the Guidelines and the 1990 Mitigation MOA recognize that compensatory mitigation may not be appropriate and practicable for every authorized discharge.

Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a Section 404 permit complies with the Guidelines (see 33 CFR Part 332.1(c)(2) and 40 CFR Part 230.91(c)(2)). For example, compensatory mitigation may be required to ensure that discharges do not cause or contribute to a violation of water quality standards or jeopardize a threatened or endangered species or result in the destruction or adverse modification of critical habitat under the Endangered Species Act (see 40 CFR Part 230.10(b)). Compensatory mitigation may be required to ensure that discharges do not cause or contribute to significant degradation (see 40 CFR Part 230.10(c)). The Guidelines also require compensatory mitigation measures when appropriate and practicable (see 40 CFR Parts 230.10(d) and 230.12; 33 CFR Parts 332.1 and 332.3(a)(1); and 40 CFR Parts 230.91 and 230.93(a)(1)).²

For the purposes of issuing Section 404 permits, the Corps is responsible for determining whether a proposed activity complies with the Guidelines (see 40 CFR Part 230.5; 33 CFR Part 332.1(c)(2) and 40 CFR 230.91(c)(2)), including whether compensatory mitigation is required for that Section 404 permit. The Corps determines the compensatory mitigation requirements for Section 404 permits, based on what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity (see 33 CFR Part 332.3(a)(1) and 40 CFR Part 230.93(a)(1)). Compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular Section 404 permit (see 33 CFR Part 332.3(a)(1) and 40 CFR Part 230.93(a)(1)).

- 1) **Considering Compensatory Mitigation Options in Alaska.** In general, required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully

² During the 404(b)(1) Guidelines compliance analysis, the Corps may determine that a Section 404 permit for a proposed discharge cannot be issued because of a lack of appropriate and practicable compensatory mitigation options (see 33 CFR Part 332.1(c)(3) and 40 CFR Part 230.91(c)(3)).

replace lost aquatic resource functions and values. The Corps considers compensatory mitigation options in the following order: (1) purchase of credits from an approved mitigation bank; (2) purchase of credits from an approved in-lieu fee program; and (3) completion of a permittee-responsible mitigation project. However, the Corps has discretion to override this preferential order (see 33 CFR Part 332.3(b)(2) and 40 CFR Part 230.93(b)(2)). In many parts of Alaska, the first two options may not be available or may not provide the appropriate number or resource type of credits to offset the proposed project impacts. In this case, some form of permittee-responsible mitigation is the only option and permittee-responsible mitigation developed using a watershed approach is preferred (see 33 CFR Part 332.3(b) and 40 CFR Part 230.93(b)).

- a. **Watershed Approach.** The goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites. If an appropriate watershed plan is available, the watershed approach should be based on that plan. In the absence of an appropriate watershed plan, the Corps uses a watershed approach based on analysis of information regarding watershed conditions and needs (see 33 CFR Part 332.3(c)(3) and 40 CFR Part 230.93(c)(3)).
 - b. **Watershed Scale.** Certain environmental factors in Alaska suggest that larger watershed scales than are commonly used in the lower 48 states may be appropriate. These factors include, but are not limited to: (1) large areas where wetlands remain relatively free from human alteration and opportunities for wetland restoration and enhancement are limited; and (2) large wetland dominated areas where there is a lack of upland sites appropriate for establishing wetlands. The size of watershed addressed using a watershed approach should not be larger than is appropriate to ensure that the aquatic resources provided through compensation activities will effectively compensate for adverse environmental impacts resulting from activities authorized by Section 404 permits. The Corps considers relevant environmental factors and appropriate locally developed standards and criteria when determining the appropriate watershed scale in guiding compensation activities (see 33 CFR Part 332.3(c)(4) and 40 CFR Part 230.93(c)(4); see also 33 CFR Part 332.3(d) and 40 CFR Part 230.93(d) for compensation site selection considerations).
- 2) **Compensatory Mitigation on Public Lands.** An additional factor in the evaluation of appropriate and practicable compensation sites is whether they occur on private or public lands. In Alaska, where a large proportion of land is under public ownership, compensatory mitigation opportunities may be available on public land. Compensatory mitigation projects may be conducted on private or public land. However, compensatory mitigation credit for such projects on public land must be based solely on aquatic resource functions provided by compensatory mitigation projects that are over and above the aquatic resource functions already being provided by the public land in accordance with how that land is currently being

managed by the responsible land management entity (see 33 CFR Part 332.3(a)(3) and 40 CFR Part 230.93(a)(3)). For example, compensation credit could be generated by implementing aquatic resource restoration or enhancement projects on public lands that are not currently being planned for or by providing additional levels of protection to publicly held sites.

- 3) **Technical Feasibility.** In determining whether compensatory mitigation is practicable, issues associated with the technical feasibility of restoring, enhancing, or establishing wetlands and other aquatic resources are also relevant. In spite of significant advances in restoration science, the technical challenges associated with establishing and re-establishing certain difficult-to-replace aquatic resources, such as permafrost wetlands, remains high. Compensation for impacts to these types of resources should be provided, if practicable, through in-kind rehabilitation, enhancement, or preservation since there is greater certainty that these methods of compensation will successfully offset permitted impacts (see 33 CFR Part 332.3(e)(3) and 40 CFR Part 230.93(e)(3)). The Corps has determined in many cases that establishing or re-establishing wetlands underlain by permafrost was not practicable, and therefore in-kind wetland establishment or re-establishment has generally not been required as compensatory mitigation under the Guidelines. If the permafrost layer has not been substantially altered, in-kind wetland rehabilitation or enhancement may be a practicable wetland compensatory mitigation option. As a general matter, in cases where wetland restoration is practicable, it should generally be the first option considered because the likelihood of successful ecological outcomes is greater and the impacts to ecologically important uplands are reduced compared to wetland establishment, and the potential gains in terms of aquatic resource functions are greater, compared to wetland enhancement and preservation (see 33 CFR Part 332.3(a)(2) and 40 CFR Part 230.93(a)(2)). When in-kind mitigation is determined to be technically infeasible, out-of-kind mitigation should be considered.
- 4) **Out-of-Kind Compensatory Mitigation.** In general, in-kind mitigation is preferable to out-of-kind mitigation because it is most likely to compensate for the functions and services lost at the impact site (see 33 CFR Part 332.3(e)(1) and 40 CFR Part 230.93(e)(1)). However, when the Corps determines that compensatory mitigation is necessary to ensure compliance with the Guidelines, out-of-kind compensatory mitigation may be an appropriate, practicable, and, in Alaska, an environmentally preferable alternative to wetland restoration, enhancement, establishment, or preservation. If the Corps determines, using the watershed approach described in 33 CFR Part 332.3(c) and 40 CFR Part 230.93(c), that out-of-kind compensatory mitigation will serve the aquatic resource needs of the watershed, the Corps can require that compensatory mitigation. For example, in Alaska, restoring or enhancing streams and their riparian areas impacted by mining and other activities to improve fish habitat and other stream functions, or removing barriers in streams (e.g., perched or undersized culverts) to improve connectivity and other aquatic functions may, in certain circumstances, be environmentally preferable to wetland restoration, enhancement, establishment, or preservation. If out-of-kind compensatory mitigation is required for the Section 404 permit, the Corps must document the reason(s) for that requirement in the

administrative record for the permit action (see 33 CFR Part 332.3(e)(2) and 40 CFR Part 230.93(e)(2)).

- 5) **Preservation.** Consistent with the 2008 Mitigation Rule, compensatory mitigation provided through preservation should be, to the extent appropriate and practicable, conducted in conjunction with aquatic resource restoration, establishment, and/or enhancement activities (see 33 CFR Part 332.3(h)(2) and 40 CFR Part 230.93(h)(2)). This requirement may be waived by the Corps in cases where preservation has been identified as a high priority using a watershed approach. In those cases, the compensation ratios shall be higher. Lands that are already provided a high level of protection (e.g., state and national parks, wildlife refuges, and designated wilderness) would not be eligible for preservation credit given the requirement in the 2008 Mitigation Rule that the resources being considered for preservation must be under threat of destruction or adverse modifications (see 33 CFR Part 332.3(h)(1)(iv) and 40 CFR Part 230.93(h)(1)(iv)).

IV. Flexibility in the Review of Small Projects with Minor Impacts

The Guidelines also afford flexibility in the review of Section 404 permit applications based on the relative severity of the environmental impact of proposed discharges of dredged or fill material. In particular, the amount of information and the level of scrutiny needed to determine compliance with the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project (see, e.g., 40 CFR Parts 230.6 and 230.10, and the 1993 Memorandum to the Field).

While Section 404 permit reviews are associated with a wide variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impacts are likely to be innocuous (e.g., de minimis), it is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex.

Moreover, substantial numbers of permit applications are for minor, routine activities that have little, if any, potential for adverse effects on the aquatic environment. It generally is not intended or expected that extensive evaluation or analysis will be needed to make findings of compliance with the Guidelines in such routine cases.

In determining whether a proposed discharge would have minor impacts, and consequently, the appropriate level of analysis, the permitting authority should consider whether the proposed project meets the following considerations:

- a) located in aquatic resources of limited natural function;
- b) small in size and causes little direct impact; and
- c) limited potential for secondary or cumulative impacts; or causes only temporary impacts (i.e., short-term and reversible impacts).

It is important to recognize, however, that in some circumstances even small or temporary fills result in substantial impacts, and that in such cases a more detailed evaluation is necessary. In particular, where high value coastal wetlands may be adversely affected or

marine, estuarine, or anadromous fish habitat may be harmed, it is likely that a more detailed Guidelines analysis will be necessary. Moreover, it is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts for the purposes of the Guidelines' alternatives analysis.

The Guidelines require that the Corps can only authorize discharges that are the least environmentally damaging practicable alternative ("LEDPA"), which is the practicable alternative with the least amount of adverse impact on the aquatic ecosystem so long as the alternative does not have other significant adverse environmental consequences³ (see 40 CFR Part 230.10(a)). Part of this analysis is overcoming the presumption that for projects that do not require siting in special aquatic sites (e.g., wetlands) to fulfill their basic purpose, practicable alternatives that do not include discharges to special aquatic sites are available and would have less adverse impact, unless demonstrated otherwise. However, in reviewing projects that have the potential for only minor impacts on the aquatic environment, the Guidelines would not necessarily require an elaborate search for practicable alternatives if it is reasonable to anticipate that there are only minor differences between the environmental impacts of the proposed activity and other potentially practicable alternatives. Moreover, when it is determined that there is no identifiable or discernible difference in adverse impacts on the environment between the applicant's proposed alternative and all other practicable alternatives, then the applicant's alternative is generally considered as satisfying the Guidelines' alternatives analysis requirements.

Even where a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, the Guidelines allow it to be rejected if it would have other significant adverse environmental consequences (see 40 CFR Part 230.10(a)). This flexibility allows for the consideration of adverse impacts to other ecosystems in deciding whether there is a less environmentally damaging practicable alternative. For example, in some areas of Alaska, impacts to certain uplands, such as moose calving areas or important riparian habitat next to rivers and streams inhabited by anadromous fish should be considered as part of such an analysis. Hence, in applying the alternatives analysis required by the Guidelines, it is not appropriate to select an alternative where minor impacts on the aquatic environment are avoided at the cost of substantial impacts to other natural environmental values.

³ Except as provided under 33 U.S.C. § 1344(b)(2).

Where proposed activities result in negligible impacts, it may be possible to conclude that no alternative location could result in less adverse impact on the aquatic environment within the meaning of the Guidelines. In such cases, it is not necessary to conduct an offsite alternatives analysis; instead, on-site minimization may be more appropriate. However, if applicable, the requirements of 40 CFR Part 230.10(a)(3) still apply to proposed activities that would result in negligible impacts.

V. Conclusion

The Clean Water Act Section 404 program provides a significant degree of flexibility in making permit decisions to reflect circumstances throughout the Nation, including Alaska. This MOA is consistent with EPA and Army regulations and policies for the Section 404 program as it relates to determination of appropriate mitigation. For Alaska:

- Avoiding wetlands may not be practicable where there is a high proportion of land in a watershed or region which is jurisdictional wetlands;
- Restoring, enhancing, or establishing wetlands for compensatory mitigation may not be practicable due to limited availability of sites and/or technical or logistical limitations;
- Compensatory mitigation options over a larger watershed scale may be appropriate given that compensation options are frequently limited at a smaller watershed scale;
- Where a large proportion of land is under public ownership, compensatory mitigation opportunities may be available on public land;
- Out-of-kind compensatory mitigation may be appropriate when it better serves the aquatic resource needs of the watershed; and
- Applying a less rigorous permit review for small projects with minor environmental impacts is consistent with the Section 404 program regulations.

Given this flexibility, Alaskans should be assured that discharges of dredged or fill material into waters of the United States will be evaluated in a reasonable manner, consistent with the agencies' goal of fair, flexible, and effective protection of the Nation's wetlands resources.

VI. Limitations

This MOA is a voluntary agreement between the EPA and the Army that expresses the policies of the parties, does not create any contractual obligations, and is not enforceable by any party. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity against the Army or the EPA, their officers or employees, or any other person. The parties reserve the right to modify this agreement in accordance with its terms without public notice.

The Clean Water Act provisions and regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, does not create legally binding requirements, nor is it a regulation itself. It does not impose legally binding requirements on the EPA, the Army, or the regulated community, and may not apply to a particular situation depending on the circumstances. The EPA and the Army retain the discretion to adopt approaches on a case-by-case basis that differ from those provided in this document as appropriate and consistent with statutory and regulatory requirements



JUN 15 2018

E. Scott Pruitt (Date)
Administrator

Environmental Protection Agency



R.D. James (Date)
Assistant Secretary for Civil Works

Department of the Army

Appendix 2. Timeframe for Corps' Actions

The following data is from the 2018-2022 Corps' dataset. "Average number of days old" refers to the entire timeframe from an application being determined to be complete until permit issuance or withdrawal.

All Corps' Actions

The first analysis below includes all Corps' actions – identified in the ORM-2 database as AJD, APPEAL, COMPCERT, CONGRINQA, DANGERZON, DEVESAEFH, DEVINLIEUA, DEVMBBA, DEVRPSS, EIS, EMERGA, FOIAA, LOP, NONCOMPLY, NPR, NWP, PERMITMOD, PERMTRANS, PGP, PJD, PREAPPCONS, PUBMEETA, RGP, SP, STRMOD, UNAUTHACT

Average Number of Days to Issue Public Notice: 14.99

Section 10: 14.36

Section 404: 13.29

Section 10/404: 32.06

Average Number of Days in Review: 53.64

Section 10: 51.58

Section 404: 44.81

Section 10/404: 80.15

No Authority Data: 93.24

Average Number of Days Old: 68.86

Section 10: 62.47

Section 404: 74.88

Section 10/404: 112.42

No Authority Data: 84.19

Standard Permits (SP):

Average Number of Days to Issue Public Notice: 20.48

Section 10: 14.36

Section 404: 13.30

Section 10/404: 32.06

No Authority Data: 26.33

Average Number of Days in Review: 153.30

Section 10: 143.07

Section 404: 132.21

Section 10/404: 194.27

No Authority Data: 119.56

Average Number of Days Old:

Section 10: 162.40

Section 404: 158.15

Section 10/404: 267.52

No Authority Data: 93.63

Letters of Permission (LOP):

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: 79.52

Section 10: 78.71

No Authority Data: 121.00

Average Number of Days Old: 90.35

Section 10: 92.35

No Authority Data: 62.81

Permit Modifications (MODs):

Average Number of Days to Issue Public Notice: 11.50

No Authority Data: 11.50

Average Number of Days in Review: 78.80

No Authority Data: 78.80

Average Number of Days Old: 54.43

No Authority Data: 54.43

Nationwide Permits (NWP):

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: 37.82

Section 10: 57.29

Section 404: 33.39

Section 10/404: 39.40

No Authority Data: 50.88

Average Number of Days Old: 50.26

Section 10: 69.20

Section 404: 46.37

Section 10/404: 55.40

No Authority Data: 32.86

Regional General Permits (RGPs):

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: 22.91

Section 10: 16.16

Section 404: 30.00

Section 10/404: 5.00

No Authority Data: 9.15

Average Number of Days Old: 32.43

Section 10: 17.12

Section 404: 43.88

Section 10/404: 22.00

No Authority Data: 41.27

Environmental Impact Statements (EISs):

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: N/A

Average Number of Days Old: 1331.08

No Authority Data: 1331.08

Appeals:

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: 1

Average Number of Days Old: 23.00

No Authority Data: 23.00

Unauthorized Actions:

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: N/A

Average Number of Days Old: 194.74

Section 10: 126.46

Section 404: 247.74

Section 10/404: 122.91

No Authority Data: 135.01

Non-Compliance:

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: N/A

Average Number of Days Old: 131.27

Section 10: 24.67

Section 404: 141.21

Section 10/404: 78.75

No Authority Data: 168.67

Compliance:

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: N/A

Average Number of Days Old: 23.92

No Authority Data: 23.92

Emergency Actions:

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: N/A

Average Number of Days Old: 19.5

No Authority Data: 19.5

In-Lieu Fees (ILFs):

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: N/A

Average Number of Days Old: 518.5

No Authority Data: 518.5

Mitigation Banks:

Average Number of Days to Issue Public Notice: N/A

Average Number of Days in Review: 503.67

No Authority Data: 503.67

Average Number of Days Old: 968.92

No Authority Data: 968.92

Preliminary Jurisdictional Determinations (PJDs): No Data

Approved Jurisdictional Determinations (AJDs): No Data

Appendix 3. Recommendations for Related Program Coordination to Improve Alaska Permitting Efficiency

The State may be able to realize additional program efficiencies associated with 404 Program assumption by taking advantage of opportunities to merge with other existing permits/authorizations.

Section 10 permitting

The State could develop and seek Corps' approval for an SPGP for Section 10 permitting in waters where the Corps retains 404 jurisdiction. A 404 SPGP combined with at Section 10 SPGP for specific types of projects could allow the State to become the sole permitting authority for projects in waters otherwise retained by the Corps.

Permit Application Coordination with the Corps

The State could develop an MOU with the Corps that allows a permittee to submit a single, electronic permit application to DEC. DEC could then review the application to determine if 1. the project is in a WOTUS in State-assumed waters (and inform the permittee that the State will handle the permitting) or, 2. the project is in a Corps-retained water (and inform the permittee that the Corps will handle the permitting). This allows a single "point of entry" for permittees and reduces confusion on which agency they apply to.

Combine Permit Authorizations Under Multiple Regulatory Programs Using a Single Permit

404 and 402 Permit for Certain Projects: Some projects require both a 404 permit for dredge and fill activities and a 402 permit for stormwater management for the same project. After program assumption and any phase-in period, DEC could consider developing a single permit application that covers both the 404 and the 402 stormwater permits and a permit that covers both, further streamlining permitting for project proponents. This approach might make the most sense for projects that include long-term earthwork such as mines.

Combine State 404 permit with DNR gravel permit application: Once the State assumes the 404 Program, it could combine the permit application and permit for 404 and the DNR gravel extraction authorization – streamlining for both the applicant and two State agencies.

Application for Permits to Mine in Alaska: Alaska already has a nearly one-stop shop within DNR for mining project proponents to apply for multi-agency permits necessary for operation. The Application for Permits to Mine in Alaska covers DNR's TWUP, DF&Gs Title 16 authorization, APDES permitting under CWA Section 402, and some (GP) authorizations by the Corps. All permits/authorizations are currently under State authorities, except for the 404 permit. Via State program assumption of the 404 Program, all authorizations necessary for mining, unless operating on BLM lands, will fall under

the State, further streamlining permitting and encouraging responsible resource development.

Use of DNR Large Project Coordination

The DNR Office of Project Management and Permitting coordinates project timelines and permit applications, permits issuance, and scheduling for large projects, at the request of the applicant. Over the years, they have learned that it is easy to take the lead on project coordination between State agencies and more challenging to engage the federal permitting authorities into the process. State assumption of 404 brings one more permit under the State umbrella and permitting can be easily coordinated with the rest of the project.

In addition to coordinating agency permitting and regulatory activity, OPMP also coordinates agency billing to the applicant for the reimbursement of State agency costs incurred during permitting and inspection activities.

University of Alaska Coordination

DEC and sister agencies DNR and DF&G have the ability to work with the University of Alaska (a State University) to help design programs and produce graduates with environmental and natural resource permitting and compliance training before they ever hit the job market - a "permitology" degree, tailored to Alaska resource needs that would include courses on Alaska's main industry sectors (mining, construction, fisheries, tourism, oil and gas, and forestry), State and federal laws and regulations that support careers in Alaska's resource agencies, along with specific technical courses. The curriculum could include Alaska wetlands specific courses – regulation, jurisdiction, and permitting.

Multi-agency Mapping Cooperation

Mapping of Alaska is still in its infancy – there is no single source for the mean higher high water mark on the coastline or showing wetlands throughout the state. The Natural Resource Conservation Service (NRCS) and the US Fish and Wildlife Service (USFWS), create and maintain maps of soil, vegetation, and wetlands throughout the nation. The NRCS and USFWS are part of the inter-agency team coordinated by the Alaska Geospatial Office, that is in the process of creating accurate mapping coverages of Alaska's wetlands, hydrography, vegetation, and coastlines. This interagency team also includes numerous other federal (including BLM, ACCOE, USFS, NOAA NPS, USGS), state (including DNR, DEC, DFG) and local agencies, Native corporations, NGOs, and private sector businesses. These coverages will all be critical to an efficient. State 404 Program, and collaboration with the NRCS will be important. See the "Alaska Wetland Technical Working Group, Statewide Wetland Inventory, Ten Year Strategic Plan, 2019-2029" found at [Alaska Wetlands Mapping Strategy WTWG Final Web 20191115 | Alaska Geospatial Council](#).

Compliance and Enforcement Synergy

As the State already implements the 402 Program, DEC could realize cost savings by cross-training staff in the Compliance and Enforcement section. Travel to remote areas of Alaska is

very expensive, but staff travelling off the road system could inspect both 402 and 404 permitted facilities in a single trip. DEC has a fledgling drone program that could also be recruited to conduct cost-effective wetlands and JD determinations and compliance inspections.

For projects that are coordinated under the OPMP umbrella, the coordination is maintained “from cradle to grave.” For example, mining projects get OPMP coordination for inspection and compliance during operations, where to the extent practicable, inspections are usually multi-agency. A State-assumed 404 Program should leverage this synergy.

Appendix 4. Other Programmatic Recommendations

Enforcement authority: A State assumed program must have sufficient authority to enforce permit violations and activities undertaken without an appropriate permit. Currently, most DEC enforcement actions require the involvement of the Department of Law and settlement negotiations with the offender. The State could realize additional streamlining (operate the program at lower cost) if DEC seeks and receives administrative penalty authority for minor violations. There has been past public and legislative concern about providing administrative penalty authority to DEC which could be alleviated by requiring Director-level (administration-appointed position) approval of any fines levied using the administrative penalty authority. The State can also realize improved follow-through on monitoring and enforcement under an assumed program where permitting/monitoring/enforcement are housed within a single State agency, rather than the current model where the Corps issues the permit and EPA enforces it. A State program can provide robust enforcement and compliance assistance programs providing consistent protection of Waters of the United States (WOTUS) while encouraging good corporate environmental stewardship.

Statewide Programmatic General Permits (SPGPs): Statewide Programmatic General Permits (SPGPs) are a type of permit that is issued by the Corps and administered by a state agency. They are designed to eliminate duplication of effort between Corps' districts and states, as well as to make the permitting process more efficient with flexibility as to the geographic region covered. SPGPs are issued by the District Engineer for a general category of activities when the following conditions are met:

- The activities are similar in nature and cause minimal environmental impact (both individually and cumulatively), and
- The Regional Permit reduces duplication of regulatory control by state and Federal agencies.

DEC could work with the Corps to develop SPGPs that are issued by the Corps for State implementation in non-assumable waters – waters retained by the Corps (marine waters and fresh waters retained by the Corps due to their link to interstate or foreign commerce – see Section 4). These permits would bring more permitting under the State umbrella and have similar benefits as State-issued permits – less confusion on who the permitting authority is, local understanding, timely, and predictable.

While SPGPs can be done without formal state program assumption, SPGPs are not easier than assumption, as they rely on trust between the Corps and the State, whereas, under assumption, if a state meets the specific program assumption standards, EPA must approve the program. One way to build that trust is to conduct joint field work. DEC could consider one or more SPGPs to help develop program capacity while working towards full program assumption.

Regional General Permits (RGPs): A state with an assumed 404 Program can issue Regional General Permits (RGPs). An RGP operates similar to an SPGP, except they are issued by the state (after program assumption) to a local government to cover specific types of local projects.

The local government then issues project approvals under the RGP, with DEC oversight. The local government must first have a local wetlands conservation plan with land use specified, and once approved can be used to guide development of an RGP to streamline permitting for projects that meet specified requirements to protect waterbodies. States have more interest in reducing the permitting burden than the Corps, so DEC would have more incentive to issue RGPs for local implementation.

Stakeholder engagement: DEC should develop a strong stakeholder engagement process during development of the assumption application. It should include representatives of the major industries in Alaska, local government, and the public. The group will need an overview of 404 (a 404 "101 course") first, and then DEC should take very specific issues/recommendations (that may be developed with subject matter experts) to the group for discussion and feedback to be incorporated into program design. For examples:

- Novel projects that could potentially be considered for mitigation
- Area-specific adjustments to the administrative boundary between assumed and retained waters

404 Permit Process Timeline: The Corps issues a public notice that they have received a permit application and they make the application available to the public for comment. Under this approach, the public does not have an understanding of what conditions the Corps might place on the permittee, making it difficult to submit meaningful comments. Florida has solved that problem with their permitting schedule:

- Florida provides the permit application to agencies for a 30-day internal review (including FWS, SHPO, etc.). The timeframes are established via MOU with the other agencies
- Florida has up to 30 days to use the information submitted by the other agencies to produce a draft permit for public review
- The public review period is 30 days
- Florida considers public input then issues a Notice to Issue the permit. The permittee and public have 21 days in which to appeal.
- The entire process takes up to 111 days. The timeframe can be reduced when the other agencies reply in less than 30 days and preparation of the draft permit takes less than 30 days. Florida has indicated that their average permit issuance time is 61 days.

DEC should adopt a similar approach that is more user-friendly to the public and allows them to review the draft Department decision on a permit application (the draft permit), not just the application.

Regulations: As DEC develops 404 Program regulations, there should be a tie between the permitting procedures and the Chapter 15 appeals process (if DEC intends to use the existing

appeals process) and an update to Chapter 70 to allow "short term variances" to cover the project duration.

Appendix 5. State of Alaska Comments to the Proposed Rule Redefining WOTUS

Document begins on next page.



Governor Mike Dunleavy
STATE OF ALASKA

February 7, 2022

Mr. Damaris Christensen
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Environmental Protection Agency
1200 Pennsylvania Avenue NW
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Ms. Stacey Jensen
Office of the Assistant Secretary of the Army
for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310

Re: State of Alaska's Comments in Response to the Revised Definition of "Waters of the United States" under the Clean Water Act ("Proposed Rule"); Docket # EPA-HQ-OW-2021-0602

Dear Mr. Christensen and Ms. Jensen,

Thank you for the opportunity to comment on the proposed definition of "Waters of the United States" ("WOTUS"), which establishes the scope of federal jurisdiction under the Clean Water Act ("CWA"). Because of its unique characteristics, Alaska stands to be disproportionately affected by the Proposed Rule, and particularly, by the vast expansion of federal jurisdiction it will inflict on states. As the Supreme Court has noted, expanded CWA jurisdiction has high costs and lengthy delays resulting from the federal government's heavy hand with Army Corps permitting. "The average applicant for an individual permit spends 788 days and \$271,596 in completing the process not counting costs of mitigation. Over \$1.7 billion is spent each year by the private and public sectors obtaining wetlands permits. These costs cannot be avoided because the Clean Water Act imposes criminal liability as well as steep civil fines on a broad range of ordinary industrial and commercial activities."¹

Alaska's climate and geography are incredibly hydrologically diverse. We have areas receiving less than five inches of annual precipitation, areas experiencing over 150 inches of annual precipitation, areas that are semi or permanently frozen, and areas somewhere in between. By any metric, Alaska has significantly more water than all other states: Alaska has roughly 900,000 miles of navigable rivers and streams; 22,000 square miles of lakes; nearly 27,000 miles of coastline; and more wetlands than every other state *combined*.² A large percentage of Alaska's lands are potential wetlands, 43 percent, compared to other states, which average less than five percent.³ Alaska needs regulations

¹ *Rapanos v. United States*, 547 U.S. 715 (2006) (plurality op.) (citing Sunding & Zilberman, *The Economics of Environmental Regulation by Licensing: An Assessment of Recent Changes to the Wetland Permitting Process*, 42 *Natural Resources J.* 59, 74-76, 81 (2002)).

² Alaska has 63% of the Nation's total wetlands. Hall, Jonathan V, W.F. Frayer and Bill O. Wilen, *Status of Alaska Wetlands*, 1994, available at <https://www.fws.gov/wetlands/documents/status-of-alaska-wetlands.pdf>. Every other state clocks in well below the numbers listed above. See U.S. Geological Survey, *Land Area and Water Area of Each State*, accessible at <https://www.usgs.gov/special-topics/water-science-school/science/how-wet-your-state-water-area-each-state> (numbers based on U.S. Census Bureau, *Geography: State Area Measurements* (2010)); see also Bureau of Land Mgmt., *National Hydrography Dataset Information* (2014) (lake count).

³ Hall, Jonathan V, W.F. Frayer and Bill O. Wilen, *Status of Alaska Wetlands*, 1994, at 3, available at <https://www.fws.gov/wetlands/documents/status-of-alaska-wetlands.pdf>.

Mr. Damaris Christensen
Ms. Stacey Jensen
February 7, 2022
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tailored to the diversity and abundance of its waters, not a one-size-fits-all rule imposing excessive federal requirements.

Alaska cannot stand behind the Proposed Rule. First, the Proposed Rule would expand WOTUS to cover more ground than under any previous administration. Legally stretching the definition to such broad proportions also highlights the failure of Congress to adequately define WOTUS in statute. An argument could be made that the lack of an adequate statutory definition causes WOTUS to be unconstitutionally vague. As one justice has noted, “[t]he Clean Water Act is unique in both being quite vague in its reach, arguably unconstitutionally vague, and certainly harsh in the civil and criminal sanctions it puts into practice.”⁴ Such an expansion is legally unjustifiable and precludes any possibility of a partnership between states and the federal government.

Second, the science underpinning the Proposed Rule is insufficient to support its application to several Alaska-specific categories of waters. Third, the Proposed Rule impedes Alaska in carrying out its constitutionally imposed responsibility to manage its own natural resources⁵ and impinges on Alaska’s right to manage its own wetlands in contravention of § 6(m) of the Alaska Statehood Act, which recognizes Alaska’s title to submerged navigable lands within its boundaries and further grants by incorporation “the right and power to manage, administer, lease, develop, and use said lands and natural resources all in accordance with applicable [s]tate law.”⁶ Fourth, the Proposed Rule flouts § 101(b) of the Clean Water Act, which “recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of [s]tates” to manage and protect water resources.⁷

Accordingly, Alaska requests four exclusions from the WOTUS definition: (1) Alaska permafrost wetlands, (2) Alaska forested wetlands, (3) Alaska wetland mosaics, and (4) Alaska waters and lands falling under the “other waters” category. These exclusions are carefully tailored to mirror the data gaps in the science underpinning the Proposed Rule.

Rather than continuing to utterly ignore Alaska and neglect its interests (or worse, treat Alaska as subservient), the agencies must work with, and respect, Alaska. This will involve relinquishing power that was never the agencies’ to begin with. This will involve accepting that states will make decisions with which the agencies may disagree. Most fundamentally, this will involve recognizing the states as co-equal sovereigns.

Rest assured my Administration will stand up for the rights of Alaska and of Alaskan property owners. This cover letter and its attachment should be considered part of our official comments for the record.

Sincerely,



Mike Dunleavy
Governor

⁴ Oral Argument Transcript, Justice Kennedy p.18, *Hawkes v. United States*, 136 U.S. 1807 (2016).

⁵ See Alaska Constitution, Article VIII: Natural Resources.

⁶ Alaska Statehood Act § 6(m); Submerged Lands Act of 1953, 43 U.S.C. § 1311(a).

⁷ Clean Water Act § 102(b).

Mr. Damaris Christensen
Ms. Stacey Jensen
February 7, 2022
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Enclosure: Alaska Department of Environmental Conservation Comments to Proposed Rule

cc: The Honorable Lisa Murkowski, United States Senate
The Honorable Dan Sullivan, United States Senate
The Honorable Don Young, United States House of Representatives
The Honorable Jason W. Brune, Commissioner, Department of Environmental Conservation
The Honorable Doug Vincent-Lang, Commissioner, Department of Fish and Game
The Honorable Corri A. Feige, Commissioner, Department of Natural Resources
The Honorable Ryan Anderson, Commissioner, Department of Transportation and Public
Facilities
The Honorable Treg R. Taylor, Attorney General, Department of Law
Ms. Tami Fordham, Director, Environmental Protection Agency, Anchorage Operations
Office
Ms. Michelle Pirzadeh, Acting Regional Administrator, Environmental Protection
Agency Region 10

State of Alaska Comments
To the Proposed Rule redefining WOTUS

February 9, 2022

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Introduction

Thank you for the opportunity to comment on the proposed definition of “Waters of the United States” (“WOTUS”), which establishes the scope of federal jurisdiction under the Clean Water Act (“CWA”). Due to its unique characteristics, Alaska stands to be disproportionately affected by the new WOTUS definition proposed by EPA and the Department of the Army (the “agencies”), and particularly, by its thinly veiled expansion of federal jurisdiction.¹

Alaska’s climate and geography are incredibly hydrologically diverse. We have areas receiving less than 5 inches of annual precipitation, areas experiencing over 150 inches of annual precipitation, areas that are semi or permanently frozen, and areas somewhere in between. By any metric, Alaska has significantly more water than all other states: Alaska has roughly 900,000 miles of navigable rivers and streams; 22,000 square miles of lakes; nearly 27,000 miles of coastline; and more wetlands than every other state *combined*.² A large percentage of Alaska’s lands are potentially wetlands—43%—as compared to other states, which average less than 5%.³ Alaska needs regulations tailored to the diversity and abundance of its waters, not a one-size-fits-all rule imposing excessive federal requirements.

Alaska has reviewed the Proposed Rule and cannot stand behind several of the Rule’s provisions. Most fundamentally, they expand federal WOTUS jurisdiction over more Alaska lands and waters than ever before. This expansion, which takes a sledgehammer to principles of cooperative federalism, is all the more alarming for its masked nature.

¹ As several Supreme Court justices have alluded to, a WOTUS definition expanding regulatory authority under the CWA will heavily impact the State of Alaska. *Rapanos v. United States*, 547 U.S. 715, 722 (2006) (plurality op.) (recognizing that the “federal regulation of land use . . . under the Clean Water Act” has undergone an “immense expansion” as illustrated by its coverage extending over “half of Alaska”).

² Alaska has 63% of the Nation’s total wetlands. Hall, Jonathan V, W.F. Frayer and Bill O. Wilen, *Status of Alaska Wetlands*, 1994, available at <https://www.fws.gov/wetlands/documents/status-of-alaska-wetlands.pdf>. Every other state clocks in well below the numbers listed above. See U.S. Geological Survey, *Land Area and Water Area of Each State*, accessible at <https://www.usgs.gov/special-topics/water-science-school/science/how-wet-your-state-water-area-each-state> (numbers based on U.S. Census Bureau, *Geography: State Area Measurements* (2010)); see also Bureau of Land Mgmt., *National Hydrography Dataset Information* (2014) (lake count).

³ Hall, Jonathan V, W.F. Frayer and Bill O. Wilen, *Status of Alaska Wetlands*, 1994, at 3, available at <https://www.fws.gov/wetlands/documents/status-of-alaska-wetlands.pdf>.

Tracking the gaps in the scientific data underpinning the Proposed Rule's application to Alaska, Alaska requests four exclusions: (1) Alaska permafrost wetlands; (2) Alaska forested wetlands; (3) Alaska's wetland mosaics; and (4) Alaska waters and lands falling under the "other waters" category. Each exclusion is carefully crafted to mirror these data gaps. Due to the lack of sufficient scientific support, these exclusions are necessary.

Rather than continuing to utterly ignore Alaska and neglect its interests (or worse, treat Alaska as subservient) the agencies must work with Alaska. This will involve, among other things, relinquishing power that was never the agencies' in the first place.⁴ Only then can we, together, protect our Nation's waters under a scheme of cooperative federalism.

1. Alaska objects to the Proposed Rule's extension of WOTUS to cover more land and water than under any definition before.

The agencies claim the Proposed Rule is a "return [of] the definition of 'waters of the United States' to its longstanding and familiar definition reflected in the 1986 regulations[,] amended only for consistency with intervening Supreme Court decisions."⁵ This "return," the agencies allege, will "quickly" and "durably" protect national waters by "provid[ing] a known and familiar framework for co-regulators and stakeholders" that will be easy to implement.⁶

To this end, the Proposed Rule begins with the 1986 definitions and adds two standards from U.S. Supreme Court caselaw: the "relatively permanent standard," which comes from Justice Scalia's plurality opinion in *Rapanos v. United States*, and the "significant nexus standard," which comes from Justice Kennedy's concurring opinion in the same case.⁷ The Proposed Rule also changes the 1986 definition of the phrase "other waters" to cover waters meeting either the relatively permanent or significant nexus standards, replacing the older definition of waters whose use "could affect interstate or foreign commerce."⁸

As explained below, the Proposed Rule stretches federal WOTUS power to cover more ground than that under any previous administration. First, the decision to adopt the 1986 regulations and both *Rapanos* standards ensures greater WOTUS coverage than either the 1986 regulations alone or the Kennedy test alone. Second, the agencies mis-recite both *Rapanos* standards: the "relatively permanent" standard is articulated differently in different sections of the Rule packet, creating a muddled picture of its applicability; and the "significant nexus" standard misdefines "significant" while quietly altering a key word. Third, the agencies change the 1986 definition of "other waters"

⁴ The agencies' decision to stretch the WOTUS definition to such broad proportions highlights Congress' failure to adequately define WOTUS in statute. An argument could be made that the lack of an adequate statutory definition causes WOTUS to be unconstitutionally vague. See Oral Argument Transcript, Justice Kennedy p.18, *Hawkes v. United States*, 136 U.S. 1807 (2016) ("The Clean Water Act is unique in both being quite vague in its reach, arguably unconstitutionally vague, and certainly harsh in the civil and criminal sanctions it puts into practice.").

⁵ 86 FR 69406; "1986 regulations" as used in the Proposed Rule is synonymous with "pre-2015 regulations." 86 FR 69373.

⁶ 86 FR 69375, 69385.

⁷ 547 U.S. 715 (2006); 86 FR 69379–69380 (explaining that these two standards were "established in *Rapanos*").

⁸ 86 FR 69418.

to create an entirely new, and unconstitutionally broad, catch-all provision. These distortions and engorgements create more WOTUS coverage than ever before.

Alaska cannot endorse such a decimation of states' rights. This expansion violates Alaska's rights to manage our own wetlands under § 6(m) of the Alaska Statehood Act, which vests title of submerged navigable lands to states and further grants by incorporation "the right and power to manage, administer, lease, develop, and use said lands and natural resources all in accordance with applicable [s]tate law."⁹ This expansion impedes Alaska's ability to carry out its constitutional responsibility to carefully manage its own natural resources.¹⁰ And this expansion defies § 101(b) of the Clean Water Act, which "recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of [s]tates" in carrying out the Act.¹¹

a. The agencies' decision to return to the expansive 1986 WOTUS regulatory definition and adopt both Rapanos tests is a decision to expand federal power.

A return to the 1986 regulations is a return to a time of heightened¹² federal WOTUS jurisdiction, when the agencies created regulations like the "Migratory Bird Rule," which extended jurisdiction to any intrastate waters "[w]hich are or would be used as habitat" by migratory birds.¹³ Under the 1986 regulations, WOTUS included "traditional navigable waters, interstate waters, and territorial seas; impoundments of jurisdictional waters; intrastate waters and wetlands, the 'use, degradation, or destruction of which could affect interstate or foreign commerce;' tributaries of jurisdictional waters; and wetlands adjacent to jurisdictional waters that are not themselves jurisdictional."¹⁴ An "[o]ther waters" provision added "intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce."¹⁵

⁹ Alaska Statehood Act § 6(m); Submerged Lands Act of 1953, codified at 43 U.S.C. §§ 1301–1356b. The relevant provision provides in full:

It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof[.]

43 U.S.C. § 1311(a).

¹⁰ Alaska Constitution, Article VIII Natural Resources.

¹¹ 33 U.S.C. § 1251(b).

¹² *Rapanos*, 547 U.S. at 722 (plurality op.).

¹³ 51 Fed.Reg. 41217. The Migratory Bird Rule was later invalidated—in 2001. See *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001) ("SWANNC").

¹⁴ *United States v. Mashui*, -- F. Supp.3d --, 2021 WL 2719247, at *3 (D.S.C. July 1, 2021) (quoting 33 C.F.R. § 328.3(a)(1)–(7) (1986)); Final Rule for Regulatory Programs of the Corps of Engineers, 51 Fed. Reg. 41,206 (Nov. 13, 1986). EPA promulgated identical regulations two years later. See Clean Water Act Section 404 Program Definitions and Permit Exemptions – Section 404 State Program Regulations, 53 Fed. Reg. 20,764 (June 6, 1988).

¹⁵ 33 C.F.R. § 328.3(a) (1986); 40 C.F.R. § 230.3(s)(3) (1988).

Two United States Supreme Court cases subsequently limited this power. In *SWANCC v. U.S. Army Corps of Engineers*, the Supreme Court invalidated the Migratory Bird Rule, holding that “nonnavigable, isolated, intrastate waters” cannot be WOTUS.¹⁶ In *Rapanos v. United States*, the Scalia plurality opinion and Kennedy concurrence endeavored to further limit this power.¹⁷ While Justices Scalia and Kennedy differed in their tests—Scalia created a “relatively permanent” standard while Kennedy created a “significant nexus” standard—five justices agreed that the Corps’ interpretation of its own power, in that case, was untenable.¹⁸

b. The agencies depart from this history by employing the Rapanos tests in a way that expands, not limits, their power. The agencies achieve this by adopting both Rapanos tests and by wielding them as independent sources of jurisdiction. This decision, combined with the agencies’ decision to recodify the expansive 1986 rules, sets the stage for an unprecedented expansion of federal WOTUS power. If the 1986 rules extended the WOTUS definition “to the outer limits of Congress’ commerce power[.]”¹⁹ this new definition blasts right through them.²⁰ The reach of the “relatively permanent” standard is unclear.

The Proposed Rule offers conflicting statements as to how the relatively permanent standard will apply. On the one hand, the preamble states that this standard will simply create “a subset of waters that will virtually always have the requisite nexus” under the significant nexus standard.²¹ This view finds some degree of support in one of the definitions articulated in the Proposed Rule, which is that

¹⁶ *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng’rs*, 531 U.S. 159, 174 (2001) (*SWANCC*).

¹⁷ *Rapanos*, 547 U.S. at 734 (plurality op.) (stating that plurality opinion’s “interpretation of the phrase “the waters of the United States” “confirms th[e] limitation of its scope”); *id.* at 767 (Kennedy, J., concurring) (“Absent a significant nexus, jurisdiction under the Act is lacking.”).

¹⁸ *Rapanos*, 547 U.S. at 739 (plurality op.) (concluding that “[t]he Corps’ expansive interpretation of ‘the waters of the United States’ is thus not ‘based on a permissible construction of the statute’”); *id.* at 786 (Kennedy, J., concurring) (concluding that the Corps’ conclusion that “mere adjacency to a tributary” suffices to establish WOTUS “is insufficient” and elaborating that “a similar ditch could just as well be located many miles from any navigable-in-fact water and carry only insubstantial flow toward it. A more specific inquiry, based on the significant nexus standard, is therefore necessary.”). *Rapanos* considered whether four Michigan wetlands, each located near ditches or man-made drains that eventually emptied into traditional navigable waters, constituted WOTUS. *Id.* at 729 (plurality op.). The factual record was insufficiently developed for the justices to apply their tests to these facts, so the Court remanded. *Id.*

¹⁹ *Rapanos*, 547 U.S. at 724 (plurality op.). Implicitly acknowledging this, the agencies state that they “are proposing to replace the Commerce Clause-based standard” with this new rule. 86 FR at 69419.

²⁰ For over 100 years, Congress’ invocation of its Commerce Clause power to protect the country’s waterways used navigability as the touchstone for the exercise of this power. *See* Rivers and Harbors Act of 1899, § 13, 33 U.S.C. § 407 (prohibiting the unpermitted discharge of “refuse matter” “into any navigable water of the United States” or any tributary thereof). In the Clean Water Act, Congress similarly couched its delegation of jurisdiction to the Agencies in terms of “navigable waters.” 33 U.S.C. § 1362(7) (defining “navigable waters” to mean “the waters of the United States, including the territorial seas”). While the Commerce Clause power has since been more expansively defined, the Proposed Rule violates both the traditional and modern scope of this power. *See Lopez v. United States*, 514 U.S. 549, 559 (1995) (holding that Commerce Clause power extends only over regulated activity that “substantially affects interstate commerce”).

²¹ 86 FR 69395.

[u]nder the relatively permanent standard, relatively permanent tributaries and adjacent wetlands that have a continuous surface connection to such tributaries are jurisdictional[.]²²

On the other hand, the agencies elsewhere state that they “are not reaching any conclusions, categorical or otherwise, about which tributaries, adjacent wetlands (other than those adjacent to traditional navigable waters, interstate waters, or the territorial seas) or ‘other waters’ meet either the relatively permanent or the significant nexus standard.”²³ And in the Executive Summary of the Proposed Rule, a very different definition is articulated:

The “relatively permanent standard” means waters that are relatively permanent, standing or continuously flowing and waters with a continuous surface connection to such waters.²⁴

This definition, which was the one articulated at the WOTUS Roundtable Discussion,²⁵ would appear to create two categories: (1) waters that are themselves relatively permanent; and (2) waters that have a surface connection to group (1). Group (1) waters seem to contain *no* requirement of connection to a foundational water²⁶—in other words, “nonnavigable, isolated, intrastate waters” would seem to qualify. Such a result would, of course, run afoul of *SWANCC*.²⁷

When, at the WOTUS Roundtable Discussion, Alaska asked the agencies for clarification on this standard,²⁸ the agencies did not give a clear answer. Clarity is needed because, in practice, ambiguity in the WOTUS definition has become a tool for expanding federal jurisdiction.²⁹

Alaska does not oppose use of the relatively permanent standard, as it is articulated in Scalia’s plurality opinion, to determine WOTUS jurisdiction. But it is exceedingly difficult to provide meaningful comment on a standard that has not been clearly articulated.

²² 86 FR 69434. “Relatively permanent” is further defined as “waters where the waters typically (e.g., except due to drought) flow year-round or have a continuous flow at least seasonally (e.g., typically three months).” 86 FR 69434 (citing *Rapanos* Guidance at 67).

²³ 86 FR 69390.

²⁴ 86 FR 69373.

²⁵ The agencies held a “State and Local Government Roundtable Discussion on the Proposed Revised Definition of ‘Waters of the United States’” from 10:00 AM to 1:00 PM EST on January 27, 2022.

²⁶ The Proposed Rule defines “foundational waters” as “traditional navigable waters, interstate waters, or the territorial seas.” 86 FR 69373. These waters are also sometimes called “jurisdictional waters.”

²⁷ 531 U.S. at 171 (holding that “nonnavigable, isolated, intrastate waters” cannot be covered under WOTUS).

²⁸ We posed the question: “How do the relatively permanent standard and the significant nexus standard interact under the Proposed Rule?”

²⁹ In the face of uncertainty and the costs associated with delaying a project for a formal jurisdictional determination, many regulated entities rationally select the more project-efficient route of moving forward with the permitting process despite doubtful grounds for federal jurisdiction. Particularly in a region where short construction seasons mean that a small delay can quickly turn into a much longer delay and escalate project costs, the delay involved with conducting necessary field work and debating jurisdiction with federal regulators becomes a major hurdle. Such a delay also conflicts with Congress’ directive at 33 U.S.C. § 1251 to implement the CWA in a manner that avoids unnecessary delays. The regulated public should be able to easily discern what rules apply to a given activity so they can avoid preparing and submitting unnecessary permit applications.

c. *The significant nexus standard, as articulated by the Proposed Rule, impermissibly expands federal power.*

The Proposed Rule’s “significant nexus” standard extends jurisdiction over any water having “more than speculative or insubstantial effects on the chemical, physical, or biological integrity of a traditional navigable water, interstate water, or the territorial seas.”³⁰ The significant nexus standard applies to “the ‘other waters,’ tributary, and adjacent wetland categories[.]”³¹

As a preliminary matter, the agencies’ articulation of this standard has two glaring problems. First, this definition distorts the test actually articulated by Justice Kennedy. Justice Kennedy used the connector “and” between the terms “physical” and “biological.”³² This is the difference between having to prove the requisite effect on *each* of the three types of integrity, versus having to prove an effect on only one. Swapping “and” with “or” triggers the broader of the two requirements, which, of course, results in an expansion of federal jurisdiction beyond even what Justice Kennedy intended. Alaska cannot support this.

Second, this definition misdefines “significant.” As Justice Kennedy only offered a circular definition,³³ the agencies had to craft their own. Regrettably, the agencies’ definition of “significant” as “more than speculative or insubstantial” does not fairly reflect the term’s plain meaning. Dictionaries define “significant” as: “large enough to be noticed or have an effect,”³⁴ “very important,”³⁵ “having great effect or influence,”³⁶ “[s]ufficiently great or important to be worthy of attention; noteworthy; consequential, influential,”³⁷ and “noticeable, substantial, considerable, large.”³⁸ The common denominator here is that to be “significant,” the thing described must meet or surpass some threshold degree of importance.³⁹ “More than speculative” or “insubstantial” falls far short of this threshold.⁴⁰ Lowering this threshold—as the agencies have done—results, unsurprisingly, in expanded WOTUS jurisdiction. Alaska cannot support this.

³⁰ 86 FR 69373, 69430.

³¹ 86 FR at 69436.

³² *Rapanos*, 547 U.S. at 780 (Kennedy, J. concurring) (“[W]etlands possess the requisite nexus, and thus come within the statutory phrase ‘navigable waters,’ if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” (emphasis added)).

³³ Under Justice Kennedy’s concurrence, a water has a “significant nexus” with a jurisdictional water if it “significantly affects” the chemical, physical, “and” biological integrity of that other water. *Id.*

³⁴ Significant, Merriam-Webster Online Dictionary, available at https://www.merriam-webster.com/dictionary/significant?utm_campaign=sd&utm_medium=serp&utm_source=jsonld.

³⁵ *Id.*

³⁶ Significant, Cambridge Dictionary Online, available at <https://dictionary.cambridge.org/us/dictionary/english/significant>.

³⁷ Significant, Oxford English Dictionary (2d ed. 1989).

³⁸ *Id.*

³⁹ *A card Kaufman v. Allstate New Jersey Ins. Co.*, 561 F.3d 144, 157 (3d Cir. 2009) (“The word ‘significant’ is defined as ‘important, notable.’” (quoting *Oxford English Dictionary* (2d ed. 1989))).

⁴⁰ The agencies’ choice to define “significant” as “more than insignificant” or “insubstantial” reflects the agencies’ erroneous understanding that something that is “not significant” is therefore “insignificant.” This is like saying that if water is not hot, it is cold; and concluding that, to be hot, water must simply not be cold. But water that is not “hot” is not necessarily “cold”—“lukewarm” is the left-out category in between. Ignoring that left-out category leads to the

Precisely how this standard would apply to wetlands, which of are particular importance to Alaska, is unclear.⁴¹ The Proposed Rule extends federal jurisdiction over those wetlands that are “adjacent to” certain specified waters.⁴² Invoking the 1986 regulations, the Proposed Rule defines “adjacent” as “bordering, contiguous, or neighboring.”⁴³ The Proposed Rule then “add[s] the significant nexus standard to the . . . adjacent wetland categor[y].”⁴⁴ Left unspecified is how the definition and the standard interact: Is determining a wetland’s coverage now a two-step inquiry (i.e., the wetland must first be deemed “bordering, contiguous, or neighboring,” and, second, must have a significant nexus)? Or does the significant nexus standard replace the definition of “adjacent” (i.e., a wetland is “adjacent” if it has a significant nexus)? Or perhaps the standard informs only a portion of the “adjacent” definition (i.e., whether a wetland is “neighboring”)?⁴⁵ As written, the significant nexus standard risks supplanting entirely the “bordering, contiguous, or neighboring” definition. If that is the intent, it should be clearly stated so it may be fully critiqued.

Alaska opposes the inclusion of this standard. Its infidelity to the Kennedy standard reflects either a lack of integrity or downright carelessness. Its definition of “significant” tips the scales toward the former. Far worse, however, is its vast expansion of the definition of WOTUS and consequent federalism violations. But worst yet? Its applicability to Alaska’s wetlands is clear as mud.⁴⁶

d. The “other waters” catch-all is an unjustified expansion of federal power:

The Proposed Rule extends jurisdiction over “the ‘other waters’ category from the 1986 regulations”—but “with changes informed by relevant Supreme Court precedent.”⁴⁷ In 1986, the “other waters” category covered non-foundational waters whose “use, degradation, or destruction . . . could affect interstate or foreign commerce.”⁴⁸ The Proposed Rule “delete[s] all of the provisions referring to “authority over activities that could ‘affect interstate commerce”” and “replace[s] them with the relatively permanent and significant nexus standards[.]”⁴⁹ In other words, waters whose activities involve no use, degradation, or destruction now qualify as WOTUS if only they are

incorrect conclusion that “hot” means “not-cold.” Similarly, a connection that is not “significant” is not, for that reason, “insignificant”—there is a left-out category separating these terms that is glossed over by the Proposed Rule. The Proposed Rule’s definition of “significant” as “not-insignificant” sweeps up that lukewarm category of connections which neither rise to the level of significant nor sink to the level of insignificance. This definition is, accordingly, wrong.

⁴¹ The Proposed Rule codifies an ostensibly more restrictive “relatively permanent” standard, but fails to acknowledge that this standard, in practice, would cover only a subset of waters *also* covered under the “significant nexus” standard.

⁴² 86 FR 69422. The specified waters are: (a) “traditional navigable waters, interstate waters, or the territorial sea”; (b) “relatively permanent, standing, or continuously flowing impoundments or tributaries [] that have a continuous surface connection to such waters”; and (3) “impoundments or tributaries that meet the significant nexus standard when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of foundational waters.” *Id.*

⁴³ 86 FR 69449.

⁴⁴ 86 FR 69436, 68422.

⁴⁵ After all, what need is there to further define “contiguous”?

⁴⁶ As explained *supra* n.23, in practice, ambiguity in the WOTUS definition has become a tool for expanding federal jurisdiction.

⁴⁷ 86 FR 69418.

⁴⁸ 86 FR 69418.

⁴⁹ 86 FR 69418.

relatively permanent or have a “more than speculative or insubstantial” nexus with a foundational water.

The agencies explain this change as a shift away from the outer bounds of the commerce clause power, which the agencies acknowledge was “pushe[d]” by the 1986 “other waters” definition.⁵⁰ Alaska agrees with the agencies that the 1986 definition was too broad. But Alaska disagrees that the agencies’ change *narrows* the 1986 “other waters” category. First, this change extends WOTUS jurisdiction to cover non-foundational waters that need only have more than “speculative” or “insubstantial” effects on the chemical, physical, “or” biological integrity of foundational waters. As explained above, this is an exceedingly broad standard. Second, this change applies *irrespective* of whether these waters are being used.⁵¹ The latter is the consequence of the agencies’ deletion. The agencies’ myopic focus on the addition of the *Rapanos* standards obscures this important deletion.

As if to emphasize this provision’s catch-all nature, the agencies state that “other waters” can include “wetlands that are located too far from other jurisdictional waters to be considered ‘adjacent.’”⁵² In other words: wetlands covered by the Proposed Rule are not, in fact, limited to “adjacent,” i.e., “bordering, contiguous, or neighboring” wetlands, but include *any* wetland that has a “significant nexus” to a jurisdictional water. The agencies may as well have deleted the definition of “adjacent” and been done with it. This catch-all is an underhanded way of achieving the same result.

To a state like Alaska, which has great quantities of unused waters—that are also not being degraded or destroyed, because our state laws protect against that⁵³—this change works to greatly expand WOTUS coverage. Following this change, non-foundational waters are covered if they merely have the requisite (low) connection, regardless of whether they are being used.⁵⁴ This will cover vastly more waters in Alaska than were the 1986 “other waters” category to remain unaltered. Perhaps the agencies simply did not have Alaska in mind when making this change. Or perhaps the agencies are intentionally flouting principles of federalism. Whatever the intent, the effect is to impinge on states’ rights and to force Alaska and Alaskan property owners to bear the high costs of compliance.⁵⁵

⁵⁰ 86 FR 69420.

⁵¹ 86 FR 69430.

⁵² 86 FR 69393.

⁵³ Alaska has previously provided a sample summary of state laws and programs that protect water resources. *See* State of Alaska Recommendations on a Refined Definition of WOTUS (Sept. 3, 2021) at 3 (citing (1) State of Alaska Comments on Proposed Revision of Federal Regulations Defining WOTUS under the CWA (June 19, 2018) and (2) State of Alaska Letter re: Step 2 of WOTUS Rule Revision at n.3 (Nov. 28, 2017) and noting errata).

⁵⁴ This provision is especially alarming in its total about-face from the NWPR, which contained a catch-all provision stating that if a water does not fall into a jurisdictional category, it does not constitute WOTUS. 85 FR 22317, 22318. In a complete reversal of this provision, the Proposed Rule’s catch-all now expressly sweep *up* waters that cannot qualify under a specific listed category.

⁵⁵ “The average applicant for an individual permit spends 788 days and \$271,596 in completing the process . . . not counting costs of mitigation Over \$1.7 billion is spent each year by the private and public sectors obtaining wetlands permits These costs cannot be avoided because the Clean Water Act imposes criminal liability as well as steep civil fines on a broad range of ordinary industrial and commercial activities.” *Rapanos*, 547 U.S. at 721 (2006) (plurality op.) (citing Sunding & Zilberman, *The Economics of Environmental Regulation by Licensing: An Assessment of Recent Changes to the Wetland Permitting Process*, 42 *Natural Resources J.* 59, 74–76, 81 (2002)).

The Proposed Rule is demonstrably not a return to the “known and familiar framework” of the 1986 regulatory definition of WOTUS, but an unjustified and costly expansion of it. This expansion is all the more serious for its masked nature.

e. Expanded federal authority will not further the CWA’s objectives in Alaska.

A water that is not a WOTUS is not, for that reason, unprotected. It is simply protected by State instead of federal law. Alaska has a comprehensive, robust, and rigorous set of environmental laws that should serve as the model for the Nation.⁵⁶ The Alaska Department of Environmental Conservation has the authority to manage all waters—WOTUS and non-WOTUS.⁵⁷ Alaska water quality standards apply equally to surface water, wetlands, and groundwater waters—WOTUS and non-WOTUS.⁵⁸ The Alaska Department of Fish and Game has permitting authority over activities potentially impacting fishery resources—a unique authority for a state fish and game agency to have. This permitting authority covers all activities that occur in anadromous streams across Alaska and operates to help us ensure that projects potentially affecting these waterbodies are completed in manner that protects our fisheries. Unlike other states, Alaska has a constitutional mandate to manage our natural resources for their sustained yield. It provides that “[f]ish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.”⁵⁹ Also unlike other states, Alaska is constitutionally required to carefully balance competing interests in managing its natural resources.⁶⁰ Alaska needs the flexibility that the Clean Water Act provides for, in § 101(b), in order to carry out our constitutional mandates.⁶¹

Alaska is also working bilaterally with Canada to address water quality issues in our transboundary rivers from mining activity in Canada. As a result of our efforts, all our waters originating from Canada meet our rigorous water quality guidelines.

Alaska has previously used its authority to fill voids left by the CWA: Alaska regulations, for example, prohibit municipal solid waste landfills from “caus[ing] or contribut[ing] to the degradation of wetlands” and expressly requires the owner or operator of such a facility to “demonstrate the integrity of the [facility] and its ability to protect ecological resources” by evaluating many factors related to the integrity of wetlands.⁶²

⁵⁶ See *supra* n.52.

⁵⁷ See Alaska Statute (“A.S.”) 46.03.020.

⁵⁸ 18 AAC 70.

⁵⁹ Alaska Constitution, Article VIII, § 4.

⁶⁰ Alaska Constitution, Article VIII, § 1.

⁶¹ 33 U.S.C. § 1251(b).

⁶² 18 AAC 60.315(3)(A)–(E) (factors that must be addressed include the erosion, stability, and migration potential of the soils and materials used to support the facilities; the volume and chemical nature of the waste managed in the facility; effects on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste; potential effects of catastrophic release of waste to the wetland and resulting environmental impacts; and other factors “necessary to demonstrate that ecological resources in the wetland are sufficiently protected”).

Greater State authority would not undermine the CWA’s objective of “restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation’s waters.”⁶³ It would simply allow a different governmental body to further this objective—States.⁶⁴ As the CWA states, States share in the responsibility of maintaining the integrity of their own waters.⁶⁵ The responsibility is on States to ensure that their own waters are clean, and to ensure they have the proper authority and infrastructure to do this. States lacking this authority should pursue it through their legislatures, not through a federal program that sets the bar for all States, including those, like Alaska, that do not need it. Emasculating all States, in service of a few, is no solution.

But this is precisely what the Proposed Rule does. Citing § 101(b), which “recognize[s], preserve[s], and protect[s] the primary responsibilities and rights of [s]tates” to manage and protect water resources,⁶⁶ the agencies unabashedly state that they believe the “better reading” of § 101(b) is that it is the states’ role to provide “support” for the agencies—as the agencies *themselves* “advance the objective of the Act.”⁶⁷ This could not be more backward. The federal government should be supporting the *states*—who, after all, are vested with the “primary” responsibility to manage their own water resources—as we manage our *own* waters and land as our Constitution requires us to. The agencies’ explicit rewriting of § 101(b)—and the audacity to even *attempt* such a thing—is profoundly disturbing.

Alaska cares deeply about our lands and waters. Our robust and rigorous environmental laws are more than sufficient to ensure their protection. We need the flexibility § 101(b) promises in order to follow our Constitution. Alaska opposes the Proposed Rule’s relegation of states to a “support” rule and its failure to create anything resembling a framework of cooperative federalism.

2. *The Proposed Rule is scientifically unsupportable as to Alaska.*

The agencies were directed by Executive Order to “listen to the science” in crafting this Rule.⁶⁸ The agencies claim the Proposed Rule is “supported by the best available science on the functions provided by upstream waters, including wetlands, that are important for the chemical, physical, and biological integrity of foundational waters.”⁶⁹ The agencies trumpet the “wealth of scientific knowledge” supporting their conclusions and further tout the “scientific literature” that “extensively illustrates the effects [that] tributaries, wetlands adjacent to impoundments and tributaries, and ‘other waters’ can and do have” on the integrity of foundational waters.⁷⁰ This wealth of scientific knowledge and literature is summarized in two key documents supporting the Proposed Rule—the

⁶³ 33 U.S.C. § 1251(a).

⁶⁴ 33 U.S.C. § 1251(a).

⁶⁵ The CWA states that “[i]t is the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter.” 33 U.S.C. § 1251(b).

⁶⁶ 33 U.S.C. § 1251(b).

⁶⁷ 86 FR 69400 (emphasis added).

⁶⁸ 86 FR 69382.

⁶⁹ 86 FR 69390.

⁷⁰ 86 FR 69390.

2015 Connectivity Report⁷¹ and Sections II and IV of the Technical Support Document.⁷² As the agencies explain, a rule so firmly rooted in science ensures that determinations made under that rule are “science-informed.”⁷³ But what if the science informing a rule omits studies pertaining to a state whose concerns are distinct from every other state? It would be difficult to justify—scientifically—imposing the rule on that state.

This is precisely the situation Alaska finds itself in. Neither of the two main technical documents supporting the Proposed Rule meaningfully engage with Alaska’s unique geographical and climatic characteristics. In the 2015 Connectivity Report, little of the referenced research was conducted in Alaska.⁷⁴ The body of the Report, which spans 226 pages of discussion of scientific studies and literature, mentions “Alaska” or “Alaskan” nine times; “permafrost” three times, and “wetland mosaics” zero times.⁷⁵ And at least one of these references supports the *lack* of the possibility of a significant connection.⁷⁶ The wetland types on which the 2015 Connectivity Report does focus are not representative of the wetlands found in Alaska.⁷⁷ Perhaps most offensively, the maps and illustrations in the Study do not even *depict* Alaska.⁷⁸

The Technical Guidance Document is no more relevant to Alaska. Alaska is rarely mentioned. The mentions Alaska *does* receive include noting Alaska’s exclusion from a statistic,⁷⁹ or noting that a

⁷¹ The agencies describe the 2015 Connectivity Report as “[a] comprehensive report prepared by EPA’s Office of Research and Development” fully entitled *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*. 86 FR 69390. The Proposed Rule calls this the “Science Report.” 86 FR 69390. This Comment calls it the “2015 Connectivity Report.”

⁷² 86 FR 69382. The Technical Support Document is available at https://www.epa.gov/system/files/documents/2021-12/tsd-proposedrule_508.pdf. It states that “[t]he Preamble, the Science Report, this Technical Support Document, and the rest of the administrative record provide the basis for the definition of “waters of the United States” established in the [P]roposed [R]ule.”

⁷³ 86 FR 69390.

⁷⁴ See 2015 Connectivity Rpt. at Ch. 7 [References].

⁷⁵ See 2015 Connectivity Rpt. Forested wetlands are discussed largely in the context of places with distinct climatic conditions, like Florida. *E.g.*, 2015 Connectivity Rpt. at ES-10 (discussing study where “sewage wastewaters were applied to forested wetlands in Florida . . .”).

⁷⁶ As the 2015 Connectivity Report provides:

Ford and Bedford (1987) note that in permafrost-dominated areas of Alaska, wetland soils tend to be frozen during snowmelt events, resulting in a significant proportion of these floodwaters running directly to streams, thus rendering these wetlands unimportant in streamflow regulation. Likewise, Roulet and Woo (1986) found that wetlands in the Continuous Permafrost Region of Canada tended to be unimportant for either long-term water storage or streamflow regulation.

2015 Connectivity Rpt. at 4-24 (emphasis added).

⁷⁷ The 2015 Connectivity Report focuses on Riparian/ Floodplain Wetlands and Non-Floodplain Wetlands. 2015 Connectivity Rpt. at iii–v.

⁷⁸ 2015 Connectivity Rpt. at 2-1 (“characteristics of U.S. streams by watershed”), 2-32 (map of annual runoff), 2-46 (“percent of wetlands lost, 1780s-1980s” and “artificially drained agricultural land, 1985”).

⁷⁹ Technical Support Doc. at 166 (“[A]pproximately 59% of streams across the United States (excluding Alaska) flow intermittently or ephemerally . . .”).

specific Alaskan wetland was found *not* to be a WOTUS,⁸⁰ or stating that Alaska contains too many wetlands to fit on a map.⁸¹

This is hardly sound science. This is *certainly* not “best available science.”⁸² The Proposed Rule may be scientifically supportable as to waters in the States that were studied and meaningfully considered in its supporting documents. But a rule based on this science cannot be applied with a straight face to a State whose unique features were hardly *mentioned*, never mind *studied*. To align the Rule with the *science* (as opposed to the *silence*) exclusions must be crafted to mirror the gaps in the underlying science. Only with these exclusions can the Rule fairly be considered scientifically supported.

3. *Alaska requests four Alaska-specific exceptions.*

Alaska believes the Proposed Rule contains several legal, logical, and scientific flaws, detailed above, and suggests that the agencies fix the legal and logical flaws in the finalized version. At this late stage, however, the scientific flaws can only be fixed with the incorporation of Alaska-specific exclusions, carefully tailored to mirror the gaps in the science underlying the Proposed Rule. Specifically, Alaska requests the exclusion of the following categories of wetlands from WOTUS coverage: (1) Alaska permafrost wetlands; (2) Alaska forested wetlands; and (3) Alaska’s wetland mosaics. Alaska further requests (4) that Alaska waters be excluded from the “other waters” category.

