

June 2012

# KACHEMAK BAY FERRY

Federally Funded  
Ferry Was  
Constructed with  
Limited Oversight and  
Faces Future  
Operating Challenges



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## Why GAO Did This Study

In 2002, the Seldovia Village Tribe proposed building a year-round ferry that would serve several isolated communities on the south shore of Alaska's Kachemak Bay. Federal funding for a ferry was subsequently included in the Department of Transportation's appropriations, transferred to the Department of the Interior, and then provided to the tribe through agreements under the Indian Self-Determination and Education Assistance Act, as amended. The tribe's ferry began operating in May 2010, amid community concerns about significant changes in the ferry's design and operation from the original proposal and its effect on existing private tour boat businesses.

GAO was asked to examine (1) the history of the Kachemak Bay ferry project; (2) the roles of federal agencies in funding and overseeing the ferry project and associated dock projects; and (3) concerns and challenges, if any, regarding the continued operation of the ferry. GAO analyzed documents and interviewed federal agency officials and tribal and community representatives.

## What GAO Recommends

GAO recommends that the Departments of the Interior and Transportation collaborate to determine the disposition of sale proceeds in the event the ferry is ever sold. Interior and Transportation agreed to implement GAO's recommendation. The Seldovia Village Tribe did not comment on GAO's recommendation but expressed a number of concerns which are discussed more fully in the report.

## KACHEMAK BAY FERRY

### Federally Funded Ferry Was Constructed with Limited Oversight and Faces Future Operating Challenges

## What GAO Found

In examining the history of the Kachemak Bay ferry project, GAO found that the Seldovia Village Tribe's federally funded ferry differs significantly from its original proposal. In 2002, the tribe proposed a vehicle and passenger ferry with year-round service between Homer, Alaska, on the north shore of Kachemak Bay and multiple southern ports, including the city of Seldovia. Federal funding was appropriated in fiscal years 2004, 2005, and 2006, from which about \$8.5 million was provided to the tribe for a ferry. The state also provided \$1.5 million. The tribe subsequently built a ferry and dock facilities that cost about \$8.8 million, but the project was significantly more limited in scope and service than the original proposal. Specifically, the ferry, known as the *Kachemak Voyager* began operating in May 2010, but it only provided passenger and light-freight service between Homer and Seldovia and only during the summer months.

Federal agencies provided funding and limited oversight but had no decision-making role for the ferry project. After the Department of Transportation (DOT) received the funds for the ferry in its fiscal years 2004, 2005, and 2006 annual appropriations, it transferred these funds to the Department of the Interior (Interior). As a result of these transfers, DOT provided no oversight for the ferry project. Interior provided the funding to the tribe through agreements under the Indian Self-Determination and Education Assistance Act, as amended, that generally authorize tribes to use funds to plan and administer programs with little involvement by the federal government. The tribe provided Interior with quarterly project status reports, but Interior did not provide guidance to the tribe in response to changes in the project. Following a 2009 Inspector General investigation, Interior developed new procedures to preclude certain transportation projects like the tribe's ferry from being funded through these agreements in the future. DOT's Federal Transit Administration (FTA) also awarded the tribe two grants in 2010, totaling \$675,000, and also provided limited oversight over the grants, according to agency officials.

A number of concerns and challenges exist regarding future operations of the ferry and its financial sustainability. First, local private tour boat operators are concerned that competition from the ferry has and will continue to negatively affect their businesses. In particular, they noted that, because of federal grants, the ferry has been able to offer lower fares that the private operators cannot match. Second, it is unlikely that the ferry will become profitable as expected by 2013, largely because of lower passenger volume and higher operating costs than projected. Using actual passenger and cost data from 2010 and 2011, GAO determined that losses will most likely continue to grow, which will make the ferry financially unsustainable without further government subsidies. Third, FTA was concerned that the tribe had not complied with its grant requirements. The tribe needed prior FTA approval before using the ferry for nonpublic transportation activities, such as sightseeing, but did not obtain approval. The tribe took corrective actions. Finally, should the tribe choose to sell the ferry, it is unclear what statutory provisions govern the sale, and it is therefore uncertain whether a portion of the proceeds must be credited to the federal-aid highway fund or if the awarding agency has a right to those proceeds.

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## Abbreviations

BIA	Bureau of Indian Affairs
DOT	Department of Transportation
FTA	Federal Transit Administration

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United States Government Accountability Office  
Washington, DC 20548

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June 11, 2012

The Honorable Don Young  
Chairman  
Subcommittee on Indian and Alaska Native Affairs  
Committee on Natural Resources  
House of Representatives

The Honorable Lisa Murkowski  
United States Senate

Alaska's Kachemak Bay lies on the southwestern edge of the Kenai Peninsula, roughly 220 miles south of Anchorage by road. The city of Homer, located on the bay's north shore, is the most populated community along Kachemak Bay, with roughly 5,000 residents. Situated at the end of Alaska's state highway system, Homer is accessible by land, air, and water. In contrast, across the bay on the south shore are several smaller communities with a combined population of about 900, including the city of Seldovia, that can only be reached by air or water. Seldovia is home to one of Alaska's federally recognized Native entities—the Seldovia Village Tribe. A commercial fishing village of roughly 250 people, Seldovia is also a summer home and tourist destination, with its population and number of visitors decreasing significantly outside of the summer months. Private air services and tour boats, as well as water taxis and private vessels, are the primary means of daily transportation between Homer and Seldovia and the other south shore communities. The Alaska Marine Highway System's passenger, vehicle, and freight-carrying ferries also serve Homer and Seldovia but not on a daily basis. Frequency of service for all transportation options can be affected by weather and maintenance demands, particularly in the harsh winter months.

The limited transportation options for the communities on the isolated southern shore of Kachemak Bay raised concerns among residents about the communities' long-term sustainability and economic development. To address these concerns, in 2002 the tribe proposed a project to build a year-round, high-speed car and passenger ferry serving multiple communities in Alaska's Kachemak Bay, with associated dock and road upgrades. Funding for a ferry that would serve four Kachemak Bay communities was included in the Department of Transportation's (DOT) fiscal years 2004, 2005, and 2006 appropriations, which DOT transferred to the Department of the Interior. Interior subsequently provided about

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\$8.5 million of this funding to the tribe. In addition, the tribe received some funding for the ferry from the state of Alaska and additional federal funding from DOT's Federal Transit Administration (FTA). The tribe's ferry—the *Kachemak Voyager*—began operating in May 2010, amid community concerns about significant changes in the ferry's design and operation from the original 2002 proposal and its effect on existing private tour boat businesses.

In light of questions about the ferry project, you asked us to examine (1) the history of the Kachemak Bay ferry project; (2) the roles of federal agencies in funding and overseeing the ferry project and associated dock facility projects; and (3) concerns and challenges, if any, regarding the continued operation of the ferry. In addition, you asked our Office of the General Counsel to issue a legal opinion regarding appropriations enacted for a ferry. This legal opinion is provided in appendix I.

To examine the history of the Kachemak Bay ferry project, we reviewed and analyzed ferry project proposal, planning, and construction documentation from local and tribal sources as well as from private tour boat operators, and we interviewed individuals with knowledge of the project. We reviewed and analyzed budget and expenditure documentation and interviewed tribal officials to determine how and when ferry project funding was spent, including for the Homer and Seldovia docks and ferry operations. We visited Homer and Seldovia, Alaska, to observe firsthand the ferry, ferry terminal, and docks. To examine the roles that federal agencies played in funding and overseeing the ferry project and associated dock projects, we reviewed appropriations and relevant documentation from DOT's Federal Highway Administration and interviewed officials. We reviewed and analyzed project files and relevant guidance from Interior's Bureau of Indian Affairs (BIA) and Office of Self-Governance and interviewed officials to determine the roles the agencies took in overseeing the project. We also interviewed officials from the U.S. Army Corps of Engineers and reviewed and analyzed documentation about their role in providing permits for the ferry dock projects. We reviewed and analyzed documentation and interviewed officials from FTA to determine the agency's role in providing grant funding to and oversight of the Homer dock upgrade and ferry operations. We reviewed and analyzed reports from Interior's Office of Inspector General to identify past concerns raised about oversight of the ferry project and how those issues were resolved.

To examine any concerns and challenges regarding the ferry's continued operation, we reviewed and analyzed documentation from federal, state,

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local, and tribal sources and from private tour boat operators and interviewed officials and tribal representatives knowledgeable about current and planned ferry operations. We analyzed documentation of operations for the *Kachemak Voyager* and other boats serving Kachemak Bay to determine the ferry's current status and concerns raised over its effect on already-existing services. We evaluated the extent to which the ferry was on course to becoming self-sustaining by reestimating the ferry's financial projections for 2010 through 2013 from the tribe's *2009 Feasibility Summary Report*, using actual operating data from 2010 and 2011 provided by the tribe. For 2010 and 2011, we replaced estimated values with actual values for (1) the number of trips, (2) passenger count per trip, (3) fuel consumption, and (4) fuel costs. For all other parameters we analyzed, such as ticket prices, crew wages, or Homer terminal costs, we used the estimated values in the 2009 report. To develop projections for 2012 to 2013, we assumed that (1) the number of passengers would grow at the same rate as from 2010 to 2011, (2) the number of one-way trips per day would remain the same as in 2011, (3) fuel consumption per hour for the ferry would remain at the 2011 level, and (4) cost per gallon of fuel would grow at the same rate as from 2010 to 2011. We also assessed the tribe's compliance with FTA's grant requirements by reviewing and analyzing FTA grant documentation and reports submitted by the tribe and interviewing agency officials. We also gathered documentation and interviewed DOT officials about where the proceeds from a potential sale of the ferry should be credited and what amount should be credited if the ferry were deemed to be not self-sustaining and was sold by the tribe.

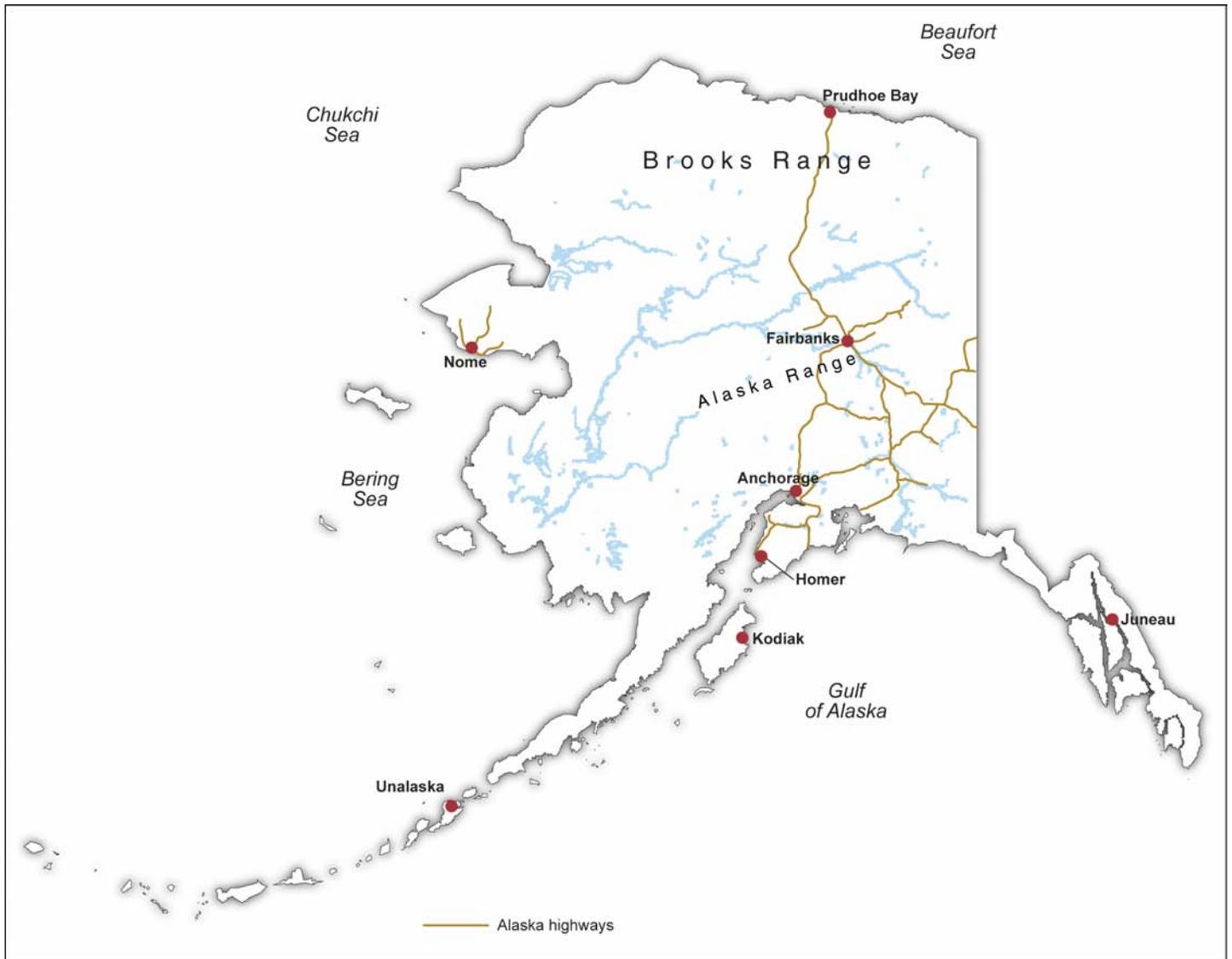
We conducted this performance audit from July 2011 to June 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

Alaska—encompassing 586,412 square miles—is the largest state in the union, one-fifth the size of the lower 48 contiguous states combined. Despite its size, Alaska is one of the least populated states, with only about 700,000 people, nearly half of whom live in the three largest cities of Anchorage, Fairbanks, and the capital of Juneau. The remainder of the population lives in smaller, often isolated communities scattered throughout the state, and access to these communities can be difficult, not just because of the state’s size but also because of its rugged terrain and harsh winter weather. As shown in figure 1, Alaska’s highway system, operated by the Alaska Department of Transportation and Public Facilities, connects some of the larger population centers by road, from Prudhoe Bay in the far north through Fairbanks and Anchorage to Homer on the Kenai Peninsula, where the highway ends on the north shore of Kachemak Bay.

Figure 1: State of Alaska, with Selected Cities and Highway System



Source: Pitney Bowes Business Insight (map).

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As shown in figure 2, communities located on the south side of the bay—including Seldovia, Halibut Cove, Jakolof Bay, Nanwalek, and Port Graham—are accessible only by water or air; they are served largely by private boat and airplane transportation businesses. The Alaska Department of Transportation and Public Facilities operates the Alaska Marine Highway System, a fleet of 11 ships that transports passengers, vehicles, and freight to more than 30 ports along a 3,500 mile route from Bellingham, Washington, to Unalaska in the Aleutian chain of islands. One of the system's ferries, the *Tustumena*, provides regularly scheduled direct route service between Homer and Seldovia, generally visiting Seldovia twice per week in the summer and once per week in the winter, when resident and tourist demand is lower. Severe weather, rough water conditions, and scheduled maintenance for the state ferry can also affect access to Seldovia during the winter months.

Figure 2: Kachemak Bay and Surrounding Communities



Sources: GAO and Google Maps.

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The city of Seldovia is home to the federally recognized Seldovia Village Tribe. Many of the tribe's approximately 470 members live in Seldovia, surrounding lands, and nearby south shore communities, as well as in Homer across the bay. The tribe's leadership and headquarters are located in Seldovia, and the tribe operates businesses and provides services to its members and the surrounding communities. Among other things, the tribe owns and operates (1) medical and dental centers in Seldovia and Homer, (2) a company that makes and sells local wild berry products, (3) a museum and visitor center, (4) a conference center in Seldovia, and (5) the *Kachemak Voyager* ferry. Pursuant to the Alaska Native Claims Settlement Act, the Seldovia Native Association, Inc., was incorporated under state law as a village corporation in 1972.<sup>1</sup>

Under the Indian Self-Determination and Education Assistance Act, as amended, federally recognized Indian tribes can enter into self-determination contracts and self-governance compacts with the federal government to take over administration of certain federal programs previously administered by the federal government on their behalf.<sup>2</sup> Self-determination contracts under the act allow tribes to contract for the administration of programs for the benefit of Indians that would otherwise be managed by Interior's BIA on their behalf. Having contracted a program, a tribe assumes responsibility for managing the program's day-to-day operations, such as hiring program personnel, conducting program activities and delivering program services, and establishing and maintaining administrative and accounting systems. BIA representatives provide technical oversight to ensure that the tribe meets contract terms. Self-governance compacts under the act transfer to tribes the administration of programs for tribes and Indians administered by Interior and provide the tribes with some flexibility in program administration. The terms for administering programs under self-governance compacts are largely established in negotiations between the tribe and Interior's Office of Self-Governance, but they generally allow for reduced oversight by Interior, even though the compacts are subject to the act's requirements and implementing regulations. The Director of Interior's Office of Self-

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<sup>1</sup>The Alaska Native Claims Settlement Act, enacted in December 1971, authorized Alaska Native villages to establish for-profit or nonprofit corporations, which were vehicles for distributing the settlement's land and monetary benefits to Alaska Natives, who are shareholders in the corporations. Pub. L. No. 92-203. 85 Stat. 688 (1971), *codified as amended at* 43 U.S.C. §§ 1601-1629h.

<sup>2</sup>Pub. L. No. 93-638 (1975), *codified as amended at* 25 U.S.C. §§ 450 to 458ddd-2.

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Governance enters into self-governance compacts with tribes that have requested to do so by tribal resolution and that meet specific planning and financial management criteria.

For both self-determination contracts and self-governance compacts, the Secretary of the Interior negotiates and enters into written annual funding agreements with the governing body of each participating tribe, which specifies the Interior program that the tribe will administer, the tribe's and Interior's obligations, and the funds being transferred to the tribe. Subject to the terms of the agreement and purpose for which the funds were appropriated, the tribes are also authorized to redesign programs, as well as to reprogram or reallocate funds provided under self-governance compacts and their annual funding agreements. In this report when we refer to the tribe's self-determination contract or self-governance compact, we are referring to the contract or compact along with its associated annual funding agreements.

