

2013

Newtok Traditional Council

Management Support:  
Alan Michael LLC

# Recovering Mertarvik

**ROOT CAUSE ANALYSIS AND CORRECTIVE ACTION PLAN**

Newtok Traditional Council's Responses to Audit Findings



NEWTOK TRADITIONAL COUNCIL

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October 21, 2013  
Thomas Sutton  
Internal Auditor III  
Commerce, Community & Economic Development  
CRA-COMM/REG AFFAIRS  
PO Box 110800  
Juneau, AK 99811-0800

RE: Audit Response and the Corrective Action Plan to address the audit findings and recommendations from: Special Report; Newtok Traditional Council-Fiscal Management of Grants & Project Management for the Mertarvik Evacuation Center Project.

Dear Mr. Sutton:

The Newtok Traditional Council has received the following: *A Special Report on the Newtok Traditional Council and the Mertarvik Evacuation Center Project, July 2013* and a *Performance Audit Report on the Project Management of the Mertarvik Evacuation Center, September 10, 2013.*

We are submitting this analysis and our initial proposals for correction of the conditions leading to serious grant management issues reflected in your reports. Your reports were well prepared and appear to have followed the process and procedures required by (GAAS) Generally Accepted Auditing Standards for you to gather adequate evidence and support for what appear to be significant audit findings and to offer recommendations to resolve the findings and to improve the fiscal and project management of the Mertarvik Evacuation Center Project.

The Newtok Village is the federally recognized tribe for the Native community of Newtok. The government for the tribe is the Newtok Traditional Council (Council). The Council has been working through an elections dispute, including strong evidence the members of the Council contracting with Federal and State of Alaska agencies had expired terms and their authority to enter into or bind the Newtok Village into financial and grant agreements is questionable and debatable topic.

Although related to many of the issues in your report, it is the position of the Council elected on October 12, 2012, the election dispute does not abdicate the Newtok Traditional Council from our responsibility of proper stewardship and management of all the Newtok Village's financial and grant resources including grants: 11-DC-559 and 12-DC-550.

The Council's responsibility is to serve the economic, health and social welfare of the Newtok Village membership. This responsibility includes the oversight and accountability of our employees and contractors holding positions of trust and management of the Newtok Village's resources. When this trust is held in question as forwarded in your audit findings, we take this seriously and will investigate and take the proper steps to remedy any discrepancies we find to make certain grant resources are utilized properly for the benefit of the Newtok Village.

Included with the audit report is an initial proposal for a Corrective Action Plan to guide the Council through the steps necessary to rebuild and maintain the credibility of the Newtok Village and to improve our working relationship with the State of Alaska.

Accept this response and the proposed initiation of a corrective plan to: (1) increase the administrative and management functions of the NTC and to work closely with the State of Alaska DCRA and other State and Federal government agencies to meet our mutual requirements and expectations for improved oversight and compliance of valuable and scarce resources as we move forward with our efforts to relocate our community.

Respectfully,



Katherine Charles; Audit and Finance Committee  
Newtok Traditional Council.

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## Introduction

A letter dated September 25, 2013 from Thomas L Sutton, CPA for the State of Alaska (State), was received requesting the Newtok Traditional Council (NTC) to review the “*Special Report on the Newtok Traditional Council and the Mertarvik Evacuation Center Project, July 12, 2013*” (Fiscal Report) and the “*Performance Audit Report on the Project Management of the Mertarvik Evacuation Center, September 10, 2013*” (Project Audit) and to respond in writing to the “findings and recommendations” of the two reports and to provide, in a separate correspondence, the current status of the required State Single Audits for calendar years ending 2011 and 2012 for State grants: 11-DC-559 “*Newtok Shelter and Road*” and 12-DC-550 “*Mertarvik Shelter & Road*”.

## Background

The Newtok Village is the federally recognized tribe for the Newtok community<sup>1</sup>. The government body for the Newtok Village is the Newtok Traditional Council (NTC).

