
Elim Subsistence Harbor Study

Appendix F: Draft Real Estate Plan

Elim, Alaska



April 2020



**U.S. Army Corps
of Engineers**
Alaska District

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1. PURPOSE:

This Real Estate Plan (REP) will be appended to the Feasibility Report for the Elim Subsistence Harbor Feasibility Study, Elim, Alaska. The purpose of the study is to (1) provide a coordinated implementable solution for navigational improvements at Elim, Alaska as specified in the Feasibility Cost Sharing Agreement (FCSA), executed March 23, 2018 between the Department of the Army and the Non-federal Sponsors (NFS) and (2) determine whether sufficient Federal interest exists to construct a project for these improvements. The Native Village of Elim and Kawerak, Inc. (a non-profit corporation) are the NFS(s) for this study and the proposed Project Partnership Agreement (PPA).

The primary purpose for this REP is to (1) identify and describe the real estate requirements for the lands, easements, rights-of-way, relocations and disposal areas (LERR) for construction, operation and maintenance of the proposed navigational improvements and project elements described in the FCSA; (2) outline the costs and real estate considerations associated for the proposed alternatives; and (3) assess the NFS' capabilities for LERR acquisition. The REP is tentative in nature, it is for planning purposes only and both the final real property acquisition lines and the real estate cost estimates provided are subject to change even after approval of the feasibility study.

2. AUTHORITY:

This Study is conducted under Section 203, Tribal Partnership Program, of the Water Resources Development Act (WRDA) of 2000 as amended by Section 1031(a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), and Section 1121 of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIIN/WRDA 2016) and provides authority for USACE, in cooperation with Indian tribes and heads of other federal agencies, to study and determine the feasibility of carrying out projects that will substantially benefit Indian tribes.

The NFS is to provide all LERR required for the project, with the cost of these real estate interests, along with any incidental administrative expenses in obtaining the LERR. These cost will be credited to the NFS 50% cost share obligation with the adjustment based upon the Native Village of Elim (Tribe) meeting the ability to pay criteria.

A Continuing Authorities Program (CAP) Section 107 study was initiated in 2013 but was not completed due to lack of sufficient Nation Economic Development (NED) benefits.

3. PROJECT LOCATION AND DESCRIPTION:

Elim is an Inupiat Village located on the northwest shore of Norton Bay on the Seward Peninsula, 96 miles east of Nome and 460 miles northwest of Anchorage. It lies at approximately 64.61656099 Latitude, -162.25964337 Longitude and encompasses 2.4 miles of land. It is located in Section 15, Township 10 South, Range 18 West of the Kateel River Meridian, Cape Nome Recording District (Figure 1).



