Seattle Journal for Social Justice

Volume 12 | Issue 2 Article 12

2013

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Recommended Citation
Iverson, Jason (2013) "Funding Alaska Village Relocation Caused by Climate Change and Preserving Cultural Values During Relocation," *Seattle Journal for Social Justice*: Vol. 12: Iss. 2, Article 12.
Available at: http://digitalcommons.law.seattleu.edu/sjsj/vol12/iss2/12

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Funding Alaska Village Relocation Caused by Climate Change and Preserving Cultural Values During Relocation

Jason Iverson*

INTRODUCTION

This article will discuss the financial and cultural needs of Alaska villages at risk of becoming uninhabitable because of climate change. Erosion, melting sea ice, melting permafrost, and increased flooding will soon force several village populations, most predominately Alaska natives, to relocate to new places. Currently, plans to relocate at-risk villages are haphazard at best and most lack coordination and funding. This article advocates that federal agencies should be delegated the task of funding and coordinating re-location of any village under imminent threat of uninhabitability due to changed climate conditions. Further, Alaska villages should be moved in their entirety to new, similarly situated locales that are geographically less susceptible to erosion, flooding, and other climate factors.

This article recognizes the high expense of moving entire rural Alaskan villages to new locales and that it would be more economically feasible to simply disperse displaced individuals throughout nearby urban centers. Although this article does not foreclose this idea, it discusses that to best

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maintain cultural autonomy, entire villages should be relocated through joint efforts between village leaders, tribal councils, local government, and federal government agencies like the US Department of Housing and Urban Development (HUD) or the Federal Emergency Management Agency (FEMA). Additionally, the state of Alaska may also seek its own funding of village relocation through the establishment of mandatory contingency funds or special taxes on private energy companies. However, the federal government is in the best position to finance relocations. It has the most available resources, and its prior imperialistic relationship with Alaska natives mandates that it take a proactive approach in relocating affected villages.

I. BACKGROUND

Most Americans are aware of the phrase "climate change." However, "climigration," the forced removal of people from geographical areas due to climate change, may not be as familiar.[1] Likewise, it is a new issue for our federal government.[2] While the United States Congress has not passed a bill on climate change,[3] on "September 14, 2007, [former Alaska] Governor Sarah Palin signed Administrative Order No. 238, officially forming the Alaska Climate Change Sub-Cabinet" to shed official light on climate problems that Alaskans are facing.[4]

Palin tasked the Sub-Cabinet with formulating an Alaska climate change strategy with other intergovernmental agencies to project the effect of climate change in different regions of Alaska; recognize which Alaska communities will have their infrastructures most affected by climate

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[1] Sam Kalen, Assoc. Professor of Law, Wyo. Univ. Sch. of Law, Lecture at University of Alaska Anchorage (July 10, 2012).

[2] *Id.*

[3] E.M., Congress, *Climate Change and Incompetent Grandstanding*, THE ECONOMIST (Feb. 9, 2011 10:18 PM), mist.com/blogs/democracyinamerica/2011/02/congress_and_climate_change.

[4] *Climate Change in Alaska*, STATE OF ALASKA, http://www.climatechange.alaska.gov/ (last visited Feb. 12, 2013).

change; and provide policies and advice on how to implement climate change legislation.[5] Such an order should be applauded for mobilizing Alaskans to address the imminent problems that climate change will have on the physical integrity of its many coastal-situated, rural communities. Nevertheless, it still does not address those who are most susceptible to climate change: Alaska native villagers, whose villages are being destroyed by unprecedented erosion, flooding, and melting permafrost.[6] The plan loosely calls for identifying ways to finance climate change activities, but does not specifically reference how village relocation will be financed, nor does it call for the expediency of relocation plans. Further, Palin's Sub-Cabinet plan now lies dormant under current Governor, Sean Parnell.[7]

Today, many Alaska native villages that lie adjacent to oceans or rivers are slowly being washed away because of climate change effects. However, government and private efforts to relocate these village populations are lagging because of a lack of funding and relocation schematics.[8] The much needed village relocation efforts are simply not happening in Alaska.[9] Current efforts to combat village degradation are only providing temporary fixes for sinking village communities. For example, to mitigate coastal village erosion, the Army Corps of Engineers has loaned villages thousands of "supersacks" and heavy equipment, but these measures are simply not enough to buffer the erosion effects from the encroaching sea and rivers.[10]

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[5] *Id.*

[6] *See generally* U.S. Gov't Accountability Office, Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by FLOODING AND EROSION (June 2009), *available at* http://www.gao.gov/new.items/d09551.pdf [hereinafter GAO].

[7] Amanda Terkel, *Sarah Palin's Climate Change Sub-Cabinet Goes Dormant Under Alaska Governor Sean Parnell*, HUFFINGTON POST (Feb. 6, 2013), http://www.huffingtonpost.com/2013/02/06/sarah-palin-climate-change_n_2630262.html.

[8] *Id.*

[9] *Id.*

[10] *Coastal Erosion and the Threat to Kivalina, Alaska*, LIVEBETTER MAGAZINE, Sept. 13, 2008, *available at* http://www.livebettermagazine.com/ article/coastal-erosion-and-the-threat-to-kivalina-alaska/ (supersacks are essentially bags of sand meant to provide a buffer to water erosion and the heavy machinery provided by the Corps of Engineers is used to maintain these "erosion buffers").

Such implementation may be sufficient to maintain essential resources like village fuel tanks and village communications infrastructure for the time being, but eventually Mother Nature will win out.[11] Some of the most affected Alaska villages, such as Kivalina and Newtok, not only face the challenge of moving an entire rural village to a new location, but they also face the massive challenge of how to fund the relocation.[12]

Many Alaska native villages, along with the cultures of those indigenous populations, will soon be lost under the sea or swept away into rivers. To prevent such cultural loss, there is one option that must be favored: instead of shuttling village populations to more urban centers or pouring money into repairing crumbling village infrastructure, we should formulate immediate plans to relocate at-risk Alaska native villages to new locations. We must act now.

The issue of relocating village populations in Alaska is truly a novel matter in the United States.[13] Alaska native villages are unique in so many ways. The majority ethnicity in village populations is Alaska native.[14] Many native villages are not structured around organized boroughs and lack incorporated municipal governments to carry out large-scale financial initiatives.[15] Furthermore, the geography of these villages is distinct from any other place in the United States. Many villages are built on permafrost[16] and others rely on the prevalence of ice for subsistence hunting.[17] The

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[11] *Id.*
[12] *Id.*
[13] *See* Anna York, UNIV. OF N.C. AT CHAPEL HILL, *Alaska Village Stands on Leading Edge of Climate Change*, POWERING A NATION, *available at* http://unc.news21.com/index.php/stories/alaska.html (last visited Oct. 23, 2013) (village relocation is a "new problem for governments").
[14] Interview with Richard Briggs, former Lead Civil Eng'r, State of Alaska Dep't of Transp., in Anchorage, Alaska (Dec. 29, 2012).
[15] *See* GAO, *supra* note 6, at 8 (147 out of 213 Alaska Native villages belong to an unorganized borough).
[16] *Id.* at 7 (80 percent of Alaska has at least some permafrost).
[17] Elizabeth Barrett Ristroph, *Alaska Tribes' Melting Subsistence Rights*, 1 ARIZ. J. ENVTL. L. & POL'Y 47, 54–56 (2010).

tangible effects of global warming have already been seen in the erosion that has engulfed coastal villages and the melting permafrost that has buckled their structures.[18]

II. VILLAGE RELOCATION AND WHAT IS AT STAKE

Alaska native village relocation will cost hundreds of millions of dollars. A comprehensive financial plan to effect relocation needs to be federally implemented in order for relocations to be carried out successfully.[19] Currently, there is no federal entity that is responsible for village relocation. This must change as the federal government has an obligation to finance village relocation due to its historical relationship with Alaska natives.

The federal government was responsible for the location selections of most current Alaska native villages, originally treating Alaska natives as wards of the federal government. While this wardship of native peoples and lands was essentially eliminated through the Alaska Native Claims Settlement Act,[20] the federal government still has a duty to maintain the well-being of indigenous peoples in the midst of unprecedented, climate-induced forced emigration because the federal government itself is mostly responsible for the location of native villages and prior disenfranchisement of native peoples. State and local agencies are ill-equipped to handle this social and economic crisis. It must fall on the shoulders of the federal government because it constitutes a natural disaster, which federal agencies are mandated to alleviate.[21]

The Army Corps of Engineers is currently permitted to assist villages in combating climate effects, but the fixes provided by the Corps are merely band-aids that will in no way ensure the survival of coastal Alaska villages. These band-aid fixes to crumbling infrastructure and eroding village borders

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[18] *See generally* GAO, *supra* note 6; York, *supra* note 13 (climate change causing structural damage to village buildings).
[19] GAO, *supra* note 6, at 4.
[20] 43 U.S.C. § 1601(b) (1971).
[21] *See* GAO, *supra* note 6, at 23.

are just prolonging the inevitable consequences: many villages in coastal Alaska will soon be underwater or otherwise uninhabitable. Without a proper plan in place for relocation, villagers have little chance to relocate their community while preserving community values.

Recently, a Ninth Court Circuit opinion, *Kivalina v. ExxonMobil Corporation*, reiterated the struggles that Alaska native villages face in finding suitable relocation sites.[22] The opinion explicitly discusses how villages are plagued by erosion, flooding, and melting permafrost as a result of global warming.[23]

In *Kivalina*, the Alaska native village of Kivalina brought suit against Exxon Mobile and other emission-producing companies on the theory of public nuisance (the nuisance: emissions of greenhouse gases that have contributed to the deterioration of the village).[24] Kivalina also argued that there was a conspiracy among Exxon and other similarly situated companies to continue their practice of emitting greenhouse gases into the atmosphere even though these companies know of the potential ill effects that those emissions have on the environment, the atmosphere, and the general environment.[25]

The court of appeals in this case recognized that Kivalina had suffered an injury in the form of village degradation, but found that no standing could be established for Kivalina because the causal chain to the injury was too tenuous.[26] In other words, it was not possible to find that Exxon's and other companies' practices were responsible for the environmental degradation of the village of Kivalina. Furthermore, the court found that the issue of

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[22] Native Vill. of Kivalina v. ExxonMobil Corp., 663 F. Supp. 2d 863, 868–69, 875 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012).