BIA is responsible for implementing federal Indian policy and administering the federal trust responsibility for both American Indians and Alaska Natives. BIA assists tribes in various ways, such as providing social services; law enforcement; and developing and maintaining infrastructure, including transportation. BIA either provides services directly or provides transportation funding to tribes through self-determination contracts, self-governance compacts, or other agreements. BIA's Division of Transportation and DOT's Federal Highway Administration's Federal Lands Highway Office jointly administer the Indian Reservation Roads Program, in accordance with an interagency agreement, to provide funding for tribes to plan, design, construct, and maintain transportation projects. The program's definition of transportation facilities includes public roads, ferry routes, marine terminals, and transit facilities, but the program only includes one ferry operated by a tribe in eastern Washington under a self-determination contract. Under the program, tribes submit tribal transportation improvement programs or a priority list of tribal transportation projects to BIA, which BIA uses to develop the Indian Reservation Roads transportation improvement program. After DOT's Federal Highway Administration approves the transportation improvement program, it is implemented by the tribes or BIA. DOT's Tribal Transit Program, administered by FTA, also provides grants to tribes to construct and operate tribal transportation projects. If a planned project, such as

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building or upgrading a dock, requires excavation in navigable waters of the United States, among other things, the tribe must obtain a River and Harbors Act section 10 permit from the U.S. Army Corps of Engineers.<sup>3</sup>

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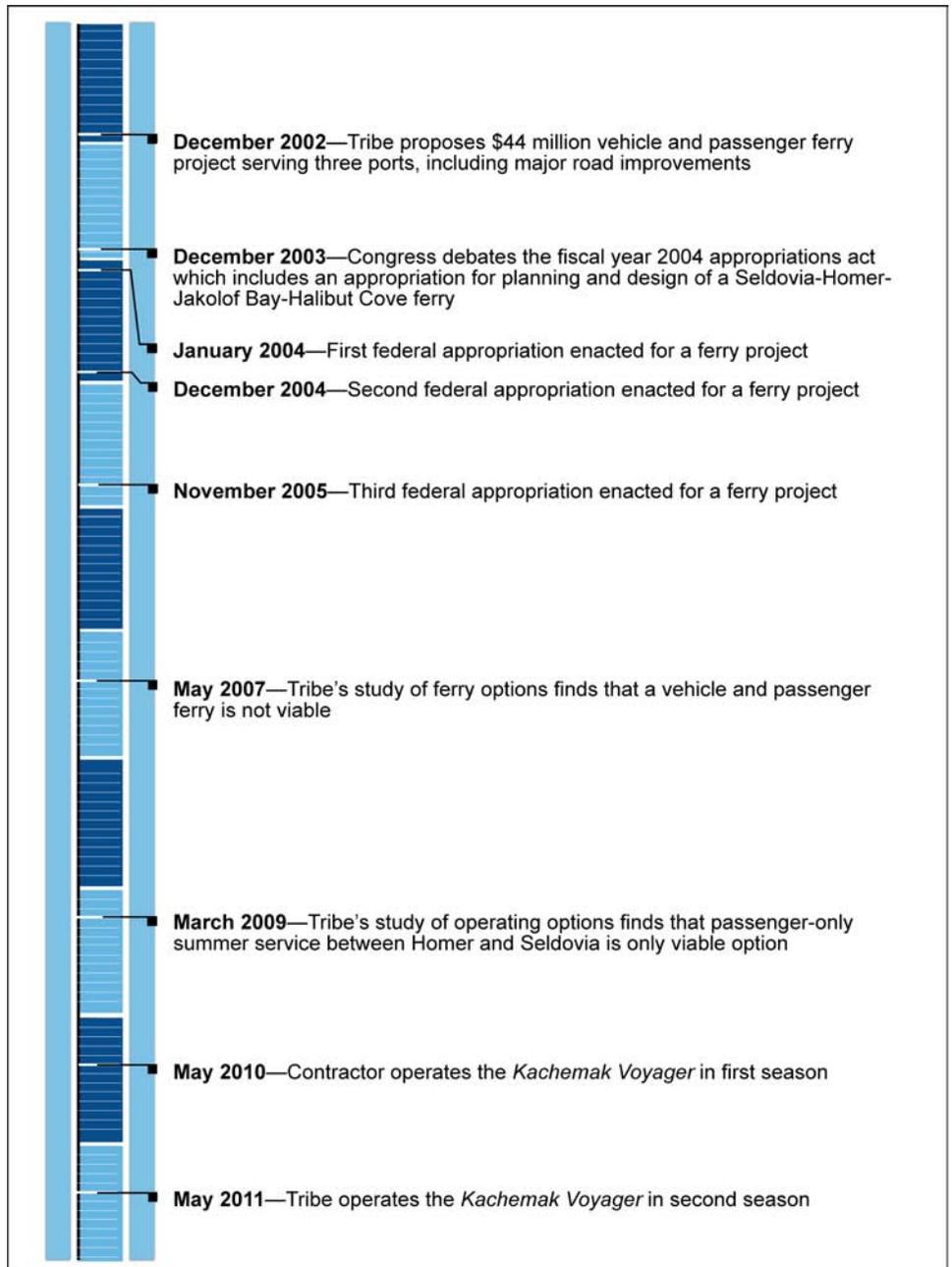
## The Seldovia Village Tribe's Federally Funded Ferry Differs Significantly from Its Original Proposal

According to historical proposal, planning, and construction documents, the ferry currently operated by the tribe—the *Kachemak Voyager*—differs significantly from the tribe's original proposal for a year-round vehicle, freight, and passenger ferry to serve Homer and several of the isolated communities along the south shore of Kachemak Bay. The ferry project underwent significant changes from 2002 to 2009, as shown in figure 3, which resulted in construction of a seasonal ferry capable of transporting passengers and light freight and serving regularly scheduled routes to Homer and Seldovia, at a cost of about \$8.8 million.

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<sup>3</sup>33 U.S.C. § 403.

**Figure 3: Timeline of Key Events for the Kachemak Bay Ferry Project**



Source: GAO.

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## The Tribe Initially Proposed a Vehicle and Passenger Ferry Serving Multiple Ports Year-Round

To encourage economic development on the south side of Kachemak Bay and provide greater access to Alaska's state highway system in Homer for south shore communities, after conducting community meetings to determine local needs, the tribe in 2002 began distributing a project summary to federal, state, and local officials and to residents. This summary included a plan for improving existing roads, constructing new roadways, and providing year-round ferry service to the south Kachemak Bay communities. The tribe-sponsored plan was to be implemented in multiple phases and included the following features:

- Twenty-six and a half miles of road reconstruction and resurfacing and 1 mile of new road construction, providing vehicle access between isolated communities and to recreational opportunities in the Kachemak Bay State Wilderness.
- Daily passenger and vehicle ferry service between Homer, Seldovia (via Jakolof Bay), and Halibut Cove (via Peterson Point).
- New ferry docks at Jakolof Bay and Peterson Point.

The tribe's estimated cost for the project was \$44 million: \$32 million for the road improvements and \$12 million for the ferry and dock improvements.

In 2003 the tribe reported that the plan had wide public support and was recommended for implementation by Alaska state officials. Residents and local business owners we spoke with confirmed that they supported the plan to provide daily transportation of vehicles and freight across Kachemak Bay. Nevertheless, according to a former state legislator, although state officials had initially agreed to provide significant financial support to the project, that support did not materialize because of a change in administration. Consequently, village corporation officials told us, not enough funding was available to carry out the plan as originally envisioned.

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With the initial project plan deemed prohibitively expensive, the tribe scaled down the original plan and offered an alternative proposal in 2003.<sup>4</sup> The revised proposal included the following features:

- Daily passenger and vehicle ferry service between Homer, Halibut Cove (via Peterson Point), Jakolof Bay, Nanwalek, Port Graham, and Seldovia.
- New ferry docks at Jakolof Bay and Halibut Cove.
- Limited road access improvements.

The tribe's estimated cost for the scaled-down project was \$14 million: \$12 million for the ferry and \$2 million for docks and associated road construction. Federal funding for a ferry project serving multiple ports in Kachemak Bay was first appropriated in fiscal year 2004, with additional funding appropriated in the following 2 fiscal years. The state also provided funding.

This scaled-down project, however, did not have the same degree of support within the community as the original proposal. For example, according to a former state legislator, he did not support the revised project because it did not include the extensive road improvements of the original proposal, which he believed were vital to encouraging regional economic development. He told us that the road improvements were necessary to sustain Seldovia and the surrounding communities by connecting them to one another, and to the state highway system in Homer, by way of a vehicle-carrying ferry. Similarly, Seldovia city officials told us they were not informed of the tribe's 2003 proposal until a few days before Congress passed the fiscal year 2004 appropriation for a ferry. They told us they notified their congressional representative that the city had not been consulted on the project. In response to the city officials' concerns, the tribe and the village corporation—which the tribe had hired

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<sup>4</sup>There is some disagreement among stakeholders regarding when the ferry project was scaled down from its original plan. According to the tribe it did not scale down its original plan until 2005, concurrent with the award of the self-determination contract. However, Seldovia city officials provided us with an undated brochure that contained information on the scaled down proposal, which they said they received in late 2003, and this information was also provided to a member of the Alaska congressional delegation prior to congressional consideration of funding for planning and design of a Seldovia-Homer-Jakolof Bay-Halibut Cove ferry, which occurred in December 2003.

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to manage the project—told us that they immediately agreed to work with the city of Seldovia to conduct community outreach, assist with request for proposals and a design feasibility study, and form a port authority to potentially operate the new ferry.

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### The Tribe Built and Now Operates a Passenger and Light-Freight Ferry Serving Two Ports in the Summer

The village corporation managed the ferry project in two phases: planning and construction. During the planning phase, the village corporation conducted two studies of options for the proposed project and, on the basis of these studies, selected a vessel option that could transport passengers and light freight in 500-pound containers—but not vehicles—and would run between Homer and Seldovia during the peak-traffic summer season.

The first study, published in 2007, analyzed ferry vessel alternatives, as well as project-scoping options, regional passenger traffic, and the project's potential financial outcomes. This study established criteria stating that the recommended ferry service must be self-sustaining in both the short and long term. Vessels were evaluated according to the extent to which they could (1) be constructed with available funds, (2) generate sufficient revenue to cover operating costs, and (3) provide social and economic benefits. The study reviewed five different vessel types, four of which could carry passengers and vehicles and one that could carry only passengers and light freight. The study found that ferries carrying both vehicles and passengers could not operate without a substantial subsidy, would be impossible to operate in competition with the Alaska state ferry, and concluded that the only viable alternative was a fast passenger-only catamaran with optional light-freight capability. According to the tribe, the level of funding available at that time and a steep increase in steel prices contributed significantly to this conclusion.

The village corporation's second study, which focused primarily on ferry-operating alternatives, projected that the selected vessel would be profitable in its fourth year of operation (2013) if it ran only during the peak-traffic summer season. This study, published in 2009 by the village corporation, evaluated different service and route options and the financial feasibility of the selected vessel—a 150-passenger and light-freight-only 83-foot catamaran.

The village corporation's proposed project, based on the results of the 2009 study, differed significantly from earlier proposals in a number of key ways:

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- The ferry would serve only two ports, Homer and Seldovia.
  - The ferry would run only during the peak-traffic summer season, generally May through September.
  - The ferry would run two routes—a direct 16.7-nautical-mile route across Kachemak Bay and an extended 22-nautical-mile route, which would include wildlife viewing and sightseeing.
  - The ferry would not have vehicle or heavy-freight transport capabilities.
  - The tribe would operate the ferry.
  - Docks would be constructed only in Homer and Seldovia.
  - No roads would be built or improved.
  - A visitor center would be built in Homer.

The release of the 2009 study generally represented the end of the planning phase, although the construction phase had already begun. In the summer of 2008, the village corporation selected a company in Bellingham, Washington, as the contractor for boat construction. The village corporation separately contracted the construction of the docks—one on village corporation-owned land in Seldovia and the other in Homer's small boat harbor.

Because of the changes in scope and service from the original project proposal, the city of Seldovia withdrew its support for the project and contacted us, BIA, and members of Congress to ask that the project be halted. City officials told us that they had not been consulted by the tribe or the village corporation on changes to the project and that, other than a single port authority steering committee meeting in 2004, there were no opportunities to provide public comment or input during the project development period. According to the tribe, the village corporation and the tribe met with, consulted with, and involved the city and the public in the design and development of the ferry through announced public meetings, a survey, and a consulting contract with the city. Voters also ratified, after initially failing to ratify, the city council ordinance establishing a port authority, but according to the city officials, the entity has never functioned because no public transportation exists in Seldovia's harbor for it to oversee. Some city residents we spoke with said they also withdrew

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their support for the ferry project after learning that the proposed vessel (1) would run only in the summer, (2) was not capable of transporting vehicles and freight, and (3) would compete with local tour companies.

*The Kachemak Voyager*, shown in figure 4, began operating in 2010, providing service between Homer and Seldovia for the summer season that extended from May through October. The village corporation hired a contractor to operate the ferry in 2010, and the tribe took over operations for the 2011 season. Since the ferry began operating, the tribe has promoted it to local commuters and tourists, advertising daily extended trips for wildlife viewing and charters for hire. In both years, the ferry operated only during the summer months, with an average of six daily one-way trips between the two ports, including two trips from Homer to Seldovia via the extended scenic route that passes by the village corporation-owned Gull Island. During the *Kachemak Voyager's* first season of operation, the tribe completed construction of the two docks—one in Homer and one in Seldovia. The Homer harbormaster told us that the dock and accompanying ramp were welcome improvements. City of Seldovia officials, however, told us that the dock in Seldovia is unstable and, therefore, has not been used for safety reasons; instead, the *Kachemak Voyager* has used the main dock in the city's harbor for mooring the ferry in Seldovia.

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**Figure 4: The *Kachemak Voyager***



Source: Seldovia Village Tribe.

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### The Tribe Spent about \$8.8 Million of Federal Funding to Plan and Construct the Ferry Project

To plan and construct the Kachemak Bay ferry and associated docks in Homer and Seldovia, the tribe spent about \$8.8 million of the close to \$9 million in federal appropriations and grants it received beginning in fiscal year 2005. According to documentation provided by the tribe, it spent about \$1.97 million for phase I project-planning activities, including expenditures for project design, administration, feasibility studies, and environmental assessments and permits, and about \$6.79 million for phase II construction activities, including expenditures for ferry construction, dock construction, administration, and outreach and marketing. Expenditures for both phases are summarized by category in table 1. Additional funding, including a \$1.5 million Alaska state grant and an operating grant from FTA, was used to subsidize ferry operations. According to the tribe, little funding remains after the 2011 season to subsidize ferry operating costs in the future.

**Table 1: The Seldovia Village Tribe's Kachemak Bay Ferry Project Expenditures for Planning and Construction, by Category, for 2005 to 2010**

<b>Expenditure categories</b>	<b>Phase I: planning</b>	<b>Phase II: construction</b>	<b>Total expenditures</b>
Administration	\$287,006	\$797,896	<b>\$1,084,902</b>
Outreach, marketing, and mobilization	73,836	328,951	<b>402,787</b>
Feasibility studies, design, and port authority development	243,409		<b>243,409</b>
Development of construction budget and sources	22,874		<b>22,874</b>
Environmental assessments and permits	65,229	274,386	<b>339,615</b>
Project design	1,214,646		<b>1,214,646</b>
Staffing and oversight	60,000	309,136	<b>369,136</b>
Ferry construction		3,304,029	<b>3,304,029</b>
Shoreside preparation and construction		1,778,132	<b>1,778,132</b>
<b>Total</b>	<b>\$1,967,000</b>	<b>\$6,792,530</b>	<b>\$8,759,530</b>

Source: Seldovia Village Tribe.

Note: A total of \$9 million was originally appropriated for the design and construction of a ferry. The fiscal years 2005 and 2006 appropriations, however, were subject to rescissions that made available less than the full amount of the appropriation. In addition, BIA retained \$33,000 and \$120,000 of the fiscal years 2004 and 2005 appropriations, respectively, for oversight. Specifically, a provision in the self-determination contract notes that the \$33,000 retained by BIA was "for travel to look at other Alaska independent owned ferries with the project manager, to attend any community meetings, to personally view the ferry infrastructure landings and any other administrative expenses associated directly with this project as deemed necessary by the BIA."

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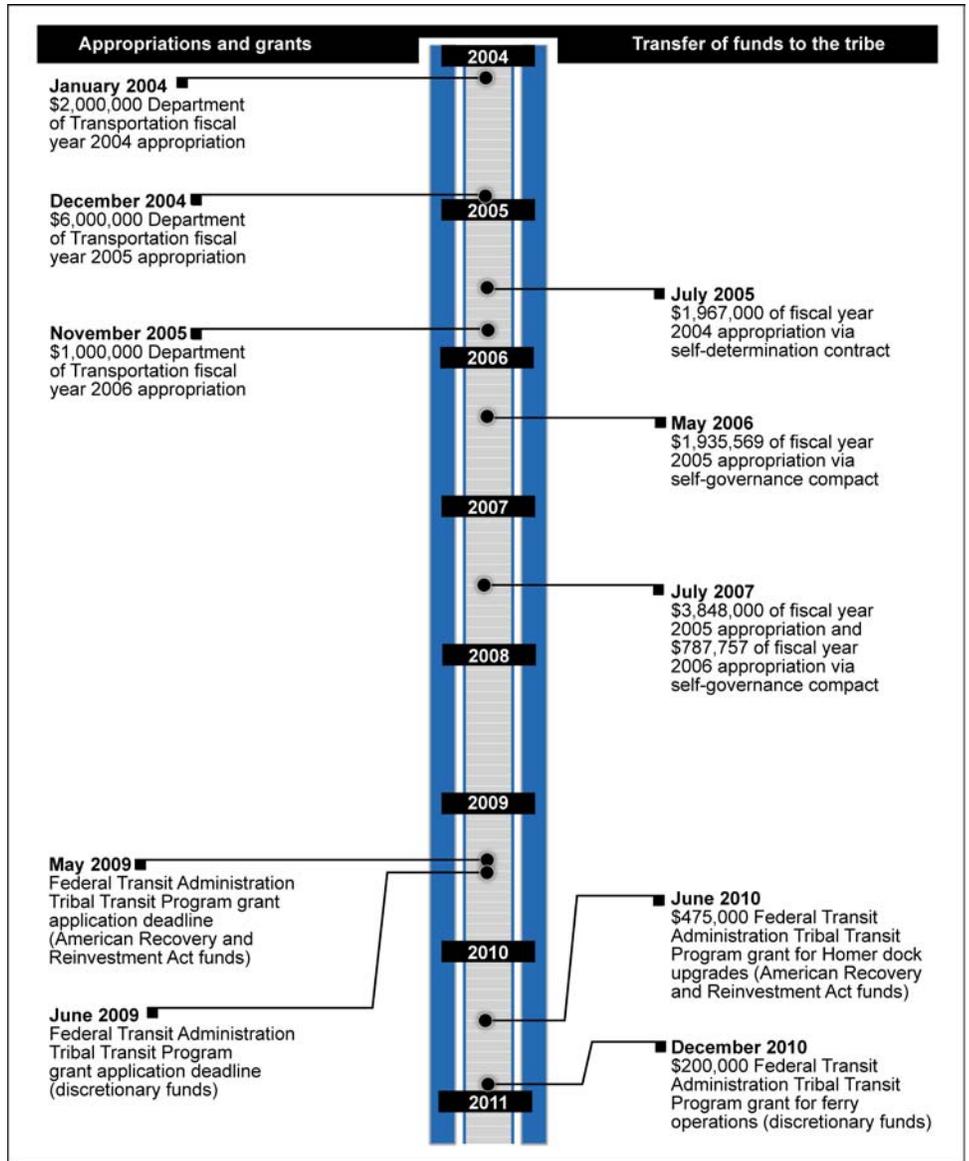
## Federal Agencies Provided Funding and Limited Oversight but Had No Decision-Making Role for the Ferry Project

Federal agencies provided funding and limited oversight, but they had no decision-making role in determining the type of ferry to be constructed or how it would be operated. Congress appropriated funds for a ferry in fiscal years 2004 through 2006 without any specific description of the type of ferry to be constructed or its operations and well before the tribe's design and operating studies were completed. Similarly, DOT transferred the ferry construction funds to Interior without any specific design or operation limitations. BIA subsequently transferred the ferry construction funds to the tribe in fiscal years 2005 through 2007 without any specific design or operation limitations and before the tribe had completed its ferry design and operating studies. The self-determination contract and self-governance compact that BIA used to provide the funds authorized the tribe to plan, conduct, and administer the funding for planning and constructing the ferry and provided for limited oversight.<sup>5</sup> The tribe also applied for and was awarded grants by FTA for dock construction and ferry operation, which it received in 2010 (see fig. 5). In total, the tribe received about \$9.2 million from these sources to plan, construct, and operate the ferry. The U.S. Army Corps of Engineers issued required permits for dock construction but did not provide funding.

