



An Alaska Native Village Corporation
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TATITLEK CONTRACTORS INC • TATITLEK MANAGEMENT INC • TATITLEK RESPONSE SERVICES INC • TATITLEK SUPPORT SERVICES INC
TATITLEK TECHNOLOGIES INC • TATITLEK CONSTRUCTION SERVICES INC • TATITLEK TRAINING SERVICES INC • GEONORTH

April 27, 2012

Secretary Kenneth Salazar
United States Department of the Interior
attn: Alaska Consultation Policy, Office of the Secretary,
1849 C Street NW.
Washington, DC 20240

RE: Comments on the Draft ANCSA Consultation Policy

Dear Secretary Salazar:

I am writing to you on behalf of The Tatitlek Corporation, an Alaska Native Village Corporation formed pursuant to the Alaska Native Claims Settlement Act. Our corporation works to provide for the economic and social needs, including health, education, and welfare, of more than 300 Alaska Native shareholders and their families. The Tatitlek Corporation is the steward for the lands and resources within the traditional homeland of the Tatitlek Alutiiq in Alaska's Prince William Sound. These lands surround the Native Village of Tatitlek, which is governed by an IRA tribal council. Since our formation in 1973, The Tatitlek Corporation and the Native Village of Tatitlek IRA council have worked together to address the needs of our Alaska Natives – both for tribal members and for our shareholders and their families. We have also sought collaboration with our regional corporation and ANCSA village corporations and Indian Tribes within the Prince William Sound region.

We thank the Department for attempting to create a policy that seeks meaningful consultation with Alaska Native corporations. To the extent that the draft ANCSA consultation policy mirrors the Indian Tribal consultation process, the Department has begun to address its obligation to consult with Alaska Native Corporations on the same basis as Indian tribes. We are concerned that the Department's emphasis on how Alaska Native Corporations lack Indian Tribal status suggests that the Department assigns a lower priority to its obligations to consult with Alaska Native corporations. The policy's vague allowances to tailor the Department's Tribal consultation policy to the needs of Alaska Native Corporations "as appropriate and allowable" mean the policy may not be consistently applied.

To be effective, the Department's consultation policy must clearly reflect the Department's obligation to recognize and respect the concerns of Alaska Native Corporations, it must assure that consultation will be meaningful, and it must be consistently applied. We have attached proposed revisions which we believe would clarify and strengthen the Department's consultation policy for Alaska Native Corporations. Our draft revisions are discussed below in detail.

The Department's emphasis on respecting the government to government relationship with Indian tribes in the Preamble suggests that Department officials are free to disregard the Department's obligations to consult with Alaska Native Corporations because they are less than tribal entities. Even if Alaska Native Corporations are not included as Indian tribes under Federal statutes and regulations, the Department has an obligation to consult with Alaska Native Corporations. Statutes passed for the benefit of dependent Indian tribes and communities need to be liberally construed in favor of the Indians and Alaska Natives who are intended to benefit from those statutes. Through these statutes, the Federal

government maintains a “unique and continuing relationship with, and responsibility to, individual Indian tribes and to *the Indian people as a whole*. . .” Indian Self-Determination and Educational Assistance Act 25 U.S.C. § 450A(a) (Emphasis added). This relationship includes an obligation to assure maximum participation in the direction of Federal services to Indian communities so that the services are responsive to the needs and desires of those communities. Id. at 450a(b) We recommend that the Department plainly state that it has an obligation to consult with ANCSA corporations even when the corporations are not considered Indian Tribes.

The Department’s emphasis on considering the needs of Indian Tribes in the Guiding Principles, suggests Department officials may disregard the concerns raised by Alaska Native Corporations when they “substantively differ” from the concerns expressed by Indian Tribes. Alaska Native Corporations and Indian Tribes were structured to operate in completely different manners even as they work toward the same or similar purposes. We realize conflicts between Alaska Native Corporations and Indian Tribal have received a lot of publicity over the years. Such coverage neglects to highlight or even mention that many Alaska Native Corporations and tribes have been working together successfully. We encourage the Department to revise the Guiding Principles to assure that consultations consider the unique concerns held by Alaska Native Corporations and Indian Tribes. And if an Alaska Native Corporation and an Indian Tribe from the same region or same village are successfully working together we hope the Department’s consultation process will support that collaboration.

Finally, we have concerns with the Department’s decision to allow its agencies to change the Tribal consultation policy provisions without defining how Department officials should account for the “unique status, structure, and interests of ANCSA Corporations.” This vague language suggests that the Department may not fully understand the role Alaska Native Corporations play in meeting the needs of Alaska Natives. A lack of understanding means the rules for conducting consultations with Alaska Native Corporations may be changed at the whims of each bureau and division within the Department. To assure consistency, the Department needs to specify how the Tribal consultation policy can or should be adjusted to reflect the status, structure, and interests of Alaska Native corporations.

Although our comments highlight areas for improvement, we commend the Department of the Interior for its intent to produce a meaningful consultation policy. We believe our suggested revisions will help the Department achieve this goal.

Sincerely
THE TATITLEK CORPORATION



Lloyd Allen
Chairman of the Board

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.”¹

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. The Department also recognizes that consultation with Indian tribes shall not be relied upon as a substitute for consultation with ANCSA Corporations, and consultation with ANCSA Corporations shall not be relied upon as a substitute for consultation with Indian Tribes. When

¹ 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).

taking departmental action that has a substantial direct affect on ANCSA Corporations, the Department will initiate consultation with ANCSA Corporations.

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. Because Indian Tribes and ANCSA Corporations serve different roles on behalf of Alaska Native people, The Department recognizes and respects the substantively different concerns each may bring during consultations with the Department. The Department shall initiate and conduct consultation with ANCSA Corporations at the same time as any consultations the Department initiates and conducts with Indian Tribes located in the same geographic area as the ANCSA Corporations. To the extent that concerns expressed by Indian Tribes and ANCSA Corporations located within the same geographic area reflect cooperation and collaboration between those Indian Tribes and ANCSA Corporations, the Department may consider supporting those joint efforts. ~~When~~ To the extent that concerns expressed by Indian Tribes and ANCSA Corporations ~~substantively differ~~ located within the same geographic area reflect conflicting or competing interests among those Indian Tribes and ANCSA Corporations, 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.

3. Any area governed by Federal statutes or regulations which define Indian Tribes as including ANCSA Corporations.

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.²

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

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

²² 43 U.S.C. § 1601 et seq.

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.