[23] UNIV. OF OR. & USDA FOREST SERV. PAC. NW. RESEARCH STATION, CLIMATE CHANGE: REALITIES OF RELOCATION FOR ALASKA NATIVE VILLAGES 1 (April 2011), *available at* http://www4.nau.edu/tribalclimatechange/tribes/ak_inupiaq_AkRelocation.asp.

[24] *Kivalina*, 663 F. Supp. 2d at 882.

[25] Kalen, *supra* note 1.

[26] *Kivalina*, 663 F. Supp. 2d at 879.

awarding damages for injuries caused by greenhouse gas emissions was a non-justiciable political question.[27] Consequently, the suit was dismissed, and Kivalina did not receive money from private oil companies to move its village to a safer physical location.[28]

Kivalina and other similarly situated villages remain in dire need of federal assistance. Village relocation planning provides the best way to ensure the continuity of their communities and native cultures. To preserve native cultural values, avoid human suffering, and to mitigate financial cost, the federal government must collaborate with tribal and Alaska state agencies to effectuate and pay for native village relocations. Waiting to disperse federal funds until after the villages are declared disaster areas, or not allowing native villages to receive federal funds because of their inability to comply with aid requirements would be unjust and inequitable to Alaska's rural, native population. Moreover, dispersing the local population of affected villages could result in unwanted assimilation into other cultures and a loss of traditional culture and language.[29]

To best implement a plan of village relocation in Alaska, FEMA and HUD should either exempt villages from meeting the strict agency financial assistance requirements or expand existing federal programs to include native villages and pay for village relocation.[30] Allowing villages to qualify for FEMA's disaster mitigation programs and HUD's Community Block Grant Program are attractive options, as either would allow for a declaration for disaster relief, thereby letting the government pay for most of the relocation while relying minimally on state or village-appropriated funds.[31]

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[27] *See Kivalina*, 663 F. Supp. 2d at 882.
[28] *See id.*
[29] J.W. Barry, *Aboriginal Cultural Identity,* 19 CAN. J. OF NATIVE STUD. 1, 2 (1999).
[30] *Id.* at 23, 24, 26–27, 34, 37.
[31] David Goodstone, *Kivilina and Climate Change Innovative Solutions from Israel,* LIVEBETTER MAGAZINE, (Feb. 2, 2013), *available at* http://livebettermagazine.com/article/kivalina-climate-change-innovative-solutions-from-israel/ (explaining how currently, to qualify for most relief programs, an emergency must be a "post emergency," meaning aid will not become available for a disaster until the disaster has already

These initiatives would also allow for villages to completely move to new sites in an effort to avoid disadvantageous cultural effects that would result from consolidating village populations or urbanizing traditionally rural populations.[32]

While state and private agencies have been active in attempting to find a way to relocate small and remote Alaska native villages affected by global warming, the issue again turns to funding.[33] Who exactly could pay for the relocations? The individual townships and village corporations generally cannot afford such relocations because they lack community funds and knowhow.[34] The financial burden has thus been placed on state agencies and ad hoc commission groups formed with the support of native leadership instead of rightly imposing on departments within the federal government that have the skill, resources, and finances needed to move populations of people subjected to natural disasters.

The Army Corps of Engineers estimates it will cost about $95-$125 million to relocate one village of 300 to 400 people.[35] Other than providing a small amount of federal stimulus money to village relocation, the federal government has been absent from organizing a plan to help many Alaska villages relocate.[36] Despite the ongoing destruction of these villages through

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occurred). *See* GAO, *supra* note 6, at 26–27, 42 (discussing the parameters of federal block grants).

[32] E-mail from Sam Kalen, Assoc. Professor of Law, Wyo. Univ. Sch. of Law, to author (Sep. 11, 8:34 AM) (on file with author).

[33] *See generally,* STATE OF ALASKA DEP'T OF PLANNING & LAND MGMT., *Newtok Planning Group*, http://www.commerce.state.ak.us/dca/planning/npg/Newtok_Planning_Group.htm (last visited Oct. 24, 2013); *See generally* GAO, *supra* note 6.

[34] *See generally Kivalina*, 663 F. Supp. 2d at 863; GAO, *supra* note 6, at 10.

[35] U.S. ARMY CORPS OF ENG'RS ALASKA DIST., STUDY FINDINGS AND TECHNICAL REPORT: ALASKA BASELINE EROSION ASSESSMENT, 5-4 (Mar. 2009), *available at* http://www.climatechange.alaska.gov/docs/iaw_USACE_erosion_rpt.pdf.

[36] Christine Shearer, *Climate Crisis: Alaska Native Village Shishmaref Sinking into Sea*, CONDUCIVE MAGAZINE, May 28, 2009, a*vailable at* http://www.conducivemag.com/2009/05/climate-crisis-alaskan-village-shishmaref-sinking-into-the-sea/. *See generally* GAO, *supra* note 6.

severe environmental damage,[37] funding from the federal government has been unavailable because Alaska native villages do not qualify for natural disaster relief.[38] HUD and FEMA have not recognized the villages as official "organized towns" that qualify for aid.[39] Although the situation for Alaska villages is dire (ravaged by flooding, melting permafrost, and erosion), FEMA currently has no plan(s) in place to fund village relocation or declare such villages as natural disaster sites.[40]

Furthermore, village relocation poses the question of how to ensure that cultural identities are not lost when villages are ultimately moved. Should we literally move the whole village to a new place, combine villages, or simply ship the people off to nearby cities and towns?

III. HISTORY OF VILLAGE DEGRADATION BECAUSE OF CLIMATE CHANGE

Before Alaska became a state, government agencies monitored the erosion of major Alaskan rivers and coastal settlements.[41] Since the 1980s, erosion from rivers and the ocean has caused great problems for remote native villages.[42] In addition to Kivalina, there are around 30 villages in Alaska that currently face possible relocation because of changed environmental factors.[43] About 12 of these village relocations will have to happen within the next generation. A couple villages, like Kivalina and the proactive village of Newtok, which was the first to set up a coalition to plan

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[37] GAO, *supra* note 6, at 20.
[38] *Id.*
[39] *Id.* at 26, 42–43 (villages that are unorganized or lie in unorganized boroughs are frequently ineligible for major government relief aid).
[40] Rachael Petersen, *The Difficulty Relocating Climate-Affected Communities*, BAKER INSTITUTE ALASKA (2012), http://bakerinstitutealaska.tumblr.com/post/28593328202/the-difficulty-relocating-climate-affected-communities.
[41] U.S. ARMY CORPS OF ENG'RS ALASKA DIST., *supra* note 35, at ES-2.
[42] York, *supra* note 13.
[43] GAO, *supra* note 6, at 12.

for village relocation in 1994, are in the midst of trying to relocate their crumbling villages.[44]

A. Environmental Concerns and Difficult Solutions for Village Relocation

The main environmental factors that have necessitated village relocation are as follows:

> **Erosion of rivers and ocean coastline**: Many Alaska villages are rapidly eroding and the physical sizes of these villages are shrinking as a result.[45] Even seawalls will not save these villages in the long-term.[46] Minor flooding has always been common in rural, native villages, but now the frequency and intensity of the floods is becoming too much for the towns' infrastructures to handle.[47]
>
> **Melting permafrost**: For thousands of years, much of the ground in northern Alaska has been permanently frozen. Now, some of that iced ground has melted. Other parts of the ground only melt temporarily and then freeze back in winter, but the effect is the same. Structures built on melting permafrost lose their structural integrity when the permafrost melts. Ultimately, the structure will warp, sag, tilt, or buckle.[48]
>
> **Loss of sea ice to protect from storms and provide subsistence hunting**.[49] In generations past, sea ice protected villages from the effects of storms, tidal waves, and erosion. Today, much of the ice has receded or thinned, and ice is also melting earlier in the spring so coastal shores have more time to be exposed to erosion factors. Moreover, the loss of the ice has proved adverse to subsistence

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[44] Kirsten Feifel & Rachel M. Gregg, NEWTOK PLANNING GRP., *Relocating the Village of Newtok, Alaska Due to Coastal Erosion*, CLIMATE ADAPTATION KNOWLEDGE EXCH. (July 3, 2010), http://www.cakex.org/case-studies/1588; GAO, *supra* note 4, at 16.
[45] York, *supra* note 13.
[46] GAO, *supra* note 6, at 33.
[47] U.S. GEN. ACCOUNTABILITY OFFICE, ALASKA NATIVE VILLAGES: MOST ARE AFFECTED BY FLOODING AND EROSION, BUT FEW QUALIFY FOR FEDERAL ASSISTANCE (Dec. 2003), *available at* http://www.gao.gov/new.items/d04142.pdf.
[48] ALASKA PUB. LANDS INFO. CTR., *Permafrost*, http://www.alaskacenters.gov/permafrost.cfm (last visited Oct. 22, 2013).
[49] Ristroph, *supra* note 17, at 53, 56.

