



Denali Commission
Office of Inspector General
Anchorage, AK 99501

November 14, 2016

INFORMATION MEMORANDUM FOR THE DENALI COMMISSIONERS


FROM: David Sheppard
Inspector General

SUBJECT: *Top Management and Performance Challenges Facing the Denali Commission in Fiscal Year 2017*

Enclosed is our report on the Denali Commission's *Top Management and Performance Challenges* for fiscal year (FY) 2017. The Commission has been substantially affected by the president's environmentally threatened communities initiative, continued budget reductions and conflict-of-interest rules that apply to Commissioners, and efforts to identify a strategic plan that addresses budget reductions amid increased responsibility. While inherent logistical challenges continue to impact the Commission staff's ability to visit funded projects, the Commission's concurrence with—and implementation of—recommendations made in a recent OIG audit report on the agency's grant monitoring efforts should improve its efforts. In addition, the recent focus of the Commission on environmentally threatened communities has reduced the available funding and subsequently the volume of legacy projects funded by the Commission. Most of the legacy projects still being funded are part of the energy program that are now in large part granted to program partners located in Anchorage. Due to these recent changes, we have removed monitoring efforts as a top management challenge.

We remain committed to keeping the Commission's decision-makers informed of problems identified through our audits, evaluations, and investigations so that timely corrective actions can be taken. The Commission's response to our October 21, 2016, draft *Top Management and Performance Challenges* report is included as an appendix. This report will be included in the Commission's *Agency Financial Report*, as required by law.¹

We appreciate the cooperation received from the Commission, and we look forward to working with you in the coming months. If you have any questions concerning this report, please contact me at (206) 220-7970.

cc: Corrine Eilo, Chief Financial Officer, Denali Commission
Jay Farmwald, Director of Programs, Denali Commission
John Whittington, General Counsel, Denali Commission
David Smith, Deputy Inspector General, U.S. Department of Commerce

¹ 31 U.S.C. § 3516(d).

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Challenge 1: Addressing Evolving Role in the Environmentally Threatened Communities Initiative

On September 2, 2015, the President of the United States announced an initiative on climate change and village relocation efforts, stating that “the Denali Commission will play a lead coordination role for Federal, State and Tribal resources to assist communities in developing and implementing both short- and long-term solutions to address the impacts of climate change, including coastal erosion, flooding, and permafrost degradation.” According to a 2009 Government Accountability Office report on the relocation of Alaska Native villages, the four most pressing environmentally threatened communities in Alaska are Newtok, Kivalina, Shishmaref, and Shaktoolik.² These four communities are identified as needing to move as soon as possible due to the continued flooding and erosion, as well as limited emergency evacuation options. All these communities are suffering the impacts of climate change and are facing the decision to either move their village to a new location or protect in place.



Newtok, Alaska, is a village of approximately 354 people on the Ningliq River in western Alaska and is not accessible by road (see figure 1). Newtok is eroding in part because it sits on permafrost, a once-permanently frozen sublayer of soil found in the Arctic region. As temperatures increase in Alaska, that permafrost is melting, leading to rapid erosion. Snow is melting earlier in the spring in Alaska, sea ice is receding, and the ocean temperature is increasing. Erosion has forced the village to begin planning and implementing relocation to Mertarvik, Alaska.



Source: Denali Commission OIG

Kivalina, Alaska, is a city and village of approximately 470 people in northwest Alaska (see figure 2). Kivalina lies on a barrier island along the Chukchi Sea—above the Arctic Circle—and is not accessible by road. The island on which the village lies is threatened by rising sea levels and coastal erosion. Historically, the people of Kivalina have hunted large bowhead whales from camps atop the sea ice that stretches out from the town’s shores. But in recent years, climate change has thinned the ice so much that it has become too dangerous to hunt the whales. In addition, the sea ice acted as a protective barrier to the island. With the sea ice thinning, the island does not have enough protection from waves washing over the shore and eroding the coastline.

² United States Government Accountability Office, June 2009. *Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion*, GAO-09-551. Washington, DC: GAO, 16.