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<sup>5</sup>The ferry was not included in the Seldovia Village's Tribal Transportation Improvement Program, a multi-year financially constrained list of proposed transportation projects developed by a tribe from the tribal priority list or the long-range transportation plan, because the appropriation was not for the Indian Reservation Road program.

**Figure 5: Timeline of Ferry Project Federal Appropriations and Grants, and Transfer of Funds to the Seldovia Village Tribe, by Fiscal Year**



Source: GAO.

Note: The fiscal years 2005 and 2006 appropriations were subject to rescissions that made available less than the full amount of the appropriation. In addition, BIA retained \$33,000 of the fiscal year 2004 appropriation for oversight, such as travel and other agency administrative expenses associated with the project, and \$120,000 of the fiscal year 2005 appropriation, even though this funding was provided to the tribe under a self-governance compact and not a self-determination contract.

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## DOT Transferred Appropriations to Interior and Did Not Oversee the Ferry Project

DOT's annual appropriation acts made available a total of \$9 million for a ferry serving four Kachemak Bay ports as follows:

- *Fiscal year 2004.* Section 115 of Division F of the Consolidated Appropriations Act, 2004, appropriated funding for a Kachemak Bay ferry by incorporating a provision of the managers' statement by reference.<sup>6</sup> The managers' statement identifies \$2 million for the "Seldovia-Homer-Jakolof Bay-Halibut Cove Ferry planning and design, Alaska."<sup>7</sup>
- *Fiscal year 2005.* Section 117 of Division H of the Consolidated Appropriations Act, 2005, appropriated funding for a Kachemak Bay ferry by incorporating a provision of the managers' statement by reference.<sup>8</sup> The managers' statement identifies \$6 million for the "Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry, Alaska."<sup>9</sup>
- *Fiscal year 2006.* Section 113 of Division A, Title I of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, appropriated funding for a Kachemak Bay ferry by incorporating a provision of the managers' statement by reference.<sup>10</sup> The managers' statement lists \$1 million for the "Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry, AK."<sup>11</sup>

The appropriation acts and the associated managers' statements did not provide any specific description of the ferry to be constructed or its operations. In addition, the funds for constructing the ferry, appropriated in fiscal years 2005 and 2006, were appropriated before completion of

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<sup>6</sup>Pub. L. No. 108-199, div. F, § 115, 118 Stat. 3, 294-95 (2004). Division F is the Transportation, Treasury & Independent Agencies Appropriations Act, 2004.

<sup>7</sup>H.R. Rep. No. 108-401, at 960 (2003).

<sup>8</sup>Pub. L. No. 108-447, div. H, § 117, 118 Stat. 2809, 3212-13 (2004). Division H is the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005.

<sup>9</sup>H.R. Rep. No. 108-792, at 1403 (2004).

<sup>10</sup>Pub. L. No. 109-115, div. A, tit. I, § 113, 119 Stat. 2396, 2407 (2005). Division A is the Transportation, Treasury, Housing, and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriation Act, 2006.

<sup>11</sup>H.R. Rep. No. 109-307, at 158 (2005).

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ferry planning and design, funded in fiscal year 2004. The design and operating studies were not completed until May 2007 and March 2009, respectively.

The fiscal years 2004 and 2005 appropriations acts provided that the appropriated funds may, at the request of the state, be transferred by the Secretary of Transportation to another federal agency to carry out the identified project. According to DOT and Alaska state officials, the state of Alaska notified DOT that it did not want to administer the funds for the tribe's ferry project or provide them to the tribe as a subrecipient and asked that a federal agency administer the funds.<sup>12</sup>

As a result, BIA and DOT officials agreed to use the process already established for the jointly administered Indian Reservation Roads Program as a means of providing the ferry funding to the tribe. The allocations were executed under the *Indian Reservation Roads Program Stewardship Plan*, a 1996 agreement between DOT's Federal Highway Administration and BIA that, as of March 2012, was being revised and updated. In keeping with this agreement, DOT allocated a total of about \$8.7 million in ferry project appropriations to the BIA Division of Transportation as follows:<sup>13</sup>

- In March 2005: \$2,000,000 of the fiscal year 2004 appropriation.
- In June 2005: \$3,968,000 of the fiscal year 2005 appropriation.
- In March 2006: \$1,935,569 of the fiscal year 2005 appropriation.
- In July 2006: \$787,757 of the fiscal year 2006 appropriation.<sup>14</sup>

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<sup>12</sup>According to Alaska state officials, they did not want to provide the tribe with the funding as a subrecipient because the state would be responsible for overseeing the tribe's use of the funds.

<sup>13</sup>The fiscal years 2005 and 2006 appropriations were subject to rescissions that made available less than the full amount of the appropriation for transfer to BIA.

<sup>14</sup>This allocation letter to BIA identified the route, location, and work type as the Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry—"Kachemak Bay Ferry" (Kbay), Kenai Peninsula Borough—construction of ferry and ferry terminal facilities. Except for this letter, the allocation letters to BIA only repeated the language from the managers' statements and did not include any additional information on the nature and scope of the ferry.

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According to DOT officials, the fiscal years 2004 and 2005 funding was transferred to BIA pursuant to the transfer authority in the appropriations acts. We discuss these transfers in the legal opinion presented in appendix I. DOT officials also told us that the agency did not have any oversight responsibility for the project after transferring these funds to BIA. However, the Chief of BIA's Division of Transportation told us that because the funding was not for an Indian Reservation Roads project or a transportation project on federal land, transferring the funds to BIA did not transfer oversight responsibility for the project to BIA; oversight responsibility remained with DOT.

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**Interior Provided Ferry Funding for the Tribe to Administer Without Any Specific Design or Operation Limitations and Had No Decision-Making Role for the Project**

After receiving the funds from DOT, BIA provided the fiscal year 2004 appropriation to the tribe under a self-determination contract and the fiscal years 2005 and 2006 appropriations under the tribe's self-governance compact. In total, BIA provided the tribe with a little over \$8.5 million as follows:

- From the fiscal year 2004 appropriation, \$1,967,000 for ferry planning and design, provided by BIA's Division of Transportation to BIA's Alaska Region for obligation to the tribe in the annual funding agreement to a self-determination contract, awarded in July 2005.<sup>15</sup>
- From the fiscal year 2005 appropriation, \$1,935,569 provided by BIA's Division of Transportation in the tribe's *Fiscal Year 2006 Annual Funding Agreement, Kachemak Bay Ferry Program Addendum*, to the tribe's self-governance compact in May 2006.
- From the fiscal year 2005 appropriation, \$3,848,000 provided by BIA's Division of Transportation to Interior's Office of Self-Governance in the tribe's *Fiscal Year 2007 Annual Funding Agreement, Kachemak Bay Ferry Program Addendum*, to the tribe's self-governance compact in July 2007.<sup>16</sup>

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<sup>15</sup>BIA retained \$33,000 of the fiscal year 2004 appropriation for oversight, such as travel and other agency administrative expenses associated with the project.

<sup>16</sup>Even though this funding was provided to the tribe under a self-governance compact and not a self-determination contract, BIA retained \$120,000 of the fiscal year 2005 appropriation.

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- From the fiscal year 2006 appropriation, \$787,757 provided by BIA's Division of Transportation to Interior's Office of Self-Governance in the tribe's *Fiscal Year 2007 Annual Funding Agreement, Kachemak Bay Ferry Program Addendum*, to the tribe's self-governance compact in July 2007.

Officials from BIA's Alaska Region, told us that the \$1,967,000 self-determination contract for ferry planning and design was administered as part of its Indian Reservation Roads Program, but that neither the ferry project nor the funding actually fell under this program. As a result, according to BIA's current regional transportation director, the project did not undergo the BIA and the Federal Highway Administration's Indian Reservation Roads Program review and approval process for inclusion in the tribe's Tribal Transportation Improvement Program—the document that specifies the allowable activities for a project—and BIA did not identify Indian Reservation Roads regulations as applicable in the tribe's contract. Nevertheless, the Alaska Region did assign an awarding official to provide oversight, as it normally would for an Indian Reservation Roads project, with oversight responsibilities focused on ensuring that the ferry was built to specifications, that it met all safety and health requirements, and was a seaworthy vehicle.

The village corporation, which administered the project, provided BIA's Alaska Region awarding official with quarterly status reports from 2005 through early 2009 and the contract file contains documentation of some oversight, such as site visits and attendance at meetings by the awarding official. This documentation demonstrates that the village corporation kept the awarding official apprised of the status of the project and the reasons that it would likely produce a ferry that differed significantly from what was originally proposed. As reported by Interior's Office of Inspector General in July 2009, the Alaska Region awarding official did not act to object or provide any guidance or direction to the tribe regarding changes in the project.<sup>17</sup> BIA's current regional transportation director noted that this contract was for planning, not construction of the ferry, and the tribe used the money to conduct a study. In commenting on our report draft, BIA stated that because a feasible alternative existed, abandonment of the project was not considered to be consistent with the intent of Congress, and that the Alaska Region met its oversight responsibility for the ferry.

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<sup>17</sup>Department of the Interior, Office of Inspector General, *Report of Investigation: Seldovia Ferry*, OI-OR-09-0225-I (Portland, Ore: July 27, 2009).

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The self-determination contract was finally closed at the tribe's request in March 2011.

In addition to the nearly \$2 million self-determination contract, Interior provided about \$6.5 million to the tribe in the fiscal years 2006 and 2007 ferry project funding agreements under its self-governance compact. BIA allocated funding to the tribe under the fiscal year 2006 funding agreement, and Interior's Office of Self-Governance administered the fiscal year 2007 funding agreement. Interior's authority to oversee these self-governance compacts was limited because compacts transfer control over program funding and decision making to tribes, provide the tribes with meaningful authority to plan and administer programs, and generally allow for limited oversight by Interior. According to the Chief of BIA's Division of Transportation, BIA's Alaska Region was responsible for providing technical oversight and assistance for transportation projects but that BIA can do little given the authority of tribes to operate their own programs and projects under self-governance compacts. Although the Alaska Region Office awarding official for the self-determination contract continued to receive quarterly status reports from the village corporation while the project was funded under the tribe's self-governance compact because the self-determination contract had not yet been closed, he did not act to provide any oversight or direction to the tribe regarding the project.

Furthermore, according to Interior's Director of the Office of Self-Governance, the *Kachemak Bay Ferry Program Addendum to the Fiscal Year 2007 Annual Funding Agreement*, makes it clear that the Alaska Region was responsible for oversight of the project and that the Office of Self-Governance was responsible only for administering the transfer of funds to the tribe. Moreover, according to Office of Self-Governance officials, they do not have sufficient staff to provide oversight to the programs they fund and, specifically, do not have engineers on staff to provide oversight for transportation projects. The officials noted that participation in self-governance requires tribes to conduct a single organizationwide audit as prescribed under the Single Audit Act. Our review showed that the tribe received an unqualified opinion in each of

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the years that it reported expenditures of federal ferry boat funding, from fiscal year 2005 through fiscal year 2009.<sup>18</sup>

In 2009, following up on concerns about mismanagement in BIA's Alaska Region, Interior's Inspector General issued a report on the region's Indian Reservation Roads Program. The report provided examples of projects that the Inspector General was told may have involved mismanagement and the potential loss or theft of funds, including the Kachemak Bay ferry project.<sup>19</sup> It was alleged that the intent of the ferry project had been arbitrarily changed, without approval from BIA, from addressing the community's transportation needs to creating an avenue of tourism revenue. Interior's Inspector General jointly investigated the ferry project with DOT's Office of Inspector General and issued its findings in July 2009. The report concluded, among other things, that (1) the tribe's use of the funds did not conflict with the language of the appropriations; (2) the project's changes in scope were allowed under the tribe's annual funding agreements; (3) BIA was informed of the changes but did not attempt any corrective action; and (4) because the tribe had notified BIA of changes to the project, any proposed misapplication of funds would be due to BIA's lack of oversight.

According to Interior officials, BIA has changed its procedures since the Inspector General's report, and it no longer provides funding to tribes via self-determination contracts or self-governance compacts for projects it

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<sup>18</sup>Pub. L. No. 98-502 (1984), *amended by* Pub. L. No. 104-156 (1996), *codified as amended at* 31 U.S.C. §§ 7501-7507. The purpose of the Single Audit Act of 1984, as amended, is, among other things, to promote sound financial management, including effective internal controls, with respect to federal awards administered by nonfederal entities. Under the act, certain nonfederal entities—such as a state, local government, Indian tribe, or nonprofit organization—that expend \$500,000 or more in federal awards in a year must have an audit conducted in accordance with Office of Management and Budget Circular No. A-133 and submit a report regarding the audit to the Federal Audit Clearinghouse Single Audit Database. The U.S. Census Bureau, in the Department of Commerce, maintains the database, which contains summary information on completed single audits, including information on the auditor, the recipient and its federal programs, and the audit results. The database is available for agency and public access at <https://harvester.census.gov/fac/>. An unqualified opinion states that the financial statements present fairly in all material respects the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting standards.

<sup>19</sup>Department of the Interior, Office of Inspector General, *Flash Report: BIA Alaska Regional Indian Reservation Roads Program Rife with Mismanagement and Lacking Program Oversight*, WR-IV-BIA-0001-2009 (Washington D.C.: Feb. 9, 2009).

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would not normally undertake under its Indian Reservation Roads Program. According to the Chief of BIA's Division of Transportation, tribes prefer that their Indian Reservation Roads funding and their funding from other sources, such as federal aid highways appropriations, be included in their self-determination contracts and self-governance compacts because these agreements allow them greater control over their transportation projects. However, the Chief told us that he now consults with Interior's Office of the Solicitor to determine if non-Indian Reservation Roads funding is for a project that the Secretary of the Interior would normally perform for tribes—that is, as part of the Indian Reservation Roads Program—thereby making it eligible for inclusion in a self-determination contract or self-governance compact. If not, according to the Chief and a Solicitor's Office attorney, BIA transfers the funding through an alternative agreement, which provides the funding to the tribe but disclaims Interior from having responsibility for the project and places responsibility for the project with, for example, the state and DOT's Federal Highway Administration for federal aid-highway funding. According to the Chief, this alternative agreement has so far been used for several projects that were determined not to meet the definition of an Indian Reservation Roads Program project or were deemed otherwise inappropriate for inclusion in the program under a self-determination contract or self-governance compact.

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### FTA Awarded the Tribe Grants for the Ferry and Exercised Minimal Oversight over Their Use

FTA awarded the tribe two Tribal Transit Program grants as follows:

- Fiscal year 2009 American Recovery and Reinvestment Act funding: \$475,000 grant for Homer dock upgrades, awarded in June 2010,<sup>20</sup>
- Fiscal year 2009 Tribal Transit Program funding: \$200,000 grant for ferry boat operations, awarded in December 2010.

According to FTA's grant documentation, the \$475,000 grant was requested by the tribe to construct and install improvements to Homer's small-boat harbor, including new piers, a gangway, and related

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<sup>20</sup>The American Recovery and Reinvestment Act of 2009 was enacted on February 17, 2009, in response to what is generally reported to be the most serious economic crisis since the Great Depression. The purposes of the Recovery Act include promoting economic recovery, making investments, and minimizing and avoiding reductions in state and local government services.

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infrastructure for the ferry terminal and moorage, to facilitate the safe loading and unloading of passengers and light freight to and from the ferry. The \$200,000 grant was requested by the tribe to provide operating assistance for ferry service between Homer and Seldovia, beginning approximately May 1, 2010, with peak service estimated to occur between Memorial Day and Labor Day, running approximately 4 to 5 days per week with two trips per day. FTA Region X and other agency officials reviewed the tribe's applications and recommended them for funding, with the final approval decision made by the Administrator of FTA and the Secretary of Transportation.<sup>21</sup> FTA officials told us that given the agency's staffing structure, its oversight approach does not rely on visiting every grant site to assess compliance with grant terms. Instead the agency uses a risk-based process to identify an oversight approach. Based on the nature of the grants to the tribe, FTA chose to review quarterly reports for the \$475,000 dock construction grant and annual reports for the \$200,000 ferry operation grant.