> hunters in communities that do not have normative cash-based economies who rely on marine mammals and fish.[50]

The following are examples of how numerous coastal villagers in Alaska are affected by these environmental changes:

> Townships are literally shrinking in size because erosion is eating away at their landmass. Buildings are being abandoned.[51]
>
> Travel is becoming harder to and from these remote and isolated villages. The rivers are getting shallower because of growing silt deposits. Barges sometimes bottom out in the shallower rivers, leaving villages without important supplies.[52] Most villages have an airstrip for bush planes, but river barges are needed to transport large-scale items important for infrastructure.[53] When rivers erode too much, it becomes more difficult and expensive to supply the villages with consumer and infrastructural necessities.[54]
>
> Flooding and melting permafrost are destroying the already rudimentary infrastructure of many native villages. Even the boardwalks are getting flooded.[55]
>
> Money is now being spent on fixing dilapidated buildings instead of on relocation efforts. However, even these "repair" funds are becoming harder to get because budgetary committees realize that spending thousands of dollars on improving sinking villages is wasteful.[56] Essentially, money is being spent on band-aids that will eventually be peeled off by future erosion or flooding. These temporary fixes and consolidations are not permanent solutions;

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[50] *Id.*
[51] York, *supra* note 13.
[52] *Newtok Planning Group: Newtok Village Relocation History*, STATE OF ALASKA DEP'T OF COMMERCE http://commerce.alaska.gov/dnn/dcra/planninglandmanagement/newtokplanninggroup/newtokvillagerelocationhistory/NewtokHistoryPartThree.aspx (last visited Dec. 30, 2013).
[53] Briggs, *supra* note 14.
[54] *Id.*
[55] York, *supra* note 10.
[56] *See* Dan Joling, *Warming Brings Unwelcome Change to Alaska Villages*, JUNEAU EMPIRE, (Mar. 29, 2011, 1:26 PM), http://juneauempire.com/state/2011-03-27/warming-brings-unwelcome-change-alaska-villages#.USHXQWdkj1N.

> but regardless, it is still easier for the villagers to get money to fix an already existing village than it is to get money to relocate a village to a new location.[57]

Spending money on these band-aid solutions is wasteful because they only stall the inevitable relocations by permitting improved infrastructure to have a slightly longer shelf life. Money spent on temporary fixes should be reallocated to relocation efforts. Temporary fixes should only be encouraged insomuch as they buy time to implement a detailed relocation plan.

Furthermore, Alaska natives are in no way culturally homogenous. Each small population has a unique subculture that is closely tied to the land.[58] Before Western intervention, most natives in the areas affected by village relocation were semi-nomadic.[59] The US forced permanent villages upon them, in a wardship-like setting.

As a result, even though Alaska natives did not voluntarily adopt many of their village sites because of forced settlement by the federal government, their connections with those village sites became very important: the land provided their subsistence needs, acted as a reference for oral history, and served spiritual purposes.[60] Stripping Alaska natives of their village sites could devastate their cultural identity if not mitigated correctly.[61] The federal government is largely responsible for current village sites. It needs

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[57] FED. EMERGENCY MGMT. AGENCY, *Public Assistance: Local, State, Tribal and Non-Profit*, http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit (last updated Oct. 25, 2013). *See* GAO, *supra* note 6, at 20–21.

[58] AJ McClanahan, *Alaska Native Claims Settlement Act: An Overview of the Alaska Native Claims Settlement Act of 1971*, CIRI, http://www.ciri.com/content/history/ancsa_overview.aspx (last visited Oct. 25, 2013).

[59] *Alaska Natives and Subsistence Rights*, THE LEADERSHIP CONFERENCE, http://civilrights.org/indigenous/alaska/ (last visited Oct. 25, 2013).

[60] McClanahan, *supra* note 58.

[61] NATIVE AM. PUB. TELECOMM., *The Urban Relocation Program*, PBS, (Sept. 2006), http://www.pbs.org/indiancountry/history/relocate.html (discussing how government programs aimed at the urbanization of Native Americans in the 1950s led to many Native Americans becoming geographically displaced and disfranchised).

to realize that integrating traditionally segregated populations of natives will further result in minor native populations losing their cultural identities to the larger ethnic populations they encounter.[62]

IV. SUSTAINING CULTURAL IDENTITY AFTER RELOCATION

A. Overview of Past Relocations of American Indians and Policies Toward Alaska Natives

Removing Native Americans from their ancestral lands has a rich, albeit tainted, history in the United States.[63] Thomas Jefferson first proposed that Native Americans living east of the Mississippi move west of the Mississippi River unless they could be assimilated into Western culture.[64] "Assimilation" often meant that Native Americans were forced to give up their semi-nomadic lifestyles in exchange for plows, spades, manufactured clothes, and a yeoman farmer lifestyle.[65]

More recently, American Indian relocation has been implemented to "benefit" the interests of Native Americans, rather than to subjugate them to the assimilative policies of a government that failed to recognize their autonomy.[66] In 1952, the federal government started to implement the Urban Indian Relocation Program.[67] Through this program, reservation Native Americans were voluntarily relocated from rural reservations to seven major cities in the hopes that they could find jobs in these cities.[68]

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[62] Barry, *supra* note 26 (discussing how permanent intercultural contact between aboriginals and non-aboriginals resulted in the minority aboriginal group losing part of its cultural identity).

[63] Clara Sue Kidwell, *The Effects of Removal on American Indian Tribes*, NAT'L HUMANITIES CTR., http://nationalhumanitiescenter.org/tserve/nattrans/ntecoindian/essays/indianremovalc.htm (last visited Oct. 25, 2013).

[64] *Id.*

[65] Carolyn J. Marr, *Assimilation Through Education: Indian Boarding Schools in the Pacific Northwest*, UNIV. LIBRARIES, UNIV. WASH., http://content.lib.washington.edu/aipnw/marr.html#foot2 (last visited Oct. 20, 2013) (*see* Part IV).

[66] *See generally* NATIVE AM. PUB. TELECOMM., *supra* note 61.

[67] *Id.*

[68] *Id.*

While the program encouraged many Native Americans to move to the cities, the government usually failed to provide promised job training and financial support to Native Americans who moved.[69] As a result of the moves, the failure of Native Americans to get jobs, and the unfamiliar culture of metropolitan America, many Native Americans became homesick and returned home to life on the reservation.[70]

Alaska has a very unique history with its Alaska natives. While Alaska natives were subject to forced re-education and Americanization in the early and mid-20th century,[71] just like in the "lower 48,"[72] Alaska natives were not subjected to the reservation system.[73] With the exception of a small reservation in Metlakatla, in Alaska's southeast, no reservations exist in Alaska.[74] Additionally, from very early on in Alaska's territorial days, Alaska natives were afforded aboriginal title to land; however, they could not hold legal title to these lands.[75] They did not even become official citizens of the Alaska territory until 1924.[76] Furthermore, the well-being of Alaska natives was overseen by the Bureau of Indian Affairs.[77] Because the Bureau of Indian Affairs originally chose to treat Alaska natives as wards of the United States who needed to integrate into Western society, the federal government sought to curtail their traditional semi-nomadic lifestyles by

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[69] *Id.*
[70] *Id.*
[71] LA BELLE ET AL., NAT'L RES. CTR. FOR AM. INDIAN, ALASKA NATIVE, & NATIVE HAWAIIAN ELDERS, BOARDING SCHOOL: HISTORICAL TRAUMA AMONGST ALASKA'S NATIVE PEOPLE 2–3 (2006), *available at* http://elders.uaa.alaska.edu/reports/yr2_2 boarding-school.pdf.
[72] *Id.* at 3.
[73] *Id.*
[74] *Id.*
[75] RICHARD S. JONES, Am. Nat'l Gov., ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971; Kalen, *supra* note 1; PUBLIC LAW 92-203: HISTORY AND ANALYSIS TOGETHER WITH SUBSEQUENT AMENDMENTS 1 (Report No. 81-127 GOV) (June 1, 1981), *available at* http://www.alaskool.org/projects/ancsa/reports/rsjones1981/ancsa_history71.htm.
[76] U.S. DEP'T OF THE INTERIOR: INDIAN AFFAIRS, *Who We Are*, http://www.bia.gov/ WhoWeAre/BIA/index.htm (last updated Feb. 15, 2013).
[77] United States v. Cadzow, 5 Alaska 125, 126–27 (D. Alaska 1914).

allotting plots to Alaska natives in the early 1900s and providing them legally recognized land interests.[78] In 1926, an act was passed to designate township sites to Alaska natives; these township sites became the precursors for many of the villages that were established throughout Alaska.[79]

B. Preserving Cultural Identity and Language by Avoiding Assimilation into Other Distinct Populations

There is little question as to whether some native populations in Alaska are going to be forced to relocate because of climate change. Fiscal matters concerning the relocation of thousands of village residents is certainly a pressing issue. However, another issue also deserves examination: How will Alaska natives relocate to different township sites while still retaining their cultural autonomy?

In America's past, native relocation coerced Native Americans into changing almost all facets of their way of life.[80] Relocation initiatives focused on integrating natives into a cash-based economy, adopting Western religion, adopting permanent settlements, dressing like Westerners, speaking English, and educating children under Western ideals.[81] State and

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[78] Alaska Native Allotment Act of 1906, 34 Stat. 197 (1906) (permitting individual Alaska Natives to claim title to up to 160 acres of land); WILLIE HENSLEY, INST. OF SOC. & ECON. RESEARCH, UNIV. OF ALASKA ANCHORAGE, WHAT RIGHTS TO LAND HAVE THE ALASKA NATIVE?: THE PRIMARY QUESTION (2001), *available at* http://www.alaskool.org/projects/ancsa/WLH/WLH66-All.htm (discussing how allotments helped to assimilate Native Americans into the American melting pot as private/agricultural land owners).

[79] Alaska Native Townsite Act of May 25, 1926, ch. 379, 44. Stat. 629 (1926) (formerly codified at 43 U.S.C. §§ 733–737); HENSLEY, *supra* note 78.

[80] *See, e.g.* Marr, supra note 65 (forcing Native children to attend boarding schools, not speak their native languages, and adopt European Christian ideals).