This Section assumes that the relatively permanent standard will create only a subset of waters otherwise covered under the significant nexus standard. Accordingly, whether wetlands in Alaska are subject to federal jurisdiction will ultimately be determined by the significant nexus standard. The agencies define “significant nexus” to mean “more than speculative or insubstantial effects on the chemical, physical, or biological integrity of a traditional navigable water, interstate water, or the territorial seas.”⁸³ The existence of such a connection turns “on the function the evaluated waters perform.”⁸⁴ Relevant factors include distance, hydrologic metrics, and climatological metrics.⁸⁵

As explained above, neither the 2015 Connectivity Report nor the Technical Support Document even attempt to specify how these factors apply to the wetlands and other waters unique to Alaska.⁸⁶ As explained below, several types of Alaska wetlands fall squarely within these data gaps. Accordingly, they must be excluded from the final rule.

⁸⁰ Technical Support Doc. at 223 (“Other wetlands determined not meet the significant nexus standard include an emergent wetland in Alaska surrounded by development that severed any hydrologic connections between the wetland and a nearby wetland complex and lake . . .”).

⁸¹ Technical Support Doc. at 245 (“[A]t Klatt Bog, one of the prominent patterned ground bogs in Anchorage, Alaska, the plant communities (and thus the wetland and nonwetland areas) intersperse more than can be mapped.”).

⁸² 86 FR 69390.

⁸³ 86 FR 69430.

⁸⁴ 86 FR 69430.

⁸⁵ 86 FR 69430.

⁸⁶ A good starting point might have been to include Alaska in their maps of the United States.

a. Alaska Permafrost Wetlands

Permafrost is soil that has a temperature continuously below 32 degrees Fahrenheit for two years or more.⁸⁷ Permafrost contributes to wetland formation by retarding the downward movement of soil water, and holding water in the surface of the soil, which creates an environment conducive to hydrophytic vegetation. This captured water can take on the properties of a wetland. The impact of this captured water on downstream jurisdictional waters is not fully understood because of the very short growing season characteristic of permafrost wetlands, the fact that hydric soils in these wetlands typically hover around a “biological zero” temperature, and the significant temporal lag in hydrology caused by the freeze-thaw cycle and lack of slope. Due to these climatic and geophysical limitations, any connection to foundational waters is difficult to discern.

An explicit exclusion of permafrost wetlands under the Proposed Rule is needed to reflect the lack of scientific evidence underpinning their inclusion.

b. Alaska Forested Wetlands

Forested wetlands are swampy areas that primarily receive water from precipitation, rather than runoff, streams, or groundwater infiltration.⁸⁸ Near-constant precipitation in these wetlands keeps the ground saturated with water. Hydrophytic vegetation and isolated pockets of hydric soils exist on hillsides and other slopes. Because the water in these wetlands comes from precipitation, these wetlands, at least in Alaska, exist independently of any jurisdictional waterways and regularly do not share surficial hydrologic connections to these waters. These wetlands’ independent existence indicates that they should be categorically excluded from WOTUS coverage. The 2015 Connectivity Report and Technical Support Document contain insufficient science to suggest otherwise.

c. Alaska’s Wetland Mosaics

Wetland mosaics consist of numerous small, discrete wetlands, separated from each other by uplands. Alaska’s wetland mosaics can span hundreds of acres. The Proposed Rule would regulate wetland mosaics as a single unit on the basis that the discrete wetlands are “similarly situated.”⁸⁹ But the lack of Alaska-specific science underlying the Proposed Rule means that the agencies cannot assume with *any* degree of scientific certainty that Alaska’s many diverse and discrete wetlands are sufficiently connected to each other to be treated as one unit for jurisdictional determinations. Perhaps, following further study, the science will reveal that arctic wetlands, for example, are

⁸⁷ The term permafrost, a contraction of permanently frozen ground, was proposed in 1943 by Simon W. Muller of the U.S. Geological Survey (“USGS”) to define a thickness of soil or other superficial deposit, or even of bedrock, beneath the surface of the Earth in which a temperature below freezing has existed continuously for 2 or more years. When the average annual air temperature is low enough to maintain a continuous average surface temperature below 0°C, the depth of winter freezing of the ground exceeds the depth of summer thawing, and a layer of frozen ground is developed. Sæ Ray, Louis L., USGS, *Permafrost*, accessible at <https://pubs.usgs.gov/gip/70039262/report.pdf>.

⁸⁸ Alaska Dept. of Fish & Game, *Featured Species-Associated Wetland Habitats: Freshwater Grass Wetland, Freshwater Sedge Wetland, Bog and Salk Marsh *Estuarine)*, accessible at https://www.adfg.alaska.gov/static/species/wildlife/action_plan/appendix5_wetland_habitats.pdf.

⁸⁹ 86 FR 69430 (“Waters, including wetlands, would be evaluated either alone, or in combination with other similarly situated waters in the region.”).

separated by frozen, virtually impermeable barriers. In such a case, each wetland would be an isolated water, all its own, that cannot be WOTUS under *SWANCC*.⁹⁰

Additionally, this provision almost certainly violates the Commerce Clause. In *United States v. Lopez*,⁹¹ the Supreme Court ruled that upholding a federal ban on firearms near schools would require the Court to “pile inference upon inference in a manner that would . . . convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.”⁹² The Proposed Rule’s potential to regulate Alaska’s wetland mosaics as a single unit similarly piles “inference upon inference”—by inferring, first, the possibility of a connection among discrete wetlands in Alaska (based on no evidence); and further inferring (again based on no evidence) the possibility of a connection between these units and interstate commerce. This is an exercise of “general [federal] police power” that does not exist.

The Proposed Rule would place the burden of proof on *Alaska* to rebut the presumption that wetlands are *not* covered WOTUS. This is entirely unacceptable, not in the least because that presumption is based on a scientifically unsupported assumption (that wetlands in Alaska are permeable or otherwise connected to each other). The WOTUS definition should not make *any* assumptions unsupported by science, and particularly should not do so when such an assumption would, in practice, work to expand federal jurisdiction over large swaths of Alaska wetlands in clear violation of federalism principles. The Proposed Rule lacks a sufficient scientific basis for regulating wetland mosaics in Alaska as a single unit. The agencies cannot simply assume this problem away. Tracking this gap in the data, the WOTUS definition must categorically exclude Alaska’s wetland mosaics.

d. Alaska exclusion from “other waters”

As applied to Alaska, the “other waters” catch-all is a vast expansion of federal power that is entirely unjustified by the Proposed Rule or its supporting documents. As previously explained,⁹³ the agencies provide no justification for their quiet deletion of the “use, degradation, or destruction” threshold criteria from the 1986 definition of “other waters.” This deletion would heavily and disproportionately impact Alaska, which has more unused waters than any other State.

There is no indication that this provision’s impact on Alaska was considered in creating this catch-all. And there is insufficient science in the supporting scientific documents (which hardly mention Alaska) to justify this deletion. To reflect this omission, the WOTUS definition must explicitly exclude Alaska from the catch-all’s coverage.

e. Historical Alaska-Specific Exceptions

This is not the first time Alaska’s unique circumstances have justified Alaska-specific exceptions. As one example, Alaska permafrost wetlands were excluded from the Food Security Act’s definition of

⁹⁰ 531 U.S. at 171 (holding that “nonnavigable, isolated, intrastate waters” cannot be covered under WOTUS).

⁹¹ 514 U.S. 549, 566 (1995).

⁹² *Id.* at 567.

⁹³ *Supra* Section (1)(d).

“wetland” by its 1986 amendments.⁹⁴ As second example, the Alaska National Interest Lands Conservation Act created “Alaska specific carve-outs to the National Park Service’s authority,” which had the effect of setting aside extensive land in Alaska for national parks and preserves “on terms different from those governing such areas in the rest of the country.”⁹⁵ As a third example, the Crude Oil Windfall Profit Tax Act of 1980 contained a tax exemption for crude oil extracted from certain areas of Alaska.⁹⁶ In yet another example, an “Alaska graywater” exception was made to the prohibition on state regulation of graywater discharges from seafaring vessels.⁹⁷

Such Alaska-specific exceptions make sense. As the U.S. Supreme Court and Congress recognized in the context of the crude-oil tax exemption, it was “Alaska’s ‘unique climatic and geographic conditions’” that justified the differential tax treatment.⁹⁸ Specifically, the Court noted that “development and production of oil in arctic and subarctic regions is hampered by severe weather conditions, remoteness, sensitive environmental and geological characteristics, and a lack of normal social and industrial infrastructure[.]”⁹⁹ These conditions increase the cost of drilling wells in Alaska to “as much as 15 times greater than that of drilling a well elsewhere in the United States.”¹⁰⁰

Here, too, it is Alaska’s unique climatic and geographic characteristics that justify excluding certain categories of wetlands from the WOTUS definition.¹⁰¹ The excluded categories encompass wetlands unique to Alaska whose connection to foundational waters is not established by the Proposed Rule’s scientific underpinnings.

f. Conclusion

Application of the WOTUS definition to Alaska’s permafrost wetlands, forested wetlands, and wetland mosaics are not supported by the Proposed Rule’s scientific underpinnings. Similarly unsupported by science is the Proposed Rule’s application of the “other waters” provision to Alaska.

Adopting Alaska-specific exclusions to mirror these data gaps will help refine an otherwise blanket rule that, in its present form, ill-fits and heavily falls on Alaska. These exclusions will also provide clarity, predictability, and a workable path forward toward cooperative federalism.¹⁰²

⁹⁴ 16 U.S.C. § 3801(27) (“For purposes of this Act, and any other Act, this term”—wetland—“shall not include lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils.”); PL 99-349, 100 Stat. 710 (1986) (adding this language).

⁹⁵ *Sturgeon v. Frost*, 139 S. Ct. 1066 (2019); see 94 Stat. 2371, 16 U.S.C. § 3101 *et seq.*

⁹⁶ 26 U.S.C. §§ 4986–4998 (since repealed).

⁹⁷ 33 U.S.C. § 1322(p)(9)(A)(i) and (v).

⁹⁸ *United States v. Ptasynski*, 462 U.S. 74, 78 (1983) (quoting H.R.Conf.Rep. No. 96-817, p. 103 (1980)).

⁹⁹ *Id.* (internal quotes removed).

¹⁰⁰ *Id.*

¹⁰¹ The lack of Alaska-specific exclusions in the CWA makes sense. At the time the CWA’s predecessor was enacted—1948—Alaska was not a state. See *EPA v. Cal. ex rel. State Water Res. Control Bd.*, 426 U.S. 200, 203 n.2 (1976). And at the time of the 1972 Amendments creating the CWA, Alaska was still very young, its climate and geography were not well understood, and the need for Alaska-specific exceptions was not apparent.

¹⁰² Additionally, these exclusions avoid the outer limits of federal authority under the Commerce Clause, so would likely survive *Sackett v. EPA* in the event of an outcome unfavorable to the agencies. See No. 21-454 (Supreme Court granting

4. *The path forward is through cooperative federalism, not compulsive federal regulation.*

“The Clean Water Act anticipates a partnership between the States and the Federal Government[.]”¹⁰³ The agencies flout the CWA by treating States not as partners, but as subservient implementers.¹⁰⁴ The federal government’s role is simply to establish a baseline of protection upon which the States may build.¹⁰⁵ States, and particularly Alaska, do not need the federal government to encroach on state power by expanding its own jurisdiction or establishing more stringent standards than necessary.¹⁰⁶

Alaska in particular needs to be respected as a partner. Congress and the United States Supreme Court have acknowledged the need for Alaska to be free to use its resources for the economic security and social benefit of its residents.¹⁰⁷ This is in part because as a young state, Alaska is not heavily industrialized: Alaska’s waters, wetlands, and vast natural areas remain largely undeveloped compared to those in the lower-48 states. Expansion of even basic transportation and utility networks, and industry development, remain in nascent stages in much of the state. As a result, Alaska’s needs are vastly different from those of the lower-48.¹⁰⁸ To address these needs, Alaska must have the flexibility to manage its own water and lands.

The four Alaska-specific exclusions would further federalism principles without decreasing environmental protections. Take the example of permafrost: the federal government is not well-positioned to regulate permafrost wetlands, but Alaska is. Alaska has the authority¹⁰⁹ and legal infrastructure¹¹⁰ to regulate permafrost wetlands. The responsibility is primarily and traditionally on Alaska to protect its own wetlands.¹¹¹ And so is the incentive: Alaska has a strong interest in

certiorari in *Sackett v. EPA* on the following question: Whether the U.S. Court of Appeals for the 9th Circuit “set forth the proper test for determining whether wetlands are ‘waters of the United States’” under the CWA.).

¹⁰³ *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992).

¹⁰⁴ As Justice Scalia noted in the *Rapanos* plurality opinion, this partnership means more than the states’ assumption of primacy of federal programs under the oversight of federal agencies. *Rapanos*, 547 U.S. at 737–39 (plurality op.).

¹⁰⁵ “Federalism is rooted in the belief that the issues that are not national in scope of significance are most appropriately addressed by the level of the government closest to the people.” Federalism Executive Order 13132 (Aug. 4, 1999).

¹⁰⁶ Under a cooperative federalism approach, the agencies would have to accept that some policy determinations about how to best balance competing interests and resources should be left to the States, even if federal regulators disagree with the outcome.

¹⁰⁷ See, e.g., Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3010 *et seq.*, and *Sturgeon v. Frost*, 139 S. Ct. 1066, 1074 (2019).

¹⁰⁸ Alaska’s Constitution, unlike that of other States, requires a careful balancing of interests in the management of natural resources. See Alaska Constitution, Article VIII: Natural Resources.

¹⁰⁹ Alaska law confers on the Department of Environmental Conservation the authority to create a wetland permitting program. AS 46.03.020(14).

¹¹⁰ See, e.g., 18 AAC 60.227–.228 (governing landfills located on permafrost); 18 AAC 72.265 (specifying test hole depth “in areas of known or suspected permafrost” and requiring that test holes be monitored as “necessary to protect public health, public and private water systems, and the environment”); 18 AAC 75.630(a)(2)(B) (classifying public land underlain with permafrost as “[v]ery sensitive terrestrial environment[.]” which triggers treatment different than other, less sensitive, types of land).

¹¹¹ Alaska’s Constitution, unlike other state constitutions, requires Alaska to maintain a careful balance of interests in the management of natural resources. See Alaska Constitution, Article VIII Natural Resources. Alaska’s water quality regulations are generally identical to, or stricter than, federal regulations. See 18 AAC 83.435 (“An A[laska] P[ollutant] D[ischarge] E[limination] S[ystem] permit must include conditions to meet any applicable requirement in addition to or more stringent than promulgated effluent limitations guidelines or standards under 33 U.S.C. 1311, 1314, 1316, 1317, 1328, and 1345”); 18 AAC 70.005–.050 (statewide water quality standards).

ensuring that Alaskans, and our environment, remain healthy.¹¹² Alaska takes this responsibility very seriously. It is time for the agencies to respect that.

Alaska's door remains, as it has been, open. Alaska and the agencies have worked together before, in the *Alaska Wetlands Initiative*,¹¹³ to take an important first step toward partnership. Joining forces once more, Alaska and the agencies could agree to formally ecoregionalize¹¹⁴ Alaska, and perhaps even create a new Administrative Region for Alaska. The agencies need not usurp Alaska's power to manage its own waters and lands by expanding the definition of WOTUS. Nor does doing so, and applying a one-size-fits-all approach, better protect the waters in Alaska.

Conclusion

The Proposed Rule stretches the definition of WOTUS to exceed that of any administration before it. This expansion precludes any *possibility* of a co-equal partnership between states and the federal government, in clear violation of the federalism principles enshrined in the CWA. In the course of drafting this rule, the agencies appear to have followed their now-longstanding policy of ignoring Alaska entirely: many of the Proposed Rule's provisions do not account for Alaska's specific characteristics and much of the Proposed Rule's supporting science simply omits Alaska and Alaska-related studies. The only solution is to include Alaska-specific exclusions in WOTUS, carefully crafted to mirror the omissions in the underpinning science. These will mark a desperately needed first step toward mending the relationship between Alaska and the federal government, as we work, collectively, to protect our waters.

¹¹² See *Williams Alaska Petroleum, Inc. v. State of Alaska*, No. S-17772 (State of Alaska litigating against refinery following drinking water contamination resulting from refinery activities).

¹¹³ The *Alaska Wetlands Initiative* was a part of the Clinton Administration's August 24, 1993 Wetlands Plan, under which the agencies worked with the State of Alaska to identify and address Alaska-specific issues related to the implementation of the CWA's § 404 regulatory program in Alaska. Many solutions arose from this collaboration, including developing a comprehensive mitigation strategy for oil and gas development activities on the North Slope, issuing a written statement recognizing the flexibility to consider circumstances in Alaska in implementing alternative analyses and compensatory mitigation requirements under the § 404 regulatory program, and implementing an abbreviated permit processing procedure for certain waters in Alaskan villages. See Environmental Protection Agency, Department of the Army, U.S. Fish and Wildlife Service, National Marine Fisheries Service, *Alaska Wetlands Initiative Summary Report* (May 13, 1994), accessible at <https://archive.epa.gov/water/archive/web/pdf/alaska.pdf>. Alaska seeks a return to such collaboration.

¹¹⁴ A good starting place is with the study and accompanying ecoregion map created by Spencer, P. et al, *Home is where the habitat is: an ecosystem foundation for wildlife distribution and behavior*, Arctic Research of the United States (2002), accessible at https://www.nsf.gov/pubs/2003/nsf03021/nsf03021_2.pdf.

Appendix 6. Waters of the United States (WOTUS) and Waters of the State (WOTS): Definitions and History

This appendix describes the definition of “Waters of the United States” (WOTUS). The definition has been controversial, and the last three federal administrations have amended the regulatory definition. In addition, three U.S. Supreme Court decisions have affected the definition. These changes have expanded and contracted the areal extent of WOTUS and therefore the Corps' jurisdiction. They have changed the extent of federal jurisdiction and have sometimes been difficult for agency staff and permit applicants to keep up with. This appendix describes the definition’s convoluted history.

The appendix also describes Alaska’s definition of “Waters of the State” (WOTS). WOTS are more extensive than WOTUS; WOTS includes all WOTUS and more. This appendix describes how WOTS differ from WOTUS.

WOTUS: Waters of the United States⁶⁵

Introduction

The 1972 amendments to the Clean Water Act (CWA) established federal jurisdiction over “navigable waters,” defined in the Act as the “waters of the United States” (WOTUS). Section 404 of the CWA requires parties that intend to place dredged or fill material into navigable waters (WOTUS) to first obtain a permit from the Corps. Therefore, the extent of the Corps' jurisdiction is dependent on the extent and therefore the definition of WOTUS. However, the CWA does not define “waters of the United States”; rather, it provides discretion for EPA and the U.S. Department of the Army to define the term in regulations.

EPA and the Corps' regulations that define WOTUS are controversial because they define the extent of federal jurisdiction under the CWA, including regulation of discharges (Section 402), and regulation of dredged and fill materials (Section 404). Additionally, many States (including Alaska) believe that an unduly expansive WOTUS definition impinges upon States’ traditional authority to make land- and resource-use decisions within state boundaries.

Early Definitions:

Following the passage of the CWA, the Corps and EPA promulgated different definitions of WOTUS. In the mid-1980s, during the Reagan Administration, EPA and the Corps promulgated a definition of “waters of the United States.” The definition is below. It is an expansive definition that not only includes waters that are navigable for the purposes of interstate or foreign commerce, but also any tributaries including even prairie potholes or wet meadows that could affect these waters. It even includes waters from which fish can be taken and sold in interstate commerce.

⁶⁵ The WOTUS history explained in this appendix is adapted from, and frequently quoted from, an EPA website: <https://www.epa.gov/wotus/about-waters-united-states> (visited December 2022).

40 CFR § 230.3(s) The term waters of the United States means (or meant in the 1980s):

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
6. The territorial sea;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

U.S. Supreme Court Decisions

1985, the Bayview decision upholds the expansive definition. In 1985, in *United States v. Riverside Bayview Homes, Inc.*, the U.S. Supreme Court deferred to the Corps' assertion of jurisdiction over wetlands adjacent to a traditional navigable water.

2001, SWANCC narrows the definition by excluding isolated ponds. In 2001, in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*, the Court rejected a claim of federal jurisdiction over non-navigable, isolated, intrastate ponds that lack a sufficient connection to traditional navigable waters, noting that the term "navigable" must be given meaning within the context and application of the statute. The Court famously held that the use of "isolated" non-navigable intrastate ponds by migratory birds was not by itself a sufficient basis for the exercise of federal regulatory authority under the CWA. The fact that the court chose to focus on whether a stop for migratory birds qualified a water as WOTUS is evidence of the expansive extent of the original definition.

2006, *Rapanos: confusion and further narrowing*. In 2006, the court issued a somewhat confusing decision: *Rapanos v. United States*. The decision was confusing because there was not a clear majority on the court. Four justices ruled that WOTUS included “only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic features’ that are described in ordinary parlance as ‘streams[,] . . . oceans, rivers, [and] lakes,’” and “wetlands with a continuous surface connection” to a “relatively permanent body of water connected to traditional interstate navigable waters (emphasis added).”

However, that narrow definition was not a majority – it included only four of the nine justices. Justice Kennedy issued a separate concurring opinion with a different approach. His opinion is summarized as that a water or wetland must have a “significant nexus” to waters that are navigable in fact. He stated that adjacent wetlands possess the requisite significant nexus if the wetlands “either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’” Justice Kennedy’s test is often referred to as the “significant nexus” test. The four remaining judges would have allowed a water which qualified under either approach – the four-justice continuous surface connection or Justice Kennedy’s significant nexus.⁶⁶

Recent Regulatory Definitions

2015: the Obama administration’s Clean Water Rule. In 2015, the Obama administration promulgated what it called the Clean Water Rule to define WOTUS consistent with the Supreme Court’s direction. It was an expansive definition. It included all waters within 100 feet of a stream’s ordinary high water; all waters within 1,500 of high tide or a stream’s ordinary high water if the water was within the 100-year floodplain; and all water within 4,000 feet of the high tide or ordinary high water that met an expansive “significant nexus” test.

This definition was controversial. The two federal district courts that reviewed the merits of the 2015 Clean Water Rule found that the rule suffered from certain errors and issued orders remanding the 2015 Clean Water Rule back to the agencies. Multiple other federal district courts preliminarily enjoined enforcement of the rule, such that more than half of the states continued to implement the 1980s regulations and not the 2015 Clean Water Rule.

2020: the Trump administration’s National Waters Protection Rule. The Trump administration replaced the 2015 Clean Water Rule with a narrower Rule, which they titled the National Waters Protection Rule in April 2020. Four months later in August, a federal district court in Arizona vacated the Trump administration’s rule and remanded it back to the EPA.⁶⁷

⁶⁶ In 2007, the Ninth Circuit held that Justice Kennedy’s *Rapanos* concurrence was controlling in the Ninth Circuit, which applies to all courts and states in the Ninth Circuit, i.e., Alaska. The case was *N. Cal. River Watch v. Cty. of Healdsburg*, 496 F.3d 993, 999-1000 (9th Cir. 2007)

⁶⁷ The Arizona District Court did not opine whether it believed its decision applied to all states, only the Ninth Circuit, or only Arizona. However, after the decision, the agencies decided that they would voluntarily revert to the 1980s rule, nationwide. See <https://www.epa.gov/wotus/about-waters-united-states>.

2023: the Biden administration's new WOTUS definition. On December 30, 2022 the Biden administration finalized its rule and published it in the Federal Register on January 18, 2023. It does not become effective until 60 days after it was published (March 20, 2023). The Biden administration's rule is more expansive than the 1980s definition. The new Biden rule would require a finding of WOTUS under either Kennedy's significant nexus test or the *Rapanos* plurality's relatively permanent test, making the definition, if finalized, the broadest it has ever been. However, it is likely to be short lived, at least in part, for the reason explained below.

The Coming Supreme Court Decision – Sackett

On October 3, 2022, the U.S. Supreme Court heard arguments in *Sackett v. Environmental Protection Agency*. Given the confusion that resulted from the no-majority *Rapanos* decision, many observers expect the Court to try to craft a durable decision acceptable to a majority of justices. While the Court has yet to announce a decision, many people expect it to narrow the extent to which WOTUS will include waters that are not connected to a traditional navigable water through a surface connection. It is possible, perhaps likely, that the Court's ruling will modify the definition recently adopted by the Biden administration.

Conclusion

The definition of WOTUS and the extent of the Corps' jurisdiction over placement of dredged and fill material has not been stable. It has changed at least six times since the first definition. It is likely to change again when the U.S. Supreme Court announces its *Sackett* decision this spring. We do not know whether *Sackett* will result in a stable, long-term definition, or whether it will be just one more stop in the cycle of expansion and contraction. We may not know for years.

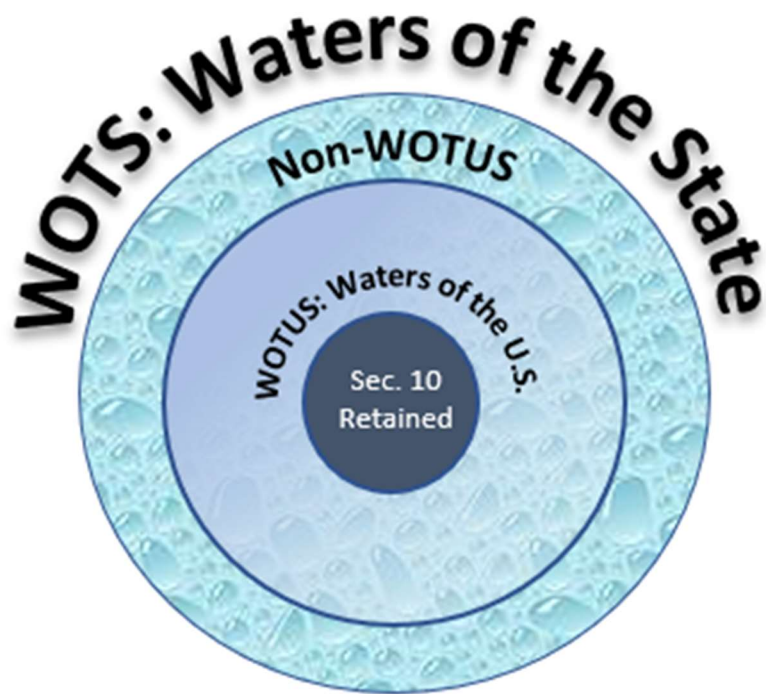
WOTS: Waters of the State

The state has adopted an expansive definition of waters. However, the state's definition does not necessarily imply as heavy a regulatory presence as the federal definition. The state's definition is given in AS 46.03.900(37): "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state."

The state's definition includes anything one typically considers wet including groundwater or natural, wetlands, or public or private waterbodies.

Because the state's definition is inclusive of and more expansive than the federal definition, all WOTUS are WOTS, but not the other way around. This is displayed graphically in the figure below.

In the visual display, all WOTUS are also WOTS. But not all WOTS are WOTUS.



Appendix 7. Corps-Identified Section 10 Waters

Source: [Alaska District > Missions > Regulatory > Recognizing Wetlands > Navigable Waters \(army.mil\)](#)

The following is a list of waters in Alaska that are regulated under Section 10 of the Rivers and Harbors Act. All waters that are subject to the ebb and flow of the tide are also regulated under Section 10 of the Rivers and Harbors Act.

No:	Waterway	Navigable Length	Remarks
1.	Becharof Lake	043.0	Empties into Egegik Lake
2.	Big Lake	004.5	Drainage to Tidal Water not navigable
3.	Buckland River	040.0	40 miles to the West Fork
4.	Campbell Lake	Entire	Entire length and Breadth
5.	Chatanika River	139.0	139 miles to Long Creek
6.	Chena River (including Noyes Slough)	Entire	Entire length of the river and slough
7.	Colville River	258.0	258 miles to the Etivluk R.
8.	Copper River	287.0	Entire Length in Alaska
9.	Lake Clark	045.0	Connects with Lake Illiama
10.	Eagle River	024.0	24 miles to the Visitors Cent
11.	Eek River	020.0	Tributary to Kuskokwim River
12.	Egegik River	028.0	Navigable for Entire Length
13.	Eyak River	4.5	N/A
14.	Iditarod River	340.0	N/A
15.	Lake Illiama	070.0	Heads Kvichak River

16.	John River	105.0	105 miles to Hunt Fork
17.	Kantishna River	100.0	N/A
18.	Kasilof River	006.0	Drains Tustemena Lake
19.	Kenai Lake	020.0	N/A
20.	Kenai River	081.0	Navigable for entire length
21.	Kobuk River	200.0	N/A
22.	Koyukuk River	544.0	N/A
23.	Kuparuk River	052.2	52.2 miles to the Toolik R.
24.	Kuskokwim River	400.0	Navigable to McGrath
25.	Kuzitrin River	015.0	N/A
26.	Kvichak	050.0	N/A
27.	Lake Louise	008.0	4 miles wide
28.	Little Susitna River	084.0	84 miles to the Schrock Road Bridge
29.	Mantanuska River	075.0	75 miles to Caribou Creek
30.	Naknek	019.5	N/A
31.	Nenana River	080.0	80 miles to the Parks Highway Bridge
32.	Noatak	400.0	400 miles to Portage Creek
33.	Nushagak River	034.0	Navigable from mouth of Wood River.
34.	Porcupine River	225.0	Navigable entire length in AK
35.	Sagavanirktok River	160.0	160 miles to the Atigun River
36.	Selawik Lake	050.0	20 miles wide

37.	Skilak Lake	012.6	On Kenai River, Downstream of
38.	Snake River	000.475	Authorized project at Nome
39.	Stikine River	30.0	Authorized project for entire length
40.	Susitna River	115.0	N/A
41.	Tanana River	455.0	Nenana 250 miles upstream is transfer point for Railroad
42.	Tolovana River	135.0	Entire Length
43.	Tustumena Lake	023.0	Head of Kasilof River
44.	Ugashik River	013.0	Entire Length
45.	Willow Creek	004.0	4 miles to the Parks Highway Bridge
46.	Wood River and Lakes	048.0	Navigable for 24 miles on River
47.	Yukon River	1,432.0	Navigable entire length in AK

Appendix 8. Corps' Data Workload Review, Methodology and Results

ORM-2 Data Analysis

An in-depth analysis was conducted on a five-year span (2017 to 2022) of the Alaska District regulatory permitting workload. The conclusions reached from reviewing the data are summarized within this report. The full data set is available in the 404 Master Workbook and found in word tables.

404 Program Workload Analysis: Methods

In October 2022, DEC obtained from the Alaska District, ORM-2 permitting data that had been exported into Microsoft Excel. The data contained authorization records from 2017 through 2022. The first step in the permit workload analysis was to filter and transfer the ORM-2 permit data into the 404 Workload Master Workbook for analysis. Only those permits with an end date (issue date) between 2017 and 2022 were included. The following filters were used to complete the initial data transfer:

Permit Authority - entries identified as Section 404 and Section 10/404 were selected. Entries where the permit authority was identified as None, where there was no permit authority identified, or no action selected these actions were not counted. Remaining unidentified permit authorities or actions were not utilized in calculating workload. Entries where the permit authority was identified as Section 10 were transferred to a worksheet labeled Section 10 LOP Permits and not used in the workload analysis, as those actions are not assumable by the State

Action Type: all AJD, NWP, Permitmod, Permittransfer, PJD, RGP, SP, Mitigation Banks, EIS, Unauthact were filtered separately. LOP, RGP and SP data was transferred to separate worksheets labeled accordingly. NWP entries were filtered based on the permit type and were transferred to separate worksheets for each NWP. This criterion was set so that review time in workdays could be accurately measured from the beginning to the end of a particular action.

NWP - ORM-2 data was filtered by each permit number and transferred to a new worksheet labeled with the NWP number (i.e., NWP 1 through NWP 59).

Multiple NWPs - ORM-2 data with at least two NWP numbers identified were transferred as one set onto a worksheet labeled NWP Multi.

No NWP - ORM-2 data where no permit number was identified were transferred as one set onto a worksheet labeled NWP UnID (unidentified).

Once all of the data was transferred to the new workbook, all duplicate entries were deleted. A single permit could have multiple entries within the ORM-2 data for each Corps' permit application number. If the entries occurred on different dates, all entries were kept. If the entries identified the same start and end dates, then duplicates were not counted as a 404 action. Actions were counted within each AJD, LOP, NWP, Permitmod, Permittransfer, PJD, RGP, SP, Mitigation Banks, EIS, and Unauthact. The closure method was critical to determining what

action the Corps took on each DA permit action. Actions that were closed by permit issuance or denial were actions that were completed by the Corps. ORM-2 data is a record of all actions taken by the Alaska District. Not all actions taken by the Corps result in a permit but do represent workload. For instance, actions in uplands are not permitted by the Corps (No permit is required), however time was spent to make the determination. There also were actions withdrawn by the applicant or the Corps. This data was transferred to separate worksheets and labeled accordingly. These additional spreadsheets, refine, sort, and classify the supplied ORM-2 data.

Alaska District Permit Workload Data Setup

Once the duplicate data was removed, each worksheet was set up so the columns with the more pertinent data were on the left side of the worksheet and the rest of the data on the right. Then the following columns were added to each worksheet to help analyze and interpret the data.

- Review Time (workdays) - This column was added to provide information on the number of workdays that transpired between the date the permit application was deemed complete and the date the permit was issued.
- Waterway - If the identified waterway was a typical marine/coastal waterway (i.e., cove, harbor, passage, inlet, etc.), the permit was assigned to the Marine category. If a waterway was identified and the waterway was a river, unnamed creek or tributary, or wetland, the permit was assigned to the Freshwater category.
- Project Name/Project Description - If the project name or description identified a typical marine/coastal waterway, the permit was assigned to the Marine category. If the project description identified impacts below a standard tidal datum (i.e., high tide line, mean higher-high water, etc.), the permit was assigned to the Marine category. If the project name or description identified a river, unnamed creek or tributary, or wetland, the permit was assigned to the Freshwater category.
- Unidentified - Permits with no descriptors in any of the above columns were identified as "Unknown".
- Section 10 Water - This column was added to categorize each permit entry as having impacts to waters currently identified on the Alaska District Section 10 Lakes or Section 10 Rivers Inventories.
- Alaska District Office - This column was added to categorize each permit entry geographically based on current Alaska District office locations.

Actions Supplied in ORM-2 Data

Preliminary Jurisdictional Determinations (PJD), Approved Jurisdictional Determinations (AJD)

The number of Alaska District PJD's was reported for 2017-2022, but no information was available on how the Alaska District performs this work. There are different types of PJD's that vary in complexity. A PJD can be a simple determination of whether jurisdictional waters are present or absent, or it can be a very labor-intensive report with field work, and WOTUS

boundary delineation. The Alaska District data most likely represents the less labor-intensive JD, which was performed in the office. The Alaska District has a policy that requests applicants, who want a timely answer on a PJD request, on parcels larger than five acres, to submit a consultant supplied Preliminary Jurisdictional Report following guidance in Alaska District Special Public Notice (SPN) 2020-00399. Reviewing an applicant submitted PJD Report is more labor intensive than an Alaska District desktop PJD.

The reported and calculated number of CWA 404 PJD's for 2017-2022 totaled 987 (197/year). In addition, the Corps reported 83 AJD's (17/year). It should be noted the Corps is willing to permit a project on a PJD if the applicant or proponent agrees to the findings. Therefore, PJD and AJD numbers will never match. Also, during this time frame applicants requested AJDs because of changing WOTUS rules. The Trump Administration changed the definition of WOTUS on June 22, 2020⁶⁸ and this was referred to as The Navigable Waters Protection Rule (NWPR) in the AJD data.

Mitigation Banks and In-Lieu Fee Program

Currently the Alaska District chairs the State Interagency Review Team (SIRT) for mitigation banks. This means it must review and approve proposed mitigation bank prospectuses and monitor mitigation bank sites. A complete prospectus contains a substantial amount of information pertaining to bank objectives, ecological suitability of the site, base line of the area, ownership, land use, credit calculations, performance standards, monitoring, and other factors. The prospectus provides detail on the proposed mitigation bank or in-lieu fee (ILF) program and is the basis for public and SIRT comment. For Mitigation Banks, ILF programs and Permittee Responsible Mitigation, the information supplied to the Corps must meet the requirements of the 2008 Mitigation Rule. The Alaska District has three mitigation banks approved for use. No ILF programs are approved. One ILF program has been submitted to the Corps for approval (twice) but has not advanced. DEC was unable to obtain any data from the Alaska District on mitigation monitoring. Permittee responsible mitigation (mitigation undertaken and constructed by the permittee) monitoring is usually required for up to five years, and the same is required for approved mitigation banks. Monitoring requires that agency staff review monitoring reports, make site visits, and resolve issues.

EIS (Environmental Impact Statement)

An EIS is an environmental document required by the National Environmental Policy Act (NEPA) for federal actions that significantly affect the quality of the human environment (42

⁶⁸ Final rule at: [Federal Register :: The Navigable Waters Protection Rule: Definition of "Waters of the United States"](https://www.federalregister.gov/documents/2020/04/21/2020-02500/the-navigable-waters-protection-rule-definition-of-waters-of-the-united-states) Engineers Corps and Environmental Protection Agency (2020, April 21). *The Navigable Waters Protection Rule: Definition of "Waters of the United States"*. National Archives and Records Administration, Federal Register. Retrieved December 29, 2023, from <https://www.federalregister.gov/documents/2020/04/21/2020-02500/the-navigable-waters-protection-rule-definition-of-waters-of-the-united-states>. Note that this rule was amended during the writing of this report. The December 30, 2022 revision can be found at: [Revising the Definition of "Waters of the United States" | US EPA. The rule was formally published in the Federal Register on January 18, 2023. Copy at: Federal Register :: Revised Definition of "Waters of the United States"](https://www.epa.gov/revision-the-definition-waters-united-states)

USC §4332). The Alaska District may be the lead Federal agency or a cooperating agency for compliance with NEPA for major 404 permit actions. The lead federal agency is generally the agency with the larger federal control over the proposed action. For actions in which the Corps is the lead Federal agency, an EIS would only be required for certain actions that require a Standard (Individual) Permit.

The decision to prepare an EIS is made based on whether the action would or could result in significant impacts to the human environment. In many cases this is soon after the receipt of a complete Corps' permit application, although a determination may not be made until an environmental assessment is prepared, which occurs at the end of the Standard Permit process. As the lead Federal agency, the Corps is responsible for the preparation and content of the EIS to ensure an independent review. Although the applicant incurs the cost of the preparation of the EIS, the contractor is under the sole direction of the Corps and will have limited interaction with the applicant.

Following selection of the third-party contractor, the Corps will initiate the scoping process by publishing a Notice of Intent (NOI) to prepare an EIS in the Federal Register (FR), and issue public notice. The NOI is intended to solicit from the public comments to consider in the EIS. Based on comments received during scoping, the EIS will be prepared by the contractor. When ready, the Draft EIS (DEIS) is released to the public through a Notice of Availability (NOA) published in the Federal Register by the EPA. The Corps will also publish a public notice for the proposed action with the DEIS, which will be sent to all adjacent property owners, interested agencies and the public, and will be posted on the Corps' website. The public will be given a specific period in which to comment on the DEIS. Following the close of the comment period of the DEIS, the Final EIS (FEIS) is completed based on comments received. The FEIS is then released to the public through a Notice of Availability published in the Federal Register by EPA. Following the close of the comment period on the FEIS, if all information has been received to make a permit decision, the Corps will prepare a Record of Decision (ROD) for the action. A public notice will be published following the completion of the ROD.

EISs are multiyear actions that typically require staff to track workload, handle public comments, assemble the public record, and complete the Record of Decision. The Alaska District does not complete the EIS, but requires the project proponent to hire a third party consultant to complete the EIS. The Alaska District is responsible to complete the Record of Decision and the 404(b)(1) evaluation.

The reported number of EISs finalized during the reporting period equals 12 (2.4/year).

Nationwide Permit (NWP)

Nationwide Permits authorize specific activities in areas under Corps' Regulatory jurisdiction. These activities are minor in scope and must result in no more than minimal adverse impacts, both individually and cumulatively. Individuals wishing to perform work under a Nationwide Permit must ensure their project meets all applicable terms and conditions, including the regional conditions specific to Alaska.

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by Nationwide Permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. The DEC database could easily be configured to allow these notifications to be submitted online.

PCN may be required by the terms and conditions of a Nationwide Permit, or by regional conditions. A PCN may be voluntarily submitted in cases where preconstruction notification is not required, and the project proponent wants confirmation that the activity is authorized by Nationwide Permit.

If the conditions cannot be met, a Regional General Permit or Standard Permit will be required. Many NWP's require written verification from the Corps of Engineers prior to conducting the work. The proponent is required to submit a PCN. The District has to review and submit the PCN to agencies for review.

The reported and calculated number of CWA 404 NWP equals 1,416 (283/yr).

Permit Modification (Permitmod)

Changes requested by a project proponent or applicant that are not substantive changes to the original SP can be authorized by the District by a permit modification.

The reported number of permit mods equals 492 (98/year).

Permit Transfer (Permittransfer)

A permit transfer is a request to transfer a current authorized action to a new responsible party. The reported and calculated number of permit transfers equals 201 (40/year).

Regional General Permit) (RGP)

Regional General Permits (RGPs) are issued by the Alaska District. Some RGPs authorize specific activities statewide, while others are specific to certain regions in Alaska. GPs can only authorize activities or categories of activities that have minimal impacts both individually and cumulatively. They are issued for five years, at which time they automatically expire, unless the Alaska District has completed the procedures to reissue the RGPs.

Most RGPs require written verification from the Corps of Engineers prior to conducting the work. The proponent is required to submit a PCN. The Alaska District has to review and submit the PCN to agencies for review.

The reported and calculated number of CWA 404 RGPs equals 210 (42/year).

Standard Permit (SP)

Individual Permits or Standard Permits require an Engineer Form 4345 and a complete WOTUS avoidance, minimization, and compensatory mitigation statement for each application. A

complete Department of Army permit application undergoes a full public interest review. A public notice, usually lasting 30 days, is distributed to all known interested persons. The permit decision is generally based on the outcome of a public interest balancing process, where the benefits of the project are weighed against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest or fails to comply with the EPA's 404(b)(1) Guidelines. The 404(b)(1) Guidelines allow the Corps to permit only the least environmentally damaging practicable alternative. Processing time usually takes 90 to 120 days, unless a public hearing is required, or an EIS must be prepared. Projects can also take longer if Government to Government consultation is requested by a Tribe.

The reported and calculated number of finalized SP decisions equals 274 (55/year).

Enforcement

Performing work in waters of the United States without Corps' authorization can have consequences. Enforcement is a part of the Corps' program. State and federal agencies, groups and individuals that report suspected violations often aid Corps' surveillance and monitoring activities. The Corps may issue orders requiring corrective action including removal of the unauthorized work and restoration, or in certain cases accept an after-the-fact permit application, initiate legal action, or recommend referral to the EPA for administrative, civil or criminal penalties. The EPA has independent enforcement authority under the CWA for unauthorized discharges. The Corps works closely with the EPA to coordinate the most effective and efficient resolution of Section 404 CWA violations. A violation of the CWA involves the discharge of pollutants into WOTUS from a point source by any person without authorization or exemption. An aspect of enforcement is compliance monitoring. The purpose of compliance monitoring is to check to see if a representative sample of the projects that were approved were actually built according to permit conditions. Compliance monitoring needs to be conducted routinely to measure program effectiveness and act as a deterrent to permittees either not reading, not understanding, or ignoring the terms and conditions in their permits, and to discourage the submission of incomplete, poorly prepared and inaccurate as-built drawings.

Unauthorized Activity (Unauthact)

Once a permit is issued, compliance with all terms and conditions of the permit is required. The Corps may conduct inspections during or after construction to determine if the work is in compliance with the permit. If the Corps determines the work is not in compliance, the permittee may voluntarily bring the violation into compliance, or the Corps may issue a permit modification if appropriate.

In cases where resolution of the violation cannot be reached, the Corps may issue a compliance order. If a permittee fails to comply with the compliance order, the Corps may suspend or revoke the permit, initiate administrative penalties up to \$27,500, or take legal action for criminal or civil actions to obtain penalties (or all three). Penalties of up to \$50,000 per day and/or imprisonment for up to three years may be imposed for any person who knowingly violates the CWA.

The Alaska District reported 164 unauthorized (39/year) and 46 (9/year) noncompliance actions during 2017-2022. It is not clear how many of these actions included site visits.

Appeals

The Corps has an administrative appeal process whereby applicants and landowners may appeal denied permits, issued permits that contain requirements that are unacceptable to the applicant or jurisdictional determinations, which are made by the Alaska District. Appeals by third parties are not allowed, except through federal court. The request for an appeal of such decisions must be submitted to the Corps within 60 days of the date of the appealable decision. A site visit or an appeal conference or meeting may be conducted during the appeal process.

The Pacific Ocean Division (POD) located in Hawaii is responsible for making appeal decisions for the Alaska District. The POD office normally makes a decision on the merits of the appeal based on the administrative record in 90 days. The division will either uphold the Alaska District decision or remand the case back to the Alaska District with direction for reconsideration of the Alaska District's initial determination. After re-evaluation, the Alaska District is to make a final decision. This final decision is not subject to further appeal.

The reported number of appeals equals 2 (<1/year).

Letters of Permission (LOP)

LOP is a type of Individual Permit issued through an abbreviated processing procedure that includes coordination with federal and state fish and wildlife agencies, and a public interest evaluation, but without the publishing of an individual public notice. The LOP cannot be used to authorize the transportation of dredged material for the purpose of dumping it in ocean waters.

LOPs may be used:

(1) In those cases subject to Section 10 of the Rivers and Harbors Act of 1899, when the Corps has determined the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. Examples of activities that may qualify for a Section 10 LOP include: fixed or floating small private boat docks, private piers, maintenance dredging using existing disposal sites, etc.

Or

(2) In those cases, subject to Section 404 of the CWA after:

(A) The District Engineer, through consultation with federal and state fish and wildlife agencies, the Regional Administrator, Environmental Protection Agency, the state water quality certifying agency (DEC, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;

(B) The District Engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and

(C) A 401 certification has been issued or waived and, if appropriate, CZM consistency concurrence obtained or presumed either on a generic or individual basis.

All LOPs in the Alaska District's data base are for Section 10 actions. No actions are counted in the finalized actions. These Section 10 actions are retained by the Corps after State 404 Program assumption.

Current Number and Types of Alaska District Permits

Based on the actions described above the Alaska District finalized a total of 3,873 (775/year) CWA actions from 2017 to 2022. There are over 840 (168/year) actions that fall into categories of no data or not in Corps' jurisdiction. These actions still require the Alaska District to file a reply.

Defining Assumable Waters (State workload)

Once the State of Alaska assumes the 404 Program, it can issue State 404 permits, but only in assumable waters. The first question that arose in the workload analysis is what portion of the Alaska District's workload would be assumable? This posed a dilemma because at the time of this writing, no determination by the State of Alaska and the Alaska District has been made regarding which waters in Alaska are assumable and which are not. To get a sense of the program by region and area of the State the number of Corps' actions will be viewed by area.

Location of Permitting Activity

The data shows permitting activity spread over Alaska. Heavier permit activity occurs throughout the south central, interior and far north regions. The permits are concentrated in population centers and on the North Slope. The next area with substantial permit activity is the southeast, which is accessible only by air or marine ferry routes. The Alaska District has offices in Fairbanks, Anchorage, Kenai, and Juneau. The Anchorage Office is located on Joint Base Elmendorf, and the Fairbanks office is located on Fort Wainwright.

The Fairbanks Office is responsible for the Fairbanks North Star Borough, the Taylor Highway westward to the Parks Highway north of the Alaska Range, the Dalton Highway, and all military projects north of the Alaska Range, including the cities of Big Delta, Birch Creek, Central, Chena Hot Springs, Chicken, Circle, Circle Hot Springs, Delta Junction, Dot Lake, Dry Creek, Ester, Fairbanks, Fox, Healy, Healy Lake, Livengood, Manley Hot Springs, Minto, Nenana, North Pole, Rampart, Tanacross, and Tok.

The Juneau Office is responsible for projects located in southeast Alaska, from Cape Suckling south to Cape Fanshaw, Admiralty Island, Chichagof and Baranof Islands. Communities include Angoon, Gustavus, Haines, Juneau, Klukwan, Skagway, Elfin Cove, Hoonah, Pelican, Port Alexander, Sitka, Tenakee Springs, and Yakutat.

The Kenai Office is responsible for projects located within the Aleutian Chain, the Bristol Bay Borough, the Kenai Peninsula Borough, the Kodiak Island Borough, and the Lake & Peninsula Borough.

The Anchorage office is responsible for all projects not located in areas covered by the three field offices.

If staffing or vacancies occur within offices, the Alaska District will cross boundary lines to staff projects. A consideration in operating a regulatory program is how to deploy the correct number of staff to cover the projected activities. If assigned staff are located near to their work, less staff time is spent traveling to sites, and customer service improves as applicants can meet with staff and staff make site visits.

To identify the greatest concentrations of workload, the boroughs were ranked from the highest to the lowest in the table below. This is intended to give a general indication of the geographical distribution of workload. Limitations of Table 1 are that the data is not sorted by permit type, wetland or non-wetland impact, and assumable vs. non-assumable. While future project location patterns may change, they are unlikely to change very much based on five years of data.

Total Number of Actions in Each Borough/Census Area with Begin Dates from 2018-2022

Borough/Census Area	Section 10	Section 10/404	Section 404	No Authority Data	Grand Total
Kenai Peninsula Borough	315	84	381	682	1462
North Slope Borough	8	67	345	363	783
Fairbanks North Star Borough	8	40	253	339	640
Matanuska-Susitna Borough	21	39	274	276	610
Anchorage Municipality	13	38	187	335	573
Yukon-Koyukuk Census Area	9	19	169	265	462
Valdez-Cordova Census Area	41	37	108	198	384
Ketchikan Gateway Borough	69	36	60	205	370
Bethel Census Area	1	9	154	165	329
Juneau City and Borough	19	61	103	104	287
Prince of Wales-Hyder Census Area	53	20	57	133	263
Nome Census Area	4	27	90	140	261
Blank	1	7	20	222	250
Southeast Fairbanks Census Area	-	6	68	112	186
Kodiak Island Borough	14	17	26	87	144
Wrangell City and Borough	21	14	34	70	139
Northwest Arctic Borough	4	9	42	72	127
Petersburg Borough	5	13	34	60	112
Sitka City and Borough	25	31	29	24	109
Aleutians West Census Area	8	11	11	67	97
Denali Borough	2	4	45	46	97
Hoonah-Angoon Census Area	18	18	29	27	92
Kusilvak Census Area	-	5	51	32	88
Lake and Peninsula Borough	3	7	11	43	64
Dillingham Census Area	8	14	13	29	64
Haines Borough	3	17	13	26	59
Aleutians East Borough	14	5	1	19	39
Bristol Bay Borough	3	1	5	10	19
Yakutat City and Borough	3	5	5	4	17
Skagway Municipality	3	3	5	4	15
Grand Total	696	664	2623	4159	8142

State programs with wide-reaching responsibility, such as other water quality programs, natural resources and land management programs, transportation and fish and wildlife agencies, typically have regional offices throughout a state. Some of those regional offices are co-located with headquarters offices. Co-location reduces indirect (overhead) costs for such essentials as office space and vehicles. State natural resource programs are frequently integrated in this way, giving states the advantage of providing better one-stop-shopping types of services than the

federal government. State offices would not be located on Federal military bases. This level of service is expected by many state citizens and is one factor that sets states apart from the federal government.

Appendix 9. Methodology to Evaluate Corps' Workload and State Workload under 404 Program Assumption

Summary of all Corps' ORM-2 Data 2018-2022

The Alaska District provided all ORM-2 data from the 2018-2022 timeframe to DEC. An analysis was conducted to evaluate Corps' workload to be used to extrapolate potential State workload under 404 Program assumption. Since the State cannot assume the program for all waters, assumptions were made regarding Corps-retained waters.

Data actions in the ORM-2 database include all AJD, APPEAL, COMPCERT, CONGRINQA, DANGERZON, DEVESAEFH, DEVINLIEUA, DEVMBBA, DEVRPSS, EIS, EMERGA, FOIAA, LOP, NONCOMPLY, NPR, NWP, PERMITMOD, PERMTRANS, PGP, PJD, PREAPPCONS, PUBMEETA, RGP, SP, STRMOD, and UNAUTHACT. For purposes of this analysis, where actions are not attributed to Section 10, Section 10/404, or Section 404, they have been identified as "No Authority Data."

This analysis looks at total Corps' actions, as that is more representative of Corps' workload than a simple count of the number of permits issued. A copy of the entire workbook of tables has been provided to DEC. This analysis is a summary of the workbook tables.

*DA numbers in the workbook of tables represent individual projects. They are counted more than once within the tables if they were withdrawn and later resubmitted or if permits were submitted under more than one authority.

Total Number of Actions in Each Authority with Begin Dates from 2018-2022

Section 10 Actions	Section 404 Actions	Section 10/404 Actions	No Authority Data	Total Actions from 2018-2022
696	2623	664	4159	8142

Summary of all Data

Total Number of Actions in Each Borough/Census Area with Begin Dates from 2018-2022

Borough/Census Area	Section 10	Section 10/404	Section 404	No Authority Data	Grand Total
Aleutians East Borough	14	5	1	19	39
Aleutians West Census Area	8	11	11	67	97
Anchorage Municipality	13	38	187	335	573
Bethel Census Area	1	9	154	165	329
Bristol Bay Borough	3	1	5	10	19
Denali Borough	2	4	45	46	97
Dillingham Census Area	8	14	13	29	64
Fairbanks North Star Borough	8	40	253	339	640
Haines Borough	3	17	13	26	59
Hoonah-Angoon Census Area	18	18	29	27	92
Juneau City and Borough	19	61	103	104	287
Kenai Peninsula Borough	315	84	381	682	1462
Ketchikan Gateway Borough	69	36	60	205	370
Kodiak Island Borough	14	17	26	87	144
Kusilvak Census Area		5	51	32	88
Lake and Peninsula Borough	3	7	11	43	64
Matanuska-Susitna Borough	21	39	274	276	610
Nome Census Area	4	27	90	140	261
North Slope Borough	8	67	345	363	783
Northwest Arctic Borough	4	9	42	72	127
Petersburg Borough	5	13	34	60	112
Prince of Wales-Hyder Census Area	53	20	57	133	263
Sitka City and Borough	25	31	29	24	109
Skagway Municipality	3	3	5	4	15
Southeast Fairbanks Census Area		6	68	112	186
Valdez-Cordova Census Area	41	37	108	198	384
Wrangell City and Borough	21	14	34	70	139
Yakutat City and Borough	3	5	5	4	17
Yukon-Koyukuk Census Area	9	19	169	265	462
Blank	1	7	20	222	250
Grand Total	696	664	2623	4159	8142

Rationale from Estimating Potential State Workload

To determine how many actions are attributed to Section 404 authority, all Section 10 authority actions were removed since Section 10 permits will remain with the Corps. Section 10/404

authority actions were then removed, assuming if the action was in a Section 10 water the wetlands will be within the correct distance to be considered adjacent and will remain with the Corps.

Actions	Number of Actions
Total Corps' Actions	8142
Remove Section 10 authority actions	-696
Remove all Section 10/404 authority actions	-664
Total estimated State actions	6782

To determine percentage of assumable actions (potential State workload as a percentage of existing Corps' workload) the total remaining actions (6782) were divided by the total actions (8142) and multiplied by 100 = 83% of the actions are assumable or, stating the converse, 17% of all action types are Section 10 and Section 10/404 and remain with the Corps.

This does not account for the missing data in the database, "No Authority Data" actions which total 4159. This represents a substantial portion of the summary data tied to an action. This data was reviewed, and it is clear from the *Authority of all Actions Table* that there is only one action that is Authority specific to Section 10 (DANGERZON). All the other actions can apply to Section 10 and or Section 10/404. Therefore, the assumed calculated percentage of Section 10 and Section 10/404 in this authority would apply at the same ratio through all action types.

The 83% was applied to the No Authority Data number of actions $(4159)(.83) = 3452$

No Authority Actions equals 3452 assumable actions, added to the Section 404 only actions (2623) (all potentially assumable) totals 6075 assumable actions.

Actions assumable by the State can now be tabulated and calculated as percent of the Corps' workload. The potential State workload (6075 actions) divided by the total Corps' workload (8142 actions) multiplied by 100 equals 75%.

The State can expect to assume approximately 75% of the Corps' workload under program assumption. This may vary depending on the final decisions on retained/assumable waters.

Total Number of State Assumable Actions in Each Authority from 2018-2022

Section 10 Actions	Section 404 Actions	Section 10/404 Actions	No Authority Data	Total Assumable Actions from 2018-2022	Percent of Total workload
0	2623	0	3452	6075	75%

Appendix 10. Analysis of Changing Nature of Corps' Workload

Permit Number Between Data Set Analysis

The Corps supplied ORM data that could be searched in 2022. Therefore, there is more data that in the 2018 -2022 data than the 2005 to 2014 data.

In the 2018-2022 the data can be sorted by AJD (Approved Jurisdictional Determination), APPEAL (Appeal), COMPCERT (Compliance Action) , CONGRINQA (Congressional Inquiry), DANGERZON, (Danger Zone Action), DEVESAEFH (Develop Programmatic ESA or EFH Consultation), DEVINLIEUA (Develop In-Lieu Fee Program), DEVMBA (Develop Mitigation Bank), DEVRPSS(Develop RGP/PGP/SPGP/Section 404-LOP), EIS (Environmental Impact Statements), EMERGA Emergency Action), FOIAA (Freedom of Information Act Action), LOP (Letter of Permission), NONCOMPLY (Noncompliance), NPR (No Permit Required), NWP (Nationwide Permit), PERMITMOD (Permit Modification), PERMTRANS Permit Transfer) , PGP (Programmatic General Permit) , PJD (Preliminary Jurisdictional Determination), PREAPPCONS (Pre-Application Consultation), PUBMEETA Public Meeting), RGP (Regional General Permit), SP (Standard Permit), STRMOD (Structure Modification), UNAUTHACT (Unauthorized Activity).

The 2005-2014 data set was supplied as a sorted excel table. The data did not include: AJD, APPEAL, COMPCERT, CONGRINQA, DANGERZON, DEVESAEFH, DEVINLIEUA, DEVMBA, DEVRPSS, EIS, EMERGA, FOIAA, NONCOMPLY, NPR, PERMITMOD, PERMTRANS, PREAPPCONS, PUBMEETA, STRMOD, UNAUTHACT.

The only comparison that can be done to determine workload trends is to use equivalent data between the two data sets. The common action types include LOPs, NWPs, PGPs, RGPs, and SPs. Using this data allows for a permit issued comparison. Data found in the data sets was incomplete from 2001-2004, 2012-2017, and in 2022.

Because incomplete data years can skew yearly results, the following tables only include years with complete data. The data is shown in four-year increments for consistency.

Authority of Actions with Begin Dates from 2005 through 2008

Action Type	Section 10	Section 10/404	Section 404	No Authority Data	Total
LOPs	-	-	-	12	12
NWPs	412	433	626	802	2273
PGPs	2	3	6	4	15
RGPs	64	66	114	229	473
SPs	128	90	156	54	428
Total	606	592	902	1101	3201

Total of Section 10/404 and 404 = **1494**

Authority of Actions with Begin Dates from 2009 through 2012

Action Type	Section 10	Section 10/404	Section 404	No Authority Data	Total
LOPs	-	-	-	3	3
NWPs	297	370	696	393	1756
PGPs	-	-	-	-	-
RGPs	43	42	190	133	408
SPs	59	55	177	15	306
Total	399	467	1063	544	2473

Total of Section 10/404 and 404 = **1530**

Authority of Actions with Begin Dates from 2018 through 2021

Action Type	Section 10	Section 10/404	Section 404	No Authority Data	Total
LOPs	190	-	-	13	203
NWPs	172	275	1038	70	1555
PGPs	-	-	4	-	4
RGPs	231	1	213	36	481
SPs	12	95	166	50	323
Total	605	371	1421	169	2566

Total Section 10/404 and 404 = **1792**

The section 10 permits were not accounted and only Section 10 and Section 404 permits were totaled. The No Authority data was ignored to ensure compatible data.

Section 10/404 and 404 Actions from 2005 through 2021

Complete Data Years	Section 10/404 and Section 404	Permit Average
2005-2008	1494	374
2009-2012	1530	383
2018-2021	1792	448

The permits have increased from 374 to 383 to 448 permits. This is an increase of seventy-two permit actions from the 2005 until 2021 or a **16% increase**.

Another way is to look at data is by Boroughs and Census areas using the same LOPs, NWP, PGP, RGP, and SP actions.

Actions by Borough 2005 through 2008

Row Labels	Section 10	Section 10/404	Section 404	No Authority Data	Grand Total
Aleutians East	4	2	5	8	19
Aleutians West	4	4	7	3	18
Anchorage	17	8	78	95	198
Bethel	20	56	29	60	165
Bristol Bay	2	2	1	3	8
Denali	5	4	10	5	24
Dillingham	2	4	3	3	12
Fairbanks North Star	28	58	81	44	211
Haines	5	3	11	12	31
Juneau	40	16	37	49	142
Kenai Peninsula	183	130	111	229	653
Ketchikan Gateway	39	34	21	38	132
Kodiak Island	8	11	8	34	61
Lake and Peninsula	3	3	4	10	20
Matanuska-Susitna	31	48	104	87	270
Nome	18	14	37	25	94
North Slope	39	60	46	70	215
Northwest Arctic	24	16	17	54	111
Prince of Wales-Outer Ketchikan	38	21	49	45	153
Sitka	10	6	39	28	83
Skagway-Hoonah-Angoon	9	4	9	22	44
Southeast Fairbanks	6	9	44	38	97
Valdez-Cordova	31	17	46	67	161
Wade Hampton	4	9	12	7	32
Wrangell-Petersburg	20	15	43	29	107
Yakutat	5	1	10	5	21
Yukon-Koyukuk	11	37	40	31	119
Total Actions	606	592	902	1101	3201

Actions by Borough 2009 through 2012

Borough	Section 10	Section 10/404	Section 404	No Authority Data	Grand Total
Aleutians East	3	6	4	2	15
Aleutians West	4	5	5	4	18
Anchorage	13	16	107	65	201
Bethel	7	10	40	8	65
Bristol Bay	1	1	2	-	4
Denali	4	8	29	17	58
Dillingham	-	10	11	4	25
Fairbanks North Star	13	44	87	8	152
Haines	6	1	11	2	20
Juneau	18	21	43	19	101
Kenai Peninsula	129	77	117	121	444
Ketchikan Gateway	25	20	29	11	85
Kodiak Island	11	3	17	8	39
Lake and Peninsula	1	23	18	24	66
Matanuska-Susitna	23	19	102	54	198
Nome	28	59	39	16	142
North Slope	35	59	71	21	186
Northwest Arctic	13	5	17	10	45
Prince of Wales-Outer Ketchikan	16	8	37	14	75
Sitka	11	12	18	12	53
Skagway-Hoonah-Angoon	5	6	7	10	28
Southeast Fairbanks	1	4	40	31	76
Valdez-Cordova	7	9	56	36	108
Wade Hampton	2	8	18	4	32
Wrangell-Petersburg	11	14	49	9	83
Yakutat	1	1	2	1	5
Yukon-Koyukuk	11	18	87	33	149
Total Actions	399	467	1063	544	2473

Actions by Borough 2018 though 2021

Borough	Section 10	Section 10/404	Section 404	No Authority Data	Grand Total
Aleutians East Borough	13	5	1	3	22
Aleutians West Census Area	7	8	6	2	23
Anchorage Municipality	13	20	107	7	147
Bethel Census Area	1	4	84	4	93
Bristol Bay Borough	3	1	2	-	6
Denali Borough	1	2	29	-	32
Dillingham Census Area	6	7	10	2	25
Fairbanks North Star Borough	6	23	121	7	157
Haines Borough	3	10	7	2	22
Hoonah-Angoon Census Area	16	9	16	1	42
Juneau City and Borough	18	21	48	9	96
Kenai Peninsula Borough	274	54	194	33	555
Ketchikan Gateway Borough	63	26	42	5	136
Kodiak Island Borough	13	13	22	1	49
Kusilvak Census Area	-	4	26	3	33
Lake and Peninsula Borough	3	3	6	2	14
Matanuska-Susitna Borough	19	17	129	10	175
Nome Census Area	1	19	43	7	70
North Slope Borough	6	46	208	11	271
Northwest Arctic Borough	4	4	26	7	41
Petersburg Borough	4	5	26	-	35
Prince of Wales-Hyder Census Area	46	12	25	7	90
Sitka City and Borough	22	12	19	1	54
Skagway Municipality	2	2	4	-	8
Southeast Fairbanks Census Area	-	4	46	6	56
Valdez-Cordova Census Area	37	17	62	6	122
Wrangell City and Borough	14	8	15	5	42
Yakutat City and Borough	3	2	3	-	8
Yukon-Koyukuk Census Area	7	10	85	15	117
Blank	-	3	9	13	25
Total Actions	605	371	1421	169	2566

The information displayed by Borough allows a look at trends over time. ORM data entry is becoming more consistent as fewer actions have no authority. Permits continue to be issued in

population and industrial areas of the Kenai Peninsula, Fairbanks, North Slope, Matanuska-Susitna, North Star Boroughs, and the Municipality of Anchorage.

It is important to note that tasks not represented in the 2005 to 2014 data exist in today's workload. The 404 Program has gotten more complicated over time for multiple reasons. The changing WOTUS Rules, Mitigation Rule, CWA 401 coordination requirements, changing NWRPs to include preconstruction notifications (PCNs), and RGRPs with PCN requirements. There are fewer non-reporting NWRP and RGRPs being reauthorized every five years. Each round of Regional and General Permit conditions result in more Federal and State agency coordination and conditions.

In 2008 the State of Alaska assumed the NPDES EPA Federal permitting process. EPA no longer leads EIS CWA 402 actions in Alaska. This change leaves the Corps as the major Federal agency on major construction projects where there is no Federal Land Manager. Examples include the Pebble Mine Application, Donlin Gold Mine EIS, Alaska Stand Alone Pipeline, and the Nanushuk Project.

The Corps must determine on each permit application if the agency has jurisdiction for the placement of fill or structures/work in waters of the United States, including wetlands. The Corps performs Jurisdictional Determination (JD) as a free service to the public upon request, excluding JD requests involving areas greater than five acres or those requiring considerable labor hours. To expedite the permit process, the Corps encourages applicants to use consultants to submit Jurisdictional Determination Reports (JDRs), for large, complex projects. JDRs are submitted to the Corps for review and verification as a Preliminary JD (PJD). If the Corps agrees with the PJD conclusions, they will complete the required documentation to convert the JDR to an Approved JD (Special Public Notice 2020-00399). This work continues to get more complex as WOTUS rules change and RGLs or court cases add additional documentation to the PJD process.

In October 2016 RGL 16-01 provided additional instructions on PJDs and AJDs. The Corps included a PJD request form and documentation sheets adding to internal paperwork requirements. The paperwork and requirements change with each WOTUS change.

RGLs are completed by HQ and the Districts are obligated to follow the prescribed RGL instructions.

Appendix 11. Required Components of a State Assumption Application

Regulations beginning at 40 CFR § 233.10 describe the elements of a state application to administer the 404 permit program. The application must be submitted (in triplicate) to the EPA Regional Administrator. The state should also submit the application electronically. While covered under different regulations than those for the 402 Program, the application elements are similar and DEC has good templates to start from, based on the 402 primacy application completed in 2008 ([Primacy Application, October 29, 2008 - Program Description \(alaska.gov\)](#)). The main elements are shown in Table 5. Required Elements of a 404 Program Assumption Application and described below.

There are six elements to the application:

Governor's Letter

The application requires a cover letter from the Governor to the EPA Administrator requesting approval under CWA Section 404(g) for the state to administer its own permit program for the discharge of dredged or fill material into navigable waters of the state (subject to specific limitations described in Section 4.5).