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### The Army Corps of Engineers Provided No Funding but Issued Required Permits for Dock Construction

The tribe received no funds from the U.S. Army Corps of Engineers (Corps), but the Corps was responsible for reviewing and approving the tribe's River and Harbors Act section 10 permit applications for dock construction in both Homer and Seldovia. Section 10 of the River and Harbors Act requires that a Corps permit be obtained for certain structures or work in or affecting navigable waters of the United States before work begins, although the Corps does not oversee the actual design or construction of projects for which it issues permits. Officials in the Corps' Kenai field office approved the tribe's permit applications on February 26, 2010, with both permits specifying that dock construction work was to occur from March through April 2010, the time frame requested by the tribe. Documentation in the Corp's permit files show that the village corporation's consultant informed the Corps in March and again in May 2010 that the dock construction work would not take place during this permitted work window. On both occasions, the Corps instructed the consultant to submit a modification request for the permits because the permits were not valid for work outside of March and April 2010, but, according to a Corps official, no modification request was submitted.

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<sup>21</sup>FTA Region X covers Alaska, Idaho, Oregon, and Washington.

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Corps officials learned in November 2010 that both docks were actually constructed from July through September 2010, outside the permitted work window. In addition, the officials learned that the Homer dock as constructed deviated from the dock as permitted. The Corps, in December 2010, sent the tribe notices of alleged noncompliance. The tribe acknowledged that the construction did occur outside the permitted work window but considered the discrepancy a “clerical error,” since the Corps was aware of the delayed construction, and the permits’ time limit for completing the work was February 28, 2015. Corps officials told us that they did not take further action on the noncompliance with the permitted work window because there was no indication of any impact on marine mammals and fish populations. To resolve the dock construction noncompliance, the Corps approved an after-the-fact permit modification and did not require removal of the dock.

Documentation from the Corps’ files shows that it received a permit modification request from the tribe in November 2010 to reorient the Seldovia dock for safety reasons because incoming storms were damaging it. The Corps informed the tribe on November 30, 2010, that the modification request would not be evaluated until the permit noncompliance issues were resolved. The permit noncompliance for the Seldovia dock was resolved on March 9, 2011, via a letter informing the tribe that no further action would be taken regarding the permit noncompliance issues on the Seldovia dock. The Corps’ March 9, 2011, letter to the tribe also requested that the tribe provide information needed to make its November 2010 permit modification request complete. The tribe contacted the Corps about the Seldovia dock in July and September 2011; as of March 27, 2012, however, the tribe had not submitted a completed permit modification application. Corps approval of the permit modification is required before the tribe can lawfully proceed with reorienting the Seldovia dock.

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## Concerns and Challenges Exist Regarding Continued Ferry Operations

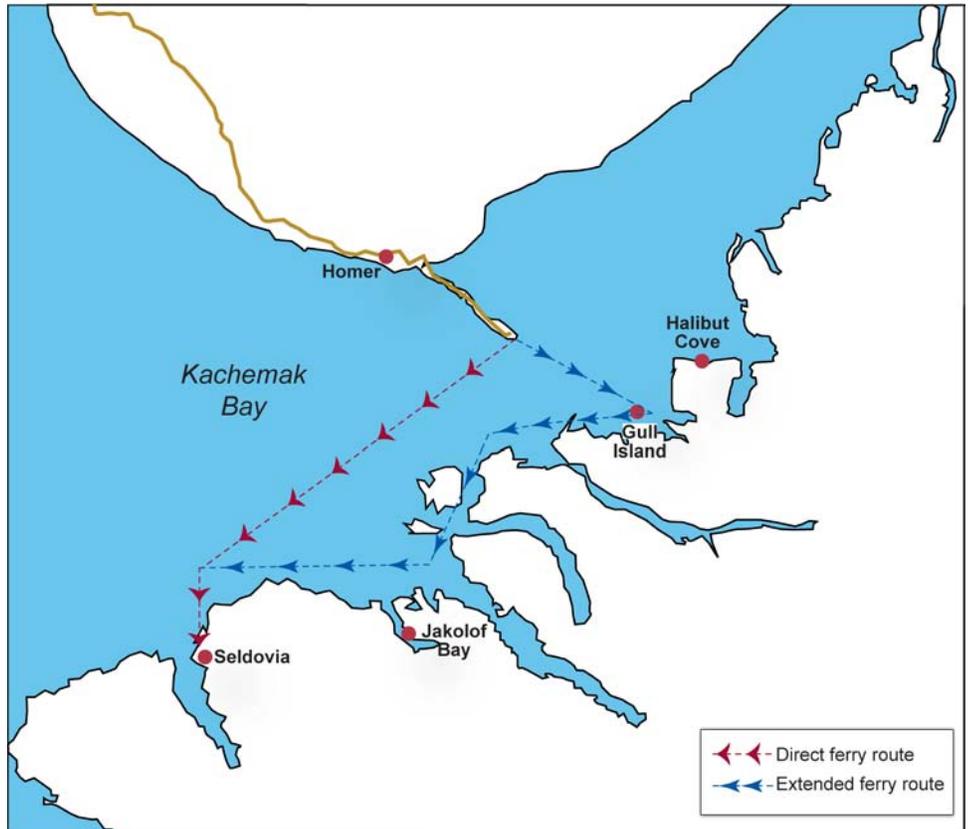
The operation of the *Kachemak Voyager* has raised a number of concerns and challenges regarding the consequences and viability of its continued operation. Specifically, private tour operators told us that they are concerned that the ferry competes directly with their long-established businesses and will continue to negatively affect them, and the tribe faces challenges meeting the projected milestone for the ferry to become financially self-sustaining. In addition, FTA officials raised concerns about the tribe's compliance with grant requirements and the tribe has taken corrective actions to resolve them. Given these challenges and concerns, should the tribe choose to sell or dispose of the ferry in the future, neither DOT nor Interior officials have taken steps to prepare for a potential sale.

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## Local Tour Boat Operators' Concerns About Ferry Competition

Local private tour boat operators have raised concerns that the *Kachemak Voyager* duplicates services between Homer and Seldovia and competes with their businesses. Like private tour operators, the *Kachemak Voyager* operates only during the peak summer tour season, and it follows an extended scenic route for wildlife viewing and sightseeing, as shown in figure 6, on two out of three daily trips from Homer to Seldovia. Like tour operators and the state ferry, on the remainder of its trips between the two ports, the *Kachemak Voyager* follows the direct ferry route. The *Kachemak Voyager* and private tour boats are similarly capable of carrying light freight and transporting more than 50 passengers per trip; the state ferry also has those capabilities, plus the additional capability to carry heavier freight and vehicles.

**Figure 6: Extended and Direct Kachemak Bay Ferry Routes from Homer to Seldovia**



Sources: GAO and Google Maps.

One of the concerns raised by the private tour boat operators is that the tribe can offer significantly discounted fares for the *Kachemak Voyager* because of the federal assistance that the tribe receives. According to documentation provided by the tribe, the *Kachemak Voyager* has offered a variety of discounts and promotions to attract local commuter and tourist business. For example, during the 2011 season, the regular adult fare for a round-trip on the *Kachemak Voyager* was \$64, but many passengers paid discounted fares because of the more than 25 promotions and discounts offered during the 2011 season. Also during the 2011 season, Seldovia residents and village corporation stockholders were eligible to receive a “local” discounted fare of \$22 each way. During this same time, tourists were offered “two for the price of one” ticket discounts for the *Kachemak Voyager* in a coupon booklet promoting Alaska tourism, which would equate to \$32 round-trip per person. In

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contrast, after taking into account all of their costs, the lowest advertised rate private tour operators could offer that year was \$30 one-way and \$45 round-trip.

The two private tour operators providing service between Homer and Seldovia during peak season told us that the direct competition from the *Kachemak Voyager* has negatively affected their businesses. They stated that competition from the *Kachemak Voyager* in the last two operating seasons has caused their combined ridership to decline by roughly 30 to 40 percent. Moreover, even though fuel prices have risen significantly in recent years, they told us that they cannot raise their ticket prices to offset the additional cost and remain competitive with the *Kachemak Voyager*. Both of these tour boat operators told us that they plan to alter their operations for 2012 because of the competition from the tribe's ferry. One operator told us that his company will shift tour boat departure and return times as needed to maximize his market share, and the other operator told us that he plans to eliminate one of his two round-trips from Homer to Seldovia. Both operators were concerned about their ability to continue to operate their businesses in the future. According to the tribe, declines in sales for the two tour boat operators may not be solely because of competition from the *Kachemak Voyager*, citing national economic conditions that have contributed to a statewide decline in tourism in 2010 and 2011.<sup>22</sup>

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### Ferry Operations Are Not Financially Sustainable without Ongoing Subsidies

Given the differences between assumed ferry operations and actual ferry operations, it is highly unlikely that the ferry will become self-sustaining within four seasons as projected by the village corporation. Instead, the ferry is likely to need significant and increasing subsidies into the future to continue operating. According to the corporation's 2009 study of operational options for the project, the *Kachemak Voyager* was projected

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<sup>22</sup>One of the private tour operators provided us with ridership information from 2003 through 2011 to document the effect of the *Kachemak Voyager* on his business. The other operator told us that the effect on his business was similar but was not able to provide us with documentation because he was out of the country while we were collecting these data. The tribe provided us with ridership information from the City of Seldovia, which in its opinion shows that the ridership of the private tour operators had increased from 2009 to 2010 and 2011, while also stating that any losses reported by the private tour operators were likely, in part, due to the poor economy. We have not included total ridership numbers from either source in the report because we were unable to independently verify their accuracy and our review of the data collected by the City of Seldovia indicates that these data are neither complete nor reliable especially prior to 2010.

to turn a profit by its fourth season (in 2013), given certain expected operating parameters. Actual ferry operating parameters during the first two seasons, however, differed greatly from what was assumed in the 2009 study, and the passenger counts anticipated in the study did not materialize. As shown in table 2, during the first two seasons of operation, the *Kachemak Voyager* ran more than three times the number of one-way trips as the 2009 study assumed for the first 2 years of operation. At the same time, passenger counts per one-way trip during this period were much lower than anticipated. In fact, ferry records for the first season indicate that 44 one-way trips were made with no paying customers, only crew and occasional light freight.

**Table 2: Assumed and Actual Ferry Operating Parameters**

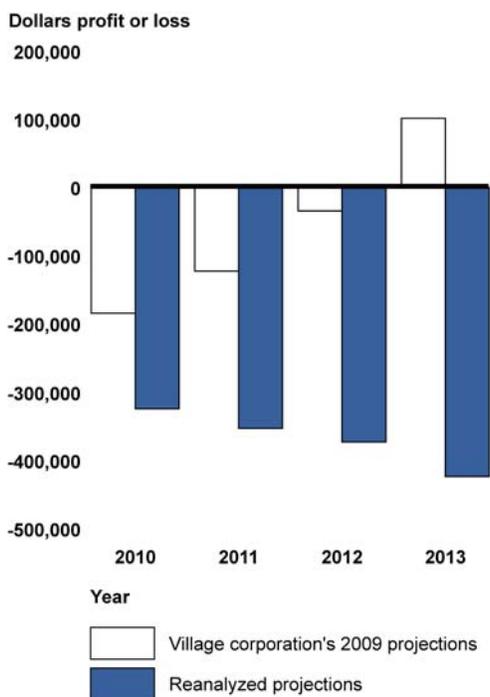
<b>Ferry operating parameters</b>	<b>Assumed</b>	<b>Actual (first two seasons)</b>
Scheduled days per week	4	7
Trips per day	4	6
Days per year	60 in 2010 and 2011	132 average for 2010 and 2011
Average passengers per trip	39 in 2010; 47 in 2011	13 in 2010; 14 in 2011
Fuel cost (annual average)	\$5.70 per gallon	\$3.05 in 2010; \$3.97 in 2011

Source: Seldovia Village Tribe.

To examine the impact of the changed parameters on the ferry’s financial performance, we reassessed the financial projections made by the village corporation’s 2009 study on the basis of the ferry’s actual performance over the 2010 and 2011 seasons. Our analysis used the same methodology as the 2009 study, except that we used actual performance data for 2010 and 2011, where available, and we assumed for the 2012 and 2013 seasons that (1) the passenger counts per trip would increase at the same rate as from 2010 to 2011 and (2) the number of trips per day would continue at the same level as in 2011. Figure 7 shows the results of our analysis compared with the village corporation’s projections. The 2009 study projected that the ferry’s operation would turn a profit and become self-sustaining by 2013, but our analysis shows that by 2013 the ferry is likely to still be operating at a loss. The ferry’s continued operational loss results primarily from rising costs, particularly for fuel, and also in part because of fewer passengers per trip and the addition of more trips per day compared with the assumptions used in the 2009

study.<sup>23</sup> Neither the village corporation's 2009 study nor our adjusted projections included any allowance for depreciation of capital assets or recovery of the capital cost of the ferry. If such an allowance had been made, it would have substantially increased the estimated annual losses from ferry operations.

**Figure 7: Projected *Kachemak Voyager* Financial Performance and Reanalysis, 2010-2013 Operating Season**



Source: GAO analysis of village corporation data.

Note: Graph compares the village corporation's 2009 projections of the *Kachemak Voyager's* financial performance with our analysis based on the ferry's actual performance parameters in 2010 and 2011.

<sup>23</sup>The 2009 study assumed growth in some cost items, but some costs, such as wages and fuel, remained unchanged over the 2010 to 2013 seasons. But, as reported by the tribe, the average price of fuel purchased over the 2010 to 2011 seasons rose from \$3.05 to \$3.97, or by about 30 percent. For our analysis, we assumed this same percentage increase in fuel prices over the 2012 and 2013 seasons.

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Tribal officials told us they expect the ferry to need ongoing subsidies to continue operating. They noted that the ferry's operating costs have increased because of two costly and unanticipated ferry repairs. Although these costs are not expected to recur in the future, they had a significant impact on operating costs in 2010 and 2011. According to tribal officials, they may also take cost-cutting measures during the 2012 season to reduce operating expenses. For example, according to the 2012 operating schedule on the ferry's website as of mid-April, the ferry will operate four direct one-way trips between Seldovia and Homer starting on May 3 and is not offering extended sightseeing trips. The ferry is scheduled to operate an average of 5 days per week—with no service most Tuesdays and Wednesdays—and service will end after the first week of September 2012. Fares are decreased from the 2011 season, with full-priced tickets for passengers ages three and over costing \$23 each way. Nevertheless, even with reduced operating costs, tribal officials expect that the ferry will need ongoing subsidies to continue operations.

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**The Tribe Did Not Comply with Its FTA Grant Requirements but Has Taken Corrective Action**

According to FTA officials, the tribe did not comply with the requirements of the FTA Tribal Transit Program grants that it received in 2010 for the Homer dock upgrades and ferry operating expenses because it did not obtain FTA approval for "incidental use" of the ferry for sightseeing. The tribe has since taken corrective actions to resolve FTA's concerns. Tribes can use Tribal Transit Program grants for operating costs of equipment and facilities used in public transportation, which is defined as transportation by a conveyance that provides regular and continuing general or special transportation to the public but not charter or sightseeing transportation, among other exclusions. FTA does permit "incidental use" of FTA-funded equipment and facilities for purposes other than public transportation, such as sightseeing, although FTA must provide prior approval of such incidental use. According to agency guidance, FTA will approve requests for incidental use if such use will not interfere with the grantee's public transportation operations, the grantee fully recaptures the costs of the incidental use from the nontransit public or private entity, the grantee uses revenues received from the incidental use to pay for public transportation expenses, and private entities pay all applicable excise taxes on fuel.

FTA Region X officials told us they initially became concerned about the tribe potentially using its grants for nonpublic transportation purposes because the tribe's applications described an extended scenic route followed by the *Kachemak Voyager* on some trips. FTA Region X officials

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told us that because of their concerns—and because the tribe was applying for the first time for Tribal Transit Program grants—they included the following language in both of the grants to ensure that the tribe was aware of the incidental use requirements:

“...funds awarded under this grant shall be used solely for public transportation purposes. Any activities not considered public transportation, such as sightseeing, may not benefit from the use of these funds unless prior written approval by FTA is obtained for such incidental use.”

According to the FTA officials, by accepting the grants, the tribe certified that it would comply with all of the grants’ requirements, including the requirement to obtain prior approval for incidental use. The officials told us that even if the tribe segregated the grants from other funding and used them only for operating expenses incurred on the direct route between Homer and Seldovia, it still needed prior FTA consent for incidental use to run on the indirect route. According to the officials, however, the tribe did not request approval for incidental use.

In September 2011, we met with FTA Region X officials and shared our concerns about the potential noncompliance with FTA’s grant requirements by the tribe because of the *Kachemak Voyager’s* indirect scenic route. After gathering additional information, FTA sent a letter to the tribe in December 2011 regarding the grants, noting that the grants limited the use of the funds to public transportation services and that sightseeing may not benefit from the use of the grant unless prior written approval was obtained from FTA for such incidental use. FTA cited the *Kachemak Voyager’s* two daily extended trips for wildlife viewing and its advertised charter service as examples of incidental use. FTA notified the tribe that it must request written approval from FTA for future incidental use if it plans to continue the extended route, as well as for each charter it runs, and asked the tribe to document that the \$200,000 operating grant was used for allowable costs, noting that failure to do so could result in a request for repayment and affect the evaluation of future grant applications. According to FTA officials, the tribe replied with a letter in January 2012 stating that it will operate only direct runs in 2012 and has neither provided charter services nor plans to offer charter services in the future. In addition, the tribe submitted documentation of enough eligible costs to justify its grant disbursements, and FTA does not plan to request that the tribe repay any grant funds. The tribe applied for another FTA grant in 2011 to subsidize its 2012 operations, but, according to FTA officials, the grant was not approved because of a large number of higher-priority applications from other entities.

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## The Disposition of Sale Proceeds Is Unclear If the Tribe Sells the Ferry

Given the potentially unsustainable operating costs of the *Kachemak Voyager* without significant subsidies, should the tribe choose to sell the ferry in the future instead of continuing to operate it at a loss, it is unclear what would happen with the proceeds. Neither DOT nor Interior has definitively identified what statutory provisions would govern the sale. In addition, neither agency has taken any steps to prepare for the potential sale of the ferry.

Generally, federal participation in the construction of ferry boats and ferry terminal facilities is subject to the following requirement regarding the disposition of a ferry:

“No such ferry shall be sold, leased, or disposed of without the approval of the Secretary of Transportation. The Federal share of any proceeds from such a disposition shall be credited to the unprogrammed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount so credited shall be in addition to all other funds then apportioned to such State and available for expenditure in accordance with the provisions of this title.”<sup>24</sup>

The funds that Interior provided to the tribe for the ferry may be subject to this requirement. The fiscal years 2006 and 2007 annual funding agreements providing funds to the tribe under its self-governance compact incorporate this requirement by reference, so the funds could be subject to it. Traditionally, only states have received federal funding for ferry boats and ferry terminal facilities, so determining where to credit the federal share of the proceeds has been relatively clear. In this instance, however, the funding for the ferry was not apportioned to a state, thereby complicating where the proceeds should be credited.