[81] *See generally* FAE L. KORSMO, POLAR PEOPLES: SELF-DETERMINATION & DEVELOPMENT: THE ALASKA NATIVES 81–104 (Minority Rights Grp. ed. 1994).

parochial sponsored schools reprimanded children for talking in their native dialects and discouraged traditional native cultural practices.[82]

Today, there exists a strong movement to preserve and re-establish the cultural identity of Alaska natives.[83] Bilingual education that preserves native languages and native history is now being orally and textually documented.[84] Native subsistence hunting backed by state and federal legislation remains a way of life in rural Alaska,[85] as does native dance and craft making.[86] Relocation poses severe threats to the cultural integrity of distinct native cultures. The best way to preserve the distinct cultures and communities that will be displaced because of "climigration" will be to move entire villages to new sites that Alaska natives themselves select with assistance from government authorities or tribal consortiums.[87] While native populations have a strong connection to the physical places where they live and often use geographical landmarks to communicate their histories and fundamental life lessons, moving a village to a nearby site will probably be the best way to mitigate cultural damage, so long as village residents do not disapprove of the new site and the village's history is accurately transcribed into tangible documents.

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[82] Paul Berg, *Historical Basis of the Crisis in Rural Alaska*, JUNEAU EMPIRE, (Mar. 1, 2012, 1:12 AM), http://juneauempire.com/opinion/2012-03-01/historical-basis-crisis-rural-alaska#.USMssWdkj1M.

[83] Jill Burke, *AFN 2012: Native Elders Seek Ways to Re-establish Cultural Ties with Youth*, ALASKA DISPATCH (Oct. 15, 2012), http:// http://www.alaskadispatch.com/article /afn-2012-native-elders-seek-ways-re-establish-cultural-ties-youth.

[84] *Mission: Document, Cultivate, and Promote Alaska Native* Languages, ALASKA NATIVE LANGUAGE CTR., UNIV. OF ALASKA FAIRBANKS, http://www.uaf.edu/anlc/ mission/ (last visited Oct. 28, 2013).

[85] Ristroph, *supra* note 17, at 84.

[86] Paul Ongtooguk, *Alaska's Cultures: Building a Context for Stories and Traditions*, ALASKA HISTORY & CULTURAL STUDIES, http://www.akhistorycourse.org/articles/article .php?artID=275 (last visited Oct. 20, 2013).

[87] York, *supra* note 13 (explaining that villagers of Newtok were largely responsible for initiating a relocation plan to another town site and for selecting where that town site would be). Further, I used the term "climigration" to refer to forced migration of Native population due to climate change.

Community and inter-village social relations will be best preserved by moving a whole town to a new site as one unit and ensuring that the new town site has modern facilities and infrastructure conducive to modern living. The easiest ways for a native community to lose its cultural identity is to have its old town site integrated with an already existing village, or to have the population of its village dispersed into different villages or urban centers.[88] Sending displaced Alaska natives to urban centers, like Nome or Fairbanks, could be a cost-effective solution to village relocation,[89] but its impact on native culture would be severe. Each village in Alaska usually has a distinct dialect and set of customs.[90] When members of a village integrate into cities or new towns, they often give up parts of their identities in exchange for social stability.[91] The best way to bolster the likelihood that native language and culture survive relocation is to establish education programs, supported by village parents and guardians, that teach children traditional native history and language in a bilingual setting.[92] This helps ensure old customs and knowledge remain relevant and visible with the new generation.

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[88] *See, e.g.* NATIVE AM. PUB. TELECOMM., *supra* note 61 (noting how American Indians who moved to urban centers in the 1950s suffered losses of cultural identity).

[89] GAO, *supra* note 6, at 29 (moving the city of Newtok alone would cost upwards of $130 million, or about $380,000 per person, whereas moving to a city would not require a complete reconstruction of infrastructure).

[90] ALASKA NATIVE HERITAGE CENTER, *Eyak, Tlingit, Haida and Tsimshian Cultures of Alaska*, ALASKA NATIVE HERITAGE CTR., http://www.alaskanative.net/en/main-nav/education-and-programs/cultures-of-alaska/eyak-tlingit-haida-and-tsimshian/ (discussing how Alaska Natives are separated into eleven distinct cultures that speak eleven distinct languages in twenty-two dialects).

[91] Kari Kydersen, *Alaska Natives Watch Traditions Melting Away*, TOWARDS FREEDOM, Aug. 2008, http://towardfreedom.com/home/content/view/1394/1/ (discussing how climate change has already forced some Natives to move to more urban cities and towns and how their emigration from their villages has resulted in families being "torn apart").

[92] John Rheyner, *Maintaining and Renewing Native Languages*, 19 BILINGUAL RES. J. 279, 280–81, 284 (1995) (discussing how tribal and parental support of bilingual education for Native Americans is crucial to bilingual success).

In Alaska villages affected by climate change, incentivizing Alaska natives to move to other towns or cities should not be encouraged if Alaska native community leaders oppose the urban relocation. As mentioned earlier, in 1952, the federal government implemented the Urban Indian Relocation Program in an effort to move Indians off reservations and into cities.[93] Those Native Americans who moved to cities and who stayed in the cities usually became indoctrinated by Western culture, which was essentially the goal of the program.[94] The program's explicit goal was to assimilate Native Americans into the cash economy and help them escape poverty from the poorly managed reservation system.[95]

In Alaska, the reservation system was not adopted. Instead, Alaska natives retained rights in their land through the Alaska Native Claims Settlement Act (ANCSA) and became autonomous in their decision-making power with the establishment of 12 regional Alaska Native Corporations and over 200 village corporations.[96] The stated goals of these corporations included maintaining the well-being of Alaska natives and retaining traditional cultural values.[97] To realize these goals, villages like Kivalina and Newtok should be entirely moved to new relocation sites. Those villagers who wish to move to cities could certainly do so; however, the government would not finance such a move. Further, unlike the 1952 Urban Indian Relocation Program, the goal of Alaska village relocation would not center on Western assimilation. The goal here would be to move Alaska natives to a new, safe location and to assist them in retaining their community identity.

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[93] NATIVE AM. PUB. TELECOMM., *supra* note 61.
[94] *Id.*
[95] *Id.*
[96] MCCLANAHAN, *supra* note 58.
[97] NAT'L CONG. OF AM. INDIANS, *Tribal and Alaska Native Corporation 8(a) Business Development: Promoting Tribal Self-Determination and Self-Sufficiency* (July 16, 2009), *available at* http://www.nativecontractors.org/media/pdf/JohnsonPataTestimony.pdf.

Moreover, while Alaska natives attained their American citizenship in 1924, and while they are no longer considered "wards" of the government, the government still should assist in promoting native cultural identity in an effort to mitigate past disenfranchisement of native culture. It was the government and Western culture that reduced the prevalence of native language and culture in rural towns, and it was the government that mandated natives settle in a township. Some of those townships, like those in Newtok and Kivalina, are now in environmental danger of being wiped off the map. Hundreds live in these cities, and if those populations do not elect to be absorbed into another community, the federal government must move them to new locales that are safer than the ones the Bureau of Indian Affairs allocated to them at the turn of the century. The federal government was responsible for their township settlements and Americanization; now it should be responsible for the subsequent relocation and for the support of cultural preservation.

V. LEARNING FROM NEWTOK

A. A Case Study on Organizing Village Relocations in Rural Alaska

The village of Newtok is a prime example of a village that is in need of relocation because of global warming issues.[98] The village is next to the Ninglick River, below sea level, and 400 miles away from the nearest road.[99] Because of erosion, the Ninglick River is widening and the town is losing land to water at a rate of about 83 feet per year.[100] Newtok is a village of less than 400 people, and currently, several of the village's roughly 60 buildings lay abandoned because they were built too close to the expanding Ninglick River.[101] Furthermore, the permafrost around Newtok is

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[98] *See generally* STATE OF ALASKA DEP'T OF COMMERCE, *supra* note 52.
[99] York, *supra* note 13.
[100] *Id.* (citing GAO, *supra* note 6, at 16).
[101] *Id.*

melting and the town is essentially sinking.[102] Within a decade, this whole Yu'Pik village could be washed away.[103] The Army Corps of Engineers estimates that an entire Newtok village relocation plan would cost up to $380,000 per person.[104]

Newtok is in no way the only Alaska village suffering from climate effects.[105] Over 200 villages in Alaska experience some kind of significant erosion or annual flooding.[106] 31 of these villages face "imminent" relocation threats and 12 of those 31 villages, including Newtok and Kivalina, have elected to take steps initiate relocation plans. Newtok and Kivalina are also among a group of three villages, the other being Shishmaref, that the Army Corps of Engineers estimates will probably be washed away within the next decade.[107]

Newtok, however, unlike many other Alaska villages, has been the most proactive in addressing its need to relocate; Newtok boasts the "Newtok Planning Commission," charged with spearheading relocation organization, and has taken successful measures in implementing the first steps of village relocation: identification of a new townsite, infrastructure planning, and preliminary grants.[108] Despite these preliminary initiatives, an exact relocation date is still not known, and the Commission itself suffers from underfunding.[109]

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[102] *Id.*
[103] William Yardley, *Victim of Climate Change, a Town Seeks a Lifeline*, N.Y. TIMES, May 27, 2007, *available at* http://www.nytimes.com/2007/05/27/us/27newtok.html?pagewanted=all&_r=0.
[104] York, *supra* note 13.
[105] *See generally* GAO, *supra* note 6.
[106] *Id.* at i.
[107] *Id.* at 10 (estimating from the Army Corps of Engineers in 2006 that Newtok, Kivalina, and Shishmaref could be totally washed away by coastal erosion).
[108] *Newtok Village Relocation History: Part 4*, STATE OF ALASKA DEP'T OF PLANNING & LAND MGMT., *available at* http://commerce.alaska.gov/dnn/dcra/PlanningLandManagement/NewtokPlanningGroup/NewtokVillageRelocationHistory/NewtokHistoryPartFour.aspx (last visited Oct. 28, 2013).
[109] Kalen, *supra* note 1.

