

# **DRAFT Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations**

## **I. Preamble**

In compliance with Congressional direction, this Policy creates a framework for consulting with Alaska Native Claims Settlement Act (ANCSA) Corporations. Pursuant to the Alaska Native Claims Settlement Act (ANCSA) of 1971, ANCSA Corporations were established to provide for the economic and social needs, including the health, education and welfare of their Native shareholders. Congress also required that “[t]he Director of the Office of Management and Budget [and all Federal agencies] shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”<sup>1</sup>

The Department of the Interior (Department) distinguishes the Federal relationship to ANCSA Corporations from the government-to-government relationship between the Federal government and each federally recognized Indian Tribe, and this Policy will not diminish in any way that relationship and the consultation obligations towards federally recognized Indian Tribes. Recognizing the distinction, the Department is committed to fulfilling its ANCSA Corporation consultation obligations by adhering to the framework described in this Policy. When taking departmental action that has a substantial direct affect on ANSCA Corporations, the Department will initiate consultation with ANSCA Corporations.

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<sup>1</sup> Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. H. § 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, Div. H., Title V. §518, 118 Stat. 2809, 3267 (2004).

## **II. Guiding Principles**

This Policy broadly defines provisions for improving the Department's consultation processes with ANCSA Corporations to the extent that a conflict does not exist with applicable law or regulations. The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of each Alaska Native person and the statutory relationship between ANCSA Corporations and the Federal Government. When concerns expressed by Indian Tribes and ANCSA Corporations substantively differ, Departmental officials shall be mindful of Indian Tribes' right to self-governance and Tribal sovereignty.

Consultation between the Department and ANCSA Corporations will involve appropriate Departmental officials and appropriate ANCSA Corporation officials. The appropriate Departmental officials are knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of an agency action. The appropriate Departmental officials will identify consulting parties early in the planning process and provide a meaningful opportunity for ANCSA Corporations to participate in the consultation policy as described in Section VII of this Policy. Department officials will make the effort to fully participate in the consultation process, ensure continuity, and demonstrate commitment to the process.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. The process creates an opportunity for equal input from all affected ANCSA Corporations. Federal consultation that is meaningful, effective, and conducted in good faith makes the Department's operation and governance practices more efficient. To that end, Bureaus and Offices will seek and promote cooperation and participation between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a

Departmental Action with ANCSA Corporation Implications. Efficiencies that derive from including ANCSA Corporations in the Department's decision-making processes through consultation will help to ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of ANCSA Corporation input.

### **III. Definitions**

Definitions of terms provided in the Department of the Interior Policy on Consultation with Indian Tribes apply to this Policy. Additional terms are defined in this section.

*Departmental Action with ANCSA Corporation Implications* – Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an ANCSA Corporation, including but not limited to:

1. ANCSA Corporation land, water areas and resources;
2. The ability of an ANCSA Corporation to participate in Departmental programs for which it qualifies.

This term, however, does not include matters that are in litigation or in settlement negotiations, or matters for which a court order limits the Department's discretion to engage in consultation.

*ANCSA Corporation* – Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act.<sup>2</sup>

*ANCSA Corporation Official or Designee* – An official designated in writing by an ANCSA Corporation.

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<sup>2</sup> 43 U.S.C. § 1601 et seq.

#### **IV. Accountability and Reporting**

The provisions in Section IV, entitled Accountability and Reporting, of the Department of the Interior Policy on Consultation with Indian Tribes, shall apply to this Policy, with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

#### **V. Training**

The provisions in Section V, entitled Training, of the Department of the Interior Policy on Consultation with Indian Tribes shall apply to this Policy , with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

#### **VI. Innovative and Effective Consultation Practices**

The provisions in Section VI, entitled Innovative and Effective Consultation Practices, of the Department of the Interior Policy on Consultation with Indian Tribes shall apply to this Policy, with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

#### **VII. Consultation Guidelines**

The provisions in Section VII, entitled Consultation Guidelines, of the Department of the Interior Policy on Consultation with Indian Tribes , shall apply to this Policy, with adjustments as necessary to account for the unique status, structure, and interests of ANCSA Corporations as appropriate and allowable.

## **VIII. Supplemental Policies.**

Bureaus and Offices, in collaboration with the Tribal Governance Officer (TGO), shall review existing policies that may be impacted by this Policy. All existing policies shall conform to this Policy and, where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Departmental entities that are not Bureaus and Offices may develop policies consistent with this Policy and in coordination with the TGO.

## **IX. Disclaimer.**

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department also does not waive by virtue of this Policy any applicable privilege that it may hold.