DOT, however, does not believe that this provision applies to the funding because the funding was made pursuant to general provisions in DOT’s annual appropriations act, the appropriations acts made the funding available notwithstanding any other provision of law, and neither DOT nor a state awarded the funding to the tribe. Instead, DOT maintains that the funding provided to the tribe for the ferry is subject to governmentwide common grants requirements, including the disposition of property requirements codified in 49 C.F.R. § 18.32(e). It is unclear, however, whether these common grant requirements apply to funding the tribe

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<sup>24</sup>23 U.S.C. § 129(c)(6).

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received because the funding was provided through a self-determination contract and self-governance compact.<sup>25</sup> If these requirements do apply, the ferry would still face legal uncertainties. For example, under the grant requirements, the federal agency awarding the grant has a right to a certain amount of the boat's current market value or sale proceeds when equipment acquired with grant funds is no longer needed for the original project. Moreover, the grant requirements generally prohibit grant recipients from using equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services.

In addition, neither DOT nor Interior has taken any steps to prepare for the potential eventuality of the tribe selling the ferry, such as assessing how the requirement regarding the disposition of the ferry would be implemented in this unique situation. In fact, the agencies do not agree on which agency is responsible for ensuring that the tribe complies with applicable sale requirements. For example, Federal Highway Administration officials told us that the agency routinely takes steps to ensure that the federal share is credited to the appropriate account when a ferry boat is disposed of by the funding recipient, but in this case BIA would be responsible in accordance with the Federal Highway Administration's transfer of the funds to BIA under the *Indian Reservation Roads Program Stewardship Plan*.

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## Conclusions

Interior and DOT faced unusual challenges in funding and overseeing the unique Kachemak Bay ferry project within the framework of their existing transportation program. The history of the *Kachemak Voyager* illustrates the need for collaboration between federal, state, local, and tribal entities to ensure that tribal transportation projects achieve their objectives and meet community needs, particularly when the project is unique and has an unusual funding source. Collaboration was limited in this case because the funding for the ferry project came from appropriations that were not effectively managed within the framework of existing agency transportation program policies and procedures. The state of Alaska, DOT, BIA, and the tribe chose to handle the appropriations in accordance with the established process for Indian Reservation Roads Program funds. Even though BIA will no longer provide funding to tribes through

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<sup>25</sup> See 25 U.S.C. § 450k(a)(1), 25 C.F.R. § 1000.220.

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self-determination contracts and self-governance compacts for projects that it would not normally undertake under the Indian Reservation Roads Program, in this case, the tribe received funds through such a contract and compact, which enabled it to proceed with constructing a ferry that differed significantly from what it originally proposed. The resulting ferry did not meet local communities' expectations or needs for year-round daily vehicle ferry service to multiple ports, and it is questionable whether the ferry will achieve the objective of encouraging economic development for the communities, since it duplicates existing transportation options and competes with existing businesses. Furthermore, if the *Kachemak Voyager* stops operating and is sold, it is unclear what should happen to the proceeds of the sale.

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## Recommendation for Executive Action

In preparation for a potential sale of the *Kachemak Voyager*, we recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs, and that the Secretary of Transportation direct the Federal Highway Administrator, to collaborate in determining the applicability of 23 U.S.C. § 129(c)(6)'s requirement or any other legal requirements regarding disposition of ferries. If the requirement of 23 U.S.C. § 129(c)(6) is applicable, (1) identify which agency will assume responsibility for having the federal share of proceeds credited, including notifying the tribe of what steps to take if it wants to sell or dispose of the ferry, and (2) determine what constitutes the federal share of sale proceeds. If another legal requirement is applicable, determine which agency will assume responsibility for ensuring that the tribe complies with it.

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## Agency and Third Party Comments and Our Evaluation

We provided a copy of our report to the Departments of Defense, the Interior, and Transportation and to the Seldovia Village Tribe for review and comment. The Department of Defense did not provide comments. The Department of the Interior agreed with our recommendation and provided technical comments which we incorporated as appropriate. (See app. II for Interior's written comments.) Interior emphasized that the Alaska Region was responsible for oversight of the tribe's ferry project under the contract and compact. The Alaska Region's oversight was focused on ensuring that the ferry was built to specifications, that it met all safety and health requirements, and was a seaworthy vessel. The tribe did not obtain the funding needed for its initial proposal but identified a feasible alternative; therefore, Interior did not consider abandonment of the project to be consistent with the intent of Congress. Interior believes that the Alaska Region fulfilled its oversight responsibility for the ferry

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project. Based on Interior's and other comments we replaced the phrase "little oversight" with "limited oversight" in the title and throughout the report in describing Interior's oversight role.

As we recommended, the Department of Transportation agreed to assist Interior in determining the proper disposition of the ferry should the tribe default. (See app. III for Transportation's written comments.)

Transportation noted that it fulfilled its requirement under law to transfer the ferry appropriations to BIA, and because the ferry project was not part of Transportation's ferry program, matters relating to the scope of the project and its actualization are beyond its purview. Transportation asserted that once funds are transferred to another federal agency, the responsibility for financial and programmatic oversight becomes that of the recipient agency. Transportation believes that BIA's actions indicate that it recognized its oversight responsibilities, and noted that the joint investigation of the ferry project by the Interior and Transportation Offices of Inspector General found that the tribe's use of the funds did not conflict with the language of the appropriations.

The Seldovia Village Tribe did not comment on our recommendation or the future sustainability of the *Kachemak Voyager*. In its written response, reprinted in appendix IV, the tribe stated that it objected to the tone and tenor of the entire report. Specifically the tribe noted that:

- The ferry which it currently operates is not significantly different from the tribe's proposal that was approved for funding, and that we inaccurately describe the timing and reasons for changes that occurred. As we describe in detail in the report, the ferry that the tribe built and now operates based on its 2007 and 2009 studies differs significantly from the proposals provided to federal, state, and local officials and residents beginning in 2002 up to when funding was appropriated for a ferry from fiscal years 2004 to 2006. We state that the availability of funding was among the reasons for changes in the ferry design and operation and we believe that the dates presented in the report are accurate. In its comments, the tribe provided a more detailed 8-page timeline of events which is generally consistent with the key events that we highlight in figures 3 and 5. We have noted the tribe's disagreement with one aspect of our timeline in the report (see footnote 4).
- The report omitted information about oversight provided by Interior's BIA and Office of Self-Governance and by Transportation and its Federal Highway Administration. As discussed above, we revised the

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report to describe Interior's oversight role as limited. In the report we describe the limited oversight provided by BIA, which primarily focused on the self-determination contract for planning and design, in keeping with its project funding agreements with the tribe. We also report that the Office of Self-Governance's role was to provide funding, not oversight, to the tribe's project, and that Transportation and its Federal Highway Administration provided no oversight after transferring ferry appropriations to BIA. We believe this information is complete and accurate.

- Contrary to the report, the private tour boat operators' ridership had not declined, citing passenger counts from the City of Seldovia from 2009 through 2011. Based on our discussions with Seldovia officials, we do not believe the city's counts are reliable. Based on documentary and testimonial information gathered from the private tour operators, we believe our characterization of their ridership decline is accurate; however, we have included the tribe's perspective in this section of the report.
- The report's section on the Army Corps of Engineers was irrelevant because this agency did not provide funding for the ferry project or provide any oversight over the funding for the project. Consequently, the tribe stated that this section should be removed from the final report. Our objective was to describe the roles of the federal agencies involved in funding and overseeing the ferry project and associated dock facility projects. As our report acknowledges, while the Army Corps of Engineers did not provide funding for the project, it did have a role in issuing permits for dock construction and ensuring compliance with them. As a result, we made no changes to the report in response to this comment.

The tribe further stated that it fully complied with the terms of its self-determination contract and compacts and that we must affirmatively conclude that the tribe and the village corporation did not misuse any funding. The Interior and Transportation Inspector Generals' joint 2009 investigation report concluded that BIA's funding agreements with the tribe allowed changes in scope, and that the village corporation indicated to BIA that it intended to depart from its original specifications before doing so; it did not report any noncompliance by the tribe. As we state in our report, BIA approved the closure of the self-determination contract. Our report focuses on the roles of federal agencies in funding and overseeing the ferry project and associated dock facility projects and does not address whether the tribe complied with the terms of its self-

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determination contract and self-governance compacts or misused funding.

The tribe further stated that BIA reviewed every request for reimbursement and approved the expenditures they determined were appropriate prior to any federal funds being provided to the project. Therefore, the tribe stated that the ferry now operated by the tribe is exactly what was proposed as revised and authorized to be funded by the government. We disagree with that conclusion. Although the self-determination contract required the tribe to submit requests for payments, quarterly financial reports, and annual narrative reports to BIA, as we point out in the report, self-determination contracts and self-governance compacts transfer responsibility for decision-making to the tribe.<sup>26</sup> As long as the tribe complied with the terms of the contract and compacts, BIA had no role in approving or disapproving the decisions the tribe made regarding the type of ferry to be constructed and how it should be operated. Neither the contract nor compact contained any specific description of the type of ferry or its operations. We agree that BIA was kept informed of the tribe's decisions, but we do not believe that the receipt of that information or disbursement of funding to the tribe can be construed as BIA's approval of the tribe's decisions because, according to BIA, the ferry the tribe developed was a feasible alternative and that abandonment of the project was not considered consistent with the intent of Congress in enacting the appropriations for a ferry.

The tribe also provided other comments that we have incorporated in the report, as appropriate.

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<sup>26</sup>Section 3 of the Indian Self-Determination and Education Assistance Act articulates the federal government's Indian self-determination policy by noting that the policy "*will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.*" 25 U.S.C.A. § 450a(b) (emphasis added). See also *Lesoeur v. United States*, 21 F.3d 965, 968-969 (9th Cir. 1994) ("The United States has made a clear policy decision to diminish regulation of Indian tribal activities," citing the Indian Self-Determination and Education Assistance Act).

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 16 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees; Secretaries of Defense, the Interior, and Transportation; and other interested parties. The report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



Anu K. Mittal  
Director, Natural Resources and Environment

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# Appendix I: GAO Legal Opinion on Department of Transportation—Homer- Halibut Cove-Jakolof Bay-Seldovia Ferry

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United States Government Accountability Office  
Washington, DC 20548

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B-322791

April 3, 2012

The Honorable Don Young  
House of Representatives

The Honorable Lisa A. Murkowski  
United States Senate

Subject: *Department of Transportation—Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry*

This responds to your request for our legal opinion regarding amounts enacted for the Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry. Letter from Congressman Don Young and Senator Lisa A. Murkowski to General Counsel, GAO (Jan. 31, 2012) (Request Letter). For each of fiscal years 2004, 2005, and 2006, Congress enacted appropriations requiring that the Secretary of Transportation make amounts from the Highway Trust Fund available for a project identified as the “Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry, Alaska” (Ferry). The amounts were made available to the Seldovia Village Tribe (Tribe), a federally-recognized Indian tribe,<sup>1</sup> who used the amounts for expenses related to a ferry. You asked us (1) which agencies other than the Department of Transportation (Transportation) were involved in the conveyance of funds to the Tribe; (2) whether Transportation’s conveyances of funds to other agencies were consistent with the laws making funds available for the Ferry; and (3) whether the conveyances to the Tribe were consistent with the appropriations acts that made amounts available for the Ferry.

In response to your first question, we found that Transportation involved one other agency, the Department of the Interior (Interior), in the conveyance of funds to the Tribe. For each of the fiscal years 2004, 2005, and 2006, Transportation allocated<sup>2</sup>

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<sup>1</sup> 75 Fed. Reg. 60810 (Oct. 1, 2010).

<sup>2</sup> An allocation is a delegation, authorized in law, by one agency of its authority to obligate budget authority and outlay funds to another agency. GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 9.

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funds for the Ferry to Interior, which then conveyed the amounts to the Tribe through its annual funding agreements pursuant to the Indian Self-Determination and Education Assistance Act.<sup>3</sup>

In response to your second question, we conclude that Transportation's actions with respect to the fiscal years 2004 and 2005 amounts were consistent with specific provisions in the appropriations acts granting Transportation authority to transfer the amounts to another federal agency. Transportation did not identify, nor did we locate, specific statutory authority to transfer the fiscal year 2006 amounts to Interior. Given the facts and circumstances, if Transportation lacks specific authority, we would not object if the fiscal year 2006 transfer were made pursuant to the Economy Act, 31 U.S.C. § 1535.

In response to your third question, we conclude that both Transportation's allocation documents and Interior's annual funding agreements with the Tribe are consistent with the language of the appropriations. Their documents required that the Tribe use the funds for a ferry, the purpose stated in the appropriations acts.

Our practice when issuing opinions is to obtain the views of the relevant agencies to develop a factual record and to establish their legal positions on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/legal/resources.html](http://www.gao.gov/legal/resources.html). In this regard, we requested the views of Transportation and Interior. Letter from Managing Associate General Counsel, GAO, to Solicitor, Interior (Dec. 16, 2011); Letter from Assistant General Counsel for Appropriations and Budget, GAO, to General Counsel, Transportation (Jan. 23, 2012). Transportation provided additional information and its legal position. Letter from Deputy Assistant General Counsel for General Law, Transportation, to Assistant General Counsel for Appropriations and Budget, GAO (Feb. 23, 2012) (Transportation Letter). Interior did not respond to our letter.

#### BACKGROUND

For fiscal year 2004, the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, required that the Secretary of Transportation make specified amounts from the Highway Trust Fund<sup>4</sup> available for necessary expenses

<sup>3</sup> 25 U.S.C. §§ 450–458ddd-2.

<sup>4</sup> Congress authorizes Transportation, through the Federal Highway Administration and its other agencies, to incur obligations (using contract authority) on behalf of the federal government. See B-275490, Dec. 5, 1996; see also Federal Highway Administration, *Financing Federal-Aid Highways*, FHWA Publication No. FHWA-PL-07-017 (Mar. 2007), available at [www.fhwa.dot.gov/reports/financingfederalaid/](http://www.fhwa.dot.gov/reports/financingfederalaid/) (last visited Mar. 19, 2012). Contract authority is a form of budget authority that permits an agency to incur obligations in advance of appropriations. See 2 U.S.C.

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to carry out projects “identified under this section in the statement of managers accompanying this Act.” Pub. L. No. 108-199, § 115, 118 Stat. 3, 279, 294–95 (Jan. 23, 2004). The explanatory statement listed several “surface transportation projects”; one of these projects is designated “Seldovia-Homer-Jakolof Bay Halibut Cove Ferry Planning and Design, Alaska,” with a corresponding amount of \$2 million. H.R. Rep. No. 108-401, at 960 (Nov. 25, 2003). The act also provided that “funds made available under this section may, at the request of a State, be transferred by the Secretary to another Federal agency to carry out a project funded under this section.” Pub. L. No. 108-199, § 115, 118 Stat. at 294–95.

In fiscal year 2005, Congress enacted the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, as part of the Consolidated Appropriations Act, 2005. Pub. L. No. 108-447, div. H, 118 Stat. 2809, 3199 (Dec. 8, 2004). This act required that the Secretary of Transportation make available a specified amount “for surface transportation projects as identified under this section in the statement of the managers accompanying this Act.” *Id.* at § 117, 118 Stat. at 3212–13. The explanatory statement lists many projects; one of these is the “Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry, Alaska,” with a corresponding amount of \$6 million. H.R. Rep. No. 108-792, at 1403 (Nov. 20, 2004). As with the fiscal year 2004 act, this act also included a provision for transfers: “funds made available under this section, at the request of a State, shall be transferred by the Secretary to another Federal agency.” Pub. L. No. 108-447, 118 Stat. at 3213.

In fiscal year 2006, Congress enacted the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006. Pub. L. No. 109-115, 119 Stat. 2396 (Nov. 30, 2005). This act specified that projects and activities described under the “Federal-Aid Highways” heading in the statement of managers accompanying the Act “shall be eligible for fiscal year 2006 funds.” *Id.* at § 113, 119 Stat. at 2407. Among the several subheadings listed under the “Federal-Aid Highways” heading in the explanatory statement is “Ferry Boats and Ferry Terminal Facilities”; under this subheading a line appears for the project designated “Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry, AK,” for the amount of \$1 million. H.R. Rep. No. 109-307, at 158 (Nov. 18, 2005). Unlike the acts for fiscal years 2004 and 2005, the fiscal year 2006 act includes no provision regarding transfer of amounts to other federal agencies.

In both fiscal years 2004 and 2005, an official from the state of Alaska requested that Transportation transfer funds for the Ferry to the Bureau of Indian Affairs, which is an agency of Interior. Transportation Letter, enclosures. To accomplish this,

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§ 622(2)(A)(iii); see also GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Sept. 2005) (Budget Glossary), at 21. Congress subsequently enacts an appropriation from the Highway Trust Fund to liquidate the obligations. Budget Glossary, at 21; see also *Financing Federal Aid Highways*, at 34.

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Transportation established an allocation account in the U.S. Treasury, which permitted Interior to obligate and administer the funds for the Ferry. Transportation Letter, at 2; see also B-321823, Dec. 6, 2011; 1 TFM 2-1500, § 1520.65. Transportation followed the same procedure in fiscal year 2006. *Id.* Interior provided the funds to the Tribe each fiscal year through an annual funding agreement between Interior and the Tribe pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-458ddd-2. *E.g., Kachemak Bay Ferry Construction Addendum to the FY 2006 Annual Funding Agreement (2006 Funding Agreement).*

**DISCUSSION**

To respond to your first question, we asked Transportation what other agencies were involved in the conveyance to the Tribe. Letter from Assistant General Counsel for Appropriations and Budget, GAO, to General Counsel, Transportation (Jan. 23, 2012). Transportation told us that for each of the fiscal years 2004, 2005, and 2006, it allocated funds for the Ferry to Interior, which then conveyed the amounts to the Tribe through annual funding agreements pursuant to the Indian Self-Determination and Education Assistance Act.<sup>5</sup> Transportation Letter; see also 2006 Funding Agreement.