Elders of Newtok village have long warned that the village should move to higher ground.[110] The elders' fears garnered more notice when they hired consultants in 1983 to evaluate the amount of erosion that was taking place in the village.[111] Over the next 20 years, the physical changes in the village became starkly apparent. For example, dirt roads were becoming unusable, building foundations were failing, and the wooden boards of the boardwalks started to "float."[112] The whole town became much more "muddy."[113] In 2003, village residents decided the only way to maintain their village and community was to move the village to a new location nine miles upstream to a grassy plateau.[114]

However, as reporter Anna York put it, "moving a village is not just a matter of packing boxes and loading a moving truck."[115] For a whole village to move, "new infrastructure must be built: plumbing, walkways, streets and electricity."[116] The community needs an access point to deliver all these materials in order to build a community "from scratch."[117]

To realize Newtok's goal of relocation, community leaders obtained permits for the new village site and conducted an impact assessment of the new site. Newtok village leaders contacted Alaska's Department of Commerce, Community, and Economic Development Division for further assistance; however, the agency's head explained it did not have the resources or expertise to effectively carry out village relocation.[118] Consequently, the Newtok Planning Group was founded in 2006 to formulate a relocation plan.[119] "The planning group consists of

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[110] York, *supra* note 13.
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] STATE OF ALASKA DEP'T OF PLANNING & LAND MGMT., *supra* note 33.

representatives from nine Alaska state government agencies, 10 federal organizations and five regional non-profit groups."[120] There is, however, no lead agency assigned to the Newtok Planning Group, the collaboration between its disjointed entities has been described as "experimental," and money is still lacking for an entire village relocation.[121]

Regardless, since 2006, Newtok and the Newtok Planning Group have made some strides towards village relocation.[122] A landing dock for barges was recently finished at the new proposed townsite, and villagers have built three fabricated homes at the new townsite.[123] Furthermore, in 2008, Newtok received a state grant from the Alaska Climate Change Mitigation Program to fund design plans for an initial evacuation center at the new village site, called "Mertarvik," to ensure that villagers would at least have a temporary refuge if evacuation plans were hastened.[124] A community layout plan of Mertarvik has also been completed, as have several other emergency evacuation response plans.[125] Currently, a strategic management plan is underway to evaluate how the physical movement of the entire village will actually be coordinated.[126]

The federal government has not appropriated relocation funds to Alaska villages that are in imminent danger of being destroyed by changing environments.[127] These villages want to move. And they need to move.

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[120] *Id.*
[121] *Id.*
[122] Feifel & Gregg, *supra* note 44.
[123] York, *supra* note 13.
[124] MERTARVIK EVACUATION CTR., NEWTOK PLANNING GRP., *available at* http://www.commerce.state.ak.us/dca/planning/EvacuationShelter.htm (last visited Oct. 28, 2013).
[125] Sally Russell Cox, *Alaska Climate Change Mitigation Program*, 7–10 (2011), *available at* http://www.climatechange.alaska.gov/docs/afe11/ACCIMP_cox_feb11.pdf.
[126] *See generally,* Carolyn George et al., COMMUNITY OF NEWTOK & THE NEWTOK PLANNING GRP., MERTARVIK RELOCATION REPORT: NEWTOK TO MERTARVIK, *available at* http://commerce.alaska.gov/dca/planning/npg/pub/Mertarvik_Relocation_Report.pdf (last visited Oct. 28, 2013).
[127] GAO, *supra* note 6, at 31 (discussing how there is no designated federal agency to appropriate funds or design village relocation plans).

Village leaders recognize that the only way to preserve their villages is to move the villages to entirely new sites.

While Newtok received planning grants for relocation from Alaska State agencies, such as the Denali Commission[128] created in 1998,[129] most villages have only been successful in getting money to improve and repair their existing town sites, not money to move to another town site.[130] For example, Alaska Administrative Orders 231 and 239 recognized the need for improvements of a seawall at the threatened Kivalina. The two orders allocated funds to temporarily protect Kivalina from further erosion and flooding, but the funds did nothing to address the need for Kivalina to relocate its sinking village.[131]

Newtok still faces a huge funding problem[132] even though it has established a well-organized planning commission and has received assistance from several state and private agencies in moving to a new town site called "Mertavik."[133] Mertavik is in its pioneer stages of development;[134] however, town leaders are only able to receive funds by coordinating with the Newtok Planning Group, which relies on incremental state grants and voluntary coordination efforts from different tribal councils and state agencies.[135] The group has not been able to secure funds in the form of a lump sum, but rather, it receives small individual state grants on a

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[128] Feifel & Gregg, *supra* note 44.
[129] Notices, 76 Fed. Reg. 35426 (June 17, 2011), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-06-17/pdf/2011-15051.pdf.
[130] Petersen, *supra* note 40.
[131] *See* STATE OF ALASKA, OFFICE OF THE GOVERNOR, AO No. 231, (2006), *available at* http://www.gov.state.ak.us/admin-orders/231.html; STATE OF ALASKA, OFFICE OF THE GOVERNOR, AO No. 239, (2008), *available at* http://www.gov.state.ak.us/admin-orders/239.html.
[132] York, *supra* note 13.
[133] *See* George et al., *supra* note 126; MERTARVIK EVACUATION CTR., *supra* note 124.
[134] NEWTOK PLANNING GRP., *supra* note 126.
[135] *See The Newtok Planning Group*, STATE OF ALASKA, http://commerce.alaska.gov/dnn/dcra/PlanningLandManagement/NewtokPlanningGroup/NewtokVillageRelocationHistory/NewtokHistoryPartFour.aspx (last visited Oct. 28, 2013).

contingency basis.[136] Moreover, a fully comprehensive plan to fund village relocation is not yet in place because there is essentially no precedent in Alaska for carrying out relocation plans caused by changing climate conditions.[137]

B. Relocation Threats Around the World: Case Studies in Fiji and Northern Russia

The need for village relocation is not unique to Alaska. Governments in the South Pacific are considering mass migrations of their populations because rising sea levels threaten to wash away their cities and towns.[138] For example, 3,000 people from the low-lying Carteret Islands have already been evacuated to Papua New Guinea.[139] In Vunidogoloa, Fiji, rising sea levels have forced villagers to abandon their homes and move their village of 150 people to higher ground.[140] The villagers had discussed migration to high land for about a decade, but the move did not start until they formally asked the Fijian government for relief aid *before* the entire village was washed away.[141] The Fijian government granted the request and is currently assisting in the construction of 30 new homes, at $15,000 apiece, and the installation of solar energy and natural water systems.[142]

In Scandinavia and Russia, native villages are also looking at the imminent threat of forced relocation because of climate change; however,

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[136] *Id.* (funds for Newtok village relocation are "being pieced together grant by grant as each individual step of the project is planned").
[137] GAO, *supra* note 6, at 10.
[138] NATURAL RES. VENTURES PRIVATE LTD., *The Carteret Islands Project*, WORDPRESS *available at* http://resourceventures.wordpress.com/ (last visited Oct. 28, 2013).
[139] York, *supra* note 13.
[140] Brook Meakins, *Village Relocated Due to Climate Change*, SALON (Sept. 19, 2012, 12:03 PM), http://www.salon.com/2012/09/19/first_village_relocated_due_to_climate_change/.
[141] *Id.*
[142] *Id.*

like native villages in Alaska, plans for relocation are lagging.[143] In Russia, for example, the Russian government has recognized indigenous "Sakha" coastal villages as villages that may soon be in need of relocation due to climate change.[144] Nevertheless, the Russian government has only gone so far as identifying the problem of village relocation and has not allocated funds to actual relocation.[145] The main reason for relocation complacency stems from the fact that Russian coastal villages, in general, have yet to experience such dire erosion or permafrost effects. Therefore, the Russian government feels no need to implement relocation plans anytime soon. This follows the same non-progressive policy of our own federal government in not carrying out relocation initiatives in Alaska.

IV. ALTERNATIVE PLANS

Revenue for relocation costs could be created by legislation that would require private companies to establish village relocation insurance funds that could be accessed if there was an imminent threat of forced relocation. Alaska villages could also look towards simple tax measures on natural resources that could further be allocated toward village relocation or to other states for funding ideas, such as California's sale of gas emission permits to the public.

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[143] Randy Showstack, *Native Communities in the Arctic Face Climate Impacts,* 94 EOS 71, 71 (2013). However, the situations in other Arctic countries appear to be less frequent and imminent than threats faced in Alaska.

[144] SUSAN A. CRATE, BROOKINGS-LSE, CLIMATE CHANGE AND HUMAN MOBILITY IN INDIGENOUS COMMUNITIES OF THE RUSSIAN NORTH, 35 (2013), *available at* http://www.brookings.edu/~/media/research/files/papers/2013/1/30%20arctic%20russia%20crate/30%20climate%20russia%20crate%20paper. "Sakha" being a type of people indigenous to coastal Russia.

[145] *See generally id.*

A. Mandate Oil and Gas Companies Establish a Contingency Fund to Help Pay for Village Relocations in Exchange for Tax Benefits.

A possible proactive way for village relocation to be at least partly financed is to mandate that oil companies and other large private emitters of greenhouse gases establish a contingency insurance fund that could be accessed when villages need money to pay for relocation caused by global warming.[146] While it may be unlikely that companies would voluntarily contribute to the fund, state legislation offering minor tax cuts could be enacted to compel companies to do so.