Shishmaref, Alaska, is a city and village of approximately 579 people in northwest Alaska (see figure 3). It is located on Sarichef Island in the Chukchi Sea, north of the Bering Strait and 5 miles from the mainland, and is not accessible by road. Climate change and rising temperatures have resulted in a reduction in the sea ice that serves as a protective barrier to buffer Shishmaref from storm surges. At the same time, the permafrost that the village is built on has also begun to melt, making the shore even more vulnerable to erosion. Although a series of barricades has been put up to protect the village, the shore has continued to erode.



Shaktolik, Alaska, is a city of approximately 260 people in northwest Alaska (see figure 4). Shaktolik is located on the eastern shore of the Norton Sound and is not accessible by road. Shaktolik is threatened by erosion and related effects of climate change, and the community has previously been relocated twice. In 2016, residents of Shaktolik completed a strategic management plan to protect their community from erosion and violent storms. The plan lists nine critical actions, including replacing the health clinic, reinforcing the berm, and building an evacuation center. All of these critical actions are

part of the village's larger goal of remaining at their current site rather than relocating.

The president, in his proclamation and press statement, has tasked the Commission with the role of lead coordinator for the environmentally threatened communities initiative. However, there has not been any formal guidance in the form of an executive order, policy statement, or regulation that assigns the Commission with the lead coordinating role. Without formal guidance or assignment, the Commission is trying to understand their role and responsibility with little definition or clarity of what its part should be. In addition, the Commission is facing the challenge of how to help these environmentally threatened communities either move or protect in place with limited federal resources to carry out such actions.

Challenge 2: Engaging Commissioners in Light of Ethics Concerns and Funding Realities

The Denali Commission Act of 1998 (Denali Commission Act) establishes that the Commission will be composed of seven members appointed by the Secretary of Commerce.³ The seven members represent a variety of perspectives throughout Alaska and are responsible for creating an annual work plan for the Commission. The Denali Commission Act names the presidents of the University of Alaska, the Alaska Municipal League, the Alaska Federation of Natives, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) Alaska, and the Associated General Contractors of Alaska, as well as the governor of Alaska (state co-chair), and the federal co-chair of the Denali Commission as members but also allows these members to nominate individuals to serve in their stead. The governor of Alaska has nominated the lieutenant governor of Alaska to the Secretary of Commerce to serve as the state co-chair.

Given the positions held by the Commissioners within their respective organizations, the Commission requested an opinion from various federal entities—including the Office of Government Ethics and the Department of Justice—on whether federal conflict-of-interest laws apply to Commissioners. The informal decisions provided by the Department of Justice in 2006 and 2007 were that, absent an exemption, the federal conflict-of-interest laws apply to all Commissioners. In light of this determination, Commissioners became concerned about their level of engagement, considering that they could be held criminally liable for breaking conflict-of-interest laws. On September 8, 2016, the Senate submitted a bill to reauthorize the Denali Commission and the proposed legislation included creating a mechanism by which a Commissioner may disclose a potential conflict of interest. This process includes the Commissioner obtaining a written determination by the agency’s designated ethics official that the disclosed interest is not so substantial as to be likely to affect the integrity of the services expected from the Commissioner. However, the bill has not yet been signed into law and, therefore, the current ethics concerns remain a challenge to the agency.

The Commission’s funding for FY 2016 was \$19.5 million—up from \$14 million the previous year. However, this level of funding is still a significant decline from the \$140.6 million budget in FY 2006. While funding is not the only incentive for Commissioners to be engaged in the work of the Commission, encouraging all Commissioners to be sufficiently engaged with the Commission’s work remains a challenge.

Demands on the Commissioners’ time are incredible both from their own organizations and issues related to Alaska and the Commission. To help alleviate scheduling concerns, a meeting schedule was developed for FY 2016 through FY 2017. During the November 2015 Commissioner meeting, it was moved that the Commissioners adopt the meeting schedule through December 2016 and revisit the remainder of the schedule closer to calendar year 2017. The motion was brought to a vote and

³ Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105-277, Division C, Title III (1998).

approved unanimously by all in attendance.⁴ Although there were nine agreed upon meetings scheduled for FY 2016, only three of the meetings were held and achieved quorum. Throughout the year, two additional meetings were scheduled but terminated due to lack of quorum. Scheduling and holding meetings takes considerable effort and time from Commission staff, as well as outside parties that have interest in the meeting. Each meeting incurs approximately 30 hours of Commission staff time dedicated to Commissioner outreach and logistics, transcriber arrangements, website announcements and newsletters, program partner outreach, and materials preparation. Both meetings in FY 2016 that were cancelled due to lack of quorum were called specifically for Commissioners to make decisions regarding the Kipnuck energy project. For both canceled meetings, the Kipnuck Tribal Association members and the Alaska Energy Authority (a program partner of the Denali Commission) attended the meeting and prepared materials. As a result of the canceled meetings, important project decisions were delayed.

