

## Department of the Interior Departmental Manual

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**Series:** Intergovernmental Relations

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

**Chapter 7:** Procedures for Consultation with Alaska Native Claims Settlement Act Corporations

**Originating Office:** Office of the Secretary

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### 512 DM 7

7.1 **Purpose.** This chapter provides the procedures and process for the Department of the Interior (Department) consultation between appropriate Alaska Native Claims Settlement Act Corporations (ANCSA Corporations) officials and Departmental officials. Please see 512 DM 5 for the Department of the Interior Consultation Policy with Federally Recognized Tribes including Alaska Native Villages.

7.2 **Scope.** All Departmental Bureaus and Offices shall follow the processes in this chapter for consultation with ANCSA Corporations.

7.3 **Authority.** 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).

#### 7.4 **Consultation.**

A. Requirement for Consultation. Bureaus and Offices must invite ANCSA Corporations as early as possible in the planning process to consult whenever a proposed Departmental plan or action with Departmental Action with ANCSA Corporation implications (as defined in 512 DM6.3(C)) is being considered. Bureaus and Offices should operate under the assumption that all actions with land or resource use or resource impacts may have ANCSA Corporation implications and should extend consultation invitations accordingly. When ANCSA Corporations indicate that there is substantial and direct effect of the Departmental Action with ANCSA Corporation Implications, the Department must engage in consultation.

#### B. Appropriate Representatives at Consultation.

(1) The Department official with authority to decide on the proposed Departmental Action with ANCSA Corporation Implications must participate in the consultation. Bureau or Office staff with subject matter expertise for the topic or program may be involved in the consultation.

(2) The ANCSA Corporation CEO, acting in their official capacity may participate or choose to designate alternate or additional ANCSA Corporation representatives to participate in the consultation.

C. Coordination. Bureaus/Offices will work with each other and with other Federal agencies, where appropriate, to coordinate consultation.

D. Facilitation Support. In planning consultation, Bureaus and Offices should consider best practices for engagement, including, but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution. Such support is available through the Office of Collaborative Action and Dispute Resolution (CADR). If the consulting parties encounter an impasse, the parties may utilize the impartial facilitation, mediation, and consensus-building services provided by CADR. Additionally, CADR can be called upon to facilitate dialog and discussion between the Department, ANCSA Corporations, and Indian Tribes in instances where there may disagreement.

E. Conduct in Consultation. Bureaus and Offices must be open and candid with the ANCSA Corporation(s) during consultations and incorporate ANCSA Corporation views in their decision-making processes. The consultations, whether initiated by the ANCSA Corporation or the Department, must be respectful, meaningful, and timely. Bureaus and Offices should be mindful of the unique relationships with ANCSA Corporations and their Alaska Native shareholders, as well as the unique interests, roles, and responsibility of ANCSA Corporations. The goal in consultation is to have ANCSA Corporation leaders and Federal representatives engage in respectful dialog based on mutual understanding of the issues to reach a common agreement.

F. Confidential or Sensitive Information. Information received will be deemed confidential, unless otherwise provided by applicable law, regulation, or policy, if disclosure would negatively impact upon cultural or other sensitive ANCSA resources or compromise the United States legal position in anticipation of, or during, administrative proceedings or litigation on behalf of the ANCSA Corporation.

G. Consensus-Seeking. The basis of consultation is rooted in meaningful dialogue where the viewpoints of ANCSA Corporations and the Department, including its Bureaus and Offices, are shared, discussed, and analyzed. Departmental officials should work to achieve consensus with ANCSA Corporations.

(1) Dispute Resolution. Where consensus cannot be achieved in a consultation with a Bureau or Office, the head of the Bureau or Office will review the consultation information and consensus-seeking documentation and make a determination on how to proceed after giving due consideration to the interests and concerns of the ANCSA Corporation.

H. Consultation Session Methods. Consultation session methods may include, but are not limited to, in-person meetings, videoconferences, teleconferences, and correspondence to discuss a specific issue, and must identify the session as consultation in advance of the scheduled meeting. Consultation session methods may be expanded upon through subsequent correspondence after consultation is initiated through written notification. The Department will strive to include both in-person and virtual consultation session methods to provide ANCSA Corporations with access to participate in at least one consultation session for a specific issue, regardless of their travel capabilities. The Departmental Offices and Bureaus should ask ANCSA Corporations about their preference for consultation session methods and strive to accommodate those preferences, and where possible should grant requests for one-on-one consultations. On a case-by-case basis, consultation may be held through a series of written correspondence with the ANCSA Corporation leadership, but only when other consultation session methods are not feasible. Providing notification (the distribution of information from one or more Departmental offices) to one or more ANCSA Corporations of a Departmental action as a stand-alone effort is not consultation.

7.4 **Consultation Procedures.** It is the responsibility of the Departmental Offices and Bureaus to proactively engage ANCSA Corporations at the appropriate time throughout the consultation process. Bureaus and Offices will carry out the consultation stages described below for a Departmental Action with ANCSA Corporation Implications.

A. Initial Planning Stage.

(1) The appropriate Departmental officials within a Bureau or Office will provide notice to ANCSA Corporations inviting them to consult as early as possible when considering a Departmental Action with ANCSA Corporation Implications and provide ANCSA Corporations a meaningful opportunity to participate in the consultation process. The process should be carried out in a manner that respects the role of ANCSA Corporations as representatives of Alaska Native shareholders. (The appropriate Departmental officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the Bureau or Office, and who exercise delegated authority in the disposition and implementation of the Bureau or Office action.)