Exxon has long had a contingency fund set up for unexpected tax increases and retroactive oil price mandates.[147] Its contingency funds are estimated to include hundreds of millions of dollars.[148] These funds provide tax benefits for Exxon because Exxon can subtract money that goes into its contingency funds from its taxable revenue,[149] thereby delaying profit realization and decreasing its taxable income.

There seems to be little reason why the state could not compel Exxon and other similarly situated companies in Alaska to establish contingency funds that will help finance village relocation initiatives via legislation. Undoubtedly, oil companies would try to fight off any such legislation. Recent proposals for oil production tax cuts have already garnered support from many state legislators and even from the Alaska governor, Sean Parnell.[150] These pro-oil tax-cutting proposals have also resulted in millions

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[146] *See generally* MD. DEP'T OF ENV'T, REPORT ON STATUS OF THE MARYLAND OIL DISASTER CONTAINMENT CLEAN-UP AND CONTINGENCY FUND (2008) (describing how Maryland mandated the creation of contingency funds for oil disasters).

[147] Josh Fitzhugh, *Five Largest Oil Companies Trimmed Millions from Profit Figures with Contingency Funds,* THE LEWISTON DAILY SUN, Apr. 27, 1974, at 19, *available at* http://news.google.com/newspapers?nid=1928&dat=19740427&id=8XggAAAAIBAJ&sjid=jGcFAAAAIBAJ&pg=941,4190137.

[148] *Id.*

[149] *Id.*

[150] Mike Doogan, *Doogan: Death of Parnell's Oil Tax Cut, Aint' Seen Nothing Like it,* ALASKA DISPATCH, Apr. 27, 2012, http://www.alaskadispatch.com/article/doogan-death-parnells-oil-tax-cut-aint-seen-nothin-it.

spent on oil lobbying.[151] Similar efforts to prevent oil companies from having to pay for village relocation would be expected. Furthermore, the oil industry in Alaska is a giant enterprise that is responsible for almost $4 billion dollars in economic activity[152] and one-third of all jobs and personal income.[153] Any proposed oil company payout to villages would have to take into account the oil's importance to the state economy, and would gain the most support if its harm to jobs and personal income was minimal. One possible way to do this would be to offer oil companies minor tax cuts in exchange for them paying for relocation costs.

B. Raise Oil Taxes or Surcharges of Oil Companies and Dedicate the Extra Revenue to a Village Relocation Fund.

In 1976, Alaska amended its constitution to require that 25 percent of the revenues it receives from oil companies be put into a fund called the Alaska Permanent Fund.[154] Since 1982, the state has been using proceeds in this fund to pay out a yearly dividend to each Alaska citizen.[155]

Currently, the oil production tax imposed on oil companies is 25 percent.[156] The state receives a four-cent conservation surcharge on each barrel of oil produced and a one-cent surcharge on each barrel when the state's Hazardous Release Fund dips below $50 million.[157] State revenue

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[151] Sean Cockerham, *Oil Industry Spent Over $1M Pushing Tax Cuts,* ANCHORAGE DAILY NEWS, May 30, 2012, *available at* http://www.adn.com/2012/05/30/2485737/oil-lobby-spent-1m-plus-to-influence.html.
[152] SCOTT GOLDSMITH, ALASKA INST. OF SOC. & ECON. RESEARCH, UNIV. OF ALASKA ANCHORAGE, THE IMPORTANCE OF PETROLEUM TO THE ALASKA ECONOMY: A *GEDANKEN* EXPERIMENT, 15 (2009), *available at* http://www.iser.uaa.alaska.edu/Publications/SF_NARSA_Regional_Science-v6.pdf.
[153] *Id.* at 20.
[154] Alaska Const. art. 9, § 15.
[155] STATE OF ALASKA DEP'T OF REVENUE, *Historical Timeline*, http://www.pfd.state.ak.us/DivisionInfo/HistoricalTimeline (last visited Feb. 8, 2013).
[156] *Oil and Gas Production Tax*, STATE OF ALASKA DEP'T OF REVENUE, http://www.tax.alaska.gov/programs/programs/index.aspx?60650 (last visited Feb. 14, 2013).
[157] *Id.*

from oil taxation in 2008 alone was $11.3 billion.[158] In 2011, revenues totaled $7 billion.[159]

To allocate money for village re-location, the state could implement one of the following measures:

> Require oil companies to establish a village relocation fund in order to continue operation.
>
> Raise oil taxes or surcharges of oil companies and dedicate the extra revenue to a village-relocation fund.
>
> Create a village relocation fund by diverting money away from the Alaska Permanent Fund and Treasury.
>
> Expand the scope of the state of Alaska's Hazardous Substance Release Prevention and Response Fund (OHSRPRF) to include damage caused by greenhouse gases.[160]

C. Expand the Scope of the State of Alaska's Hazardous Substance Release Prevention and Response Fund (OHSRPRF)

The expansion of OHSRPRF would have to recognize that greenhouse gas emissions are "hazardous substances" just like oil, and that any damage caused by their release would necessitate funding allocation.[161] To limit the

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[158] Maureen Farrell, *Alaska's Windfall,* CNNMONEY, Feb. 29, 2012, http://money.cnn.com/2012/02/29/markets/alaska_oil/.

[159] *Id.*

[160] ALASKA STAT. § 46.08.005 (1993) (discussing the establishment of a relief fund for hazardous materials that have been discharged in Alaska and are a "real and substantial threat to the public health and welfare, to the environment, and to the economy of the state").

[161] ALASKA STAT. § 46.08.900 (1999) defining a hazardous substance as the following:

> (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657.).

Id. Pursuant to this statute, greenhouse gas emissions into the Earth's atmosphere do not qualify as "hazardous substances." *Id.*

scope of this fund however, it would be easier to create a separate "village relocation fund" that would be designed specifically to address forced village relocation due to damage caused by global warming.

The existence of OHSRPRF shows Alaska's state legislature has recognized that oil companies can cause damage to its citizens, which actually sets a precedent to establish another type of "disaster relief fund" that could be catered towards village relocation.

D. Following California and Establishing Greenhouse Gas Credits

Perhaps the most novel way to set up a village relocation fund is to follow California's footsteps by auctioning off greenhouse gas emission permits.[162] Revenue gained from the issuance of such permits in Alaska could be used to establish a village relocation fund so long as such permits were not invalidated as illegal taxes on oil companies.

V. THE FEDERAL GOVERNMENT MUST EXPAND LEGISLATION TO PROVIDE DISASTER FUNDS TO NATIVE ALASKA VILLAGES THAT NEED TO RELOCATE

In 2004, Congress passed the now repealed 2005 Consolidated Appropriations Act was passed as a remedial measure for the low amount of federal aid funds in the federal government.[163] Section 117 of the Act allowed the federal government to assist Alaska villages that needed financing for village relocation caused by coastal erosion, as well as by ice and glacial damage.[164]

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[162] *California Begins Auctioning Greenhouse Gas Permits*, CBS SF BAY AREA, Nov. 14, 2012, http://sanfrancisco.cbslocal.com/2012/11/14/california-begins-auctioning-greenhouse-gas-permits/.

[163] Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, § 117, 118 Stat. 2944 (2004) (stating "The Secretary of the Army is authorized to carry out, at full Federal expense, structural and non-structural projects for storm damage prevention and reduction, coastal erosion, and ice and glacial damage in Alaska, including relocation of affected communities and construction of replacement facilities").

[164] *Id.*

Section 117 also gave discretion to the Secretary of the Army to fully fund projects that affected communities like Newtok and provide for the construction of replacement facilities and villages.[165] This act provided $2,400,000 to provide for seawalls in some villages and allowed the villages of Newtok, Shishmaref, Koyukuk, Barrow, Kaktovik, Point Hope, Unalakleet, and Bethel to implement some anti-flood and coastal erosion barriers; however, no money was ever earmarked for relocation.[166] Section 117 was repealed in 2009, and no such similar federal provision has been enacted.[167]

Currently, the state of Alaska and local Native Corporations lack the funds, expertise, and know-how to implement grand village relocation plans. Unless a similar provision to Section 117 is passed in Congress, federal money to fund village relocation needs to come from FEMA or from HUD.[168] A 2009 Congressional study done by the Army Corps of Engineers identified over 30 Alaska villages that were in need of federal assistance because of damage from erosion and permafrost melting.[169] Nevertheless, Alaska villages still do not qualify for disaster relief aid even though Congress has acknowledged that village relocation is imminently necessary.[170]

As mentioned before, there is no single federal authority in place that is set up to coordinate Alaska village relocation.[171] Moreover, the principal problem villages like Newtok and Kivalina encounter when trying to get funds from FEMA or HUD is that they simply do not qualify for the funds

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[165] *Id.*
[166] ALASKA SEA GRANT COLLEGE PROGRAM, COASTAL EROSION RESPONSES FOR ALASKA 57 (Orson P. Smith ed., 2006), *available at* http://nsgl.gso.uri.edu/aku/akuw 06001.pdf.
[167] Omnibus Appropriations Act, Pub. L. No. 111-8, § 117, 123 Stat. 524 (2009).
[168] *See generally* GAO, *supra* note 6 (mentioning continuously how currently FEMA and HUD programs fail to recognized the needs of Alaska village relocation efforts).
[169] *Id.* at *2.
[170] *Id.* at 3, 15.
[171] *Id.* at 39.

because they lack a formal government structure or because erosion damage has not been elevated to natural disaster status.[172] They also do not meet the financial criteria for much of the assistance because most programs require the villages or local governments to share the costs of federal projects, usually around 25 percent.[173] The requirement of cost sharing would be impossible for local organized boroughs and villages to meet. Moreover, most Alaska villages lack the necessary scientific erosion data to show that village relocation is imminently necessary and do not have proper environmental impact statements necessary to start comprehensive relocation initiatives.[174]

A. FEMA's Shortcomings in Providing Disaster Relief Programs to Rural Villages in Alaska and the Need to Change FEMA Policy