Figure 1. Location of Elim,

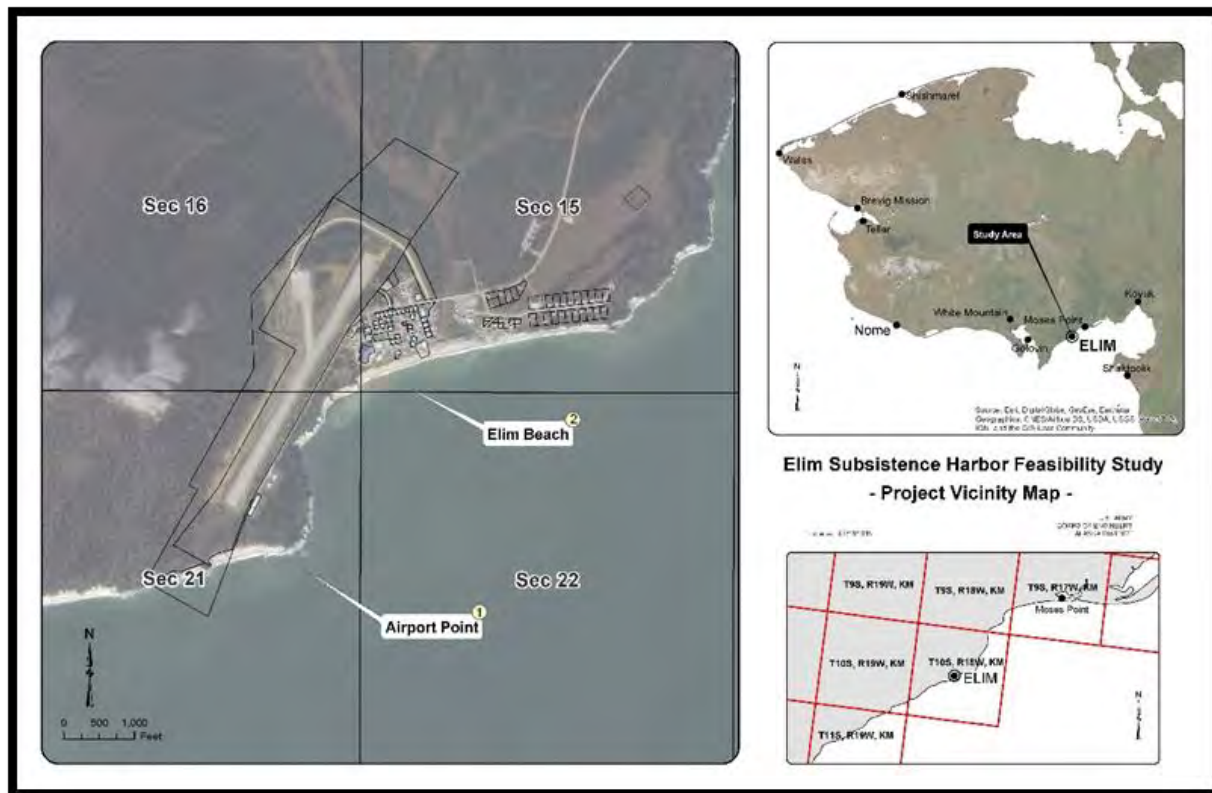
The village is not accessible by a road system and can only be accessed by boat, plane, dog team, or snow machine during the winter season. The objective of this feasibility study is to provide the community with safe, reliable, and efficient waterborne transportation for movement of commerce, subsistence, and recreation to support the long-term viability of the community.

Alternative #5 has been selected as the Tentative Selected Plan (TSP) for the study.

The TSP is a commercial and subsistence fleet harbor with 2 tenders and fuel and freight barge access, displayed in Figure 2 and Figure 3.

The harbor would be sized to accommodate one 160-foot barge and associated tug, two tenders, and 50 vessels varying in size from 18 feet to 32 feet. It is assumed that vessels would raft two deep to two removable floating docks approximately 245 feet long and two gangways approximately 50 feet long for foot traffic. The plan would also include a tender dock with a length of 75 feet. The breakwaters would provide a mooring basin approximately 6.2 acres with a dredge depth of -9.0 feet MLLW. The

breakwaters include one 1,082 foot and one 468 foot rubble mound breakwater. The entrance channel would also have a dredge depth of -12.0 feet.