There is currently a tribal dispute involving the membership over the composition of the NTC Council (Council) members; there are two competing councils claiming to legally represent the Newtok Village. The Bureau of Indian Affairs (BIA) recognized the selection of the Newtok Village’s council members through a determination issued by the Acting BIA Regional Director, Eufrona O’ Neill on July 11, 2013<sup>2</sup>. The State, although not required, followed suit and recognized the same council members determined by the BIA as the legal and elected council of the Newtok Village government. The State notified Paul Charles, the NTC Council president, of this recognition in a letter dated August 22, 2013<sup>3</sup>

There is little question of the Newtok Village memberships’ choice of members selected for the Council. Director O’ Neill based her determination to recognize the Council, composed of: Paul Charles, George Carl, Katherine Charles, Louie Andy, Lisa Charles, Bernice John and Simeon Fairbanks Jr. on a variety of community events; an election,

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<sup>1</sup> <http://www.bia.gov/cs/groups/public/documents/text/idc-041248.pdf>

<sup>2</sup> [http://www.alan-michael-llc.com/BIA\\_Determination.pdf](http://www.alan-michael-llc.com/BIA_Determination.pdf) BIA Determination letter p 8.; issued July 11, 2013; “Accordingly, BIA accepts the assertion of the members of the New Council that they constitute the Traditional Council which has authority to act as the governing body of Newtok Village, and therefore BIA will comply with the directions given, if any, regarding ISDA contracting by the New Council acting as the Traditional Council, pursuant to Section 102(a)(1) of the ISDA”

<sup>3</sup> [http://www.alan-michael-llc.com/Newtok\\_Council\\_Recognition\\_8-21-13-1.pdf](http://www.alan-michael-llc.com/Newtok_Council_Recognition_8-21-13-1.pdf) “In reviewing the history of as outlined in this summary, the State feels that the actions occurring, especially this at the June community meeting, are compelling enough for the State to recognize the council members from the new council as the members for state purposes.”

several petitions and an affirmation of majority support by the Newtok Village community for the Council during a public meeting on June 14, 2013.

The previous council members had the right to appeal and in a letter dated August 29, 2013<sup>4</sup>, did appeal the BIA determination to the Interior Board of Indian Appeals (IBIA). By filing an appeal the BIA's Council recognition, for all practical purposes, was automatically stayed<sup>5</sup>. Since this is the case, the BIA cannot proceed with any 93-638 contract agreements with the NTC until a ruling by the IBIA is issued to resolve the old council's appeal. A result of the dispute, is the operating account at the Wells Fargo bank was been suspended by Wells Fargo and the NTC's financial resources have not been available to the NTC. The action by Wells Fargo effectively suspended the administrative functions of the NTC.

## **Current Administrative Capacity**

Due to the suspended operating account and the lack of financial resources, the normal administrative functions are non-existent. The Council went through the process of advertising and selecting a new Tribal Administrator, Mr. Tom John, however with no funds to support a salary Mr. John has not signed any employment documents, contracts or IRS forms to commence his administration duties.

To address basic administrative requirements; budget requests, resolutions, funding requests- capital projects and grant requests, establish a bank of account and correspondence deemed necessary by the Council, the NTC entered into a contract agreement for management services with Alan Michael LLC. The production of this audit response was completed with the administrative support from Alan Michael LLC.

## **Federal Government Shutdown**

The IBIA was scheduled to notify all the interested parties of the status of the election dispute appeal twenty (20) days after the appeal was accepted by the IBIA. To date no response has been received; no announcement or any other correspondence to the NTC or previous council has arrived to Newtok.

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<sup>4</sup> <http://www.alan-michael-llc.com/APPEAL1.pdf> RE: Newtok Traditional Council By-Laws

<sup>5</sup> [http://www.alan-michael-llc.com/BIA\\_Sept6.pdf](http://www.alan-michael-llc.com/BIA_Sept6.pdf) Newtok Traditional Council v. Alaska Regional Director, BIA p.12

## **Barred from NTC Administration Office and Files**

Without a final decision from the IBIA, the previous council refuses to relent or acquiesce to Newtok Village's authority to select a new Council and through their administrative manager, Stanley Tom has barred access to the NTC administrative offices and specifically, access to the accounting records and grant files applicable to the audit findings. Without original documentation it is not possible to concur with or challenge any of the Fiscal report or Project Audit findings or provide any meaningful discussion about the conclusions of the Fiscal Report or Project Audit.

## **Audit Response: All Recommendations**

The objectives of the financial compliance review consisted of: (1) an assessment of the organization's ability to conduct its financial activities in compliance with terms and conditions of the grant contract and (2) the reliability and integrity of the accounting and financial information presented by the NTC to grant administrators.