FEMA's allocation of disaster funds to communities is adverse to Alaska village needs and is biased against village governmental structure. For example, Alaska villages cannot receive flood mitigation funds from FEMA's Flood Mitigation Assistance Program, Repetitive Flood Claims Program, or Severe Repetitive Loss Pilot Program because the villages do not belong to FEMA's National Flood Insurance Program.[175] To belong to the Flood Insurance program, Alaska village communities would have to agree to meet FEMA's strict requirements for flood prevention measures and adhere to strict FEMA ordinances that would require expensive draft plans, site evaluations, and cash balances.[176] Even then, FEMA aid would

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[172] *Id.* at *2, 20, 42.
[173] *Id.* at 20 (for example, most villages could not contribute the needed 25 percent share cost to conform with FEMA's hazard mitigation program).
[174] *The State and Federal Response to Storm Damage and Erosion in Alaska's Coastal Villages Before the Senate Ad Hoc Subcomm. On Disaster Recovery of the Comm. On Homeland Sec. and Governmental Affairs,* 110th Cong. (2007).
[175] GAO, *supra* note 6, at 21.
[176] *About the National Flood Insurance Program: Overview*, NAT'L FLOOD INS. PROGRAM, http://www.floodsmart.gov/floodsmart/pages/about/nfip_overview.jsp (last updated Feb. 1, 2013).

not be given to the villages until after the villages became flooded.[177]

More importantly, villages like Newtok, which are located in Alaska's unorganized and unincorporated borough, do not qualify for funds because the villages themselves are unincorporated. FEMA does not give funds to unincorporated towns in unorganized boroughs.[178] While this policy seems to be facially discriminating towards Alaska native villages, FEMA is hesitant to change its policies due to the fact that its funds are limited and because it would be difficult to administer village relocation plans in a state as big as Alaska, where small native villages are oftentimes very remote and expensive to supply.[179]

Many Alaska native villages fail to qualify for other FEMA funds because they have not established village mitigation plans.[180] FEMA will not award grants to communities that have not spent resources in submitting village mitigation plans, evacuation plans, community development plans, etc.[181] As of 2009, out of the 31 threatened villages, only 12 had valid mitigation plans (Alakanuk, Barrow, Cordova, Dillingham, Emmonak, Golovin, Kotlik, Koyukuk, McGrath, Unalakleet, Kivalina, and Newtok) to meet the initial threshold to qualify for FEMA aid, and only 33 Alaska villages in total had acceptable mitigation plans.[182] But even having an approved mitigation plan in place does not guarantee that a village will receive a grant because FEMA retains discretion to give those grants to the communities it finds to be most deserving.[183]

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[177] *Fema National Flood Insurance Program, Flood Insurance Requirements for Recipients of Federal Disaster Assistance*, FEMA, *available at* http://www.fema.gov /library/viewRecord.do?id=3323 (last visited Oct. 28, 2013).
[178] GAO, *supra* note 6, at 24, 26, 42.
[179] Kalen, *supra* note 1.
[180] *Id.*
[181] *Id.*
[182] GAO, *supra* note 6, at 22.
[183] 44 C.F.R. § 4.10 (2009) (stating that the Administrator of FEMA may accept, modify, or reject a state's recommendation for disaster relief at his or her discretion).

Relocating Alaska villages provides less utility than other projects in the continental United States because of the economics involved.[184] Alaska villages are remote, village populations are low, transportation costs for materials are high, and construction costs are high in rural Alaska.[185] Essentially, village relocation is very expensive and only benefits a small population of people.[186] But the real benefit in relocation will be in avoiding the disenfranchisement of thousands of rural Native Americans and keeping their communities intact. Such benefits need to be pursued, and a strictly utilitarian delegation of funds would be inherently unfair and inhumane.

The federal government has not provided Alaska native villages with much flooding relief. Since 1953, only 15 federal disasters have been declared in Alaska because of flooding, and, as a result of those disasters, only four villages received any financial aid for relocation costs under FEMA authority.[187] In those four instances, the federal government only paid for one entire village to be relocated (over $6 million was given to the village of Alatna in 1994 to move the village to higher ground after a flood).[188] In Alatna's case, a new village was built with federal relief money on higher ground, but only after the village had become submerged by six feet of water. Officials determined that the area would be highly susceptible to erosion events in the future, and all but four structures from the old townsite had been swept away downstream.[189]

FEMA has several programs aimed at disaster mitigation, but most are based on flood prevention and require a village's inclusion in the Flood Insurance Program.[190] Two programs more applicable to Alaska villages are

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[184] Briggs, *supra* note 14.
[185] *Id.*
[186] *Id.*
[187] GAO, *supra* note 6, at 23.
[188] *Id.*
[189] U.S. ARMY CORPS OF ENG'RS, ALATNA BASELINE EROSION ASSESSMENT 1 (2008), *available at* http://www.poa.usace.army.mil/Portals/34/docs/civilworks/BEA/Alatna_Final%20Report.pdf.
[190] GAO, *supra* note 6, at 21–23.

FEMA's Pre-Disaster Mitigation Program and its Public Assistance Program.[191]

FEMA's Public Assistance Program requires that the village site be declared a federal disaster, and it would require cost sharing from the state of Alaska or from the village applicant.[192] The aid distributed by FEMA could go to the state or directly to tribes and organizations, like the Newtok Planning Group.[193] The intent of the program is to assist in "debris removal; emergency protective measures to preserve life and property; and the repair and replacement of damaged structures, such as buildings, utilities, roads and bridges, recreational facilities, and water-control facilities."[194]

A. Broadening FEMA's Public Assistance Program to Include Village Relocation Efforts

The Public Assistance Program could replace some of the infrastructure of Alaska native villages and assist in protecting property; however, the Pre-Disaster Mitigation Program may be a more viable option.[195] Data collected from 317 pre-mitigation projects indicates that the ratio of loss to cost for pre-mitigation projects compared to what the projects would have cost without the pre-mitigation plans was 3.2 to 1 (meaning that it cost $1 to fund a pre-mitigation project that would have cost $3.20 to mitigate after the fact).[196] For flooding and coastal storms, the ratio was 4.6 to 1.[197] For example, in 2004, FEMA awarded over $4.6 million to Harris County, Texas, in order to buy out homes facing flooding, and to move 64 families

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[191] *Id.* at 17, 20–21.
[192] *Id.* at 21. *See generally Public Assistance: Eligibility*, FEMA, http://www.fema.gov/public-assistance-eligibility (last visited Oct. 28, 2013).
[193] *Id.* FEMA.
[194] *Id.*
[195] *See generally* GAO, *supra* note 6.
[196] CONG. BUDGET OFFICE, POTENTIAL COST SAVINGS FROM THE PRE-MITIGATION PROGRAM (2007), *available at* http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/86xx/doc8653/09-28-disaster.pdf.
[197] *Id.*

to another location so that the flooded areas could return to their "natural states."[198] The early initiative of the program saved the county, insurance companies, and families millions of dollars.

The Pre-Disaster Mitigation Program could provide funds to the State of Alaska or to local village communities to implement mitigation measures *prior* to a disaster event.[199] The goal of the program is to prevent future reliance on funding that FEMA is mandated to provide following a declaration of a natural disaster.[200] To qualify for this program, FEMA would have to recognize an Alaska village relocation effort as a qualifying mitigation measure, which it currently does not.[201] Additionally, to qualify for such assistance, the village needs a mitigation plan, cost-benefit analysis report, and a cost share of 25 percent needs to be assumed by the state of Alaska or the local village community.[202] This cost share could be reduced to as low as ten percent if the village applicant qualifies as a "small and impoverished community."[203] This may be applicable to many Alaska villages due to the lower than average per capita income of such communities.[204]

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[198] Press Release, U.S. Dep't of Homeland Security: FEMA, FEMA Funds Ongoing Flood Buyouts (June 28, 2004), *available at* http://www.swmp.org/news/FEMA_REL_and_PDM_Facts_6-28.pdf.

[199] *See generally Pre-Disaster Mitigation – 2010 Guidance*, FEMA, *available at* http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit/hazard-mitigation/pre-disaster-mitigation-2010 (last visited Oct. 28, 2013) [hereinafter FEMA]; GAO, *supra* note 6, at 20.

[200] GAO, *supra* note 6, at 20.

[201] *See generally* FEMA, *supra* note 199. Nowhere in the pre-mitigation part of the FEMA website does it acknowledge that erosion or permafrost damage are natural disasters; listed natural disasters include hurricanes, earthquakes, tornadoes, winter storms, etc. *Id.*

[202] GAO, *supra* note 6, at 20.

[203] *Id.*

[204] INST. OF SOC. & ECON. RESEARCH, UNIV. OF ALASKA ANCHORAGE, BENEFITS OF ANCSA AND SBA 8(A) PROGRAM: STATUS OF ALASKA NATIVES (2009), *available at* http://www.iser.uaa.alaska.edu/Publications/8%28a%29/B.pdf.