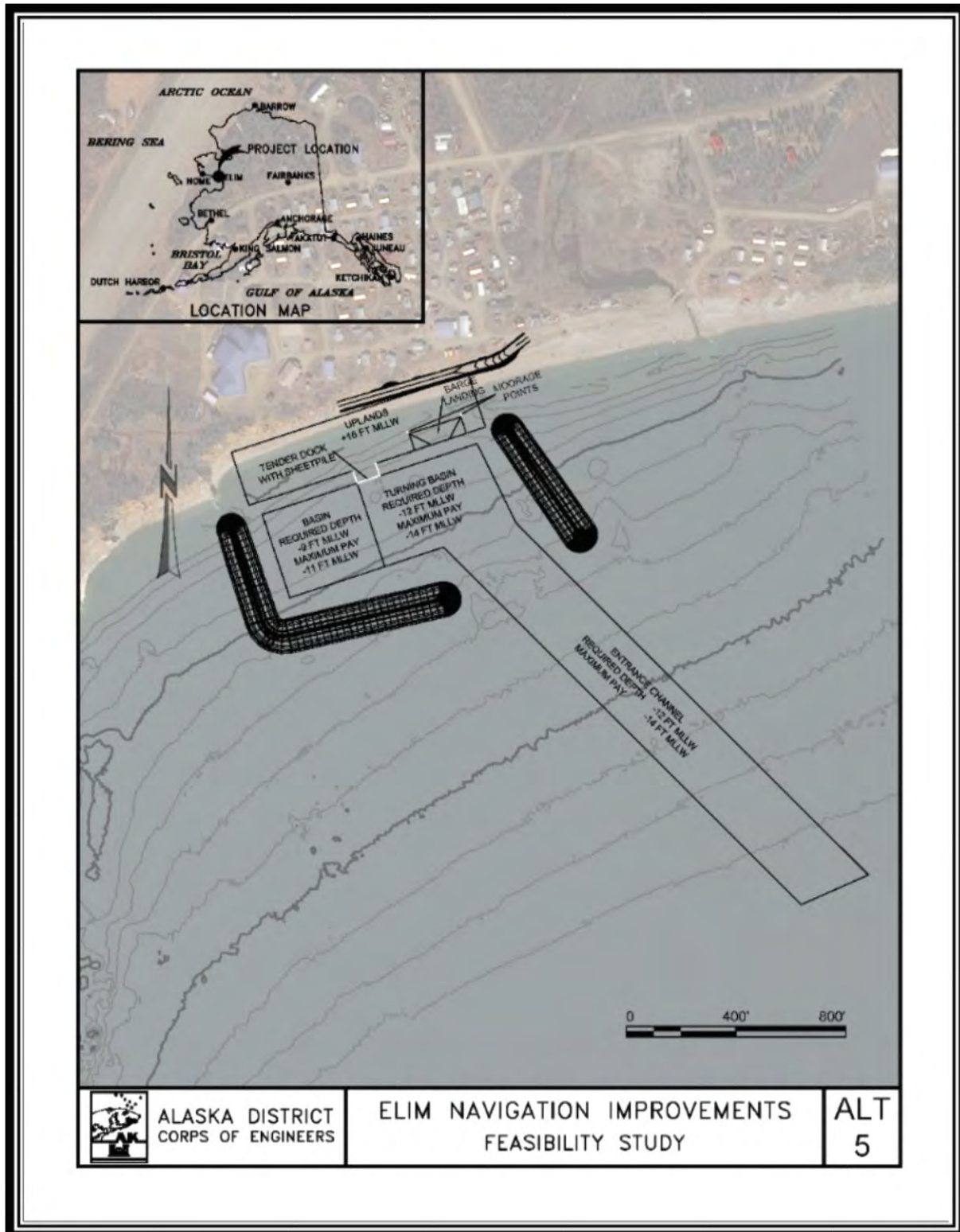


Figure 3.TSP

4. DESCRIPTION OF LERR REQUIRED:

The Government's dominant right of navigation servitude will be exercised for project tidelands below the mean high water (MHW) mark for the General Navigation Feature (GNF), the location is identified in Exhibit C. The NFS has no requirement to provide LERR.

5. LERR ALREADY OWNED BY THE NFS:

The non-federal sponsors own no land needed for the project.

6. STANDARD ESTATE/NON-STANDARD ESTATE:

No Standard/Non-standard Estate required for the GNF for the project.

7. EXISTING FEDERAL PROJECTS:

There are no other existing Federal Projects that lies fully or partially within the LER required for this Project.

8. FEDERALLY OWNED LANDS:

There is no other existing Federal Project that lie fully or partially within the LERR required for this project.