However, near the end of FY 2016 the Commissioners have shown improvement both in obtaining a quorum for scheduled meetings as well as the substance of the meetings in terms of decision making. Over the last two fiscal years, FY 2017 is the first year the Commissioners have approved a tentative work plan prior to the beginning of the new fiscal year.

The current cadre of Commissioners embodies a wealth of knowledge and experience within the state and represents an important cross-section of tribes, municipalities, state government, academia, business, and labor. Obtaining their input and advice is considered by many to be an important component of the Denali Commission Act. Therefore, increasing Commissioner engagement is a challenge the Denali Commission's staff will need to overcome not only to ensure it is meeting the intent of the act, but also taking full advantage of everything the Commissioners have to offer.

⁴ Six of seven Commissioners were in attendance at the November 2015 meeting, including the Federal Co-chair, who only votes in the event that a tie breaker is needed. Therefore, there were five voting Commissioners in attendance and they unanimously approved the motion.

Challenge 3: Identifying a Strategic Vision and Plan in a Period of Funding Uncertainty

As noted previously, although the FY 2016 budget was a \$5.5 million increase from the previous year, this level of funding is still a significant decline from the \$140.6 million budget in FY 2006. The Commission no longer receives Congressional earmarks and receives few transfers from other federal or state agencies. Its FY 2016 budget was \$19.5 million, with funding coming from only two federal sources: the Energy and Water Development and Related Agencies Appropriations Act, 2014, and the Trans-Alaska Pipeline Liability Fund. Despite drastic reductions in funding, the Commission continues to explore ways to improve rural Alaska.

In FY 2014, the Commission entered into an agreement with Enlighteneering, Inc., to help begin the critical effort of creating a strategic plan. The Commissioners met on March 27, 2015, to begin their strategic planning process; however, the plan was not finalized and recent progress has not been made in moving forward to complete the strategic plan. During the August 2016 Commissioner meeting, how to move forward with strategic planning was discussed but it was unanimously voted—by the five Commissioners in attendance—to table the issue until the Commission is reauthorized and a quorum, including both co-chairs, are present. Although strategic planning has been delayed, the process could help bring together Commissioners with different perspectives and varied perceptions of the Commission's priorities. It will require Commission staff, the federal co-chair, and the Commissioners themselves to agree on core values and a common vision for the Commission's future. Considering the President's announcement of the Commission's new role in a time of limited and uncertain funding, this will be a challenge.

These complexities are the very reasons that the completion of a strategic vision and planning effort is so critically important. Strategic planning will help the Commission fulfill its mandate from Congress by (a) clearly identifying its priorities and whom it should be serving, (b) developing a process to help it deliver those priorities to its beneficiaries, which are primarily rural Alaska communities, and (c) helping to identify the best approach to delivering on the President's new initiative. The planning process will also help the Commission to make the best use of its limited funding and unite the Commission staff, the Commissioners, and its stakeholders—which include its beneficiaries, the Alaskan Congressional delegation, and others—around a common vision and approach. The planning process should also provide the Commission with a method of assessing whether its activities are successfully meeting measurable program goals.

In order to have an effective strategic planning process, the Commission must have the full support of each staff member and each Commissioner, working toward a common goal and pulling in the same direction.

Appendix A: Agency Response



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Memorandum

To: David Sheppard, Inspector General
From: Joel Neimeyer, Federal Co-Chair *Joel Neimeyer*
Subject: Response to Top Management Challenges Facing the Denali Commission in FY2017
Date: November 10, 2016

This is in response to your memo dated October 21, 2016 concerning the above referenced subject. The following is offered.