The NTC can only offer concurrence to any findings when the facts of a condition can be verified by evidence. This can suggest a strong correlation with the audit conclusions and the cause for the audit finding (s).

Your reports states: "The NTC management and internal accounting controls are so ineffective that financial statements and general ledgers are unreliable and inaccurate for grant administrators to use as (a) financial tool". This statement goes directly to the question of correct management and oversight for all the other recommendations in your report.

### **DISCUSSION**

To correctly manage any organization there must be a functioning accounting information system and managers employed who are capable to understand the requirements for reporting to their respective boards and councils charged with oversight and setting organization policy and to for interested parties to rely on the contents of the financial reports to guide the organization. In the case of a major project, a functioning accounting information system is essential to ensure milestones are achieved and progress is successful to complete a project within a reasonable budget. The baseline definition of an accounting information system is: *"The collection, storage and processing of financial and accounting data that is used by decision makers. An accounting information system is generally a computer-based method for tracking accounting activity in*

*conjunction with information technology resources. The resulting statistical reports can be used internally by management or externally by other interested parties including investors, creditors and tax authorities” (Source: <http://www.investopedia.com>).*

## **Financial Management Reports Nonexistent**

A long known complaint about the Newtok NTC is: there were no production of reliable or useful financial reports compiled showing the status of the funds and resources under the administration’s management. During the work associated with the election dispute it became clear the meeting minutes often reflected there were no financial reports provided to the council or to the public. Although a statement by a previous council person George Tom suggests the accounting records are open to the public for review at any time, this is counter to their current stance of non-access to the administration building and access to the grant files for review to produce this response. Emails and letters were forwarded to Mr. Stanley Tom and to their newly elected president Mr. Andy Patrick and both of these requests were ignored by Mr. Tom and Mr. Patrick.

Based on: (1) the actions of the previous council to deny access to the administration building and access to the accounting records and grant files associated with the Fiscal Report and Project Audit and (2) the minutes showing the lack of any available financial or budget reports -- produced by Stanley Tom in his attempts to show elections were completed during the last 8 years prior to Oct 2013 – there is strong evidence to support the memberships’ complaint of: No reliable financial reports were ever produced for review by the council or the public.

### **EVIDENCE**

Based on: (1) the minutes<sup>6</sup> forwarded to the BIA to support the previous council’s appeal, revealing there were no reliable, regularly published financial reports to review by the council or by the Newtok Village membership and (2) the current issues with access to the accounting and grants records the NTC must concur with your observation: “The NTC management and internal accounting controls are so ineffective that financial statements and general ledgers are unreliable and inaccurate for grant administrators to use as (a) financial tool”. In fact meeting minutes are devoid of any type of verifiable financial, budget or accounting reports deemed usable by the council

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<sup>6</sup> [http://www.alan-michael-llc.com/No\\_Financial\\_Reports.pdf](http://www.alan-michael-llc.com/No_Financial_Reports.pdf)



to properly oversee any program funded through the BIA, (either the annual funding agreement or 93-638 contracts agreements) the State, regional funders such as the Coast Village Region Fund or YKHC.

There are currently no trained accounting personnel employed with the NTC. The issues of completing simple grant reporting forms to the State suggest the NTC had no qualified accounting employees on staff during CY2011 and CY2012.

### CONCLUSION

Accounting and accounting information systems are an important function of any organization. The systems and the reports they produce are only as effective as the people charged with the management and operation of the organization. In the case of the NTC, the management and internal accounting controls are ineffective and any attempt to forward financial statements and general ledgers reports are unreliable and inaccurate and are of no practical use for the Council or the Newtok Village membership.

## **NTC Concurs with All Fiscal and Project Audit Findings**

### FISCAL REPORT

The process of resolving audit findings range from revising an accounting procedure or increasing staff awareness or adding a cross check, separation of duty or other recognized accounting procedure to correct a process resulting in an audit finding. Audit findings and management letters for a typical corporate organization are regarded as a mark against management and if there are too many findings or management letters, then boards and councils usually take note and begin looking closely at the managers for further training or in the extreme cases replacement and the hiring of new managers.