9. NAVIGATION SERVITUDE:

The navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. Art. I, §8, cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands hereunder for various commerce-related purposes including navigation and flood control. In tidal areas, the servitude extends to all lands below the MHW mark. In non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the MHW mark. *United States v. Cress*, 243 U.S. 316, 37 S. Ct. 380, 61 L. Ed. 746 (1917), *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S. Ct. 383, 62 L.Ed.2d 332 (1979). The Government's rights under the navigation servitude exist irrespective of the ownership of the banks and bed of a stream below the MHW mark and irrespective of western water rights under prior appropriation doctrine. As stated in Section 4 herein, the Federal government can exercise its right of navigational servitude hereunder for the construction and maintenance improvements being proposed. In addition, USACE will follow proper permitting process for excavating and/or disposing of material in navigable waters as required under Section 10 of the River and Harbor Act of 1899. Navigation servitude is being applied to this project.

Table 1. Exercise Navigation Servitude

Features	Owners	Acres
Dredge Entrance Channel Water)	State of Alaska	14.06
Dredge Turning Channel	State of Alaska	3.55
Western Breakwater	State of Alaska	3.22
Eastern Breakwater	State of Alaska	1.56
Dredged Material Placement Site (In Water)	State of Alaska	TBD
Total Construction Area Below MHW mark.	State of Alaska	122.00

10. FLOODING INDUCED BY PROJECT:

No flooding will be induced by the construction or the operation and maintenance of the proposed project. As such, no Physical Takings Analysis is required.

11. BASELINE COST ESTIMATE ON ACQUISITION OF LERR (BCERE):

The NFS has no requirement to provide LERR, for the GNF. The Baseline Cost Estimates for Real Estate was prepared by the realty specialist as a rough order of magnitude (ROM) estimate, as shown in Table 2. Baseline Cost Estimate for Real Estate (BCERE) and Table 3. Chart of Accounts. Federal and non-Federal administrative costs have also been included in the BCERE to account for project coordination, crediting, and miscellaneous expenses that may occur during the planning or implementation of the proposed project. The BCERE may be revisited during the Project Engineering & Design (PED) phase in order to apply additional costs if necessary. If land acquisition by the NFS is deemed necessary in the future, additional appraisals will be prepared to offer reasonable support for unit land values which will in turn be used in calculating the BCERE for the proposed project.

Table 2 Baseline Cost Estimate for Real Estate (BCERE)

CATEGORY		COST
Lands		
Lands		\$0
Improvements		\$0
Severance Damages		\$0
Minerals		\$0
Total Lands & Damages		\$0
Administrative Costs		
Federal Review of Non-Federal Sponsor		
Sub-Total:		\$0
Contingency (25%)		\$0
Sub-Total		\$0
Non-Federal Sponsor Administrative Costs		
Sub-Total:		\$15,000
Contingency (25%)		\$3,750
Sub-Total		\$18,750
Public Law 91-646 Relocation Costs		0
Total RE Cost Estimate:		\$18,750