To respond to your second question, we reviewed the appropriations acts provisions permitting Transportation to transfer to another agency amounts enacted for the Ferry. In fiscal year 2004, the appropriations act provided that “funds made available under this section may, at the request of a State, be transferred by the Secretary [of Transportation] to another Federal agency to carry out a project funded under this section.” Pub. L. No. 108-199, 118 Stat. at 294–95. In fiscal year 2005, the appropriations act provided that “funds made available under this section, at the request of a State, shall be transferred by the Secretary [of Transportation] to another Federal agency.” Pub. L. No. 108-447, 118 Stat. at 3213. For both of these years Alaska made a request of Transportation. Transportation Letter, enclosures. Thus, Transportation had authority to allocate the fiscal years 2004 and 2005 amounts to Interior.

In fiscal year 2006, the appropriations act did not include the same transfer authority as in fiscal years 2004 and 2005. See Pub. L. No. 109-115, 119 Stat. at 2407. Generally, agencies may transfer appropriations only as specifically authorized by law. 31 U.S.C. § 1532. In its letter to us, Transportation did not acknowledge that the fiscal year 2006 act did not provide transfer authority. Transportation did advise that it had allocated the fiscal year 2006 amounts to Interior in the same manner as it did the fiscal years 2004 and 2005 amounts. Transportation Letter. If Transportation lacks specific transfer authority, we would not object if the transfer were made pursuant to the Economy Act, 31 U.S.C. § 1535. The Economy Act

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<sup>5</sup> 25 U.S.C. §§ 450–458ddd-2.

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allows an agency to transfer appropriations to another agency in return for a service rendered. In that regard, the Economy Act would authorize Transportation to acquire Interior's services to convey the amounts to the Tribe, and permit Transportation to transfer the amounts to Interior to effect that purpose, just as Transportation did in fiscal years 2004 and 2005 with its allocation documents.<sup>6</sup> However, Transportation has not provided us with an Economy Act agreement.

To respond to your third question, we reviewed the appropriations acts provisions for fiscal years 2004, 2005, and 2006 that enacted amounts for the Ferry. The appropriations act for each fiscal year incorporated by reference<sup>7</sup> provisions from the statements of managers providing that amounts would be made available for a ferry.<sup>8</sup> For fiscal year 2004, the statement of managers provided \$2 million for the "Seldovia-Homer-Jakolof Bay Halibut Cove Ferry." H.R. Rep. No. 108-401, at 960. For fiscal year 2005, the statement of managers provided \$6 million for the "Homer-Halibut Cove—Jakolof Bay—Seldovia Ferry, Alaska." H.R. Rep. No. 108-792, at 1403. For fiscal year 2006, the statement of managers provided \$1 million for the "Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry, AK." H.R. Rep. No. 109-307, at 158.

The documents in which Transportation allocated amounts to Interior stated that the amounts were allocated for a ferry. See, e.g., Letter from Director, Office of Program Development, Federal Highway Administration, Transportation, to Deputy Director, Office of Tribal Services, Bureau of Indian Affairs, Interior (allocating fiscal year 2004 amount). Similarly, the annual funding agreements required that the Tribe use the funds for expenses related to a ferry. See, e.g., 2006 Funding Agreement. Therefore, we conclude that both the documents Transportation prepared to allocate funding to Interior and the annual funding agreements between Interior and the Tribe are consistent with the language of the appropriations acts; the documents required that the Tribe use the funds for a ferry, the purpose stated in the appropriations.

#### CONCLUSION

Transportation allocated funds that Congress made available for the "Homer-Halibut Cove-Jakolof Bay-Seldovia Ferry, Alaska" to Interior, which conveyed the amounts

<sup>6</sup> The Economy Act would authorize Transportation, also, to transfer an amount to pay Interior costs Interior may incur in handling the transaction for Transportation.

<sup>7</sup> For a discussion of the legislative practice of incorporation by reference, see B-316010, Feb. 25, 2008.

<sup>8</sup> See Pub. L. No. 108-199, 118 Stat. at 294; Pub. L. No. 108-447, 118 Stat. at 3213; Pub. L. No. 109-115, 119 Stat. at 2407. Aside from the provisions from the statements of managers that the appropriations acts incorporated by reference, there is no additional legislative history concerning the appropriations for the Ferry for any of the three fiscal years 2004, 2005, or 2006.

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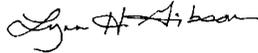
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to the Tribe. Both Transportation's allocation documents and Interior's annual funding agreements with the Tribe are consistent with the language of the appropriations. The documents required that the Tribe use the funds for a ferry, the purpose stated in the appropriations acts. While the appropriations acts for fiscal years 2004 and 2005 specifically authorized Transportation to transfer the amounts to another federal agency, Transportation did not identify, nor did we locate, similar authority for fiscal year 2006. If Transportation has no such specific authority, we would not object, as explained above, to Transportation's use of the Economy Act to justify the transfer.

If you have any questions, please contact Thomas H. Armstrong, Managing Associate General Counsel, at (202) 512-8257, or Julia C. Matta, Assistant General Counsel for Appropriations and Budget, at (202) 512-4023.

Sincerely,



Lynn H. Gibson  
General Counsel

# Appendix II: Comments from the Department of the Interior

Note: We have not included the exhibits.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

**MAY 18 2012**

Ms. Anu K. Mittal  
Director, Natural Resources and Environment  
U. S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Mittal:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) Draft Report (Report) entitled, *KACHEMAK BAY FERRY: Federally Funded Ferry Was Constructed with Little Oversight and Faces Future Operating Challenges* (GAO-12-559).

The Report recommends that the Secretary of the Interior and the Secretary of Transportation collaborate on the disposition of the sale proceeds in the event of a potential sale of the Kachemak Voyager. The Department of the Interior agrees with this recommendation and will coordinate with the Federal Highway Administration to determine the next action, based on the requirements of 23 U.S.C. § 129(c)(6) and P. L. 93-638, the Indian Self-Determination and Education and Assistance Act, as amended.

We enclose with this letter some technical comments (Exhibit 1) for your consideration. There are several areas in the Report where the term Division of Transportation is used interchangeably with the Alaska Regional Office of the Bureau of Indian Affairs (BIA) and the Washington, D.C., Central Office. For clarification, the BIA Division of Transportation (BIADOT) is located within the BIA's Office of Indian Services in Washington, D.C. It is overseen by a Division Chief and has personnel in two locations: Washington, D.C. and Albuquerque, New Mexico. The BIADOT is the Federal Highway Administration's (FHWA) Office of Federal Lands Highways primary point of contact for the Indian Reservation Roads (IRR) Program and oversees the program from a national level.

The Transportation Office in the Alaska Regional Office is overseen by the Regional Roads Engineer (RRE). The RRE reports directly to the BIA Regional Director. There is no line of authority between the RRE and the Division Chief of BIADOT. There is no BIA Division of Transportation in a regional office.

As a further point of clarification, the funds appropriated by Congress in FY 2004 were provided by FHWA to BIADOT who, in turn, made them available to the Alaska Region for inclusion in a P. L. 93-638 contract with the Seldovia Village Tribe (Tribe). A P. L. 93-638 contract is project specific and is awarded and overseen by the BIA staff (Awarding Official and the Awarding Officials Technical Representative). Funds are obligated to the contract and expended and made available to the Tribe as work is completed and milestones are reached. For transportation projects, the regional transportation office carries out oversight on projects funded through P. L. 93-638 contracts.

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**Appendix II: Comments from the Department  
of the Interior**

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The funds appropriated in FY 2005 and FY 2006 were provided by FHWA to BIADOT, who, in turn made them available to the Office of Self-Governance (OSG) for inclusion in a P. L. 93-638 compact with the Tribe. When implementing a self-governance compact for an IRR project, OSG includes a funding agreement that has an addendum attached. The addendum specifically sets forth the provisions that will apply to the IRR project.

The funds appropriated by Congress were intended for the construction of a ferry. The BIA Alaska Region had the responsibility for oversight of the ferry and dock work, not OSG (Exhibit 2). The BIA Alaska Regional oversight responsibilities were focused on ensuring that the ferry was built to specifications, that it met all safety and health requirements, and was a seaworthy vessel. The Report does not recognize the oversight provided by the BIA Alaska Regional Office in this regard.

The Report discusses the type of ferry, road, and dock work. The work, as initially proposed and designed and approved would have cost \$44 million. This proposal was supported by the town and other ferry competitors. When the contract amount was reduced to \$8.9 million, it was no longer possible for the Tribe to build the type of ferry that was initially envisioned and also support the dock and road work. The price of a ferry that would have met the requirements of the initial plans would have been approximately \$12 million (Exhibit 3).

The Tribe fulfilled its due diligence by completing a thorough feasibility study which included an economic analysis based on data available at the time, by conducting a review and assessment of existing transportation resources in Kachemak Bay, and by soliciting public comment and involvement. The Tribe assessed the feasibility of different alternatives and selected the best alternative that was achievable within the existing funding. Because a feasible alternative existed, abandonment of the project was not considered to be consistent with the intent of Congress.

Although the BIA Alaska Region Transportation program had documented shortcomings in its monitoring program in that same time period, which have since been corrected, we believe the Alaska Region met its oversight responsibility in this case.

The Department hopes that these comments will assist you in preparing the final report. If you have any questions, please contact Ms. Sharee Freeman, DOI, Office of Self Governance, at (202) 219-0240 or Mr. LeRoy Gishi, Division of Transportation at the Bureau of Indian Affairs, at (202) 513-7711.

Sincerely,



Donald E. Laverdure  
Acting Assistant Secretary – Indian Affairs

Enclosures (3)

# Appendix III: Comments from the Department of Transportation



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

MAY 22 2012

1200 New Jersey Avenue, SE  
Washington, DC 20590

Ms. Anu K. Mittal  
Director, Natural Resources and the Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20458

Dear Ms. Mittal:

As directed by law, the Department of Transportation (DOT) fulfilled its requirement to transfer funds, identified by earmarks within appropriations law, to the Department of the Interior's (DOI) Bureau of Indian Affairs (BIA) for the purposes described in the statute - to construct a Ferry. It is important to note that the Ferry project was not part of DOT's Ferry program, or selected as a participant in our rigorous Ferry discretionary program. The DOT's role was straightforward, to transfer funds totaling approximately \$9 million to the DOI. As a result, matters relating to the scope of the project and its actualization are beyond the purview of DOT.

Once the funds were transferred to a Federal agency outside of DOT, the responsibility for financial and programmatic oversight becomes that of the recipient agency. There is considerable support in law and practice for DOT's position that with the transfer of funds, the responsibility for the project management and oversight resides with the recipient agency. First and foremost, there was language to this effect in the original, FY 2004 appropriations act. Specifically, the law stated that "...funds made available under this section may, at the request of a State, be transferred by the Secretary to another Federal agency to carry out a project funded under this section, ***such funds to be then administered by the procedures of the Federal agency to which such funds may be transferred...***"<sup>1</sup> [emphasis added]. There is further precedent within DOT for the recipient of transferred funds to be accountable for the use of

<sup>1</sup> Section 115 of Public Law 108-199; 118 Stat. 294-95

those funds. For example, funds transferred from the Federal Highway Administration to the Federal Transit Administration are done so with the statutory provision that the administration of these funds is accomplished by the receiving agency.<sup>2</sup> Finally, there is more general precedent discussed in a prior GAO Comptroller General decision relating to funding transfers among government entities. Specifically, GAO found that inasmuch as the funds were transferred to an independent Federal agency, it was with the expectation that the receiving agency has the responsibility to monitor its grants projects and ensure that funds were used properly.<sup>3</sup>

The BIA recognized its obligation to provide oversight of the funds when it reserved the \$153,000 described in the GAO draft report for “travel to look at other independently owned ferries with the project manager, attend meetings and personally view ferry infrastructure landings, and other administrative expenses associated directly with this project, as deemed necessary by BIA.” DOT is in no position to posit an opinion as to the impact the Indian Self Determination and Education Assistance Act (Pub. L. 93-638) may have had on BIA’s oversight of the funds for the Ferry. However, we note that these and other issues were subject to previous analyses by the DOI’s Office of Inspector General, as well as a joint review by the Inspectors General of both Departments. The joint investigation of the Ferry Project by the DOT and DOI OIGs found that the Tribe’s use of funds did not conflict with the language of the appropriations.

DOT is prepared to assist the DOI in determining the applicability of 23U.S.C. § 129(c) (6) as to the disposition of the Ferry, should the operator default, as discussed in the GAO recommendation. In light of the discussion above relating to the transfer of these funds to be administered by DOI outside the authority of Title 23 U.S.C., it is not clear that this provision of law is applicable. First and foremost any disposal of the Ferry upon default should be consistent with the terms and conditions established by the DOI with the Tribe. In the event these terms and conditions were not spelled out under the agreement, ferry disposal may be governed by Common Grant Rule section .32 as it pertains to the disposal of equipment.<sup>4</sup> In such case, DOT stands ready to assist the DOI in determining whether another Tribe, State, or local agency may be able to use the ferry for an eligible transportation purpose consistent with the Rule.

<sup>2</sup> 23 U.S.C. 104(K)(1) specifically and unambiguously provides that upon transfer of highway funds for a transit project the highway funds are administered under chapter 53 of title 49 (the transit chapter).

<sup>3</sup> See GAO Comptroller General Decision, “*Denali Commission – Transfer of Funds Made Available through the Federal Transit Administration’s Appropriations*,” B319189.

<sup>4</sup> See Office of Management and Budget Circular A-102, “Grants and Cooperative Agreements with State and Local Governments.”

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**Appendix III: Comments from the Department  
of Transportation**

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We appreciate this opportunity to comment on the GAO report. Please contact Martin Gertel, Director of Audit Relations with any questions or if we may be of further assistance.



Brodi Fontenot  
Deputy Assistant Secretary  
for Administration

# Appendix IV: Comments from the Seldovia Village Tribe

Note: GAO comments supplementing those in the report text appear at the end of this appendix. In addition, we have not included the exhibits.



## SELDOVIA VILLAGE TRIBE

Tradition Integrated with Technology

VIA EMAIL TO [dobbinsb@gao.gov](mailto:dobbinsb@gao.gov) and OVERNIGHT MAIL

May 30, 2012

Ms. Anu K. Mittal  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

**Re: Seldovia Village Tribe and Seldovia Native Association, Inc.'s Joint Comments on GAO's Proposed Report**

Dear Ms. Mittal:

By this letter, Seldovia Village Tribe (the "Tribe") and Seldovia Native Association, Inc. ("SNA"), provide objections and written comments to the U.S. Government Accountability Office ("GAO") proposed report entitled *Kachemak Bay Ferry: Federally Funded Ferry Was Constructed with Little Oversight and Faces Future Operating Challenges (GAO-12-559)* supplied to the Tribe on April 23, 2012, ("Draft Report") and respectfully request that these comments be incorporated into the final report issued by the GAO regarding the Kachemak Bay Ferry ("KBF").<sup>1</sup>

### I. INTRODUCTION

The Tribe and SNA object to the tone and tenor of the Draft Report in its entirety.<sup>2</sup> The Draft Report is currently written in such a manner that it portrays the ferry project in a negative light and insinuates that the Tribe arbitrarily changed the KBF project without government approval or public involvement and took actions beyond the scope of the Tribe's authority under its contractual agreements with the government; none of which are true. In fact, there is an abundance of evidence to the contrary, and no credible evidence to support the tone and tenor expressed in the Draft Report.

Indeed, the Draft Report contains misleading information and omits significant facts, which are necessary to understand the history and evolution of the KBF project, and therefore,

<sup>1</sup> The current name of this project is the Seldovia Bay Ferry.

<sup>2</sup> Even the GAO's proposed title is objectionable. The Tribe requests the GAO to revise the title of the Final Report to "Federally Funded Ferry Faces Future Operating Challenges" because the GAO's conclusions regarding oversight of the KBF project are in dispute.

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misrepresents facts surrounding the tour boat operators and skews the history and evolution of the KBF project, which results in a negative portrayal of the KBF project. In addition, the Draft Report contains information that is not relevant to the funding or oversight of the KBF, or to the history of the KBF or continued operation of the ferry. These irrelevant facts should be omitted from the GAO Final Report.

Moreover, there are fundamental errors, either explicitly or by implication, contained in the Draft Report because of the sources GAO chose to rely upon when formulating its conclusions. The GAO chose in many cases to use and rely upon self-serving after-the-fact statements despite having contemporaneous documents that contradict those statements. The reliance upon non-credible statements is the foundation for poorly-drawn conclusions.

Regardless, the GAO implies throughout that something was wrong with this project, but fails to state how the oversight on this project deviated from the standard government oversight policy, or how the Tribe or SNA did anything inappropriately. Rather, the GAO chose to damn the Tribe through implication; namely, that if proper oversight was present, a different project would have resulted. In doing so, the GAO fails to acknowledge the depth of governance oversight on this project, choosing to rely, instead, on the self-serving statements of delinquent tax payers. The GAO does so despite an earlier Office of Inspector General ("OIG") report that essentially cleared the Tribe of any wrong doing and its own earlier opinion letter that the Tribe did nothing illegal.

The Tribe and SNA, at their own great expense, have presented evidence to the GAO. In some cases, the GAO failed to obtain the documents from government sources, and SNA obtained it through a Freedom of Information Act ("FOIA") request. The information obtained, which was made contemporaneously during the project, contradicts the GAO's own evidence and after-the-fact statements made by agency personnel.

This letter sets forth some of the more egregious errors contained in the Draft Report.

## II. INCORRECT FACTUAL INFORMATION AND SIGNIFICANT OMISSIONS REGARDING GOVERNMENT OVERSIGHT AND APPROVAL.

There are numerous incorrect factual statements and significant omissions in the Draft Report regarding government oversight and approval that should be corrected prior to the issuance of the GAO Final Report. The items that should be corrected are set forth in more detail below.

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See comment 1.



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this modified proposal was submitted and approved prior to the Tribe receiving *any compact funding* from the government.<sup>7</sup>

Also of significance, the initial funding received by the Tribe in September 2005, was a contract from the BIA in support of a design and feasibility study for the project, and the Tribe appropriately utilized the funds it received on *design and feasibility studies* for the KBF. Simply put, until 2005, the design and feasibility for the project was not adequately studied, as with any other project prior to conducting the design and feasibility studies. That is, the project was conceptual in nature, as understood by all parties, when the initial larger funding was sought.

In addition, the contract required that all design and feasibility study expenditures be submitted to the BIA accompanied by a report requesting reimbursement. The BIA reviewed every request for reimbursement and approved the expenditures they determined were appropriate prior to any federal funds being provided to the project. This system mandated direct and ongoing BIA oversight for all of the contract expenditures and was considerably more than “technical” compliance to the contract terms, as the BIA actively reviewed and approved expenditures.

