

Department of the Interior
Departmental Manual

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Series: Intergovernmental Relations

Part 512: American Indian and Alaska Native Programs

Chapter ~~75~~: Procedures for Consultation with Alaska Native Claims Settlement Act Corporations ~~Indian Tribes~~

Originating Office: Office of the Secretary

512 DM 5

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

5.2 **Scope.** All DOI bureaus/offices shall follow the processes in this chapter for consultation with ANCSA Corporations.

5.3 **Authority.** ~~Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments).~~ Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. I I. § 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).

5.4 **Consultation.**

A. Requirement for Consultation. Bureaus and offices must invite ANCSA Corporations early in the planning process to consult whenever a proposed DOI plan or action with Departmental Action with ANCSA Corporation Implications arises.

B. Appropriate Representatives at Consultation.

(1) The DOI official with authority to decide on the proposed DOI Action with ANCSA Corporation Implications must participate 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.

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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). ~~In the event that~~ If the consulting parties encounter an impasse, the parties may utilize the impartial facilitation, mediation, and consensus-building services provided by CADR.

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 DOI, must be respectful ~~of Tribal sovereignty~~.

A.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 a trust resource or~~ compromise the United States trustee's legal position in anticipation of/or during administrative proceedings or litigation on behalf of the ANCSA Corporations. ~~Tribal government(s)~~.

G. Consensus-Seeking The basis of consultation is rooted in meaningful dialogue where the viewpoints of ANCSA Corporations and DOI, including its bureaus and offices, are shared, discussed, and analyzed.

(1) Seeking Consensus. ~~DOI officials should work to achieve consensus with~~ ANCSA Corporations.

(2) Dispute Resolution. ~~Where consensus cannot be achieved, the head of the bureau or office will review the consultation information and consensus-seeking documentation and make a determination on how to proceed.~~

H. Consultation Session Methods. ~~A~~ eConsultation session methods may includes, but ~~are~~ is not limited to, in-person meetings, video-conferences, teleconferences, and correspondence to discuss a specific issue, and must identify the session as consultation in advance of the scheduled meeting. ~~In the case of in-person meetings, video-conferences, and teleconferences, the e~~Consultation session methods may be expanded upon through subsequent correspondence after consultation is initiated through written notification. ~~DOI 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.~~ On a case-by-case basis, consultation may be held through a series of written correspondence with the ANCSA Corporation leadership, but ~~this process of utilizing written correspondence should only be used~~ when other consultation session methods ~~of dialogue~~

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are not feasible. Providing notification (the distribution of information from one or more DOI offices) to one or more ANCSA Corporations of a Departmental action as a stand-alone effort is not consultation.

5.5 **Consultation Procedures.** Bureaus/offices will carry out the consultation stages described below for a Departmental action with ANCSA Corporation tribal implications.

A. Initial Planning Stage.

(1) The appropriate DOI officials within a bureau/office will provide notice to, and begin invite ANCSA Corporations to consultation as early as possible when considering a Departmental-DOI action with ANCSA Corporation implications and provide ANCSA Corporations a meaningful opportunity to participate in the consultation process. Providing notification (the distribution of information from one or more DOI offices) to one or more Tribes of a Departmental action as a stand-alone effort is not consultation. (The appropriate DOI officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for a bureau/office, and who exercise delegated authority in the disposition and implementation of a bureau/office action.)

(2) Notification of a consultation 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 the consultation. Adequate notice entails providing:

- (i) a description of the topic(s) to be discussed;
- (ii) The expected scope of the proposed DOI action under consideration;
- (iii) The expected purpose of the DOI action under consideration;
- (iv) The expected a timeline of the process, and possible outcomes under consideration; and
- (v) DOI offices and bureaus that are expected to participate in the consultation and development and implementation of the DOI 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, tThe bureau/office will ensure that public 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 of the consultation, 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 DOI action planning proceeds.

(i) ANCSA Corporations may request that DOI provide an extension of more than 30 calendar days' notice prior to consider whether to request consultation and, at its discretion, DOI may grant such requests.

(+)(ii) If a bureau/office invites an ANCSA Corporation to consult but does not receive a response, the bureau/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.

(2) An ANCSA Corporation may request that the DOI initiate consultation when the ANCSA Corporation believes that a bureau/office is considering a ~~departmental-DOI~~ action with ANCSA Corporation implications. The appropriate bureau/office Tribal Liaison Officer TGO or appropriate representative will treat an official request for consultation in an expedited fashion and respond to the ANCSA Corporation in writing that DOI 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.

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

B. Proposal Development Stage. The bureau/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/office schedules and allows for ANCSA Corporation input in determining if there is substantial and direct effect to the Corporation.

(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/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/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 through 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

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consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. If litigation, ~~or~~ legal requirements, or natural disaster emergencies impact a bureau/office schedule for conducting consultation, the bureau/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 DOI bureau/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:

- (2) A summary of ANCSA Corporation input received;
- (3) An explanation of how that ANCSA Corporation input was addressed;
- (4) The reasoning for any instance in which ANCSA Corporation suggestions were not incorporated into the DOI action or consensus could not be attained.

D. Implementation of Final Federal Action Stage. Bureaus/offices may consider implementing a post-consultation review process that invites ANCSA Corporation feedback or considers the need for training or technical assistance concerning the final Federal action. The post-consultation review process shall not limit DOI's deliberative process privilege regarding internal considerations or any other applicable privilege.

E. Consultation Summary Report. Upon completion of the consultation, bureaus/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 6.74.8.

~~5.6—**Joint Federal Tribal Consultation Team (Team)**. The Secretary will appoint six to eight tribal leaders to serve on the Team and advise departmental officials on the consultation process. Each member's term of appointment may not exceed 2 years, and each member must be the duly elected tribal leader for the duration of the term appointment, or cede the position at the expiration of the tribal leadership position.~~

~~B.F. The DOI officials should engage members of the team to determine what constitutes meaningful consultation to DOI's decisionmaking process. The DOI officials will also coordinate with the team and discuss implementation of best practices and lessons learned during the consultation process for future Departmental action.~~

~~C.—The Team shall meet regularly to discuss the most recent quarter's DOI consultation sessions with Indian tribes to identify areas where consultation with engaged~~

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~~tribal stakeholders impacted Departmental action.~~

~~D. _____~~

~~E.G. Tribal Team members will be elected officers of tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities in order to comply with the exception of the Federal Advisory Committee Act (5 U.S.C. App.) contained in the Unfunded Mandates Reform Act (Pub. L. 104-4).~~

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