Challenge 1: Addressing Evolving Role in the Environmentally Threatened Communities (ETC) Initiative:

I concur with this management challenge. Once the Commission was given the assignment by the President to be the lead coordinating Federal agency for village relocation and protect in place solutions, and until such time Congress or the White House formally rescinds or amends the assignment, all of rural Alaska will look to the Commission to serve in a lead role in identifying and prioritizing solutions. The lack of formal guidance makes the agency assignment more challenging as we explore what are the opportunities and the boundaries for a coordinating agency in providing prioritized solutions to the cabinet level agencies, which will ostensibly implement these solutions. As an example, lacking formal guidance, to the Commission and the full family of Federal agencies, why should a cabinet level agency agree to waive or modify existing grant making programs to focus resources on ETC prioritized projects?

Nonetheless, the Commission is leaning forward in working with the 31 ETC prioritized rural Alaska communities (see GAO Report 09-551) in identifying solutions to environmental threats. We are heartened by similar efforts from other Federal agencies including the US Army Corps of Engineers, the US Department of Housing and Urban Development, the Federal Aviation Administration, and most especially the Bureau of Indian Affairs in working with ETC communities. We are also appreciative of other Federal agencies such as the Federal Emergency Management Administration that have, in full candor, discussed their Congressional authorities and agency regulations and how these fit, or do not fit, with responding to environmental threats to rural Alaska villages. Lastly, the commitment by the Commissioners to assign significant agency resources to the ETC program is a clear indication to the public and our program partners of the serious nature of the agency's work in this area.

One final note on this Challenge, the subject GAO report identifies a distinction between Newtok versus the communities of Shishmaref, Kivalina, and Shaktolik. GAO states that Newtok is moving, and the other three "will likely need to relocate".

Challenge 2: Engaging Commissioners in Light of Conflict-of-Interest Concerns and Funding Realities:

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I concur with this management challenge. As I noted last year on this Challenge, the agency intended to deploy alternative means for Commissioner engagement on the agency annual work plan. This included deliberating on the work plan in a three phase approach. First, the Commissioners in a work session would identify general funding levels for specific programs and only on rare exception consider specific projects (where conflict of interest issues increase for Commissioners). Second, the agency holds a public hearing and accepts written comments. Lastly, 30 days or so after the work session the Commissioners reconvene in a public meeting to consider public comments and then vote on a work plan. This approach was applied successfully since the 2015 Top Management Challenges was published for the agency's FY2016 and FY2017 work plans. From my vantage point I view this change as more transparent to the public; it allows more meaningful public engagement; and it allows Commissioners to engage in a more meaningful way (by removing consideration of specific projects, for one).

Despite the success on the work plan process in FY2016, the agency was not successful in fulfilling our commitment of holding Commission meetings, as noted. One cause of this was the extended Alaska legislative cycle in an environment in which significant State budget cuts were considered – many of which specifically impacted the Commissioners. Nonetheless, we can do better on this front.

Challenge 3: Identifying a Strategic Vision and Plan in a Period of Uncertainty:

I concur with this management challenge. As noted in last year's response to the Top Management Challenges, Commissioners started the 5-Year Strategic Planning process at the March 27, 2015 Commission meeting – which I should note was where the germination of the ETC program began. This work was then further refined by agency staff and our contract associates with Enlighteneering, Inc. Unfortunately, Commissioners, as noted in Challenge 2, were not able to meet as originally envisioned and their work on the strategic plan remains largely unaddressed. The strategic plan remains for them to complete in FY2017. That being said, much of the work they have done recently on annual work plans fits in nicely with the development of a strategic plan. For example, the investments in FY2016/17 work plans for the ETC program outline a path for how the agency can serve as a lead coordinating agency on village relocations and protect in place solutions. Furthermore, the Commissioners opined on the agency's FY2018 budget request to the Office of Management and Budget. In addition, the inclusion of some investments for refurbishment, and enhancing operation and maintenance of existing energy infrastructure is a step forward for "maintaining, sustaining and protecting" existing rural Alaska infrastructure. This concept of taking care of what we have is an area of investment interest for the Commissioners and speaks to the question of how the agency can remain relevant during a time of limited funding.

One final note on this Challenge, the Commission also received \$2.5M in US Department of Agriculture – Rural Utility Service funding in FY2016 that was used for the agency's energy program investments.

I thank you for the opportunity to comment on the Top Management Challenges for 2017.