Program Description

The application must include a complete Program Description (PD), as described in 40 CFR § 233.11. The PD must include the scope and structure of the State's program, the extent of the State's jurisdiction, scope of regulated activities, interagency coordination, and permit exemptions, and permit review criteria. It must describe procedures for permitting, including public and administrative review; the State's organizational structure, including other agencies that may be involved and their role; funding and manpower needs; anticipated workload (JD's, permitting including number of discharges under different permitting tools, mitigation, inspection and compliance/enforcement); copies of all forms to be used in administering the program and a description the program data management system; the compliance evaluation and enforcement program and policy including coordination with the Corps and EPA; State jurisdictional waters and waters retained by the Corps, including a comparison of State and Federal definitions of wetlands (note that for the 402 Program implementation, Alaska adopted a regulatory definition of "waters of the U.S." that tracks the federal definition); and, a description of how the State will address certain exemptions for farm roads, forest roads, or temporary roads for moving mining equipment (404(f)(1)(e)). See Appendix 12. Program Description Outline for 404 Program Assumption. It's important to note that DEC needs to develop the PD and that all program elements described in the PD must be in place before or by program assumption approval.

Attorney General's Statement

The application package must include a statement by the Attorney General that the laws and regulations of the State provide adequate authority to carry out the program set forth in the Program Description submitted by DEC. The statement must cite specific statutes and

regulations which are fully adopted by the time the assumption application is submitted and effective by the time the program is approved. This timing was a challenge when the State sought approval of the 402 Program but can be addressed by making the State regulations effective upon EPA approval of the program.

If more than one agency has responsibility for administering the State program, the AG Statement must certify that each agency has full authority to administer the program within its category of jurisdiction. If program responsibilities are assigned to DNR or DF&G, their authority to conduct those responsibilities must be described and the State, as a whole, must have authority to implement the entire State 404 Program.

The AG statement must include a legal analysis of State law regarding the prohibition on taking private property without just compensation and how that may affect successful program implementation. Note that the AG Statement for the 402 Program did not require such an analysis, however, Alaska law is similar to federal law regarding takings and will have no impact on successful 404 Program implementation.

The AG statement should include a crosswalk between the State program authorities and the federal program authorities to demonstrate the State's program does not reduce environmental protections offered by federal law.

MOA with the Regional Administrator

The program assumption application must include a MOA signed by the DEC Commissioner and the Regional Administrator (See Appendix 13. Outline for MOA with the EPA Regional Administrator). If DNR or DF&G have responsibility for portions of program implementation, they will need to be parties to the MOA, with their commissioner's signatures.

The MOA must include classes and categories of permit applications for which EPA will waive federal review (as specified in 40 CFR § 233.51). As a provision of the MOA, DEC should propose to EPA establishing heavier oversight in the early years of program implementation and less federal oversight over time (see Section 3.4 EPA Oversight).

The MOA must include the frequency and content of reports, documents, and other information which the State needs to submit to EPA, including the annual report and date for submission. DEC should define reporting based upon the State fiscal year, to coincide with other, internal, State reporting requirements. The MOA also needs to grant access to EPA to review State records, reports, and files related to administration of the approved program and should provide DEC with access to relevant EPA records

The MOA must define EPA and State roles regarding coordination with respect to compliance monitoring and enforcement activities. While EPA will retain enforcement authority over State-issued permit violations (or unpermitted activities), as with the 402 Program, the MOA should include provisions that EPA must first notify the State that it is aware of a potential violation and give the State the first right to take follow up actions. It should also give the State the right to request EPA assistance with a compliance/enforcement action.

Finally, the MOA must include provisions for modification.

MOA with the Secretary

The program assumption application must include a MOA signed by the DEC Commissioner and the Secretary of the Army (See Appendix 14 Outline for MOA with the Secretary of the Army).

If DNR or DF&G have responsibility for program implementation, they will need to be parties to the MOA, with their commissioner's signatures.

The MOA must include a description of waters of the United States over which the Corps retains jurisdiction. These are to be identified by the Corps.

The MOA must include procedures, upon program approval, for transfer to the State of pending 404 permit applications for discharges into State assumed waters, and other relevant information. The MOA can be used to describe any "phase-in" of full program assumption. A phase-in could be based on geographic areas; recognize pending permit applications; transfer certain permit types (for example, State take-over of federal GPs); or consider the seasonality of the permit application cycle. The MOA should also document the procedures for coordination on joint public notice and hearings where both parties may be involved in permitting a project, for example, Corps' permits in retained waters and State certification of those permits. If federal regulations are updated to allow "partial" program assumption prior to DEC submitting its assumption application and DEC wants to seek partial assumption, the MOA can describe work the State will assume. The MOA can be used as a vehicle to make DEC a co-chair with the Corps of the State Interagency Review Team.

The MOA must also identify all GPs (NWP, PGP, RGP) issued by the Corps that the State intends to administer upon program approval, and a plan for transferring responsibility for them to the State, along with files, compliance reports, records of enforcement actions, and other relevant information.

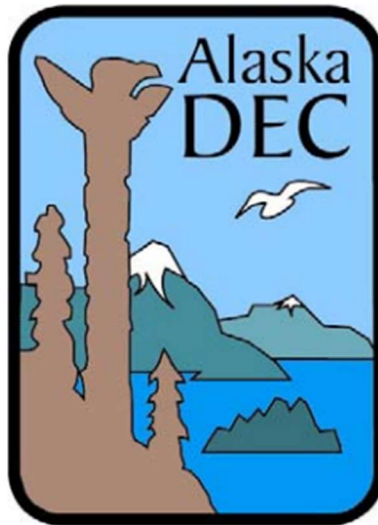
Statutory Authority and Regulations

The program assumption application must include copies of all applicable State statutes and regulations governing the program, including regulations regarding administrative and appeals procedures.

Appendix 12. Program Description Outline for 404 Program Assumption

Document begins on next page.

Alaska's State 404 Program Program Description



**Division of Water
Alaska Department of Environmental
Conservation**

[Date]

Draft January 2023

Program Description Table of Contents

[*Based on Michigan's recent 404 Program application and DEC's 402 Program Description. Note that Michigan included a lot of their PD information in a "State 404 Program Applicant's Handbook." DEC will need to ensure all that information is covered in the PD, appendices, or other attachments and guidance documents.]

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Abbreviations and Acronyms

1. Introduction

Purpose

The following program description documents the structure, organization, and procedures that the Alaska Department of Environmental Conservation (DEC) will follow to administer Section 404 of the Clean Water Act (CWA) in the state of Alaska, pursuant to 33 USC §1344 (g).

Guidance

This document is a full and complete description of the Alaska State 404 Program that will be established and administered under State law. It includes all information necessary for the Environmental Protection Agency's (EPA) review and approval in accordance with the provisions of 40 CFR Part 233. The program description is organized in sections with each section corresponding to the lettered requirement in 40 CFR § 233, with one additional section titled "Additional Information" that includes information that may not fit exactly within a lettered category. In instances where detailed descriptions of the permitting program standards and procedures are required, a reference is provided to the memorandum of agreement (MOA), Memorandum of Understanding (MOU), document, or State 404 Program regulation that describes those standards and procedures. The standards and procedures are not repeated in detail within this document. Helpful links to the DEC website are provided throughout for convenience.

Legislative Authority

In 2013, the legislature passed, and the governor signed, SB 27 directing DEC and DNR to evaluate the potential benefits, costs, and consequences to the State of assuming primacy for regulating dredge and fill activities under 33 U.S.C § 1344. The bill directs the agencies to take reasonable steps to assume primacy and provides broad authority to take actions, including adoption of regulations necessary to obtain federal approval of a State program and to implement the program. [Describe any subsequent legislative authority, if any] DEC will implement the law and regulations adopted thereunder.

Overview

State assumption of the 404 Program will provide a streamlined permitting procedure where both federal and State requirements are addressed by State permits. This will provide greater certainty to the regulated community, conserve resources of both applicant and regulator, and afford the State greater control over its natural resources while complying with federal law. When Alaska's program is approved, it will be the fourth state to implement a state-assumed program. Assumption of the dredge and fill permitting program under section 404 of the CWA will result in significant efficiencies for permittees and allow better engagement with the public, while rigorously protecting the environment. The State 404 Program will apply to any project proposing dredge or fill activities within State assumed waters. Such projects include, but are not limited to: single family residences; commercial developments; utility projects; environmental restoration and enhancement; linear transportation projects; governmental development; certain

agricultural and silvicultural activities; and in-water work within assumed fresh water bodies such as docks, piers, marinas, living shorelines, and other shoreline stabilization.

[Describe any pre-public notice stakeholder process] A public notice of proposed rules for the State 404 Program was published on [date]. As part of the rule development process DEC held [workshops/hearings] available to residents throughout the State. [List dates and locations] The public comment period ran from [date] until [date]. All comments and public input were reviewed and incorporated into the draft rule as appropriate. The final rule was adopted on [date] and certified by the Lt. Governor on [date]. The rules will become effective on the date that EPA publishes approval of Alaska's program in the Federal Register. The finalized rules are included in this submission, along with other required components of the assumption package such as Memoranda of Agreement (MOAs) between DEC and the Corps and DEC and EPA. DEC continues to prepare for assumption by conducting both beginner and advanced level wetland delineation training and State 404 Program regulatory and compliance training, which will be provided to existing staff prior to the effective date of assumption and will be provided on regular intervals and as needed into the future. The Department worked diligently with EPA, the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) to ensure that the State's process for complying with the requirements of the Endangered Species Act (ESA) is at least as stringent as the federal program. Additionally, the Department has been working with EPA, the State Historic Preservation Office, and Tribes to ensure that the outcomes of the State's process for protection of historical and cultural resources are at least as protective as those under the federal process.

2. Description of the Scope and Structure of the State's Program (required by 40 C.F.R § 233.11(a))

Purpose of Section (a)

The purpose of Section (a) is to provide the information required in 40 CFR § 233.11(a), which states: “The program description as required under §233.10 shall include: (a) A description of the scope and structure of the State's program. The description should include extent of State's jurisdiction, scope of activities regulated, anticipated coordination, scope of permit exemptions if any, and permit review criteria;”

State 404 Program Jurisdiction

In accordance with [Alaska statutes/regulations] the State 404 Program governs all dredge and fill “activity” in waters of the United States regulated by the State under section 404(g)-(l) of the CWA, 33 U.S.C. §§ 1344(g)-(l). The State will administer the CWA section 404 dredge and fill permitting program within assumed waters. The Army Corps of Engineers (USACE) will retain administration of the CWA section 404 dredge and fill permitting program within retained waters.

Agency Coordination

[Briefly describe MOAs with EPA, USACE, USFWS; describe roles of DNR mapping, OPMP, SHPO, and DF&G and any MOAs; identify that DEC may also coordinate with Tribes under the Tribal and Local Government Coordination guidance document]

Scope of Activities Regulated by the State 404 Program

DEC regulations at [insert reference] require that an applicant receive a State 404 Program permit prior to discharging any dredge or fill material in, on, or over State-assumed WOTUS unless the activity qualifies for an exemption. The State 404 Program provides several types of authorizations: verifications of exemption, [permit by rule?], General Permits, and Individual Permits. Where required, applicants must submit the appropriate application with supporting documentation to the Department for review and authorization prior to commencing any regulated activity. A [matrix/website?] to assist applicants in determining the appropriate application form based on the type of authorization required is located [where?]. Typical dredge and fill activities in Alaska include, but are not limited to:

- Dredging • Filling • Wetlands restoration • Excavation • Commercial developments • Residential developments • Single-family residences • Utilities • Transmission lines • Roadways • Airports • Marinas • Docks • Piers • Boat ramps • Dams • Levees • Mining activities

State 404 Program Permit Exemptions

Pursuant to [reference State regulation], a State 404 Program permit is not required for the activities described in 40 CFR §232.3. Notice to the Department is not required to conduct an exempt activity.

State 404 Program General Permits

[Describe federal General Permits the State is assuming and any General Permits already in place. Can refer to the Corps' MOA.]

State 404 Program Individual Permits

3. Description of the State's Permitting, Administrative, Judicial Review and Other Applicable Procedures (required by 40 CFR § 233.11(b))

Purpose of Section (b)

The purpose of Section (b) is to provide the information required in 40 CFR § 233.11(b), which states: “The program description as required under §233.10 shall include: (b) A description of the State's permitting, administrative, judicial review, and other applicable procedures;”

General Summary of Procedures

Specific Permitting and Verification Procedures

Jurisdictional Determinations

General Permits

Individual Permits

Administrative and Judicial Review

4. Description of the Basic Organization and Structure of the Alaska Department of Environmental Conservation, Which will have Responsibility for Administering the State 404 Program (Required by 40 CFR § 233.11(c))

Purpose of Section (c)

The purpose of Section (c) is to provide the information required in 40 CFR § 233.11(c), which states: “The program description as required under §233.10 shall include: (c) A description of the basic organization and structure of the State agency (agencies) which will have responsibility for administering the program. If more than one State agency is responsible for the administration of the program, the description shall address the responsibilities of each agency and how the agencies intend to coordinate administration and evaluation of the program;”

DEC

[Overview of Department and Divisions]

Division of Water

[overview of Programs, organization, attach org charts, include permitting, compliance and enforcement, mitigation, data management, administration]

Other State Agency Roles

[DNR Geospatial mapping, SHPO, OPMP, DF&G]

5. Description of the Funding and Person-Power Which will be Available for Program Administration (Required by 40 CFR § 233.11(d))

Purpose of Section (d)

The purpose of Section (d) is to provide the information required in 40 CFR § 233.11(d), which states: “A description of the funding and manpower which will be available for program administration;”

Introduction

State 404 Program FTE

[Identify staff numbers by job class, location (including plans to move staff to Wasilla or Soldotna) and general job duties (i.e. jurisdictional determinations, engineering, General Permit Authorizations and Individual Permits, mitigation, inspection/compliance, administrative)]

Staff Funding

[Identify numbers of staff, including existing or new staff in related programs such as Water Quality Standards that support the program]

[Identify funding source, by year for first full year after assumption approval]

6. An Estimate of the Anticipated Workload (Required by 40 CFR § 233.11(e))

Purpose of Section (e)

The purpose of Section (e) is to provide the information required in 40 CFR § 233.11(e), which states: "An estimate of the anticipated workload, e.g., number of discharges."

Analysis of Corps' Workload and State-Assumable Workload

[Use data from January 2023 Feasibility Study]

Estimated Number of State 404 Program Permits by Geographic Region

[Anchorage, Fairbanks, Juneau. Use data from the January 2023 Feasibility Study. Demonstrate DEC has sufficient staff to carry out the assumed workload. Consider analysis of the time it takes to conduct specific activities such as JDs, GP authorizations, IPs]

Program Reassessment

[Staffing and funding needs are reassessed annually with development of the annual governor's budget request.]

7. Copies of Permit Application Forms, Permit Forms, and Reporting Forms (Required by 40 CFR § 233.11(f))

Purpose of Section (f)

The purpose of Section (f) is to provide the information required in 40 CFR § 233.11(f), which states: "Copies of permit application forms, permit forms, and reporting forms;" The following is a list of forms included as attachments to this section.:"

[Describe EDMS and electronic ap forms. Include a list of all forms and attach copies to PD. Include 1. application forms for JDs, IPs, GPs (including GP-specific applications), 2. Other forms such as permit transfer, permit modification, 3. permit templates, 4. Inspection reports and compliance documents – Notices of Violation, etc., 5. As built certification form, 6. other templates such as public notices.]

8. Description of the State's Compliance Evaluation and Enforcement Programs (Required by 40 CFR § 233.11(g))

Purpose of Section (g)

The purpose of Section (g) is to provide the information required in 40 CFR § 233.11(g), which states: “The program description as required under § 233.10 shall include: (g) A description of the State's compliance evaluation and enforcement programs, including a description of how the State will coordinate its enforcement strategy with that of the Corps and EPA.”

Compliance and Enforcement Program Overview

Compliance Assistance

Permit Compliance

Unauthorized Activities

Enforcement

[Include description of inspection and enforcement approach]

Corrective Actions

Administrative Penalties

[If DEC receives administrative penalty authority]

Civil Penalties

[Including guidance for calculating penalty amounts – reference as an attachment]

Appeals and Public Participation in Enforcement Proceedings

Methods to Ensure Coordination and Consistency Across the Program

9. Description of the Waters of the United States Within a State Over Which the State Assumes Jurisdiction under the Approved Program (Required by 40 CFR § 233.11(h))

Purpose of Section (g)

The purpose of Section (h) is to provide the information required in 40 CFR § 233.11(h), which states: “The program description as required under §233.10 shall include: (h) A description of the waters of the United States within a State over which the State assumes jurisdiction under the approved program; a description of the waters of the United States within a State over which the Secretary retains jurisdiction subsequent to program approval; and a comparison of the State and Federal definitions of wetlands.”

Description of State-Assumed Waters

Description of Retained Waters

State vs. Federal Definitions of Wetlands

Comparison of State Wetlands Delineation Methodology to the Federal Methodology

[Consider use of 1987 Wetlands Delineation Manual and Alaska Supplement, or design Alaska's own.]

Comparison of State vs. Federal Hydrologic Indicators

[If needed]

10. Description of Specific Best Management Practices for Exemptions (Required by 40 CFR § 233.11(i))

Purpose of Section (i)

The purpose of Section (i) is to provide the information required in 40 CFR § 233.11(i), which states: “A description of the specific best management practices proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) of the Act for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.”

Description of Specific Best Management Practices

[Can adopt terms and conditions directly from 40 CFR § 232.3 into State regulation.]

11. Additional Information Related to the Program Description

Purpose of Section

The purpose of Section 11 is to provide additional information that did not fit cleanly into any of the program description sections listed in 40 CFR § 233.11 but are pertinent to a clear description of the State's program.

Memoranda of Understanding/Operating Agreements with Other Agencies

[Identify MOAs with USFW, SHPO, DF&G, DNR OPMP if not covered earlier.]

Information Management

[Describe EDMS and how it is used to tailor permit applications; fill out permit templates and populate other templates such as compliance letters; and manage program data]

Mapping and GIS Data

[Describe Alaska Geospatial Council, Wetlands Tasks Force, and ongoing wetlands mapping work.]

State 404 Program Data Collection

State 404 Program Training and Staff Development

[Describe what's been done and what is planned.]

Comparison with Federal Requirements

DEC prepared a comprehensive cross-walk to document how the State program meets federal requirements [Appendix XX].

Appendix 13. Outline for MOA with the EPA Regional Administrator

Document begins on next page.

**MEMORANDUM OF AGREEMENT
BETWEEN THE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

SECTION I. GENERAL

- A. Purpose: States the purpose of the MOA is to describe federal and state roles in implementing the State program.
- B. Authorities: Outlines the legal authorities for each agency.
- C. Effective Date and Revisions: This section provides for: the effective date of the MOA, which is the approval of the State program by EPA; cooperation between DEC and EPA; retention of authorities by EPA under the CWA; review and revision procedures for the MOA; and that the MOA remains in effect until amended, modified or replaced, the program is withdrawn by EPA, or DEC transfers the program back to the Corps.
- D. Confidentiality: Provides for confidentiality procedures.
- E. Computing Time Periods: Describes how Saturdays, Sundays, and legal holidays are addressed in computing time periods.
- F. Alaska DEC Agreement with Corps: Provides for how this MOA relates to the MOA with the Corps.
- G. Alaska MOU with the USFWS (if done) and DF&G (if done): Provides for how this MOA relates to agreements with these two agencies.
- H. Operating Agreement with the Department of Natural Resources State Historic Preservation Office: Provides for how this MOA relates to this agency.
- I. DEC MOA with Other Agencies: Provides for how this MOA relates to agreements that DEC may enter into with other agencies.

SECTION II. PERMIT APPLICATION REVIEW AND PERMIT ISSUANCE

- A. Lead Agency Responsibility for State Permit Program: Outlines roles, responsibilities, and procedures for DEC and EPA for the review and issuance of permits under the State program, including EPA's periodic review of the State program and access to State records. This section also provides for USFWS consultation and recommendation for protective measures.
- B. Waiver of EPA Review: Describes which permits EPA waives its review for.
- C. Coordination with Other States and Tribes: Outlines procedures for permit review if the proposed action may impact Indian Country.
- D. Permit Processing and Federal Comment: Outlines procedures for federal agency review of permit applications, and public notice.
- E. Coordination and Mitigation Banking: Outlines procedures for EPA review of mitigation banking projects.

SECTION III. COMPLIANCE MONITORING AND ENFORCEMENT

This section outlines responsibilities and procedures for compliance monitoring and enforcement by DEC and EPA, including EPA's authorities in Indian Country, EPA's role in monitoring and enforcement of the State program, review of monitoring and enforcement records, coordination between DEC and EPA, procedures for issuing violations, and the use of consent agreements or other enforcement tools.

SECTION IV. PROGRAM MAINTENANCE

This section outlines procedures for program review and oversight, reporting, and State program modifications.

SECTION V. GENERAL PROVISIONS

This section provides general provisions for the MOA.

SECTION VI. SIGNATURES

This section contains the signatures of the authorized representatives of DEC and the EPA.

Appendix 14 Outline for MOA with the Secretary of the Army

Document begins on next page.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND
THE DEPARTMENT OF THE ARMY**

SECTION I

Purpose and Authority: Outlines the respective roles of Alaska's Department of Environmental Conservation and the U.S. Department of the Army, and states that the purpose of this MOA is to fulfill the requirements of 40 CFR § 233.14.

Effective Date and Revisions: Provides that the effective date of the MOA is when the EPA approves the State 404 program, that the Corps and DEC will closely cooperate in the implementation of the program, the MOA shall be reviewed at least every 12 months, and that the MOA will remain in effect until either EPA modifies the State program authorization or DEC transfers the program back to the Corps.

SECTION II

Waters to be retained: Outlines which waters are to be retained in Corps jurisdiction per 404(g), in Indian Country, and in Denali National Park and Preserve, and outlines how modifications to the Retained Waters List will be addressed.

SECTION III

Joint Coordination Procedures: Outlines the procedures the Corps and DEC will use to determine if an application is in retained waters or State waters, and also outlines how applications in Section 10 waters will be addressed.

SECTION IV

Existing Permits and Pending Permit Applications: Outlines the procedures that DEC and the Corps will use to address Individual and General Permits existing prior to State assumption where the work has not been competed yet, and provides for the transfer of records from the Corps to DEC.

SECTION V

Review of Applications for State Program Permits: Outlines certain procedures for reviewing State permit applications, including those permits which may involve substantial impairment of navigation, Corps civil works projects, emergency permits, and EPA objections to State permits.

SECTION VI

Coordination of Mitigation Banking: Outlines procedures for mitigation bank instruments and in-lieu fee program agreements, permits for mitigation banks and in-lieu fee programs, and the use of credits from mitigation banks.

SECTION VII

Enforcement. Outlines how DEC and the Corps will coordinate enforcement activities after State program assumption.

SECTION VIII

Communication between parties: Outlines procedures for communication between DEC and the Corps.

SECTION IX

General provisions: Provides general provisions to the MOA.

SECTION X

This section contains the signatures of the authorized representatives of DEC and the Corps.



FAIRBANKS PIONEER HOME

Program
and
Expansion Plan



State of Alaska
Department of Family and
Community Services

NOVEMBER 14, 2023

DRAFT

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A. GENERAL INFORMATION

FAIRBANKS PIONEER HOME

CONDITION ASSESSMENT STUDY / DESIGN PROGRAM

CLIENT	State of Alaska Department of Family and Community Services Heidi Hamilton, Division Director Mark Moon, Facilities Manager
USER GROUP	Fairbanks Pioneer Home Angie Howard, Pioneer Home Administrator Andrew Carie, Building Maintenance Foreman
CONSULTANT TEAM	Steve Fishback Architect – Architectural Planning and Design DOWL – Civil Engineering BBFM Engineers, Inc. – Structural Engineer RSA Engineering, Inc. – Mechanical/Electrical Engineer NORTECH, Inc. – Environmental Consulting Arctic Food Service Design, LLC – Food Service and Laundry Estimations Inc. – Cost Estimating
PRIMARY CODES AND REFERENCES	International Building Code (IBC) 2018 Edition International Mechanical Code (IMC) 2018 Edition International Fire Code (IFC) 3018 Edition Alaska Department of Public Safety – Fire Marshal National Fire Protection Association (NFPA) – 72 American Disabilities Act (AD) Regulations AHSRAE Standard 62.1 – Ventilation for Acceptable Indoor Air Quality ASCE 7-10 – Minimum Design Loads for Buildings and Other Structures

B. EXECUTIVE SUMMARY

The Fairbanks Pioneer Home has been carefully maintained and is sited beautifully in a natural setting making it a seemingly idyllic place for Alaskan seniors to live and enjoy the last years of their lives. Fortunately, the Alaska Division of Pioneer Homes recognizes the 55 year old building has become a liability and is far out of compliance with basic building requirements. The building structure does not support the Fairbanks mandated snow load, important fire separations are not provided, smoke control and building wide alarm annunciation are not provided, living spaces are not ADA compliant making it difficult for seniors to access their bedrooms/bathrooms without help from staff. And the list could go on for pages, but it is clear the building has served the State for over half a century and it's time for a significant upgrade or replacement. To this end an addition/renovation and a replacement study have been completed and are the focus of this report.



Both approaches carried the same basic goals, which was to provide comfortable and safe housing for 100 senior residents who will need some level of assistance as time marches on. The building is to be designed to house people who may not be capable of self-evacuation in the case of an emergency without some level of staff assistance. In recent years the International Building Code has been modified to accommodate this type of population with provisions that are not as onerous as a hospital or penial facility, but significantly more than a multi-family housing facility.

The building failings that precipitated this study will be discussed in the following pages, but generally the 1966 building was not intended or designed to provide the level of care now offered in the home. The investigation and analysis conducted for this report concluded the current building could not be simply “remodeled” to support a contemporary assisted living environment for 100 residents without a major addition and extensive renovation/replacement. The list of current building failings is long and described in Section D of this report.

The project mission assuring modern standards for construction and senior care would be incorporated into the final solution were simple when designing the new structure, however even after stripping the existing building interior to the basic structure, the building could not be reconstructed to allow minimum bedroom/bathroom configurations. Ultimately, it was discovered that a sizeable addition would be needed to maintain reasonable living conditions while construction took place and then it would take ten years to work through the five independent phases to bring the entire building up to modern assisted living standards.

In the case of new construction, the building program led to a strong and efficient plan. The new building plan diagrams and description can be found in Section E of this report.

Ultimately the two approaches were investigated and diagrammed. There were obvious advantages and disadvantages to both approaches. The new building was roughly 89,790 square feet and met all the project goals and master plan objectives including minimizing disruption to the residents’ quality of life. The negative aspects included the cost of the new building (\$127,668,734) and the question of what to do with the existing structure. The most obvious solution of simply removing the existing 60,000 square foot building that contained

hazardous materials was expected to cost \$3,650,000. Alternatively, once the new building is complete and the existing building is empty it would be far simpler to renovate, but to what purpose?

In the case of the renovation, a 25 bedroom addition was required to move 25 residents from their existing rooms into new space that ideally fit the program, but the remaining 75 rooms required extensive demolition and reconstruction. Ultimately after weeks of working closely with the Home, the plan did come together in a 92,400 square foot, five phase project that is projected to cost \$151,499,155. This number is impacted by escalation over the 10 years it is expected to build all five phases and finish the full project.

Both approaches result in modern, code compliant living environments that will serve senior Alaskans over the next 50 years.

C. SCOPE OF WORK

The goal of this project is to develop a plan for a Fairbanks Pioneer Home capable of providing assisted living residential care for 100 residents in a comfortable home-like environment that meets current senior care standards and building code safety requirements. To reach that goal, the Department of Family and Community Services, Division of Pioneer Homes asked the project Design Team to assess the existing building for renovation and to develop a companion plan to construct a new building on a new but adjacent State-owned lot. Initially the renovation approach was considered to be too disruptive to the current residents to be viable, but through a ten (10) year phasing approach, the disruption initially appeared to be manageable.

However, through the course of this study, the initial concerns were found to be largely true. The disruption and cost may have been uncomfortable but manageable and would have been further considered if the desired outcomes could have been achieved. After extensive investigation it was found the physical constraints of the existing building configuration made reuse of the existing plan less than ideal resulting in a compromised finished building. The building's failings were so wide reaching and inherent to the basic structure that correcting the deficiencies required extensive demolition and reconstruction over the existing structure. This approach was more expensive per square foot than building the new building.

The first step of discovery was to collect existing information that, in this case, has been carefully maintained. With the existing information in hand, an inspection of the building took place July 28, 2022. Discoveries from the document review and the inspection have been outlined in Section D of this report.

Following the onsite investigation inspection notes and the existing condition report, the programming team began interviewing the Fairbanks staff, particularly the Manager Angie Howard and Maintenance Foreman Andy Carie to learn how the building was being used. The programming sessions generally ran about one hour as we moved through the 60,000 sf building. The purpose of these discussions was to learn what was working well and where operational deficiencies were found. It quickly became apparent the building did not meet the needs of the current resident population who are generally older and more frail than the original building was constructed to support. It was also found that many of the current residents are suffering from various levels of dementia. The information was carefully recorded in meeting minutes and incorporated into the project program. By mid-September 2022 it was determined every interior wall would need to be removed and repositioned to meet fire barrier requirements and normal comfort levels for the residents. Even with those extreme reconstruction measures in some cases the distance from the corridor to the bedroom outside wall was so narrow the bedrooms needed to extend laterally significantly, which of course encroached on the next room. In the end, approximately one-quarter (25) of the 91 existing bedrooms could not be accommodated within the existing building footprint. Also weighing heavily on the reuse program were the building's structural capacity concerns, lack of fire required protection, failing and antiquated utilities, and minimal thermal insulation. The programming team determined that without significant demolition and reconstruction, the bones of the building were only good enough to deliver a diminished home for the northern region residents. At that point the focus shifted from renovation to new construction and effort was applied to the concept investigation of a new building on a State-owned parcel immediately northeast of the current Pioneer Home. Using information gathered during the earlier phases, a new 89,600 square foot building plan was developed. Further discussion of the two tested approaches can be found in Sections D and E of this report.

ARCHITECTURAL PROGRAM SUMMARY

Two independent approaches to constructing a 100 bed Pioneer Home in Fairbanks are the focus of this report. One approach is to add to and renovate the existing building, the second approach is to build a completely new, stand-alone structure on an adjacent State owned lot. As noted earlier the goals for both approaches are the same, 100 bedrooms for individuals requiring Assisted Living level of care in a facility that meets current codes and comfort standards. Two designs have been created to meet the challenges facing each site.

The new building is a self-contained 89,789 square foot structure that is estimated to take 30 months to construct. The design meets all the program goals that were requested during our several month long planning sessions. The plan is compact, includes the preferred housing pod arrangement and includes the needed support spaces.

The 92,400 square foot renovation generally follows the arrangement of the existing building and retains most of the food service and large resident gathering spaces. Administration is moved from the far east end of the building to a more centralized location, closer to most residents. Again, the plan was generated as the result of many meetings and plan adjustments to get as close as possible to all the criteria requested by the home.

The 92,400 square foot design is captured in a one story housing building with its 100 bedroom suites, common spaces, support spaces, dining areas, lounge areas, and circulation. The development also includes a new mechanical space and a warehouse that will be similar to the warehouse at the Palmer Pioneer Home. The mechanical space will accommodate the plumbing and heating needs of the building and will be built as a part of Phase 1.

- Phase Renovation 1 - 5 (92,400 sf)
- New mechanical/warehouse structure (8,066 sf)

At the end of Phase 5, 60% of the existing building will be replaced, 20% significantly renovated creating a completely new interior layout, and 20% will remain substantially the same with new finishes – the areas with the fewest structural changes include the Kitchen, Dining Room, and Recreation Room/Stage.

Housing Units (Neighborhoods)

The individual housing units (Neighborhoods) in both options contain 25 individual residential suites which are described below. One goal of the individual Neighborhoods was to provide a sense of home for the residents in the pod while easily interfacing with other neighborhoods creating a Pioneer Home community.

Overview:

While exploring the option of constructing a new building on the adjacent site, a 25-room pod was developed that reflected the Department's goal for resident privacy and open community opportunities. At the time of the new building study, the plan was well received. However, when the new building approach was put aside to focus on the renovation, the design team explored how the 25-room pod could be incorporated as an asset to the existing building.

The 25-Room Pod

The design of the 25-room pod started with the new resident room and private bath. The front door to each resident room is recessed three feet creating a semi-private zone where residents can conveniently store a walker, a motorized cart, or perhaps a comfortable chair. Upon entering the suite, one's view is of a sitting area nestled into a projecting nook. The rotation of the wall in this nook orients the window towards views of the surrounding landscape rather than views into another resident's room across the courtyard. The rotation of this nook also means the window directly faces the resident while sitting in bed. The room also includes a closet and a chest of drawers.

The fully accessible bathroom is compact but functional. A 6' x 3' roll-in shower is directly opposite the door and in a direct line to the bed for convenient use of a lift between the two if required. The shower floor will be flush with the rest of the room and included as part of the required turning radiuses for wheelchair accessibility. A walker can be pushed into the shower and then reversed to access the toilet safely. The vanity is 60 inches wide, providing a generous amount of counter and lower cabinet space for personal items. All twenty-five rooms and bath suites in the pod are the same size and layout, simplifying resident care and maintenance.

The Architects worked closely with the Department to understand the operational requirements of the pod, resulting in a well-designed floor plan that has earned the buy-in of facility management.

Each pod of 25 rooms is divided into two wings (one with 12 rooms, the other with 13) and are accessed from a hallway with entry doors to the main corridor at the north end and a light-filled lounge area at the south. The pods can be overseen by two CNAs (Certified Nursing Assistant), one for each wing with the workstation placed near the entry doors for easy access by residents and ongoing monitoring of the halls. An enclosed office will be shared by a Nurse II and roving Nurse III.

The two wings are connected by a large open common space for dining, preparing snacks, socializing, relaxing, and entertaining guests around a fireplace (direct vent gas and completely sealed to prevent interaction between living space and fumes). Residents will have the option of eating their meals at these tables within the pod (main meals will arrive by cart from the commercial kitchen) or leave the pod to mingle with the wider community in the main dining room. Large windows give visual connection to the main circulation spine of the facility at the north wall and on the south wall to natural light and views through the courtyard. A pantry is provided adjacent to the dining area to store of tea, coffee, snacks, and other condiments.

Two storage rooms, one on each wing, will be stocked with commodities and items to support activities held in the pod. Additional shared resident amenities adjacent to the Common space include two accessible toilet rooms as a convenience when residents are away from their rooms, plus an additional toilet room accessed from the main hall as a convenience when residents are away from their pod. For those who require or prefer a bath, each pod has a shared Spa which will be designed to feel as residential as possible.

A small mechanical room for sprinkler risers and access to a second level fan room is accessed from Denali Way, and a janitor's closet is provided within each pod.

Execution (Demolition – Construction – Demolition)

The first phase of the renovation project including the housing addition and the supporting mechanical/warehouse space can be built without much impact to the remaining buildings. However, in order to construct the 25 room Phase 2 addition, the east end of Alaska Way that projects beyond the Homestead neighborhood will need to be removed, and a new temporary exterior wall constructed to enclose the existing building. It is important to maintain

a minimum of 91 rooms during construction, particular care to both constructability and maintaining bed counts will be important criteria for the designers.

Mechanical Building

As outlined earlier in this report, the basement mechanical room will be phased out as the project progresses. To replace that function a new detached structure will be built to house the new mechanical system as well as vehicle storage and bulk commodity storage.

Existing Building Additions and Renovations

It is important to note that not only is the facility aging and in need of repair and upgrades, but it was also designed around assisted living home practices of the 1960s. Over the nearly 60 years since the Fairbanks Pioneer Home opened, attitudes and philosophies for care of the elderly have evolved and shifted to one that includes a greater focus on preserving the autonomy, individuality, and dignity of the residents.

Most of the identified safety concerns in the existing building will be corrected by complying with current building codes and design standards. The new structure will be appropriate for seismic, wind, and snow loads, the mechanical system will deliver clean fresh air and spaces will be physically accessible to people with disabilities. In aged care, safety concerns go beyond these mandates to cover issues such as minimizing travel distance from resident rooms to common spaces. Safe design includes creating clear circulation paths for simple wayfinding and designing spaces that enable and encourage social interaction with staff and fellow residents.

For an elderly person, comfort is often first associated with warmth. The building addition design includes an enhancement to the building envelope that incorporates current building science and construction materials to maintain thermal comfort year-round. The building envelope is also designed to allow greater connection to the outdoors through natural light and windows that offer views of the outdoor park like setting.

The Department's two main priorities for the architectural layout addressed the need for privacy and the ability to create community. For privacy, the Department prioritized that each resident should have a private, accessible bathroom, a comfortable place to sit in their room, either alone or with a friend, and the ability to look outdoors to the well-kept grounds. To build upon the "community", the Department requested a layout whereby 20-25 rooms would be grouped into a "pod." Each pod would have its own dining room and lounge area where residents could eat, socialize with one another, and entertain visits from family members and friends, all without needing to leave their pod.

These ideas overlap with the Green House Project, which is a care approach designed to improve, research-backed delivery of care that promotes smaller, more residential scale environments that eliminate institutional cues as much as possible. While Green House residential homes are typically stand-alone structures for 10-12 residents, many elements of these homes have been borrowed in the development of this larger project.

Renovation of the existing Pioneer Home was initially considered a potential cost saving approach to improving the quality of care for the building's residents. From the onset, occupant disruption and safety were a concern. It was also assumed there was enough value in the existing building that less new construction would be required. Further investigation revealed this was not the case and as the following descriptions reveal, renovation of the existing building with occupants continuing to live in the building became a herculean effort that resulted in a compromised solution.

Existing conditions are described, solutions/corrections are recommended and a plan has been developed to illustrate a suggested approach to renovate the existing building in an effort to breathe new life into the 1966 building.

The diagram at the end of Section D illustrates the building plan and indicates the general use of each space by color code. This drawing and larger scale areas shown on this drawing have been reproduced at a larger scale to describe the solution further. In this section of the report, project components have been broken down within each discipline by area or type of system, and recommendations for improvement are provided after each area of concern.

MECHANICAL BUILDING

When the building Condition Assessment was undertaken it was found the mechanical systems were very well maintained but approaching or beyond their expected life span and either failing now or expected to fail in the near future. Those systems include all domestic water piping, sprinkler systems, hot water generators, air handlers, most valves, the fuel oil buried tank and other associated systems. For a full accounting of the existing mechanical system please see Section D of this report. Rather than further burdening the existing mechanical system, a new stand-alone system is planned to support the addition. There are two types of space allocated for the new mechanical system. The plumbing (wet side) will be in an addition co-located with a new maintenance/storage building and piped into the housing addition. This space will include the facility's water service, sprinkler manifolds, boiler, hot water generator, and sewage lift station if one is required. The new above ground fuel oil tank and the existing standby generator will be located adjacent to the new building. The other mechanical space will be for the building ventilation system including the air handlers. That space is a smaller room located above the inhabited spaces in the addition. The space allocated for the plumbing addition has been oversized allowing room for replacement equipment to be installed to support future phases and the existing structure. This approach will enable the Home to manage and repair essential equipment until the time it is eventually replaced in the new mechanical space, thus alleviating some expensive and disruptive emergency repair projects.

Mechanical Building and Main Building System Demolition

The water service that enters the current facility will be extended to the mechanical building to serve plumbing fixtures, as well as a NFPA 13 wet sprinkler system.

As future phases occur, the existing central water heating equipment will be replaced with a 1000-gallon storage system and Aerco Smart Plates, ensuring a continuous supply of hot water. An electronic tempering valve will be used to maintain water temperature within code-required safety limits.

The aging central heating and cooling systems in the main facility will be removed and replaced, including distribution piping throughout the facility.

The goal of these mechanical system modifications is to replace outdated equipment, increase capacity for the expanded population, and support remodels in the existing parts of the facility. We've selected equipment with a proven track record of performance and maintainability to provide the owner and staff with the best value.

The central heating equipment will be placed in the maintenance/storage/mechanical building that will be constructed on the campus. Boilers are anticipated to be Riello RTC8000 boilers with dual fuel capabilities. A 10,000 gallon above ground fuel tank will be situated immediately outside the facility to serve the boiler system if the Gas system is shut down, as well as the emergency generator. New central heating system pumps with VFDs will be provided to serve air handling equipment, anticipated sizes are (2) 750 GPM pumps for the heating system.

Air cooled chillers will be utilized to serve a central chilled water loop that will connect to the air handling equipment, as well as the Jaga equipment utilized in the addition. The system will be sized for future remodels in the existing facility. It is anticipated that 120 Tons of cooling will be required for the facility. Central chilled water pumps of 500 GPM capacity will be employed to distribute chilled water to air handling and terminal units throughout the existing and addition portions of the facility.

Renovated Common Spaces

Heating and cooling in the common spaces will be with Jaga Briza equipment. Along exterior windows Clima Canals will be employed for heating and cooling. A central Energy Recovery Ventilator will draw exhaust from the Kitchen, Janitor, and public restroom spaces while supplying fresh air for occupants into other communicating occupancies.

Renovated Elder Rooms

Each room will be equipped with Jaga Clima Canal along the exterior wall. The Clima Canal will provide both heating and cooling for the space. Ventilation for the space will be provided from a central Energy Recovery Ventilator that draws exhaust from the restroom and supplies fresh air to the living space.

Each restroom will be provided with a counter mounted lavatory, ADA height water closet, and ADA shower with combo fixed and spray wand heads.

D. EXISTING BUILDING RENOVATION AND ADDITIONS

The project goal to develop a modern, code compliant, safe and comfortable home for 100 northern region Alaskan seniors in the existing 91 bedroom Pioneer Home Building was initially thought to be fairly straight forward. However, through the course of investigation it was determined the existing building's failings were so significant the renovation would require a nearly complete teardown to renovate. This level of disruption prohibits residents from occupying the building area where work was taking place. The only way around this roadblock was to create a stepping stone phased approach by building an addition, moving current residents into the new neighborhood and once vacated the formerly occupied existing neighborhood could be demolished/renovated and upon completion, the next neighborhood would be relocated into the renovated space. Through careful planning a 5 step phased approach was developed that was thought to take approximately 10 years to fully execute. Diagrams of the phased plan approach are illustrated in the drawings that can be found at the end of this Section. The renovated bedrooms are designed to be compliant with current Assisted Living standards for room areas and amenities found in modern Senior Care facilities. The 25 bed neighborhoods and support spaces are functional and fully building code compliant.

The current building is struggling to stay warm in the winter and many of the bedrooms will not maintain comfortable temperature on Fairbanks coolest days. Likewise domestic hot water cannot be maintained at any time of the year. These capacity issues are only the tip of the mechanical and electrical problems. To overcome these system wide deficiencies a new, remote mechanical building with a storage component is planned to be built with the first phase and will house the mechanical system that supports the first phase of the new construction. As each subsequent phase is added the building component will be served by expanded systems in the new mechanical space. The mechanical building will be sized to eventually replace the existing mechanical system that is located in the existing buildings basement.

The first phase of the project is to create an addition to start the phases towards total renovation. The addition is planned as an extension of Denali Way, the primary corridor running through the home. The addition floor plan will be repeated as individual phases to ultimately provide rebuilt space creating each of the four neighborhoods as well as the buildings support systems. The ultimate renovated building will be 92,400 square feet plus the new 8,066 sf mechanical/storage building.

The following discussion describes the existing building and the steps investigated to repair or correct the numerous deficiencies.

ARCHITECTURAL PROGRAM AND FINDINGS

FOUNDATION

The Fairbanks Pioneer Home is built with concrete perimeter grade beams that support the floor steel structure and exterior walls. The interior surface of the grade beam is insulated with two inches of rigid insulation and the exterior surface is left as exposed concrete. The grade immediately around much of the exterior of the building slopes towards the foundation walls which directs surface water to enter the building causing seasonal leak problems. Whether this is the result of the heat loss from under the building, or other causes is unknown.

Recommendation

The building exterior wall needs to be excavated and 3 to 4 inches of extruded polystyrene insulation is to be applied on the exterior side of the concrete grade beam. Protection board with a water shedding cap is to be applied over the insulation before the backfill is replaced. Careful detailing of the below slab,

slab edge, and exterior wall will be required to ensure continuous insulation is provided. When the fill around the building is replaced, it must be graded to slope away from the structure.

EXTERIOR WALLS

The exterior walls are generally precast insulated concrete panels, or 6 inch thick concrete masonry units (CMU). In either case the interior of the exterior wall is covered by four inches of rigid insulation which in turn is covered with 5/8 inch gypsum board, or plaster. Between the masonry walls are four foot wide openings with windows in the upper portion of the openings and unit heaters below the windows. The heaters extend from the floor to 30 inches above the floor where the glazing starts. One inch thick ridged insulation is provided behind the heaters offering only R 6-10 insulating value. No vapor barrier is provided on exterior walls causing condensation to occur within and on the exterior wall.

Recommendation

The interior wall insulation and finish is to be removed and 6 inches of extruded polystyrene insulation is to be applied over the inside face of the concrete/masonry surface and fastened to the walls with non-conductive "Z" furring. A 10 mil vapor retarder is to be applied over the insulation and 1-1/2 inch to 2 inch channels applied horizontally over the Z furring to support the 5/8 inch thick painted gypsum board. Impact and mold resistant gypsum board similar to National Gypsum Gold Bond eXP Interior Extreme AR is recommended throughout the resident occupied spaces. The wall insulation and vapor retarder are to be extended behind each room's new heater.

ROOF

The Pioneer Home roof structure has been reported to be incapable of supporting more than a 35 pound per square foot live load. The current Fairbanks building code requires a 50 psf live load, leaving a 15 pound per square foot capacity deficit. Please refer to the structural discussion regarding this issue.

The existing roof assembly is supported with steel beams that support a metal deck. Over the metal deck is 4 inches of rigid insulation which in turn is covered with a 5 ply built-up asphalt roof with an aggregate surfacing. Adding to the roof loading problem is the heavy glaciation that occurs at the building's eaves. The current eave construction seems to encourage air migration from the eaves up the roof slope. The design had spray-in insulation in this area, but from what can be seen, the spray-in insulation seems to have either broken and lost a tight seal against the metal framing, or there never was good adhesion. The resulting warm air that is introduced in the roof's ventilation space is likely to contribute to the roof's heat loss and subsequent snow melt and ice build-up. Like the walls, there is no vapor barrier within the roof assembly.

Recommendation

The existing ceiling finishes are to be removed as required by other building deficiencies, with the structure exposed the roof is to be structurally enhanced to support the required loads from both the snow load and the capacity of the patient lifts. Once adequate structure is in place a new warm roof with internal roof drains is to be installed. The new roof will begin by stripping the roof assembly down to the steel deck and covering the deck with a non-combustible cover board similar to Dens-Deck. A 10 mil vapor barrier is to be installed over the cover board which in turn is to be covered with a rigid insulation providing R-50 roof insulation. The insulation is to be covered with mechanically attached 3/4" thick plywood and a 60 mil EPDM is to be adhered to the plywood deck.

BUILDING ENTRY CANOPY

The building currently does not have a covered drop off area for residents' protection as they get into or out of vehicles at the building entry. These trips could be a simple visit with a family member, friend taking them to lunch, or a medical emergency in an aid vehicle. During discussions there was a request for a covered, enclosed, heated staging area. This request was tested and a suitable location for the addition was found on the northwest side of the existing building. Additionally, we suggest the current roof structure be extended to bridge the existing entry drive isle and the planter in front of the home to create a covered pull-off area next to the building and a drive aisle on the east side of the pull-off site. Columns supporting the canopy would rest on what is now the outer (eastern) edge of the planter. The canopy construction will need to be non-combustible concrete and steel with a minimum height clearance of 16 feet making ample space for emergency vehicles and snow removal equipment to pull through. Using non-combustible construction materials will allow this covering to be constructed without fire sprinklers thus simplifying the construction. The new canopy roof drain will be piped into the building's storm sewer. Heat trace will be required in all exterior piping to ensure drains stay open and operational in the cold environment. Surface drainage is to be positive out and away from the drop-off area.

LOADING DOCK AND FOOD STORAGE

The current dock has inadequate space for staging off loaded materials in today's supply-on-demand environment, and the small staging area is particularly problematic in the cold Central Alaska region. The dock door location is also difficult for large truck drivers to negotiate and off-loading trucks constrict the drive aisle on the north side of the building, creating access problems. Lastly, the loading area is inconvenient to the food and material storage areas.

Recommendation

Our recommendation is to relocate the loading dock west and north of the area where the walk-in kitchen refrigerator and freezer are currently located. The walk-in rooms will be reconfigured and co-located next to the dry food stores in a space that will be accessed immediately off the loading/staging area. Food storage will be 600-700 sq. ft. and the dock staging area will be 500-600 sq. ft. of unencumbered and contiguous space. The existing Food Storage room will be turned into a large storage room accessible by way of Corridor 8 from the new loading dock or McKinley Hall, or the room could become office space allowing staff office to move out of former bedrooms. The existing loading dock will become a shop space for the maintenance department.

BUILDING INTERIOR

BUILDING CODE

Construction drawings from the original 1966 construction, nor the 1972 addition include a code summary. However, it is our assumption the building was built as an R occupancy. As time has passed the resident age has increased and their overall health has declined, particularly the number of individuals diagnosed with dementia or a related memory malady. We are recommending the building be classified as an I-1 Condition 2 occupancy in Type 1 construction. The existing building is fully sprinkled and provided with a fire alarm. There are currently eleven cross corridor one-hour fire breaks with door closers on hold-opens and 90 minute doors. Unfortunately, there is no continuation of the fire barrier to the structure above or to a fire rated ceiling, the the fire rating simply stops a few inches above the occupied space which is defined by a lay-in acoustic ceiling. Likewise, most corridor walls stop just above the lay-in acoustical ceiling as do the demising walls between the bedrooms. In some areas a single layer of 5/8 inch gypsum board is suspended above the

acoustical ceiling and some demising walls and fire barriers frame against that surface, but the single layer of suspended GWB does not constitute a fire rated ceiling.

Recommendation

Bedrooms are planned to be reconfigured and when reconstructed bedrooms must comply with all required fire and smoke barriers including doors. Where required, fire/smoke dampers will be installed.

The building code requires the I-1 building to include smoke compartments to allow residents the opportunity to “shelter in place”. The compartments are not to exceed 22,000 square feet and contain less than 200 feet of travel distance to an exit way. Smoke compartments are to be defined with new 2-hour rated fire walls and smoke barriers with proper alarm annunciation and automatic door closers.

ACCESSIBILITY

The building was built decades before the 1990 Americans with Disability Act was enacted and consequently spaces throughout the building are not accessible, including most bedrooms, essentially all semi-private bathrooms and most public toilet rooms do not comply with accessibility standards. As previously discussed in the site section, site amenities are not compliant with ADA standards as are most other resident facilities. One goal of the renovation project will be to correct the accessibility deficiencies.

Recommendation

Where possible all accessibility barriers will be removed and spaces will be made to comply with current accessibility standards.

EXIT PATHS

Exit paths are well defined and all are within required distances. Wander management is an important part of the staff's responsibilities and the introduction of a wander management system in the building renovation will be required. Typically, these systems allow free egress to everyone who does not pose an identified risk of becoming confused. A badge or name tag containing a proximity chip that precludes or delays egress is issued to residents who are identified to have memory loss. These devices prevent badged residents from passing through doors equipped with the management system. When the building is in an alarm status the wander management system is disabled.

Recommendation

Exit paths will be retained, signage/lighting will be upgraded and where needed a wander management system will be installed.

FINISHES

Generally, the building's finishes are maintained at a very high level. Other than worn floor carpets, the building's interior finishes are overall in very maintained and in reasonable condition.

FLOORS Floors in corridors and resident bedrooms are carpet, which is not the preferred system due to the difficulty in cleaning and overall maintenance. The renovation project will replace the carpet with a resilient flooring product. Resident bathrooms are generally sheet vinyl, although a number are vinyl tile (VCT). The floors in dining rooms are vinyl plank and, in the kitchen, floors are mostly quarry tile with some limited areas of failing sheet vinyl. Support areas are floored in either painted concrete or vinyl tile. Floors in the tub rooms are covered sheet vinyl.



WALL SURFACES Wall surfaces are much like the floors, there is a wide variety of wall surfaces from the entry painted wood siding with accents of natural wood, to gypsum board with wood wainscots in most corridors. In service areas FRP is widely used as a 48" high wainscot with painted GWB/Concrete or CMU above. Bedrooms and bathrooms seem to have only painted GWB walls although, some bathrooms have ceramic tile wainscots and most have fiberglass shower surrounds. Most areas where impact against walls has been expected, corner guards and chair/handrails have been installed and are doing a good job of protecting the walls. There are a number of walls that have large murals painted directly on the walls and the design team will need input from the facility about how these should be handled as renovation occurs.



DOORS AND WINDOWS Doors and windows throughout the building are in unusually good condition. This is in large part due to the tall door armor (36" – 42" high) on the wooden doors generally used in resident spaces and the hollow metal doors in service areas. All doors are mounted in hollow metal frames, another very durable product. Windows are commercial aluminum windows with double panel insulating glass. The aluminum windows are the original windows, now over 50 years old. This older technology is far less energy efficient than windows currently made. The glazing in the old windows offers an R-1.2-1.3. Modern glazing systems today easily reach R-5. Other than their thermal performance the existing fixed windows seem to be performing very well but due to their age, the frames are not provided with thermal breaks so iced over frames are expected on the colder days. The interior sills of most windows are made of a non-absorptive material, plastic laminate, tile or solid surface. These durable finishes have helped preserve the walls under the windows which undoubtedly sweat due to frame heat loss.

CEILINGS Ceilings in the building are mostly lay-in acoustic tile in a metal grid system. This system is found in the hallways, bedrooms and most common or gathering spaces. Exceptions to the lay-in tile ceilings is a gypsum board panel with sprayed on acoustic “popcorn”, these ceilings are found in the entry and the large dining and activities area. Painted gypsum board ceilings are found in the kitchen, food storage, resident bathrooms and many service areas. There are also some service areas and utility spaces that have exposed structure ceilings. In some cases, the structure is left un-painted, in others the surfaces are painted and in others yet, the surfaces are sprayed with a fire retardant insulation.

Recommendation

Floor surfaces are to be generally replaced with resilient flooring with the exceptions being the kitchen and food service/laundry areas where quarry tile is to remain. In heavy use service spaces where painted concrete is in place now, it will continue to serve the floor finish function.

Maintaining the current pattern of wood wainscots with ample wall protection at the base and handrail level will continue to serve the building well. Painted gypsum board above the wainscot is recommended. Walls in bedrooms and bathrooms, the kitchen and food prep areas as well as the various gathering spaces throughout the building is recommended to be impact and mold resistant painted gypsum board. Wood wall accents in special areas such as the entry lobby, library, small and large gathering areas is recommended.

Doors are to be replaced that comply with required fire assemblies. The door finishes are to continue to follow the model of the current Home with wood doors (or wood like doors) in residential areas and hollow metal doors in service areas. High density plastic covered doors with wood patterning should be considered. These doors are extremely durable, look very much like wood and meet all current fire requirements. One manufacturer of these doors is www.c-sgroup.com/doors/flush-doors. Windows are to be replaced throughout the facility. Commercial composite frames and high performance glazing units are to replace the low performing existing windows. Providing window units with an operable section should be considered in the building. If the decision is to provide operable windows it is recommended the operator be easily secured (with tools) and that the windows be limited to open no more than six inches. During the cooler seasons the opening devices can be secured by staff to prevent freeze-ups, but during warm summer days residents could have opening windows.

Generally, the ceilings throughout the building are recommended to be replaced with products similar to the existing ceilings. Fire rated ceiling barriers will need to be installed in many locations throughout the facility. These fire barriers can be above the finished ceiling, but in some cases, it may be preferable to use the fire barrier as the finish ceiling assembly. Installing lay-in acoustic tile in the building’s hallways will simplify access to devices located in the interstitial space as well as helping the sound reverberation which will be heightened with removal of the carpet. The configuration of the new ceilings in the existing dining and activity rooms will enhance sound deadening and the addition of an absorptive finish to the existing gypsum board will further benefit the acoustics in the currently noisy space.

INTERIOR SPACES

The Multi-Purpose and Dining rooms have a combined area of approximately 3,600 sq. ft. The space is well finished with vinyl plank flooring, painted walls and an interesting gypsum board ceiling that is painted white and sprayed with a sound absorbing material sometimes called “popcorn”. Unfortunately, the space is acoustically uncomfortable due to the highly reverberating sound that is partly a condition of the room’s configuration but mostly caused by the sound reflective floor and walls. The Dining and Recreation spaces

are nearly equally divided by a folding partition wall that appears to be part of the original construction. Huge improvements have been made to this wall type over the past 50 years, particularly in the acoustic performance and the wall's ability to be opened and closed easily.



Recommendation

Acoustic wall panels are recommended for the north wall, between the windows and the short wall on each side of the folding partition. The surface of the partition might also be covered with sound dampening panels. If these surfaces are covered first, and the sound problem continues, acoustical treatment to some of the ceiling coffers may be required. There are a number of vertical folding partitions that have excellent acoustic properties and are easily retracted and extended by electric motor. One exceptional product is made under the trade name Skyfold info@skyfold.com. Care must be taken in detailing to ensure the more sound attenuating and fragile acoustic panels are protected by chair rails, wall base and denser panel surfaces in areas where they are likely to come in contact with people's hands or other abuse. Wainscot and door surrounds may be the ideal locations for hard surfaced acoustic panels. Two examples of abuse-resistant acoustic panels include <https://kineticsnoise.com/hardside/high-impact>, or <https://www.soundseal.com/s-4000-high-abuse-acoustical-wall-panels.html>.

Resident bedrooms are generally not accessible when viewed through the Americans with Disabilities Act (ADA) standards. Doors are too narrow or poorly positioned, adequate turning space for wheelchairs is not provided, passageways between furniture preclude acceptable access, toilet room fixture heights are too high, and in-room bathing facilities are not accessible. The bedrooms present other problems besides the accessibility problems.

The rooms are generally too small for a person to park a wheelchair or walker while they are in the room, so these devices tend to end up in the corridors outside the bedrooms making a tripping hazard for seniors who have impaired vision or need a handrail to provide stability while walking. The building structure is not capable of supporting patient lifts to get residents out of bed or into tubs for bathing, so portable lifts are used and there is again no place to store these large devices. Most of the bedrooms continue to use the finishes and cabinetry that was installed at the time of the original construction 56 years ago. At this point the cabinets are showing signs of their age and need replacement.



As mentioned in the body of the report the renovation approach was generally found to be incompatible with the goals of the Department without extensive cost and resident disruption. This was brought about by expanding the bedrooms/bathrooms to be ADA compliant and meeting current acceptable minimum space standards. These area increases necessitated an addition of 35-45 bedroom suites and the remaining rooms that were reconfigured were fit into available space which resulted in no conformity within the existing rooms. There was no good way to stage this multi-phased work which meant the residents would be subjected to construction activity for 5-6 years, so in some cases the entire time the seniors were in the Home.

Also, the renovation needed to include extensive modification to the structural system, replacement of essentially all the mechanical and electrical systems, and provisions to make the building safe from a fire prospective were imperative for this type of occupancy.

In the end it was concluded the final product would be as expensive as a new building, would be forced by the existing footprint to be spatially inefficient. The bones of the building were effectively broken and could not be repaired within modern codes, guidelines and standards.

SITE

CIVIL – SITE AND UTILITIES

Findings

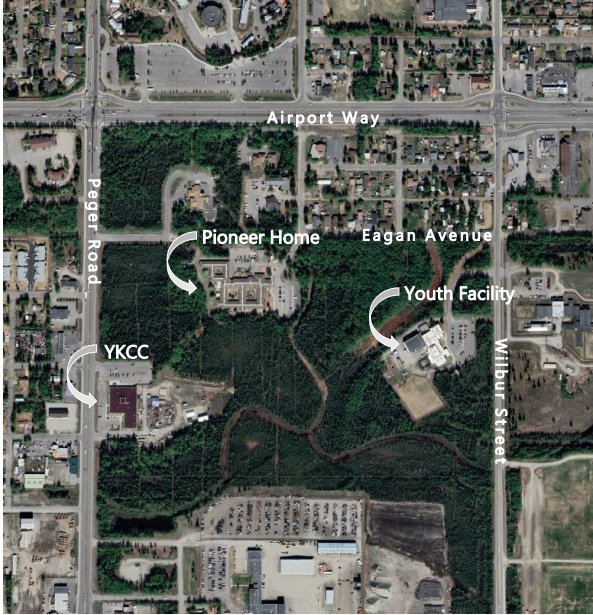
OVERVIEW

On July 28, 2022, the project design team visited the Fairbanks Pioneer Home (FPH) to document existing site and utility conditions and note deficiencies associated with grading, drainage, surface conditions, fire protection, ADA accessibility and other compliance issues. As part of the site visit the team met with FPH facility staff to discuss specific issues and inadequacies of the 56-year-old building. The Condition Assessment team reviewed as-built record construction drawings from 1966 and 1972 as well as previous conditions assessments by Charles Bettisworth and Company Inc. (1992) and the Asset Detail Report by Stantec in 2015. Property information was obtained from Fairbanks North Star Borough GIS website and AutoCAD drawings were created using as-built record drawings. The following observations were made. The attached Site Plan depicts the existing site and indicates recommended improvements.

PROPERTY AND LAND USE

The FPH is located at 2221 Eagan Avenue, Fairbanks, Alaska. The parcel is a portion of Tract B, Alaska State Land Survey No. 80-64 in Section 16, Township 1 South, Range 1 West, Fairbanks Meridian, Plat No. 80-149. The tract of land is approximately 14.630 acres

Department of Natural Resources (DNR) is the current landowner on which the Fairbanks Pioneer Home is located as well as adjacent properties. In 1966 DNR issued an Interagency Land Management Assignment (ILMA) from DNR to the Department of Transportation and Public Facilities (DOT&PF) for 80 acres which included what is now the location of the Pioneer Home. In 1990 DNR issued an ILMA granting land management authority to the Department of Administration (DOA) for the portion of Tract B described above including the Pioneer Home. In 2005 the management of the Pioneer Home facility changed from DOA to the Department of Health and Social Services (DHSS). In 2022 the land management authority changed again from DHSS to Department of Family and Community Services. DOT&PF continues to manage the remainder of the original 80 acres in the area.



The property is bordered to the north by a 50 ft. public right-of-way. There are no known utility easements or encumbrances.

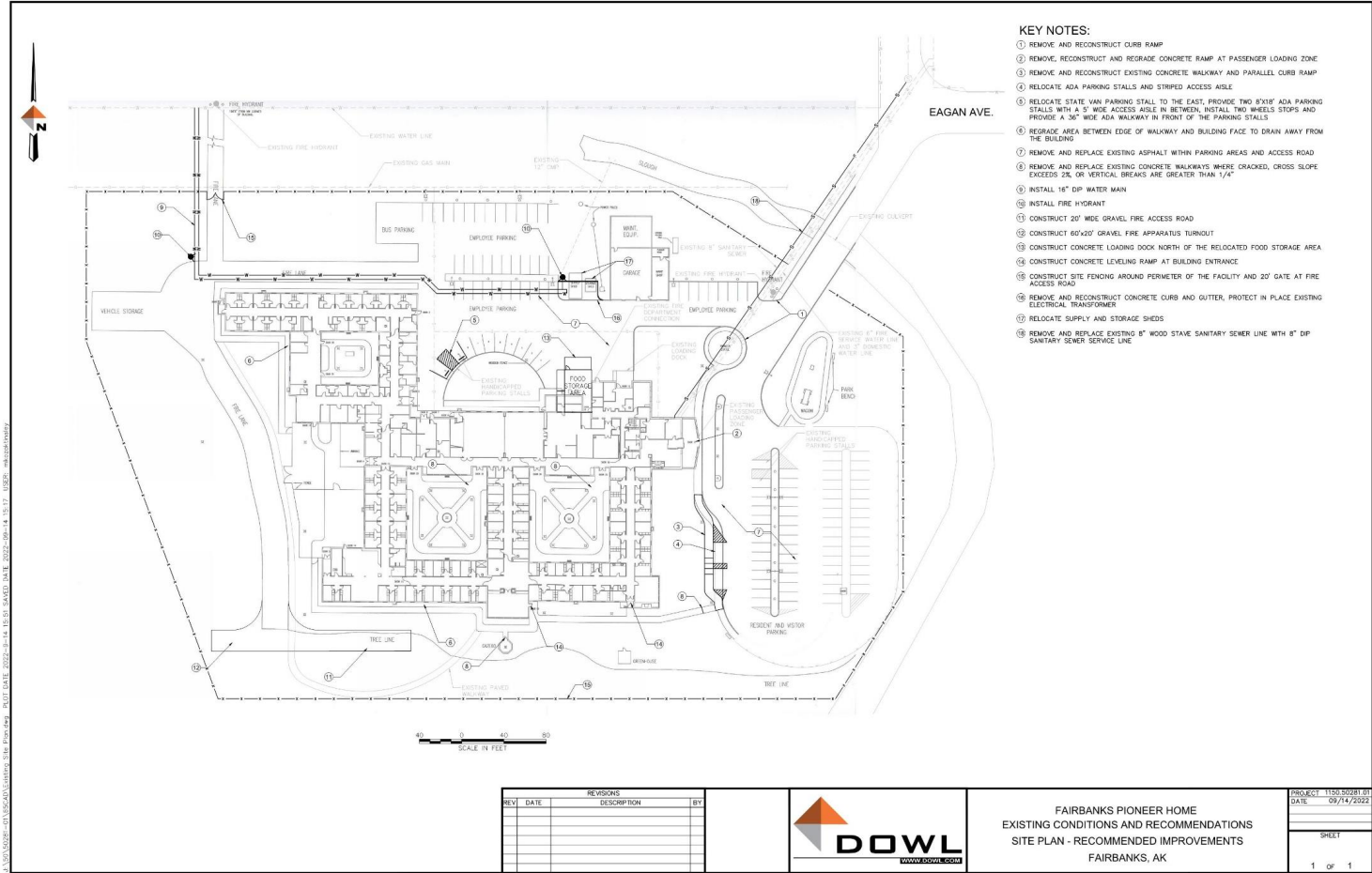
The Fairbanks North Star Borough (FNSB) shows the property is zoned Multiple-Family Residential (MF). Nursing homes, convalescent homes, retirement centers, and similar institutions are all allowed conditional uses in the MF residential district. The existing facility meets the current MF geometric standards for lot area, required yards, off-street parking, loading, and building height.

FNSB Multiple Family (MF) Residential Geometric Standards	
Lot Area	No less than 5,000 sf.
Required Yards	Front Yard: 20 ft. Side Yard: 10 ft. Rear Yard: 10 ft.
Building Height	Unlimited
Parking Spaces	Hospital Use: 1 space per 3 beds Commercial Use: 3 spaces per 3 employees
Off-Street Loading Facilities	May not obstruct traffic on adjacent streets or alleys.

