

Mertarvik Interagency NEPA Meeting Background and Other Supporting Information

Updated February 7, 2017

Problem Statement: Recognizing that the community of Newtok has four years or less before it is no longer a viable community due to persistent shoreline erosion from the Ninglick River, and that a typical environmental impact statement (EIS) may take years to complete, what does the family of Federal agencies recommend for appropriate environmental review on the development of Mertarvik.

Background: Newtok, with significant funding support from the State of Alaska, has begun the process of developing Mertarvik with some core community infrastructure (waterfront improvements, quarry development, road work, four housing units, the foundation for a community building and some sanitation improvements). In addition, work is funded and will be undertaken for more roadwork, housing and supportive housing elements in 2017.

The US Army Corps of Engineers (Corps) completed an environmental assessment (EA) in 2008 for much of the work that has been completed to date and the Bureau of Indian Affairs has adopted the Corps' EA for transportation work to be completed in 2017. Separately, the Federal Emergency Management Administration and the US Department of Housing and Urban Development are working on environmental review documents for the work that these Federal agencies are funding in 2017.

The Commissioners for the Denali Commission (Commission) identified up to \$900K in FY2016 funding to undertake environmental review work in Mertarvik. These funds became available for use to the agency in mid-August 2016. The Commissioners did not specify that the Commission would do this work (i.e. other Federal agencies could do the work on behalf of the Commission).

Commissioners, when approving \$900K in funding for Mertarvik environmental review, recommended that the agency consider seeking Congressional authority to accept existing EAs as sufficient for future construction work in Mertarvik. Any consideration of a legislative solution to environmental review would likely be better received if the family of Federal agencies exhausted the remedies found in their respective NEPA policies.

Analysis: There are two fundamental questions that must be answered. First, will the cumulative effects by all the actions of a multi-agency development effort in Mertarvik trigger the need for completion of an EIS process? Second, which Federal agency is best suited to be the Lead Agency for completion of NEPA, or Co-Lead Agencies?

Cumulative Effects and Triggering an EIS: The primary source that will inform this decision is the CEQ 1997 document "Considering Cumulative Effects under National Environmental Policy Act". A secondary source the Commission may consider is engaging with other Federal agencies that routinely have to consider cumulative effects and seek their opinion with respect to the development of Mertarvik. In addition, the Commission should explore with other Federal agencies if they have NEPA policies that allow for an abbreviated EIS process as the Commission has.

Commission as Lead Agency: The Commission's NEPA final regulations (see Federal Register/Vol. 81, No. 155, pages 53033 to 53039) provide guidance on the matter if the Commission were to be the Lead Agency for NEPA matters. Specifically, Section 900.405 reads as follows:

An EIS will normally be required for:

(a) Large scale infrastructure efforts such as the relocation of an entire community

and,

Section 900.202(d):

Where emergency circumstances make it necessary to take actions with significant environmental impacts without observing other provisions of these NEPA implementing procedures...the Federal Co-Chair may consult with CEQ about alternative arrangements for implementation of NEPA. In these situations, the Commission may reduce processing times or, if the emergency situation warrants, abbreviate its preparation and processing of EISs.

If the Commission is the Lead Agency, ostensibly an EIS would have to be completed for the development of Mertarvik (see Section 900.405). However, with concurrence from CEQ, and likely with concurrent support from other Federal agencies, the Commission may pursue an abbreviated environmental review on the development of Mertarvik (see Section 900.202(d)). It would be up to CEQ, but an abbreviated environmental review may be a programmatic EA or an abbreviated EIS process.

Other Federal agencies as Lead Agency: In this approach the Commission would transfer funds via an Interagency Agreement to another Federal agency which would then undertake the environmental review. Other Federal agencies have knowledgeable staff with the breadth of professional experience to undertake a complex programmatic EA or EIS process for the development of Mertarvik. However, some agencies may have concerns that the development of Mertarvik will include construction of infrastructure and other potential environmental impacts that are outside their normal course of work. Consequently, the Commission may not be able to find other agencies receptive to volunteer for this assignment.