(2) Notification should include sufficient detail of the topic to be discussed to allow ANCSA Corporation leaders to determine if they want to accept the invitation and, if so, provide an opportunity to fully engage in consultation. Departmental Offices and Bureaus should work with ANCSA Corporations to determine the preferred method for notification on consultation. Notification methods can include, but are not limited to, consultation invitation letters and Federal Register notices. Adequate notice entails providing:

- (a) A description of the topic(s) to be discussed;
- (b) The scope of the proposed Departmental action under consideration, including relevant background information and documentation;
- (c) The purpose of the Departmental action under consideration;

- (d) The timeline of the process, and possible outcomes under consideration;
- (e) Notice of the right to identify confidential or sensitive information and detail regarding Federal laws relevant to the protection of specific categories of information;
- (f) Notice of the right to request technical assistance and a general description of how the Department provides technical assistance; and
- (g) Departmental Offices and Bureaus that are expected to participate in the consultation and development and implementation of the Departmental action under consideration.

(3) The notice should also give ANCSA Corporation leaders the opportunity to provide feedback prior to the consultation, including time to request technical assistance and/or clarification on how the consultation process conforms to the requirements in this chapter and preferred consultation method.

(4) If the notice is announcing a scheduled consultation session, the Bureau or Office will ensure that notice to the ANCSA Corporation(s) is given at least 30 calendar days prior to the first scheduled consultation session. If exceptional circumstances prevent notification within 30 days, an explanation for the abbreviated notification will be provided in the invitation letter.

(5) If the notice is announcing the opportunity to consult, without a scheduled consultation session, the notice should give the ANCSA Corporation leaders at least 30 calendar days (preferably 45 days) to request consultation before Departmental action planning proceeds.

(a) ANCSA Corporations may request that the Department provide an extension of more than 30 calendar days' notice to consider whether to request consultation and, at its discretion, the Department may grant such requests, and such extension shall not be unreasonably withheld. If a Bureau or Office invites an ANCSA Corporation to consult but does not receive a response, the Bureau or Office should make good-faith, reasonable and periodic efforts to repeat the invitation and, when feasible, should allow an ANCSA Corporation to join an ongoing consultation. These efforts of engagement shall be appropriately documented.

(6) An ANCSA Corporation may request that the Department initiate consultation when the ANCSA Corporation believes that a Bureau or Office is considering a Departmental action with ANCSA Corporation implications. The appropriate Bureau or Office Tribal Liaison Officer or appropriate representative will treat an official request for consultation in an expedited fashion and respond to the ANCSA Corporation in writing that the Department has received the request, using the most expedient methods to communicate (e.g., by email in addition to U.S. Mail) and should also follow up by phone to ensure the written response was received.

(a) Whenever an ANCSA Corporation requests consultation the Department will work with the ANCSA Corporation to schedule the consultation as soon as practicable and at a mutually agreeable time, usually 30 calendar days in advance.

(b) Whenever an ANCSA Corporation requests expedited consultation, the Department will work with the ANCSA Corporations to schedule the consultation as soon as practicable and at a mutually agreeable time.

B. Proposal Development Stage. The Bureau or Office will develop a process for the Proposal Development Stage that maximizes the opportunity for timely input by ANCSA Corporations, and that is consistent with both ANCSA Corporation and Bureau or Office schedules and allows for ANCSA Corporation input in determining if there is substantial and direct effect to the Corporation. Examples of appropriate processes for the proposal development stage include, but are not limited to, a series of open ANCSA Corporation meetings, or single meetings. Bureaus and Offices may perform these activities during the Initial Planning Stage, above, as appropriate.

(1) Bureaus/Offices will solicit the views of any affected ANCSA Corporation regarding the process timeline to consult on a Departmental Action with ANCSA Corporation Implications. Bureaus and Offices should work with ANCSA Corporations to structure a process, to the extent practicable, that considers specific ANCSA Corporation structures, traditional needs, and schedules of the ANCSA Corporation. Bureaus and Offices may proceed with the expectation that interested ANCSA Corporations will respond within a reasonable time period, and only after documenting attempts to follow up on consultation letters thorough multiple forms (e.g., letters, emails).

(2) When the matter under consultation involves confidential or culturally sensitive information, the Bureau/Office will work with the ANCSA Corporation to develop a consultation process that addresses the sensitivity of the information to the extent permitted by Federal law.

(3) If litigation, legal requirements, or natural disaster emergencies impact a Bureau or Office schedule for conducting consultation, the Bureau or Office shall explain the constraints to the ANCSA Corporation. If a determination is made that the Administrative Procedure Act or other Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the ANCSA Corporation should be informed at the earliest opportunity in this stage of the process.

C. Record of Consultation. On completion of the consultation period, the head of the Departmental Bureau or Office or their designee must prepare and transmit to the ANCSA Corporation (or for national and regional consultations or if otherwise appropriate, publish on the website) documentation in a record of consultation that describes:

(1) A summary of ANCSA Corporation input received, including a summary of notices and communications to and from the ANCSA Corporation, and consultation methods;

(2) An explanation of how that ANCSA Corporation input was addressed;

(3) The reasoning for any instance in which ANCSA Corporation suggestions, views, and requests were not incorporated into the Departmental action or consensus could not be attained;

(4) Inviting the ANCSA Corporation to provide feedback or submit input on the need for training or technical assistance concerning the final Federal action.

D. Bureaus and Offices Post-Consultation Review Process. The post-consultation review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege.

E. Consultation Summary Report. Upon completion of the consultation, Bureaus and Offices must prepare a summary of the consultation activities. Information from the summaries should be used to develop the Annual Report described in 512 DM 6.7.