Table 3. Chart of Accounts

Chart of Accounts				
		FEDERAL	NON-FEDERAL	TOTALS
01A	PROJECT PLANNING			
	Other	\$0	\$15,000	\$15,000
	Project Partnership Agreement (OC)	\$0		
01AX	Contingencies (25%)	\$0	\$3,750	\$3,750
	Subtotal	\$0	\$18,750	\$18,750
01B	LANDS AND DAMAGES			
01B20	Acquisition by non-Federal sponsor	\$0	\$0	\$0
01B40	Acq/Review of non-Federal sponsor	\$0	\$0	\$0
01BX	Contingencies (25%)	\$0	\$0	\$0
01R	RE PAYMENTS			
01R1	LAND PAYMENTS	\$0	\$0	\$0
01R1A	By Government	\$0	\$0	\$0
01R1B	By non-Federal sponsor	\$0	\$0	\$0
01R1C	By Government on behalf of non-Federal sponsor	\$0	\$0	\$0
01R1D	Review of non-Federal sponsor	\$0	\$0	\$0
01RX	Contingencies (25%)	\$0	\$0	\$0
		\$0		
01R2	PL 91-646 Assistance Payments	\$0	\$0	\$0
01R2A	By Government	\$0	\$0	\$0
01R2B	By non-Federal sponsor	\$0	\$0	\$0
01R2C	By Government on behalf of non-Federal sponsor	\$0	\$0	\$0
01R2D	Review of non-Federal sponsor	\$0	\$0	\$0
	TOTALS	\$0	\$18,750	\$18,750
Any potential cost estimate for Federal and/or non-Federal real estate activities necessary for implementation of the project after completion of the feasibility study for land acquisition, construction, LERRs, and other items are coded as delineated in the Cost Work Breakdown Structure are identified in the Chart of Accounts. This real estate cost estimate is then incorporated into the Total Current Working Estimate.				

Values in the Baseline Cost Estimate are estimates and not a final LERR value for crediting purposes.

12. UTILITIES & FACILITIES RELOCATION:

There are no known utilities or facilities requiring relocation that are impacted by the proposed project footprint.

13. RELOCATION ASSISTANCE BENEFITS (P.L. 91-646):

Public Law 91-646, Uniform Relocation Assistance provides entitlement for various payments associated with federal participation in acquisition of real property. Title II makes provision for relocation expenses for displaced persons, and Title III provides for reimbursement of certain expenses incidental to transfer of property. There will be no relocations required for this project. As such, no Title II or Title III costs are associated or identified herein.

ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REPORT THAT AN ITEM IS A UTILITY OR FACILITY RELOCATION TO BE PERFORMED BY THE NONFEDERAL SPONSOR AS PART OF ITS LERR RESPONSIBILITIES IS PRELIMINARY ONLY. THE GOVERNMENT WILL MAKE A FINAL DETERMINATION OF THE RELOCATIONS NECESSARY FOR THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE PROJECT AFTER FURTHER ANALYSIS AND COMPLETION AND APPROVAL OF FINAL ATTORNEY'S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES.

14. HAZARDOUS, TOXIC, AND RADIOLOGICAL WASTE (HTRW) IMPACTS:

Section 3.1.1.1 of the draft Integrated Feasibility Report and Environmental Assessment discusses known HTRW sites in the Elim area, and their potential impact on the project. No real estate avoidance is anticipated due to known or suspected HTRW located in, on, under, or adjacent to the LERR required for the construction, operation, or maintenance of the project, including LERR that is subject to navigational servitude. No HTRW sites will be impacted by the project.

15. MINERAL ACTIVITY IMPACTED PRESENT/FUTURE:

There are no current or anticipated mineral or timber activities within the vicinity of the proposed project that will affect construction, operation, or maintenance of the proposed project. Nor will any subsurface minerals or timber harvesting take place within the project.

16. PROJECT MAP:

Project Map is enclosed as Exhibit C.

17. ASSESSMENT OF NON-FEDERAL SPONSOR LEGAL CAPABILITY:

The Native Village of Elim and Kawerak, Inc., have been provided the Sponsor Real Estate Acquisition Capability Assessment form. A determination will be made after the assessment form is returned. The Non-Federal sponsor Points of Contact are:

President
Native Village of Elim
P.O. Box 39070
Elim, Alaska 99739

President
Kawerak, Inc.
P.O. Box 948
Nome, Alaska 99762

18. ADVANCE ACQUISITION:

The non-federal sponsors has been notified in writing about the risks associated with acquiring land before the execution of the PPA and the Government's formal notice to proceed with acquisition of the lands needed for the project.

19. ZONING ORDINANCES CONSIDERED IN SUPPORT OF LERR REQUIREMENTS

No zoning ordinances are proposed in lieu of, or to facilitate acquisition in connection with the project.