C. Using HUD to Advance Village Relocation

HUD currently has programs that can be modified to provide financial relief for Alaska villages that need to relocate. Although villages may have difficulty meeting HUD's expectations for federal assistance,[205] HUD provides relocation assistance for displaced persons and communities in certain situations with its Community Block Grant Program. Once qualified, funds can only be distributed by the state to "units of general local government that are political subdivisions of the state."[206]

Sixty-four villages in Alaska, such as Newtok, fail to qualify for the block grants simply because they do not have an incorporated municipal government.[207] Instead, they have local tribal governments. Furthermore, the state of Alaska is not allowed to act as a proxy for a village municipal government because the state does not constitute a municipal government and the state cannot distribute funds to itself under this program.[208] Unincorporated villages may gain access to HUD funds by applying HUD's Indian Community Development Block grant;[209] however, because the villages are unincorporated, they will not receive the dual benefit of accessing funds from both block programs, and the funds they do receive from the Indian Community Development Block grant would probably be insufficient to fund a relocation project.[210]

HUD also provides Imminent Threat Grants to fund housing assistance to communities facing imminent threats to their health or safety; however,

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[205] GAO, *supra* note 6, at 26.
[206] *Id.*
[207] *Id.*
[208] *Id.* at 26–27.
[209] *Id.* at 27.
[210] *Indian Community Development Block Grant Program*, U.S. DEP'T OF HOUSING & URBAN DEV., *available at* http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/grants/icdbg (last visited Oct. 28, 2013); *Id.* at 27 (stating that 64 unincorporated Alaska Native villages are disadvantage because their unincorporation leaves them only eligible for a tribal community block grant and not a general HUD Community Development Block Grant).

these grants are not used for long-term relocation planning because such long-term threats are not "imminent" for purposes of grant allocation.[211]

D. National Environmental Protection Act

Lastly, most villages face difficulties stemming from the 1969 National Environmental Protection Act (NEPA).[212] Under NEPA, a federal authority must conduct lengthy environmental impact assessments about proposed federal projects.[213] Therefore, before any relocation project can take place in Alaska, a federal authority must be appointed to spearhead environmental assessments and conduct them in order to satisfy NEPA.

VI. SOLVING THE PROBLEM: USING FEDERAL MONEY TO SUPPORT RELOCATION BEFORE A FEDERAL DISASTER IS DECLARED.

With new knowledge must come new legislation. FEMA and HUD policies were implemented before the ramifications of climate change on Alaska villages were known.[214] Furthermore, the policies of these federal agencies fail to recognize the unique organization of Alaska's state government and rural native populations in that many Alaska native villages are designated as unorganized and isolated.[215] In order to advance the social welfare of villages in Alaska that will soon be forced to relocate to new sites because of erosion, flooding, melting permafrost, melting ice, and severe seasonal storms, the federal government must take a more proactive approach to village relocation planning and funding.[216]

FEMA could wait until entire Alaska villages wash away and then have the president declare the areas to be natural disasters that qualify for FEMA

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[120] GAO, *supra* note 6, at 37.
[212] *Id.* at 10–11, 31.
[213] Kalen, *supra* note 1.
[214] *Id.*
[215] *Id.*
[216] *Id.*

funds.[217] However, a more practical approach would be to fund village relocation as soon as possible. Most natural disasters happen within a short time span, but, in the case of Alaska villages like Newtok and Kivalina, the natural disaster is slowly advancing.[218] Erosion, melting permafrost, and flooding are destroying villages little by little. Any mitigation efforts to save these villages so far have only provided temporary relief.[219]

Because FEMA regulations do not allow most Alaska villages to qualify for flood insurance,[220] FEMA should at least allow unincorporated and non-organized villages to take part in its Pre-Disaster Mitigation Program or in another type of public assistance program. The very goal of the Pre-Disaster Mitigation Program is to mitigate the need for funds that a community needs *after* a natural disaster has occurred by invoking less costly measures before disaster strikes; providing funds for new infrastructure *during* the disaster seems to accomplish the program's goal. Just because FEMA's programs did not have the foresight to recognize the position of Alaska native villages does not mean that rural Alaska villagers should suffer an unwarranted penalty.

Further, because most villages lack large-scale economic resources and are inhabited by low-income individuals, HUD needs to label these villages as impoverished communities. This way, the cost-sharing obligation to the state of Alaska or to other planning groups could be as low as ten percent,[221]

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[217] M. Alex Johnson & Miguel Llanos, *Sandy's Mammoth Wake: 46 Dead, Millions Without Power, Transit*, NBC NEWS, (Oct. 31, 2012 12:43:34 AM), http://www.nbcnews.com/id/49605748/ns/weather/#.UmV4BBBrjl0 (stating that President Obama declaring major disaster in New Jersey after four towns became submerged under six feet of water).
[218] *See, e.g.* York, *supra* note 13 (representing that Newtok residents have noticed erosion in their town for decades).
[219] *See, e.g.* STATE OF ALASKA, OFFICE OF THE GOVERNOR, *supra* note 131 (providing that the State gave relief to rebuild sea walls at Kivalina, a town village that is predicted to be under water within the next decade).
[220] GAO, *supra* note 6, at 21–23.
[221] *Id.*

a percentage of money that could be allocated from the state treasury or from native regional corporations.

HUD also needs to eliminate its preferential treatment of incorporated and organized cities and award block grants to unincorporated and unorganized villages that are in need of relocation. Unincorporation or lack of organization does not quell their need for aid. Those block grants can be used to supplement new housing and infrastructure. FEMA's refusal to allocate the block grants to Alaska villages effectively discriminates against Alaska tribal governments and against the overall organization of Alaska and its rural native citizens.

HUD further needs to award Imminent Threat Grants to villages that need to relocate quickly, such as Kivalina and Newtok. HUD should recognize that, while dangers to those villages may not be imminent, they are inevitable and deserve priority funding.

People in these Alaska villages, like the victims of Hurricane Sandy and Katrina, are in immediate need of assistance. After Hurricane Sandy, federal money was provided to states within days of the storm to do things such as rebuild roads, repair utilities, and provide medical relief.[222] Following the hurricane, which occurred in early November 2012, Congress and the public have voiced little opposition to the additional money that FEMA provided Sandy-affected states.[223] Support for plans to have the government pay for 100 percent of Sandy damages, instead of the standard 75 percent

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[222] *Hurricane Sandy: Timeline*, FEMA, http://www.fema.gov/hurricane-sandy-timeline (last visited Oct. 28, 2013) (stating that President Obama declared FEMA aid will be given to certain states on the east coast immediately after the storm ended to permit for the re-building of infrastructure).

[223] Raymond Hernandez, *Congress Approves $51 Billion in Aid for Hurricane Victims*, N.Y. TIMES, Jan. 28, 2013, *available at* http://www.nytimes.com/2013/01/29/nyregion/congress-gives-final-approval-to-hurricane-sandy-aid.html?_r=0 (stating that $51 billion in Hurricane Sandy Aid was approved by Congress after President Obama initially proposed the relief amount to $61.4 billion).

for federal disasters, has already gained wide support.[224] Allocating money to Alaska villages now, instead of later, would allow for better planning, coordination, and effective use of monetary funds. Like in Sandy and Katrina, the allocation of funds would also be in response to an emergency, albeit one that does not affect as many people, but which still would result in damaging economic and social effects.

Alaska villages may also follow the behavior of lawmakers from states affected by Hurricane Sandy; these lawmakers demanded the federal government provide for all mitigation funding caused by the hurricane, including relocation.[225] By asking the federal government to supply 100 percent of the aid, village relocation would not be limited by prohibitive state and village spending allowances.

The federal government must also eliminate the need for Alaska villages to comply with the NEPA requirement. First, NEPA's requirement that environmental impact statements be produced by a federal agency would be difficult because there is no federal entity in place to head the assessment projects required.[226] Second, because of the remoteness of villages and their relatively small populations, any new settlement is likely to have a negligible environmental impact that would not usurp the need to move humans from danger; in this case, an exception to NEPA impact assessments is warranted.[227]

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[224] Richard Simon, *In Areas Hit by Sandy, Lawmakers Ask U.S. to Pay the Whole Cost*, L.A. TIMES, Nov. 1, 2012, *available at* http://articles.latimes.com/2012/nov/01/nation/la-na-nn-lawmakers-hurricane-sandy-recovery-cost-20121101 (stating that lawmakers in states affected by Hurricane Sandy implore the federal government to completely cover the cost of all damaged infrastructure).
[225] *Id.*
[226] Kalen, *supra* note 1.
[227] 42 U.S.C. § 4321 2–5(a)(i), (vii) (1983) (stating that consideration for an exemption to NEPA can be influenced if the action taken would have a negligible environmental impact or was taken for disaster relief).

A. Environmental Legislation that Needs to be Relaxed in Order to Expedite Relocation: NEPA

Requiring Alaska villages to comply with NEPA would only further delay relocation and result in further degradation, social plight, and increased relocation costs. Congress should either amend NEPA or allow a temporary special exemption for Alaska villages. Congress has already allowed for the relaxation of NEPA regulations when they prohibited military projects in "emergency situations."[228] Agencies such as FEMA and HUD also need to recognize that disasters can manifest themselves in forms that have not been traditionally acknowledged, such as melting ice, melting permafrost, and large-scale erosion. By not allowing Alaska villages to easily access federal funds for relocation, the federal government is prejudicing rural villages in Alaska and disenfranchising its rural native population

VIII. CONCLUSION

Floodwaters, melting permafrost, and erosion will soon displace scores of rural villages and drastically alter thousands of lives. Current relocation plans for Alaska villages are generally unorganized, experimental, and slow moving. Without proper funding by the federal government, either through HUD, FEMA, or another government agency, many Alaska native villages will face an uphill challenge in obtaining piecemeal grants to organize their migration from sinking villages.

Not only is relocation funding important for economic reasons, but for cultural reasons as well. Alaska natives have a defined sense of community that need not be broken by relocating them to other towns or cities. The entire village must be moved to a safe place where it can continue its

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[228] ROBERT MELTZ, CONG. RESEARCH SERV., EXEMPTIONS FOR MILITARY ACTIVITIES IN FEDERAL ENVIRONMENTAL LAWS 1 (2002), *available at* http://congressionalresearch.com/RS21217/document.php?study=Exemptions+for+Military+Activities+in+Federal+Environmental+Laws.

traditions, customs, and way of life. Cost should be an ancillary issue to the federal government as the situations these people face truly are disasters. The best solution to this problem is to be proactive in planning and immediately allocate federal funds to commissions that can readily effect relocation.