It has been the experience of this author, management letters and audit findings for some small tribal and city governments and even school districts, where qualified accountants and trained personnel are scare become a normal course of business. This seems to be the case for the Newtok NTC. A management letter or an audit finding for the pervious council is “nothing for them to consider” and based on their continued efforts to remain in control of the Newtok Village the reports produced by the State the: Fiscal Report and Project Audit, detailing serious fiscal and project management issues

for the Mertarvik Evacuation Center project are nothing to worry about and in fact Mr. Andy Patrick relayed to the Newtok community during a recent meeting of the previous council the audit reports were only an effort by the State to disparage the previous council.

### PROJECT MANAGEMENT AUDIT

The Newtok NTC has never been involved with, or attempted to develop any construction projects outside of assembling houses. Assembling a house is a far cry from planning and managing a \$150-200 million dollar community development project in remote Alaska.

### NTC CONCURS WITH THE STATE OF ALASKA ON ALL AUDIT FINDINGS

The basis for agreeing to an audit finding is usually done on a case by case basis for each finding; as stated processes have gone bad are examined, ignored procedures reviewed and steps are taken to resolve the events leading to a finding. This increases the reliability of the entire system and improves the performance of the organization.

The Fiscal Report and Project Audit detailed an entire host of issues related to the integrity of the accounting information system and project management capabilities of the administrator of the Council in charge of the overall accounting system and the contracted project manager or "CEO" of the Mertarvik Community Development Corporation, the entity formed to manage the construction of the MEC.

The NTC Council does not have access to the accounting records or the grant files to make a determination of each finding in the State reports. The basis of our agreement is from the evidence gathered outside of the accounting information system and project management of the MEC and the events surrounding the election dispute and they are: (1) the lack of monthly budget and financial reports to the Council or Newtok membership and (2) the failure of the previous council to allow access to public accounting records and grant files and (3) a public statement<sup>7</sup> from the CEO and Tribal Administrator, owners and administrators of the Newtok TC internet page stating: "The management of the grants were NOT done by either MCDG George Owletuck or NTC Administrator Stanley Tom...." This statement demonstrates the lack of understanding of the basic management responsibilities inherent for both managers to properly manage the Newtok Traditional Council and maintain strict oversight and direct management for a major construction project in remote Alaska.

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<sup>7</sup> [http://www.alan-michael-llc.com/Project\\_Management\\_Statements.pdf](http://www.alan-michael-llc.com/Project_Management_Statements.pdf)

# Newtok Traditional Council

## Root Cause Analysis and Corrective Action Plan

There are a variety of causes for failure and in the case for the MEC project it can be traced to the management capacity of the NTC. The evidence suggests, strongly, over the last decade the NTC was configured as an organization more akin to a dictatorship than a tribal council with the administrator dictating the terms to the Council and not having any Council or Newtok Village oversight. The BIA contracting process added to the difficulty of the membership to intervene and gain control and oversight of the Newtok Village government and the process is still ongoing with no apparent end in sight for the Village residents.

### Capacity & Compliance

During the next several weeks the NTC will embark on the process of reestablishing their administrative and management capabilities in an adequate location. The idea of determining a “Root Cause” for the issues presented by the Fiscal Report and Project Audit should be addressed in the entirety as the NTC moves to develop a functioning accounting information system. In light of the erosion and the recent acceleration of the river taking out the Newtok site, the idea of forming an adequate project management team to oversee and develop a multimillion dollar community development in remote Alaska is



***Inadequate NTC Office Space***

probably, at this point a far-fetched proposition. In every recovery project there has to be step one. In this case step one is to secure an adequate location to conduct Council business.

***More Inadequate Office Space***



Currently at the old NTC offices there is no adequate office space to assure compliance or offer any opportunities to conduct business in an environment where compliance, separation of duties and proper management can occur to assure the mission statement of the Newtok Village is

being properly met with the scarce resources available to the Council. Training and practice areas are needed, and if the Council is to actively participate in the

development of their new community site an area to review plans, conduct meetings and provide space for visiting professionals is needed to be secured in the community.

The NTC has secured a location and with gracious cooperation of the Alaska National Guard, has secured the use of the Armory in Newtok. This space will allow the NTC to revive, quickly the stalled administrative and management functions for the Council.



**New Office/Administrative Offices Area for the Newtok NTC**

### **NTC CORRECTIVE ACTION PLAN**

...to be continued during the Fall/Winter 2013.



**Newtok Traditional Council Elected on October 12, 2012 by a majority of the Newtok Village membership**