20. SCHEDULE:

The anticipated project schedule, unless revised after coordination with the non-federal Sponsor, as shown in Table 4.

Table 4. Project Schedule

Task	Start
NFS – Receipt of the final real estate drawing from the Alaska District, Engineers.	2-4 weeks after PPA execution.
POA – Formal transmission of right of way drawing and instructions to acquire LERR.	4-6 weeks after PPA execution.
NFS – Certify all necessary LERR available for construction.	6-24 months after PPA execution.
POA – Certifies/verifies the NFS has acquired the real interest required and sufficiency for contract advertisement, etc.	Prior to contracting.
NFS – Prepare and submit credit requests.	6-8 months upon completion of project.
POA – Review/approve or deny credit requests.	6 months of NFS submission

21. CULTURAL RESOURCES:

The USACE has determined that the no proposed project would have no adverse effect on historic properties under Section 106 of the NHPA (36 CFR § 800.5(b)). The Alaska State Historic Preservation Officer (SHPO) has concurred with a determination of no historic properties adversely affected (Appendix G: Correspondence). The proposed project would not alter or lead to the alteration of any important attribute of historical or cultural resources. No other historic property or cultural resource would be impacted by this project.

22. MITIGATION:

No mitigation features will not have any real estate implications.

23. VIEWS OF FEDERAL, STATE AND REGIONAL AGENCIES:

This project is supported by Federal, State, and Regional agencies. The Corps has met with representatives of the NFS and other pertinent parties to discuss aspects of the proposed action. Further coordination will be ongoing. In compliance with NEPA rules/regulations, letters will be sent to resource agencies and residents in the area; public notices will transpire within the project vicinity.

24. LANDOWNERS OPPOSITION:

Public meetings have been conducted with the USACE, NFS, the City of Elim, the principal landowner for adjacent project lands, and village residents. The residents of Elim are collectively in favor of the project. Further coordination will be ongoing between USACE, NFS, City, State and Federal resource agencies, Native Corporation, and residents of the area.

25. OTHER REAL ESTATE ISSUES:

The NFS's have been advised of P.L. 91-646 requirements; and they have been advised of the requirements for documenting expenses for LERR crediting purposes.

25.1. Issues Related to Local service facilities (LSF):

The LSF required would include an extension to the fuel header located on Elim Beach, a single boat launch, two mooring points, uplands with an area of approximately 3.9 acres for parking and turn-around at the boat launch, a road connecting the uplands to Front St. to the harbor uplands. The road would be approximately 0.15 miles and relatively flat. Acquiring the land for the LSF is the responsibility of NFS, and may be required as part of the PPA, because they are necessary for project benefits to accrue.

Patent 50-79-0148 conveyed U.S. Survey No. 2548 to Elim Native Corporation containing 297,982 acres to include all lands (SE and SSE) above the line of mean high

tide and islands within 3 miles of coastline; however – the patent is subject to 3d party interests that may impact project implementation of the LSF:

EIN 2 (Solomon C-1)

25-foot wide trail easement for travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles and small ATVs (less than 3,000 lb GVW; season restricted to winter use only

PREPARED BY:

REVIEWED AND APPROVED BY:

RONALD J. GREEN
Realty Specialist

GARY C. HANSON
Chief, Real Estate Division

ASSESSMENT OF NON-FEDERAL SPONSOR'S
REAL ESTATE ACQUISITION CAPABILITY

ELIM SUBSISTENCE HARBOR STUDY
NATIVE VILLAGE OF ELIM

1. **LEGAL AUTHORITY:**

a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes?	YES	NO
b. Does the sponsor have the power of eminent domain for this project?	YES	NO
c. Does the sponsor have "Quick-Take" authority for this project?	YES	NO
d. Are any of the lands/interests in land required for this project located outside the sponsor's political boundary?	YES	NO
e. Are any of the lands/interests in land required for this project owned by an entity whose property the sponsor cannot condemn?	YES	NO