DESIGN CRITERIA

For purposes of this conditions assessment the FPH site was evaluated using current government codes. The following codes were used in making the civil recommendations:

- City of Fairbanks Building Codes:
 - Ord 6152 – 2018 International Building Code (IBC)
 - Ord 6158 – 2018 International Fire Code (IFC)
 - Ord 5928 – 2013 Fairbanks Landscape Ordinance
- Fairbanks North Star Borough Code of Ordinances:
 - Title 18 – Zoning, Chapter 18.52 MF Multiple-Family Residential District
 - Title 18 – Zoning, Chapter 19.86 Supplementary Regulations - Off-street parking and loading requirements
- Alaska Flexible Pavement Design Manual, Alaska DOT&PF 2004
- Standard Practice for Road and Parking Lots Pavement Condition Index Surveys, ASTM D6433-20
- ADA Standards for Accessible Design, 2010
- Public Right of Way Accessibility Guidelines
- Utility Services of Alaska Service Line Standards, 2017
- Utility Services of Alaska Standards of Design and Construction, 2017



- KEY NOTES:**
- ① REMOVE AND RECONSTRUCT CURB RAMP
 - ② REMOVE, RECONSTRUCT AND REGRADE CONCRETE RAMP AT PASSENGER LOADING ZONE
 - ③ REMOVE AND RECONSTRUCT EXISTING CONCRETE WALKWAY AND PARALLEL CURB RAMP
 - ④ RELOCATE ADA PARKING STALLS AND STRIPED ACCESS AISLE
 - ⑤ RELOCATE STATE VAN PARKING STALL TO THE EAST, PROVIDE TWO 8'X18' ADA PARKING STALLS WITH A 5' WIDE ACCESS AISLE IN BETWEEN, INSTALL TWO WHEELS STOPS AND PROVIDE A 36" WIDE ADA WALKWAY IN FRONT OF THE PARKING STALLS
 - ⑥ REGRADE AREA BETWEEN EDGE OF WALKWAY AND BUILDING FACE TO DRAIN AWAY FROM THE BUILDING
 - ⑦ REMOVE AND REPLACE EXISTING ASPHALT WITHIN PARKING AREAS AND ACCESS ROAD
 - ⑧ REMOVE AND REPLACE EXISTING CONCRETE WALKWAYS WHERE CRACKED, CROSS SLOPE EXCEEDS 2% OR VERTICAL BREAKS ARE GREATER THAN 1/4"
 - ⑨ INSTALL 18" DIP WATER MAIN
 - ⑩ INSTALL FIRE HYDRANT
 - ⑪ CONSTRUCT 20' WIDE GRAVEL FIRE ACCESS ROAD
 - ⑫ CONSTRUCT 60'X20' GRAVEL FIRE APPARATUS TURNOUT
 - ⑬ CONSTRUCT CONCRETE LOADING DOCK NORTH OF THE RELOCATED FOOD STORAGE AREA
 - ⑭ CONSTRUCT CONCRETE LEVELING RAMP AT BUILDING ENTRANCE
 - ⑮ CONSTRUCT SITE FENCING AROUND PERIMETER OF THE FACILITY AND 20' GATE AT FIRE ACCESS ROAD
 - ⑯ REMOVE AND RECONSTRUCT CONCRETE CURB AND GUTTER, PROTECT IN PLACE EXISTING ELECTRICAL TRANSFORMER
 - ⑰ RELOCATE SUPPLY AND STORAGE SHEDS
 - ⑱ REMOVE AND REPLACE EXISTING 8" WOOD STAVE SANITARY SEWER LINE WITH 8" DIP SANITARY SEWER SERVICE LINE

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REV	DATE	REVISIONS DESCRIPTION	BY



FAIRBANKS PIONEER HOME
 EXISTING CONDITIONS AND RECOMMENDED IMPROVEMENTS
 SITE PLAN - RECOMMENDED IMPROVEMENTS
 FAIRBANKS, AK

PROJECT 152	DATE 09/14/2022
SHEET	
1 of 1	

DRAINAGE

The walkways and parking areas are generally graded away from the building toward the property line or wooded perimeter of the site and through existing scuppers in the curb and gutter. An existing culvert below the FPH access road conveys the slough that runs along the east and northeast portions of the site. There is also an existing culvert from the staff parking area to the existing slough.

The roof scuppers discharge directly to the ground. In many locations they discharge onto a ~4-foot grass strip between the sidewalk around the perimeter of the building, thus trapping runoff. The grass areas adjacent to the building drain toward the building for approximately 50% of the building perimeter, which results in trapped runoff seeping into the crawlspace and basement. Some downspouts are directed to splash blocks which flow directly onto walkways causing significant icing and dangerous walking conditions in the winter.

A system of catch basins in the courtyards drain into the sanitary sewer. While not desirable, no change to this system is required. Roof runoff also causes glaciation across the parking area and drive-up loading/unload zone.

Recommendation

To prevent water entering the basement it is recommended the grass areas adjacent to the building be removed, regraded to drain away from the building at a minimum of 2% slope, and replanted. To prevent icing and hazardous walking conditions during the winter it is recommended to the extent possible that roof drainage be directed away from walkways, building entrances, and the loading/unloading zone, see Architectural recommendations.

PAVING AND CONCRETE WALKWAYS

The original visitor, resident, and staff parking lots and FPH access road were constructed in 1966. From record drawing review the typical paving section is assumed to consist of 1 ½ inch asphalt, 3 inch basecourse, 24 inch compacted gravel and concrete curb and gutter. Additional staff parking was constructed to the northeast of the building entrance in 1972. Another expansion of the on-site parking areas occurred at some point after 1972, the visitor/resident parking area was extended to the east adding 31 stalls and the staff parking to the north adding approximately 22 stalls. No record drawings were available for review.

During the site visit it was observed that there is medium to high severity of block cracking and medium severity of longitudinal and transverse cracking in the asphalt originally constructed in 1966. It was also observed that there is a medium severity of depressions and low to medium severity of raveling. These conditions make the surface unsuitable for patients and visitors using walkers and wheelchairs. Concrete curb and gutter throughout the site are spalling and have settled and cracked in numerous locations.



The concrete walkways adjacent to the building were constructed in 1966 and 1972 and consist of an 8 ft. wide walkway at the front of the building and 6 foot wide walkways along the access road and along the north, west, and south sides of the facility. The typical concrete section consists of 4 inch reinforced concrete over 12 inch compacted pit run gravel. Existing concrete walkways have some localized cracking and vertical displacement due to their age. The concrete walkways in the interior courtyards have some cracking, vertical changes, and grades that are not ADA compliant. FPH staff have blocked a door accessing the courtyard due to unsafe sidewalk conditions.



Recommendation

The average life span of asphalt pavement is typically 15-20 years. Most of the asphalt onsite was constructed in 1966 and is now 56 years old. Considering the age of the existing asphalt and to provide safe walking surfaces for the disabled, elderly residents/visitors and employees, it is recommended the asphalt be removed down to base course and replaced with 2 inches of hot mix asphalt. Asphalt shall be graded uniformly away from the walks or curbs toward the site limits. Replacement would exclude the newer visitor/resident parking area to the east of the original (1966) parking area.

To provide access to all users, including disabled residents, it is recommended that portions of the concrete walkways in the interior courtyards be removed and reconstructed with ADA compliant running slopes of 5% or less and cross slopes of 2% or less. Segments of the exterior concrete walkways should be removed and replaced where cracking and vertical offsets no longer meet ADA requirements. Walkway removal and replacement shall consist of full panel removal from the nearest joint and match existing concrete thickness.

OFF-STREET PARKING

The visitor/resident parking area to the east of the building's main entrance has two ADA parking stalls and an estimated 59 standard vehicle parking stalls with 16 headbolt heater outlets. The staff parking areas to the north of the building consist of two ADA parking stalls and an estimated 51 standard parking stalls with 12 headbolt heater outlets. A sufficient number of parking stalls are provided, although the resident and visitor parking are not conveniently located for building access or designed to accommodate residents with mobility issues.

Recommendation

The current facility has approximately 100 beds and 40 staff members. Using the FBNS parking code and a combination of parking requirements for hospitals, 1 space per 3 beds, and the commercial use requirement of 3 spaces for every 4 employees, the minimum number of required off-street parking spaces is 64 total stalls. No additional off-street parking is currently necessary at the facility. The existing number of ADA stalls also meets the FNSB parking code, which requires 1 space for every 50 parking spaces required or 10 spaces, whichever is less.

ADA ACCESS

At least one accessible route must be provided between each of the site arrival points to the building's main entrance. There are four site arrival points at the FPH, the load/unload zone at the main entrance, the visitor and employee parking lots, and via sidewalk from Eagan Avenue. The main entrance consists of a covered concrete porch and a one-way single lane drop-off zone. There is a one inch vertical difference in elevation between the concrete porch and the concrete drop off/loading area. A short steep ramp which exceeds the maximum ADA running slope was constructed between the two surfaces.

The two visitor/resident ADA parking stalls are not compliant with the ADA guidelines or the FNSB parking code. The accessible route travels behind car spaces and across traffic lanes. They are also in an area with indirect access to the curb ramps and pedestrians must travel a long distance out of the way to get from the stalls to a ramp and then back to the building entrance. The curb ramp along the accessible route is non-compliant, it does not provide the required landing area and does not have detectable warning tiles. The ADA parking stalls located in the employee parking area have no access aisles and the accessible route also travels behind vehicle spaces, a violation of ADA and FNSB parking codes.



The accessible route from Eagan Avenue consists of a concrete sidewalk along the north side of the access road ending in a directional curb ramp, crossing a drive aisle to a parallel curb ramp near the Pioneer Statue, and following a concrete walkway south to the building entrance. Both concrete curb ramps are non-ADA compliant and do not have the required landings or detectable warning tiles.

Recommendation

The concrete within the pedestrian loading and unloading driveway should be removed and reconstructed to raise the elevation. Raising the elevation will eliminate the vertical change in elevation at the front entrance and provide a flush ADA accessible loading zone. Removal and replacement will be coordinated with the construction of a roof extension (see Architectural) covering the loading/unloading zone.

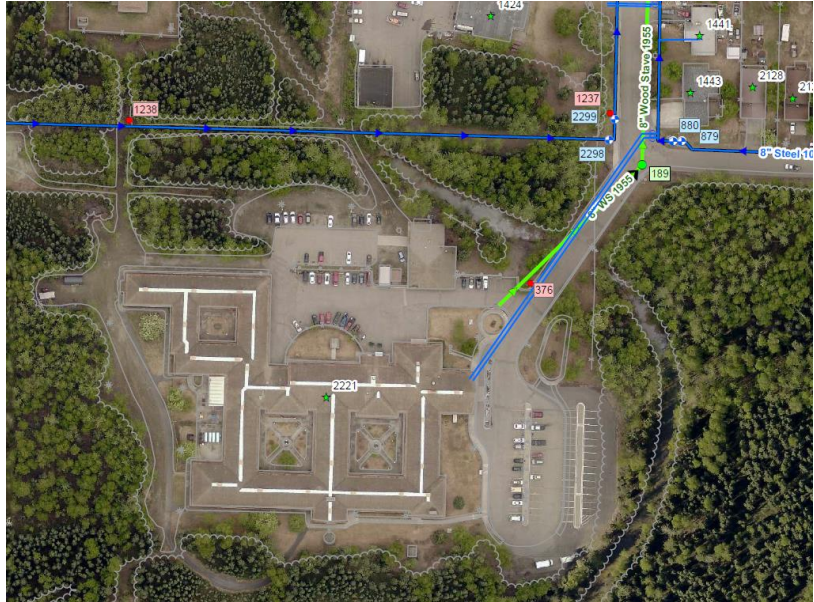
To meet the FNSB parking code and ADA accessibility requirements, the visitor ADA stalls shall be relocated to the west along a reconstructed concrete walkway with direct access to the building's front entrance. The ADA stalls shall be parallel to the curb and at least 8 ft. wide with a 5 ft. wide access aisle adjacent to the drivers' or passengers' side of the vehicle. A 5 ft. wide aisle and parallel curb ramp shall be constructed between the two stalls. The two curb ramps along the accessible route from Eagan Avenue shall be reconstructed to meet current ADA requirements. The reserved State van stall shall be moved to the east and the employee ADA parking stalls relocated to the west to provide a more direct accessible route to the building. The relocated ADA stalls shall be a minimum of 8 ft. by 18 ft. with a 5 ft. wide access aisle between them. Two wheel stops will be required and a 36 in. wide ADA compliant walkway in front of the parking stalls to provide access to the nearest building entrance.

At the building entrances concrete releveling ramps shall be constructed where changes in level exceeds more than ½ inch. Where vertical offsets are between ¼ in. and ½ in. edges shall be beveled.

UTILITIES & FIRE SUPPRESSION

The existing water supply and wastewater systems are owned and maintained by Golden Heart Utilities. Two water lines branch off an 8 inch steel water line in Eagan Avenue, one 3 inch domestic service and one 6 inch fire service. They run southwest below the FPH access road and enter the building near the existing administrative office.

The FPH is located within the City of Fairbanks fire service area. Currently there are two fire hydrants located on the property, one near the site entrance and one to the northwest down a dirt path in a wooded area. There is no coverage for the back of building. There is an existing fire department connection (FDC) near the loading dock on the north side of the building. The existing fire lane consists of a gravel road along the



north and west portions of the building. It exceeds allowable length without a turnaround and does not provide sufficient coverage to the back of the building. The public water system pressure is maintained at 95-100 psi, and data shows flows of 1,238 gpm and 1,300 gpm were measured at the two existing fire hydrants on-site.

An 8 inch sanitary sewer line exits the building near the existing administration office. Record drawings indicate it flows to the northeast below the FPH access road via 8 in. wood stave pipe to a manhole in Eagan Avenue. Utility as-builts indicate the pipe was constructed in 1966.

To the north of FPH there is an Interior Gas Utility (IGU) natural gas main. A single gas service runs south from the main line toward the Pioneer Home, then branches to a metering station at the laundry room and to a metering station at the boiler room near the loading/receiving area. There are no reported problems.

Recommendation

The distance from the existing hydrants to all portions of the building with approved sprinkler systems shall not exceed 600 ft. per 2018 IFC 507.5.1. In order to meet the distance requirement and provide fire suppression coverage to the back of the building, installation of a new hydrant near the northwest corner of the facility is recommended. Buildings equipped with FDCs require a fire hydrant within 100 ft. of the standpipe per 2018 IFC 507.5.1.1. A new hydrant will be required near the garage on the north side of the building to feed the existing FDC connection. A 16 inch ductile iron water main extension, approximately 1,040 ft., will be required to feed the new hydrants. GHU would require a utility easement for the water main extension and the main would be contributed to the utility. A looped configuration is required to keep the water circulating and prevent freezing.

The distance from a fire apparatus road to all portions of the building face shall not exceed 150 ft. The existing 20 ft. wide gravel fire apparatus access road will need to be extended eastward by approximately 150 ft. along the south side of the building and a gravel hammerhead turnaround constructed at the southwest corner to provide a means of turning.

The above assessment and recommendations for the site fire suppression system were made using as-built drawings, no survey information was available. It is recommended that a survey of the existing fire hydrants and building be conducted and further investigation to determine if a new hydrant is needed at the northwest corner of the building. All proposed fire system and access road improvements will need to be reviewed and approved by the City of Fairbanks Fire Marshal.

Considering the age and material of the existing 8 in. wood stave sanitary sewer service line, it is recommended it be removed and replaced with approximately 400 ft. of 8 in. ductile iron pipe from the building to the existing manhole in Eagan Avenue.

LANDSCAPING AND SITE ELEMENTS

The site is almost surrounded by existing wooded vegetation. On-site landscaping includes grass areas, small shrubs, some deciduous trees and plantings and flowers near the loading/unloading zone at the main entrance. There is currently decorative iron fencing around one of the housing units, but fencing does not surround the entire property. This creates a safety concern for many residents, who due to a variety of illnesses or conditions, can become disoriented or confused and leave the property.

Recommendation

To increase resident safety and to keep wildlife away from the building, it is recommended approximately 2,200 ft. of wrought iron fencing be constructed around the entire facility. A 20 ft. wide gate will be constructed across the fire access road to the existing fire hydrant near the northwest corner of the building; fire access will be required at all times. No additional landscaping is required by the City of Fairbanks landscape ordinance.

LOADING DOCK:The current loading dock is undersized and does not serve the facility well. Maneuvering a large truck into the tight space is difficult and when accomplished, the cab projects into the drive isle shutting off access to a good deal of the facility's parking and services. In addition, the existing loading ramp is approximately 16 ft. by 10 ft., has a steep 3H:1V ramp and has shifted away from the building creating a 2 in. horizontal gap and 2 in. vertical lip.



Recommendation

To better accommodate facility operations a new concrete loading dock should be constructed to the west of the existing dock, near Door 18. To provide additional maneuvering room for delivery vehicles the storage and supply sheds to the north shall be relocated, approximately 50 ft. of curb and gutter removed and approximately 60 ft. of new concrete curb and gutter constructed. Relocation of the loading dock will require reconfiguration of the walk-in freezers and food storage area, see Architectural recommendations. The concrete loading dock will be approximately 12 ft. by 25 ft. and 12 in. high. The maximum grade of the maneuvering area in front of the loading dock should be 2% or less.

SOIL CONTAMINATION

Findings

The facility was constructed with a buried diesel tank north of the boiler room that provided fuel to the heating system and the emergency generator system. This type of “dual-use” system is considered regulated by the Underground Storage Tank Program administered through the State of Alaska Department of Environmental Conservation (ADEC). Facility records indicate that the original tank was replaced in the 1996 and was found to have leaked. Site assessment data from the tank replacement indicate that contaminated soil was present beneath the water and wastewater utilities, as well as portions of the sidewalk. This material was left in place due to the presence of these structures and was not considered a significant environmental risk at the time. The new tank was installed to meet the 1998 UST regulations and is a doubled walled tank with interstitial monitoring and other leak detection features. The tank has been inspected as required by UST regulations and no leaks have been documented. A new generator was installed in 2018 and has a separate diesel tank, so the facility has attempted to “deregulate” the existing tank since it is now only used for unregulated storage of heating oil. ADEC required additional site assessment to complete the deregulation and this site assessment work has confirmed the residual contamination from 1996 remains present in the vicinity of the tank. The deregulation site assessment process is ongoing and ADEC has requested additional evaluation of the risk associated with the residual contamination. The upgrades to this facility is not expected to replace or alter the petroleum storage requirements for the boiler or the water and wastewater utility connections to the building. However, if disturbance of contaminated soil is expected in this area, all work will be required to be completed under a work plan approved by ADEC and remediation of contaminated soil that is encountered is expected to be required.

GEOTECH

Findings

At this early time of information gathering no formal geotechnical investigation has been conducted in light of the significant amount of information gathered from existing projects and the experience of the condition survey team. The existing Pioneer Home was built in the mid-1960s on frozen ground and is founded on a perimeter grade beam and drilled in bell shaped concrete posts in the building's interior. The bottom of the bell foundation was approximately twelve feet below the surface and well into sandy gravel. While unconventional, this system does seem to have supported the 55 year old building relatively well. At the time of original construction 36 test holes were drilled and sampled and logs of these test holes are included on the 1966 project record drawings. The borings indicate the ground is frozen one to two feet below the surface and the soil makeup is generally silty sand down to approximately 10 feet below grade. At that level, the soils consistently change to sandy gravel. Since the ground was frozen there is no indicated water tables.

In the early 1980s the neighboring Fairbanks Youth Facility was extensively expanded and the soils on that site were found to be very similar to those found in the logs of the Pioneer Home which is less than 100 feet away. In the mid-1990s a new gymnasium, corridor and two classrooms were added to the Fairbanks Youth Facility structure. By the time of the gymnasium additions, the previously frozen soils had thawed and the soils were found to be very susceptible to liquefaction. As a part of the design project, a full geotechnical investigation with foundation recommendations will be required to assure the existing challenging soils are well understood and accounted for in the building's foundation. At this early stage we have assumed a

foundation system similar to the existing Pioneer Home foundation as a conservative approach to price when creating the project construction cost estimate.

SITE ELECTRICAL

Findings

A. LIGHTING

Site lighting is provided by pole-mounted luminaires with a mix of LED in the front parking lot and high intensity discharge (HID) in the rear of the building. The rear pathway has very little illumination as it is far from the building and there are no poles in that area.

Recommendation

1. Replace site lighting in rear of building with LED luminaires.
2. Add new poles along rear pathway for illumination.
3. Replace parking lot luminaires with the same LED version used in the rear to provide the best life expectancy and lighting distribution, as the LED replacement bulbs currently in use are acceptable but not the best long-term solution.

B. POWER

The facility is supplied with power from a pad-mounted transformer by Golden Valley Electric Association. No deficiencies were seen in the transformer, pad, or surrounding area.

The parking lot has headbolt heater outlets for a number of vehicles supplied from a panel inside of the boiler room. There is an island that was added to the parking lot with no headbolt heater outlets, but a conduit was routed from the building for future installation.

Recommendation

1. Install headbolt heater outlets in the island in the front parking lot.

C. SPECIAL SYSTEMS

No special systems of note are present on the site, all devices are mounted on the building and are included in that section.

A list of major deficiencies found during the late July site tour highlights major electrical concerns. This list can be found later in this study in the electrical section.

STRUCTURAL

The Fairbanks Pioneer Home was constructed in two phases. The Original was designed in 1966 and the Addition was designed in 1973. It is assumed they were designed in accordance with the 1964 Uniform Building Code and 1970 Uniform Building Code respectively, although this was not stated in the General Notes for either. Both were designed for Seismic Zone 3.

The structural systems for both phases are similar. The roof is steel deck supported by steel beams and steel trusses. The trusses are supported on square steel tube columns. Some of the roof beams are supported on concrete masonry unit (CMU) walls. The floor is concrete fill on steel deck supported by steel beams and

girders, with a crawl space. The foundations are cast in place concrete drilled piers with the bearing ends belled out for added bearing area. The perimeter foundation is a cast in place concrete grade beam.

The Original lateral force resisting system is the steel roof deck in conjunction with horizontal rod bracing for the roof diaphragm. The vertical elements are precast concrete wall panels and CMU walls on the exterior, in addition to steel rod X-bracing in the dining and recreation rooms. For the Addition the roof deck is the roof diaphragm with the vertical elements as the precast concrete walls and exterior walls as the vertical elements.

Site Visit

There was no damage or distress observed in the building structure during the site visit.

Roof Framing

The roof was designed for a uniform snow load of 40 pounds per square foot (psf). The current requirement for uniform snow loads in Fairbanks is 50 psf. The current roofing was added after both phases were complete. It is a wood furring roof system with gravel ballast.

A structural analysis of the roof was done in 1991 by Design Alaska. They indicate the roof furring and ballast weigh in at 8 psf which is greater than the weight of the original roof. Their report states the maximum uniform snow load capacity of the roof is 36 psf with the capacity of some areas as low as 29 psf. The gable roof shape with current codes dictates snow loads greater than the uniform snow load that will impact roof purlins and may impact the roof trusses and girders. It is our understanding there is a snow removal program when the snow approaches the capacity of the roof structure.

In summary the roof snow load capacity is less than the original 40 psf uniform snow load, and is significantly less than the current requirement of 50 psf uniform snow load with surcharge loads in some areas. Reinforcing the existing roof framing would be a significant effort.

Lateral Load Systems

An ASCE 41-17 "Seismic Evaluation and Retrofit of Existing Buildings" Tier 1 analysis was performed for the structure and there are several noncompliant items in the lateral force resisting systems. A Tier 1 Analysis is a broad overview of the lateral force resisting system based on building type using a series of checklists. The checklists focus on the key elements of the structure that impact its seismic performance. The checklists include some limited structural analysis. For this facility the analysis is done with the Collapse Prevention Checklists for Steel Braced Frames with flexible diaphragms (Structural System S2a), Precast Concrete Shear Walls with flexible diaphragms (Structural System PC1) and Reinforced Masonry Shear Walls with flexible diaphragms (Structural System RM1) .

Noncompliant items are those structural elements that do not meet the requirements of the Checklists and require further analysis to determine whether they are acceptable as is or require upgrades. Noncompliant items are as follows:

1. S2a BRACE AXIAL STRESS CHECK – The axial stress in the diagonal rods exceeds the limits defined for the Quick Check. Possible upgrade: replace the rods with tension/compression brace members.
2. S2a TRANSFER TO STEEL FRAMES – See Item 6.

3. S2a CONCENTRICALLY BRACED FRAME JOINTS – For one brace, one end does not coincide with the column and beam. The beam does not appear to be designed for the required forces with this discontinuity. Possible upgrade: either reconfigure the brace or reinforce the floor beam.
4. S2a/PC1/RM1 OTHER DIAPHRAGMS – For the Original design there is roof deck and horizontal rod bracing acting as the diaphragm. The roof deck is stiffer than the rod bracing and will act as the diaphragm but its attachment is unknown. Also, there is not a direct load path between the roof deck and the shear walls. For both the Original and Addition the attachment of the floor deck to the steel framing is not indicated. Possible upgrade: provide connection between roof deck and framing.
5. PC1 PRECAST WALL PANELS – The precast wall panels are tied back into the concrete fill on steel deck but there is no indication of a direct connection to the foundation. Possible upgrade: provide direct connection between precast panels and the foundation.
6. RM1 REINFORCING STEEL – The horizontal reinforcing in the CMU walls does not meet the minimum requirements. Possible upgrade: attach horizontal steel straps to the face of the CMU walls.
7. RM1 FOUNDATION DOWELS – The drawings do not indicate that the vertical reinforcing in the CMU walls is doweled into the concrete grade beams. Possible upgrade: provide direct connection between CMU walls and the foundation.

MECHANICAL

Findings

A. FIRE PROTECTION

A 6" water main for the domestic and sprinkler system enters the basement mechanical room where a backflow preventer is installed to protect the domestic drinking water system from the fire suppression system. The backflow preventer appears to have been recently installed and has annual inspection tags.

The existing FDC and sprinkler alarm bell are located on the north side of the building adjacent to the loading dock door.

The sprinkler system is original to the facilities construction date. The owner noted that they have experienced the occasional head failures and have begun to replace heads. The existing heads are no longer available, and thus a modern style of head has been chosen.

The original system would have been designed as a schedule pipe system, something typical of the era when computer assisted calculations were not available. For the residence rooms (which falls under NFPA 13R coverage) the current system likely meets the current code requirements for flow, however in much of the remainder of the facility where NFPA 13 coverage is required coverage may not meet current code requirements.

It was noted during the walkthrough that the Kitchen Storage area was piled too high, creating a life safety hazard. Clearance of 18" from the sprinkler head is required by NFPA 13 to ensure proper coverage by the sprinkler head spray pattern is achieved.

The facility lacks any form of exterior canopy sprinkler protection. While the canopies do not require protection (noncombustible materials), it was noted that this limits the use in some instances. This is most evident at the loading dock, where storage below is not permitted due to the lack of sprinkler protection.

Recommendation

The existing water service appears to be in fair condition. No indication of leaks, nor were there any owner comments regarding the need for replacement.

The existing piping should be inspected in accordance with NFPA requirements for reuse. Branch piping throughout the facility will be replaced during upgrades to the facility.

Any remodeled areas will be hydraulically calculated in accordance with current NFPA 13 requirements and upgraded where necessary to provide coverage. The addition will have a main extended to it and coverage provided in accordance with current code requirements. In dwelling spaces NFPA 13R system would be provided, other commercial spaces an NFPA 13 system would be provided.

Confirmation that the building is equipped with (2) sprinkler riser assemblies is required. NFPA 13 permits a maximum of 52,000 ft² be served by a single riser valve; currently the facility is 57,000 ft² with the possibility of further growth. Any remote areas that border the addition will be connected to the additional riser (if required) under this project.

B. PLUMBING

The water service enters the basement mechanical room as a 6" line from the city distribution system. A 3" circulation line (with pump) continuously circulates water between the building and the street service line. A 3" CW line connected to the circulation line extends to serve the building domestic water system.

Piping throughout the facility is largely original and has exceeded its expected service life. While no failures were indicated by the owner at this time, it can be expected that failures will begin to occur as the piping further ages.

In general, plumbing fixtures appear to be in need of upgrade/replacement. It was noted that many of the fixtures were out of ADA compliance (tempering valves, insulation, shower threshold), and thus require upgrades to meet current code for a facility of this type.

The water heater system is comprised of two shell and tube heat exchangers, circulation pumps, and domestic hot water circulation pumps. A Heat Timer (Electronic Tempering Valve) controller was observed during our site walk; however, the condition of the control valve was not observed. Notes from maintenance indicate that the water heating system is undersized for the facility.

There are humidification systems for the air handling equipment that have failed and no longer can be operated. Given the lack of a vapor barrier, it is unlikely that the systems were capable of maintaining any level of relative humidity in the facility, and likely contributed to mold growth in the exterior envelope (to be determined). It was noted that the building rarely exceeds 20% RH during winter months. In cases where condensation has reached 40% RH during large events, there have been condensation issues.

Waste drainage is a mixture of gravity drainage and lift stations. It has been noted that the existing waste line leaving the building is a wooden pipe original to the construction of the facility. Fixtures from the kitchen gravity

drain to this line, along with rooms along the northern portion of the facility. The rooms south of the facility gravity drain to the lift station in the mechanical room where they are pumped over to the gravity main.

No form of storm drainage system currently exists for the facility. It was noted that the current system creates slipping hazards for residents during the transition season (late fall/spring) where water may freeze on surfaces overnight.

Recommendation

The water service may be reused for the facility. The circulation pump will be upgraded to ensure continued uninterrupted operation.

The piping throughout the facility will be demolished and replaced. All domestic cold, hot, and recirculation piping will be replaced with copper or CPVC. Sectional isolation valves will be installed under the project, as well as branch line isolation, to facilitate maintenance on the system.

The waste piping throughout the facility will be replaced. An alternative approach to routing the piping that removes the need for lift stations is recommended. Alternatively, changing to a site installed lift station would be another approach which could alleviate the mechanical room congestion and code violations currently present. Replacement piping will be ABS where not located in a plenum and cast iron where routed through plenum.

Replacement water heaters will be designed utilizing dual heat (electric and hydronic) to allow for shutdown of boiler equipment in the summertime. An electronic tempering valve will be installed, along with dual circulation pumps, to provide tempered water to the facility. Capacity requires evaluation to determine the required size of the equipment.

Plumbing fixtures throughout the facility will be replaced to meet architectural requirements. Showers will be provided with ADA components. All lavatories would be equipped with ASSE compliant tempering valves per code and ADA trap arm insulation.

An RO water system is needed to serve the humidification system, see the ventilation portion of this narrative for additional information. A water treatment system is required to remove minerals from the water service for the RO water system. Water samples are necessary to determine the treatment system size and requirements.

Storm water will be collected from the current scupper system and routed to grade to alleviate potential slip hazards present in the current design

C. HEATING

The boiler system is comprised of (2) cast iron sectional, ~80% efficient Weil McClain boilers with dual fuel (Fuel Oil/Natural Gas) burners. The burners primarily operate with natural gas; the backup fuel oil system is a requirement of the local provider for larger facilities should an interruption to the service occur. The heating plant equipment was replaced approximately 20 years ago and appears to be in fair condition. No signs of leaks or damage to the heating equipment were present. The pumps appeared to function properly and free of any noise, a possible indicator of various system deficiencies.

Natural gas piping is welded schedule 40 steel piping up to the regulators, and megapress fittings downstream of regulators. No issues with the installation were noted.

Fuel oil piping extends from an 8,000 gallon underground fuel tank located outside of the facility. The tank is of double wall construction and is equipped with a leak detection system. Piping between the tank and building is also said to have secondary containment and leak detection. The tank and piping are approximately 25 years old.

Heating piping was insulated but is expected to be a mixture of schedule 40 steel piping (large diameters) and Type L copper tubing (smaller sizes), typical of the era.

A glycol system is provided for the air handler coils. The glycol is heated through a heat exchanger in the boiler room and pump through piping to each air handler location.

Reports from the owner/maintenance indicate rooms struggle to maintain temperature during winter extreme temperatures, which can reach -40F in the area. It is possible the terminal units are undersized and need replacement. There is also a chance that the original envelope has deteriorated over time, leading to the terminal units lacking sufficient capacity to maintain space temperature.

Cabinet unit heaters throughout the facility are placed in areas of the building in locations high heat load, those include entry spaces, corridors w/ windows, and other exterior doors. The unit appears to be in fair condition and free of damage. Replacement of equipment is recommended during the facility upgrades.

No form of emergency equipment stop was observed to be installed, as required by ASME CSD-1.

Recommendation

The central heating plant equipment is currently in fair condition, replacement does not appear to be critical to the facility at this time. At the completion of the facility upgrades the heating equipment will likely need to be replaced. As the design progresses and heating loads are calculated, it also may become necessary to consider replacement to facilitate building additions and ventilation systems.

Existing terminal units in each wing of the facility will be replaced to facilitate architectural reconfiguration of the rooms. Terminal units will be multi row fin tube or radiators depending on the heating capacity required; consideration will be given to designing the terminal units for low temperature operation to facilitate future boiler replacement with condensing gas equipment.

The natural gas system appears in good condition and will remain largely unchanged from its current configuration.

The buried fuel tank is approaching its expected lifetime; additional caution is necessary due to the tank being buried. The existing tank will be removed; the replacement tank shall be installed with an aboveground configuration. Piping between the tank and building will be double wall with containment and leak detection sensors. A Veeder Root leak detection system will be installed to report any leaks. Size of the piping and tank will be dependent on any changes to the heating plant size, at this time equivalent size should be anticipated.

Heating piping throughout the facility is at, or beyond expected service life and will be replaced during any projects in service areas to ensure low maintenance operation. Alternatives to copper/steel for this facility are worth considering; a PPRCT system would likely provide greater system life than traditional metallic piping.

Control valves throughout the facility will be replaced and upgraded to connect to the DDC system installed under the upgrades to the facility.

A heat exchanger will be provided to replace the existing unit serving the air handler heating coil system. Pumps and other components will be replaced as well to ensure minimal maintenance moving forward.

A Snow Melting system is recommended at minimum to serve the main entry to prevent injuries. The system could be configured to melt additional areas (staff entry, sidewalk loop) at the owner's desire.

An emergency boiler stop switch should be installed in the mechanical room to meet current code requirements.

D. COOLING

Refrigeration equipment for the kitchen is covered under a separate portion of this report.

Mechanical cooling for the facility is provided through an open loop well water system. This system is high maintenance due to the presence of debris, as well as the lack of water treatment resulting in piping deterioration.

Piping for the system routes through the crawlspace to the mechanical rooms that are scattered throughout the facility. The piping is in extremely poor condition where insulation is missing. The water is noted to contain excessive amounts of iron, which fouls coils, and ultimately leads to reduced performance.

Recommendation

The existing well water cooling system will be abandoned. A chilled glycol system will be installed to provide cooling capacity for each air handling unit in the facility. Piping for the chilled glycol system would be routed through the crawlspace to each remote air handling unit.

A remote chiller for the system will be installed on the facility campus, with a specific location To Be Determined during system design. Pumps and expansion tanks would be installed in the mechanical room in a To Be Determined location.

E. VENTILATION

The facility utilizes air handling units for ventilation and cooling of the facility. The equipment is dispersed throughout the facility in mechanical rooms.

The air handler systems largely operate on a fixed outside air percentage of 20%. While calculations have not been performed, this seems high for a facility of this type. Any remodel work that replaces the equipment will further evaluate sizing and air volumes. Air handlers were originally outfitted with MERV7 filters but have since been retrofitted with MERV13. This is likely reducing performance by inducing additional air pressure drop, which can reduce the equipment air flow. Only one unit was inspected while touring the facility however those filters were observed to be extremely loaded with debris and in need of replacement. It's recommended developing a filter changing schedule to ensure proper operation of the equipment year round.

The crawlspace is currently utilized as a return air plenum for all air handling systems in the facility. Though this is permitted by code, given the age of occupants in the facility and the potential for radon and other contaminants, this is not recommended. The crawlspace lacks a proper vapor barrier separating the air from

the exposed soils; further research is needed to determine necessary upgrades to meet code for the return air plenum.

Much of the sheet metal in the facility is original. Condition appears to be fair. Any work that utilizes the existing ductwork should include resealing and duct cleaning to remove debris that typically accumulates over years of use.

There is a lift station in both mechanical basement spaces (boiler and fan room). It did not appear that adequate ventilation was provided in either space to declassify the space. It is unknown how code at the time would have classified these spaces, however current code requires that ventilation be provided at a rate of 6 Air Changes per Hour (ACH) to ensure all hazardous fumes are removed.

Recommendation

Air handlers throughout the facility will be replaced. Calculations to determine the correct size will be performed. The central Admin and Dining areas would be maintained with a recirculating air handler system; In the residential wings Heat Recovery Ventilators (HRV's) will be utilized to provide code minimum outside air and exhaust in the bathrooms.

The central air handling equipment will be provided with heating and cooling coils to achieve desired indoor temperature conditions. Humidification systems would be designed into the ductwork to provide building wide humidity control.

HRV units will be equipped with glycol preheat and post heating coil to temper discharge air to the rooms.

Any salvaged ductwork would be specified to receive cleaning and would be resealed to ensure leakage is minimized.

Consideration is needed in the basement mechanical room to achieve the 6 Air Changes per Hour required by code. A preferred approach with the remodel would locate the lift station outside of the facility and remove this from the basement mechanical rooms.

Kitchen ventilation system will be modified and/or replaced as indicated in the Food Service portion of this narrative.

Under floor ducting is to be added to support the return air system.

F. DIRECT DIGITAL CONTROLS

Portions of the facility have been upgraded over the years to Direct Digital Controls (DDC), sourced from Johnson Controls. No issues were noted with the current system; however, it can be expected that any major mechanical system overhauls will likely require a DDC upgrade.

Recommendation

The entire facility will be outfitted with a Direct Digital Control (DDC) system. The system would utilize energy saving programming where possible to reduce air flow rates. Selection of the controls contractor is to be determined pending further evaluation.

G. SEISMIC RESTRAINT

The current facility was constructed in an era where attention was seldom provided for seismic systems.

Recommendation

Replacement equipment will be performance specified to receive seismic restraint. Any existing systems that are salvaged and reused (natural gas, sheet metal) would also have bracing upgraded to meet current ASCE 7-10 requirements.

ELECTRICAL

Findings

A. LIGHTING

The building lighting includes a mix of incandescent, T12 fluorescent, T8 fluorescent, and LED sources. Between half and three quarters of the building uses fluorescent luminaires, with maintenance installing LED replacement tubes as time and funding allows. Resident rooms use a fluorescent ceiling-mounted luminaire and direct/indirect valence lighting. Light levels are reported to be low in these rooms.

Exit signs are a mix of incandescent and LED sources. Spacing and quantity appear to be acceptable.

Emergency lighting is typically provided with halogen lighting units (bugeyes). Spacing appears to be too far to provide code-required emergency egress lighting.

Lighting control consists of manual switches, with occupancy sensors and dimming capabilities not present.

Recommendation

- Replace all luminaires in the building with LED sources. This includes the fluorescent models that have had LED tubes installed. This will allow for uniformity and better control options.
- Provide new exit signs throughout the building.
- Replace emergency lighting units throughout the building and add more where required for code compliance in the corridors and common areas.
- Provide lighting controls throughout the building. In the corridors, dim lights when unoccupied and bring back to 100% when occupied. In common areas, offices, and staffed support spaces provide occupancy sensors. Provide dimming in all offices, resident rooms, and common areas

B. POWER

The building power distribution system starts with a Westinghouse main fusible switchboard that was built in 1974. The main section is rated 1600A, with a generator section rated 600A. This switchboard supplies power to a 400A distribution panel and 600A motor control center that were installed in a major mechanical project in 2000.

The standby generator was replaced in 2018, which allowed the entire building to be connected to standby power. As part of that contract, new main distribution panels were purchased to replace the 1974 gear but were not installed at that time. Those panels are wrapped and stored in the old generator room awaiting funding for installation.

The majority of the branch panelboards in the building are of the Westinghouse era similar to the main switchboard. There are a handful of exceptions, such as the headbolt heater panel (1995) and panels in the boiler room that were part of the 2000 project.

Branch wiring is reported to be in good condition by maintenance staff. The older wiring, however, shares neutral conductors between circuits which presents a safety issue if an energized circuit puts current on a neutral shared with another circuit that is thought to be deenergized. The electrical code requires these circuits to have a means to turn off together such as handle tie devices in the panels, but there are none present. Most of the branch wiring, particularly the original wiring, does not have equipment grounding conductors present and instead depends on the conduit to provide a grounding path. This is allowed by the NEC but common practice in Alaska is to include an equipment grounding conductor in branch circuits in case of conduit separation due to seismic activity. Anchorage requires this by local amendment but Fairbanks does not.

One issue noted in earlier reports is that the branch wiring and feeders have inconsistent use of insulation colors, resulting in confusion when trying to trace circuits or replacing wiring.

Receptacles in the resident rooms have mostly been replaced by maintenance staff, but the majority of the building otherwise has older receptacles that are due for replacement. Resident rooms require AFCI and GFCI protection to meet current code requirements but neither is present in the original power systems. One of the issues brought up by staff is that receptacle spacing is insufficient to meet resident needs, resulting in the use of extension cords to provide power where needed. Receptacles have a color code with red being used to indicate generator-backed locations. This code is no longer required as the recent generator project put the entire building on backup power.

Recommendation

- Install the new distribution panels that were purchased under the generator project.
- Replace all the branch panelboards in the building. Though the 2000 era panels are in good condition and parts are available, the best long-term solution is to have all equipment matching and on the same maintenance/replacement cycle.
- Replace branch wiring throughout the building when the panelboards are replaced. This will give the opportunity to provide dedicated neutrals for all circuits (which will be important when trying to install AFCI/GFCI devices in resident rooms), correct the color code inconsistencies, and provide equipment grounding conductors in all conduits.
- Replace all receptacles in the building. In the resident rooms, these will need to be tamper-resistant, as well as have GFCI and AFCI protection.
- Replace motor starters, disconnects, and controllers for all equipment provided under mechanical recommendations.

C. SPECIAL SYSTEMS

FIRE ALARM The building fire alarm system was recently upgraded to a Siemens Desigo panel. The notification devices (strobes, horn/strobes) appear to be older styles that were connected to the new panel. Initiating devices (smoke/heat detectors, pull stations) were replaced as part of the upgrade, as these devices must be listed for use with the new panel.

There is smoke detection throughout the corridors and in the resident rooms, along with most other normally occupied areas of the building. Pull stations appear to be located at all code-required locations such as exits

and stairs, and there are additional pull stations at interior locations not code-required. The air handlers have both supply and return-side duct detectors, and carbon monoxide detectors were observed in the fan room.

Resident rooms have no notification devices installed, though there are indicator lights over the doors on the corridor side to indicate activation of a detector in the room.

Recommendation

Replace notification devices throughout the building. Provide new notification in all resident rooms, including horns in all rooms and strobes in accessible rooms at the quantity required by the IFC or greater.

TELECOM The building has two telecom rooms, one in the old generator room, and a second located in Storage 045. Telecom cabling is a mix of Category 5E and Category 6, with both riser and plenum-rated cable observed. Note that with the crawlspace being the return air plenum cabling above the ceiling does not need to be plenum-rated.

Recommendation

Recable all telecom outlets and wireless access points with Category 6 cable if currently using Category 5E. We would recommend replacing all riser-rated cable with plenum-rated to allow the above ceiling areas to be used as return air plenums if needed. The telecom equipment in Storage 045 should be moved to a dedicated room, which means all cabling to that room would be replaced. The telecom room in the old generator room can remain, but needs cooling added due to heat load.

ACCESS CONTROL There is no electronic access control system for the facility, and this has been identified as an item that staff would like to have. There are key switches at exterior doors to arm them, which will sound an alarm and illuminate a blue light if opened.

Recommendation

Provide a building-wide access control system for staff and residents. Exterior doors should have electrified hardware and a card reader for both staff and resident access. Selected interior doors other than resident rooms should have the same for staff access, such as medicine storage/distribution, office areas, nurse's stations, etc.

Resident rooms are to be provided with electrified hardware to allow for individual assignments to rooms instead of passing out hard keys.

TELEPHONE The building has telephone service to it, with individual residents responsible for the telephone service to their room. The telephone room is located next to the old generator room that is now a telecom room.

Recommendation

No recommendations at this time, though the telephone room could be combined with the telecom room that is in the old generator room.

VIDEO SURVEILLANCE There is a building-wide video surveillance system using Milestone software and Axis cameras, with most cameras located in the interior. Video system equipment is located in the telecom rooms. In discussion with staff, there are an additional 20-25 locations where they would like to see additional cameras.

Recommendation

Provide new cameras in the locations designated by staff. This would require 20-25 cameras with cabling, new patch panels, new network switches, and additional storage for the video.

NURSE CALL Like all other Pioneer Homes in the state, this facility uses the Code Alert system by RF Technologies for nurse call and wander management systems. There are text readers and pagers connected to the system for alerts. The system controls 22 exterior doors for wander management. No deficiencies were reported by the staff.

Recommendation

No recommendations at this time.

WI-FI There are multiple systems in place in the facility. A recent project brought internet and cable into the resident rooms via RG-6 coaxial cable, with a local router providing wireless capabilities. There is a staff Wi-fi system by the State of Alaska using Cisco access points, but our understanding is that this system is not functional at this time. There are also Aruba access points located in corridors/common areas for resident/guest Wi-Fi.

Recommendation

No recommendations at this time, though additional access points may be needed once the building is reconfigured.

CABLE TELEVISION: See Wi-Fi above, cable television is provided under the same service as the resident internet.

Recommendation

No recommendations at this time.

PUBLIC ADDRESS: The building-wide paging system is not functional at this time. It is our understanding that it become disabled when an upgrade was performed on the State of Alaska telephone system in use at the facility. Per staff, the paging system does have an allocation in the fiscal year 2023 budget for replacement.

Recommendation

No recommendations at this time, assuming the FY23 paging system is installed prior to any renovation of the building.

SOUND SYSTEM The multi-purpose room has a small sound system with a handful of speakers. Per discussion with staff, this system cannot play music from outside devices, has poor sound quality (which may be partially due to acoustics in the room) and does not have any kind of assistive listening system for residents hard of hearing.

Recommendation

Provide a new sound system for the multi-purpose room including amplifier/mixer, Bluetooth inputs for connecting devices, microphone kit (wireless), assisted listening headsets and antenna for up to 30 users at a time, and new speakers throughout the space.

FOOD SERVICE AND LAUNDRY

Findings

LOADING DOCK/RECEIVING 007C The exterior loading dock is uncovered, and the immediate space is inadequate for the amount of food and other deliveries received. The interior receiving room 007C is small allowing only small amount of freight to be brought inside before being distributed around the facility.

Recommendation

It is suggested that the Storage Room 007D be removed to provide more space for the receiving process. Additionally, the exposed piping in the receiving area will need to be protected from freezing temperatures when the receiving doors are opened. Options would be to create a new receiving space adjacent to the kitchen that includes cold storage (walk-in cooler & freezer) and dry storage.

DRY STORAGE ROOM 012 With the recent addition of providing meals for the clients at the nearby youth detention facility, there is insufficient space in the dry storage room to stock the necessary supplies for the residents/clients of the FPH and the youth detention facility. As a temporary solution, the food distributors have been able to provide twice a week deliveries during the summer months (versus the normal once per week delivery) but may not be able to offer this service during the winter months. Additionally, the mechanical chase on the east side of the room requires regular service access, the electrical panel/communication equipment on the south side of the room requires clearance space in front per code, and the existing grease interceptor is accessed through the floor in this room.

Recommendation

The storage shelving within the room needs to be re-configured and selected shelf units made mobile for the service access and clearance components.

The grease interceptor needs to be relocated and changed to a point-of-use type at the sink fixtures where required by code, to eliminate the need for access in the dry storage room. Alternatively, the dry storage should be relocated into a new larger space adjacent to the kitchen and include a covered loading dock & heated receiving area to breakdown palletized deliveries.

FOOD PREP ROOM 012A This room was re-configured from the walk-in cold storage area, into a food preparation and bakery during the 1994 remodel. A type one exhaust hood was installed with a double convection oven and cooktop. The cook top has since been replaced with a steamer, and the hood used as a type two system with the removal of the chemical hood fire suppression system. There are also various bakery work tables, multiple sized mixers, storage shelving, and carts installed.

Recommendation

The room layout can be improved for workflow efficiency by reconfiguring the equipment, shelving, mixers, and tables. The wood shelf needs to be replaced with stainless steel, and wall finishes upgraded to FRP from floor to ceiling for DEC compliance and cleanliness. Lighting needs to be upgraded to LED fixtures for energy efficiency, and to eliminate the need to store spare fluorescent bulbs.

KITCHEN ROOM 015 The kitchen could be improved with some upgraded stainless steel sinks, worktables, shelving, appliances and a new type one exhaust hood. The wall finishes also need to be upgraded to FRP from floor to ceiling for Alaska Food Code compliance and cleanliness. Lighting needs to be upgraded to LED fixtures for energy efficiency, and to eliminate the need to store spare fluorescent bulbs.

Recommendation

- A. The three compartment sink unit needs replacement, eliminating the disposer, adding a recirculating wash sink compartment with rinse and sanitize compartments, a scrapping sink, and a point-of-use grease interceptor with grease skimming capability. This would reduce labor costs, speed up the pot and pan hand washing task, reduce or eliminate clogged waste piping, and simplify the grease collection and disposal task.
- B. Upgrade the circa 1970 work counter adjacent to the service line with a new stainless steel work counter that has more efficient storage, reposition the existing stainless steel wall mounted over-shelf to improve workflow, and move the microwave to a wall mounted shelf to make room for the small countertop appliances.
- C. Replace the original U-shaped food preparation table with a re-configured stainless steel food preparation table unit that allows for a point-of-use refrigerator, eliminates the unused disposer, and substantially improves work efficiency and flow. Counter appliances (food cutter, food slicer) would be relocated or installed on sturdy mobile work carts, providing flexibility and better function. Wall finishes need to upgrade to FRP from floor to ceiling for DEC compliance and cleanliness. The sinks would need to drain to an indirect waste, such as a floor sink receptacle to comply with the Alaska Food Code and state plumbing code.
- D. The type one exhaust hood is the original to the building and requires excessive and inefficient exhaust and make-up air volumes. New type one exhaust hoods now have reduced air flow requirements that directly reduce energy costs for the exhaust and make-up air mechanical systems. They also have automatic “demand control ventilation” (DCV) controls that automatically adjust exhaust and make-up air systems to reduce energy costs based on the cooking processes occurring at any given time. With a new updated type one exhaust hood, the utility service to each of the cooking appliances would be improved with a building wall between the front and rear cooking line and eliminating the awkward utility chase that creates a difficult cleaning and maintenance problem.
- E. Replace the existing over-shelf at the serving line to improve service efficiency with a two tier over-shelf and utensil rack. Over the food wells and over the plate pass through section, strip heaters would be provided to maintain food temperatures while serving the clients.
- F. The addition of a reach-in blast chiller was recommended to provide Hazard Analysis Critical Control Point (HACCP) compliance for properly chilling food through the critical temperature zone (from 135 deg F to 42 deg F) to minimize any food safety hazards. Heated food would be properly chilled to 40 deg F before being placed into the walk-in cooler.
- G. The existing soiled dish scrapping table needs to be replaced, including a new pre-rinse faucet, to improve the soiled dish scrapping function. The disposer needs to be removed, and a point-of-use grease interceptor installed, both per state plumbing code. Upgraded wall finishes of either stainless steel flashing or FRP wall panels for DEC compliance and cleanliness, would be required when the old dish table is replaced.
- H. In conjunction with the soiled dish table replacement, a hand wash sink is required in the dish room to comply with the Alaska Food Code.

- I. It was stated that there may be a risk of injury to staff working in the dish room with the current configuration of the clean dish table outlet at the dishwasher. For a more efficient dish room layout, we recommend adding a power loader accessory to the dish washer at the soiled dish table side, and replacing the clean dish table with one that includes a corner turn roller table assembly to minimize any risk of staff injury and to facilitate the handling and unloading of clean dish ware. Upgraded wall finishes of either stainless steel flashing or FRP wall panels for DEC compliance and cleanliness, would be required when the old dish table is replaced.
- J. The water supply to the kitchen contains excessive amounts of minerals that cause scaling issues with the dish room and cooking appliances. It is recommended that a central water treatment system be installed for the main water supply to the kitchen.
- K. The beverage service station is primarily used to service the mobile meal carts that deliver meals to the Homestead and Aurora client dining areas. Relocating and re-configuring the beverage service station, power, water and waste would improve workflow.
- L. The current meal delivery carts used are of stainless steel construction, very tall, and somewhat heavy when loaded, which makes it difficult for staff to move the carts within the facility. The height of some staff members makes this impractical, and possibly a safety issue. Replacing the stainless delivery carts with insulated polyethylene constructed carts that are shorter in height will allow staff full visibility and easy maneuverability. Existing trays and service ware could still be used with these new delivery carts.

SORTING 039A & WASHING 039B Four washers are currently used at capacity and the facility needs additional capacity to keep up with demand. The immediate need is to replace three ageing commercial washers whose replacement parts are no longer available or will soon be no longer available.

Recommendation

Our recommendation is to upgrade from the 55-pound washers to 70-pound or larger machines. As part of this machine upgrade, revise the space for the washers to include either the Kitchenette room 039A and/or the stage areas. Both spaces (kitchenette & stage) are no longer used as designed and could be remodeled for an expanded laundry area.

Also, with the larger washers, the existing concrete drain trough needs to be replaced and upgraded to a polypropylene or similar type trough, to accommodate larger volumes of water. Maintenance staff have indicated the drain trough periodically backs up into the laundry. This may indicate that the existing waste line(s) may need to be enlarged when replacing the trough. Some of the existing detergent and chemical dispensing systems may be re-used with the new washers.

A point-of-use water treatment system would also benefit this wash equipment, extending its useful life and reducing service issues.

DRYING 039D & CHEMICAL STORAGE 039C The existing dryers would likely have to be upsized when the washers are replaced. The four 70-pound washers would be ideally paired with three 120-pound industrial tumble dryers. The lint collection system and dryer vents would need to be upgraded at the same time.

The existing Chemical Storeroom 039C needs to be relocated into the expanded washroom, and the unused exterior door removed, to allow the drying room to be re-configured for more folding, and hanger space.

HAZARDOUS MATERIAL IDENTIFICATION

LIST OF AVAILABLE DOCUMENTS

FPH Maintenance Department provided a number of documents, listed below, related to previous abatement projects.

YEAR	PROJECT NAME	DESCRIPTION
1966	Original Floor Plans	As-builts, 41 Sheets
1972	Additions and Alterations	As-builts, 37 Sheets
1980	Laundry Room Renovation and Asbestos Abatement	As-builts, 26 Sheets
1987	Repair and Renovation (Asbestos Abatement)	As-builts, 11 Sheets
2022	Asbestos Floor Locations Map – FPH Maintenance Dept.	1 Sheet

REVIEW OF FLOORING MAP

According to the FPH Maintenance Department 2022 ACM Flooring Locations Map, known asbestos containing flooring and/or mastic has been identified in the following areas/rooms: Staff Room 008, Corridor 008, Corridor 009, McKinley Hall 016, Solarium 017, Men's/Women's Bathrooms 033 & 034, Marigold Hall 018, Resident Laundry 023, Room 115, Alaska Way 019, McKinley Hall 035, Aviary, Solarium 038, Bathrooms associated with Rooms 160-171, Stage, Conference Room 054, Kitchen 055, Room 200, Room 205-229, Linen Closet 063C, Lounge 063A, Sitting Area 063A, Office 063B, Linen Closet 061, Utility Room 062, and Blueberry Hall 063.

The Map states that Rooms 100-158 have not been tested for asbestos and should be assumed to contain asbestos flooring and/or mastic at a minimum for building materials present including all additional non-living quarter spaces present throughout the area of the building containing these rooms. Bathrooms associated with Room 100-158 are stated to have been abated between 2010-2011. "Vinyl Asbestos" flooring is shown on Page 6 of the 1966 FPH drawings in the Finish Schedule throughout the building in specific rooms. "Acoustical Plaster" is shown on Page 6 of the 1966 FPH drawings in the Finish Schedule for the Vestibule, Rec Room, and Reception .

Front Office 004 is also stated to have the Closet flooring abated but does mention a previous abatement project for the Office floor itself and should be assumed to contain asbestos flooring and/or mastic.

REVIEW OF OTHER HISTORICAL DOCUMENTS – ASBESTOS

A review of the other historical documents indicates a wide variety of potentially asbestos containing materials may be present in the facility. These items should be assumed to contain asbestos unless sampling and testing by a certified inspector determines these are not ACM. If these are ACM, the ACM maybe be managed in place until impacted by a remodel project. Although ACM may be left in place during a remodel, the best

management practice is to remove ACM during major remodel projects to permanently eliminate the hazard from the facility. The following items are determined to potentially remain in the structure:

- Pryobar partition contains thermal mortar that is known to contain anthophyllite and the plaster on room side assumed ACM (page 40-1966)
- Fire doors potential to contain assumed ACM in mechanical rooms (page 40-1966)
- Potential ACM sprayed on fireproofing over all steel framing and decking in boiler room with Pyrobar stack walls up to roof (page 40-1966)
- Assumed ACM waterproofing membrane at fad down to footing (page 40-1996)
- “Fire partition” wall above ceiling in attic space in Corridor 91 assumed to contain ACM (page 35-1966)
- Flexible fabric duct connections assumed to be ACM (page 32-1966)
- Steel support vibration insulation blocks are potential ACM (page 32-1966)
- Assumed ACM waterproofing sealant for drains in plenum space (page 32-1966)
- Damper insulation assumed ACM (page 31-1966)
- Below floor, flexible fabric connectors & vibration isolators are assumed ACM (page 29-1966)
- ACM (unknown type) at corridor walls and exterior walls remains in rooms 67, 203, 204, 237/239, 233/235 (page 3-1986)
- Fan Room 7 heat exchangers with asbestos insulation (page 3-1986)
- ACM between plaster substrate & stage curtain beam in dining room (page 4-1986)
- Spray-on acoustical ceiling in lobby/dining room (page 4-1986)
- Partition-wall between existing plaster ceiling & above existing panel wall (page 4-1986)
- Fan Room #4 ACM TSI on piping runs, joints, insulation (page 6-1986)
- Assumed ACM in spray-on acoustical ceiling in current library (page 6-1986)
- Throughout the entire building (every area and room), ACM TSI is present and appears everywhere in walls and crawlspace. (page 7/8/9/10-1986)
- Asbestos containing basement boiler/tank insulation (page 10-1986)
- Metal decking ACM fireproofing (page 11-1986)
- Asbestos packing mastic from flue seams (page 11-1986)
- Assume ACM waterproofing membrane behind ceramic tile at exterior walls and shower curbs (page 15-1966)
- Assumed ACM sealant used between galvanized Reglet above fireplaces (page 13-1966)
- Assumed ACM insulation under freezer wall locations (page 13-1966)
- Potential ACM stucco on lathe at soffits (page 13-1966)
- Column detail shows suspect ACM plaster in finishes, subcoats, and over gypsum wallboard (page 12-1966)
- Suspect ACM acoustical plaster at ceiling in dining/rec room areas (page 12-1966)
- Fireplace flue lines with “asbestos felt” (page 10-1966)

REVIEW OF OTHER HISTORICAL DOCUMENTS – LEAD

In addition to the hazards from asbestos, lead may be present in paint (lead based paint, LBP) and is sometimes used in construction for specific purposes. These may include solder in copper piping systems, as well as lead oakum packing in plumbing drain systems (wastewater and roof drain). These lead containing

materials are often difficult to see or test and are assumed to be present in facilities of this age with these systems.

In addition to the lead that is commonly encountered in the plumbing systems, a review of the available documents indicates that this building may also have lead in the following locations:

- Lead shielding built into wall in x-ray room in cabinet storage and walls themselves and leaded glass window (page 15-1966)
 - Solid lead frame, lead glass, lead glass stops, and lead wall lining (page 12-1966)
 - Lead shielding surrounding door jamb (page 6-1966)
- Lead wool used as packing material behind handrail penetrations into walls (page 13-1966)

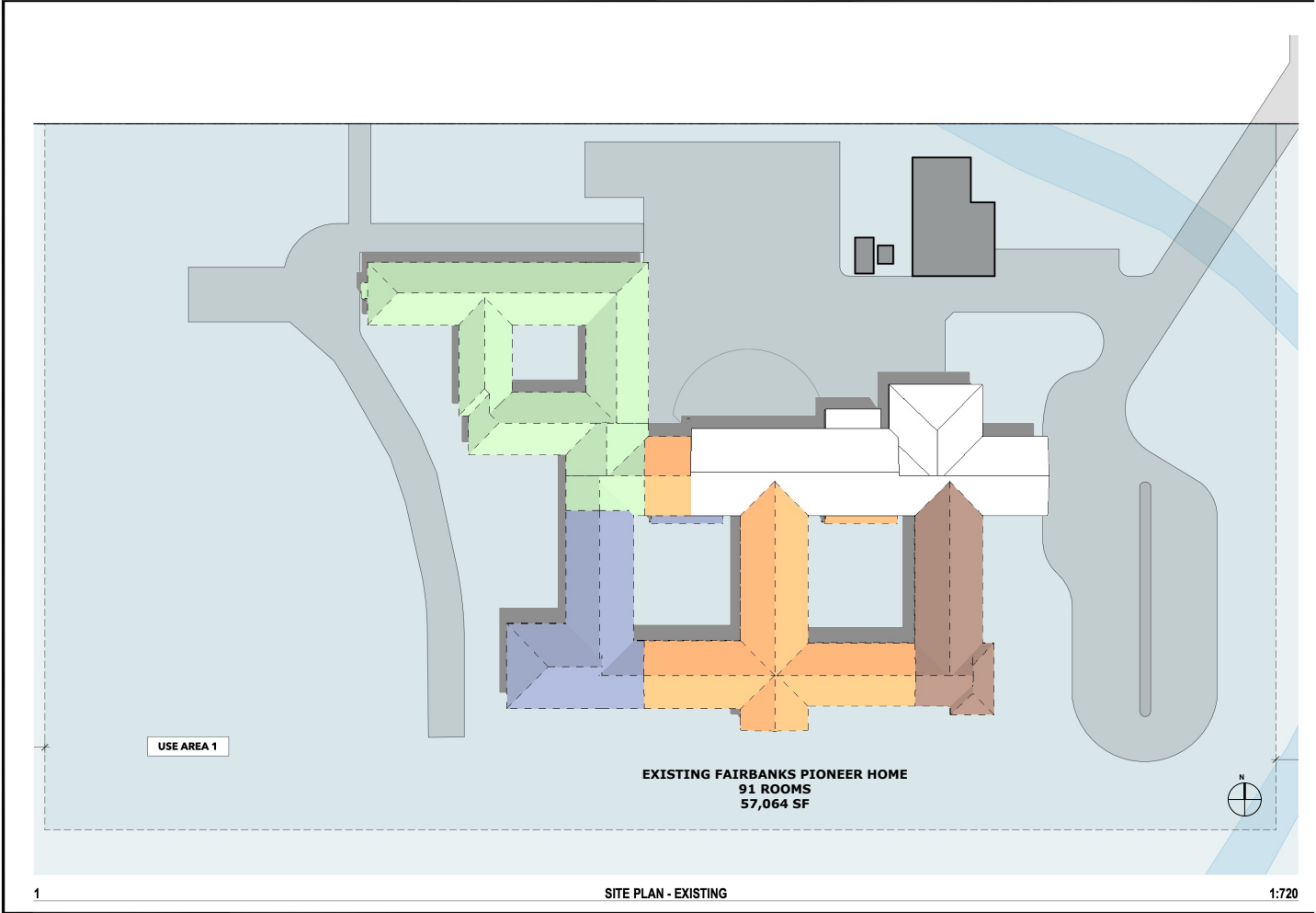
OTHER HAZARDOUS MATERIALS OBSERVED DURING SITE INSPECTION

During the site inspection, **NORTECH** personnel also looked for other items that could become hazardous if not handled properly during renovation, demolition, or disposal of associated waste streams. These items were not quantified as to the number or location observed.

- Fire Extinguishers
- Fluorescent Bulbs (mercury)
- Fluorescent Ballasts (PCBs)
- Exterior Lighting (heavy metals)
- Thermostats
- Exit Signs (Batteries and/or Radioactive Source)
- Smoke Detection Equipment (Radioactive Source)
- Lead-Acid Batteries (Emergency Lighting)
- Hydraulic Door Closers

Recommendations

The extent of the renovation of this facility will depend on a number of factors, including budget and schedule. Destructive testing to evaluate suspect ACM and other potential hazards should be kept to a minimum until the scope of the project has been well defined to minimize the disruption to residents of the facility. For a facility like this, testing is recommended based on the 65% Design Documents when the project scope and project funding/schedule are reasonably well defined. Limited testing, such as the Maintenance Department has completed for the flooring, is possible at earlier design phases. For cost estimating purposes during earlier design phases (35% and 65%), the bulleted list of suspect finishes and materials should be used to identify suspect and assumed ACM, lead containing materials, and other hazardous materials.