Further, the Draft Report does not contain any explanation of why the design of the ferry changed from a vehicle-passenger ferry to a passenger and light freight ferry.<sup>8</sup> The Draft Report mentions that the Tribe sought \$14 million in funding for the KBF project, which included \$12 million for the ferry design and construction, and \$2 million for docking facilities. The Draft Report also correctly states that the Tribe only received a total of \$10.9 million for the KBF project, including all sources.<sup>9</sup> However, the Draft Report does not state how the lack of funding affected the design of the ferry. There is a large disparity between \$10.9 million and \$14 million; the Tribe was forced to change the design of the ferry because it simply did not have the funds to build a ferry that could haul vehicles.

Importantly, the price of steel increased drastically during the design phase of the KBF project, which greatly impacted the design of the KBF project. The same ferry that would have cost \$12 million increased to \$28 million due to this increase in steel prices during 2007. *See Exhibit 2, pp. 1, 7-8.*

<sup>7</sup> The Tribe signed the funding agreement on July 20, 2005, and received its first draw of design and feasibility funds from the government on or around September 13, 2005. The Tribe later received its first compact funds in May of 2006.

<sup>8</sup> The Draft Report incorrectly concludes at page 12 that the ferry is a passenger only ferry. This is simply inaccurate. The ferry can haul light freight and some smaller vehicles such as ATVs, which no other operator offers.

<sup>9</sup> Also of note, the funding was received by the Tribe throughout a span of five years, and it was often unknown if any additional funding would be secured during that time.

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See comment 4.

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See comment 4.

In addition to the decreased funding amount and increases in the price of steel, the Alaska Marine Highway System (“AMHS”), which operates the State ferry named the “Tustumena,” also changed its position regarding the KBF during the design phase. In that regard, AMHS went through a change of personnel, and the new director was adamant about not partnering with the Tribe to replace the AMHS ferry services to Seldovia with the KBF. Coupled with the lack of funding and increased prices, the Tribe had no choice but to build a ferry that was not capable of hauling vehicles in order to prevent competition with AMHS.

Most importantly, the Tribe openly conveyed all of this information in its quarterly reports to the BIA prior to approval of construction of the KBF ferry. *See* Exhibit 3. Ultimately, the ferry now operated by the Tribe is *exactly* what was proposed as revised and authorized to be funded by the government.

The following timeline succinctly demonstrates the significant events and government oversight over the project for the years 2002 – 2011.

- **December 2002** – The Tribe proposes \$44 million Kachemak Bay Intermodal Transportation Improvements project to the U.S. Congress, which included five phases, one of which was a vehicle and passenger ferry project serving three ports and four phases included major road improvements. *See* Exhibit 26.
- **March 2003** – Upon request, the Tribe provides additional information to Congress regarding the \$44 million Kachemak Bay Intermodal Transportation Improvements project. *See* Exhibit 1.
- **December 2003** – Congress considers funding the KBF project proposal for \$14 million. *See* Draft Report at 11.
- **2004 and 2005** – The appropriate and proper avenue of funding was extensively discussed and analyzed by the FHA, BIA, and DOT. There are several emails and references to in-person meetings discussing how the contractual and oversight relationships would be handled prior to approval and issuance of funding. *See* Exhibit 4.
- **March 2004** – The City of Seldovia resolves to form a Steering Committee that will expire on December 31, 2004. *See* Exhibit 17 at 2-3.
- **May 2004** – The local communities form a Steering Committee, and the Steering Committee meets on May 17, 2004. *See* Exhibit 17 at 1, 9-17. The Tribe supplies FHA with the proposal sent to Senator Stevens, draft design budget in the amount of \$2 million, and requests approval for funding. *See* Exhibit 27.

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**Appendix IV: Comments from the Seldovia Village Tribe**

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- **May 2005** – The BIA approves a funding document for the design of the ferry in the amount of \$2 million [signed by the Deputy Bureau Director of Tribal Services]. Art High, the BIA representative assigned to the ferry project, holds a teleconference with the Tribe and writes the Tribe a letter regarding required submittals to the BIA. *See* Exhibit 28 at 1.
- **July 18-19, 2005** – The BIA approves a funding document for the ferry project in the amount of \$3.968 million [signed by the Deputy Bureau Director of Tribal Services] pursuant to Section 117. *See* Exhibit 28 at 2.
- **January to July 2005** – The DOT, BIA, and Office of Self Governance review and analyze the project and determine the appropriate avenue for funding. Several in-person meetings are held discussing how the contractual and oversight relationships would be handled prior to approval and issuance of funding. *See* Exhibit 4. Art High with the BIA writes the Tribe on June 30, 2005 regarding questions concerning its proposal, and the Tribe provides responses to his questions. *See* Exhibit 29.
- **July 20, 2005** – An agreement is negotiated and executed between the U.S. and the Tribe in the amount of \$1.967 million for design and feasibility studies. *See* Exhibit 30.
- **July 20, 2005** – An agreement is negotiated and executed between the U.S. and the Tribe in the amount of \$1.967 million for design and feasibility studies. *See* Exhibit 30.
- **August 2005** – The City of Seldovia reactivates the Steering Committee after funding delays. Exhibit 31
- **September 2005** – Tribe commences preliminary design and feasibility studies for the ferry project pursuant to its agreement with the U.S. government. The Tribe also has at least five meetings with the City Manager of Seldovia, Seldovia City Council members and representatives of Port Graham and Halibut Cove regarding the ferry project and executes a contract with the City of Seldovia to assist in the design and development of the ferry. *See* Exhibit 3 at 38-40. The City of Seldovia reactivates the steering committee. *See* Exhibit 17 at 24.
- **September to December 2005** – The Tribe has at least six meetings with Seldovia City Manager, representative of Halibut Cove, consultants, The Alaska Industrial Development and Export Authority and AMHS. *See* Exhibit 3 at 1-40. Working with the City of Seldovia and consultants, the Tribe finalizes its four Requests for Proposals for design and feasibility for the ferry project, coordinating the ferry project with AMHS

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and ADOT, and to plan and organize a Title 29 municipal port authority. *Id.* The City of Seldovia organizes a Port Authority for the ferry. The Tribe also prepares and submits its first quarterly report for quarter ending September 30, 2005 and reports its progress to the BIA pursuant to its agreement. *Id.*

- **October 2005** – The BIA instructed the village corporation to include a description of work in their quarterly reports and specified that their new rules require the BIA to review scopes of work. *See* Exhibit 5.
- **November 22, 2005** – The Tribe passes Resolution No. 2005-12 and exercises its authority to assume the Kachemak Bay Ferry Project and assume the \$6 million FHWA funds into its 2005 compact annual funding agreement. *See* Exhibit 1a at 7-8.
- **December 1, 2005** – The Tribe meets with BIA, including Peggy Exedine and others to discuss the ferry project. *See* Exhibit 32.
- **January 2006** – The Tribe enters into a contract with the City of Seldovia, which details out a scope of work for the City of Seldovia. *See* Exhibit 18 at 3. Art High is assigned as the Awarding Official Technical Representative for the BIA. *See* Exhibit 32.
- **February 2006** – The Tribe supplies the U.S. Congress, the BIA and FHA the Kachemak Bay Ferry Project Briefing Report, which included concepts, resolutions, BIA Questionnaire, funding proposal, funding summary, first and second quarterly reports to the BIA, design budget, design scope, construction budget and scope, RFP winners, landing site and shipyard recon, design recon, procurement plan, feasibility and design, port authority, convention, environmental, resumes, CEO diary, and original concept. The budget included in the Briefing Report is \$14 million; \$2 million for design and feasibility, \$2 million for docks and infrastructure, \$8.3 million for construction of the ferry, and \$1.7 million for management, administration, and operation during the first two years. *See* Exhibit 32.
- **February 2006** – The Tribe verbally briefs Art High, the BIA representative assigned to this project, of the project status, and holds a separate meeting to report the ferry design status to Peggy Exedine, Walter Hislop, and BIA Director Niles Cesar. *See* Exhibit 32. The Tribe submits its second quarterly report to the BIA pursuant to its contract and reports that the general consensus was that they could not afford the Lockheed Martin design with available funding and that the Tribe had “received excellent cooperation and attention from Art and Janelle.” *See* Exhibit 3 at 42-43. The Tribe also has at least five additional meetings with state lawmakers, Clem Tillion, Governor Murkowski, Commissioner Mike Menge, Robin Taylor (AMHS Chief), Mike Barton (Alaska DOT

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Commissioner), Jim Potdevin and Andy Hughes (State DOT), and Dave Miller, Karen Schmidt, and Karen Tennyson (FHA). *Id.* at 42-43 and Exhibit 32.

- **March 2006** – The Tribe has at least four meetings with Lockheed Martin, Allen Marine, the City of Seldovia Manager, Clem Tilliam of Halibut Cove, Tim Navarre (assistant to Kenai Peninsula Mayor), and provides a congressional update. *See* Exhibit 32. The Tribe writes Don Young, provides a copy of the Briefing Report, and requests \$3.5 million in funding. *See* Exhibit 33.
- **April 11, 2006** – The Tribe meets with Peggy Exedine and Niles Cesar with the BIA regarding the ferry project. *See* Exhibit 3 at 73.
- **April 12, 2006** – The Tribe gives a presentation to the Seldovia City Council and citizens of the community on the ferry project. *Id.*
- **May 2006** – The Tribe submits its third quarterly report for the quarter that ended March 31, 2006 to the BIA pursuant to its contract, and reports that the Lockheed Martin ferry design “is both too expensive and represents too much possible repair liability and this option that Lockheed Martin originally proposed is all but dead.” *Id.* at 50.
- **June 1, 2006** – The Tribe meets with the FTA in Seattle regarding the ferry project. *Id.* at 88.
- **June 5, 2006** – A design work session is held in Seattle with SNA, designers, research consultants, and the representative of BIA assigned to the ferry project, Art High. **It is known and discussed in this work session that the Lockheed vessel design, as originally proposed is not feasible.** Four design options are discussed, one of which is a passenger/light freight high speed option (ultimately built), and three different conventional ferry options that would require AMHS to leave the market in Homer/Seldovia. *See* Exhibit 6.
- **July 2006** – The Tribe submits its fourth quarterly report to the BIA for quarter ending June 30, 2006 pursuant to its contract. *See* Exhibit 3 at 54-98. The Tribe reports that a team meeting was held in Seattle that included the personal attendance of Art High from the BIA, and attaches the written trip report from this planning session (described above). *Id.*
- **August 2006** – The Tribe solicits public opinions through a survey. A website with public information about the project is online. Initial feasibility studies are complete.

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The Seldovia City Council passes Ordinance 070-1 to establish the port authority, subject to voter ratification. *Id.* at 117-151.

- **September 2006** – The Tribe holds a dock facilities design reconnaissance in Washington with PMTS. *Id.* at 108-113.
- **October 2006** – The citizens of the City of Seldovia vote to not authorize a Port Authority. *Id.* at 174. The Tribe enters into a grant agreement with the State of Alaska in the amount of \$1.5 million. *Id.* at 104. The Tribe submits its fifth quarterly report to the BIA for quarter ending September 30, 2006 pursuant to its contract. *Id.* at 99-163. The Tribe reports to the BIA that a “substantial amount of adjustments [were] made to the design of the ferry...it is becoming obvious following in the path of the Lockheed Martin boat that we originally thought would work best for Kachemak Bay is now not a viable alternative. The cost of aluminum and steel has placed this boat out of reach of our \$14 million budget.” *Id.*
- **November 2006** – The Tribe holds at least two meetings with the City Manager of Seldovia and the FTA. *Id.* at 179-184.
- **December 6, 2006** – The Tribe meets with Art High from BIA in Anchorage regarding the ferry project. *Id.* at 185.
- **January 2007** – The Tribe submits its sixth quarterly report to the BIA for quarter ending December 31, 2006 pursuant to its contract and requests the BIA to transfer \$3.968 million and \$788K per the agreements. *Id.* at 164-189 and Exhibit 34.
- **February 13, 2007** – The Tribe holds a conference call with Sheldon Kipp and Peggy Exendine with BIA to discuss the ferry project. *See* Exhibit 3 at 216.
- **February to March 2007** – The Tribe holds at least three meetings with the Seldovia Chamber of Commerce, Clem Tillion, and AMHS. *Id.* at 212-223.
- **May-2007**-The Tribe’s study of ferry options confirms that a vehicle and passenger ferry is not viable. *Id.* at 224-226. The Tribe prepares and submits its seventh quarterly report for quarter ending March 31, 2007 to the BIA pursuant to its contract and attaches its design study that includes its preferred design alternative. *Id.* The Tribe reports that the design study “absolutely confirmed that the cost to build any type of ferry that hauls automobiles, trucks, and containers is out of the price range of our project and is not feasible. *Id.* at 225. The Alaska Marine Highway System also has emphatically stated that they will continue to run the AMHS ferries even if we had our own ferry. We

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absolutely cannot compete against the State of Alaska. All of our focus, consultants, budgets, and projects have now switched gears and are moving towards the design and development of a passenger only ferry system that may have capabilities for limited freight (totes/ATV)." *Id.*

- **June 22, 2007** – The Office of Self Governance approves the Tribe’s IRR funding agreement for the ferry that states in part “[t]he signed, final version on the right hand side of this folder incorporates changes and edits made through extensive discussion with Andy Caulum, Office of the Solicitor, and LeRoy Gishi, BIA Division of Transportation. Those changes have been reviewed by the Tribe and agreed to by them.” The agreement is signed by the federal negotiating team that includes the BIA Regional Director, Office of Self Governance Negotiator, and the BIA Regional Roads Administrator, and a certification that states, “We hereby attest that the programs and dollar amounts identified in the attached annual funding agreement are those which were negotiated at sessions involving federal and tribal representatives as part of the Tribal Self-Governance negotiations for 2008 agreements.” The funding agreement details the funding amount and source, reporting and oversight responsibilities, and attaches the approved budget for the project. *See Exhibit 8 at 2-3.*
- **June 25-27, 2007** – Art High with the BIA travels to Seldovia and prepares a trip report (dated July 2, 2007). Art High acknowledges the escalating prices of aluminum and that the project is being scaled accordingly. Art High also notifies the Tribe that the construction and operation funds will be released pending public comment on the project. Art High tours the roads originally proposed for reconstruction in 2002 and recommends these roads be included in the BIA’s high priority project list. *See Exhibit 7.*
- **June 6 and 28, 2007** – The Office of Self Governance faxes the BIA routing slip, signed by several BIA personnel, where the subject, in bold is “Review of Kachemak Bay Ferry Program Addendum to the FY 2007 Annual Funding Agreement between the Seldovia Village Tribe and the United States of America.” *See Exhibit 8.*
- **July 3, 2007** – The Tribe writes Art High and requests a year extension to complete the project due to changes in the design and caused by the “skyrocketed” price of the original proposed ferry and decrease of available funding from \$14 million to \$10.2 million. The letter states “[w]e are moving forward with a passenger only ferry that will have a substantial favorable economic impact on Seldovia.” *See Exhibit 35 at 3.*
- **July 2007** – The Tribe holds a public open house and public information meetings in Seldovia regarding the ferry and submits its eighth quarterly report for quarter ending

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June 30, 2007 to the BIA pursuant to its contract. *See* Exhibit 3 at 224-248. The Tribe reports that it completed and published its Design, Development and Feasibility Study Report and knows now that the project will not be funded as originally intended (\$10.2M vs. \$14M). The quarterly report also summarizes Art High's trip to Seldovia. *Id.* Art High approves the Tribe's extension request. *See* Exhibit 35 at 2.

- **September 2007** – Additional public meetings are held in Homer and Seldovia. The May 2007 design development and feasibility study report is presented and available to the public regarding the ferry project. *See* Exhibit 3 at 249 and Exhibit 18 at 43-44.
- **November 2007** – The Tribe submits its ninth quarterly report for quarter ending September 30, 2007 to the BIA pursuant to its contract. In its report, the Tribe describes its presentations of its preferred alternative to the communities of Homer and Seldovia for comment. *See* Exhibit 3 at 249-254.
- **December 2007** – Art High emails Peggy Exendine with the BIA regarding status of the ferry project holds an internal BIA meeting to discuss the controversy surrounding the project. *See* Exhibit 9.
- **January 2008** – The Tribe issues the Kachemak Bay Ferry project scoping report that contains records of public meetings, radio and newspaper ads regarding public notices, public input documents, and results of the Tribe's survey sent to the Kachemak Bay Communities. The Tribe also submits its tenth quarterly report for quarter ending December 31, 2007 to the BIA pursuant to its contract. This report attaches the Tribe's scoping report and a draft environmental report for the BIA's review. The Tribe informs the BIA that it plans to develop its own dock in Seldovia. *See* Exhibit 3 at 255-262.
- **April 2008** – The Tribe submits its eleventh quarterly report for quarter ending March 31, 2008 to the BIA pursuant to its contract and summarizes its efforts in preparing a Request for Proposal (RFP) for construction of the ferry. *Id.* at 263-271.
- **May 2008** – The Tribe issues a RFP to solicit bids to construct the ferry and requests a one-year extension to the contract to complete the project. *See* Exhibit 10.
- **July 2008** – The BIA approves a year extension from July 31, 2008 to July 31, 2009 to complete the ferry project. The approval, signed by Art High, states "Seldovia has been making steady progress on the Ferry project...I believe this to be a reasonable no additional cost to the government request." *See* Exhibit 36. The Tribe also submits its twelfth quarterly report for quarter ending June 30, 2008 to the BIA pursuant to its

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signed, final version on the right hand side of this folder incorporates changes and edits made through *extensive discussion with Andy Caulum, Office of the Solicitor, and LeRoy Gishi, BIA Division of Transportation*. Those changes have been reviewed by the Tribe and agreed to by them. As of today, June 22, 2007, AS-IA Artman has designated me to sign all IRR Funding Agreements.” *Id.* at 2 (*emphasis added*). Also attached is a signature page, signed by the federal negotiating team, that included the BIA Regional Director, Office of Self Governance Negotiator, and the BIA Regional Roads Administrator, and a certification that states, “[w]e hereby attest that the programs and dollar amounts identified in the attached annual funding agreement are those which were negotiated at sessions involving federal and tribal representatives as part of the Tribal Self-Governance negotiations for 2008 agreements.” *Id.* at 3. Further attached is the actual funding agreement that goes into detail about funding, reporting oversight responsibilities, and attaches the budget for the project. *Id.* at 4-17. Again, this demonstrates that the funding agreements that included the specific duties of each party to the agreement, outlined the reporting and oversight requirements, and detailed out the scope of work along with a budget for the KBF project, were reviewed, discussed, and negotiated at great length within federal agencies.

