THE SECRETARY OF THE INTERIOR
WASHINGTON

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 of 1971 (ANCSA) Corporations. The ANCSA Corporations were established ANCSA to provide for the economic and social needs, including the health, education, and welfare, of their 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] This Policy is to be read in conjunction with the existing Department of the Interior Policy on Consultation with Indian Tribes (Tribal Consultation Policy). The select provisions of the Tribal Consultation Policy are modified below for the purpose of consultation with ANCSA Corporations. The Department of the Interior (Department) distinguishes the Federal relationship to ANCSA Corporations from the government-to-government relationship between the Federal Government and federally recognized Indian Tribes in Alaska and elsewhere, 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 as it supplements the Tribal Consultation Policy. When taking Departmental Action that has a

[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).

substantial direct effect 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 and shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Indian Tribes. 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 right of sovereignty and self-governance of federally recognized Indian Tribes.

Consultation between the Department and ANCSA Corporations will involve appropriate Departmental officials and appropriate ANCSA Corporation officials on Departmental Actions with ANCSA Corporation implications. The appropriate Departmental officials are those individuals who 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. 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 endeavor 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. This Policy creates an opportunity for input from all affected

ANCSA Corporations. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices. To that end, Bureaus and Offices will seek and promote cooperation, participation, and efficiencies 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

In addition to the definitions of terms provided in the Department of the Interior Policy on Consultation with Indian Tribes, the following terms are defined for purposes of this Policy.

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:

1. Any activity that may substantially affect ANCSA Corporation land, water areas, or resources;
2. Any activity that may impact 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 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 or ANCSA member 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 appropriate given the unique status, structure, and interests of ANCSA Corporations.

V. Training

The provisions in Section V, entitled Training, of the Tribal Consultation Policy shall apply to this Policy, with adjustments as appropriate given the unique status, structure, and interests of ANCSA Corporations.

VI. Innovative and Effective Consultation Practices

The provisions in Section VI, entitled Innovative and Effective Consultation Practices, of the Tribal Consultation Policy shall apply to this Policy, with adjustments as appropriate given the unique status, structure, and interests of ANCSA Corporations.

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[2] 43 U.S.C. § 1601 et seq.

VII. Consultation Guidelines

The provisions in Section VII, entitled Consultation Guidelines, of the Tribal Consultation Policy shall apply to this Policy, with adjustments as appropriate given the unique status, structure, and interests of ANCSA Corporations.

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 does not waive any applicable privilege that it may hold by virtue of this Policy.

Ken Salazar

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Date: AUG 10 2012