USE AREA 1

EXISTING FAIRBANKS PIONEER HOME
91 ROOMS
57,064 SF

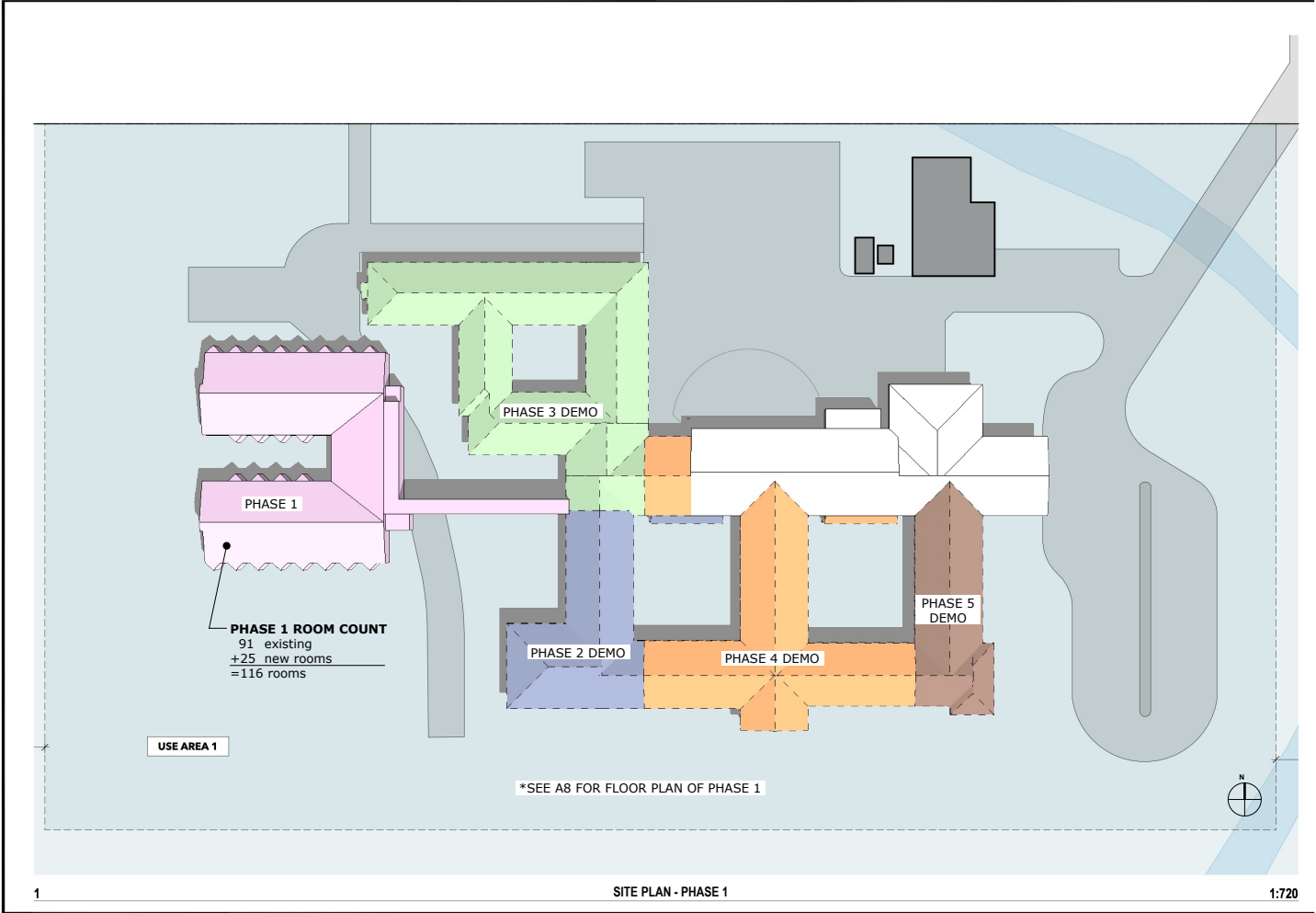


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SITE PLAN - EXISTING

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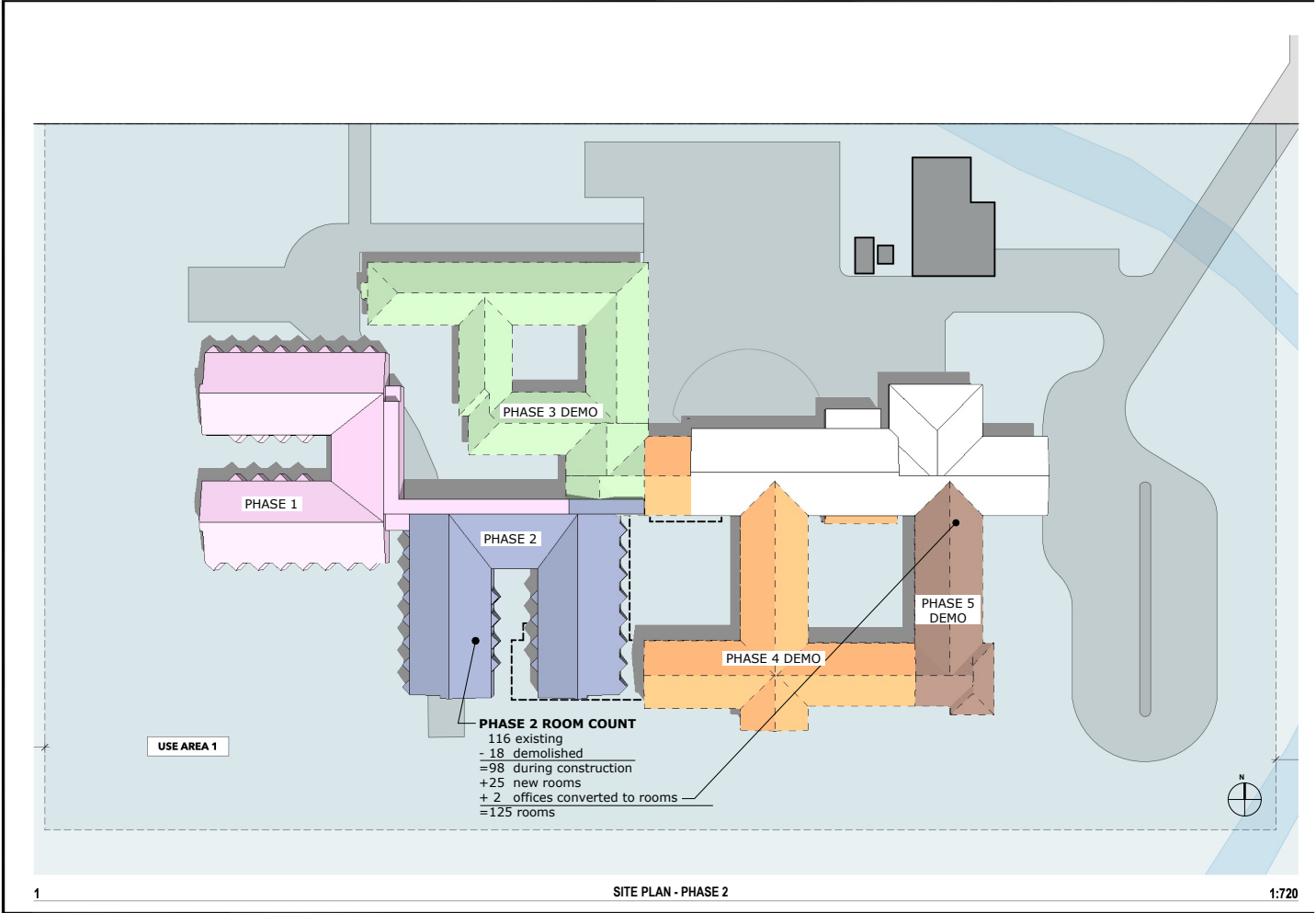
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<p>DIHS STATE OF ALASKA FAIRBANKS PIONEER HOME 2221 EAGAN AVENUE FAIRBANKS, ALASKA 99701</p>	
<p>DATE: Feb 15, 2023</p>	<p>PROJECT: Existing</p>
<p>SHEET NO: A1</p>	



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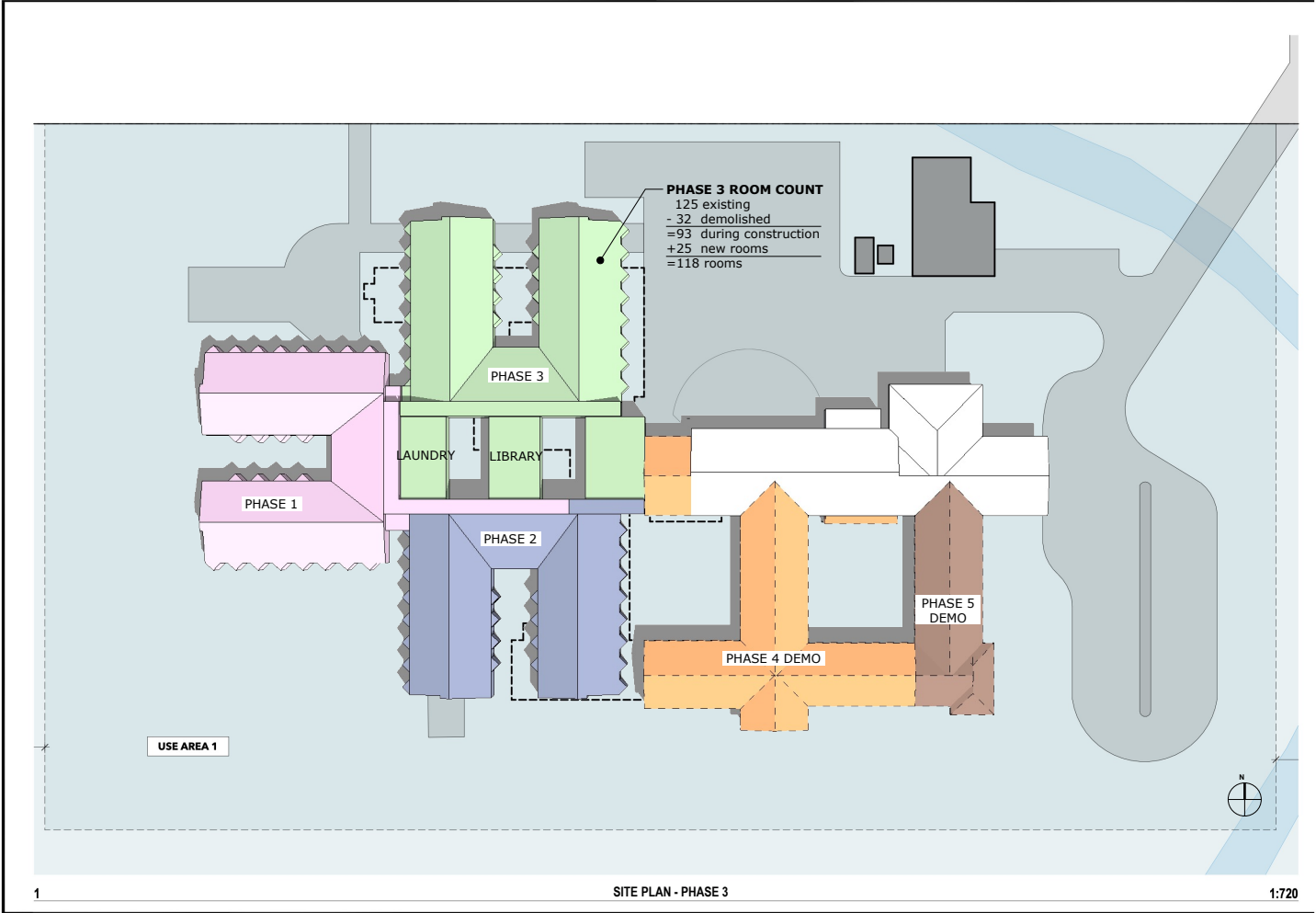
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PROJECT:	Phase 1
SHEET NO:	A2



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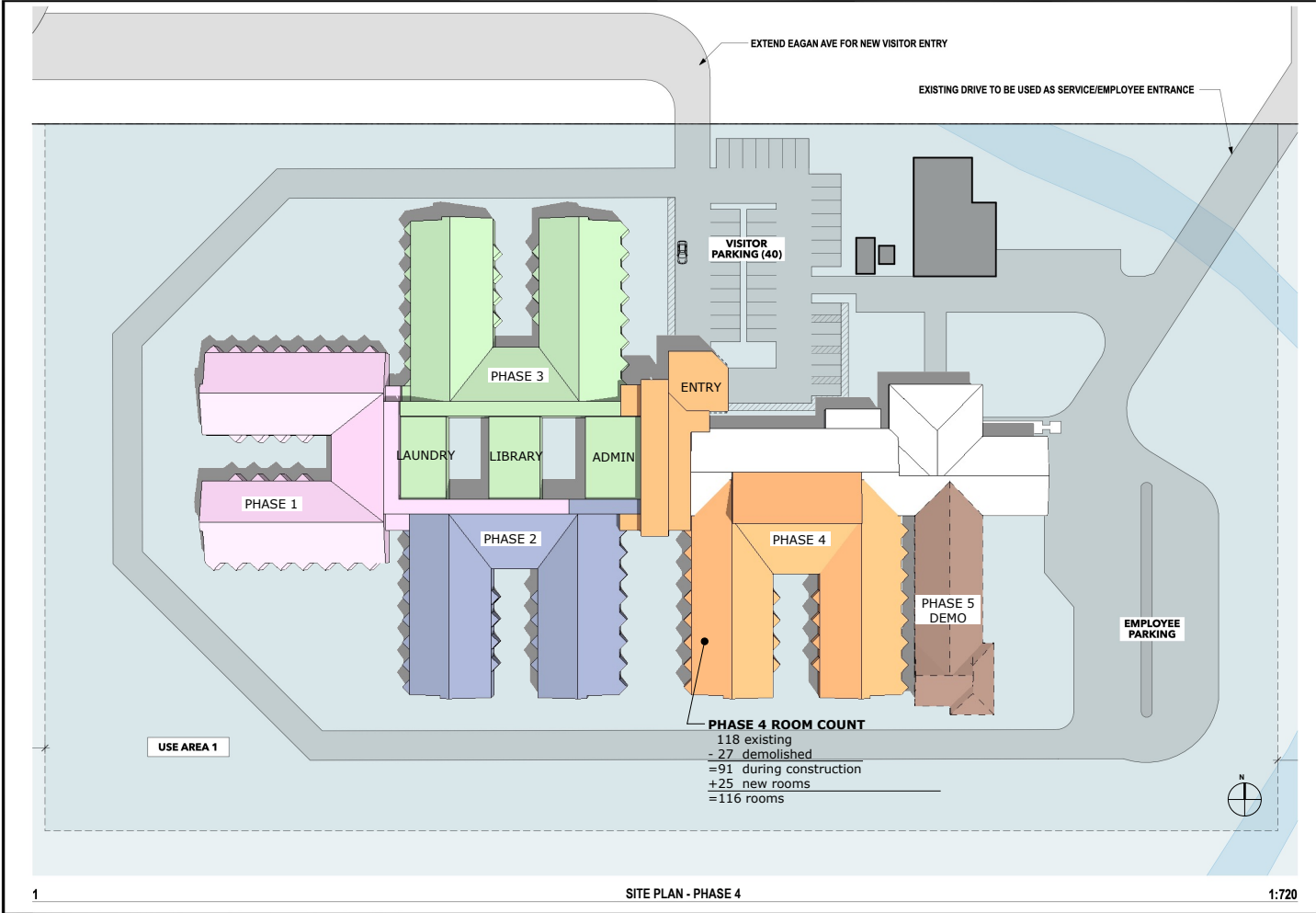
DATE:	Feb 15, 2023
PROJECT:	Phase 2
SHEET NO:	A3



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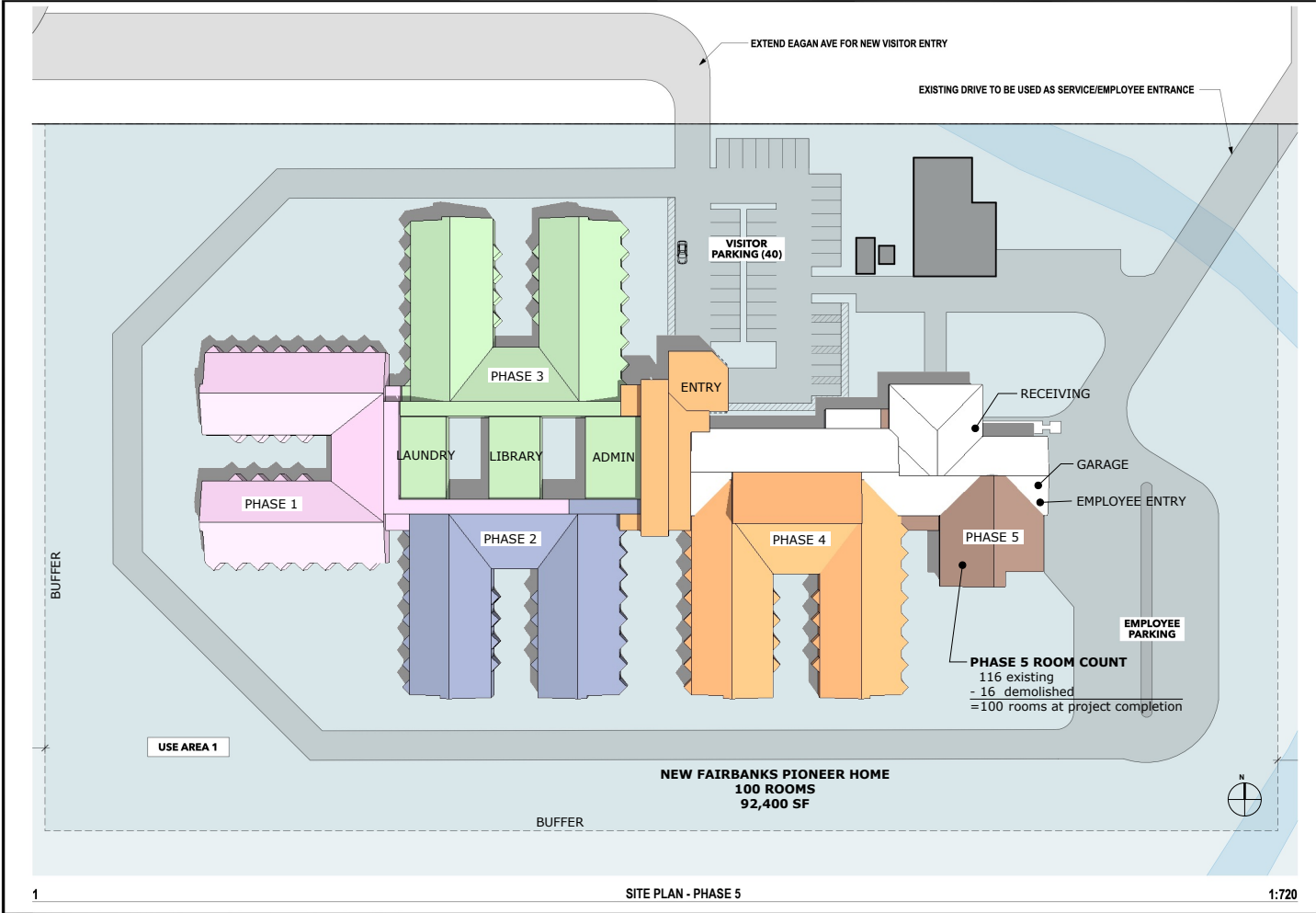
DATE:	Feb 15, 2023
PROJECT:	Phase 3
SHEET NO.:	A4



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DATE	Feb 15, 2023
PROJECT	Phase 4
SHEET NO.	A5



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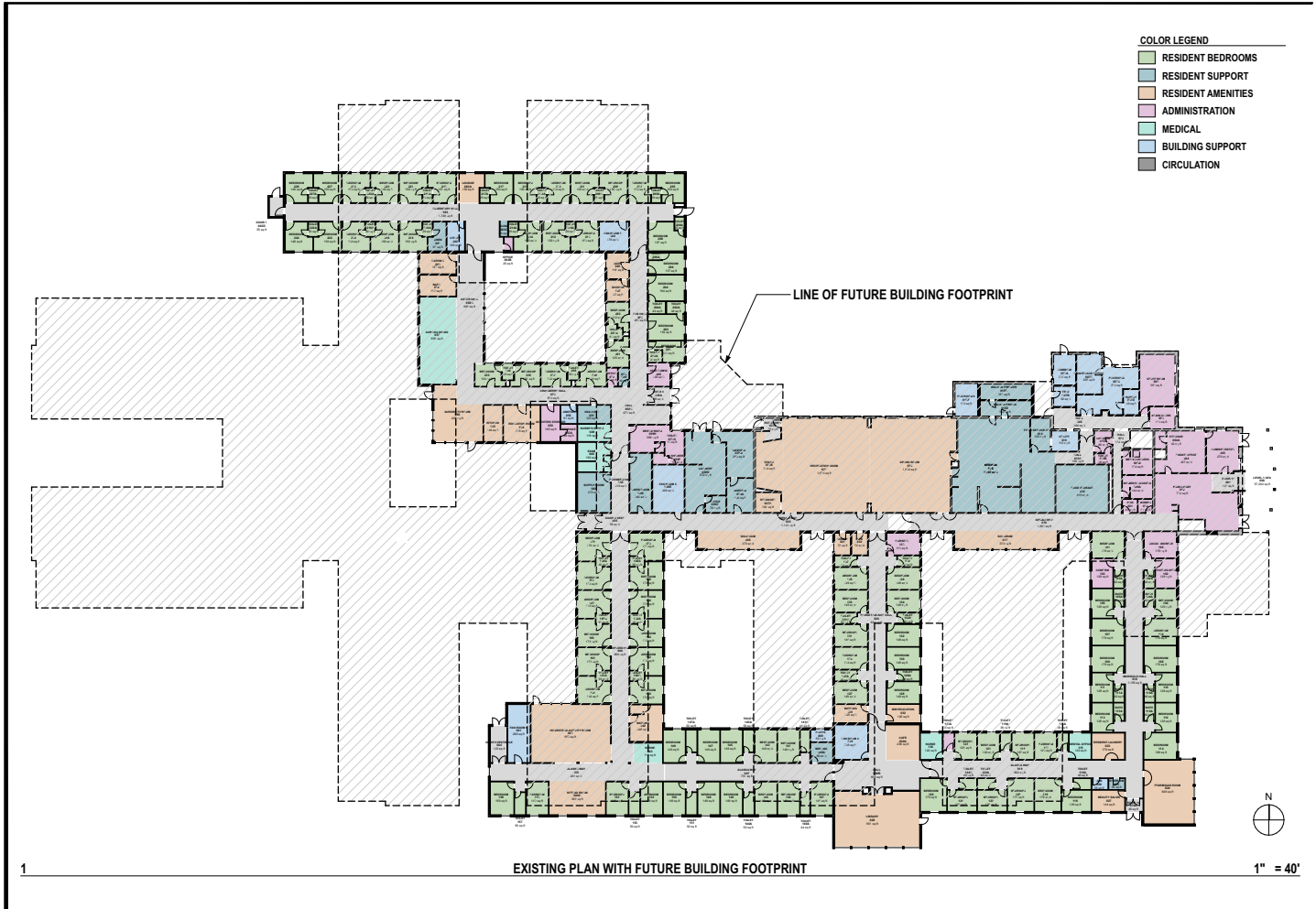
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DATE:	Feb 15, 2023
PROJECT:	Phase 5
SHEET NO:	A6

1

SITE PLAN - PHASE 5

1:720



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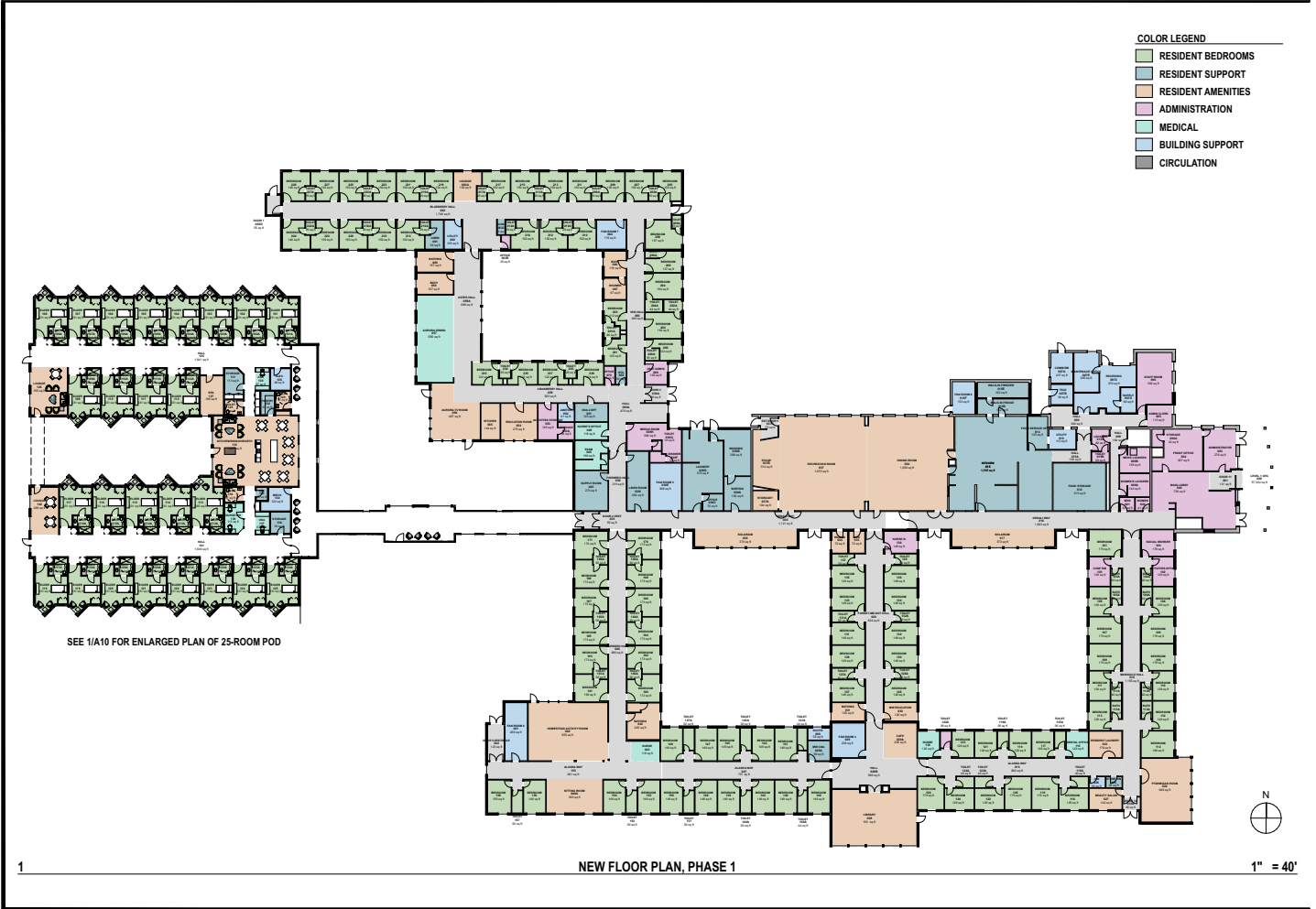
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15/2/2023

EXISTING PLAN WITH FUTURE BUILDING FOOTPRINT

SHEET NO.

A7



- COLOR LEGEND**
- RESIDENT BEDROOMS
 - RESIDENT SUPPORT
 - RESIDENT AMENITIES
 - ADMINISTRATION
 - MEDICAL
 - BUILDING SUPPORT
 - CIRCULATION

SEE 1/1A10 FOR ENLARGED PLAN OF 25-ROOM POD

NEW FLOOR PLAN, PHASE 1

1" = 40'

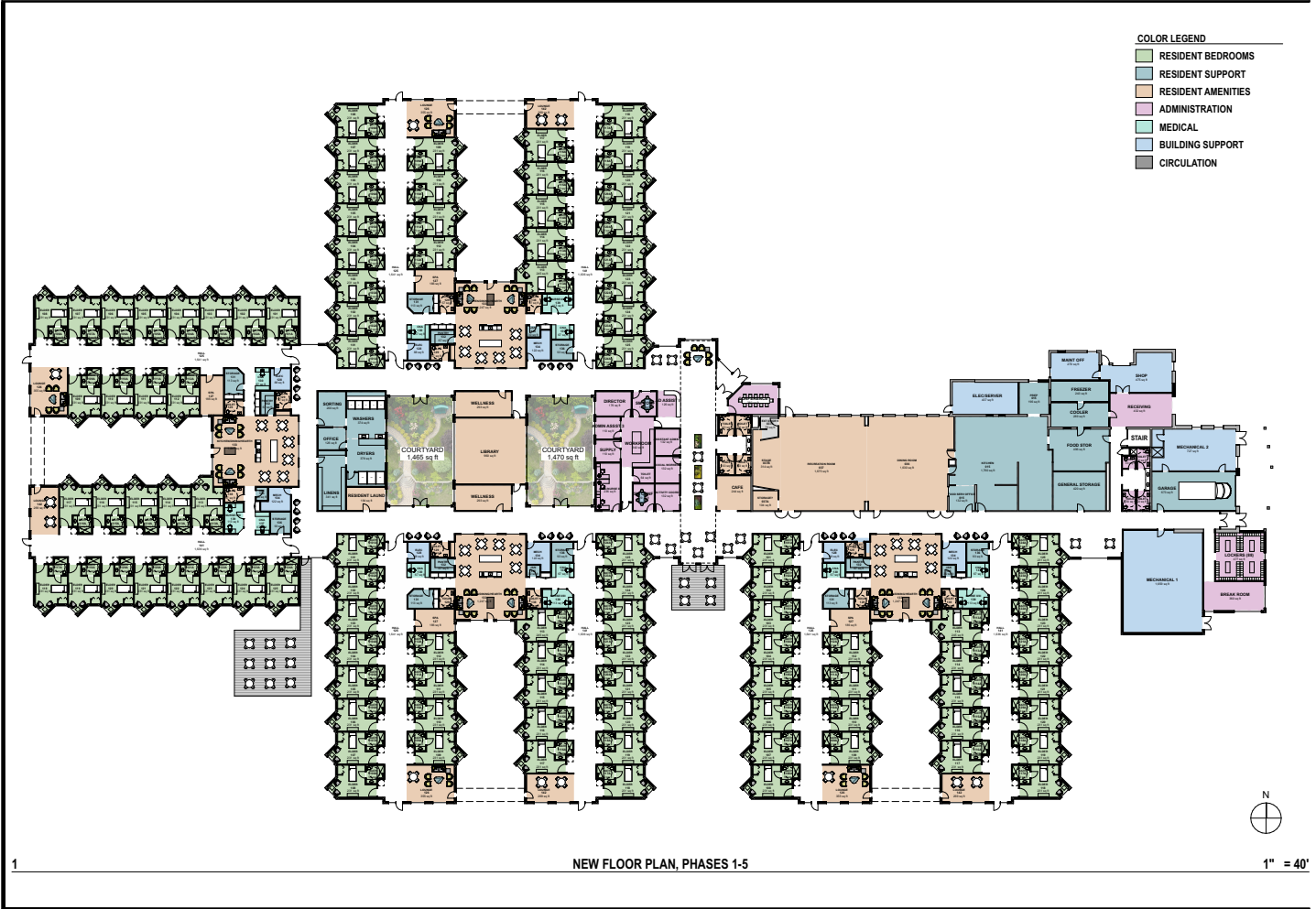
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15/2/2023

NEW FLOOR PLAN, PHASE 1

SHEET NO. **A8**



- COLOR LEGEND**
- RESIDENT BEDROOMS
 - RESIDENT SUPPORT
 - RESIDENT AMENITIES
 - ADMINISTRATION
 - MEDICAL
 - BUILDING SUPPORT
 - CIRCULATION

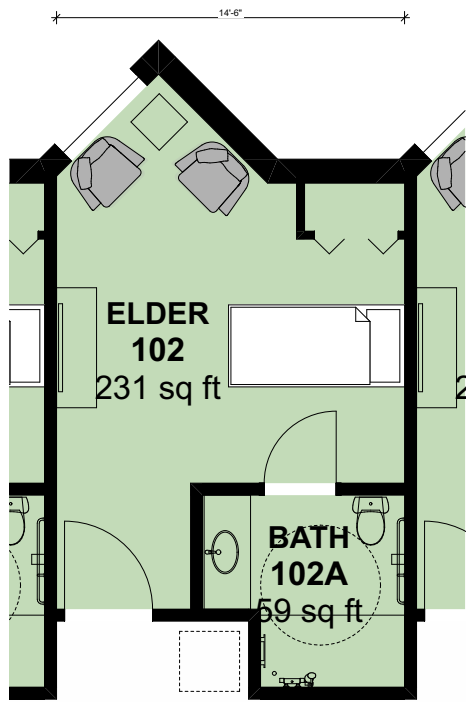
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DATE:	15/2/2023
PROJECT:	NEW FLOOR PLAN, PHASES 1-5
SHEET NO:	A9

NEW FLOOR PLAN, PHASES 1-5

1" = 40'



2 ROOM PLAN 1/4" = 1'-0"



1 25-ROOM POD 1" = 20"

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DATE: 15/2/2023

PROJECT: 25-ROOM POD

SHEET NO:
A10



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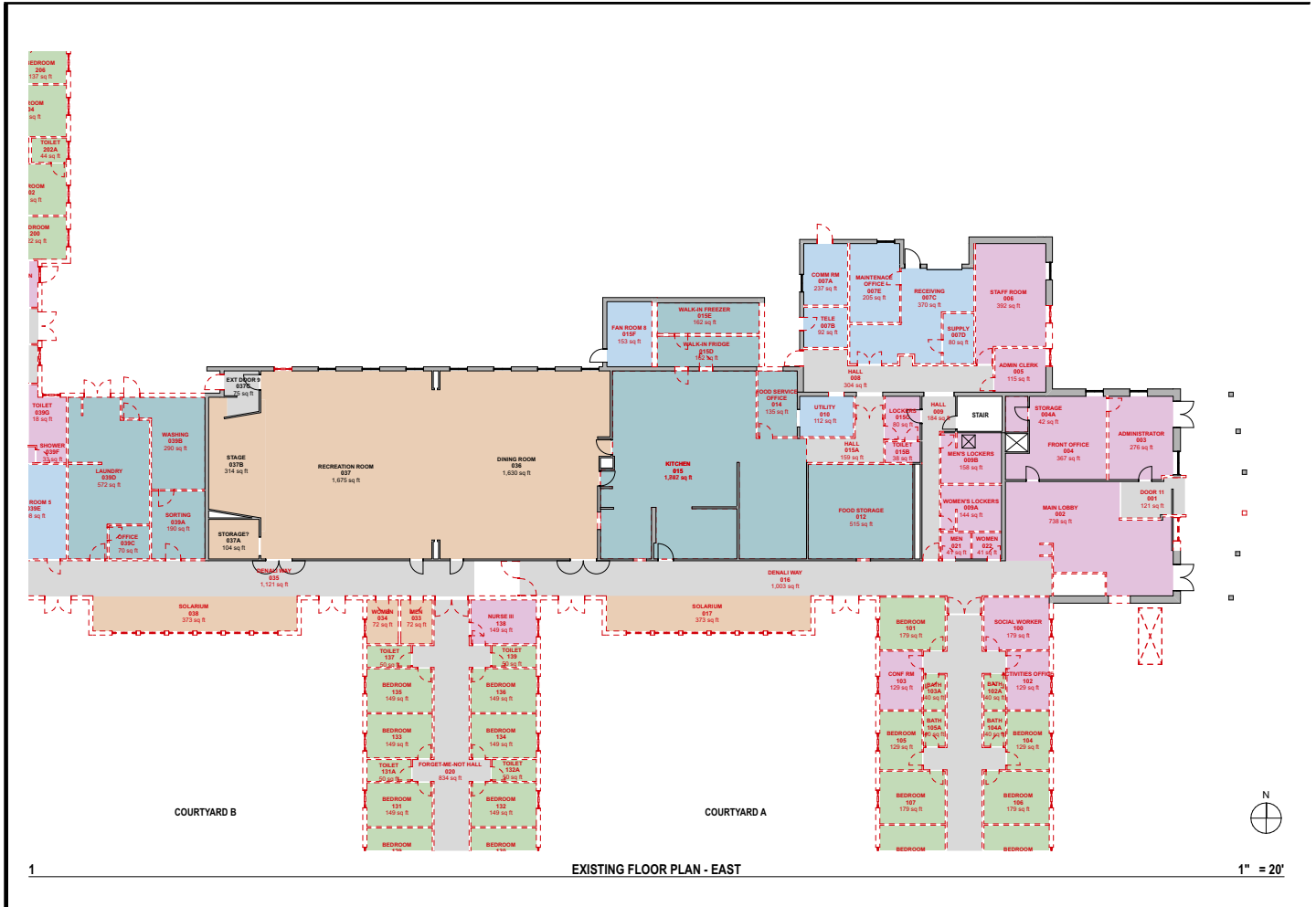
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15/2/2023

NEW FLOOR PLAN - WEST

SHEET NO.

A11



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DATE:	
SCALE:	
PROJECT NO.:	
DATE:	15/2/2023
DESCRIPTION:	DEMOLITION FLOOR PLAN - EAST
SHEET NO.:	A12



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DATE:	15/2/2023
PROJECT:	NEW FLOOR PLAN - EAST
SHEET NO:	A13

DATE:	15/2/2023
PROJECT:	NEW FLOOR PLAN - EAST
SHEET NO:	A13

E. NEW CONSTRUCTION

After the conditions assessment and initial renovation approach were well understood, the design team worked with the Home to develop a new, standalone Pioneer Home structure on an adjacent, vacant, state-owned lot identified as "Area 6". The new building program is to meet the program requirements established during the renovation investigation. The new building program includes 100 private bedrooms, each with a bathroom fully compliant with current codes and standards, including the American Disabilities Act. The building housing pods of approximately 25 bedrooms each took form as the designers worked with the Pioneer Home staff to discover the required spaces, amenities, and configurations. After several weeks of working through design options, a housing unit pod was developed that supported the program while promoting resident walking and interaction.

Eventually, four pods were formed around the required support, program, and staff spaces. The building's public entry rotated from the existing east orientation to a more northeast orientation. The site vehicular access was still off Eagan Avenue, but the access drive into the facility was to be moved further east, closer to Wilber Street. The 25 bed housing pods are generally on the southeast and west sides of the building with the goal of bringing as much southern light as possible into the bedrooms in the fall, winter, and spring. The entry lobby and staff spaces are located on the northeast side of the building under a large drive-through canopy with a drive aisle that includes a heated slab to keep the surface ice free. A large gathering space is located in the entry off the lobby for direct access by visiting family and friends for the large events held in the Home. The gathering space can be divided into a dining room and a multipurpose room through a high performance retractable wall that can be electrically raised and lowered to open or close to define the space. The facility's commercial kitchen, loading dock, and food storage spaces are adjacent to the dining room. These amenities are located on the north side of the building. To the east of the public entry, the building extends to a commercial laundry, the building's primary mechanical/electrical room and a large storage room. This area also includes a covered, heated garage for resident transport for use by the facility's staff for resident visits and program, and emergency vehicles for transportation to medical facilities. The parking bay has been sized and configured to accommodate a standard nine person van and the Fairbanks Fire Department's EMT vans.

Bordering the core services and extending to the southwest are the 25 bedroom housing pods. Each of the four housing pods is a single story, roughly 16,000 square foot, containing living space with support for the medical providers assigned to the pod, a dining/break area, a lounge and a bathing room for residents unable to bathe themselves. The pods have been designed to allow residents to walk a "loop" that takes them from one housing wing, through the dining area into the second housing wing and then outdoors and back into the original housing wing. The full circle loop will likely only be used during the warmer days, but some hearty individuals may be willing and able to make the course all year.

Bedrooms are generally 231 square feet including the projecting bay window. Each room is to be furnished with two chairs, a small coffee table, a bed and the choice of a desk or a bureau at the foot of their beds. Each room will also have a small but accessible bathroom with a roll-in shower. Adjacent to the corridor door into each bedroom is a small area allotted to storing a scooter, walker, or wheelchair. In the existing building there is no place to store these personal devices making a walk down the corridor for a person with failing eyesight difficult and potentially dangerous.



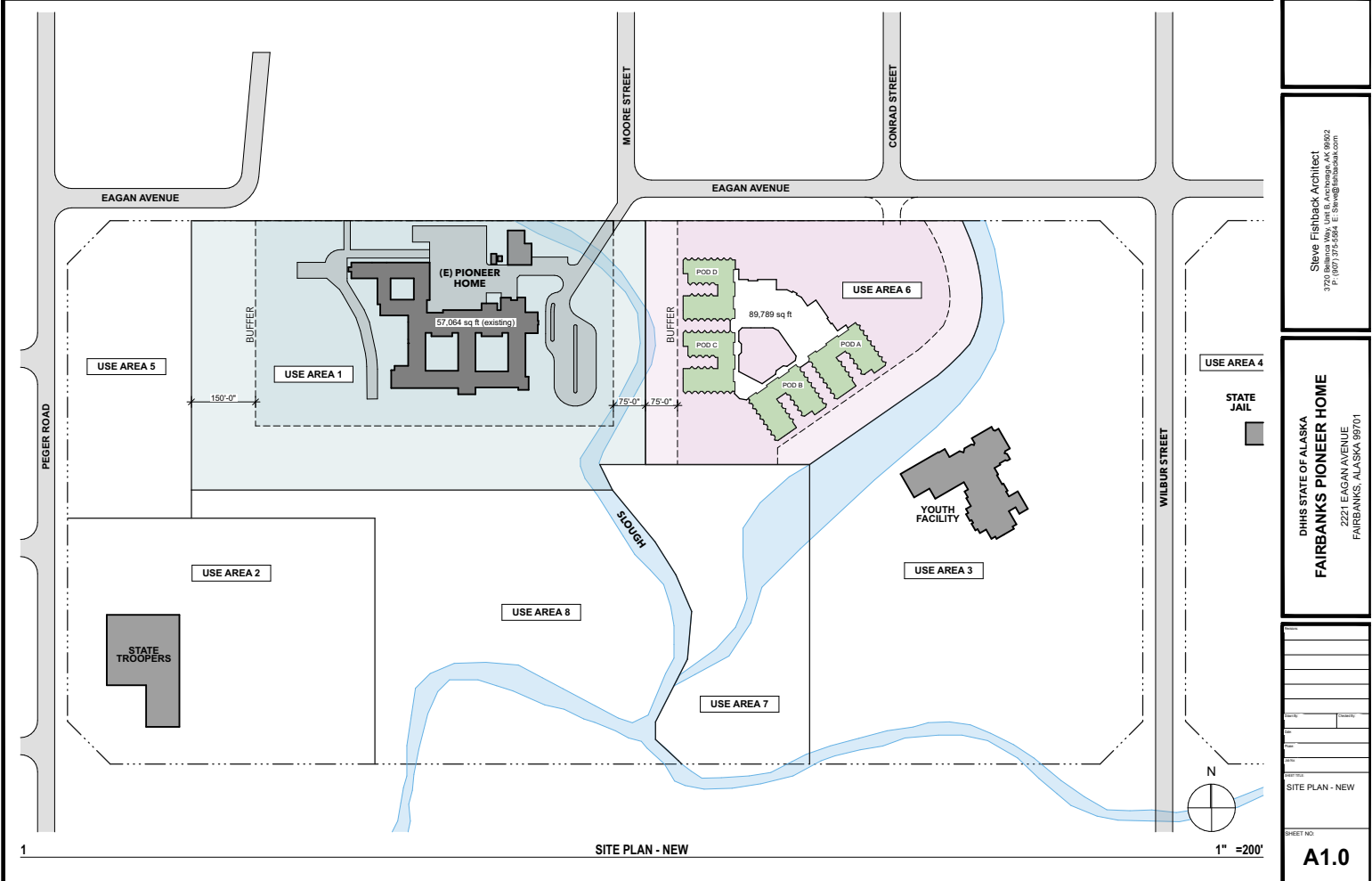
Resident Room Plan

At the far southwest end of the building is a public break area with pleasant views of the facility's yards and trees surrounding the site and a south facing deck for outdoor gathering on warm, or nicer days. This public gathering space is accessed by a central corridor system that connects the multiple components of this 89,790 square foot building with clear, straight lines of sight that have clear destinations at the corridor ends to assist in wayfinding. Breakout seating has been provided along the way for residents to rest, visit with a friend, or just look through the windows to the outdoors.

The outdoors during Fairbanks winters can be difficult for seniors due to slipping on snow and ice covered surfaces and extreme cold. The center courtyard illustrated in the building plans could minimize safety concerns by keeping walkways clear of ice and snow and by covering (but not enclosing) the space with a transparent or translucent roof.

The designed building provides the spaces and accommodation the department was looking for from this new facility. Still, due to the building's area and the high cost of creating assisted living space, this solution was thought to be un-fundable.

Building plan drawings of the new building can be found on the following pages.



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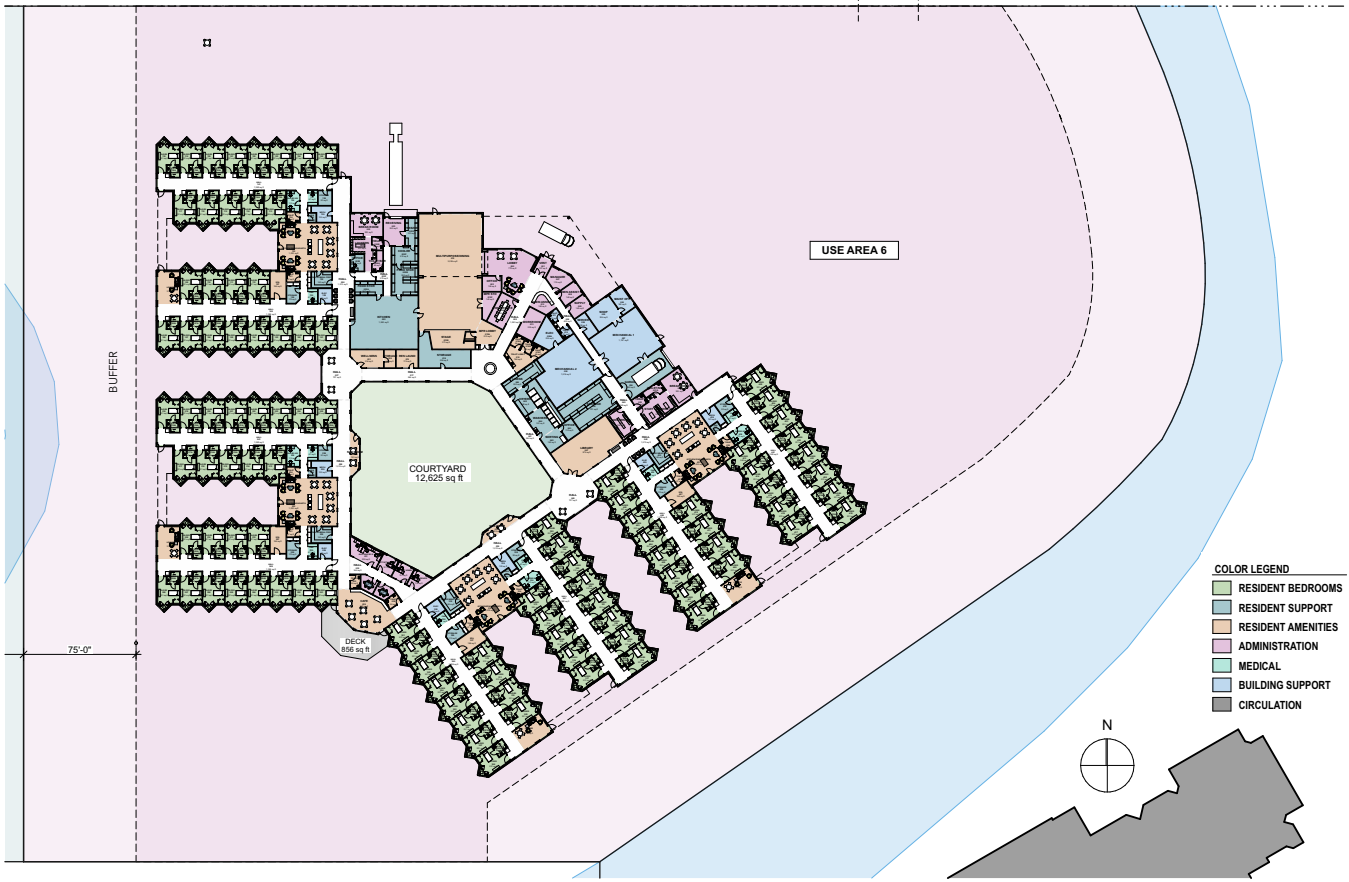
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NO.	DESCRIPTION	DATE	BY	CHECKED

PROJECT NO. _____

SHEET NO. _____

A1.0

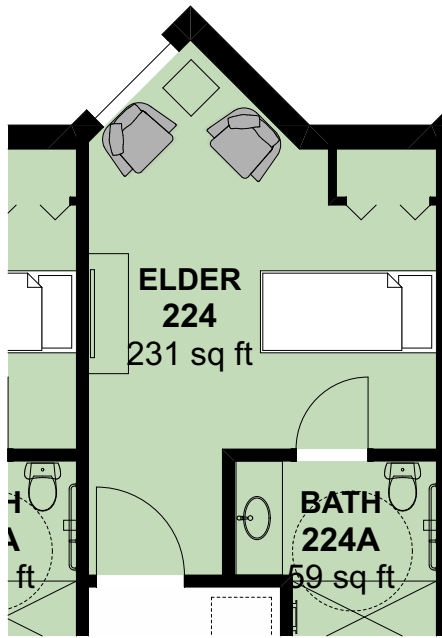


1 REFERENCE PLAN 1/64" = 1'-0"

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DATE:	
SCALE:	
PROJECT:	
DESCRIPTION:	REFERENCE PLAN - NEW
SHEET NO.:	A1.1



2 ENLARGED PLAN 1/4" = 1'-0"



1 25 ROOM POD 1" = 20"

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25 ROOM POD

SHEET NO.

A1.2



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ADMIN & SUPPORT SPACES
 SHEET NO.
A1.3



1

PODS 2 & 3, CAFE & DECK PLAN

1" = 20'



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PODS 2 & 3, CAFE & DECK

SHEET NO.

A1.4

F. COST AND SCHEDULE INFORMATION

The following construction Cost Estimate includes the actual building construction, design, State management costs, Building Department fees, Furniture, Fixtures and Equipment needed to occupy the building, utility connections, a reserve for unexpected occurrences that increase costs and require Change Orders and lastly, a forecast of the expected escalation from the time of the estimate to the mid-way point of construction.

Renovation Costs

In the case of the renovation project, the construction includes both the multi-phase housing addition/renovation of the 92,400 sf building and the 8,069 sf mechanical/storage structure. The cost of Phase 1 is \$36,633,450.

The 15,761 square foot 2nd Phase construction/program cost of \$1,315.00 per square foot, plus the next 18 months of escalation at a rate of 13.5% becomes \$23,523,686.

The 22,932 square foot 3rd Phase construction/program cost of \$1,315.00 per square foot, plus the next 18 months of escalation at a rate of 18.75% becomes \$35,809,751.

The 24,133 square foot 4th Phase construction/program cost of \$1,315.00 per square foot, plus the next 18 months of escalation at a rate of 24% becomes \$39,351,269.

And the final 9,521 square foot 5th Phase construction/program cost of \$1,315.00 per square foot, plus the next 18 months of escalation at a rate of 29.24% becomes \$16,180,996.

In summary, the new building is expected to take 30 months to construct at a cost of \$127,668,734.00.

The renovation project is expected to take 10 years to complete and applying the fully escalated cost will reach \$151,499,155.00.

New Construction Costs

In the case of new construction, the full project cost is \$1,250/sf of structure (89,789 sf x \$1,250) = \$112,236,250. The expected duration is 30 months at an unusually high inflation rate of 5.5%. The resulting \$127,668,734 cost forecast identifies the full anticipated project cost and is expected to be used as a funding budget generator.

PROJECT SCHEDULE AND RECOMMENDED APPROACH

Renovation Option

The renovation project design is expected to take roughly 10-12 months from Concept Development to Bid Ready Construction Documents. Assuming funding is made available by July 2024, the procurement of the design team will take approximately three months from solicitation through proposal review, negotiations, and contract award. Assuming the 15 month process began in mid-July of 2024, construction documents should be available by mid-October 2025. At that time the construction procurement process can begin. Again, the solicitation bid and award process will likely take three months, bringing the contractor on board by January 2026. This timing will allow the contractor to provide a comprehensive work plan for Phase 1 and a rough schedule for the full 90 month project. During this time the contractor will also procure shop drawings and materials, and stage for construction of Phase 1 to begin in early spring of 2026. The contractor's goal will be to have the structure erected and weather tight by November 2026. Through the winter, work will be focused on interior systems and finishes which should be completed by the end of April 2027. With the milder weather ahead, the work will shift outside again to finish exterior finishes and landscaping. The construction duration is expected to be approximately 18 months.

This project schedule assumes a conventional Design/Bid/Build contract delivery method. There are other contracting methods that could expedite the process, allowing the design and construction activities to overlap and reduce the entire project delivery by several months.

The following is a more granular look at the project activities and time frames.

PHASE 1	July 2024	Receive design funds for project.
	August 2024 – October 2025	Design entire building with Phase 1 construction documents complete, receive building permit, advertise for construction bids.
	July 2025	Receive funds from the legislature for construction.
	November 2026 – December 2026	Receive bids and award construction contract.
	January 2026 – April 2026	Procurement
	April 2026 – May 2026	Mobilize, prepare building and site for construction.
	May 2026 – November 2026	Place foundations, erect superstructure, enclose building for interior winter work.
	November 2026 – April 2027	Final interior build-out and furnishings installed.
	May 2027 – June 2027	Residents move into addition.
	June 2027 – July 2027	Remove existing surplus Homestead bedrooms. Begin excavation for Phase 2.

PHASE 2	Phase 2 is expected to follow a similar construction pattern as Phase 1 did, but in the case of Phase 2 excavation will be occurring in mid-summer which will likely force some of the superstructure and enclosure work occurring in late fall early winter.
July 2027 – August 2027	Excavate and begin foundation construction.
August 2027 – September 2027	Superstructure construction.
September 2027 – October 2027	Superstructure completion, begin envelope construction.
October 2027 – November 2027	Envelope construction.
November 2027 – January 2028	Envelope construction, begin interior build-out and furnishings installation.
January 2028 – September 2028	Resume envelope work as weather permits, continue interior work.
September 2028 – February 2029	Finish exterior including site, complete interior work.
March 2029 – April 2029	Resident move into Phase 2.
May 2029	Contractor prepares for Phase 3 construction.
SUBSEQUENT PHASES 3-5	This 17 – 19 month construction cycle will continue through 2033 into the beginning of 2034 when Phase 5 will be complete along with all other project work. As the project progresses, opportunities might be found to shorten the project duration. At this point the sequential steps appear to be the best path forward unless a method to bring more beds into the early phases of the project comes forth.

New Construction Option

The procurement process for the new construction will be identical to the renovation project. The funding award to begin design solicitation in July 2024 will start the process. It will take three months to get the design team under contract and 10-12 months to complete bid ready construction documents that can be bid by October 2025. Again, it will take three months to get a contractor under contract which will allow construction to begin in early spring of 2026. The expected construction duration is 30 months, resulting in an occupancy ready building in November of 2028.

DESIGN AND CONSTRUCTION SCHEDULE	
July 2024	Receive design funds for the project.
August 2024 – October 2025	Design building and complete construction documents. Complete City Plan Review, advertise for construction.
July 2025	Receive funds for construction.
November 2026	Receive bids and award contract.
January 2026 – April 2026	Procurement
April 2026 – May 2026	Mobilize, prepare site for construction.
May 2026 – December 2026	Place foundations, erect superstructure, begin enclosing building.
December 2026 – February 2027	Finish rough enclosure, provide temporary heat to building and begin interior work.
February 2027 – May 2027	Interior work.
May 2027 – October 2027	Finish envelope, apply building heat.
October 2027 – May 2028	Interior work including finishes and furnishings.
May 2028 – August 2028	Finish interior work, exterior finish work and landscaping.
August 2028 – November 2028	Open new building, move residents from old home into new building.

G. BUILDING CODE STUDY

The following Codes and Standards are provided for general reference and are the basis for this document. The 2018 IBC will be used for the occupancy classification due to the refined definitions for the I-1 condition 2 occupancy types. The 2018 IBC includes condition 1 and condition 2 under the occupancy type to describe the abilities of the occupants to respond to and exit the building during an emergency.

Codes

International Building Code, 2018 (2018 for occupancy condition 2)

International Existing Building Code, 2018

International Fire Code, 2018 edition

International Mechanical Code, 2018

Uniform Plumbing Code, 2018

National Electrical Code, 2017

Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1, 2017 (Considered more restrictive than that adopted in the deferred jurisdiction)

Prior Code Summary

The most recent portion of the building was built under the 1973 Uniform Building Code.

IEBC Summary –

Chapter 3 – Provisions for all Compliance Methods

Section 305 – Accessibility for Existing Buildings

305.4.1 – Provide accessible route, new sleeping units to comply with 1107 IBC and Chapter 9 IBC for visible alarms (only to added spaces)

305.7 - The route to the primary function shall be accessible, to include drinking fountains, and toilets. Exception

1. Limits the expense of upgrades to 20% of the budget. This project is 50 resident room toilet / shower rooms, drinking fountains and other areas to be accessible. The public toilets at the core are to comply with the new accessibility requirements. Spaces and finishes are being replaced and the existing level of accessibility is being maintained. The rooms were designed to comply with the ADA.

Chapter 10 – Change of Occupancy

Section 1006 – Structural - Gravity loads –

Structural elements carrying tributary live loads from an area with a change of occupancy shall satisfy the requirements of Section 1607 of the IBC. Design live loads for areas of new occupancy shall be based on Section 1607 of the IBC. Design live loads for other areas shall be permitted to use previously approved design live loads.

Exception: Structural elements whose demand-capacity ratio considering the change of occupancy is not more than 10 % greater than the demand-capacity ratio based on previously approved live loads.

Section 1011 – Change of Occupancy Classification

1011.1.1.2 – Change of Occupancy Classification with separation:

If separated from the rest of the building per IBC then the portion being changed will be protected throughout per Chapter 9 for the new occupancy classification.

Tables 1011.4, 1011.5, 1011.6 = I-1, R-2, and R-4 are the same relative hazard.

1011.4.2 – Existing elements shall comply with requirements of Section 905 – New construction shall comply with Chapter 10 of the IBC.

1011.4.3 – Egress capacity shall comply with the IBC for the new occupancy.

1011.4.4 – Handrails: handrail 1 side up to 66 inches required width – handrail both sides greater than 66 inches in required width. Handrails to be designed per IBC.

1011.4.5 – Guards: stairs and landings above 30 inches above the floor or grade shall be provided with a guard. Areas above 30 inches that do not have a guard or the existing guard is in danger of collapsing shall be provided with a guard designed and installed per the IBC. The existing guards are sound and do not need to be replaced. Existing guards comply with the standards of the applicable code at the time of construction.

1011.5.1.2 – New occupancy is equal risk: Height area of existing building is considered allowable.

1011.6.2 – Exterior Wall – Existing exterior walls, including openings, are accepted as constructed. New exterior walls shall match type 1 construction with R-35 insulation.

1011.7.2 – Stairways: New stairway enclosures shall be protected in accordance with the IBC.

1011.7.3 – Other vertical shafts: Rated as required.

IBC Summary

The existing Fairbanks Pioneer Home was built in several phases. The available documents indicate that the building has the equivalent construction type of a Type I-B under the current code.

Chapter 3 - Building Occupancy:

A-2 – Dining and Kitchen

A-3 – Multipurpose Rooms and Staff Lounge

B – Administrative Space

R-2 per existing code review - existing resident rooms

I-1 Condition 2 (2018 IBC) – Addition

The original one story building was built in two phases. The building was built and classified as an R-2 occupancy.

Chapter 4 - Special Detailed Requirements

Section 420, Group I-1

420.2 – walls between sleeping units and the building shall be constructed as fire partitions in accordance with Section 708.

Exception 2 – where sleeping units are constructed as suites, walls between bedrooms within the sleeping unit and the walls between the bedrooms and associated living spaces are not required to be constructed as fire partitions.

420.3 Horizontal separation – constructed in accordance with Section 711.

420.6 – Smoke barriers in Group I-1, Condition 2.

Separate addition from existing building with smoke barrier – max travel distance 200 feet. (smoke barrier per section 709).

420.7 – Group I-1 assisted living housing units.

Group living spaces, meeting or multipurpose therapeutic spaces can be open to the corridor if constructed with the following criteria:

1. The walls and ceilings constructed as required for corridors.

2. The spaces are not occupied as sleeping rooms, treatment rooms, incidental uses in accordance with Section 509.
3. Protected by an automatic fire detection system in accordance with Section 907.
4. Group I – Condition 2 - Corridor is in the same smoke compartment, protected by automatic fire detection system in accordance with Section 907, or the spaces are equipped throughout with quick response sprinklers in accordance with section 903.3.2
5. Space is arranged so as not to obstruct access to the required exits.

Chapter 5 - General Building Heights and Areas

Allowable per IEBC 1012.5.1.2, see above.

Occupancy Separation

Table 508.4

R-2 to I-1 – condition 2: 1 hour separation

New second floor in the addition will provide the 1 hour separation, any penetrations and gaps will be verified to provide required fire protection.

Chapter 6 - Types of Construction

Type I-B construction.

Table 601 – Fire-Resistance Rating Requirements for Building Elements

Type I-B:

Structural Frame

Floor Framing: 2 hours

Roof Framing: 1 hour

Bearing Walls Interior and Exterior 2 hours

Floor Construction 2 hours

Roof Construction 1 hour

Table 602 – Fire-Resistance Rating Requirements for Exterior Walls Based on Fire Separation.

Chapter 7 - Fire-Resistance-Rated Construction

Section 707 – Fire Barriers

Fire Areas – not used

Shaft Enclosure – see section 713 for rating

Table 707.3.10 – A, I, and R occupancies = 2 hour

Continuity = top of floor below to bottom of floor slab or roof deck above (continuous through concealed spaces)

Section 708 – Fire Partitions

Walls between Dwelling Units = 1 hour

Section 709 – Smoke Barriers

Smoke Barriers shall form an effective membrane from top of the floor to the underside of the floor above.

709.4.1 – Smoke barrier shall be continuous from outside wall to outside wall.

709.5 – Openings – Exception 1 – In Group I-1, Condition 2, cross corridor pair of doors swinging in opposite directions do not need to be protected in accordance with 716.

The doors shall be close fitting within operational tolerances and shall not have a center mullion or undercuts in excess of 3/4". The doors shall have head and jamb stops, and astragals or rabbets at the meeting edges.

Where permitted by the door manufacturer 's listing, positive-latching devices are not required. Factory-applied or field-applied protective plates are not required to be labeled.

Section 712 – Vertical Openings
Same enclosure requirements per Section 713.

Section 713 – Shaft Enclosures
713.4 – 2 hour at 2 hour floor construction.

Section 716 – Opening Protectives
Table 716.5 (2012 IBC) / Table 716.1(2) (2018 IBC)
Corridor doors for 1 hour wall are 20 minute rated doors and sidelight/transom are 45 minute rated.

Chapter 8 - Interior Finishes

Class B (Flame Spread 26-75, Smoke-developed 0-450)
Class B (Flame Spread 76-200, Smoke-developed 0-450)

Table 803.13
R-2: Interior Exits, Corridors and Room - Class C
I-1: Interior Exits - Class B, Corridors and Rooms - Class C

Section 806 Decorative Materials and Trim
R-2 and I-1
806.2

I-1: Combustible decorative materials suspended from walls or ceilings shall comply with Section 806.4 and shall not exceed 10 percent of the specific wall or ceiling. (Exception 2) R-2 : limited to 50 percent in sleeping and dwelling units since building is fully sprinkled.

806.4
Flame propagation Test 1 or 2, as appropriate, of NFPA 701 or less than heat release less than 100kW when tested per NFPA 289 using the 20kW ignition source.

Chapter 9 - Fire Protection Systems

Sprinklers provided per NFPA 13

Section 905
Class 1 Stand Pipes –required
Section 906 – Portable Fire Extinguishers – as per the International Fire Code

Section 907 – Fire Alarm and Detection Systems – provided per 907.2.1 through 907.2.23

Section 909.21 – Hoistway supplied with air to provide 0.10–0.25 in water positive pressure with respect to adjacent occupied spaces on all floors.

Chapter 10 - Means of Egress

Section 1004.1.1 – Occupant Load per table 1004.1.1:

- Business Areas = 100 gross
- Sleeping Areas = 120 gross
- Assembly – chairs and tables = 15 net

Table 1014.3 (Table 1006.2.1 - IBC 2018)
• Common Path of Travel = 75' maximum

1016.2.5 Egress Through Intervening Spaces, Exception 1: Means of egress are not prohibited through a kitchen area serving adjoining rooms constituting part of the same dwelling unit or sleeping unit.

Table 1017.2 Exit Access Travel Distance: 250 feet for Group I-1

Table 1018.1 – Corridor Fire Resistance Rating

- 1 hour rated for I-1 occupancy
- 0 hour rated for A and B occupancies

Section 1024 – Luminous Egress Path Markings – Not a high rise – not required

Section 1025 – Horizontal Exits – Can be provided by a fire barrier per Section 707 and a horizontal assembly per Section 711.

Chapter 11 - Accessibility

This project is required to comply with ICC /ANSI 117.51 and ADA requirements.

1107.5.1 – Units shall be Accessible

1107.5.1.1 – Accessible: I-1 Condition 1 = 4%, I-1 Condition 2 = 10% but not less than 1. Use 10%, 50 units, 10% = 5 toilet rooms considered Accessible.

1107.5.1.2 – All units are Accessible

Chapter 12 – Interior Environment

Minimum ceiling heights = 7'-6"

Elevators:

Chapter 30 – Elevators and Conveying Systems

Section 3006.1 – Elevator lobby not required.

Section 3006.2 – Hoistway opening protection required. Hoistway door opening shall be protected in accordance with 3006.3.3 – additional smoke protection shall be provided by pressurizing elevator hoistway per Section 909.21 – building contains a group I-1, Condition 2 occupancy.

IFC Summary

Chapter 7 Fire-Resistance-Rated Construction

Section 704 – Floor Openings: new floor openings to comply with IBC.

Chapter 8 – Interior Finish, Decorative Materials and Furnishings

Table 803 – finishes the same as IBC Table 803.9

Section 805 (IFC 2018) – Upholstered Furniture and Mattresses in New and Existing Buildings (Group I-1, Condition 2 – 2018 IFC)

- Newly introduced upholstered furniture shall meet ignition and heat release rate requirements.
- Newly introduced mattresses shall meet ignition and heat release rate requirements.

Section 807 (IFC 2018) – Decorative Materials and Artificial Decorative Vegetation in New and Existing Buildings:

Section 807.2 (IFC 2018) – Decorative Materials:

1. Combustible decorative materials hung from the wall shall not exceed 10% (shall be tested by an approved agency and meet the flame propagation performance criteria of Test Method 1 or Test Method 2 as appropriate of NFPA 701)
 - a. I-1 Condition 1 – sleeping units – decorative materials placed on walls shall be limited to not more than 50%.
 - b. I-1 Condition 1 – other than sleeping units - decorative materials placed on walls shall be limited to not more than 30%.
 - c. I-1 Condition 2 – sleeping units – decorative materials placed on walls shall be limited to not more than 30%.

- d. I-1 Condition 2 – other than sleeping units - decorative materials placed on walls shall be limited to not present a hazard of fire development or spread.
- e. Dormitories in R-2 – within sleeping units - - decorative materials placed on walls shall be limited to not present a hazard of fire development or spread.

Section 808 (IFC 2018) – Furnishings Other Than Upholstered Furniture and Mattresses or Decorative Materials in New and Existing Buildings

1. Waste baskets and linen containers in group I-1:

- a. Constructed on non-combustible materials or materials not exceeding a peak release of 300kW/M² when tested in accordance with ASTM E1354.
- b. Metal waste baskets and other metal waste containers with a capacity of 20 gallons or more shall be listed in accordance with UL 1315 and shall have a non-combustible lid.

Portable containers exceeding 32 gallons shall be stored in an area classified as a waste and linen collection room and constructed per Table 509 IBC.



State of Alaska (State) Department of Family and Community Services (DFCS)

Comprehensive Child Welfare
Information System (CCWIS)
Planning and Procurement Project
(PPP)

Deliverable 7: Cost-Benefit Analysis (CBA)
Report

Version 3.1

Submitted by:

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Table i: Version History

Version	Delivered Date	Version Notes
0.5	January 12, 2023	Deliverable Expectations Document (DED) for D7. CBA Report
1.0	July 26, 2023	Working draft submitted to the Alaska DFCS
2.0	August 01, 2023	Finalized draft submitted to Alaska DFCS for final approval
3.0	November 02, 2023	CBA Figures updated based on ACF feedback and finalized report submitted to Alaska DCFS for final approval
3.1	November 14, 2023	Correct DDI Timeline inserted into Section 3.3 based on OCS feedback.

1.0 Executive Summary

1.1 Project Background

In mid-2022, the State of Alaska (State) Department of Family and Community Services (DFCS) Office of Children's Services (OCS) engaged BerryDunn to conduct an analysis of potential alternatives to replace its legacy Statewide Automated Child Welfare Information System (SACWIS), called the Online Resource for the Children of Alaska (ORCA). According to the Administration for Children and Families (ACF) Code of Federal Regulations (45 CFR 95.605), and as outlined in Program Instruction (ACYF-CB-PI-07-10), states shall show a commitment to conduct a Feasibility Study (FS) that includes a Needs Assessment, Alternatives Analysis, and CBA to receive federal funds to support information technology (IT) system planning and implementation efforts. Functional and technical requirements must inform the evaluation of alternatives that might meet State-specific needs. In addition, the analysis must include an explanation of how specific alternatives align with OCS' needs.

The CBA is the third step in a three-step FS process required to receive federal funding from ACF. With the guidance and support of OCS, tasks performed by BerryDunn as part of the CBA included:

- Performing background research
- Analyzing the State reimbursement history for the past five years
- Analyzing State ORCA Maintenance and Operations (M&O) costs for the past five years
- Analyzing data from comparison states on Comprehensive Child Welfare Information System (CCWIS) implementation and M&O costs to-date
- Performing comparison research on each potential alternative's benefits and risks
- Analyzing alternatives against criteria identified as important to OCS and OCS' federal partners
- Developing detailed cost estimates
- Evaluating alternatives costs and benefits to determine the relative costs and benefits of each solution

CBA SUMMARY AT A GLANCE

Alternatives Analyzed:

- Alternative 1:
Status Quo (baseline)
- Alternative 2:
ORCA Upgrade
- Alternative 4:
Accelerator Solution
- Alternative 5:
Transfer Solution

CBA Results:

Alternative 4:
Accelerator Solution
has the lowest overall
cost of the CCWIS-
compliant alternatives
and significant potential
benefits for OCS in
comparison with other
alternatives.

1.2 Purpose

The purpose of this analysis is to provide an estimate of the costs and benefits of three alternatives (Alternative 2: ORCA Upgrade, Alternative 4: Accelerator Solution, and Alternative 5: Transfer Solution) identified in the previously conducted Alternatives Analysis as functionally and technically feasible solutions to achieve OCS' system CCWIS goals. As required by the ACF, the CBA also reviewed Alternative 1: Status Quo as a baseline for the other alternatives.

The CBA is a key step in the FS process required to receive funds from the ACF to support IT system planning and implementation efforts. The CBA calculations within this report are not a projected budget for moving forward with any of the alternatives. Rather, they are a way for OCS to review the entirety of the project life cycle of the alternatives and determine which alternative appears to provide the most value to OCS after weighing the costs against the benefits of each alternative.

The path forward that OCS chooses to pursue might be influenced by factors other than costs and benefits. For example, some alternatives might be better aligned with the State's strategic priorities, or the State might face other constraints (e.g., funding) or opportunities (e.g., modernized State technology infrastructure or other State agency system implementations) that must be considered.

1.3 Results

1.3.1 Costs

As summarized in Table ES1 on the following page, when comparing Alternative 2: ORCA Upgrade with Alternative 4: Accelerator Solution and Alternative 5: Transfer Solution, BerryDunn estimates that Alternative 4: Accelerator Solution will have the lowest combination of design, development, and implementation (DDI) and annual recurring M&O costs over an eight-year period. This is due to several factors such as the leveraged value of a commercially available product over a customized design, the ability to reuse select components from states (e.g., Illinois [IL] and Idaho [ID]) that have advanced their CCWIS implementation efforts, and lower ongoing M&O costs.