- In December 2007, Art High emailed Peggy Exendine with the BIA regarding the status of the KBF project and a meeting to discuss the controversy surrounding the project. *See* Exhibit 9. Notably, this was well in advance of any construction of the ferry because the Request for Proposals (“RFP”) for a contractor to construct the ferry was not issued until May 1, 2008, and a contractor was not selected, and a notice to proceed for construction was not issued, until September 2008. *See* Exhibit 10, letter from SNA and first page of the RFP. This demonstrates that Art High and others within the BIA were overseeing the project and aware of the controversies surrounding the project in 2007.
- On September 17, 2008, immediately following the execution of the contract for All American Marine to build the ferry, the Tribe, through SNA, submitted an invoice to the BIA and requested approval of funds to be dispersed specifically for construction. *See* Exhibit 11. Of note, the BIA reviewed and approved this invoice and request. *See* Exhibit 12 at 1.
- As of November 17, 2008, the DOT had SNA’s October 31, 2008 quarterly report in its possession. This demonstrates that the BIA was indeed forwarding on status reports to DOT as part of its oversight duties. *See* Exhibit 12.
- On January 27, 2009, Art High emailed Peter Field with DOT regarding the status of the ferry project. *See* Exhibit 13. In this email, he states that he had been giving

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prior to closeout and final disbursement of funds. Moreover, the Tribe and SNA accurately and appropriately reported the status of the project, and in the end, the Tribe and SNA delivered a ferry that was exactly as proposed and approved by the government.

**D. The Ferry Was Proposed to be Owned by the Tribe.**

The Draft Report states that the Tribe originally proposed to have a port authority own and operate the ferry, and that this changed.<sup>13</sup> The KBF project was never planned or proposed to be owned by a port authority and these false statements in the Draft Report must be corrected. Although the City of Seldovia opposed the Tribe owning the ferry because it wanted to own it; neither the Tribe nor SNA ever proposed to the government that the City of Seldovia or a port authority own the KBF. *See* Exhibit 16 at 2. Indeed, the Tribe clearly proposed to own the ferry in its initial application for discretionary funding. *Id.* Page 2 of the Tribe's funding application states in no uncertain terms, "[t]he Kachemak Bay Ferry Boat will be 'publicly owned' by the Seldovia Village Tribe, a federally recognized Indian Tribe headquartered [sic] in Seldovia, Alaska." In addition, the Tribe's original proposal clearly explained the options for operating the ferry, and that a port authority required voter ratification in order to operate the ferry. *Id.* at 3. In the event the public did not authorize a port authority to operate the ferry, the Tribe's proposal made it clear that the Tribe would operate the ferry. *Id.*

**E. The City of Seldovia and the Public Were Involved in the Planning and Design of the Ferry.**

Contrary to assertions in the Draft Report, the City of Seldovia and the public were involved in the planning and design of the ferry. The Tribe worked with the City of Seldovia to establish a Steering Committee in 2004, and the Steering Committee met regarding the KBF project. *See* Exhibit 17. The Tribe later worked with the City of Seldovia to form a Port Authority for the KBF project. *See* Exhibit 18, attached, demonstrating the Tribe's payments to the City of Seldovia for Port Authority expenses, as well as payments to a City of Seldovia consultant.<sup>14</sup> The Tribe and SNA also met with City of Seldovia personnel on multiple occasions to discuss the project and paid the City of Seldovia over \$90,000 for its input and work associated with the KBF. *Id.* The Tribe further organized and hosted several public meetings and issued a survey to residents of the community. *See* Exhibit 18 at 43-44; Exhibit 3 at 249. Thus, the GAO's sentence that reads: "there were no opportunities to provide public comment or input during the

<sup>13</sup> *See* Draft Report at 12 and 13.

<sup>14</sup> This exhibit also demonstrates that the City of Seldovia had a written contract to assist in the design and development of the ferry, and the Tribe and the City of Seldovia observed the terms of that contract; however, a formal Port Authority could not be formed to operate the ferry because the public failed to authorize its formation by a public vote.

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See comment 4.

See comment 7.

Now on pp. 14 and 15.

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project development period”<sup>15</sup> should be stricken, and all of these facts should be included in the GAO Final Report.

**F. Omissions Regarding State Ferry Service and Tour Boat Operators.**

The omissions in the Draft Report regarding the AMHS services and tour boat operations make it appear as if the KBF provides duplicate services to the Homer and Seldovia communities, which is not true. The KBF caters to residents who need to commute back and forth between Homer and Seldovia, and is the only ferry service that does this. The Draft Report concludes that the KBF “duplicates existing long-established private tour boat and state ferry services to Homer and Seldovia.”<sup>16</sup> This conclusion is erroneous and must be corrected in the Final Report.

The KBF does not duplicate services of the State ferry service. The Tustumena offers one round trip between Homer and Seldovia approximately two times per week during the summer, and sometimes not at all. *See* Exhibit 19. In addition, the single ferry trip leaves Homer at 11:45 a.m. and arrives in Seldovia at 1:15 p.m. (a 1½ hour-ride), which does not accommodate commuters who live in Homer and work in Seldovia. *Id.*

The KBF does not duplicate services of the tour boats because both Rainbow Tours and the Discovery cater purely to tourists and not residents. Both of these tour boats offer six to seven-hour day trips that include more than three hours sight-seeing on the boats and three hours sight-seeing in Seldovia. *See* Exhibit 20.

Further, the facts in the Draft Report regarding the pricing of tickets in 2011 are misleading. The Draft Report correctly states that the regular adult fare for a round trip on the KBF was \$64 in 2011, and local Seldovia residents and village corporation stockholders were eligible to receive a local discounted fare of \$22 each way. The Draft Report correctly states the lowest advertised one-way rate that private tour operators could offer in 2011 was \$30. However, what the Draft Report does not compare is the round-trip ticket prices of the tour boat operators with the round-trip ticket prices of the KBF, which portrays an entirely different picture. The cost of a six to seven-hour, fully-narrated round-trip tour was \$45 per adult, which was significantly less than the cost of a round-trip ticket on the KBF. *See* Exhibit 20. The discounted rate for local residents that KBF offered was very comparable to the tour boat operator’s round-trip ticket rate. *Id.* The table below demonstrates that the tour boat operators’ fares are much cheaper for tourists than the KBF fares.

<sup>15</sup> *See* Draft Report at 17.  
<sup>16</sup> *See* Draft Report at 27.

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See comment 4.

See comment 4.

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Entity	Tourist Round Trip 2011 Fares
Kachemak Voyager	\$64
Rainbow Tours	\$45
The Discovery	\$45

This misleading 2011 fare comparison must be stricken from the Final Report or revised to reflect an accurate picture of the round-trip rates charged.

The Draft Report also emphasizes KBF's 2011 "extended scenic route for wildlife viewing and sightseeing."<sup>17</sup> What the Draft Report fails to mention is that, even with this "extended" route, the KBF trip is still a shorter duration than the tour boats or the Tustumena at a total duration of one hour and fifteen minutes, compared to forty-five minutes on the more direct route. *See* Exhibit 21. This extended route is also shorter than the Tustumena ride of 1½ hours each way. Because of the way that the Draft Report is worded, it also appears that the majority of the routes are "extended." This is also not true. Only two of the six one-way routes ride by Gull Island, and they are at times when most of the occupants would not be commuting to or from work. None of the routes that leave Seldovia follow the "extended" route. In addition, SNA owns Gull Island and promotes its land with this route. The mission statement of the BIA is:

The BIA's mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of self-determination.<sup>18</sup>

The KBF falls exactly in line with the BIA's mission. In any event, after going into the 2011 "extended route" offered in 2011, the GAO states in its Draft Report that the Tribe will no longer offer this "extended route" commencing in 2012, and therefore, does not directly compete nor duplicate other existing services.

The conclusion in the Draft Report states that the local tour operators may go out of business. This self-serving statement by the tour boat operators is being taken at face value by the GAO. When the Tribe and SNA presented the actual numbers from the seasons that the tour boat operators claimed were decreasing, it was clear that the numbers showed an *increase*. These numbers came directly from the City of Seldovia and demonstrated an increase for the tour boat operators for the years 2009, 2010, and 2011. Despite these numbers and trends, the GAO chose

<sup>17</sup> See Draft Report at 27-28.  
<sup>18</sup> See <http://www.bia.gov/FAQs/index.htm>

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See comment 4.

See comment 4.

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to discount the actual numbers for 2009 because it may not meet federal audit standards, while self-serving statements by delinquent tax payers do so. Even if 2009 were disregarded, the numbers for 2010 and 2011 demonstrate the tour boat operators' statements were false. The GAO's likely response is to drop the actual numbers into a footnote, while giving credibility to the self-serving statements.

When the GAO was given additional information, such as the actual numbers and the FTA documents, its response was that some information was furnished late. Not only was the vast majority of information given by the Tribe and SNA early, the GAO's criticism misses the mark. It is actual incumbent upon the GAO to have factual documentation to support its findings, rather than a private party having to supply refuting evidence to demonstrate analytical and factual failures and inaccuracies. Moreover, some of the information was from government sources that had to be obtained by FOIA request. This information should have been readily available to the GAO.

**G. The Tour Boat Operators Are Delinquent on Their Taxes.**

The GAO affirmatively stated in conversations with the Tribe and SNA that the tour boat operators are current in paying their tax assessment to the City of Seldovia based upon the passenger count. This seems to be another example of a statement that is not based on facts or evidenced by hard documents. Tim Dillon, the City of Seldovia City Manager, stated that Rainbow Tours is three years behind in its taxes, and Coastal Marine Tours still owes taxes from last year when another tourism year is right around the corner.<sup>19</sup>

In contrast, the KBF has paid its taxes. The irony is that the word of delinquent tax payers is being taken at face value without hard document evidence by an investigative arm of the government while the tax paying corporate citizen is being investigated and has to disprove nonexistent facts. Indeed, it was not until the Tribe and SNA obtained the actual tax records that the GAO reversed its position.

**H. Tour Boat Ridership Has Not Declined.**

As mentioned previously, the local tour boat operators reported to the GAO, with unknown sources of backup, that they have seen a 30-40% decline in the last two operating seasons due to the KBF.<sup>20</sup> Once again, facts supplied by independent third parties disprove this allegation. Layla Pedersen, the City of Seldovia Harbor Master, stated that the city recorded 5,186 passengers in 2009; 9,177 passengers in 2010; and 10,007 passengers in 2011. See Exhibit 25. These numbers reflect the total number of passengers, age 13 and older, that disembarked from

<sup>19</sup> See Affidavit of Rachael Pope, attached as Exhibit 23.

<sup>20</sup> See Draft Report at 29; see also the ill conceived conclusion section of the Draft Report stating the tour boat operators may go out of business.

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See comment 8.

See comment 4.

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the commercial passenger carriers in the Seldovia Boat Harbor. Ms. Pedersen further indicated that the KBF accounted for 3,703 passengers in 2010 and 4,501 passengers in 2011. *Id.* All commercial operators that park at the City of Seldovia Boat Harbor are included in the head count. The operators include Rainbow Tours, Central Charters, and KBF. Although it is fair to assume there might be some minor errors in the count, the overall figures from the City of Seldovia establish that there has been no noticeable decline in ridership for the local tour operators.

This is especially striking given the sharp downturn in the economy that has severely impacted the Alaskan tourist industry. The Alaska Visitor Statistics Program reported a 15% decrease of visitors to Alaska in 2010 and 2011 statewide, and a lower percentage of visitors who traveled to Alaska for vacation or pleasure. *See* Exhibit 22.

**III. NON-RELEVANT FACTS INCLUDED IN THE DRAFT REPORT MUST BE REMOVED.**

The section titled “The Army Corps of Engineers Provided No Funding but Issued Required Permits for Dock Construction,” and any portion of the Draft Report that refers to the Army Corps of Engineers permit, should not be included in the GAO Final Report. This section does not relate to any funding received on the KBF project, and does not relate to oversight of funding on the project. As such, this section should be removed in its entirety.

**IV. THE TRIBE IS COMPLIANT WITH THE FTA GRANT.**

The Tribe objects to the section of the Draft Report titled “The Tribe Did Not Comply with Its FTA Grant Requirements and Took Corrective Action.” This title is incorrect, as well as the underlying conclusions reached by the GAO. Thus, this section needs to be revised in the Final Report to state the Tribe *complied* with its FTA grants. In that regard, the FTA requested that the Tribe supply it with information that confirmed it complied with the grant requirements. Upon receipt of that request, the Tribe subsequently provided detailed financial documentation to FTA establishing that FTA grant money was used exclusively to fund “operating costs of equipment and facilities used in public transportation.” *See* Exhibit 24. None of the FTA grant funds, either directly or indirectly, provided support for the extended route around Gull Island. The FTA accepted the Tribe’s documentation and has not required corrective action from the Tribe.

**V. CONCLUSION**

In 2010, the Departments of the Interior and Transportation devoted their limited resources to conducting an exhaustive joint examination into the history of the KBF project, its scope, and the federal funding provided for its development. Less than one year after the joint investigation’s

See comment 9.

See comment 10.

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conclusion, the GAO undertook a second examination into virtually identical issues. These two extensive (and expensive) investigations reached the same conclusions. There was no misuse of federal or state funds. There was no mismanagement or wrong-doing. There was no unilateral or arbitrary change of scope. There was no indication by any source at any level that funds were stolen, lost, or unaccounted for. Instead, the KBF project was transparent, vetted and approved by the Department of Transportation, the Bureau of Indian Affairs, and the State of Alaska at every step over multiple years. There was nothing unusual about the level of oversight by federal agencies; it was the same as nearly every comparable project, the government never hinted of any oversight issues while the project was progressing, and the Tribe was providing all required reports and accountings. Indeed, everyone agreed that the KBF project had much potential based on 2002-2006 projections. Like so much else in this country, of course, the projections were impacted by the most severe economic downturn since the Great Depression. It is neither proper nor fair to use this downturn, as unforeseeable to the government as it was to the Tribe, as the basis for hindsight criticism.

The Tribe and SNA sincerely hope and respectfully request that you seriously consider these comments and additional facts for inclusion in the GAO Final Report. As always, we are open to discuss or provide any additional information you may require. Please do not hesitate to contact me directly if you have any questions or concerns regarding this submission.

Respectfully submitted,

SELDOVIA VILLAGE TRIBE



Crystal Collier, President/CEO

Enclosures

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The following are our comments on the Seldovia Village Tribe's letter dated May 30, 2012.

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## GAO Comments

1. Our legal opinion, which is reprinted in appendix I, discusses the Department of Transportation's allocation of funds to the Department of the Interior for the ferry and Interior's annual funding agreements with the tribe. Although the opinion concludes that both the allocation and annual funding agreements are consistent with the language of the appropriations, it does not discuss any actions of the Seldovia Village Tribe. Therefore, our legal opinion does not find, as the tribe maintains, that they "did nothing illegal."
2. The tribe commented that the ferry currently operated by the tribe does not significantly differ from the tribe's proposal that was approved for funding. We accurately reported, and the tribe agrees, that the scope of the ferry project changed significantly between 2002 and 2007. Because one of the report's objectives was to examine the entire history of the ferry project, not just the history beginning in 2007, we made no changes in response to this comment. Furthermore, as we discussed in the Agency and Third Party Comments and Our Evaluation section, BIA's receipt of quarterly status reports and disbursement of funding under the self-determination contract did not constitute approval of the ferry project because the tribe—not BIA had decision-making authority—and BIA had a limited oversight role. As we stated in our legal opinion, both Transportation's allocation documents and Interior's annual funding agreements with the tribe are consistent with the language of the appropriations. The documents required that the tribe use the funds for a ferry, the purpose stated in the appropriations acts.
3. The tribe commented that the ferry project did not change after the 2007 study of ferry alternatives and that the 2009 study simply summarizes the final design alternative and recommendations of the 2007 study. We believe that we have accurately characterized the results of the two studies in the report. While we agree that the ferry alternative of a passenger-only catamaran with light-freight capability was recommended in both studies, the 2007 study only provided a recommendation on the type of ferry and did not include specific conclusions or recommendations for the operation of the ferry. Therefore, we cannot assume, as the tribe suggests, that decisions for the operation of the ferry had already been made in 2007. We found no evidence, and the tribe has provided none beyond the

assertions in its May 30 letter, that the 2007 report's recommendations were in fact final determinations.

4. We made revisions to the report based on this comment.
5. Our report focuses on the roles of federal agencies in funding and overseeing the ferry project and associated dock facility projects and does not address whether the tribe complied with the terms of its self-determination contract and self-governance compacts or misused funding. In addition, a comprehensive analysis of the ferry's expenditures and budgets was beyond the scope of our review.
6. We accurately described the oversight actions taken by each of these agencies with respect to the ferry project. As we reported, for a variety of reasons many of these agencies had little or no oversight responsibility. We made some changes in the report to clarify each agency's role, but we believe the tribe's blanket statements concerning agency oversight and approval of the ferry are inaccurate.
7. We made changes to the report to ensure that we have accurately captured the views of the city and the tribe. As we report, city and tribal officials do not agree on whether the degree of city involvement was adequate.
8. Our report, including prior drafts, does not address the tax issue because it is not pertinent to our objectives.
9. Our objective was to describe the roles of the federal agencies involved in funding and overseeing the ferry project and associated dock facility projects. As our report acknowledges, while the U.S. Army Corps of Engineers did not provide funding for the project, it did have a role in issuing permits for dock construction and ensuring compliance with them. As a result, we made no changes to the report in response to this comment.
10. We reported the interaction between FTA and the tribe accurately, and made no changes in response to this comment. As we reported, in December 2011, FTA notified the tribe that the ferry's extended trips with sightseeing activities appear not to serve any public transportation purpose by their less direct route, and that deviating a transit service for the purpose of sightseeing is not consistent with the requirement that FTA-funded facilities be used for public transportation. Moreover, FTA noted that incidental use of the ferry for sightseeing requires prior FTA written consent, which is not

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automatically granted. In addition, FTA asked the tribe to (1) request approval for incidental use for the extended route trips to be done in the future and (2) provide documentation to support the operating costs for public transportation charged to the grant. As we reported, the tribe did not apply for incidental use approval because it took corrective action by stating that the ferry would no longer take the extended sightseeing route and provided FTA with documentation of enough eligible costs for its direct routes to justify its grant disbursements.

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anu K. Mittal, (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Jeffery D. Malcolm (Assistant Director), Ellen W. Chu, Brad C. Dobbins, Karine E. McClosky, Mehrzad Nadji, and Jeanette M. Soares made key contributions to this report.

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