

## Department of the Interior Departmental Manual

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**Effective Date:** 11/30/2022

**Series:** Intergovernmental Relations

**Part 512:** American Indian and Alaska Native Programs

**Chapter 6:** Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations

**Originating Office:** Office of the Secretary

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### 512 DM 6

6.1 **Purpose.** This chapter provides the requirements for the Department of the Interior (Department) consultation between appropriate Alaska Native Claims Settlement Act Corporation (ANCSA Corporation) officials and Department officials. It expands and clarifies the Department's policy on consultation with ANCSA Corporations and acknowledges the provisions for conducting consultation in compliance with applicable statutes and administrative actions. Please see 512 DM 4 for Department of the Interior Consultation Policy with Federally Recognized Tribe including Alaska Native Villages.

6.2 **Scope.** The policy and requirements in this chapter apply to all Department Bureaus and Offices. The chapter complements, but does not supersede, any existing Federal laws, rules, statutes, or regulations that guide consultation processes with ANCSA Corporations. The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCSA Corporations and the Federal Government. To the extent that concerns expressed by Indian Tribes and ANCSA Corporations substantively differ, Departmental officials shall give due consideration to the rights of sovereignty and self-government of Federally recognized Indian Tribes, and to the unique legal status and rights of ANCSA Corporations. Department officials shall also be mindful that ANCSA Corporations hold title to lands conveyed pursuant to ANCSA and related legislation.

### 6.3 **Definitions.**

A. **ANCSA Corporation.** Any Alaska Native Village Corporation, Group Corporation, Urban Corporation, former reserve corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act.<sup>1</sup>

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<sup>1</sup> 43 U.S.C. 1601 et seq.

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Replaces [11/09/15 #4031](#)

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

C. 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<sup>2</sup>, including but not limited to:

(1) Any activity that may substantially affect land, water areas, or resources owned or selected by ANCSA Corporation, or resources;

(2) Any activity that may impact the ability of an ANCSA Corporation to participate in Departmental programs for which it qualifies;

(3) Any activity that may impact the ability of ANCSA shareholders to access and use ANCSA lands, water areas, or resources;

(4) Any activity that may impact the ability of Alaska Native people to maintain their traditional way of life and subsistence practices on ANCSA Corporation lands, waters, or adjacent federal lands; or

(5) Any activity that may have a direct effect on the ability of ANCSA Corporations to fulfil the purposes for which they were established under ANCSA.

D. Formal Consultation. A formal consultation is defined as having both Departmental and ANCSA Corporation officials with decision-making authorities or representatives designated by the ANCSA Corporation present at the consultation session/meeting regarding the proposed plan or Departmental Action with ANCSA Corporation implications. Formal consultation does not include representatives of other entities, organizations, or stakeholders, unless agreed to by the Department and the ANCSA Corporation(s).

6.4 **Policy.** It is the policy of the Department to recognize and fulfill its legal obligations to consult with ANCSA Corporations on the same basis as Indian Tribes under Executive Order

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<sup>2</sup> Advice from the Office of the Solicitor is not a regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula change, or operational activity with any direct effect on a party outside the Department, but rather an internal legal opinion. *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgt.*, CV 17-8587-GW(ASX), 2019 WL 2635587, at \*12 (C.D. Cal. June 20, 2019). Such advice is also protected from disclosure under the attorney-client privilege. *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313 (2011). Any such advice, therefore, is not within the scope of this Chapter. Furthermore, 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 are also outside the scope of this Chapter.

13175.<sup>3</sup> All Bureaus and Offices shall make good-faith efforts to invite ANCSA Corporations to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with ANCSA Corporation implications (see 512 DM 7 for consultation process). It is the policy of the Department to seek consensus throughout the consultation process.

## 6.5 Responsibilities.

A. Tribal Governance Officer (TGO). The TGO is appointed by the Secretary and is responsible for carrying out the responsibilities in this chapter including the following:

- (1) Serving as the Secretary's representative when requested to do so in matters pertaining to consultation.
- (2) Leading and managing the Department's consultation efforts to ensure effective government-to-government relationships with Tribes.
- (3) Overseeing the Department's compliance with the policy in this chapter, EO 13175, and other consultation requirements pertaining to government-to-government consultation.
- (4) Implementing a Departmental reporting system to ensure that consultation efforts are documented and properly reported.

B. Assistant Secretaries. Assistant Secretaries are responsible for ensuring that all Bureaus and Offices within their reporting chain comply with the requirements of this chapter.

C. Heads of Bureaus and Offices. Heads of Bureaus and Offices are responsible for:

- (1) Ensuring that procedures are established to carry out the consultation activities of their organizations and ensuring compliance with those procedures.
- (2) Ensuring compliance with the requirements in this chapter.

D. Tribal Liaison Officers (TLOs). The TLOs are responsible for:

- (1) Serving as the Bureau/Office principal point of contact for consultation matters.

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<sup>3</sup>Consolidated Appropriations Act 2004, Pub. L. 108-199, Div. H, §161, 118 stat. 3, 452 (2004), as amended by Consolidated Appropriations Act 2005, Pub. L. 108-447, Div. H, Title V, §518, 118 stat. 2809, 3267 (2004).

- (2) Promoting and facilitating consultation and collaboration between ANCSA Corporations and their Bureau/Office.
- (3) Reporting to the TGO annually in the Tribal Consultation Annual Report (See 512 DM 6.7) of regional consultations with ANCSA Corporations and any updates to Bureau/Office consultation procedures or processes.

E. Departmental Staff. Any Departmental staff who will represent the Department or a Bureau or Office in consultation (other than note-takers) must complete training to promote positive relations with ANCSA Corporations, including training on implementation of this policy and a review of:

- (1) The general history of the relationship between the Federal Government and ANCSA Corporations and the Alaska National Interest Land Conservation Act (ANILCA);
- (2) The culture and history of Alaska Natives; and
- (3) Existing ANCSA Corporation governance, decision-making process, and consultation policies.

F. Department of the Interior University (DOIU). The DOIU in collaboration with Bureaus/Offices, tribal colleges and universities, ANCSA Corporation representatives, and entities with ANCSA Corporation expertise is responsible for developing and delivering training to facilitate implementation of this policy.

G. Office of Collaborative Action and Dispute Resolution (CADR). Upon request, the CADR may assist in planning and facilitating an effective consultation process, negotiated rulemaking, or other collaborative approaches to decision making.

**6.6 Departmental Database.** A single Departmental database will be maintained to manage the contact list for leadership of all ANCSA Corporations. The database should be an electronic and interactive system that allows real-time updating of contacts and allows all Bureau and Office access. This database shall be maintained by the Bureau of Indian Affairs, Office of Indian Services.

**6.7 ANCSA Corporation Consultation Annual Report.** On an annual basis, Bureaus and Offices shall develop a report of the results of their efforts to promote consultation with ANCSA Corporations. The report is due to the TGO by December 31 of each year and can be included with the Bureau or Office Tribal consultation report (See 512 DM 4). Reporting is intended to be a comprehensive list of all formal consultation efforts undertaken that year and may include, but is not limited to, the scope, cost, and activities of the consultation efforts. The Bureau/Office may also include consultation efforts conducted one-on-one with ANCSA Corporations to highlight

successes, challenges, or best practices. The report should also include proposed plans and recommendations.