After considering the potential Federal Financial Participation (FFP) funds the State could be eligible to receive to support modernization costs to become CCWIS compliant, the projected net impact on State funds if OCS proceeds with Alternative 4: Accelerator Solution for the eight-year period is approximately \$39.7 million, as compared with \$50.7 million and \$64.5 million, respectively, if the OCS proceeds with Alternative 2: ORCA Upgrade and Alternative 5: Transfer Solution¹. Although Alternative 1: Status Quo has the lowest cost, as described in the CBA, proceeding with this option will not allow OCS to achieve its programmatic vision and goals and fulfill OCS' functional and technical requirements.

¹ Alternative 2: ORCA Upgrade and Alternative 5: Transfer Solution have a nine-year cost estimation period due to the longer anticipated timeline for DDI.



Table ES1: Summary of Potential Costs and Net Impact on State Funds

Cost Item	Alternative 1: Status Quo	Alternative 2: ORCA Upgrade	Alternative 4: Accelerator Solution	Alternative 5: Transfer Solution
Summary of Planning, DDI, and M&O Costs				
Subtotal Planning and DDI Costs	\$0	\$34,831,629	\$27,195,626	\$45,464,352
Subtotal ORCA and Modernized System's M&O Costs	\$23,563,728	\$30,703,222	\$24,070,597	\$37,826,954
Total Planning, DDI, and M&O Costs	\$23,563,728	\$65,534,851	\$51,266,223	\$83,291,306
Summary of Quantitative Benefits				
CCWIS FFP (Federal Matching Funds)*	\$5,301,839	\$32,767,426	\$25,633,111	\$41,645,653
Total Quantitative Benefits	\$5,301,839	\$32,767,426	\$25,633,111	\$41,645,653
Net Impact on State Funds (State Match)	\$18,261,889	\$32,767,426	\$25,633,111	\$41,645,653

* Federal Match is calculated for non-CCWIS as $CCWIS_Automated_Func_Checklist\% * CCWIS\ Population\% * CCWIS\ FFP\% * Total\ Costs = 100\% * 45\% * 50\% * Total\ Costs$. When CCWIS requirements are met, the CCWIS Population% is not required and is $100\% * 50\% * Total\ Costs$. The CCWIS Automated Function Checklist for all alternatives is assumed to be 100% implying full CCWIS compliance.

1.3.2 Benefits

Table ES2 provides a summary of the benefits of Alternative 1: Status Quo, Alternative 2: ORCA Upgrade, Alternative 4: Accelerator Solution, and Alternative 5: Transfer Solution. The magnitude of Title IV-E funding that OCS could potentially be eligible for is greater for Alternative 5: Transfer Solution versus other alternatives due to the projected overall costs of the Transfer Solution in comparison with other alternatives². The Accelerator Solution, however, is anticipated to take approximately one year less to implement than Alternative 2: ORCA Upgrade and Alternative 5: Transfer Solution.

With respect to qualitative benefits, Alternative 4: Accelerator Solution and Alternative 5: Transfer Solution offer similar benefits as they address the same pain points. However, they offer greater benefits than Alternative 2: ORCA Upgrade for reasons including but not limited to the ability to leverage new functionality to improve process efficiency and effectiveness, increase data sharing and collaboration, and improve reporting and availability of business intelligence (BI) to inform decision-making and improve service delivery. As described in Sections 4.2.6, 4.3.6, and 4.4.6 Risk Analysis, OCS must also consider the risks inherent with each alternative in combination with the costs and benefits, such as the reported complexity of implementing Alternative 5: Transfer Solution and the changes to State business processes it could require.

Table ES2: Summary of Benefits for Alternatives

	Alternative 1: Status Quo	Alternative 2: ORCA Upgrade	Alternative 4: Accelerator Solution	Alternative 5: Transfer Solution
CCWIS FFP ³	\$0	\$14,095,161	\$11,534,900	\$18,740,544
Time to Deployment	N/A	6 Years	5 Years	6 Years
Qualitative Benefits	See Section 5.2.2	See Section 5.3.2	See Section 5.4.2	See Section 5.5.2

1.4 Next Steps

Project next steps include:

- In alignment with the ACF FS Guide, BerryDunn will complete a FS with information obtained from the Needs Assessment, Alternatives Analysis, and CBA.
- BerryDunn will develop an Executive Presentation and review the CBA results with OCS executives and other interested parties.
- BerryDunn will integrate the CBA into the FS and Executive Presentation.

² Please see Section 3.5.1 Overarching Constraints for additional information related to constraints with determining quantitative benefits.

³ For the purposes of the CBA, this value represents the CCWIS matching funding (in 2023 prices) from 2025 through 2033 that the State could potentially be eligible for based on each alternative.

- BerryDunn and OCS will develop an IAPD for ACF review and approval.

OCS will evaluate the results of the FS and choose an alternative to move forward into the Request for Proposals (RFP) development phase, unless OCS chooses to move forward with Alternative 1: Status Quo, in which case an RFP will not be needed.

2.0 Introduction

2.1 Background

The mission of OCS is to provide responsive services sensitive to the needs of the children in care and their families. OCS' mission includes helping to ensure the safety, permanency, and wellbeing of children by strengthening families, engaging communities, and partnering with tribes.

OCS' current child welfare case management system is named ORCA. OCS has used ORCA as its SACWIS for nearly 20 years. ORCA's operational efficiencies include expanded access to existing State databases, and the elimination of many paper-based processes. ORCA has connectivity to the following State database/system:

- Integrated Resource Information System (IRIS)

Data-sharing is conducted with the following systems but not through a direct bi-directional interface:

- Medicaid Management Information System (MMIS)
- Grants Electronic Management System (GEMS)
- IBM® COGNOS Reporting
- Web-based Immunization Information System (VacTrak)

ORCA provides data to the following federal databases/systems:

- National Electronic Interstate Compact Enterprise (NEICE)
- Substance Abuse and Mental Health Services Administration (SAMHSA)
- Children's Health Insurance Program (CHIP) IT system
- Adoption and Foster Care Analysis and Reporting System (AFCARS)
- National Child Abuse and Neglect Data System (NCANDS)

ORCA has enabled the State to channel information more effectively to federal reporting programs such as NCANDS and AFCARS. However, OCS has determined that ORCA no longer supports the business and technical needs of OCS and its key interested parties such as Tribal partners. Challenges in the current environment include, but are not limited to:

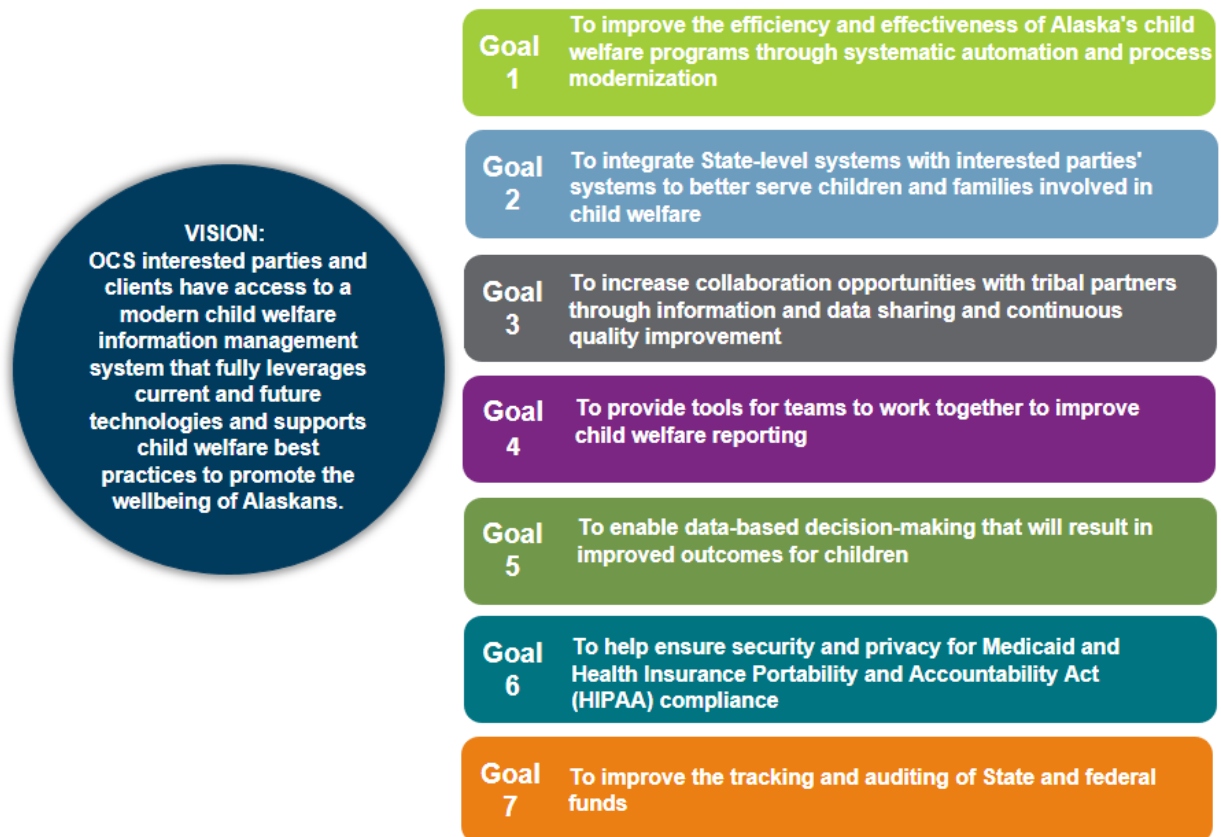
- The lack of flexibility in the system results in gaps in business processes that require workarounds.
- Case data is not entered into ORCA in a timely manner, making it difficult to help ensure that reports are accurate when they are needed.

- OCS loses the opportunity to have a full view of their budget in real-time when information is held within disconnected systems.
- Users take significant time to enter required information into ORCA, impacting the time that could be spent with families making clinical decisions.
- Information entered in one place cannot be used throughout the system, dramatically increasing the amount of double entry required to complete the work in partnering State departments.
- The lack of mobile functionality presents a significant challenge to case work in rural Alaska. Connectivity to the larger system can be inconsistent, leaving caseworkers without key information to support children in their community when they need it.
- ORCA regularly undergoes changes. OCS provides follow-up training to users when they do not have time for initial training due to their workload. As a result, data might be entered incorrectly due to human error or lack of skill in using the system correctly until users are able to receive training.
- ORCA was originally built for a different purpose. Over time, OCS has added new functions to meet the changing needs. These technical changes have affected the integrity of the system as it was not developed and updated in a cohesive way, requiring ongoing repairs to the system (e.g., on a weekly basis).

OCS has determined that the future system must integrate with OCS partner agencies; provide resources for families; and allow Tribal partners and other community interested parties the ability to access pertinent information in a secure and appropriate manner.

Due to ORCA's inability to meet current functional and technical needs, OCS seeks to implement a modernized, integrated IT system to help achieve its project vision and goals, as depicted in Figure 1 on the following page.

Figure 1: Project Vision and Goals



In May 2022, OCS engaged BerryDunn to perform a FS to assist with decision-making regarding the best approach to replace the current system with a modernized system to meet federal CCWIS requirements and the needs of the future OCS integrated practice. Key project activities include, but are not limited to:

- **Performing a Needs Assessment**, including facilitating business process review (BPR) sessions and developing requirements to better understand strengths and challenges related to current business processes and technologies and to identify needs, desires, and opportunities for improvement in the future
- **Completing an IT System Alternatives Analysis and CBA** to identify and analyze potentially feasible alternatives to fulfill OCS' needs and desires for the future, to determine the costs and benefits of each feasible alternative, and to identify the alternative that will provide the most value to OCS
- **Providing Procurement Planning and Support** to develop an IAPD and RFP, as well as provide support for procurement of a CCWIS vendor

2.2 Report Purpose

The purpose of this analysis is to provide an estimate of the costs and benefits of three alternatives (Alternative 2: ORCA Upgrade, Alternative 4: Accelerator Solution, and Alternative 5: Transfer Solution) that BerryDunn identified in the previously conducted Alternatives Analysis as functionally and technically feasible solutions to achieve OCS' CCWIS goals. As required by the ACF, the CBA also reviewed Alternative 1: Status Quo as a baseline for the other alternatives.

The CBA is a key step in the FS process required to receive funds from federal partners to support IT system planning and implementation efforts. BerryDunn and OCS completed a Needs Assessment and an Alternatives Analysis to define the functional and technical capabilities that the future CCWIS must deliver. Following the Alternatives Analysis, BerryDunn performed a CBA to estimate the costs and benefits associated for each of the potentially feasible IT systems to further narrow the possibilities and assist OCS in selecting an alternative to pursue.

This CBA includes planning, DDI, and ongoing M&O costs for the CCWIS alternatives determined to have the highest likelihood of feasibility for OCS based on the Alternatives Analysis. The CBA estimates are not a projected budget for moving forward with any of the alternatives. Rather, they are a way for OCS to review the entirety of the project life cycle for each alternative, consider the benefits against the costs, and determine which alternative appears to provide the most reasonable approach in terms of costs and tangible benefits.

2.3 Work Performed

BerryDunn and OCS performed the following tasks to complete this CBA:

- Reviewed background documentation, including State and federal requirements
- Performed a requirements analysis to document OCS' business and functional requirements for an IT system and an Alternatives Analysis to identify potentially feasible alternatives to fulfill OCS' vision and goals
- Examined one-time and ongoing M&O costs for ORCA
- Compared ORCA M&O expenditures to historical reimbursement rates
- Documented potential business and technical assets in scope for CCWIS implementation
- Documented business and technical assets available for reuse
- Considered tangible and intangible benefits for each alternative
- Applied SACWIS versus CCWIS cost allocation methodologies to the analysis
- Reviewed operational statistics for OCS child welfare programs, including:
 - Adoption and Guardianship

- Children’s Justice Act Task Force
- Foster Care
- Home Visiting Resource Network
- Independent Living
- Indian Child Welfare (ICWA) and Tribal Partnerships
- Strengthening Families

BerryDunn reviewed the following data sources to complete the CBA:

- Five years of State Medicare Claims Processing details
- Five years of State child welfare reimbursement data
- State salaries by position type and fringe rate—as typically used for budgeting purposes
- Cost allocation plans across State programs or other programs that are cost allocated to federal funds
- The State’s Advance Planning Document (APD), and IAPD updates for ORCA for the last five years
- Five years of M&O vendor, State costs, and staff loads to maintain ORCA or other systems related to this procurement
- Operational cost analyses (bill analysis, etc.), for the last five years, submitted to federal partners or written or partially written but not submitted
- Five years of operational statistics for OCS, including participant demographic counts and unduplicated participation by demographic variables, if possible
- Five years of program budget detail for program operations; including program staff full-time equivalents (FTEs), State personnel position identification designations (for salary lookups), State salaries by position type, and fringe rate—as typically used for budgeting purposes

2.4 Report Format

This report includes seven major sections and four supporting appendices, as follows:

- Section 1.0 (Executive Summary) provides an overview of key information in subsequent report sections.
- Section 2.0 (Introduction) provides details on the project background, report purpose, and work performed to develop the report.
- Section 3.0 (Approach, Methodology, Timeline, and Influences) describes the overall approach and methodology used to analyze each alternative’s cost and benefits,

provides timelines for system modernization, and describes the project's influences (including assumptions and constraints).

- Section 4.0 (Cost Analysis) provides the estimated costs for each alternative.
- Section 5.0 (Benefits Analysis) provides estimated benefits for each alternative.
- Section 6.0 (Summary of Analysis) presents the overall results of the alternatives analyzed.
- Section 7.0 (Next Steps) provides project next steps.
- The related appendices supply supporting details pertaining to the report, including:
 - Appendix A (Glossary of Acronyms) lists the acronyms used in this report.
 - Appendix B (Glossary of Terms) defines key terms used in this report.
 - Appendix C (Detailed CBA Calculations) provides the supporting detailed cost analysis worksheets for each alternative.
 - Appendix D (Sources) lists the information sources referenced by BerryDunn to perform the analysis.
 - Appendix E (Interested Parties) includes a list of OCS' interested parties involved in development of the functional and technical requirements for the modernized system.

3.0 Approach, Methodology, Timeline, and Influences

3.1 Approach Overview

The primary goal of the CBA is to analyze the costs and benefits, per ACF guidelines, of potentially feasible alternatives for ORCA modernization so that OCS can determine the best path forward—in alignment with OCS’ vision and goals for modernization as well as broader programmatic and technology strategies. The CBA provides a summary of the modernization costs for each alternative down-selected⁴ from the Alternatives Analysis, as well as the current/legacy M&O costs to maintain Alternative 1: Status Quo during development of the modernized system.

The CBA leveraged a streamlined FS cost analysis spreadsheet template to summarize recurring and nonrecurring costs associated with each alternative. This template included a framework to capture budgetary costs from the beginning of the planning phase through the end of the DDI phase, plus costs associated with the first three years of the alternatives’ M&O phase. This template also included projected M&O costs associated with Alternative 1: Status Quo from the beginning of the modernization planning phase through the end of the modernized system’s DDI phase. The result is a total cost summary for each year of the modernization effort. The approach provides a systematic way to identify and analyze alternatives for states moving from a traditional SACWIS to a CCWIS.

3.2 Methodology

3.2.1 Overview

The methodology for conducting the CBA included a series of data collection and analysis steps to calculate statistics for each of the selected alternatives. With input from ACF, BerryDunn and OCS used “The Streamlined FS for Child Support System Modernization Guide (December 2020)⁵” for this CBA analysis. The guide supports efforts to determine the most effective, efficient, and cost reasonable solutions to modernize a statewide system, while meeting the essential requirements for project approval and subsequent FFP. BerryDunn collected State-specific data and data from other states to build detailed cost and benefit profiles at 2023 price levels for states engaged in similar CCWIS projects. BerryDunn analyzed the data to determine costs for maintaining Alternative 1: Status Quo from 2025 to 2033. Data from other state implementations, paired with information about Alaska, also provided the ability to develop a multiyear implementation profile of Alternative 2: ORCA Upgrade, Alternative 4: Accelerator

⁴ Down-select (verb): To narrow the field of choices; to choose from a list of choices under consideration by applying evaluation criteria to each option before proceeding to a more detailed examination of choices

⁵ Administration for Children and Families. December 10, 2020. *Department of Health and Human Services (HHS) Administration for Children and Families (ACF) Office of Child Support Enforcement (OCSE) Division of State and Tribal Systems (DSTS) Streamlined Feasibility Study (FS) Guide Version 1.0*. Administration for Children and Families Accessed July 25, 2023. <https://www.acf.hhs.gov/css/policy-guidance/streamlined-feasibility-study-child-support-system-modernization>

Solution, and Alternative 5: Transfer Solution. Subsequent report sections contain additional methodology details specific to each alternative.

Alternative 2: ORCA Upgrade and Alternative:5 Transfer Solution were evaluated by BerryDunn considering six years of implementation, followed by three years of initial M&O activities.

Alternative 4: Accelerator Solution was evaluated by BerryDunn considering five years of implementation, followed by three years of initial M&O activities. Implementation considerations included development, customization, configuration, training, and the addition of supplemental systems (such as a mobile application). Alternative 1: Status Quo was only evaluated for M&O activities over the entire nine-year period to be comparable to the longest alternative study periods, as Alternative 1: Status Quo does not require development or implementation.

3.2.2 Alternative Selection

Prior to performing the Alternatives Analysis and CBA, OCS and BerryDunn performed a Needs Assessment and developed a Requirements Traceability Matrix (RTM) consisting of over 800 unique functional and technical requirements for the modernized system to address the collaborative work of State interested parties, as listed in Appendix E: Interested Parties. The RTM aligns with what OCS envisions a system could provide for their staff, other interested parties, and community at large. OCS and BerryDunn then utilized input from key staff and other interested parties, analyzed federal and State regulations, and facilitated meetings with OCS leadership to gather other information and operational considerations that OCS deemed important for the Alternatives Analysis. In addition, BerryDunn reviewed the ACF Streamlined FS for Child Support System Modernization Guide.

To determine which modernization alternatives to include in the Alternatives Analysis, OCS and BerryDunn reviewed and discussed the relevance and appropriateness of various alternatives based on OCS’ current and future needs, the Needs Assessment findings, and the RTM. The refinement helped to inform the initial alternatives’ list to arrive at a revised list of alternatives (see Table 1) to include in the Alternatives Analysis.

Table 1: Alternatives Included in Alternatives Analysis

Alternative	Description
Alternative 1: Status Quo	Alaska OCS continues using ORCA as is, with no modifications
Alternative 2: ORCA Upgrade	Alaska OCS continues using ORCA with enhancements to the existing application
Alternative 3: New Development	Alaska OCS procures a custom-built CCWIS
Alternative 4: Accelerator Solution	Alaska OCS procures a CCWIS via replacement, using an Accelerator Solution
Alternative 5: Transfer Solution	Alaska OCS procures a CCWIS via transfer or leveraging a system implemented by another state
Alternative 6: Enterprise-Wide System Framework	Alaska OCS develops a combination of integrated technology functionalities designed to support enterprise-class integration initiatives

OCS and BerryDunn then analyzed the experience and solutions from other states to better understand the alternatives the State was considering. OCS and BerryDunn considered factors such as the size and rural nature of the state, the level of Tribal involvement, how long a system has been in place, the similarities of the state practices, the relative state budgets, and the type of systems available in the current market. From the initial states for consideration, OCS and BerryDunn selected seven states with whom to perform an initial facilitated discussion to determine lessons learned and to narrow the number of states that would participate in a more robust discussion and analysis. OCS and BerryDunn selected a subset of five of the seven states to review for the more detailed Alternatives Analysis by considering OCS modernization vision and other factors.

Using the information collected through this process, OCS and BerryDunn compared the most important requirements with the analysis criteria (functional fit, technical fit, and operational impacts and support for business goals) for each alternative. One-time costs, ongoing costs, and implementation timeline were also considered.

Results were analyzed to include ranking based on the raw scores, culminating in a total score for the functional fit, technical fit, and operational impacts and support for business goals criteria. A weighted factor was then applied to the scores for each of the three analysis criteria, as described in Table 2. OCS determined the weighting factors in Table 2 for the criteria based on the criterion’s relative importance to achieving OCS’ CCWIS modernization goals.

Table 2: Alternatives Analysis Criteria Weighting Factors

Analysis Criteria	Weighting Factor (%)
Functional Fit	40%
Technical Fit	30%
Operational Impacts and Support for Business Goals	30%

This comparison and ranking were used by OCS as a basis for choosing the alternatives to proceed to the CBA for additional consideration. Alternatives appearing to demonstrate strong potential fit with OCS’ modernization goals and requirements advanced for inclusion in the CBA. These alternatives include Alternative 2: ORCA Upgrade, Alternative 4: Accelerator Solution, and Alternative 5: Transfer Solution. As required by ACF, BerryDunn also included the cost and benefits of maintaining Alternative 1: Status Quo in the CBA.

Notably, the ACF has indicated that it is not aware of any states that are implementing a 100% Accelerator Solution. However, IL is developing a system that is approximately 65% Accelerator and 35% customization, which is close to the 80/20 federal standard. The functionality of the IL system is one that would be useful to the State and therefore, BerryDunn included this alternative in the CBA.

3.2.3 Data Collection

To perform the calculations necessary for each alternative, BerryDunn collected and analyzed the following data:

- The cost of M&O for the current ORCA system, including contracted maintenance and staff time.
- Cost data from other states with relevant CCWIS projects underway that represent each alternative included in this analysis.
- Existing pain points and workarounds reported in discovery sessions with OCS staff and interested parties when using ORCA and other supportive systems.
- Planning, implementation, and project management data from other states with relevant CCWIS projects underway that represent each alternative included in this analysis.
 - Implementation APD Update (IAPDU)
 - Child welfare operational budgets
 - Child welfare reimbursement data
 - SACWIS/CCWIS M&O costs
 - SACWIS/CCWIS operational statistics
 - Support system costs
 - System support and DDI internal State labor costs
 - System support and DDI external vendor costs
 - Cost allocation plans
 - Census population estimates and projections
 - Bureau of Labor statistics indices
 - ACF outcomes data



3.3 CCWIS/IT Solution Modernization Timeline and Schedule

3.3.1 Alternative 1: Status Quo Project Timeline

The following four alternative timelines provide a preliminary view of the activities required to either leave ORCA unchanged except for basic M&O activities or deploy one of three modernization alternatives under consideration. The timelines for Alternatives 2, 4, and 5 begin with a synchronization of efforts that start in State Fiscal Year (SFY) 2025 and continue through implementation and three years of M&O activities. Timelines are provided to allow for a comparison of project milestones and indicate that any of the three alternatives under evaluation can be completed within OCS' desired implementation timeline.

Figure 2 provides a preliminary timeline for Alternative 1: Status Quo, where ORCA is not upgraded to CCWIS compliance. In this alternative, the State would continue to utilize the current ORCA system with regular M&O provided as needed.

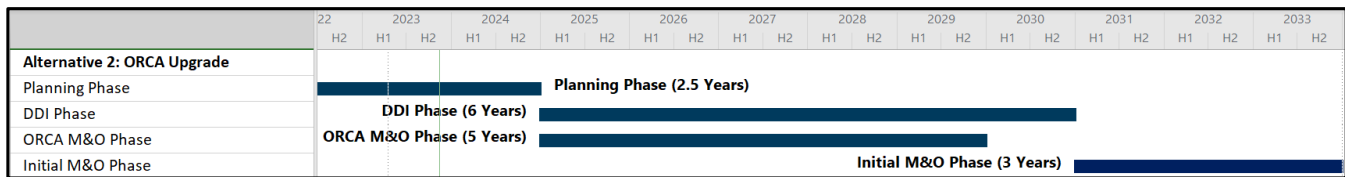
Figure 2: Alternative 1 – ORCA Status Quo Timeline



3.3.2 Alternative 2: ORCA Upgrade Project Timeline

Figure 3 provides a preliminary timeline for Alternative 2: ORCA Upgrade, where ORCA is upgraded in place with functionality and architecture to comply with CCWIS guidelines. In this alternative, the State would significantly upgrade ORCA's capability and back-end processing architecture.

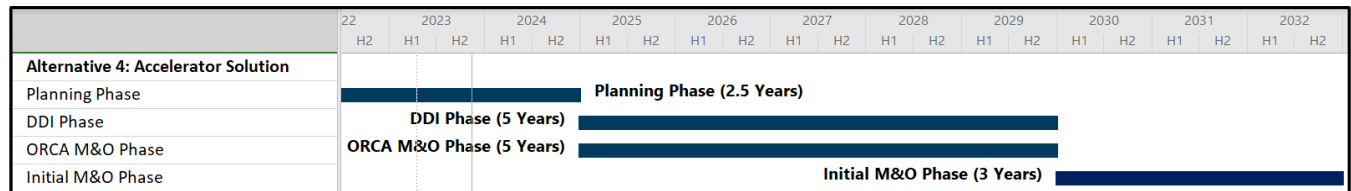
Figure 3: Alternative 2 – ORCA Upgrade Project Timeline



3.3.3 Alternative 4: Accelerator Solution Project Timeline

Figure 4 provides a preliminary timeline for Alternative 4: Accelerator Solution, where ORCA is replaced with a commercially available product (or products) that allow it to comply with CCWIS guidelines. In this alternative, CCWIS commercially available modules would be supplemented by approximately 15% customized components. For example, the State would leverage technology already developed by another state, such as IL’s mobile CCWIS application.

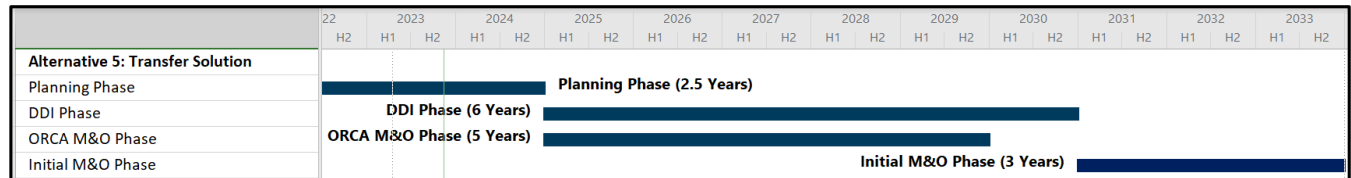
Figure 4: Alternative 4 – Accelerator Solution Project Timeline



3.3.4 Alternative 5: Transfer Solution Project Timeline

Figure 5 provides a preliminary timeline for Alternative 5: Transfer Solution, where ORCA is replaced with a CCWIS-compliant solution transferred from another state. Transferring an existing CCWIS solution would also require the reconfiguration of modules to meet the functional and technical needs of the State. The State would also consider using another state’s (e.g., IL’s) mobile CCWIS application in this option.

Figure 5: Alternative 5 – Transfer Solution Project Timeline



3.4 CCWIS/IT Solution Modernization Project Schedule

Table 3 provides a summary of the CCWIS/IT Solution Modernization project schedule. For the purposes of this analysis, each alternative considers a five-to-six-year implementation phase (depending on the alternative), followed by an initial three-year M&O phase, although M&O will continue past that milestone. The CCWIS/IT Solution Modernization project schedule could vary depending on the alternative chosen. Alternative 1: Status Quo M&O activities are calculated only for the total DDI time of the other alternatives analyzed.

Table 3: CCWIS/IT Solution Modernization Project Schedule

Phase or Activity	Start and End Dates (SFY)		Estimated Duration
Activity Year Defined as SFY (1 July – 30 June)	Q1 = 1 July – 30 September Q2 = 1 October – 31 December Q3 = 1 January – 31 March Q4 = 1 April – 30 June		
Preliminary Activities	Start Q3, 2022	End Q2, 2024	24 Months
FS Activities	Start Q1, 2023	End Q2, 2023	6 Months
IAPD Activities	Start Q1, 2024	End Q2, 2024	6 Months
Procurement Activities	Start Q4, 2023	End Q3, 2024	12 Months
Status Quo System's M&O Phase	Start Q1, 2025	End Q4, 2033	96 Months
Alternative 2: ORCA Upgrade DDI Phases	Start Q1, 2025	End Q4 2030	60 Months
Alternative 2: ORCA Upgrade M&O Phase	Start Q1, 2030	End Q4, 2033	36 Months
Alternative 4: Accelerator Solution DDI Phase	Start Q1, 2025	End Q4, 2030	60 Months
Alternative 4: Accelerator Solution M&O Phase	Start Q1, 2030	End Q4, 2033	36 Months
Alternative 5: Transfer Solution DDI Phase	Start Q1, 2025	End Q4, 2030	60 Months
Alternative 5: Transfer Solution M&O Phase	Start Q1, 2031	Q4, 2033	36 Months

3.5 Analysis Influence

3.5.1 Overarching Constraints

For the purposes of this analysis, constraints are factors that could prevent BerryDunn from calculating representative and comparable estimates of costs or benefits using the data available for the analysis. In this analysis, BerryDunn defines representative estimates as estimates of the State's costs or benefits that are as close as possible to what the State will pay for goods or services in 2023. BerryDunn defines comparable estimates as those that represent the 2023 price level for goods and services while adjusting for monetary inflation as required by the Office of Management and Budget (OMB). BerryDunn overcomes constraints in the analysis by making assumptions to enable the calculation of representative and comparable estimates. Overarching constraints globally impact this analysis by affecting either the Status Quo and each alternative, or the alternatives exclusively.

BerryDunn has identified the following overarching constraints to this CBA:

- BerryDunn did not independently validate the information in background documents provided by OCS and other sources. The documents provided by OCS and other states are either publicly available or federally approved.
- OCS had limited availability to participate in CBA work sessions and had limited information to define the quantitative benefits of each alternative. As a result, quantitative benefits are limited to the anticipated value of FFP that OCS would receive as a result of transitioning to a CCWIS, as well as the reduced DDI timeline in years for Alternative 4: Accelerator Solution. For the same reason, pain points experienced by OCS were defined as qualitative rather than quantitative benefits for each alternative to which they apply.
- Performing a detailed technical assessment of ORCA for Alternative 1: Status Quo (e.g., reviewing code, technical and system architecture, and security vulnerabilities) was not within BerryDunn's scope of work. BerryDunn relied on reviewing background documents, OCS information, and interested party feedback to develop technology-related gaps covered in this report.
- CCWIS project data provided by other participating states (Wisconsin [WI], IL, and ID) was accepted by BerryDunn as accurate without further validation.
- Not all states provided cost data, requiring BerryDunn to perform additional research on CCWIS contracts via a licensed opportunity management database (i.e., Deltek GovWin).
- Cost profiles from state procurements found in GovWin did not provide specific M&O costs.
- The State has a limited staffing resource pool participating in DDI activities for a new system. State Subject Matter Expert (SME) positions will be supplemented by contracted staff augmentation staff via the State.

- Indirect cost estimates were not readily available from IAPDU's. These costs include telephone, office space, and other expenses that cannot be readily assigned to a specific cost object. These costs are needed to operate OCS as a whole and are part of the streamlined FS line items.

3.5.2 Overarching Assumptions

BerryDunn imposed assumptions in the analysis to overcome estimation constraints and to describe the composition of alternatives in terms of out-of-scope systems, reuse of existing assets, technology procurements, and professional services procurements. The methodology used matches overarching constraints to overarching assumptions to remediate the restriction and allow for the analysis. The method also establishes assumptions about existing technologies and business assets that are out of scope and those that the State can reuse to support the other alternatives, procurements expected to support all alternatives, and benefits of ORCA system modernization that are global to all alternatives. Alternative 1: Status Quo and each alternative analyzed have additional unique assumptions, identified starting in Section 4.2.3.

The following assumptions influenced the completion of the CBA:

- The status of the report's content might change between the time information was provided and the time BerryDunn submits the report.
- To maximize the value and relevance of the CBA to OCS, BerryDunn and OCS engaged in an iterative discussion and decision-making process to choose data points for evaluation that best supported critical decision-making and evaluation of alternatives that align with OCS' vision and goals.
- For the purposes of the CBA, OCS and BerryDunn engaged with three representative states for cost comparison, based on their CCWIS upgrade experiences as potential alternative IT systems. Several other states have IT systems that are practical candidates for analysis but do not match the State in practice, rural geography, or the number of children and families served each year.
- BerryDunn used data from previous CBAs and other state CCWIS contracts to supplement data provided by the State and three participant states. If the State chooses to not become CCWIS compliant or fails to achieve compliance as defined by the ACF it is assumed that Title IV-E reimbursement will decrease to zero.
- For the purposes of CBA and spending projections, it is assumed that the State will begin its CCWIS implementation in July of 2025.
- This analysis calculates indirect costs using an indirect cost rate (IDCR) of 12%. IDCR is multiplied against total State staffing costs.
- For supplemental positions, anticipated as either full-time or via contract) the following data was used: Salary: \$71,019; Benefits: \$48,770; Total \$122,309. It is assumed that contracted positions will be paid at salary but not receive State employee benefits.

- Cost calculations for State staff time were based on FTE annual salary data provided by OCS management and <https://www.openthebooks.com/>.
- OCS will use the Master Client Index and components of the Master Data Management (MDM) already developed for the State as system replacement alternatives. Therefore, cost estimates for these alternatives do not include these components. Each Alternative includes a description of the technology assets that are potentially reusable.
- When M&O cost profiles were not available from other states, BerryDunn assumed costs would be 20% of DDI vendor costs.
- The cost of an external Project Management Office (ePMO) vendor will be a significant component of overall cost for each alternative except Alternative 1: Status Quo. The ePMO vendor will provide staff to augment the State PMO. This will include positions like technologists, testing managers, and implementation managers. As a result, ePMO vendor costs are estimated as 10% of the full DDI cost (i.e., DDI vendor, State staffing, and indirect costs and supplies).
- For each alternative except Alternative 1: Status Quo, OCS will engage an Independent Verification and Validation (IV&V) vendor. Costs are estimated as 3% of the full DDI cost (i.e., DDI vendor, State staffing, and indirect costs and supplies).

4.0 Cost Analysis

4.1 Basis of Cost Estimates

BerryDunn has followed the basis of cost estimates method to document various aspects of the State's SACWIS support efforts, CCWIS planning activities, and ORCA M&O costs over the past five years. This estimating method used historical procurement data from CCWIS projects in WI (Alternative 2: ORCA Upgrade), IL (Alternative 4: Accelerator Solution), and ID (Alternative 5: Transfer Solution). Information from the states of California (CA), Hawaii (HI), Indiana (IN), Louisiana (LA), Maine (ME), Montana (MT), and West Virginia (WV) was also used to model market costs. In addition, state staff and staff augmentation vendors' level of effort were estimated for each respective alternative in the state. Data (see Section 3.2.3) was reviewed for each state that was part of the analysis and was used to model market prices for implementing each of the types of alternatives using the State's child welfare characteristics as the inputs.

Factors in the cost estimates include:

- Publicly available historical costs and projections for other CCWIS implementation projects (contracts, IAPDs, Operational APD Updates [OAPDUs])
- Staffing projections for state and contractor staff workloads
- Wage and benefit rates
- Cost estimates for identifiable risks (e.g., escalation costs, schedule delays)
- Other pricing factors or external influences that might have a significant impact on project costs
- Population estimates and projections
- ACF Children's Bureau reported outcomes data by state

Cost data was collected and econometrically modeled to project effort, timelines, and market cost for each of the alternatives. The data was adjusted for the complexity of each state's CCWIS efforts and differences such as scope and technical resources used in the project.

4.2 Alternative 1: Status Quo Cost Analysis

4.2.1 Alternative Description

OCS, in partnership with a technology vendor, built ORCA in 2004. With 231 federally recognized tribes and native Alaska communities, the State faced complex case management issues to help ensure that children received the services and coordination they needed. OCS required an automated system that could meet its logistical challenges, enabling staff to monitor and communicate with children throughout the State, including in remote locations.

ORCA is a transitional CCWIS application and is the case management and information system for OCS that tracks child welfare, financial, licensing, and eligibility information. Data processed in ORCA supports federal reimbursement of services and facilitates external, federal, and internal reporting. ORCA enables OCS to track and manage reports of harm, active cases for children in the State's custody and placed in out-of-home care, and children receiving subsidies in the adoption and guardianship program. It contains federally mandated tools to track child Title IV-E eligibility and provide the necessary documentation to claim federal reimbursement through federal programs, such as Medicaid and Title IV-E. ORCA represented a single, integrated system that supported efficiencies in processing services for over four hundred users.

In 2009, ORCA achieved Tier 2 SACWIS compliance with ACF. Data processed in ORCA supports federal reimbursement of services and facilitates federal, other external, and internal reporting. ORCA supports processing weekly foster care maintenance and special needs payments and managing OCS provider information. ORCA interfaces with the State Department of Public Assistance, Department of Administration, Department of Revenue, and the Division of Juvenile Justice.

ORCA enables OCS to track and manage reports of harm, active cases of children in custody of the State, and families who receive subsidies through adoption and guardianship programs. OCS uses federal tools to track Title IV-E eligibility and provide necessary documentation to claim federal reimbursement through federal programs, such as Medicaid and Title IV-E.

The programs directly impacted by ORCA include but are not limited to:

- Child Welfare (AS 47.10)
- Child Protection (AS 47.17)
- Child Care Facility Licensing (AS 47.35)
- Interstate Compact on Placement of Children (AS 47.70)
- Federal Title IV-E (statewide and Tribal)
- Federal Title IV-B (Part I/II)
- ICWA (P.L. 95-60)
- Independent Living (Chaffee Act)
- Foster Care/Residential Care (Title IV-E/Medicaid reimbursement)
- Adoption Assistance (Title IV-E)

On a weekly basis, existing backlog, and new work items—both change requests and system bugs—are re-prioritized. DevOps teams deploy production solutions once per month in a hybrid sprint cycle that lasts four to five weeks.

Alternative 1: Status Quo assumes that OCS will continue to use ORCA without significant modifications or enhancements. OCS will make no material changes to the application

architecture, capabilities, or database schema. ORCA will not transition from a SACWIS to a CCWIS.

Leaving ORCA unchanged has the lowest one-time cost of the alternatives, as depicted in Table 4, under consideration, based on the alignment of the current ORCA system with the requirements of the CCWIS guidelines as released by ACF in a Final Rule on June 2, 2016 (referred to subsequently as “Final Rule”). Without upgrading ORCA, the system does not meet CCWIS guidelines and presents significant challenges that encumber optimal agency performance, creates worker inefficiencies, and compromises the user experience. The system does not (and will not in the future) meet the federally defined guidelines in the areas of modularity, data exchange features, portability, data quality, and mobility. Table 4 provides the summary scoring of Alternative 1: Status Quo based on the criteria from the Alternatives Analysis.

Table 4: Alternative 1 – Status Quo Alternatives Analysis Scoring Summary

Assessment Criteria	Scoring Summary	
	Raw Score	Weighted Score
Functional Fit (Weight: 40%)	113.00 of 160.00	158.20 of 224.00
Technical Fit (Weight: 30%)	31.00 of 68.00	40.30 of 88.00
Operational Impact Fit (Weight 30%)	24.00 of 32.00	31.20 of 42.00
Total Score	168.00 of 260.00	229.70 of 354.00
Rank 1 (best) to 6 (least)	6	

Further evaluation of the alternatives revealed that Alternative 1: Status Quo—although required by ACF to be evaluated—does not align with OCS’ vision, goals, and requirements.

4.2.2 Constraints

In addition to the overarching constraints in Section 3.5.1, additional constraints specific to Alternative 1: Status Quo are:

- Neither the State nor the United States (U.S.) Census Bureau provides discrete projections of children under 18 for the years 2022 to 2034.
- The State and U.S. Census Bureau provide age brackets that include ages 15 – 19, overlapping age 18 and 19.
- Percentage of children in poverty is not projected by Alaska or the U. S. Census Bureau for 10 or more years past the latest estimate (2022).
- The State is still in the planning stages of developing its long-term technology strategic plan, making it challenging to predict future technology infrastructure requirements.
- The potential continued of business and technical components of the current ORCA system, as they exist now, are considered constraints. They represent limitations on the

direction of the future system at the State-level. Use of the State's MDM, Microsoft (MS) Power BI report capabilities, policy documentation, and foundational child welfare practice elements could limit future child welfare information management improvements.

4.2.3 Assumptions

In addition to the overarching assumptions in Section 3.5.2, additional assumptions specific to Alternative 1: Status Quo include:

- Alternative 1: Status Quo assumes that OCS will continue to use ORCA without significant modifications or enhancements. OCS will make no material changes to the application architecture, capabilities, or database schema. ORCA will not complete a transition from a SACWIS to a CCWIS.
- If the State chooses not to become CCWIS compliant or fails to achieve compliance as defined by the ACF it is assumed that Title IV-E reimbursement will decrease to zero.
- Overarching assumptions about out-of-scope items are not part of the costs of Alternative 1: Status Quo.
- ORCA M&O and enhancements can be projected using the percentage of children under 18 in poverty.
- Overarching assumptions about reusable assets are inherently part of Alternative 1: Status Quo costs due to budget-level information and include costs to maintain ORCA at current policy requirements.
- Projections of children in poverty can be estimated by using a five-year average from 2017 to 2021 and are projected as the average.
- Hardware and software costs can be projected by using an average of the five years of data provided by OCS.
- Using discrete estimates from Alaska Population by Age and Sex, 2010 Census projections for 2020 to 2022, ages 15 to 19, provides a percentage of ages 15 – 17 that is a reasonable estimate to transform the age 15 – 19 population into children under 18 years of age.
- Using the U.S. Census Bureau population projections to 2035 is the best estimate of the population of children under 18 years old.
- This analysis assumes that for Alternatives 2, 4, and 5 will be 100% CCWIS compliant at go-live.
- The cost analyses for Alternatives 2, 4, and 5 considers ORCA M&O as part of the cost of modernization at the time a respective alternative project kicks off. For these analyses, the starting year is 2025.

4.2.4 Methodology

BerryDunn constructed Alternative 1: Status Quo projections by modeling the operational line items provided by OCS. For M&O, State personnel, contractor services, contractor new development, and total new development costs were modeled by regressing operational data against population data and projecting 10 years past the operational data to allow at least nine years of comparison for the longest alternative. State staff participation in new development was estimated as the difference between the total new development model and the contractor new development model for each given year. Hardware and software line items were projected using an annual average. The linear model for these line items used children in poverty projected at an average for 10 years. That average was constant, which makes the resulting estimates constant across the 10-year span.

4.2.4.1 Estimated Cost Methodology

To develop estimated costs for Alternative 1: Status Quo, BerryDunn used State published population projections⁶ and the State poverty estimates⁷. Operational data was available from 2015 to 2022.

Data used in the assessment included:

- APD's containing ORCA M&O costs
- ORCA support system costs
- State budgets and Advance Planning Document Updates (APDUs)
- State cost allocation plans
- State data quality plan updates
- Child population and poverty information⁸
- Children's Bureau CCWIS status³
- Child maltreatment data

⁶ Alaska Department of Labor and Workforce Development. Alaska Population Projections: 2021 to 2050, Table 1.5 Middle Scenario: Alaska Population by Age and Sex, and Components of Change 2021 to 2050.

Live.laborstats.alaska.gov. Published June 2022. <https://live.laborstats.alaska.gov/pop/projections/pub/popproj.pdf>

⁷ U.S. Census Bureau. 2020 ACS 1-year Experimental data Tables. Census.gov. Published November 30, 2021 <https://www.census.gov/programs-surveys/acs/data/experimental-data/1-year.html>

The American Community Survey (ACS) of the Census Bureau provided data on child poverty. The 2020 poverty estimates, which are experimental and not yet available on data.census.gov due to the COVID-19 pandemic's effects, can be found on the ACS Experimental Data webpage (U.S. Census Bureau, 2021).

⁸ Child Trends. *State level data for understanding child welfare in the United States*. Published April 27, 2023. <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states>

- SACWIS transfer system data from the Children's Bureau⁹
- Comparison states' CCWIS implementation project contracts¹⁰

State and contractor components cost for M&O were projected by regressing costs against program demographics (i.e., percentage of children under 18 in poverty, population of children under 18). This yielded models where program demographics explained 60% to 85% of the variability in costs for state staff and contractors. No reasonable correlations were identified for software or hardware; therefore, those line items were projected using a five-year average. After bringing historical costs forward to 2023 price levels, future years 2025 – 2033 were forecast using the demographic variables.

4.2.4.2 Quantitative Benefit Calculation Methodology

Quantitative benefits in this CBA are calculated based on CCWIS FFP if a system meets compliance criteria. The quantitative benefits for Alternative 1: Status Quo are zero for the purposes of the CBA because it is not CCWIS compliant.

4.2.4.3 Pain Point Analysis Methodology

BerryDunn considered operational pain points using feedback from OCS through discovery sessions, existing costs provided by OCS, and operational statistics from BerryDunn's experience working with other states. For example, the value of engaging in duplicate work when caseworkers are unable to access the system remotely out in the field requires them to spend extra time creating documentation from their field notes to complete their child visit requirements.

Identified pain points were compared to what is required for a sanctioned CCWIS using the Final Rule and the requirements of the ACF Streamlined FS for Child Support System Modernization CBA requirements.¹¹ The most significant findings were identified for this report.

4.2.5 Analysis Results

4.2.5.1 Estimated Cost Summary

Table 5 on the following page presents the cost of Alternative 1: Status Quo for nine years, which reflects the timeline associated with the alternative that will take the longest to implement (i.e., six years of DDI) plus three years of M&O. Maintaining the current ORCA system with small enhancements over a nine-year period is projected to cost approximately \$23.5 million. Planning costs are not factored into Alternative 1: Status Quo as the assumption is made that significant resources are not invested in planning. Enhancements to the system are minimal and

⁹ Office of the Administration for Children and Families. *SACWIS Transfer System*. Published June 23, 2020. <https://www.acf.hhs.gov/cb/training-technical-assistance/sacwis-transfer-systems>

¹⁰ *Welcome to GovWin*. Accessed May 2023. <https://iq.govwin.com/neo/home>

¹¹ National Archives and Records Administration. *ACF HHS 45 CFR Part 95 and Chapter III Comprehensive Child Welfare Information System Final Rule*. FederalRegister.gov. Published June 2, 2016. <https://www.federalregister.gov/documents/2016/06/02/2016-12509/comprehensive-child-welfare-information-system>

less than \$5 million for a given enhancement project. Costs under \$5 million are not considered software assets but are treated as regular maintenance costs.

Table 5: Alternative 1 – Status Quo Cost Summary

Alternative 1: Status Quo	
Planning and DDI Costs	
Preliminary Activity Costs	\$0
FS Activity Costs	\$0
IAPD Activity Costs	\$0
Procurement Activity Costs	\$0
DDI Costs	\$0
Subtotal Planning and DDI Costs	\$0
M&O Costs	
M&O/Enhancement Costs	\$23,563,728
Subtotal M&O Costs	\$23,563,728
Total System Costs	\$23,563,728

4.2.5.2 Estimated Annual Cost Results

Table 6 on the following page provides a nine-year cost summary for Alternative 1: Status Quo.



Table 6: Alternative 1 – Status Quo Annual Cost Summary

	SFY 2025	SFY 2026	SFY 2027	SFY 2028	SFY 2029	SFY 2030	SFY 2031	SFY 2032	SFY 2033	Total
DDI Costs										
DDI Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal DDI Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
M&O Costs										
New Solution M&O Costs (First Three Years After DDI)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ORCA M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$23,563,728
Subtotal M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$23,563,728
Subtotal Planning and DDI Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Subtotal M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$23,563,728
Total Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$23,563,728

4.2.5.3 Pain Point Analysis

With the OCS vision and goals at the forefront of the analysis—in conjunction with requirements for an approved CCWIS—BerryDunn, OCS staff, and interested parties identified pain points related to Alternative 1: Status Quo. The pain points identified include based on the modernization goals of OCS include:

- Goal 1: To improve the efficiency and effectiveness of Alaska’s child welfare programs through systematic automation and process modernization.
 - Attrition and additional skilled programmer needs could increase the cost to perform DDI and M&O for the upgraded ORCA system, which will leverage both old and new technology.
 - As State departments upgrade to new technology to meet federal requirements, departments that do not upgrade will need to absorb additional fixed costs for maintaining legacy infrastructure.
 - Broadband limitation makes it challenging for Alaskans to access OCS resource information and services within their community.
 - Manual referrals are needed when children are under age three; the ORCA user must complete this process manually instead of information auto-populating throughout the system.
 - Case documentation is time-consuming as elements are in different areas of ORCA. This requires extra time to complete the necessary paperwork and often leads to work arounds that negatively affect the data collected in the system.
- Goal 2: To integrate State-level systems with interested parties’ systems to better serve children and families involved in child welfare.
 - Families must provide information in multiple ways, making it frustrating to access the services they need when they need them.
 - It is challenging for foster families to effectively communicate and collaborate with OCS related to case management and licensing needs.
 - Programs that require referrals are completed outside of ORCA. Using numerous systems makes it difficult to track progress of the referrals and the impact of programs on child and family outcomes.
 - Communication among team members is often disjointed or not shared as there is no uniform way to communicate with each other within ORCA.
- Goal 3: To increase collaboration opportunities with Tribal partners through information and data sharing and continuous quality improvement.

- Tribal partners are unable to connect to OCS and other system partners when supporting families within their tribe. This makes collaboration and access more challenging.
- Goal 4: To provide tools for teams to work together to improve child welfare reporting.
 - Caseworkers must enter case information when they can connect to ORCA versus real-time when they are in the field meeting with families and youth.
 - Reporting in ORCA is often not flexible, or user-friendly, making the use of data inefficient and, at times, inaccurate due to human error and workarounds.
 - Data for reporting is often not accurate and requires significant time to clean-up as the data is not entered in a timely fashion.
- Goal 5: To enable data-based decision-making that will result in improved outcomes for children.
 - The licensing business process is a paper-based process, offering little opportunity to use the collected information for monitoring and improvements.
 - OCS staff are required to develop a significant number of ad hoc reports to support quality and program activities.
 - Due to the time it takes to generate information that could inform data-driven decisions, managers do not use the data because it is difficult to pull and sort through.
 - Updated versions of assessments and reports are unavailable to users, making it difficult to utilize the data from the assessments in meaningful ways to drive data-based decision-making and to access and plan for the necessary services.
 - ORCA is seen as a file system versus an analytics tool. There are limitations to how the users can use the data within the system making it difficult to increase preventive programs using analytics measurements.
- Goal 6: To help ensure security and privacy for Medicaid and Health Insurance Portability and Accountability Act (HIPAA) compliance.
 - Data related to family and medical appointments is often not collected within ORCA if an OCS field worker is not present. This critical information is needed to monitor visitation with family and siblings, medical concerns, and educational process as children in foster care move from place to place.
- Goal 7: To improve the tracking and auditing of State and federal funds.
 - When adoption cases receive subsidies, the reason for the subsidy is not documented within ORCA. The changes and justifications are tracked in separate hard copy files.

- Time spent producing information for internal quality assurance (QA) reporting is significant, and especially for federal reporting. It can take an experienced user two to three days to create a QA report.
- Significant data clean-up is needed for tracking, monitoring, and auditing federal data elements.
- Additional processes have been created to determine child eligibility for federal funding. This requires additional time and resources to review and decide if a child is eligible.
- Budgeting and monitoring are done outside of ORCA making it difficult for OCS teams to monitor program spending throughout the year and proactively plan.
- It is difficult to see in ORCA when a program is grant funded, what parameters must be followed, and the target population. This hinders the creation of new programming.

The future direction of the ORCA technical structure should OCS need to update components such as the mainframe remains unclear, however the current ORCA functionality does not appear to meet OCS' existing or future needs.

4.2.6 Risk Analysis

Choosing Alternative 1: Status Quo might result in the following risks:

- Inability to meet OCS' vision, goals, and requirements for the future
- Rising costs to maintain the current technology platforms
- Increasing cost of overall operations with an aging system
- Challenges in maintaining a workforce to support the system functionality
- Inefficient and inaccurate data entry with minimal data sharing functionality
- Continued inefficient workflow during a time of workforce crisis that contributes to burnout, increased demands, and increases in time to complete required documentation
- Increased demand on reporting staff to help ensure that reports are accurate, on time, and reflect the rapid changes in practice and legislative demands
- Inability to adapt to evolving State and federal policy, programmatic, security, and other requirements

An additional risk that applies to all alternatives is that the State does not currently have a functional data warehouse, and OCS staff shared that they are not aware of State plans to develop one in the immediate future. Data sharing across State agencies currently does not happen consistently, leaving the State at risk for additional costs related to integrated systems, significant data quality and infrastructure issues, and increased time to map key business processes around data sharing. There is a significant need for a data warehouse to provide

flexible, dynamic reporting across State agencies. OCS might need to consider two solutions—a case management system and a data warehouse to meet reporting needs. These systems will need to integrate with other State agency systems as reporting becomes more collaborative at the State and federal levels.

4.3 Alternative 2: ORCA Upgrade Cost Analysis

4.3.1 Alternative Description

Alternative 2: ORCA Upgrade involves upgrading the current ORCA system infrastructure and functionality to make it a CCWIS-compliant solution and extend its usable lifespan to achieve OCS’ vision, goals, and requirements. OCS would accomplish implementation of Alternative 2: ORCA Upgrade using the current ORCA application architecture, data environment, and external support vendors.

The intent of an ORCA Upgrade would be to improve the functional and technical fit for OCS and improve operational impacts, while increasing the ability of the system to meet OCS’ vision, goals, and requirements. The key premise of Alternative 2: ORCA Upgrade is that although the solution is not suited for CCWIS compliance, aspects of the existing solution architecture could be improved with a focused set of enhancements to meet OCS’ and federal partners’ needs.

Table 7 provides the summary scoring for Alternative 2: ORCA Upgrade based on the criteria from the Alternatives Analysis.

Table 7: Alternative 2 – ORCA Upgrade Alternatives Analysis Scoring Summary

Assessment Criteria	Scoring Summary	
	Raw Score	Weighted Score
Functional Fit (Weight: 40%)	121.25 of 160.00	169.75 of 224.00
Technical Fit (Weight: 30%)	40.75 of 68.00	52.98 of 88.00
Operational Impact Fit (Weight 30%)	15.50 of 32.00	20.15 of 42.00
Total Score	177.50 of 260.00	242.88 of 354.00
Rank 1 (best) to 6 (least)	5	

Data provided by the WI Department of Children and Families (DCF) for the implementation of its eWiSACWIS system serves as the primary source of cost data for the CBA of Alternative 2: ORCA Upgrade, supplemented by independent research and data provided by BerryDunn. BerryDunn obtained CCWIS contract data from GovWin for CA, HI, ID, IN, LA, ME, and MT. Two cost proposals were available from LA. In addition, four cost proposals were available from ME.

4.3.2 Constraints

In addition to the overarching constraints in Section 3.5.1, additional constraints specific to the Alternative 2: ORCA Upgrade are:

- Unknown factors (e.g., technical, and staffing requirements, technical dependencies, scope of each enhancement) currently exist, contributing to a broad range of estimated costs. More detailed cost information from technical vendors is needed to perform a more detailed analysis.
- Without performing a detailed technical analysis, it is not feasible to calculate precise costs associated with Alternative 2: ORCA Upgrade. Although costs are intended to be informational based on currently available data, the true costs of upgrading the aging system are difficult to determine.
- BerryDunn was unable to obtain cost profiles of other states doing an upgrade to an existing system to become CCWIS compliant.

4.3.3 Assumptions

In addition to the overarching assumption in Section 3.5.2, assumptions specific to Alternative 2: ORCA Upgrade are:

- OCS will upgrade ORCA using existing Office of Information Technology (OIT) and Information Technology Services (ITS) technology architecture and application server capabilities while moving forward with a “Cloud-First” strategy.
- The currently compiled list of potential functional and technical requirements completed in November 2022 is not an exhaustive list; therefore, it is unclear what the total one-time costs are if other enhancements are needed.
- With the complexity of the enhancements needed for ORCA to meet OCS’ functional and technical needs, OCS could expect the implementation to take six years, causing additional strain on current resources.
- While OCS workers could incrementally benefit from enhancements, the look and feel of the system will remain similar, making it easier for ORCA users to adjust to changes while maintaining their work responsibilities.
- Because there was no comparable cost data for Alternative 2: ORCA Upgrade, data for custom development was used and scaled back by 40%.
- The scoring of Alternative 2: ORCA Upgrade in the Alternatives Analysis was used to scale this option based on the functional, technical, and operational fit.

4.3.4 Methodology

The methodology used for Alternative 2: ORCA Upgrade includes a determination of the estimated cost of this alternative as it relates to upgrading ORCA and the identification of any planned reusable technology or business processes already in place at OCS.

4.3.4.1 Estimated Cost Methodology

The methodology for establishing the nine-year DDI and M&O costs for Alternative 2: ORCA Upgrade is included the following steps:

1. Estimate a DDI Vendor build cost, scale to OCS' expectations via the Alternatives Analysis scoring results and deflate the build cost to represent an upgrade to a cloud-based approach.
2. Estimate M&O costs.
3. Estimate external PMO (ePMO) and IV&V costs.
4. Establish a software development life cycle (SDLC).
5. Estimate State PMO, State staff, and supplemental contractor workload per the SDLC.
6. Distribute vendor costs (i.e., DDI, ePMO, IV&V) across the SDLC.
7. Sum by SFY for DDI and for M&O.
8. Input the results into the ACF Streamlined CBA templates.

Combined data from other states was used to build a linear model to estimate vendor DDI costs as a function of child population, victim percentage of the population (identified victims divided by child population), and the type of DDI the state was pursuing (e.g., build, accelerator, transfer, enterprise). Once the model was estimated, these same demographics—specific to Alaska— were entered into the linear model for the “Build” solution. The solution was then scaled up using functional, technical, and operational scores from the Alternatives Analysis. This resulting cost was deflated to 60% (40% functional, 6% BPR cost, and 14% technology).

M&O, ePMO, and IV&V costs were estimated as a percentage of applicable DDI costs. M&O is a percentage of functional and technical DDI costs. ePMO and IV&V are a percentage of the total DDI costs (see Section 3.5.2 Overarching Assumptions).

State staff costs (e.g., SME, project management, and supplemental staff), were estimated at a minimum given BerryDunn's understanding of available personnel. Staffing loads for the State PMO are constant across the DDI phase. SME and supplemental staff vary by activities such as deliverable review, joint application development (JAD) session participation, testing participation. Supplemental staff are contractors hired to assist State SMEs with their regular daily workload to free their time for project participation.

The SDLC was established to complete a series of tasks in DDI and then for M&O. State staff efforts and vendor costs were arranged by the SDLC to get annual costs for both DDI and three years of M&O. The tasks are split across four phases: Platform Stand-Up and Configuration; Cloud Services Stand-Up and Configuration; Child Welfare Program Management Configuration and Integration; and Final Testing and Deployment to Production. Activities in each phase include Planning Deliverables Review, Case Management, Business Rules Engine, MDM, Business Process Redesign, Data Conversion, Design, Development, Integration, System Integration Testing (SIT), User Acceptance Testing (UAT), Training, Finalizing to Production,

Certification, M&O. For each task, the assumption is that State staff will review deliverables and participate in JAD sessions, or other design activities, and UAT. For each task, the vendor will produce deliverables, organize and document JAD sessions results, configure systems, code as necessary, establish interfaces, conduct SIT, and review/respond to UAT results. During M&O, State project management takes a minor load (two hours per week) to review and manage the vendor’s M&O contract.

4.3.4.2 Quantitative Benefit Calculation Methodology

Quantitative benefits in this CBA are calculated based on CCWIS FFP if a system meets compliance criteria. For Alternatives 2, 4, and 5, CCWIS compliance allows for 50% FFP for the CCWIS participation rate. This is calculated as (100%-Title IV-E participation%) x 50% x alternative cost.

4.3.4.3 Reuse of Technical and Business Assets Methodology

BerryDunn, through interviews with OCS program and technology staff, identified technical and business assets that would continue to support the ORCA Upgrade.

4.3.5 Analysis Results

4.3.5.1 Estimated Cost Summary

Table 8 presents the cost of planning and DDI for Alternative 2: ORCA Upgrade, as well as three years of M&O for the upgraded solution and the cost of M&O for the current ORCA system while the upgraded solution is in DDI. The overall projected cost of modernization (planning and DDI) is approximately \$31.9 million. M&O for the current ORCA system plus three years of M&O for the upgraded solution is projected to be \$.7 million. In total, it is estimated that Alternative 2: ORCA Upgrade would cost approximately \$62.3 million from planning to the third year of M&O.

Table 8: Alternative 2 – ORCA Upgrade Cost Summary

Alternative 2: ORCA Upgrade	
Planning and DDI Costs	
Preliminary Activity Costs	\$1,170,401
FS Activity Costs	\$597,981
IAPD Activity Costs	\$145,021
Procurement Activity Costs	\$191,356
DDI Costs	\$32,726,870
Subtotal Planning and DDI Costs	\$34,831,629
M&O Costs	
M&O/Enhancement Costs	\$30,703,222
Subtotal M&O Costs	\$30,703,222
Total System Costs	\$65,534,851

4.3.5.2 Estimated Annual Cost Results

Key components and functionality within the current ORCA system, including underlying database structure, application code modularity, presentation-layer web services, security controls, automated functionality and bi-directional data exchanges must be upgraded for OCS to realize CCWIS compliance and its vision and goals. Two examples of this functionality are integration with other systems and mobile availability. The final three years show minimal dollars in DDI as it reflects minimal time for the State contract manager to oversee tasks related to remaining certification and maintenance release items.

After DDI is completed, M&O costs are projected to be similar to SFY2025 totals.

Table 9 on the following page provides a cost summary for Alternative 2: ORCA Upgrade DDI and M&O costs. It does not include planning costs incurred prior to 2025.



Table 9: Alternative 2 – ORCA Upgrade Annual Cost Summary

	SFY 2025	SFY 2026	SFY 2027	SFY 2028	SFY 2029	SFY 2030	SFY 2031	SFY 2032	SFY 2033	Total
DDI Costs										
DDI Costs	\$3,082,694	\$6,074,106	\$8,650,186	\$6,752,357	\$4,259,143	\$3,845,895	\$24,605	\$18,711	\$19,174	\$32,726,870
Subtotal DDI Costs	\$3,082,694	\$6,074,106	\$8,650,186	\$6,752,357	\$4,259,143	\$3,845,895	\$24,605	\$18,711	\$19,174	\$32,726,870
M&O Costs										
Upgraded Solution M&O Costs (First Three Years Following DDI Phase)	\$0	\$0	\$0	\$0	\$0	\$0	\$4,998,023	\$4,998,023	\$4,998,023	\$14,994,070
ORCA M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192				\$15,709,152
Subtotal M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$4,998,023	\$4,998,023	\$4,998,023	\$30,703,222
Subtotal DDI Costs	\$3,082,694	\$6,074,106	\$8,650,186	\$6,752,357	\$4,259,143	\$3,845,895	\$24,605	\$18,711	\$19,174	\$32,726,870
Subtotal of M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$4,998,023	\$4,998,023	\$4,998,023	\$30,703,222
Total Costs	\$5,681,986	\$8,018,425	\$10,470,852	\$8,842,184	\$6,467,268	\$6,055,278	\$5,001,853	\$5,001,238	\$5,001,317	\$63,430,092

4.3.5.3 Reuse of Technical and Business Assets Analysis

Technical and/or business assets that could be reused through this alternative include:

- The State has assets such as MDM, infrastructure, datacenters, VPN solutions, signature capture devices, and other items that can be reused while still improving ORCA with a “cloud first” architecture approach. In an ORCA Upgrade alternative, the State would not be required to change any of its existing technology to accommodate a CCWIS.
- The State would continue to use its existing security, access control, incident response and security engineering technology and business processes. The current security governance process would not require any changes to accommodate an upgraded ORCA.
- OCS already understands their business processes and how they interact with ORCA. OCS might be able to improve these business processes using the current ORCA system (e.g., through operational versus technological improvements), and these business processes can also serve as a foundation upon which to design improved business processes supported by any upgrades made to ORCA.
- ORCA’s current integration with other information systems provides a baseline to build additional connections with other databases and improve collaboration and data sharing.
- The OCS business rules repository, State and federal child welfare case management documentation requirements, and existing templates can provide tangible benefits to OCS by saving significant analysis and design work that OCS has already performed.

4.3.6 Risk Analysis

Based on lessons learned from peer states who have implemented a similar alternative, information gleaned through background research review and discussions with OCS, and industry experience upgrading legacy solutions, implementing Alternative 2: ORCA Upgrade might result in the following risks:

- Upgrading ORCA to be compliant with the CCWIS requirement for modularity would require a complete redevelopment of the existing application due to the age of the system. Assuming such redevelopment was determined to be technically feasible, it could result in numerous challenges (e.g., bugs, defects, data issues, etc.) that make ORCA’s functionality unreliable and/or unusable.
- ORCA currently uses the Apache Struts open-source application framework, which has experienced security flaws which might require the redevelopment of the existing application to improve security functionality and meet State and federal requirements.
- A waiver from ACF might be needed to use the existing system components and still receive Title IV-E funding matching funds.

- Finding qualified State IT resources to support ongoing M&O of the current and upgraded system components might be a challenge due to the diverse skill set needed and the residency requirement for new hires.
- OCS might incur additional costs related to a need for additional business analysts to address bug fixes and additional functional design that leverages the existing and new system components and functionality.
- With the development of upgraded features, the system might develop bugs or defects that would require additional development and business analyst support to assess, test, and resolve. Although this risk is present in all the alternatives, it is generally perceived to be greater when attempting to upgrade an aging system using a mix of old and new technologies.
- OCS staff will still require retraining to decrease workarounds and other business process inefficiencies and to understand how to use the upgraded system, and OCS will need to factor in additional time away from fieldwork for this training.
- OCS will need to add mobile functionality to meet the needs of the rural practice, requiring an upgrade in security measures and statewide connectivity.
- Many work tasks require the use of multiple functions within ORCA, which makes the system difficult to navigate. Workarounds create a domino effect that leads to data inaccuracies and missing information as caseworkers leave the agency. Upgrading ORCA could potentially increase the magnitude of this issue if not upgraded in a holistic, integrated manner.

4.4 Alternative 4: Accelerator Solution Cost Analysis

4.4.1 Alternative Description

Alternative 4: Accelerator Solution would involve engaging with a vendor, or a series of vendors, to implement a commercially available solution to achieve OCS' vision, goals, and requirements. Accelerator Solutions are a single, unified application or system that might require acquire supplemental components (e.g., a mobile application) to manage child welfare information. BerryDunn evaluated Alternative 4: Accelerator Solution using case studies and industry knowledge of the architecture, configuration, and implementation of an Accelerator Solution compared to key components needed for OCS to meet its goals for a CCWIS.