2. **HUMAN RESOURCE REQUIREMENTS:**

a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended?	YES	NO
b. If the answer to 2a is "YES" has a reasonable plan been developed to provide such training?	YES	NO
c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project?	YES	NO
d. Is the sponsor's projected in-house staffing level sufficient considering its other work load, if any, and the project schedule?	YES	NO
e. Can the sponsor obtain contractor support, if required in a timely fashion?	YES	NO
f. Will the sponsor likely request USACE assistance in acquiring real estate?	YES	NO

3. **OTHER PROJECT VAIRABLES:**

a. Will the sponsor's staff be located within reasonable proximity to the project site?	YES	NO
b. Has the sponsor approved the project/real estate schedule/milestones?	YES	NO

4. **OVERALL ASSESSMENT:**

a. Has the sponsor performed satisfactorily on other USACE projects? **YES** **NO**

b. With regard to this project, the sponsor is anticipated to be:

HIGLY CAPABLE

FULLY CAPABLE

MODERATELY CAPABLE

MARGINALLY CAPABLE

INSUFFICIENTLY CAPABLE

Justification for Insufficient Capability:

5. **COORDINATION:**

a. Has this assessment been coordinated with the sponsor? **YES** **NO**

b. Does the sponsor concur with this assessment? **YES** **NO**

Justification for Sponsor Non-concurrence:

NON-FEDERAL SPONSOR:

(Signature)

(Printed Name and Title)

PREPARED BY:

Ronald J. Green
Realty Specialist

REVIEWED AND APPROVED BY:

Gary C. Hanson
Chief, Real Estate Division

ASSESSMENT OF NON-FEDERAL SPONSOR'S
REAL ESTATE ACQUISITION CAPABILITY

ELIM SUBSISTENCE HARBOR STUDY
KAWERAK, INC.

1. **LEGAL AUTHORITY:**

a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes?	YES	NO
b. Does the sponsor have the power of eminent domain for this project?	YES	NO
c. Does the sponsor have "Quick-Take" authority for this project?	YES	NO
d. Are any of the lands/interests in land required for this project located outside the sponsor's political boundary?	YES	NO
e. Are any of the lands/interests in land required for this project owned by an entity whose property the sponsor cannot condemn?	YES	NO

2. **HUMAN RESOURCE REQUIREMENTS:**

a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended?	YES	NO
b. If the answer to 2a is "YES" has a reasonable plan been developed to provide such training?	YES	NO
c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project?	YES	NO
d. Is the sponsor's projected in-house staffing level sufficient considering its other work load, if any, and the project schedule?	YES	NO
e. Can the sponsor obtain contractor support, if required in a timely fashion?	YES	NO
f. Will the sponsor likely request USACE assistance in acquiring real estate?	YES	NO

3. **OTHER PROJECT VAIRABLES:**

a. Will the sponsor's staff be located within reasonable proximity to the project site?	YES	NO
b. Has the sponsor approved the project/real estate schedule/ milestones?	YES	NO

4. **OVERALL ASSESSMENT:**

a. Has the sponsor performed satisfactorily on other USACE projects? **YES** **NO**

b. With regard to this project, the sponsor is anticipated to be:

HIGLY CAPABLE

FULLY CAPABLE

MODERATELY CAPABLE

MARGINALLY CAPABLE

INSUFFICIENTLY CAPABLE

Justification for Insufficient Capability:

5. **COORDINATION:**

a. Has this assessment been coordinated with the sponsor? **YES** **NO**

b. Does the sponsor concur with this assessment? **YES** **NO**

Justification for Sponsor Non-concurrence:

NON-FEDERAL SPONSOR:

(Signature)

(Printed Name and Title)

PREPARED BY:

Ronald J. Green
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REVIEWED AND APPROVED BY:

Gary C. Hanson
Chief, Real Estate Division

