



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law
CIVIL DIVISION

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April 9, 2015

The Honorable Anna MacKinnon
Alaska State Senate
State Capitol Room 516
Juneau, AK 99801

Re: *Kasayulie v. State*
Court Case No.: 3AN-97-3782 CI

Dear Senator MacKinnon,

You have requested clarification from the Department of Law regarding the State of Alaska's ("State") obligations for the Kivalina K-12 school construction project (the "Kivalina School") as provided for in the 2011 Consent Decree and Settlement Agreement in *Kasayulie v. State*, 3AN-97-3782 CI (the "Settlement").

Members of the finance committee queried whether Charles Wohlforth's letter, dated January 7, 2015, and Commissioner Hanley's response, dated March 3, 2015 have obligated the State to provide funding during future sessions for the Kivalina access road project (the "Kivalina Road") as a condition of the Settlement. As an initial matter, the Settlement and the administration's recent communications with the plaintiffs recognize that the power of appropriation rests solely with the legislature.

Additionally, we do not believe that any obligation for future funding of the Kivalina Road exists or has been created by the Settlement. The Settlement provides that the State's financial obligation to the Kivalina School is tied directly to the Department of Education and Early Development's November 2013 Capital Improvement list. And, funding for projects on that list are always subject to legislative appropriation. The eligible amount of the Kivalina project does not include funding for the Kivalina Road, and any discussions that have taken place between the parties on incremental funding do not alter or add to what is required in the Settlement. Specifically, to meet the incremental funding option allowed for in Mr. Wohlforth's letter requires funding for the Kivalina Road independently of the Kivalina School, and does not require additional funding for the Kivalina Road after the \$2.4 million separately provided for in the

Governor's proposed FY2016 budget. Should the legislature choose to appropriate funds for the Kivalina School and the Kivalina Road in the manner proposed by the Governor this year, and then wishes to bring final resolution to the *Kasayulie* lawsuit thereafter, the ultimate financial obligation under the Settlement remains the same and does not include funding for the Kivalina Road.

The communications between Mr. Wohlforth and Commissioner Hanley explored the possibility of incremental funding in light of the current budget situation and the fact that plans for the Kivalina School have not been finalized. They represent one possibility that would require less funding in the FY2016 budget for the Kivalina School, with the understanding that full funding under the Settlement would be requested in future years. However, another possibility that we believe fully complies with the consent decree would be an appropriation, effective no later than July 1, 2015, in the amount of \$50,475,822. The sum of \$50,475,822 represents the total current eligible amount the Kivalina School could receive, minus the Northwest Arctic Borough's participating share.

I hope this clarifies the State's obligation and the funding possibilities.

Sincerely,

CRAIG W. RICHARDS
ATTORNEY GENERAL

By:



Rebecca E. Hattan
Assistant Attorney General

REH/rjc

cc: Craig W. Richards, Attorney General, Alaska DOL
Michael Hanley, Commissioner, Alaska DEED
Darwin Peterson, Legislative Director, Office of the Governor
Cori Mills, Legislative Liaison, Special Assistant to the AG, Alaska DOL