ACF indicated that it is not aware of a state has become CCWIS compliant using an Accelerator Solution (20% customization and 15% configuration, using a solitary product). The Accelerator Solution employed by IL includes MS Dynamics as a base, Google integration for search functions and address validation, and MS Power BI for data visualization and reporting. IL used different accelerator components in conjunction rather than deploying a single CCWIS provided by a single vendor. IL also employed an external BPR vendor throughout its process to help redesign business processes to best support key stakeholder needs.

An inherent advantage of an Accelerator Solution is the ability to rely on configuration to meet OCS’ functional requirements rather than engaging in extensive custom software development. From a technical perspective, this approach provides an opportunity to replicate a proven and stable structure with the option to configure where needed if the platform is similar to the platform which OCS has in place. Implementing the Accelerator Solution will require collaboration across several experts to integrate the multiple components needed for the desired end-user experience.

The main drivers for the IL approach to the Accelerator Solution were sustainable, in-house management; cost; and functionality. The approach was strategically resource rich, using best practices in project management and system design. For example, technology such as mobile applications were developed in-house by IL to reduce cost. OCS would need to hire additional resources to support this approach.

Table 10 provides the summary scoring for Alternative 4: Accelerator Solution based on the criteria from the Alternatives Analysis.

Table 10: Alternative 4 – Accelerator Solution Alternatives Analysis Scoring Summary

Assessment Criteria	Scoring Summary	
	Raw Score	Weighted Score
Functional Fit (Weight: 40%)	141.25 of 160.00	197.75 of 224.00
Technical Fit (Weight: 30%)	56.75 of 68.00	73.78 of 88.00
Operational Impact Fit (Weight 30%)	27.00 of 32.00	35.10 of 42.00
Total Score	225.00 of 260.00	306.63 of 354.00
Rank 1 (best) to 6 (least)	1	

Data provided by the IL Department of Children and Families Services (DCFS) for the implementation of its future CCWIS serves as the primary source of cost data for the CBA of Alternative 4, supplemented by independent research and data provided by BerryDunn. BerryDunn obtained CCWIS contract data from GovWin for CA, HI, ID, IN, LA, ME, and MT. Two cost proposals were available from LA. In addition, four cost proposals were available from ME.

4.4.2 Constraints

There were no constraints specific to Alternative 4: Accelerator Solution when performing the CBA.

4.4.3 Assumptions

In addition to the overarching assumptions in Section 3.5.2, additional assumptions specific to Alternative 4: Accelerator Solution include:

- The analysis focuses on an Accelerator Solution only, i.e., not an Accelerator Solution in combination with a Transfer Solution.

- To support the user adoption of the modernized system, IL implemented significant Organizational Change Management (OCM) strategies to help its users buy into using the modernized system. For a similar implementation, it is assumed that OCS will support this approach.
- The scoring of the Alternative 4: Accelerator Solution in the Alternatives Analysis was used to scale this option based on the functional, technical, and operational fit.
- An Accelerator Solution will still require that the State add customized components and modules to its CCWIS to account for gaps in the solution and/or incompatible technology components.

4.4.4 Methodology

The methodology used for Alternative 4: Accelerator Solution included a determination of the estimated costs of this alternative as it relates to replacing ORCA with an established accelerator product, the identification of any planned reusable technology or business processes already in place at OCS, and the consideration of technology purchases required for customization.

4.4.4.1 Estimated Cost Methodology

Estimated costs for Alternative 4: Accelerator Solution were developed using the same methodology as Alternative 2: ORCA Upgrade (Section 4.3.4.1: Estimated Cost Methodology) with minor changes to steps one and four. For step one, the model was estimated with an Accelerator Solution as the input and the result was not deflated. All other Alternatives Analysis scaling was done using the scores for the Accelerator Solution. Step four—the SDLC—was customized to an accelerator approach. All other steps remain the same for consistency and comparability of the results.

4.4.4.2 Quantitative Benefit Calculation Methodology

Quantitative benefits in this CBA are calculated based on CCWIS FFP if a system meets compliance criteria. In the case of Alternatives 2, 4, and 5, CCWIS compliance allows for 50% FFP for the CCWIS participation rate. This is calculated as $(100\% - \text{Title IV-E participation\%}) \times 50\% \times \text{alternative cost}$.

4.4.4.3 Reuse of Technical and Business Assets Methodology

BerryDunn, in collaboration with OCS program and technology staff, identified technical and business assets that would continue to support the Accelerator Solution. These assets included technology infrastructure components, remote access capabilities, program subject matter experts with significant ORCA configuration experience, PMO resources, State technology oversight committees, existing application architecture review boards and any existing BPR analyses.

4.4.5 Analysis Results

4.4.5.1 Estimated Cost Summary

Table 11 presents the cost of planning and DDI for Alternative 4: Accelerator Solution, as well as three years of M&O for the upgraded solution and the cost of M&O for the current ORCA system while the upgraded solution is in DDI. The overall projected cost of modernization (planning and DDI) is approximately \$30.8 million. M&O for the current ORCA system plus three years of M&O for the upgraded solution is projected to be \$24 million. In total, it is estimated that Alternative 4: Accelerator Solution would cost approximately \$54.9 million from planning to the third year of M&O.

Table 11: Alternative 4 – Accelerator Solution Cost Summary

Alternative 4: Accelerator Solution	
Planning and DDI Costs	
Preliminary Activity Costs	\$1,170,401
FS Activity Costs	\$597,981
IAPD Activity Costs	\$145,021
Procurement Activity Costs	\$191,356
DDI Costs	\$25,090,867
Subtotal Planning and DDI Costs	\$27,195,626
M&O Costs	
M&O/Enhancement Costs	\$24,070,597
Subtotal M&O Costs	\$24,070,597
Total System Costs	\$51,266,223

4.4.5.2 Estimated Annual Cost Results

The overall cost summary for Alternative 4: Accelerator Solution provides OCS a projected estimate of the cost to implement a new Accelerator Solution that would require some customization to meet OCS’ vision, goals, and requirements. The cost of an Accelerator Solution can vary significantly based on which product is chosen and how much customization is required to meet OCS’ needs.

To develop estimated costs for Alternative 4: Accelerator Solution, BerryDunn used published population projections¹²⁶ and the poverty estimates¹³¹⁴⁷ for IL. Operational data was available from 2015 to 2022.

¹² <https://data.ers.usda.gov/reports.aspx?ID=17827>

¹³ <https://iecam.illinois.edu/browse/data/poverty-levels-children-age-5-and-under-by-federal-poverty-level>

¹⁴ <https://dph.illinois.gov/topics-services/life-stages-populations/infant-mortality/toolkit/data.html>

Data used in the assessment included:

- Child population and poverty information⁸
- Children's Bureau CCWIS Status
- Child Maltreatment Data
- SACWIS Transfer System Data from the Children's Bureau⁹
- Comparison States' CCWIS Implementation Project Contracts¹⁰
- IL's CCWIS FS Study results
- IL's CCWIS planning and release schedule documentation

After DDI is completed, M&O costs were projected to be similar to SFY2025 totals.

Table 12 on the following page provides cost summary for Alternative 4: Accelerator Solution. This cost summary provides the annual costs for an Accelerator Solution DDI, and three years of M&O following the DDI phase. The final three years show minimal dollars in DDI as it reflects minimal time for the State contract manager to oversee tasks related to remaining certification and maintenance release items.



Table 12: Alternative 4 – Accelerator Solution Annual Cost Summary

	SFY 2025	SFY 2026	SFY 2027	SFY 2028	SFY 2029	SFY 2030	SFY 2031	SFY 2032	SFY 2033	Total
DDI Costs										
DDI Costs	\$3,705,967	\$6,854,900	\$6,101,093	\$4,790,039	\$3,600,440	\$21,289 ¹⁵	\$8,462	\$8,678	\$0	\$25,090,867
Subtotal DDI Costs	\$3,705,967	\$6,854,900	\$6,101,093	\$4,790,039	\$3,600,440	\$21,289	\$8,462	\$8,678	\$0	\$25,090,867
M&O Costs										
Accelerator Solution M&O Costs (First Three Years After DDI)	\$0	\$0	\$0	\$0	\$0	\$3,659,879	\$3,659,879	\$3,659,879	\$0	\$10,979,637
ORCA M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$0	\$0	\$0	\$0	\$13,090,960
Subtotal M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$3,659,879	\$3,659,879	\$3,659,879	\$0	\$24,070,597
Subtotal DDI Costs	\$3,705,967	\$6,854,900	\$6,101,093	\$4,790,039	\$3,600,440	\$21,289	\$8,462	\$8,678	\$0	\$25,090,867
Subtotal M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$3,659,879	\$3,659,879	\$3,659,879	\$0	\$24,070,597
Total Costs	\$6,324,159	\$9,473,092	\$8,719,285	\$7,408,231	\$6,218,632	\$3,681,168	\$3,668,341	\$3,668,557	\$0	\$49,161,464

¹⁵ DDI costs drop significantly in 2031, 2032, and 2033 for this alternative as final implementation adjustments are made and the focus shifts to the first three years of M&O.

4.4.5.3 Reuse of Technology and Business Assets Analysis

Technical and/or business assets that could be leveraged through this alternative include:

- The State's MDM architecture could be reused in this option, managing both system user and affected family identity data.
- The State would have the option of improving, and using, its previously developed CCWIS mobile app.
- The State would have the option of continuing to use its existing signature pad technology, after integrating it into an Accelerator Solution's architecture.
- An Accelerator Solution that is not cloud-based would be able to use existing State datacenter and server farm resources.
- A Transfer Solution that is not cloud-based would be able to use existing State VPN resources to facilitate remote connectivity to a CCWIS.
- Reports developed using Power BI can be implemented in the modernized system through an Application Programming Interface (API).
- Current OCS' Data and Research Department staff could provide stability through their deep knowledge of how to use existing ORCA functionality while leveraging their experience to support ORCA upgrades.

4.4.6 Risk Analysis

Based on lessons learned from peer states who have implemented a similar alternative, information gleaned through background research review and discussions with OCS, and industry experience upgrading legacy solutions, implementing Alternative 4: Accelerator Solution might result in the following risks:

- The age of the State's current infrastructure might require OCS to deploy significant upgrades to use an Accelerator Solution in the way it was intended.
- OCS might need to adapt its business processes to align with how the Accelerator Solution is configured to support business processes, causing the agency to change current processes in ways that are important to the State's interested parties. This decision could require significant retraining for users. However, if OCS chooses to customize aspects of the Accelerator Solution to align with its business processes instead, it could lead to additional time, effort, and cost.
- Transitioning from ORCA to an Accelerator Solution could require a major shift in how workers perform business processes and practices, resulting in operational disruptions.
- Finding qualified State IT resources to support ongoing M&O on the Accelerator Solution components might be a challenge due to the diverse skill set needed and the residency requirement for new hires.

- Implementing an Accelerator Solution for CCWIS compliance will tether the State to a specific solution vendor or vendors and might necessitate long-term M&O agreements that could limit future solution development options.
- Mobile functionality will represent an additional component required to meet the needs of rural practice areas, requiring an Accelerator Solution to meet the security protocols and connectivity guidelines of the State.
- Extensive investments in resources, tools, planning, training, and an implementation approach that includes assembling a team of architects, analysts, developers, solution implementers, and consultants highly skilled with the Alternative 4: Accelerator Solution might be needed. This alternative might not always conform to in-house software development cycles and could require a project management approach that leans heavily on Agile adaptive and extreme strategies.

4.5 Alternative 5: Transfer Solution Cost Analysis

4.5.1 Alternative Description

Alternative 5: Transfer Solution represents the transfer of another state's existing CCWIS components to OCS to achieve its vision, goals, and requirements.

A CCWIS cannot be transferred from one state to OCS without significant customization and adaptation. It can require supplemental components to manage child welfare information. A mobile CCWIS application is a primary example of a supplemental component. A Transfer Solution will still incur the licensing costs of software and infrastructure components to function. Transferring components are not included in the transfer of software licenses. This alternative might require the State to adopt infrastructure architecture and components of another state to help ensure functionality.

BerryDunn explored the ID Department of Health and Welfare (DHW) CCWIS implementation and considered how it might be transferred to OCS. All states are required to make the components of their CCWIS available to other states through a shared software library hosted by ACF. This shared library is called the Child Welfare Information System Project Software and Artifact Pool (C-SWAP)¹⁶.

Table 13 on the following page provides the summary scoring for Alternative 5: Transfer Solution based on the criteria from the Alternatives Analysis.

¹⁶ Administration for Children & Families. *Child Welfare Information System Project Software and Artifact Pool (C-SWAP)*. Acf.hhs.gov. Published June 29, 2021. <https://www.acf.hhs.gov/cb/training-technical-assistance/state-tribal-info-systems/c-swap>

Table 13: Alternative 5: Transfer Solution Analysis Scoring Summary

Assessment Criteria	Scoring Summary	
	Raw Score	Weighted Score
Functional Fit (Weight: 40%)	121.75 of 160.00	170.45 of 224.00
Technical Fit (Weight: 30%)	56.00 of 68.00	72.80 of 88.00
Operational Impact Fit (Weight 3%)	20.25 of 32.00	26.33 of 42.00
Total Score	198.00 of 260.00	269.58 of 354.00
Rank 1 (best) to 6 (least)	2	

Data provided by the ID Department of DHW for the implementation of its CCWIS, Ensuring Safety and Permanency in Idaho (EPSI), serves as the primary source of cost data for the CBA of Alternative 5: Transfer Solution, supplemented by independent research and data obtained by BerryDunn from GovWin for CA, HI, ID, IN, LA, ME, and MT. Two cost proposals were available from LA. In addition, four cost proposals were available from ME.

4.5.2 Constraints

There were no constraints specific to Alternative 5: Transfer Solution when performing the CBA.

4.5.3 Assumptions

In addition to the overarching assumptions in Section 3.5.2, additional assumptions specific to the Alternative 5: Transfer Solution are:

- The scoring of the Transfer Solution in the Alternatives Analysis was used to scale this option based on the functional, technical, and operational fit.
- It was assumed that no other state has the exact same technology and information architecture as Alaska, and that a Transfer Solution will require significant levels of adaptation to function.
- A Transfer Solution will require that the State still add customized components and modules to its CCWIS to account for gaps in the transferred solution and/or incompatible technology components.

4.5.4 Methodology

The methodology used for Alternative 5: Transfer Solution includes a determination of the estimated cost of this alternative as it relates to transferring an already developed system to OCS' platform, the identification of any planned reusable technology or business processes already in place at OCS to support functionality, and the consideration of technology that might be needed for further customization to meet the needs of OCS.

4.5.4.1 Estimated Cost Methodology

Estimated costs for Alternative 5: Transfer Solution were developed using the same methodology as Alternative 2: ORCA Upgrade (Section 4.3.4.1: Estimated Cost Methodology) with minor changes to steps one and four. For step one, the model was estimated with a Transfer Solution as the input and the result was not deflated. All other Alternatives Analysis scaling was done using the scores for the Transfer Solution. Step four—the SDLC—was customized to a transfer approach. All other steps remain the same for consistency and comparability of the results.

4.5.4.2 Quantitative Benefit Calculation Methodology

Quantitative benefits in this CBA are calculated based on CCWIS FFP if a system meets compliance criteria. In the case of Alternatives 2, 4, and 5, CCWIS compliance allows for 50% FFP for the CCWIS participation rate. This is calculated as $(100\% - \text{Title IV-E participation\%}) \times 50\% \times \text{alternative cost}$.

4.5.4.3 Reuse of Technology and Business Assets Methodology

Technical assets that could be leveraged through this alternative include:

- Reports developed using Power BI can be implemented in the modernized system through an API.

Business assets that could be leveraged through this alternative include:

- Current staff resources within the Data and Research Department can provide the stability for the existing pieces of ORCA while leveraging their experience to support the system upgrades.
- Established infrastructure within the system already takes into consideration all parts of the federal child welfare practice standards. Customization would provide tweaks that would accommodate OCS practice. This should be minimal in comparison with other alternatives and could be managed with BPR and OCM.
- Efficiencies and user functionality have already been considered in an established Alternative 4: Accelerator Solution. OCS would benefit from reusing tools another state has developed

The CBA considers the valuation of these benefits as project cost avoidance as OCS can reuse the assets.

4.5.5 Analysis Results

4.5.5.1 Estimated Cost Summary

Table 14 on the following page presents the cost of planning and DDI for Alternative 5: Transfer Solution, as well as three years of M&O for the upgraded solution and the cost of M&O for the current ORCA system while the upgraded solution is in DDI. The overall projected cost of

modernization (planning and DDI) is approximately \$44.5 million. M&O for the current ORCA system plus three years of M&O for the upgraded solution is projected to be \$37.8 million. In total, it is estimated that Alternative 5: Transfer Solution would cost approximately \$82.3 million from planning to the third year of M&O.

Table 14: Alternative 5 – Transfer Solution Cost Summary

Alternative 5: Transfer Solution	
Planning and DDI Costs	
Preliminary Activity Costs	\$1,170,401
FS Activity Costs	\$597,981
IAPD Activity Costs	\$145,021
Procurement Activity Costs	\$191,356
DDI Costs	\$43,359,593
Subtotal Planning and DDI Costs	\$45,464,352
M&O Costs	
M&O/Enhancement Costs	\$37,826,954
Subtotal M&O Costs	\$37,826,954
Total System Costs	\$83,291,306

4.5.5.2 Estimated Annual Cost Results

The overall cost summary for Alternative 5: Transfer Solution is relative to the level of infrastructure needed to implement the Transfer Solution, in addition to the customization needed to meet OCS' needs.

Table 15 on the following page provides the annual costs for Alternative 5: Transfer Solution DDI and three years of M&O following the DDI phase. The final three years show minimal dollars in DDI as it reflects minimal time for the State contract manager to oversee tasks related to remaining certification and maintenance release items.



Table 15: Alternative 5 – Transfer Solution Annual Cost Summary

	SFY 2025	SFY 2026	SFY 2027	SFY 2028	SFY 2029	SFY 2030	SFY 2031	SFY 2032	SFY 2033	Total
DDI Costs										
DDI Costs	\$4,066,322	\$8,322,751	\$10,742,910	\$8,676,981	\$6,054,193	\$5,479,549	9776.51462	\$3,511	\$3,600	\$43,359,593
Subtotal DDI Costs	\$4,066,322	\$8,322,751	\$10,742,910	\$8,676,981	\$6,054,193	\$5,479,549	\$9,777	\$3,511	\$3,600	\$43,359,593
M&O Costs										
Transfer Solution M&O Costs (First Three Years After DDI)	\$0	\$0	\$0	\$0	\$0	\$0	\$7,372,601	\$7,372,601	\$7,372,601	\$22,117,802
ORCA M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$0	\$0	\$0	\$15,709,152
Subtotal M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$7,372,601	\$7,372,601	\$7,372,601	\$37,826,954
Subtotal DDI Costs	\$4,066,322	\$8,322,751	\$10,742,910	\$8,676,981	\$6,054,193	\$5,479,549	\$9,777	\$3,511	\$3,600	\$43,359,593
Subtotal M&O Costs	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$2,618,192	\$7,372,601	\$7,372,601	\$7,372,601	\$37,826,954
Total Annual Costs	\$6,684,514	\$10,940,943	\$13,361,102	\$11,295,173	\$8,672,385	\$8,097,741	\$7,382,378	\$7,376,112	\$7,376,201	\$81,186,547

4.5.5.3 Reuse of Technology and Business Assets

Technical and/or business assets that could be leveraged through this alternative include:

- The State's MDM architecture could be reused in this option, managing both system user and affected family identity data.
- The State would have the option of continuing to use its existing signature pad technology, after integrating it into a Transfer Solution's architecture.
- A Transfer Solution that is not cloud-based would be able to use existing State datacenter and server farm resources.
- A Transfer Solution that is not cloud-based would be able to use existing State VPN resources to facilitate remote connectivity to a CCWIS.
- Reports developed using Power BI can be implemented in the modernized system through an API.
- The State would have the option of improving, and using, its previously developed CCWIS mobile app.
- Established infrastructure within ORCA already considers all parts of the federal child welfare practice standards. Customization would provide tweaks to accommodate OCS practice.
- Efficiencies and user functionality have already been considered in an established Alternative 5: Transfer Solution. OCS might also benefit from reusing technology another state has already implemented.

4.5.6 Risk Analysis

Based on lessons learned from peer states who have implemented a similar alternative, information gleaned through background research review and discussions with OCS, and industry experience upgrading legacy solutions, implementing Alternative 5: Transfer Solution might result in the following risks:

- Transferring a CCWIS from one state to another can be complex, and could require significant customization of application components, database schema, and program workflow components. OCS will require additional staffing resources to manage the transfer, including managing any related bugs or defects that might result from the transfer.
- The age of the State's current infrastructure might require OCS to deploy significant upgrades to use a Transfer Solution in the way it was intended.
- OCS might need to adapt its business processes to align with how a Transfer Solution is configured to support another state's business processes, causing the agency to change current processes in ways that are important to the State's interested parties. This decision could require significant retraining for users. However, if OCS chooses to

customize aspects of the Transfer Solution to align with its business processes instead, it could lead to additional time, effort, and cost.

- Transitioning from ORCA to a Transfer Solution could require a major shift in how workers perform business processes and practices, resulting in operational disruptions.
- Finding qualified State IT resources to support ongoing M&O on Transfer Solution components might be a challenge due to the diverse skill set needed and the residency requirement for new hires.
- Implementing a Transfer Solution for CCWIS compliance will tether the State to a specific solution vendor or vendors and might necessitate long-term M&O agreements that could limit future solution development options.
- Mobile functionality will represent an additional component required to meet the needs of rural practice areas, requiring a Transfer Solution to meet the security protocols and connectivity guidelines of the State.
- Extensive investments in resources, tools, planning, training, and an implementation approach that includes assembling a team of architects, analysts, developers, solution implementers, and consultants highly skilled with the Transfer Solution might be needed. This alternative might not always conform to in-house software development cycles and could require a project management approach that leans heavily on Agile adaptive and extreme strategies.

5.0 Benefits Analysis

5.1 Objectives and Needs

Section 2.1 Background provides OCS' vision and goals for a modernized CCWIS to best serve the children, youth, and families in Alaska in a way that is collaborative and meets the needs of each individual in their own community.

Based on Figure 1, OCS seeks a solution that is fiscally responsible and meets the following goals:

- Is an efficient and effective modernized system
- Integrates with interested parties on a Statewide level
- Provides ways to collaborate with Tribal Partners
- Provides tools for team to work together to improve data quality
- Supports data-based decision-making
- Is secure and maintains all required privacy standards
- Provides the ability to track and audit State and federal funding

The overarching benefits of a modernized CCWIS based on the evolving State practice and ACF needs are the following:

- Modernized system that provides modularity to meet the individualized State needs, incorporates technology to support practice requirements, and allows for future growth without the need for a revamped system.
- Robust reporting that provides the State and federal agencies the ability to utilize data in dynamic ways while providing the ability to improve practice and reporting outcomes through ongoing continuous quality improvement processes.
- Functionality that includes mobility and flexibility to integrate with tools that are easily utilized in the field but also are useful to families in need by providing them easy access to their OCS team and other resources.
- Integrated platforms that support collaboration with community and system partners and support better communication and use of the services available to families in their community.
- Financially responsible options that can leverage federal funding to minimize the burden on the State but also meet the changing needs of the workforce, communities, and the State budget.

- The opportunity to reuse technology components that might have already been developed and in use by the State workforce to further support a shortened time to implementation, minimize costs, and maximize past efforts to improve the system.

5.2 Alternative 1: Status Quo Benefit Analysis

5.2.1 Quantitative Benefits Summary

As described in Section 3.5.1 Overarching Constraints, data regarding quantifiable benefits during the CBA was not available for reasons including limited cost information from other states and limited availability of OCS to have in-depth discussion related to the benefits. As a result, the CBA includes benefits that could potentially be quantified as qualitative benefits in the CBA, although OCS could potentially quantify them in the future if desired.

There were no quantitative benefits identified for Alternative 1: Status Quo.

5.2.2 Qualitative Benefits Summary

OCS could realize qualitative benefits by pursuing Alternative 1: Status Quo—primarily, the way OCS provides services, documents casework, issues payments, develops reports, and performs other activities would not change. This could prove advantageous during OCS’ workforce shortage as field staff will not have to spend time in training or adjust existing business processes. Similarly, keeping ORCA as it is today will provide OCS with relatively consistent costs—for which they have previously secured funding—and minimize additional significant State expenditures.

Table 16 summarizes the qualitative benefits for Alternative 1: Status Quo. The benefit impact is ranked (high, medium, or low) for each listed benefit based on the CCWIS requirements and the ACF Feasibility Guide.

Table 16: Qualitative Benefit Summary – Alternative 1: Status Quo

Qualitative Benefit	Impact	Description
Business Processes	Medium	The State workforce will not experience changes to business processes and practice, eliminating the need for OCM and retraining.
Capped Spending	Medium	The State will not incur any additional DDI, training, or other costs beyond its current M&O activities.
Workforce	High	The current staffing model can remain in place, requiring no or minimal increase in OCS’ annual budget for the workforce.

5.3 Alternative 2: ORCA Upgrade Benefits Analysis

5.3.1 Quantitative Benefits Summary

As described in Section 3.5.1 Overarching Constraints, data regarding quantifiable benefits during the CBA was not available for reasons including limited cost information from other states and limited availability of OCS to have in-depth discussion related to the benefits. As a result, the CBA includes benefits that could potentially be quantified as qualitative benefits in the CBA, although OCS could potentially quantify them in the future if desired.

Table 17 summarizes the quantitative benefits for Alternative 2: ORCA Upgrade. The benefit impact is ranked (high, medium, or low) for each listed benefit based on the CCWIS requirements and the ACF Feasibility Guide.

Table 17: Quantitative Benefit Summary – Alternative 2: ORCA Upgrade

Quantitative Benefit	Impact	Description
CCWIS FFP	\$14,745,341	By upgrading ORCA, the State would benefit from accessing CCWIS funding to support system development. The State could be eligible to receive \$14,095,161 in CCWIS FFP based on preliminary CBA projections.

5.3.2 Qualitative Benefits Summary

OCS could realize qualitative benefits by pursuing Alternative 2: ORCA Upgrade, as underscored by WI DCF in collaborative meetings during the Alternatives Analysis. In WI, using the existing solution was a politically palatable option, and it was coupled with an ACF exemption that allowed the state to remain eligible for Title IV-E funding. Similarly, upgrading the current ORCA system rather than procuring an entirely modernized system might be a more politically practical path in the State, particularly if OCS does not receive significant additional funding for the system.

Table 18 summarizes the qualitative benefits for Alternative 2: ORCA Upgrade. The benefit impact is ranked (high, medium, or low) for each listed benefit based on the CCWIS requirements and the ACF Feasibility Guide.

Table 18: Qualitative Benefit Summary – Alternative 2: ORCA Upgrade

Qualitative Benefit	Impact	Description
Business Processes	Medium	As program and technical staff are accustomed to ORCA and established business processes and workarounds, extensive training and OCM strategies to engage interested parties and garner support and buy-in for a new way of performing business processes would be minimal.

Qualitative Benefit	Impact	Description
Familiarity with System	Medium	The look and feel of ORCA will remain similar, making it easier for users to adjust to changes.
Limited Feature Improvement	Low	Workers could benefit incrementally as OCS completes select ORCA enhancement projects.
Application Standardization	Medium	By upgrading ORCA, the State could benefit from standardized web applications that are more cost effective to maintain.
Technology Component Reuse	Medium	An upgraded ORCA would support reuse of existing technology infrastructure components within the State.

5.4 Alternative 4: Accelerator Solution Benefit Analysis

5.4.1 Quantitative Benefits Summary

As described in Section 3.5.1 Overarching Constraints, data regarding quantifiable benefits during the CBA was not available for reasons including limited cost information from other states and limited availability of OCS to have in-depth discussion related to the benefits. As a result, the CBA includes benefits that could potentially be quantified as qualitative benefits in the CBA, although OCS could potentially quantify them in the future if desired.

Table 19 summarizes the quantitative benefits for Alternative 4: Accelerator Solution. Benefit impact is ranked (high, medium, or low) for each item listed based on CCWIS requirements and the ACF Feasibility Guide.

Table 19: Quantitative Benefit Summary – Alternative 4: Accelerator Solution

Quantitative Benefit	Impact	Description
CCWIS FFP	\$12,353,583	By deploying an Accelerator Solution, the State would benefit from accessing CCWIS funding to support system development. The State could be eligible to receive \$12,353,583 in CCWIS FFP based on preliminary CBA projections.
Time to Deployment	1 Year	By selecting an Accelerator Solution, OCS could implement a modernized system within a shorter amount of time (five versus six years) than other alternatives. The time difference is inherent in an Accelerator Solution being a design informed by current business rules and processes versus an upgrade or transfer that would require breaking down existing assets and reforming them to the same standards.

5.4.2 Qualitative Benefits Summary

OCS could realize qualitative benefits by pursuing Alternative 4: Accelerator Solution, as underscored by IL DCFS in collaborative meetings during the Alternatives Analysis. With

interested parties representing policy, practice, and fiscal subject matter areas and the community, OCS could design more efficient and effective processes that better support children, families, the State workforce, and other interested parties.

Table 20 summarizes the quantitative benefits for Alternative 4: Accelerator Solution. The benefit impact is ranked (high, medium, or low) for each listed benefit based on the CCWIS requirements and the ACF Feasibility Guide.

Table 20: Qualitative Benefit Summary – Alternative 4: Accelerator Solution

Qualitative Benefit	Impact	Description
Business Processes	High	Leveraging the functionality and workflow features from a modernized, modular, configurable Accelerator Solution, OCS could design more efficient and effective processes that better support children, families, the State workforce, and other interested parties. In addition, although some customization might be needed, an Accelerator Solution could be chosen to align with many of OCS' foundational child welfare processes, making it more intuitive for the workforce.
Cloud Optimization	High	The State will have the option of selecting an Accelerator Solution that uses cloud computing resources, streamlining implementation, and supports the State's "cloud first" computing initiative.
Development Practices	High	An Accelerator Solution's development best practices can be implemented into the resulting CCWIS, making the process of upgrading in the future more efficient.
Efficiency	High	OCS could benefit from workflow efficiencies developed by supported by an Accelerator Solution.
Features	High	Access to a developed Accelerator Solution could allow OCS to use available modules such as mobile applications or portals.
Infrastructure Matching	High	An Accelerator Solution can be procured to place emphasis on the product(s) matching existing State technology infrastructure to allow for an easier integration of a CCWIS.
Predictability	High	Compared to other alternatives, Accelerator products are generally perceived to have more predictable implementation outcomes, and implementation often requires less effort. End user support, software updates, and patches are typically handled by the vendor.
Technology	High	An Accelerator Solution could align with OCS' preference to employ a cloud-based solution, leveraging modular, purpose-built, and reputable third-party add-ons and services.

Qualitative Benefit	Impact	Description
Configuration	Medium	A CCWIS Accelerator Solution that makes use of configuration over custom coding could increase the system's lifespan and allow for easier modification when needed.
Connectivity	Medium	Use of Accelerator Solution with existing APIs will support the use of advanced application programming interfaces.
Modular Customization	Medium	By selecting an Accelerator Solution, OCS will have an opportunity to select modules that are most important to the statewide child welfare practice. Making strategic improvements to an Accelerator Solution could support increased workforce effectiveness.
Product Life Cycle	Medium	Selecting an established Accelerator Solution will allow the State to take advantage of vendor-funded product upgrades over the lifetime of the system, facilitating a well-defined system upgrade schedule.
Reporting	Medium	OCS could leverage existing reporting features in the Accelerator Solution, allowing users to have more accurate, timely, and comprehensive reports soon after implementation.
Reuse	Medium	Based on their choice of an Accelerator Solution, OCS will have the opportunity to preserve their investment in infrastructure and application architecture while also enabling OCS to become CCWIS compliant.
User Base	Medium	Accelerator Solutions typically have larger user bases than the other alternatives under evaluation and allow for "solve once, apply multiple times" approach to system issue resolution. This allows for faster (and potentially less costly) bug fixes.

5.5 Alternative 5: Transfer Solution Benefit Analysis

5.5.1 Quantitative Benefits Summary

As described in Section 3.5.1 Overarching Constraints, data regarding quantifiable benefits during the CBA was not available for reasons including limited cost information from other states and limited availability of OCS to have in-depth discussion to support development of quantifiable benefits of each alternative.

Table 21 summarizes the quantitative benefits for Alternative 5: Transfer Solution. The benefit impact is ranked (high, medium, or low) for each listed benefit based on the CCWIS requirements and the ACF Feasibility Guide.

Table 21: Quantitative Benefit Summary – Alternative 5: Transfer Solution

Quantitative Benefit	Impact	Description
CCWIS FFP	\$18,740,544	By transferring a CCWIS from another state, the State would benefit from accessing CCWIS funding to support system development. The State could be eligible to receive \$18,266,973 in CCWIS FFP based on preliminary CBA projections.

5.5.2 Qualitative Benefits Summary

Although there are risks in implementing Alternative 5: Transfer Solution, as discussed in Section 4, the benefits are similar to an Accelerator Solution.

Table 22 summarizes the qualitative benefits for Alternative 5: Transfer Solution. The benefit impact is ranked (high, medium, or low) for each listed benefit based on the CCWIS requirements and the ACF Feasibility Guide.

Table 22: Qualitative Benefit Summary – Alternative 5: Transfer Solution

Qualitative Benefit	Impact	Description
Business Processes	High	Leveraging the functionality and workflow features from a modernized, modular, configurable Transfer Solution, OCS could design more efficient and effective processes that better support children, families, the State workforce, and other interested parties. In addition, although some customization might be needed, an Accelerator Solution could be chosen to align with many of OCS’ foundational child welfare processes. making it more intuitive for the workforce.
Reuse	Medium	OCS will have the opportunity (based on the available choices from existing implementations from other states) to preserve their investment in infrastructure and application architecture while also enabling OCS to become CCWIS compliant.
Reporting	Medium	OCS could leverage existing reporting features in the Transfer Solution, allowing users to have more accurate, timely, and comprehensive reports soon after implementation.
Maintenance	High	Cloud or no-code transfer alternatives will likely be easier to manage for the existing OCS team.
Features	High	Access to a developed Transfer Solution could allow OCS to use available features such as mobile applications or portals.

Qualitative Benefit	Impact	Description
Efficiency	High	OCS could benefit from workflow efficiencies developed by other states and supported by the Transfer Solution.
Cloud Optimization	High	The State will have the option of selecting a Transfer Solution (based on the available choices from existing implementations from other states) that uses cloud computing resources, streamlining implementation, and supporting the State’s “cloud first” computing initiative.
Configuration	Medium	A CCWIS that makes use of configuration over custom coding (based on the available choices from existing implementations from other states) could increase the system’s lifespan and allow for easier modification when needed.
Connectivity	Medium	Use of Transfer Solution with existing APIs (based on the available choices from existing implementations from other states) will support the use of advanced application programming interfaces.
Development Practices	High	A Transfer Solution’s development best practices (based on the available choices from existing implementations from other states) can be implemented into the resulting CCWIS, making the process of upgrading in the future more efficient.
Infrastructure Matching	High	A Transfer Solution can be selected to place emphasis on the system matching the existing State technology infrastructure to allow for an easier integration of a CCWIS.
Modular Customization	Medium	By selecting a Transfer Solution, OCS will have an opportunity to select modules that are most important to the statewide child welfare practice. Making strategic improvements to a Transfer Solution could support increased workforce effectiveness.
Product Life Cycle	Medium	Selecting an established Transfer Solution will allow the State to take advantage of vendor-funded product upgrades over the lifetime of the system, facilitating a well-defined system upgrade schedule.
Technology	High	A Transfer Solution (based on the available choices from other state implementations) could align with OCS’ preference to employ a cloud-based solution, leveraging modular, purpose-built, and reputable third-party add-ons and services.

6.0 Summary of Analysis

6.1 Summary of Costs for Each Alternative

Table 23 presents a summary of the CBA results with costs aggregated for each alternative and presented side-by-side for ease of review.

With the exception of Alternative 1: Status Quo, Alternative 4: Accelerator Solution is projected to be the least costly alternative to implement over the period of planning activities through system DDI and three years beyond implementation into long-term M&O activities.

Table 23: Summary of Total Costs for Alternatives

	Alternative 1: Status Quo	Alternative 2: ORCA Upgrade	Alternative 4: Accelerator Solution	Alternative 5: Transfer Solution
Planning and DDI Costs				
Preliminary Activity Costs	\$0	\$1,170,401	\$1,170,401	\$1,170,401
FS Activity Costs	\$0	\$597,981	\$597,981	\$597,981
IAPD Activity Costs	\$0	\$145,021	\$145,021	\$145,021
Procurement Activity Costs	\$0	\$191,356	\$191,356	\$191,356
DDI Costs	\$0	\$32,726,870	\$25,090,867	\$43,359,593
Subtotal Planning and DDI Costs	\$0	\$34,831,629	\$27,195,626	\$45,464,352
M&O Costs				
M&O Costs (First Three Years After DDI)	\$0	\$14,994,070	\$10,979,637	\$22,117,803
ORCA M&O Costs	\$23,563,728	\$15,709,152	\$13,090,960	\$15,709,152
Subtotal M&O Costs	\$23,563,728	\$30,703,222	\$24,070,597	\$37,826,955
Total System Costs	\$23,563,728	\$65,534,851	\$51,266,223	\$83,291,306

Table 24 provides more detail of the individual cost estimates for each alternative. Although there is no one-time planning or DDI costs for Alternative 1: Status Quo, the M&O costs are still significant, and the current ORCA system does not meet the current and future needs of OCS. Alternative 4: Accelerator Solution maintains the same expected level of costs for M&O costs and could offer additional benefit to OCS if OCS implements a solution that better supports the State's business processes in an efficient and effective manner.

Table 24: Detail of Estimated Project Costs for Alternatives

Cost Item	Alternative 1: Status Quo	Alternative 2: ORCA Upgrade	Alternative 4: Accelerator Solution	Alternative 5: Transfer Solution
One-Time Costs				
State Government Staff/Direct Personnel	\$0	\$487,146	\$472,509	\$497,797
Consultant/SME	\$0	\$2,875,179	\$2,410,661	\$2,275,552
DDI Vendor	\$0	\$25,188,233	\$18,968,473	\$35,258,741
ePMO	\$0	\$2,896,183	\$2,220,431	\$3,837,132
IV&V	\$0	\$868,855	\$666,129	\$1,151,140
Overhead/Indirect Costs	\$0	\$411,274	\$352,664	\$339,231
Total One-Time Costs	\$0	\$32,726,870	\$25,090,867	\$43,359,593
Recurring Costs				
M&O	\$23,563,728	\$30,703,222	\$24,070,597	\$37,826,954
Total Recurring Costs	\$23,563,728	\$30,703,222	\$24,070,597	\$37,826,954
Total Costs	\$23,563,728	\$63,430,092	\$49,161,464	\$81,186,547

6.2 Summary of Project Benefits for Each Alternative

Table 25 on the following page provides additional information on benefits to the State by pursuing each respective alternative.

Table 25: Summary of Benefits for Alternatives

	Alternative 1: Status Quo	Alternative 2: ORCA Upgrade	Alternative 4: Accelerator Solution	Alternative 5: Transfer Solution
CCWIS FFP ¹⁷	\$0	\$14,745,341	\$11,534,900	\$18,740,544
Time to Deployment	N/A	6 Years	5 Years	6 Years
Qualitative Benefits	See Section 5.2.2	See Section 5.3.2	See Section 5.4.2	See Section 5.5.2

¹⁷ For the purposes of the CBA, this value represents the CCWIS matching funding (in 2023 prices) from 2025 through 2033 that the State could potentially be eligible for based on the projected costs of each respective alternative.

6.3 Summary of CBA Results

As summarized in Table 27, when comparing Alternative 2: ORCA Upgrade with Alternative 4: Accelerator Solution and Alternative 5: Transfer Solution, BerryDunn estimates that Alternative 4: Accelerator Solution will have the lowest combination of DDI and annual recurring M&O costs over an eight-year period.

After considering the potential FFP funds the State could be eligible to receive to support modernization costs to become CCWIS compliant, the projected net impact on State funds if OCS proceeds with Alternative 4: Accelerator Solution for the eight-year period is approximately \$30.2 million, as compared with \$34.5 million and \$46.2 million, respectively, if the OCS proceeds with Alternative 2: ORCA Upgrade and Alternative 5: Transfer Solution¹⁸. Although Alternative 1: Status Quo has the lowest cost, as described in the CBA, proceeding with this option will not allow OCS to achieve its programmatic vision and goals and fulfill OCS' functional and technical requirements.

Table 27: Summary of Potential Costs and Net Impact on State Funds

Cost Item	Alternative 1: Status Quo	Alternative 2: ORCA Upgrade	Alternative 4: Accelerator Solution	Alternative 5: Transfer Solution
Summary of Planning, DDI, and M&O Costs				
Subtotal Planning and DDI Costs	\$0	\$34,831,629	\$27,195,626	\$45,464,352
Subtotal ORCA and Modernized System's M&O Costs	\$23,563,728	\$30,703,222	\$24,070,597	\$37,826,954
Total Planning, DDI, and M&O Cost	\$23,563,728	\$65,534,851	\$51,266,223	\$83,291,306
Summary of Quantitative Benefits				
CCWIS FFP	\$0	\$14,745,341	\$11,534,900	\$18,740,544
Total Quantitative Benefits¹⁹	\$0	\$14,745,341	\$11,534,900	\$18,740,544
Net Impact on State Funds	\$23,563,728	\$50,789,510	\$39,731,323	\$64,550,762

¹⁸ Alternative 2: ORCA Upgrade and Alternative 5: Transfer Solution have a nine-year cost estimation period due to the longer anticipated timeline for DDI.

¹⁹ Does not include Time to Deployment quantitative benefits, i.e., the shorter anticipated implementation timeline (five versus six years) for Alternative 4: Accelerator Solution.

7.0 Next Steps

Project next steps include:

- BerryDunn will develop an Executive Presentation and review the CBA results with OCS executives and other interested parties.
- In alignment with the ACF FS Guide, BerryDunn will complete a FS with information obtained from the Needs Assessment, Alternatives Analysis, and CBA.
- BerryDunn will integrate the CBA into the FS and Executive Presentation.
- BerryDunn and OCS will develop an IAPD for ACF review and approval.
- OCS will evaluate the results of the FS and choose an alternative to move forward into the RFP development phase, unless OCS chooses to move forward with Alternative 1: Status Quo, in which case an RFP will not be needed.

Appendix A: Glossary of Acronyms

Table A1 lists the common acronyms used throughout this report.

Table A1: Glossary of Acronyms

Acronym	Definition
ACF	Administration for Children and Families
APD	Advance Planning Document
API	Application Programming Interface
APDU's	Advance Planning Document Update's
AFCARS	Adoption and Foster Care Analysis and Reporting System
AK	Alaska
BI	Business Intelligence
BPR	Business Process Review
CA	California
CCWIS	Comprehensive Child Welfare Information System
CBA	Cost-benefit analysis
C-SWAP	Child Welfare Information System Project Software and Artifact Pool
CPI-U	CPI for All Urban consumers
DCF	Department of Children and Family
DCFS	Department of Children and Families Services
DDI	Design, Development, and Implementation
DHW	Department of Health and Welfare
DED	Deliverable Expectations Document
DFCS	Department of Family and Community Services
DSTS	Division of State and Tribal Systems
ePMO	External Project Management Office
EPSI	Ensuring Safety and Permanency in Idaho
eWiSACWIS	WI Statewide Automated Child Welfare Information System
FFP	Federal Financial Participation
FTE	Full-Time Equivalent
FS	Feasibility Study
HI	Hawaii
HIPAA	Health Insurance Portability and Accountability Act

Acronym	Definition
HHS	Department of Health and Human Services
IAPD	Implementation Advance Planning Document
IAPDU	Implementation Advance Planning Document Update
ICWA	Indian Child Welfare Act
ID	Idaho
IDCR	Indirect Cost Rate
IL	Illinois
IN	Indiana
IT	Information Technology
ITS	Information Technology Services
IV&V	Independent Verification and Validation
IAPD	Implementation Advance Planning Document
JAD	Joint Application Development
LA	Louisiana
MACWIS	Montana Adult and Child Welfare Information System
M&O	Maintenance and Operations
MDM	Master Data Management
MMIS	Medicaid Management Information System
MS	Microsoft
MT	Montana CA
NPV	Net Present Value
NCANDS	National Child Abuse and Neglect Data System
OAPDUs	Operational Advance Planning Document Updates
OCM	Organizational Change Management
OCS	Office of Children's Services
OIT	Office of Information Technology
OMB	Office of Management and Budget
ORCA	Online Resource for the Children of Alaska
PMO	Project Management Office
PPP	Planning and Procurement Project
QA	Quality Assurance

Acronym	Definition
RFP	Request for Proposals
RTM	Requirements Traceability Matrix
SACWIS	Statewide Automated Child Welfare Information System
SDLC	Software development life cycle
SFY	State Fiscal Year
SIT	System Integration Testing
SME	Subject Matter Expert
State	Alaska
UAT	User Acceptance Testing
U.S.	United States
WV	West Virginia
WI	Wisconsin

Appendix B: Glossary of Terms

Table B1 lists the common terms used throughout this report.

Table B1: Glossary of Terms

Term	Definition
Comparable estimate	Estimates that represent the 2023 price level for goods and services while adjusting for monetary inflation, as required by OMB.
Economic index	Statistical measure of change in a representative group of individual data points; data is derived from any number of sources, including company performance, prices, productivity, and employment. Economic indices track economic health from different perspectives.
Pain points	Effects of a current system that causes problems. Pain points typically help convince an organization to upgrade, enhance, or replace a system.
Quantitative benefits	Benefits for which a reasonable valuation can be predicted and projected.
Qualitative benefits	Benefits linked to factors other than numbers.
Representative estimate	Estimates of State costs or benefits that are as close as possible to what the State would pay for goods or services in 2023.

Appendix C: Detailed CBA Calculations

This appendix contains embedded MS Excel work files that provide supporting detailed information on the calculations used to develop the CBA provided in this report.



AK_OCS_CBA_ORC_A_Upgrade.xlsx AK_OCS_CBA_Accelerator_Solution.xlsx AK_OCS_CBA_Transfer_Solution.xlsx

Appendix D: Sources

Table D1 includes a non-exhaustive list of key documents and other sources of information BerryDunn leveraged for the CBA.

Table D1: Sources

No.	Document Name	Resource/Reference	Date Published
1.	2020 ACS 1-Year Experimental Data Release	United States Census Bureau	June 2023
2.	Alaska Population Projections 2021 to 2050	Alaska Department of Labor and Workforce Development Research and Analysis	June 2022
3.	Child Welfare Information System Project C-SWAP	ACF	June 2021
4.	Comprehensive Child Welfare Information System	National Archives Federal Register	June 2016
5.	Department of Health and Human Services (HHS) ACF Feasibility, Alternatives, and Cost-Benefit Analysis Guide	ACF	July 1993
6.	HHS ACF OCSE Division of State and Tribal Systems (DSTS) Streamlined Feasibility Guide, Version 1.0	ACF	December 2020
7.	HHS ACF OCSE Division of State and Tribal Systems (DSTS) Streamlined FS Cost Analysis Spreadsheet, Version 1.0	ACF	December 2020
8.	HHS ACF OCSE DTST Streamlined FS Template, Version 1.0	ACF	December 15, 2020
9.	SACWIS Transfer Systems	ACF	June 2020
10.	State-level Data for Understanding Child Welfare in the United States	Child Trends	April 2023
11.	Table 9.4U. Software investment and Prices, Line 21 State and Local Government Own Account, Chain-type price indexes, 2012=100	Bureau of Economic Analysis	July 2022
12.	CPI for All Urban consumers (CPI-U), Seasonally Adjusted. All items in U.S. city average, all urban consumers, seasonally adjusted. Base Period: 1982-84=100	Bureau of Labor Statistics	July 2023
13.	Chain-Type Price Indexes for Value Added by Industry, Baseline 2012=100. Line 65 Professional and business services. 2000 to 2022 projected to 2023	Bureau of Economic Analysis	October 2022

No.	Document Name	Resource/Reference	Date Published
14.	Children's Bureau Comprehensive Child Welfare Information System Technical Bulletins 1-9	Children's Bureau	September 2017
15.	Department Of Health and Human Services Administration For Children and Families Feasibility, Alternatives, And Cost / Benefit Analysis Guide	U.S. Department of Health and Human Services	July 1993
16.	CCWIS Final Rule Cost Allocation	Children's Bureau	August 2016
17.	C-SWAP and the State Technology Profile	Children's Bureau	March 2021
18.	Policy Clarifications of Automated Systems in Title IV-D Child Support Enforcement Program	ACF	December 2019
19.	WI DCFS Annual APDU for WI Statewide Automated Child Welfare Information System (eWiSACWIS) Project	ACF	November 2021
20.	ACF Response for WI's Updated Data Quality Plan for eWiSACWIS Project	ACF	January 2023
21.	IL DCFS CCWIS Project Advance Notice for Request for Proposals	IL DCFS	December 2018
22.	IL DCFS CCWIS Planning APD	IL DCFS	November 2016
23.	IL DCFS 2015 – 2019 Final Report for the Children's Bureau of the ACF	IL DCFS	June 2019
23.	IL DCFS CCWIS Feasibility Study Recommendation	IL DCFS	June 2018
24.	IL DCFS CCWIS System Integrator and Modules Implementation RFP DCFS PO19-164	IL DCFS	November 2020
25.	ID DHW Cost Allocation Plan	ID DHW	July 2022
26.	AK OCS ADPU ORCA Child Welfare Information System Project	ACF	November 2017
27.	AK OCS 2021 Data Quality Plan	AK OCS	August 2021
28.	DE DSCYF CCWIS Contract	DE DSCYF	March 2016
29.	WA DC CCWIS Implementation Forecast Pre-RFP	WA DC CFSA	April 2023
30.	HI DHS FFY 2023 Annual Progress and Services Report	HI DHS	June 2022
31.	LA DA OIS CCWIS Project Contract	LA DA	June 2019
32.	ME DHHS Award Justification Statement RFP# 201904061 Maine Comprehensive Child Welfare Information System	ME DHHS	July 2019

No.	Document Name	Resource/Reference	Date Published
33.	Montana Adult and Child Welfare Information System (MACWIS)	MO DPHHS	September 2015
34.	NC Child Welfare Request for Information and Child Welfare Case Management Legislative Report	NC DHHS	September 2020
35.	North Carolina Child Welfare Families Accessing Services through Technology (NC FAST) Child Welfare System Assessment, Alternatives Analysis, Recommendations and RFI	NC	June 2020
36.	State of RI Capital Budget Fiscal Year 2023 Budget Proposal	RI	2023
37.	IT Contract between WY DFS and Accenture LLP	WY DFS	July 2022

Appendix E: Interested Parties

The following is a list of State interested parties involved in development of the functional and technical requirements for the modernized system.

- OCS Interested Parties
 - OCS Leadership Team
 - OIT
 - OCS ORCA M&O Team
 - OCS field staff and independent living staff
 - OCS Residential Licensing and Community Prevention Agencies
 - OCS offices/programs (Medical, TDM, Admin, Safety, Adoptions, Service Array, APSIN, IV-E, etc.)
 - DCFS Departmental Support Services Finance and Management Services
 - OCS QA/Reporting
- Community and Lived Experience Parties
 - Resource families (foster, adoptive, relative caretakers, and guardianship families)
 - Tribal representatives
 - Community-based organizations involved in the prevention of child abuse and neglect
- System Partners
 - Legal partners
 - Home Visiting and Infant Learning Program providers
 - Alaska Impact Alliance
 - Department of Public Health and Epidemiology
 - Child Support Services

U012 MEDICAD SUMMARY LINE PRELIMINARY SFY2024	CURRENT EXP FFP	ACTUAL BUDGET FY23 (COL.F-G)	PROPOSED RP (COL.F-G)	UNOBLIGATED BUDGET FY23 (COL.F-G)
SUMMARY TOTALS	\$2,736,089,884.20	\$2,694,657,692.83	\$0.00	\$32,091,027.41
TOTAL FED	73.82%	\$2,114,063,400.00	\$0.00	\$30,867,009.52
TOTAL GF	28.11%	\$620,122,478.79	\$0.00	\$1,224,017.89
TOTAL PR	0.00%	\$0.00	\$0.00	\$0.00
TOTAL SDPR	0.00%	\$360,000.00	\$0.00	\$0.00
TOTAL SDPR	0.00%	\$1,654,005.16	\$0.00	\$0.00
TOTAL RECOVERY	0.00%	\$0.00	\$0.00	\$0.00
TOTAL MH/TAAR	0.00%	\$0.00	\$0.00	\$0.00
TOTAL TOBACCO	0.00%	\$0.00	\$0.00	\$0.00
TOTAL RECIDIVISM	0.00%	\$0.00	\$0.00	\$0.00
GRAND TOTAL U012	100.00%	\$2,736,089,884.20	\$2,694,657,692.83	\$0.00

U012 MEDICAD SUMMARY LINE PRELIMINARY SFY2024	CURRENT EXP FFP	ESTIMATED EXPENDITURES BASED ON ACTUAL FY24 (Z) (MWS)	PROJ ADJMTS (Z) (MWS)	ESTIMATED TOTAL EXPENDITURES FY24 (COL.Z-AC)
SUMMARY TOTALS	\$2,497,627,500	\$2,709,489,224	\$0	\$2,709,489,224
TOTAL FED	73.82%	\$1,776,173,400	\$0	\$2,000,231,584
TOTAL GF	28.11%	\$699,770,200	\$0	\$1,399,540,400
TOTAL PR	0.00%	\$0	\$0	\$0
TOTAL SDPR	0.00%	\$0	\$0	\$0
TOTAL RECOVERY	0.00%	\$1,910,888	\$0	\$1,910,888
TOTAL MH/TAAR	0.00%	\$0	\$0	\$0
TOTAL TOBACCO	0.00%	\$0	\$0	\$0
TOTAL RECIDIVISM	0.00%	\$0	\$0	\$0
GRAND TOTAL U012	100.00%	\$2,497,627,500	\$2,709,489,224	\$2,709,489,224

U012 MEDICAD SUMMARY LINE PRELIMINARY SFY2024	CURRENT EXP FFP	ESTIMATED EXPENDITURES BASED ON ACTUAL FY24 (Z) (MWS)	PROJ ADJMTS (Z) (MWS)	ESTIMATED TOTAL EXPENDITURES FY24 (COL.Z-AC)
SUMMARY TOTALS	\$2,497,627,500	\$2,709,489,224	\$0	\$2,709,489,224
TOTAL FED	73.82%	\$1,776,173,400	\$0	\$2,000,231,584
TOTAL GF	28.11%	\$699,770,200	\$0	\$1,399,540,400
TOTAL PR	0.00%	\$0	\$0	\$0
TOTAL SDPR	0.00%	\$0	\$0	\$0
TOTAL RECOVERY	0.00%	\$1,910,888	\$0	\$1,910,888
TOTAL MH/TAAR	0.00%	\$0	\$0	\$0
TOTAL TOBACCO	0.00%	\$0	\$0	\$0
TOTAL RECIDIVISM	0.00%	\$0	\$0	\$0
GRAND TOTAL U012	100.00%	\$2,497,627,500	\$2,709,489,224	\$2,709,489,224

U012 MEDICAD SUMMARY LINE PRELIMINARY SFY2025	CURRENT TEMP FFP	ESTIMATED EXPENDITURES BASED ON FY24 (COL.Z-AC)	PROJ ADJMTS	ESTIMATED TOTAL EXPENDITURES FY25 (COL.AK-AN)
SUMMARY TOTALS	\$2,497,627,500	\$2,709,489,224	\$83,764,000	\$2,793,253,224
TOTAL FED	74.12%	\$1,776,173,400	\$0	\$2,070,443,684
TOTAL GF	25.81%	\$899,770,200	\$13,552,000	\$1,914,292,772
TOTAL PR	0.00%	\$0	\$0	\$0
TOTAL SDPR	0.00%	\$0	\$0	\$0
TOTAL RECOVERY	0.00%	\$1,910,888	\$0	\$1,910,888
TOTAL MH/TAAR	0.00%	\$0	\$0	\$0
TOTAL TOBACCO	0.00%	\$0	\$0	\$0
TOTAL RECIDIVISM	0.00%	\$0	\$0	\$0
GRAND TOTAL U012	100.00%	\$2,497,627,500	\$83,764,000	\$2,793,253,224

U012 MEDICAD SUMMARY LINE PRELIMINARY SFY2025	CURRENT TEMP FFP	ESTIMATED EXPENDITURES BASED ON FY24 (COL.Z-AC)	PROJ ADJMTS	ESTIMATED TOTAL EXPENDITURES FY25 (COL.AK-AN)
SUMMARY TOTALS	\$2,497,627,500	\$2,709,489,224	\$83,764,000	\$2,793,253,224
TOTAL FED	74.12%	\$1,776,173,400	\$0	\$2,070,443,684
TOTAL GF	25.81%	\$899,770,200	\$13,552,000	\$1,914,292,772
TOTAL PR	0.00%	\$0	\$0	\$0
TOTAL SDPR	0.00%	\$0	\$0	\$0
TOTAL RECOVERY	0.00%	\$1,910,888	\$0	\$1,910,888
TOTAL MH/TAAR	0.00%	\$0	\$0	\$0
TOTAL TOBACCO	0.00%	\$0	\$0	\$0
TOTAL RECIDIVISM	0.00%	\$0	\$0	\$0
GRAND TOTAL U012	100.00%	\$2,497,627,500	\$83,764,000	\$2,793,253,224

U012 MEDICAD SUMMARY LINE PRELIMINARY SFY2025	CURRENT TEMP FFP	ESTIMATED EXPENDITURES BASED ON FY24 (COL.Z-AC)	PROJ ADJMTS	ESTIMATED TOTAL EXPENDITURES FY25 (COL.AK-AN)
SUMMARY TOTALS	\$2,497,627,500	\$2,709,489,224	\$83,764,000	\$2,793,253,224
TOTAL FED	74.12%	\$1,776,173,400	\$0	\$2,070,443,684
TOTAL GF	25.81%	\$899,770,200	\$13,552,000	\$1,914,292,772
TOTAL PR	0.00%	\$0	\$0	\$0
TOTAL SDPR	0.00%	\$0	\$0	\$0
TOTAL RECOVERY	0.00%	\$1,910,888	\$0	\$1,910,888
TOTAL MH/TAAR	0.00%	\$0	\$0	\$0
TOTAL TOBACCO	0.00%	\$0	\$0	\$0
TOTAL RECIDIVISM	0.00%	\$0	\$0	\$0
GRAND TOTAL U012	100.00%	\$2,497,627,500	\$83,764,000	\$2,793,253,224

ARU	OBJ	FUND	CODE	FUN	EXP	ESTIMATED EXPENDITURES BASED ON FY24 (COL.Z-AC)	PROJ ADJMTS	ESTIMATED TOTAL EXPENDITURES FY25 (COL.AK-AN)
U10601002	7000	FED	1004	FEED	71.62%	\$17,434,623	\$0	\$17,434,623
U10601003	7000	GF	1004	GF	28.38%	\$6,907,426	\$6,907,426	\$13,814,852
TOTAL U106					100.00%	\$27,004,500	\$6,907,426	\$34,342,049
U1201002	3000	FED	1004	FEED	2.31%	\$62,103,662	\$0	\$62,103,662
U1201003	3000	GF	1004	GF	1.12%	\$29,951,460	\$29,951,460	\$59,902,920
U1201004	3000	GFU	1004	GFU	-0.24%	\$0	\$0	\$0
U1201007	3000	IA	1004	IA	0.00%	\$250,000	\$0	\$250,000
U1201008	3000	SDPR	1004	SDPR	0.06%	\$1,666,985	\$0	\$1,666,985
U1201062	3000	HHTAAR	1082	HHTAAR	71.00%	\$1,920,693,269	\$0	\$1,920,693,269
U1201063	3000	HHTAAR	1082	HHTAAR	1.00%	\$533,700,714	\$533,700,714	\$1,067,401,428
U1201003	7000	GF	1004	GF	19.76%	\$550,622,700	\$533,700,714	\$1,084,323,414
U1201004	7000	GF	1004	GF	2.22%	\$37,784,100	\$61,347,814	\$99,131,914
U1201005	7000	PR	1004	PR	0.00%	\$0	\$0	\$0
U1201007	7000	IA	1004	IA	0.00%	\$4,968,800	\$0	\$4,968,800
U1201009	7000	SM	1004	SM	0.11%	\$27,450,200	\$0	\$27,450,200
U1201010	7000	SDPR	1004	SDPR	0.00%	\$2,145,300	\$0	\$2,145,300
U1201247	7000	Recovery	1004	Recovery	0.00%	\$24,183	\$24,183	\$48,366
U1201168	7000	Tobacco	1168	Tobacco	0.00%	\$0	\$0	\$0
U1201246	7000	RechDivism	1246	RechDivism	0.00%	\$0	\$0	\$0
TOTAL U012					99.92%	\$2,470,623,000	\$2,685,147,175	\$5,155,770,175

ARU	OBJ	FUND	CODE	FUN	EXP	ESTIMATED EXPENDITURES BASED ON FY24 (COL.Z-AC)	PROJ ADJMTS	ESTIMATED TOTAL EXPENDITURES FY25 (COL.AK-AN)
U10601002	7000	FED	1004	FEED	71.62%	\$17,434,623	\$0	\$17,434,623
U10601003	7000	GF	1004	GF	28.38%	\$6,907,426	\$6,907,426	\$13,814,852
TOTAL U106					100.00%	\$27,004,500	\$6,907,426	\$34,342,049
U1201002	3000	FED	1004	FEED	2.31%	\$62,103,662	\$0	\$62,103,662
U1201003	3000	GF	1004	GF	1.12%	\$29,951,460	\$29,951,460	\$59,902,920
U1201004	3000	GFU	1004	GFU	-0.24%	\$0	\$0	\$0
U1201007	3000	IA	1004	IA	0.00%	\$250,000	\$0	\$250,000
U1201008	3000	SDPR	1004	SDPR	0.06%	\$1,666,985	\$0	\$1,666,985
U1201062	3000	HHTAAR	1082	HHTAAR	71.00%	\$1,920,693,269	\$0	\$1,920,693,269
U1201063	3000	HHTAAR	1082	HHTAAR	1.00%	\$533,700,714	\$533,700,714	\$1,067,401,428
U1201003	7000	GF	1004	GF	19.76%	\$550,622,700	\$533,700,714	\$1,084,323,414
U1201004	7000	GF	1004	GF	2.22%	\$37,784,100	\$61,347,814	\$99,131,914
U1201005	7000	PR	1004	PR	0.00%	\$0	\$0	\$0
U1201007	7000	IA	1004	IA	0.00%	\$4,968,800	\$0	\$4,968,800
U1201009	7000	SM	1004	SM	0.11%	\$27,450,200	\$0	\$27,450,200
U1201010	7000	SDPR	1004	SDPR	0.00%	\$2,145,300	\$0	\$2,145,300
U1201247	7000	Recovery	1004	Recovery	0.00%	\$24,183	\$24,183	\$48,366
U1201168	7000	Tobacco	1168	Tobacco	0.00%	\$0	\$0	\$0
U1201246	7000	RechDivism	1246	RechDivism	0.00%	\$0	\$0	\$0
TOTAL U012					99.76%	\$2,470,623,000	\$2,685,147,175	\$5,155,770,175

GRAND TOTAL U012 \$2,736,089,884.20 \$2,694,657,692.83 \$0.00 \$32,091,027.41

GRAND TOTAL U012 \$2,497,627,500 \$2,709,489,224 \$83,764,000 \$2,793,253,224

GRAND TOTAL U012 \$2,736,089,884.20 \$2,694,657,692.83 \$83,764,000 \$2,793,253,224

PROJECTION NOTES:

(1) COL. AM: FEDERAL RESOURCE-BASED RELATIVE VALUE SCALE (RRVS) RATE INCREASE FOR PHYSICIAN SERVICES: \$11.8M TOTAL AT \$13.8M FED & \$8.0M GF

(2) COL. AM: S03 3.7% PROVIDER RATE INCREASE: \$13.2M TOTAL AT \$6.6M FED & \$6.6M GF

(3) COL. AM: ESTIMATED RATE INCREASE: \$2M TOTAL AT \$1.0M FED & \$1.0M GF

(4) COL. AM: INCORPORATE CDR RATE INCREASE 2024 (INCLUDED IN F23 GOV.AMD): \$14.0M TOTAL AT \$10.0M FED & \$4.0M GF

(5) COL. AM: CDR RATE INCREASE 2025: \$5.5M TOTAL AT \$2.8M FED & \$2.7M GF

(6) COL. AM: CDR RATE INCREASE 2026: \$5.5M TOTAL AT \$2.8M FED & \$2.7M GF

(7) COL. AM: FEDERAL REGISTER FFY23 1.5% RMAP AND 1.0% RMAP INCREASE: \$43.1M FED & \$13.9M GF

FEDERAL: \$74,217,000 = \$12,850,000 + 6,600,000 + \$16,000,000 + \$6,000,000 + \$13,077,000 (see footnotes 1-7 for more detail)

GF: \$13,982,000 = \$9,000,000 + \$4,982,000 + 7,000,000 + \$2,000,000 + \$1,700,000 + \$1,077,000 (see footnotes 1-7 for more detail)

Summary Overview FY25 INC

FY2025 Medicaid Services Summary UGF Overview
 AKDOH FY2025 Medicaid Services RDU Summary UGF

FY2024 UGF Current Budget (Basis for FY2025)	\$ 699,770,200
Governor's Preliminary Request Internal / Clarifying Notes	
RBRVS (for Physician Svcs) Rate Increase	\$ 5,000,000 <i>Resource-Based Relative Value Scale (Physician Services Rates)</i>
SDS 3.7% Provider Rate Increase	\$ 6,600,000
Estimated ORR Rate Increases	\$ 7,000,000 <i>State and Federal Required Provider-Specific Annual Rate Increases</i>
Community Behavioral Health Rate Increase Final	\$ 2,300,000
1115 Rate Increase 2025	\$ 1,700,000 <i>Inflationary increase</i>
	\$ 22,600,000 <i>FY25 Preliminary Projected Request</i>
FY2025 UGF Current Budget	\$ 722,370,200
FY2025 UGF Projected Spend	\$ 720,898,772
FY2025 UGF Projected (Shortfall)/Surplus	\$1,471,428



Alaska Department of Natural Resources
Division of Mining, Land and Water

2023 REPORT TO THE ALASKA LEGISLATURE ON

Municipal Entitlement Status

December 2023

Christianna Colles

Director

Division of Mining, Land and Water

Mike Dunleavy

Governor

State of Alaska

John Boyle

Commissioner

Department of Natural Resources

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Introduction

The State of Alaska has maintained a long-standing commitment to maximize local self-government by offering incentives for municipal incorporations under state law. Since 1962, one of these incentives has been the receipt of state general grant land within the boundaries of the local government to create or expand a tax base, generate revenue through land sales and leases, provide a land base for community expansion, and a land base for other public purposes.

In addition to general grant land entitlements, municipalities may acquire otherwise unavailable state land under the public and charitable use statute (AS 38.05.810). The land must be used for a public purpose and must be available to the public at large.

The last category of state land made available to municipalities was tideland grants to cities incorporated at statehood. Under rigid guidelines established in the Alaska Land Act, cities may acquire tidelands adjacent to their boundaries. This provision was codified as AS 38.05.320 and was renumbered in 1984 as AS 38.05.820. In 1995, the statute was amended to allow the conveyance of tide and submerged lands to municipalities under AS 38.05.825 (§ 2 ch. 95 SLA 1995).

The Department of Natural Resources (DNR), Division of Mining, Land and Water (DMLW) adjudicates the conveyance of general grant land classified as vacant, unappropriated, and unreserved¹ (VUU) to municipalities (cities and boroughs) through best interest findings. The administrative decision-making process allows DNR to gather and consider agency and public comments and provides an avenue for appeal.

Report Intent

In 2023, the Alaska State Legislature approved, and Governor Dunleavy signed, House Bill 39 (Ch. 1 FSSLA 2023), which included intent language directing DNR to provide a status report on municipal entitlement conveyances. The report shall be delivered to the Co-Chairs of Finance and the Legislative Finance Division no later than December 20, 2023, and must include:

1. The amount of acreage that has not yet been conveyed to a municipality or borough, as part of its land entitlement selections as described in state law;
2. The date each municipality or borough was legally granted the right to state lands;
3. For each municipality or borough, the amount of acreage specifically identified and selected but not yet conveyed by the State;
4. For each municipality or borough, the amount of time that has passed since it identified

¹ Vacant, unappropriated, unreserved (VUU) land is general grant land patented or tentatively approved to the State from the United States excluding minerals as required by 6(i) of the Alaska Statehood Act and is conveyable under the Municipal Entitlement Act (AS 29.65).

some or all of the land selections currently pending with the Department of Natural Resources;

5. For each municipality or borough, the reason(s) the Department of Natural Resources has not yet conveyed selected lands to that municipality or borough;
6. The significant hurdles, legal or otherwise, to completing conveyances; and
7. The amount of funding necessary to complete all requested conveyances by 2026.

This document serves as the report required under HB 39 and is divided into sections and tables in response to each of the reporting requirements itemized above.

Section 1: The Amount of Acreage That Has Not Yet Been Conveyed to A Municipality or Borough, As Part of Its Land Entitlement Selections As Described In State Law.

Table 1 provides entitlement acreage not yet conveyed to municipalities. Table 1 does not include an accounting of municipalities without any entitlement, as described in Section 2.

Section 2: The Date Each Municipality or Borough Was Legally Granted the Right to State Lands.

There are three categories of general grant land entitlements under AS 29.65:

1. A specified statutory entitlement (AS 29.65.010) for unified home rule municipalities and organized boroughs.
2. 10% of the maximum total acreage of VUU land within the boundaries between September 10, 1972, and January 1, 1988, for cities incorporated as of July 1, 1978 (AS 29.65.020).
3. 10% of the maximum total acreage of VUU land within the boundaries between the date of incorporation and two years after that date for cities incorporated after July 1, 1978 (AS 29.65.030).

At the time of certification in 1978, many villages and small towns had no state land within their boundaries, so the calculated VUU acreage was zero. Table 2 shows certification dates for all municipalities.

Section 3: For Each Municipality or Borough, the Amount of Acreage Specifically Identified And Selected But Not Yet Conveyed by the State.

Once the Department of Commerce, Community and Economic Development has certified a new municipality's boundary, DMLW determines the maximum total amount of general grant land available to satisfy the municipal entitlement. Pursuant to AS 29.65.020-AS 29.65.030, this equals 10% of the VUU land within the boundary. DMLW then provides a Municipal Entitlement Certification, an administrative decision that identifies eligible VUU land within the municipal boundary. A municipality undertakes a planning process to identify community priorities and needs and submits selections to the State. DMLW adjudicates selections and renders a best interest finding to approve or reject conveyance. To reject a selection, DMLW must find that the State's interest in retaining the land outweighs the borough's interest in obtaining it

(AS 29.65.050). The timeline for rendering conveyance decisions can vary widely depending on the amount of acreage to adjudicate, issues encountered during adjudication, and the number of cases or competing projects adjudicators handle simultaneously.

Table 1 details the amount of acreage selected by a municipality but not yet approved for conveyance. Column definitions are as follows:

- Certified Entitlement: Total acreage of land certified for entitlement to a municipality.
- Patented: Total acreage of land conveyed to the municipality where a deed has been recorded.
- Approved: Total acreage of land where a best interest finding has been completed and signed by the appropriate authorities, management authority has been granted to the municipality under AS 29.65.070(b), but a deed has not been recorded.
- Conditional Approval: Total acreage of lands conditionally approved for conveyance, but certain conditions must be met before final approval is given. For these lands, the State retains management authority², and they are not counted in the remaining entitlement.
- Selected: Total acreage of lands selected for conveyance by a municipality for their municipal entitlement. An application for these lands has been received by DMLW, but adjudication of the application has not started, or a decision has not been finalized.
- Estimated Entitlement Remaining: An estimation of the amount of land remaining in the entitlement; acreage is estimated dependent upon a final survey of the exterior boundary of the selected lands at the time of approval (AS 29.65.070(a)). This estimate includes the number of selected lands if the full entitlement has not been reached.

Section 4: For Each Municipality or Borough, The Amount of Time That Has Passed Since It Identified Some or All of The Land Selections Currently Pending with the Department of Natural Resources.

DMLW adjudicates selections as they are received, and those requests vary greatly in complexity, acreage, and priority based on a municipality's planning process and needs. Some municipal entitlement decisions are for small areas of high importance, and others are vast land entitlements with huge potential for the municipality. As those decisions vary, so do processing times. DMLW strives to keep and strengthen communications with municipalities as we balance all municipal land entitlement selections. Table 2 provides the amount of time that has passed since a municipality submitted selections currently pending with DMLW.

Section 5: For Each Municipality or Borough, the Reason(s) the Department of Natural Resources Has Not Yet Conveyed Selected Lands to That Municipality or Borough.

DMLW has not yet conveyed land to various municipalities for reasons both inside and outside the State's control; see Section 6 for an accounting of the impediments to completing municipal entitlement conveyances. See Table 1 for the main impediments delaying each municipality's

² AS 29.65.070(b) allows the State to transfer management authority on entitlement lands approved for conveyance to a municipality. Municipalities manage the surface use on these lands by entering into conditional sales or leases and take on existing authorizations.

final patent of entitlement lands.

Section 6: The Significant Hurdles, Legal or Otherwise, to Completing Conveyances

The State prioritizes municipal entitlement conveyances and provides an annual accounting of entitlement conveyances in DNR's Annual Report to the Legislature. DNR established municipal entitlement conveyances as a core service indicator and reports annually to the Office of Budget and Management. Land planning and conveyance require extensive due diligence and are process and time intensive. Some impediments to completing municipal entitlement conveyances include:

- **Land Availability** – Near some municipalities, state land ownership is limited, leading to limited lands available for selection for municipal entitlement. Some state-owned lands may also be classified in a manner that is not conveyable per AS 29.65.130(10)(C). This may lead to changing land classifications via an area plan amendment, which takes time to research, write, and send for public review. Small cities such as Whale Pass and Edna Bay have had the benefit of having land classifications changed so that they may fulfill their entitlement.
- **State Entitlement Process** – In some cases, the federal government has yet to issue tentative approvals or patents to the State for lands the municipality hopes to bring in through entitlement. In those cases, the State selected those lands under the Statehood Act and pursues conveyance from the federal government but cannot control the timelines or priorities of the Bureau of Land Management (BLM). The State can approve municipal entitlements while holding only tentative approval from the federal government (AS 29.65.070(b)) but must wait for a survey and patent before issuing final conveyance to the municipality through a state patent. A completed survey from BLM may take ten or more years, depending on BLM's funding and priorities. Currently, BLM is prioritizing Native Allotment adjudication and surveys, including for new programs such as the Dingell Act for Alaskan Native Vietnam Veterans. The Haines Borough, for example, has approximately 1,576 acres of land selected under the Statehood Act but not yet approved by BLM for conveyance to the State.
- **Municipal Planning Efforts** – Some municipalities still need to submit or prioritize the selections made for DMLW to adjudicate to fulfill their municipal entitlement. They need to undertake planning efforts before completing selection requests. Municipalities must plan for current and future needs in making selections that define their community forever; that land planning process requires a robust effort on the part of the community and is time intensive. Selections require careful consideration by communities and serve as their only entitlement.
- **New Municipal Entitlement Selections** – Some municipalities, such as the North Slope Borough, are still submitting their selections for entitlement lands. Additionally, if the selections submitted are adjudicated and are not approved, the municipality must submit a new selection and restart the adjudication process. Finally, as lands are surveyed, that may open additional lands for selection, requiring the municipality to submit a selection before the State can begin adjudication.

- **Third-Party Interests** – State land can be tied up by other state agencies or other state concerns that impede the ability to transfer the land to a municipality. For instance, the Division of Transportation and Public Facilities controls land near the airports or has an interest in gravel pits, the Division of Forestry and Fire Protection maintains the need for log transfer facilities near communities, and the Alaska Division of Fish and Game needs to implement protection measures to protect access or habitat.
- **Adjudication of Selection** – DMLW has not started or completed adjudication for a selection in these cases. Land selections submitted to DMLW by a municipality must go through a decision process where DMLW determines whether the State’s interest in retaining the land outweighs the Borough’s interest in obtaining it. Adjudication includes agency review, public notice, title due diligence, extensive research and fact-finding, and analysis.
- **Time-Consuming** – DMLW adjudicates selections and renders a best interest finding to approve or reject conveyance. This time-consuming process requires intensive land research, identification of third-party interests and potentially working towards compromises, consultation with agencies, responding to agency comments, and best interest finding issuance. Significant time is also required of DMLW Realty Services and DMLW Survey Section staff.
- **Survey** – The State cannot convey unsurveyed lands. Once the State issues the best interest finding conferring managing authority to a municipality, that municipality must have the lands surveyed before the State issues the final patent. Nothing in state statute applies a timeline for a municipality to survey its approved-for-conveyance land. Survey costs may be prohibitive for the municipality.
- **No Land Reselection or Return** – Municipalities have no mechanism to give back municipal entitlement lands, surveyed or not surveyed, and select different lands from the pool of remaining state land. While DMLW understands that the municipality’s intent for a land selection could have changed from its original intended use, the only authority for DMLW and a municipality to exchange land is AS 29.65.090. Land exchanges can enable municipalities to exchange for state lands better suited for community development and expansion needs and for the State to consolidate land ownership; however, the statute is clear that it is an equitable exchange so that the State has similar land back in the public domain. However, to exchange land, the title has to be transferred to the municipality, which can cause delays as municipalities are reluctant to spend the money on surveying land they consider a low priority.
- **Conditionally Approved Land** – In some instances, DMLW may place land in conditional approval status until a situation or condition is met. The land is also held in such status until the municipality surveys all its approved-for-conveyance lands to see what acreage may be left over to meet the final entitlement.
- **Appeals** – Municipalities have the right to appeal a selection the State rejects. This time-consuming process requires significant time for State staff to complete a case file review and the administrative record.
- **Iterative Process** – To adjudicate an entitlement selection, the State must provide agency review and public notice and consider input in determining whether the State’s

interest in retaining the land outweighs the borough’s interest in obtaining it. The State conducts extensive due diligence on all disposal decisions and conveyances, including title reports. In many cases, due diligence, agency reviews, and public input inform final decisions and effect approval of entitlement selections and acreage amounts, causing the municipality and the State to engage in an iterative process of requests, decisions, and additional requests based on decisions to ensure the best outcomes for the municipality and the State as the process progresses.

Section 7: The Amount of Funding Necessary to Complete All Requested Conveyances By 2026.

To complete all requested³ conveyances by 2026, the State must adjudicate 50,380 acres of selected land in seven communities, and approximately 542,824 acres of approved land in 24 communities would need to be surveyed and conveyed. To complete all municipal entitlements, seven communities would need to submit approximately 62,416 acres of selections. In total, eleven communities have remaining entitlement totaling 112,796 acres.

In a scenario where the impediments to municipal entitlement approvals and conveyances described in Section 6 were reduced or eliminated, the State could move forward with all municipal entitlement decisions and patents. The municipal entitlement program is currently staffed with one Natural Resource Specialist 2 and overseen by one Natural Resource Manager 2 who reviews decisions. Several additional staff members would be required to adjudicate all remaining entitlements by the end of 2026. The State recommends staffing at the Natural Resource Specialist 3 level to expedite the process where decisions are complex and to reduce the burden on the section manager in decision review. Given the realities of entitlement processes, it is challenging to project the staffing resources necessary for such an undertaking. The State adjudicated an average of 2,169 acres and approved an average of 1,887 acres of municipal entitlements per year in the past three years. To adjudicate all requested³ outstanding acreage by 2026, the State would need to employ and train at least four additional staff in the municipal entitlement program.

The State undertakes title due diligence for acquiring federal lands that are then available for municipalities and title reports for each municipal entitlement decision and conveyance. Staffing resources necessary for this work vary based on the complexity and nature of land interests and the history of each parcel. In a scenario where the federal government is amenable to the conveyance of all federal land requests for municipal entitlements, the State estimates staff resources may be prioritized and available within our existing entitlement program.

³ Some municipalities still need to complete submitting their selections to the State or still need to prioritize the submitted selections. For example, the North Slope Borough is currently submitting selections and reviewing prior selections to determine if they should relinquish them. Additionally, Lake and Peninsula Borough has submitted selections beyond their remaining entitlement and must prioritize or relinquish selections they consider the highest priority. The State can only adjudicate submitted selections as requested by a municipality. This is reflected in the numbers as a difference between remaining entitlement and selected lands.

For municipal entitlement title work, the process includes a title report for any initial decision, then a title report once the lands are slated to be conveyed after survey. Title reports are peer-reviewed and expire after a year. The DMLW Realty Services Title Unit is staffed with four Natural Resource Specialists 1/2/3. The State has a 12-month turnaround on title report requests due to a backlog caused by various successful initiatives, including decisions for municipal entitlements in recent years and successful land sale programs. In Fiscal Year 2023, the State produced title reports for approximately 21,000 acres of municipal entitlement decisions. Due diligence for 23,000 acres of municipal entitlement decisions may be subsumed within our existing staffing framework; however, if entitlement decision requests increased or 23,000 acres served to double annual requests, the unit would require additional staff dedicated to municipal entitlement reports, the unit's most complex reports. Staffing requirements are directly proportional to demand. For example, an additional 21,000 acres of municipal entitlement decisions require an additional Natural Resources Specialist 3 to support title due diligence.

In a scenario where surveys were completed, and patents for entitlements were requested for over 500,000 acres, the unit would require at least four to five additional staff members dedicated only to municipal entitlement reports, the unit's most complex reports. In general, in a scenario where municipal entitlement requests, decisions, and surveys increase, providing additional staffing resources for title due diligence is necessary to support acceptable timelines and quality assurance. The DMLW Realty Services Section Title Unit produces reports for all Department decisions and disposals; any additional backlog in this unit will cause delays to all land offerings and sales, issuances of state leases, material site designations, easements, and fiber optic projects, and so forth.

Once DMLW approves a selection, the municipality has management authority for the lands and must survey them before patent. For each parcel, the DMLW Survey Section conducts a survey determination, which averages 20 hours of staff time. Once requested by the municipality's surveyor, survey instructions requiring 67 hours of staff time are issued. The first review of the completed survey requires 40 hours plus an additional 4 hours for each additional tract or parcel. The second review takes half the time of the first review, and the final Mylar review generally takes 5 hours.

From the Survey Instruction Request to the final Mylar recording, it takes approximately three to four years to complete a survey. This is due to fieldwork and the platting authority requirements, which are generally more extensive and time-intensive than the State's. The Statewide Platting Unit is currently staffed with one Land Survey Specialist 2, one Land Surveyor 1, and is overseen by one Land Surveyor 2, who is a working supervisor. Two additional staff members at the Land Surveyor 1 level would be required to provide survey determinations, write survey instructions, and review survey plats to complete all remaining entitlements by the end of 2026.

Once surveyed, municipal entitlement lands are patented by the State. The State issues patent to an average of 11,400 acres per year for all department conveyances while staffed with either one or two patent officers, classified as Natural Resource Specialists 2/3. The staff required to process patents in a scenario where more lands are approved and surveyed will be directly proportional to the volume of requests received. For instance, to issue another 11,400 acres of entitlement patents a year, the unit will need one additional Natural Resource Specialist 2/3. Patents have a current turn-around time of 9 months to a year, and the unit cannot subsume additional work without causing additional processing time for all requests (this includes patents for lands bought at auction or over the counter to private individuals). Providing adequate resources to entitlement adjudicators, the survey team, and the title team facilitates a smooth patent process.

When considering staffing resources necessary to complete municipal entitlements, it is essential to remember that these conveyances are the most complex and cumbersome for the Department due partially to the nature of the complex legal framework and public laws affecting lands conveyed under the Statehood Act. Usually, the most tenured and skilled staff work all aspects of decisions, title work, surveys, and conveyances for entitlements. Short or long-term non-permanent staff will not be able to achieve the required skills and knowledge in a short timeframe for this work; neither will contracted title companies or other contractors have familiarity with the legal framework and processes to facilitate efforts to complete all entitlements successfully by 2026. Existing staff will likely need to undertake the work, while newer hires would train and take on less complex work to support other Department functions, such as facilitating land sales, leases, or easements.

Other resources required to complete municipal entitlements include, but are not limited to, funding for municipalities to undertake planning and survey work and funding or staffing resources for BLM to complete entitlement and survey work for state selections within municipalities.

Table 1

Municipality	Certified Entitlement	Patented	Approved ⁱ	Conditional Approval	Remaining Entitlement	Selected ⁱ	Total Left to Convey	Impediments for Land to be Conveyed
Aleutians East Borough	7,633.0	576	7,208	492	0	0	7,057	Survey, State Entitlement Process
Anchorage, Municipality of ⁱⁱ	44,893.0	21,130	3,596		0 ⁱⁱⁱ	1,196	0	Survey
Anderson, City of	1,182.0	832	349	40	0	135	350	Survey
Bethel, City of	40.0	87			0		0	
Bristol Bay Borough ⁱⁱ	2,898.0	2,699			199	0	199	Muni. Planning Efforts, New Muni. Selections
Coffman Cove, City of	222.0	220		2	0		2	Conditional Approval
Cordova, City of	235.0	168	76		0	184	67	Survey
Delta Junction, City of	481.8	504			0		0	
Denali Borough	49,789.0	5,211	43,302	1,920	0	20	44,578	Survey, Conditional Approval, Third-Party Interests
Dillingham, City of	0.5	11			0		0	
Edna Bay, City of	319.6		314		6	0	320	Survey, Muni. Planning Efforts, Land Availability, Third-Party Interests
Fairbanks, City of	7.0	96			0		0	
Fairbanks North Star Borough ⁱⁱ	112,000.0	97,396	15,697		0	2,407	14,604	Survey, No Land Reselection or Return (talk of exchanges)
Haines Borough ⁱⁱ	5,967.0	2,569	2,413	20	987	1,692	3,398	Survey, Adjudication of Selection, State Entitlement Process, Conditional Approval, No Land Reselection

Table 1

Municipality	Certified Entitlement	Patented	Approved ⁱ	Conditional Approval	Remaining Entitlement	Selected ⁱ	Total Left to Convey	Impediments for Land to be Conveyed
								or Return (talk of exchanges)
Homer, City of	12.0	15			0		0	
Houston, City of	267.0	408			0		0	
Juneau, City & Borough ⁱⁱ	19,584.0	17,273	2,211	100	0	0	2,311	Survey, Conditional Approval
Kenai, City of	370.0	370			0		0	
Kenai Peninsula Borough ⁱⁱ	15,5780.0	104,074	41,897	400	9,809	561	51,706	Survey, Muni. Planning Efforts, Adjudication of Selection, Conditional Approval, New Muni. Selections, Third-Party Interests
Ketchikan, City of	4.0	4			0		0	
Ketchikan Gateway Borough ⁱⁱ	11,593.0	11,209	812		0		384	Survey, No Land Reselection or Return (talk of exchanges)
Kodiak, City of	10.0	10			0		0	
Kodiak Island Borough ⁱⁱ	50,600.0	21,090	10,431		0 ⁱⁱⁱ		29,510	Survey
Lake & Peninsula Borough ⁱⁱ	125,000.0	1	99,785		25,214	42,879	124,999	Survey, Adjudication of Selection
Matanuska-Susitna Borough ⁱⁱ	355,210.0	278,318	79,722	3,495	0 ⁱⁱⁱ		76,892	Survey, Conditional Approval, No Land Reselection or Return (talk of exchanges)
North Pole	0.6	20			0		0	

Table 1

Municipality	Certified Entitlement	Patented	Approved ⁱ	Conditional Approval	Remaining Entitlement	Selected ⁱ	Total Left to Convey	Impediments for Land to be Conveyed
North Slope Borough ⁱⁱ	89,850.0	4,491	20,114		65,245	13,121	85,359	Survey, Muni. Planning Efforts, Adjudication of Selection, New Muni. Selections
Northwest Arctic Borough	285,438.0	107,130	176,770	1,532	1,538	19,314	178,308	Survey, Adjudication of Selection, State Entitlement Process, Conditional Approval
Pelican, City of	10.0	10			0		0	
Petersburg, City of	297.0	458			0		0	
Petersburg Borough ⁱⁱ	14,666.0	1,048	4,137		9,481	8,942	13,618	Appeal, Survey, Muni. Planning Efforts, Adjudication of Selection, Third-Party Interests
Port Alexander, City of	53.0	8	45		0		45	Survey
Port Lions, City of	1.8	1.8			0		0	
Seldovia, City of	21.0	21			0		0	
Seward, City of	565.0	548			17	30	17	Survey, Adjudication of Selection, Land Availability
Sitka, City of	0.0	456			0		0	
Sitka, City & Borough ⁱⁱ	10,500.0	10,671	46		0		0	Survey
Skagway, Municipality of	7,977.0	4,175	3,504	55	298		3,802	Survey, Muni. Planning Efforts, Conditional Approval, Land Availability

Table 1

Municipality	Certified Entitlement	Patented	Approved ⁱ	Conditional Approval	Remaining Entitlement	Selected ⁱ	Total Left to Convey	Impediments for Land to be Conveyed
Soldotna, City of	15.0	15			0		0	
Tenakee Springs, City of ^{iv}	2,958.0	2,958			0		0	
Thorne Bay, City of	675.0	689			0		0	
Valdez, City of	7,593.0	7,554	413		0		39	Survey
Whale Pass, City of	295.8	5	289		2		290	Survey, Muni. Planning Efforts, Land Availability
Whittier, City of ^{iv}	600.0	600			0		0	
Wrangell, City of	551.0	551			0		0	
Wrangell, City & Borough ⁱⁱ	9,006.0	2,174	7,205		0		6,832	Survey, State Entitlement Process
Yakutat, City of	104.0	104			0		0	
Yakutat, City & Borough ⁱⁱ	21,500.0	364	22,488		0		21,136	Survey
Totals	1,396,775.1	708,322.8	542,824		112,796	90,481	688,019	

ⁱ Note: Some municipalities are over approved and/or over selected.

ⁱⁱ Entitlement established through legislation.

ⁱⁱⁱ Settlement agreement satisfied entitlement.

^{iv} Entitlement established through settlement.

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Akhiok, City of	11/20/1972	4/18/1988	0.0	-
Akiachak, City of	2/7/1975	8/7/1978 5/2/1988	0.0	-
Akiak, City of	7/9/1970	8/7/1978 4/18/1988	0.0	-
Akutan, City of	1/7/1980	4/18/1988	0.0	-
Alakanuk, City of	1969	8/7/1978 4/18/1988	0.0	-
Aleknagik, City of	3/26/1973	8/7/1978 4/18/1988	0.0	-
Aleutians East Borough	1987	4/13/1990	7,633.0	-
Allakaket, City of	2/13/1975	8/7/1978 4/18/1988	0.0	-
Ambler, City of	5/24/1905	8/7/1978 4/18/1988	0.0	-
Anchorage, Municipality of ⁱ	5/28/1905	8/7/1978	44,893.0	-
Anderson, City of	1962	8/7/1978 6/29/1988	1,182.0	-
Angoon, City of	1963	8/7/1978 4/18/1988	0.0	-
Aniak, City of	5/10/1972	8/7/1978 4/18/1988	0.0	-
Anuktuvuk Pass, City of	6/9/1959	8/7/1978 4/18/1988	0.0	-
Anvik, City of	10/6/1969	8/7/1978 4/18/1988	0.0	-
Atka, City of	9/1/1988	10/29/1990	0.0	-
Atmautluak, City of	2/2/1976	8/7/1978 4/21/1988	0.0	-

¹ Many municipalities have multiple certification dates, the first in 1978 and the second in 1988, which may have resulted in a new or enhanced entitlement. However, for some municipalities, the entitlement was certified at zero acres.

² For municipalities with multiple certification dates, the certified acres column displays the certified acreage at that date. The bolded number is the official acreage for the entitlement.

³ The amount of time passed since a municipality identified some or all of the land selections pending with DMLW. For municipalities with no number identified, the municipality has no certified entitlement, has received all their entitlement lands, or has yet to make selections for their remaining entitlement. In some cases, such as the Northwest Arctic Borough, DMLW waits for the municipality to prioritize the submitted selections.

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Atkasuk	10/25/1982	4/7/1983 4/18/1988	0.0	-
Barrow, City of	1959	8/7/1978 6/9/1988	0.0	-
Bethel, City of	1957	10/31/1978 16/13/1988	40.0 0.5	-
Bettles, City of	12/20/1985	3/21/1986 4/18/1988	0.0	-
Brevig Mission, City of	10/6/1969	8/7/1978 4/18/1988	0.0	-
Bristol Bay Borough ⁱ	1962	8/7/1978	2,898.0	-
Buckland, City of	6/1/1966	8/7/1978 4/18/1988	0.0	-
Chefornak, City of	2/7/1974	8/7/1978 4/18/1988	0.0	-
Chevak, City of	10/13/1967	8/7/1978 4/18/1988	0.0	-
Chignik, City of	5/16/1983	10/6/1983 4/18/1988	0.0	-
Chuathbaluk, City of	3/31/1976	8/7/1978 4/18/1988	0.0	-
Clark Point, City of	3/26/1971	8/7/1978 4/18/1988	0.0	-
Coffman Cove, City of	10/23/1989	3/10/1992	222.0	-
Cold Bay, City of	4/15/1982	9/28/1982 4/18/1988	0.0	-
Cordova, City of	1909	8/7/1978 7/12/1988	235.0 218.0	-
Craig, City of	1922	8/7/1978 6/9/1988	0.0	-
Deering, City of	10/28/1970	8/7/1978 4/18/1988	0.0	-
Delta Junction, City of	12/15/1960	8/7/1978 6/8/1988	400.0 481.8	-
Denali Borough	1990	11/14/1995	49,789.0	-
Dillingham, City of	1963	8/7/1978 6/13/1988	0.5	-
Diomedede, City of	10/28/1970	8/7/1978 4/18/1988	0.0	-

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Eagle, City of	1/8/1901	8/7/1978 4/18/1988	0.0	-
Edna Bay, City of	10/2/2014	10/13/2014	319.6	-
EEK, City of	7/9/1970	8/7/1978 4/18/1988	0.0	-
Egegik, City of	1995	no submission	0.0	-
Ekwok, City of	2/7/1974	8/7/1978 4/18/1988	0.0	-
Elim, City of	10/19/1970	8/7/1978 4/18/1988	0.0	-
Emmonak, City of	2/13/1964	8/7/1978 4/18/1988	0.0	-
False Pass, City of	10/19/1990	7/24/1994	0.0	-
Fairbanks North Star Borough ⁱ	3/13/1983	8/7/1978	112,000.0	-
Fairbanks, City of	1903	8/7/1978 7/1/1988	15.0 7.0	-
Fort Yukon, City of	2/17/1959	8/7/1978 4/18/1988	0.0	-
Galena, City of	1971	8/7/1978 6/9/1988	0.0	-
Gambell, City of	12/12/1963	8/7/1978 4/18/1988	0.0	-
Girdwood, City of	1961	8/7/1978	0.0	-
Golovin, City of	3/26/1971	8/7/1978 4/18/1988	0.0	-
Goodnews Bay, City of	7/9/1970	8/7/1978 4/18/1988	0.0	-
Grayling, City of	6/9/1969	8/7/1978 4/18/1988	0.0	-
Gustavus, City of	4/1/2004	11/28/2005	25.0	-
Haines, City of	1/24/1910	8/7/1978 6/9/1988	0.0	-
Haines Borough ⁱ	10/17/2002	7/1/1978 6/28/2010	2,800.0 5,967.0	12
Holy Cross, City of	4/18/1968	8/7/1978 4/18/1988	0.0	-

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Homer, City of	1964	8/16/1978 6/13/1988	16.0 12.0	-
Hoonah, City of	6/8/1946	8/7/1978 6/13/1988	15.0	-
Hooper Bay, City of	2/7/1966	8/7/1978 4/18/1988	0.0	-
Houston, City of	1966	8/7/1978 5/19/1988	405.0 267.2	-
Hughes, City of	10/30/1973	8/7/1978 4/18/1988	0.0	-
Huslia, City of	6/9/1969	8/7/1978 4/21/1988	0.0	-
Hydaburg, City of	10/4/1927	8/7/1978 6/9/1988	0.0	-
Juneau, City & Borough ⁱ	1970	8/7/1978	19,584.0	-
Kachemak, City of	1961	8/7/1978 4/18/1988	0.0	-
Kake, City of	11/7/1952	8/7/1978 6/9/1988	0.0	-
Kaktovik, City of	3/26/1971	8/7/1978 4/18/1988	0.0	-
Kaltag, City of	6/9/1969	8/7/1978 4/18/1988	0.0	-
Kasigluk, City of	8/2/1982	5/2/1988	0.0	-
Kasaan, City of	2/27/1976	8/7/1978 4/18/1988	0.0	-
Kenai Peninsula Borough ⁱ	1964	8/7/1978	155,780.0	3
Kenai, City of	5/18/1960	8/7/1978 7/8/1988	30.0 307.0	-
Ketchikan Gateway Borough ⁱ	1963	8/7/1978	11,593.0	-
Kiana, City of	6/30/1964	8/7/1978 4/18/1988	0.0	-
King Cove, City of	7/2/1947	8/7/1978 6/9/1988	0.0	-
Kivalina, City of	6/23/1969	8/7/1978 4/18/1988	0.0	-
Klawock, City of	1929	8/7/1978 6/9/1988	0.0	-

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Kobuk, City of	10/25/1973	8/7/1978 4/18/1988	0.0	-
Kodiak Island Borough ⁱ	1963	8/7/1978	50,600.0	-
Kodiak, City of	1940	9/28/1978 7/8/1988	32.0 10.0	-
Kotlik, City of	10/28/1970	8/7/1978 4/18/1988	0.0	-
Kotzebue, City of	3/5/1973	8/7/1978 4/18/1988	0.0	-
Koyuk, City of	10/19/1970	8/7/1978 5/17/1988	0.0	-
Koyukuk, City of	10/30/1973	8/7/1978 4/18/1988	0.0	-
Kupreanof, City of	8/12/1975	8/7/1978 4/18/1988	0.0	-
Kwethluk, City of	5/9/1975	8/7/1978 4/18/1988	0.0	-
Lake & Peninsula Borough ⁱ	1989	8/7/1978	125,000.0	17
Larson Bay, City of	2/7/1974	8/7/1978 4/18/1988	0.0	-
Lower Kalskag, City of	6/5/1970	8/7/1978 4/21/1988	0.0	-
Manokotak, City of	10/19/1970	8/7/1978 4/18/1988	0.0	-
Marshall, City of (Fortuna Ledge)	7/9/1970	4/18/1988	0.0	-
Matanuska-Susitna Borough ⁱ	1964	8/7/1978	355,210.0	-
McGrath, City of	6/24/1975	8/7/1978 4/18/1988	0.0	-
Mekoryuk, City of	9/24/1969	8/7/1978 4/18/1988	0.0	-
Mountian Village, City of	1967	8/7/1978 4/18/1988	0.0	-
Napakiak, City of	10/19/1970	8/7/1978 4/18/1988	0.0	-
Napaskiak, City of	10/27/1971	8/7/1978 4/18/1988	0.0	-
Nenana, City of	1921	8/7/1978 6/30/1988	0.0	-

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Newhalen, City of	10/26/1971	8/7/1978 4/21/1988	0.0	-
New Stuyahok, City of	11/20/1972	8/7/1978 4/21/1988	0.0	-
Newtok, City of	2/2/1976	8/7/1978 4/20/1988	0.0	-
Nightmute, City of	2/7/1974	8/7/1978 4/20/1988	0.0	-
Nikolai, City of	7/9/1970	8/7/1978 4/20/1988	0.0	-
Nome, City of	1901	8/7/1978 6/9/1988	0.0	-
Nondalton, City of	5/18/1971	8/7/1978 4/20/1988	0.0	-
Noorvik, City of	1964	8/7/1978 4/20/1988	0.0	-
North Pole, City of	1953	8/7/1978 6/30/1988	0.5 0.0	-
North Slope Borough ⁱ	1972	7/1/1978 10/1/1990	89,850.0	2
Northwest Arctic Borough	1986	2/12/1988	285,437.0	19
Nuiqsut, City of	6/24/1975	8/7/1978 4/21/1988	0.0	-
Nulato, City of	3/22/1963	8/7/1978 4/21/1988	0.0	-
Nunapitchuk, City of	1969	8/7/1978 4/21/1988	0.0	-
Old Harbor, City of	1966	8/7/1978 4/21/1988	0.0	-
Ouzinkie, City of	10/23/1967	8/16/1978 6/29/1988	0.0	-
Palmer, City of	1951	8/7/1978 6/15/1988	0.0	-
Pelican, City of	1943	8/7/1978 6/28/1988	0.0 6.0	-
Petersburg, City of	1910	8/7/1978 7/1/1988	297.3 457.5	-
Petersburg Borough ⁱ	1/3/2013	12/6/2013 11/16/2017	1,438.5 14,666.0	5

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Pilot Point, City of	1992	no submission	0.0	-
Pilot Station, City of	10/6/1969	8/7/1978 4/21/1988	0.0	-
Platinum, City of	2/3/1975	8/7/1978 4/21/1988	0.0	-
Point Hope, City of	1966	8/7/1978 4/27/1988	0.0	-
Port Alexander, City of	8/1/1974	8/7/1978 6/9/1988	0.0 53.0	-
Port Heiden, City of	11/20/1972	8/7/1978 4/27/1988	0.0	-
Port Lions, City of	1966	8/16/1978 6/29/1988	35.0 1.8	-
Quinhagak, City of	2/13/1975	8/7/1978 4/27/1988	0.0	-
Ruby, City of	10/30/1973	8/7/1978 5/13/1988	0.0	-
Russian Mission, City of	10/28/1970	8/7/1978 4/27/1988	0.0	-
Saint George, City of	9/13/1983	3/13/1983 4/27/1988	0.0	-
Saint Mary, City of	1967	8/7/1978 6/15/1988	0.0	-
Saint Michael, City of	7/15/1969	8/7/1978 4/27/1988	0.0	-
Saint Paul, City of	7/12/1971	8/7/1978 4/27/1988	0.0	-
Sand Point, City of	10/10/1966	8/7/1978 6/15/1988	0.0	-
Savoonga, City of	10/6/1969	8/7/1978 4/27/1988	0.0	-
Saxman, City of	9/30/1929	8/7/1978 5/3/1988	0.0	-
Scammon Bay, City of	5/22/1967	8/7/1978 5/3/1988	0.0	-
Selawik, City of	6/29/1977	8/7/1978 5/3/1988	0.0	-
Seldovia, City of	5/7/1945	8/7/1978 6/15/1988	0.0 21.0	-

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Seward, City of	1912	10/6/1978 7/1/1988	562.0 565.0	41
Shageluk, City of	7/9/1970	8/7/1978 5/3/1988	0.0	-
Shaktoolik, City of	10/7/1969	8/7/1978 5/3/1988	0.0	-
Sheldon Point, City of	2/7/1974	8/7/1978 5/3/1988	0.0	-
Shishmaref, City of	7/15/1969	8/7/1978 5/3/1988	0.0	-
Shungnak, City of	3/31/1976	8/7/1978 5/3/1988	0.0	-
Sitka, City & Borough ⁱ	1971	7/1/1978	10,500.0	-
Skagway, Municipality of	2000	3/6/1978 1/1/1988	35.0 7,977.0	24
Soldotna, City of	5/13/1960	10/27/1978 7/1/1988	14.0 14.6	-
Stebbins, City of	6/5/1970	8/7/1978 5/3/1988	0.0	-
Tanana, City of	6/7/1961	8/7/1978 6/29/1988	0.0	-
Teller, City of	1963	8/7/1978 5/13/1988	0.0	-
Tenakee Springs, City of ⁱⁱ	10/26/1971	8/7/1978 7/1/1981	3,959.3 2,958.0	-
Thorne Bay, City of	8/2/1982	9/30/1982 6/29/1988	612.0 675.0	-
Togiak, City of	6/10/1969	8/7/1978 5/13/1988	0.0	-
Toksook Bay, City of	4/14/1972	8/7/1978 5/13/1988	0.0	-
Tuluksak, City of	10/28/1970	8/7/1978 5/13/1988	0.0	-
Tununak, City of	2/13/1975	8/7/1978 5/13/1988	0.0	-
Unalakleet, City of	12/2/1974	8/7/1978 5/13/1988	0.0	-
Unalaska, City of	4/25/1905	8/7/1978 6/29/1988	0.0	-

Table 2

Municipality	Incorporation	Certification Date ¹	Certified Acres ²	Amount of Time Passed for Pending Selections (years) ³
Upper Kalskag, City of	2/13/1975	8/7/1978 5/13/1988	0.0	-
Valdez, City of	1901	8/16/1978 7/1/1988	4,805.0 7,593.0	-
Wainwright, City of	12/31/1962	8/7/1978 5/13/1988	0.0	-
Wales, City of	4/16/1964	8/7/1978 5/13/1988	0.0	-
Wasilla, City of	1974	8/7/1978 6/15/1988	0.0	-
Whale Pass, City of	1/19/2017	2/3/2017	295.0	-
White Mountain, City of	7/15/1969	8/7/1978 5/13/1988	0.0	-
Whittier, City of ⁱⁱ	4/6/1973	8/7/1978 6/13/1988	114.0 600.0	-
Wrangell, City & Borough ⁱ	2008	6/28/2011 7/1/2013	1,852.0 9,006.0	-
Wrangell, City of	1903	12/15/1988	551.0	-
Yakutat, City & Borough ⁱ	1948	8/7/1978 7/1/1988 9/25/1998	104.0 81.0 21,500.0	-

ⁱ Entitlement established through legislation.

ⁱⁱ Entitlement established through settlement.

FY 2024
Fire Activity Emergency Declaration Authorization Request
for General Fund
August 30th, 2023

Wildland Fire Suppression: AS 41.15.010 - 41.15.170

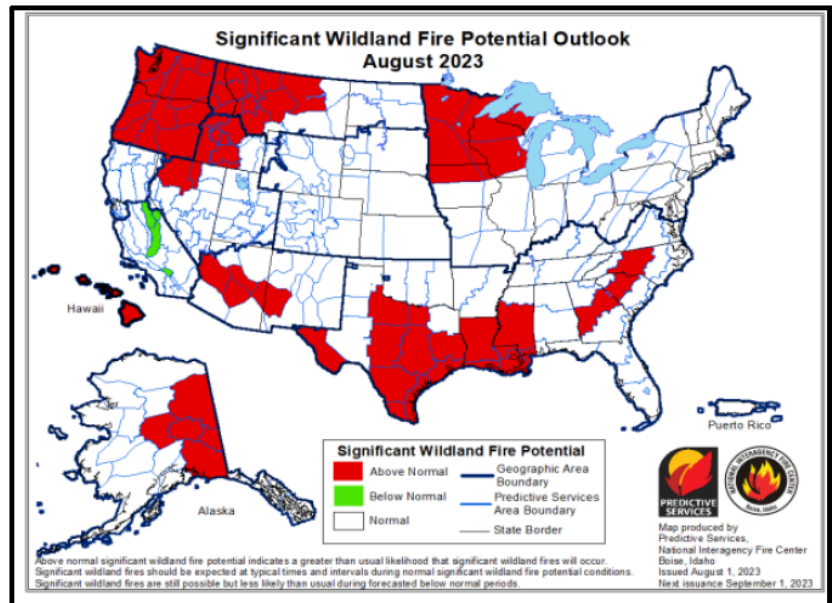
FY24 General Fund Supplemental Authority Request: \$61,000,000

Wildland Fire Suppression Statute Authority: Under AS [41.15.010](#) - [41.15.170](#) the Alaska Division of Forestry & Fire Protection (DOF) protects the lives, property and resources of Alaskans on over 150 million acres of state, municipal, and private land. Additionally, through cooperative agreements and the Alaska Interagency Wildland Fire Management Plan, DOF protects federal, BIA Trust and Native lands.

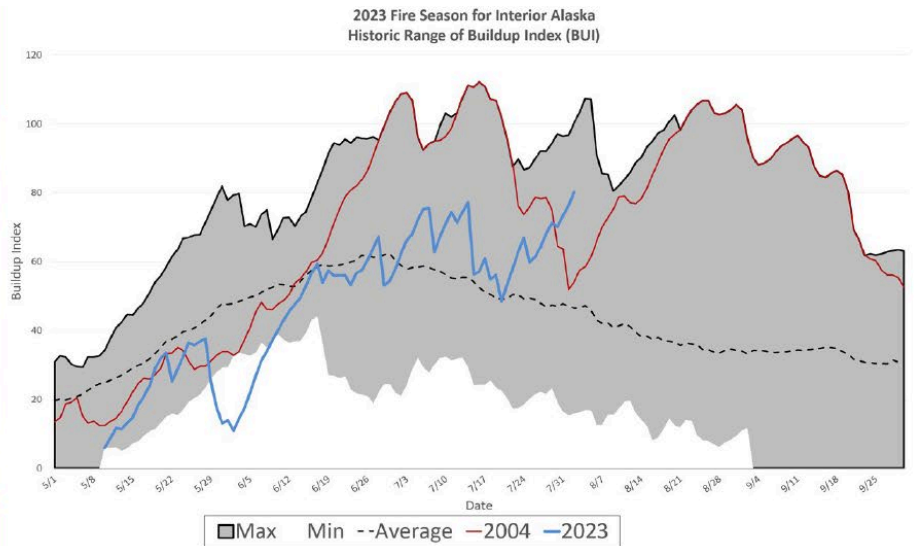
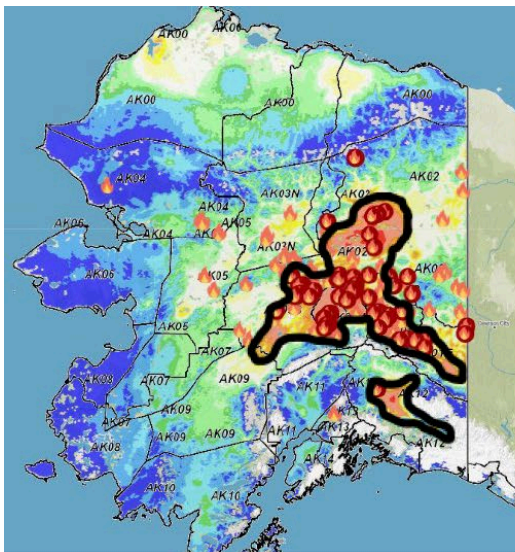
Limited general fund authority for wildland firefighting has been authorized with the intent that additional authorization for wildland fire suppression efforts, including high complexity Type I and II project fires, would be obtained through the declaration process.

This declaration includes the costs of repositioning firefighting resources to areas of high fire danger, fire suppression costs and vendor contracts for wildfire incidents through fire season 2023. Federal and Northwest Compact cooperating agencies sent aircraft and personnel in support of firefighting efforts. Anticipated invoices and obligations will exceed the current available balance (in the Fire Activity GF appropriation). The annual general fund allocation to the Fire Activity component is \$13,641,000 which is not adequate for the billings associated with the resources provided. These invoices and obligations are for direct fire suppression assistance to the State of Alaska for the CY23/FY24 season. Not fulfilling these financial obligations in a timely manner will result in the lack of support in the future which will have a negative impact on the Division's ability to protect the State of Alaska. Areas of concern are the Central and Eastern Interior, the Yukon Flats, Tanana Valley and Copper River Basin.

Many of the fires that occurred in the CY23 season and required suppression efforts were within the 90.2 million acres of land in State of Alaska's jurisdiction and fiscal responsibility. Due to the State's fiscal responsibility of fire suppression expenses, Fire Activity federal authority cannot be used for these costs. However, when applicable, the Division of Forestry & Fire Protection applies for federal support through FEMA's Fire Management Assistance Grants (FMAG) for specific incidents. As of August 9, 2023, DOF has been approved for the Lost Horse Creek incident as an FMAG fire. The state will be reimbursed for 75% of suppression costs, which will result in approximately \$15,000,000 of cost recovery for the state. Despite this federal assistance for the Lost Horse Creek Fire, our financial obligations will still exceed our current available balance.



Although the 2023 fire season had a slow start, interior Alaska was abnormally dry for July. The last week of July saw high temperatures with numerous lightning ignitions. Over 40,000 ground strikes struck the Interior in 5 days, causing 115 ignitions. While most seasons have seen wetting rains by this time, fire danger remained elevated with weeks of no significant precipitation and sustained lightning activity. Since mid-August, multiple days of wetting rain adding up to more than one inch will be needed for lasting relief.



Below were the most significant wildfires in state fiscal responsibility:

Anderson Complex (#899) – [50,830 acres] Anderson-Clear area. Due to wetting rain, high relative humidity, and cloud cover fire behavior in the complex was minimal. A community meeting will be held tonight in Anderson and evacuation levels remain in place from the [Denali Borough](#). **(250 personnel)**

Lost Horse Creek (#296) - [8,924 acres] North of Old Murphy Dome Road, 3.5 miles east of Mile 18 Elliot Highway. Potential for burning of the fire diminished as moisture moved into the area yesterday. Crews continue working to keep the fire north of the Haystack subdivision and east of the improvements along the Elliott Highway. Evacuation levels remain in place from the [Fairbanks North Star Borough](#). **(238 Personnel)**

Pogo Mine Road (#191)– [42,000 acres] 9 miles down Pogo Road. With the moderated weather personnel were able to go direct on the west flank of the fire. Dozers were utilized on the southern and eastern edges and DOF personnel continue hose lay around the incident. **(32 personnel)**


McCoy Creek (#201) – [13,402 acres] River mile 29, Salcha River. The fire area did not receive measurable precipitation yesterday. Union Hotshots went direct on the east end of the fire, smokejumpers did structure assessment from 14.5 mi of Salcha up to mile 42, and other crews completed mop up behind structures. Evacuation levels remain in place from the [Fairbanks North Star Borough](#). **(154 personnel)**

FY2023 Fire Activity Declaration Authorization Request for General Fund

	<u>General Funds</u>	
Auto – AB	(13,641,000)	
Prior Declaration:		
Total Budgeted Amount:	(13,641,000)	
Spent and encumbered as of 8/30/2023	12,433,629	
Current Authorization Remaining	1,207,371	
Pending Transactions:		
Current estimation of outstanding GF fire charges through August 30, 2023	62,140,718	
Estimated Current Balance:	(60,933,347)	
Declaration Request:	61,000,000	Rounded

Line-Item Breakout	
1000	5,000,000
2000	2,500,000
3000	40,000,000
4000	11,000,000
5000	2,500,000
	61,000,000

BGE70 240001121
BGR71 240000618


Theresa Cross
09/05/2023

Support Services Director Date

Division of Forestry & Fire Protection 2023 Fire Cost Summary

State Fiscal Year 2023 (7/1/2022 - 6/30/2023)

BUDGET:	State GF	Reimbursable	TOTAL
Initial FY23 Authorized Budget	13,641,000	25,460,400	37,601,400
Supplemental	8,000,000	-	8,000,000
Declarations	50,000,000		50,000,000
TOTAL AUTHORIZED FY23 BUDGET	71,641,000	25,460,400	95,601,400
EXPENDITURES:			
Actual expenses from July 1, 2022 to December 31, 2022	65,121,905	4,715,681	69,837,586
Actual expenses from January 1, 2023 to June 30, 2023	(14,030,728)	15,881,619	1,850,891
TOTAL (Actual) EXPENSE for FY2023	51,091,177	20,597,301	71,688,478
EXPENDITURE:			
Estimated Remaining expenses FY23 from January 1, 2023 to June 30, 2023 (Estimated fire costs minus existing payables)	13,924,647	3,544,754	17,469,401
TOTAL (Estimated) EXPENSE for FY2023	13,924,647	3,544,754	17,469,401
BUDGET BALANCE	6,625,176	1,318,345	6,443,522

Calendar Year 2023 (1/1/2023 - 12/31/2023)

BUDGET:	State GF	Reimbursable	TOTAL
FY23 Amended Authorized Budget (1st half of CY, 1/1/23 - 6/30/2023)	6,625,176	1,318,345	6,443,522
FY24 Initial Authorized Budget (2nd half, 7/1/23 - 12/31/2023) (FY24 IRIS Allocation)	13,641,000	25,460,400	37,601,400
TOTAL ESTIMATED CY2023 BUDGET:	20,266,176	26,778,745	44,044,922
EXPENDITURE:			
Estimated Remaining expenses FY23 from January 1, 2023 to June 30, 2023 (Estimated fire costs minus existing payables)	13,924,647	3,544,754	17,469,401
Estimated expenses FY24 from July 1, 2023 to December 31, 2023 (Estimated fire costs)	62,140,718	3,439,144	65,579,863
ESTIMATED EXPENSES for CY2023	76,065,365	6,983,898	83,049,263
PROJECTED BALANCE (thru 12/31/2023)	(55,515,542)	(2,120,799)	(59,136,341)

State Fiscal Year 2024 (7/1/2023 - 6/30/2024)

BUDGET:	State GF	Reimbursable	TOTAL
Initial Authorized Budget (FY24 IRIS Allocations)	13,641,000	25,460,400	37,601,400
TOTAL AUTHORIZED FY2024 BUDGET:	13,641,000	25,460,400	37,601,400
EXPENDITURE:			
Actual expenses FY24 from July 1, 2023 to December 31, 2023 (IRIS exps as of 8/30/23)	12,433,629	254,444	12,688,073
Actual expenses FY24 from January 1, 2024 to June 30, 2024	-	-	-
TOTAL (Actual) EXPENSES for FY2024	12,433,629	254,444	12,688,073
EXPENDITURE:			
Estimated expenses FY24 from July 1, 2023 to December 31, 2023 (Estimated fire costs)	62,140,718	3,439,144	65,579,863
Estimated expenses FY24 from January 1, 2024 to June 30, 2024	-	-	-
TOTAL ESTIMATED EXPENSES for FY2024	62,140,718	3,439,144	65,579,863
PROJECTED ESTIMATED BALANCE TO DATE (thru 08/31/2023)	(60,933,347)	21,766,811	(40,666,536)

BFY	Fund	Appr Group	Appr Type	Obj Group	Appr Unit	Obj Type	Current Budget <i>fx</i>	Pre-Encumbered	Encumbered	Accrued Expenses	Cash Expenses	Actual Expenses <i>fx</i>	Uncommitted <i>fx</i>	Unobligated <i>fx</i>	Ac
2024	1004	NLWO	NFSA	1000	NFSA01004	1000	\$3,373,200.00	\$0.00	\$0.00	\$0.00	\$3,484,167.86	\$3,484,167.86	(\$110,967.86)	(\$110,967.86)	Yes
2024	1004	NLWO	NFSA	2000	NFSA01004	2000	\$231,300.00	\$0.00	\$29,283.05	\$602.00	\$259,416.64	\$260,018.64	(\$58,001.69)	(\$58,001.69)	Yes
2024	1004	NLWO	NFSA	2000	NFSA01004	3000	\$8,608,900.00	\$0.00	\$4,563,662.20	\$601,367.62	\$1,961,661.52	\$2,563,029.14	\$1,482,208.66	\$1,482,208.66	Yes
2024	1004	NLWO	NFSA	2000	NFSA01004	4000	\$1,427,600.00	\$0.00	\$1,300,542.42	\$1,429.36	\$1,518,486.40	\$1,519,915.76	(\$1,392,858.18)	(\$1,392,858.18)	Yes
2024	1004	NLWO	NFSA	2000	NFSA01004	5000	\$0.00	\$0.00	\$0.00	\$0.00	\$4,737.98	\$4,737.98	(\$4,737.98)	(\$4,737.98)	Yes



LAWS OF ALASKA

2023

FIRST SPECIAL SESSION

Source

SCS CSHB 39(FIN) am S

Chapter No.

AN ACT

Making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; repealing appropriations; amending appropriations; making capital appropriations, supplemental appropriations, and reappropriations; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

1	Appropriation	General	Other
2	Allocations	Items	Funds
3			Funds

3 The amount allocated for Mining, Land and Water includes the unexpended and unobligated
4 balance on June 30, 2023, not to exceed \$5,000,000, of the receipts collected under AS
5 38.05.035(a)(5).

6 It is the intent of the legislature that the Department of Natural Resources shall provide a
7 report to the Co-Chairs of Finance and the Legislative Finance Division no later than
8 December 20, 2023 that describes: The amount of acreage that has not yet been conveyed to a
9 municipality or borough, as part of its land entitlement selections as described in state law; the
10 date each municipality or borough was legally granted the right to state lands; for each
11 municipality or borough, the amount of acreage specifically identified and selected but not yet
12 conveyed by the state; for each municipality or borough, the amount of time that has passed
13 since it identified some or all of the land selections currently pending with the Department of
14 Natural Resources; for each municipality or borough, the reason(s) the Department of Natural
15 Resources has not yet conveyed selected lands to that municipality or borough; the significant
16 hurdles, legal or otherwise, to completing conveyances and the amount of funding necessary
17 to complete all requested conveyances by 2026.

18 Forest Management &	9,484,600
19 Development	

20 The amount allocated for Forest Management and Development includes the unexpended and
21 unobligated balance on June 30, 2023, of the timber receipts account (AS 38.05.110).

22 Geological & Geophysical	11,673,200
23 Surveys	

24 The amount allocated for Geological & Geophysical Surveys includes the unexpended and
25 unobligated balance on June 30, 2023, of the receipts collected under AS 41.08.045.

26 Fire Suppression	25,931,000
27 Preparedness	

28 Fire Suppression Activity	18,601,400
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29 It is the intent of the legislature that the Department of Natural Resources, Division of
30 Forestry provide to the Co-Chairs of Finance and the Legislative Finance Division at the
31 conclusion of the calendar year 2023 fire season an estimate of supplemental funding needed
32 for the remainder of FY 2024. At the time of the Governor's FY 2024 supplemental budget
33 submittal, the Department should also provide to the Co-Chairs of Finance and the Legislative

1 been made that take effect in the fiscal year ending June 30, 2024, of the difference between
2 \$6,264,300,000 and the actual unrestricted general fund revenue collected in the fiscal year
3 ending June 30, 2024, not to exceed \$636,400,000, is appropriated as follows:

4 (1) 50 percent from the general fund to the dividend fund (AS 43.23.045(a)) to
5 pay a one-time energy relief payment as part of the permanent fund dividend and for
6 administrative and associated costs for the fiscal year ending June 30, 2025; and

7 (2) 50 percent from the general fund to the budget reserve fund (art. IX, sec.
8 17, Constitution of the State of Alaska).

9 (b) After the appropriations made in (a) of this section, the amount remaining, after all
10 appropriations have been made that take effect in the fiscal year ending June 30, 2024, of the
11 difference between \$6,900,700,000 and the actual unrestricted general fund revenue collected
12 in the fiscal year ending June 30, 2024, is appropriated from the general fund to the budget
13 reserve fund (art. IX, sec. 17, Constitution of the State of Alaska).

14 * **Sec. 80.** (a) Section 1, ch. 16, SLA 2013, page 76, lines 8 - 12, is repealed.

15 (b) Section 11, ch. 11, SLA 2022, page 111, lines 6 - 7, is repealed.

16 (c) Section 65(d), ch. 11, SLA 2022, is repealed.

17 * **Sec. 81.** LAPSE OF APPROPRIATIONS. (a) The appropriations made in secs. 14 - 19,
18 33(2), and 34 - 43 of this Act are for capital projects and lapse under AS 37.25.020.

19 (b) The appropriations made in sec. 2, page 43, lines 5 - 8 (fund capitalization, public
20 education fund - \$182,397,800), and secs. 29, 33(1), 50, 56(a), (b), and (d) - (f), 59(c) - (e),
21 67(a), 70(b) and (c), 72, 73(a) - (k) and (n) - (q), 74(a) - (c), and 79(a)(1) of this Act are for
22 the capitalization of funds and do not lapse.

23 (c) A grant awarded in this Act to a named recipient under AS 37.05.316 is for a
24 capital project and lapses under AS 37.05.316 unless designated for a specific fiscal year.

25 * **Sec. 82.** RETROACTIVITY. (a) The appropriations made in sec. 1 of this Act that
26 appropriate either the unexpended and unobligated balance of specific fiscal year 2023
27 program receipts or the unexpended and unobligated balance on June 30, 2023, of a specified
28 account are retroactive to June 30, 2023, solely for the purpose of carrying forward a prior
29 fiscal year balance.

30 (b) Sections 8 - 13, 17 - 19, 26, 27(a), 35, 36, 37(a) and (b), 39, 40(a), 41(a) and (b),
31 42(a) and (b), 43 - 46, 48(c) and (d), 50, and 80(a) and (b) of this Act are retroactive to

1 April 16, 2023.

2 (c) Sections 20 - 25, 27(b), 28 - 32, 47, 48(a) and (b), 49, 62(b), 71(d), 73(d) - (g), and
3 80(c) of this Act are retroactive to June 30, 2023.

4 (d) Sections 1 - 4, 14 - 16, 33, 34, 37(c), 38, 40(b) and (c), 41(c), 42(c), 51 - 61, 62(a)
5 and (c) - (h), 63 - 66, 67(a), 68 - 70, 71(a) - (c) and (e), 72, 73(a) - (c) and (h) - (q), 74 - 78,
6 81, and 83 of this Act are retroactive to July 1, 2023.

7 * **Sec. 83.** CONTINGENCIES. (a) The appropriations made in sec. 1 of this Act for the
8 payment of a bonus to an employee in the executive branch of the state government who is a
9 member of a collective bargaining unit established under the authority of AS 23.40.070 -
10 23.40.260 (Public Employment Relations Act) but for which the state and applicable
11 bargaining unit of the employee have not yet entered into a letter of agreement under
12 AS 23.40.070 - 23.40.260 are contingent on the following:

13 (1) the state and the applicable bargaining unit of the employee entering into a
14 letter of agreement under AS 23.40.070 - 23.40.260 for the bonus; and

15 (2) the Department of Administration, division of personnel and labor
16 relations, providing a copy of the letter of agreement described in (1) of this subsection to the
17 legislative finance division in electronic form not later than 30 days after the department
18 enters into the letter of agreement.

19 (b) The appropriation made in sec. 40(c) of this Act is contingent on passage by the
20 Thirty-Third Alaska State Legislature and enactment into law of a version of Senate Bill 48 or
21 a similar bill.

22 (c) The appropriation made in sec. 41(c) of this Act is contingent on passage by the
23 Thirty-Third Alaska State Legislature and enactment into law of a version of Senate Bill 67 or
24 a similar bill.

25 (d) The appropriation made in sec. 42(c) of this Act is contingent on passage by the
26 Thirty-Third Alaska State Legislature and enactment into law of a version of Senate Bill 138
27 or a similar bill.

28 (e) The appropriation made in sec. 61(e) of this Act is contingent on the failure of a
29 version of Senate Bill 52 or a similar bill increasing the base student allocation to be passed
30 by the Thirty-Third Alaska State Legislature in the First Regular Session and enacted into
31 law.

1 * **Sec. 84.** Sections 8 - 13, 17 - 19, 26, 27(a), 35, 36, 37(a) and (b), 39, 40(a), 41(a) and (b),
2 42(a) and (b), 43 - 46, 48(c) and (d), 50, 80(a) and (b), and 82 of this Act take effect
3 immediately under AS 01.10.070(c).

4 * **Sec. 85.** Sections 20 - 25, 27(b), 28 - 32, 47, 48(a) and (b), 49, 62(b), 71(d), 73(d) - (g),
5 and 80(c) of this Act take effect June 30, 2023.

6 * **Sec. 86.** Sections 5 - 7 and 67(b) of this Act take effect January 1, 2024.

7 * **Sec. 87.** Section 79 of this Act takes effect June 30, 2024.

8 * **Sec. 88.** Except as provided in secs. 84 - 87 of this Act, this Act takes effect July 1, 2023.

DEPARTMENT OF PUBLIC SAFETY

Alaska State Troopers

Operating/Capital Budget (CCS HB 281(brf sup maj fld H)) and Mental Health (CCS HB 282)

It is the intent of the legislature that the Department of Public Safety increase efforts to fill vacant positions within the Alaska State Troopers appropriation and reduce overtime to better manage within the authorized budget. The Department should provide two reports to the Co-Chairs of Finance and the Legislative Finance Division, the first no later than December 20, 2022, and the second no later than July 1, 2023, that detail monthly hiring and attrition, as well as premium and overtime costs by category, a comparison of actual outlays to budgeted amounts, a graph showing actual overtime outlays versus budgeted for the past 5 fiscal years, and a description of any contributing factors to the overtime amounts and actions taken to address those factors from the start of the fiscal year to the month preceding the due date of the report.

The following information is provided in compliance with the above legislative intent language.

Monthly Hiring and Attrition Counts

Note: Monthly hiring and attrition counts will be provided as soon as data can be validated. Initial data missed some important hiring information.

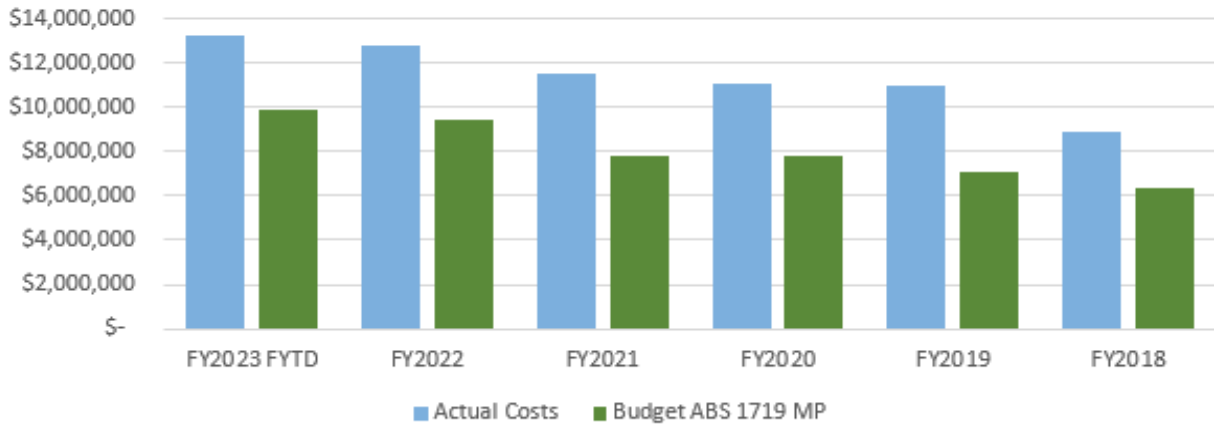
Annual Premium and Overtime Costs by Category (all fund sources)

Cost Category	FY2023 FYTD	FY2022 Includes Ratification \$	FY2021	FY2020	FY2019	FY2018
Additional Regular	\$271,294	\$179,330	\$291,103	\$228,339	\$187,734	\$135,512
Allowances to Employees	\$301,492	\$314,959	\$339,723	\$363,921	\$352,232	\$354,326
Other Premium Pay	\$3,832,395	\$3,874,783	\$3,371,845	\$3,322,951	\$2,989,839	\$2,631,155
Overtime	\$7,560,285	\$6,962,092	\$6,070,704	\$5,720,731	\$6,003,878	\$4,419,793
Rural Relocation Expense Offset	\$204,500	\$186,500	\$159,000	\$170,000	\$178,000	\$187,000
Sea Duty Pay	\$589,579	\$767,045	\$761,242	\$769,729	\$823,969	\$750,553
Shift Differential	\$528,205	\$502,597	\$529,579	\$485,664	\$491,589	\$434,421
Actual Costs	\$13,287,750	\$12,787,306	\$11,523,196	\$11,061,335	\$11,027,241	\$8,912,760

Budget ABS 1719 MP	\$9,932,614	\$9,469,865	\$7,849,252	\$7,849,252	\$7,072,327	\$6,393,376
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Difference	\$3,355,136	\$3,317,441	\$3,673,944	\$3,212,083	\$3,954,914	\$2,519,384
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Budgeted Versus Actual Overtime Costs
All Fund Sources



Premium Pay: The Department of Public Safety utilizes premium pay to comply with contractual requirements for pay for employees. There are a variety of premium pay designations for types of services by employees. Examples include field training, shift differential, stand by, pilot flight differential, special emergency action team, assignment incentive, and recall pay.

Overtime Pay: Response occurrences to public safety events throughout Alaska are often unpredictable. Overtime is utilized by troopers for case investigation, court duties on days off, shift coverage, and call outs for afterhours emergencies. Sergeants and troopers are by far the biggest contributors to overtime stemmed from requirements to meet the mission of the department and balancing vacancies. Extreme short staffing among emergency services dispatchers has created a need for overtime. Fiscal year to date, Emergency Services Dispatchers have logged 8,473 hours of overtime to provide around the clock dispatch services.

As a statewide law enforcement agency responsible for emergencies outside of municipal areas, the department responds to large events that require intense manpower response for prolonged periods. These situations are unpredictable and result in overtime for each event.

It is inevitable Alaska State Trooper staff, civilian and commissioned, will deal with fatigue due to overtime, on-call, and exposure to stressful situations. The department continues to identify areas that will assist in reducing overtime, such as:

1. Bolstering recruitment and retention - The department is committed to refining and enhancing current recruitment and retention efforts to ensure that there is sufficient staffing to meet demand. A unit is dedicated to recruiting and processing trooper recruits, with a comprehensive hiring and screening process. A hiring incentive bonus program has helped recruit lateral transfers into Alaska. The department believes that incentives such as move reimbursement, state housing, a take home car, and a robust wellness program have contributed to trooper retention. Once staffing levels improve, less overtime will be utilized.
2. Troopers and supervisors routinely examine if overtime is necessary to complete the call for service or a specific task. Examples include passing a call to another on shift trooper, working

DEPARTMENT OF PUBLIC SAFETY

with the department of law to minimize court appearances while on personal leave or days off, and maximizing efficiency through teamwork and sharing of responsibilities.

3. The department continues to explore and implement efficiencies that take work off troopers. Examples include technology upgrades for digital evidence and the addition of new support positions for FY2024.
4. The department is committed to using data and reporting to manage staffing and lessen the demand for overtime wherever possible. Long work hours cause fatigue, injuries, burnout, and illness. It is important that supervisors have the information that they need to effectively manage overtime. Timely reports would help in the monitoring of excessive overtime. The department will address overtime through wellness campaign messaging to all staff.
5. The department's wellness unit has been tasked with addressing overtime from the perspective of maintaining and sustaining healthy employees. The U.S. Department of Justice provides officer safety and wellness resources such as articles, podcasts, infographics, trainings, and webinars.
6. To address the impact of overtime and fatigue on troopers, and to ensure that staff can be at peak performance in dangerous situations, the department is evaluating the types of calls that require immediate response verses calls that can wait for a trooper to return to their regularly scheduled shift. Formal direction to supervisors regarding immediate and delayed response times is forthcoming.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Transportation and
Public Facilities

STATEWIDE ADMINISTRATIVE SERVICES

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January 3, 2024

The Honorable Neal Foster
Co-Chair, House Finance Committee
State Capitol, Room 511
Juneau, AK 99801

Dear Representative Foster:

This letter is in reference to legislative intent and to inform the House Finance Committee of projects that the Department of Transportation and Public Facilities has programmed with fiscal year 2024 contingency appropriations for the quarter ending December 31, 2023.

T11Y21002 - Statewide Rural Airport System Overruns & Other Projects allocation

APPR	Program Group	BQ40 Program Code	BQ40 Program Name	Sum of BQ40 CA Phase Reimbursable Current Budget
T11Y21002	CR25	CFAPT00817	Nunapitchuk Airport (16A) SRE	25,000.00
	NR25	NFAPT00371	Marshall Airport Improvements	13,849,615.00
		Z625970000	Chalkyitsik Airport Improvements	10,783,969.00
	SR25	SFAPT00559	SIT Airport Terminal Modification Phase 1A	4,300,000.00
T11Y21002	Total			28,958,584.00

T17E21002 - Surface Transportation Overruns & Other Projects allocation has not been used.

If you have any further questions, please feel free to contact me at 465-2956.

Sincerely,

Dom Pannone
Administrative Services Director

cc: The Honorable Ryan Anderson, Commissioner Designee, DOT&PF
Katherine Keith, Deputy Commissioner, DOT&PF
Andy Mills, Special Assistant to the Commissioner, DOT&PF