

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

UPDATES TO DEPARTMENT OF THE INTERIOR'S ALASKA NATIVE
CORPORATION CONSULTATION POLICY AND PROCEDURES

DAY 1

Washington, D.C.

Thursday, September 15, 2022

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1 P R O C E E D I N G S

2 (2:04 p.m.)

3 MS. BROWN: To connect. We would like
4 to welcome you to the consultation on the Alaska
5 Native Corporation consultation policy and
6 procedures with the Department of Interior. To
7 help with audio quality, please mute yourself and
8 also cameras off until the discussion begins. If
9 you don't mind, please, closed captioning will be
10 available and I will put the link in the chat to
11 access the closed captioning live stream. This
12 consultation is closed to the press so we ask if
13 you are a member of the press, we ask you
14 disconnect at this time and just for awareness,
15 this session will be recorded. If you do not
16 consent to recording, we ask that you disconnect.
17 I will now turn it over to Assistant Secretary
18 Newland.

19 MR. NEWLAND: Thank you so much, Rachel.
20 Good morning. Good afternoon, everyone.
21 Afternoon here in D.C. My name is Bryan Newland.
22 I have the privilege of serving as Assistant

1 Secretary for Indian Affairs here at the
2 Department of the Interior. I'm joined by several
3 brilliant and talented folks from our team here.
4 You just heard from Rachel Brown. We also have
5 Senior Policy Advisor Tracy Goodluck, our Policy
6 Special Advisor Joaquin Gallegos, our Policy
7 Counselor, Rose Petoskey. And we're really glad
8 to be with you today. Before we get started,
9 ordinarily we want to provide space to tribal
10 leaders and representatives to offer prayer or
11 words of blessing, or in the absence of that, to
12 take a moment to allow everyone to pray in your
13 own way for a good conversation.

14 So, we're going to do that now. Thank
15 you so much for taking that time. We know in
16 Indian affairs, working with the Indian people
17 that across our Tribal nations it's customary to
18 make sure we convene our gatherings and our
19 important conversations in an appropriate,
20 respectful way. So again, I want to express my
21 gratitude to all of you for taking time to join us
22 today. I know that you're all busy on behalf of

1 your organizations doing a lot of work, and this
2 is always the end of summer. Beginning of fall is
3 always a really busy time of year. So, thank you
4 again for taking your time with us. We are here
5 to hear from you on the department's draft
6 policies and procedures on consultation with
7 Alaska Native corporations.

8 We are proposing new chapters of the
9 Department's manual, which would be found at the
10 Departmental manual Part 512 Chapter six for the
11 policy and at Chapter seven for the procedures.
12 These new chapters are part of our effort to
13 update the consultation policies for the
14 Department, as well as incorporate the
15 freestanding 2012 DOI policy in consultation with
16 ANCSA corporations into our departmental menu.
17 We've undertaken a similar update with respect to
18 our consultation policy with federally recognized
19 tribes, and we'll be developing separate chapters
20 and procedures for consultation with the Native
21 Hawai'ian community. On August 15th. We sent a
22 consultation invite letter to its corporate

1 team is ready. And as you heard from Rachel at
2 the top, we're making a transcript of this so that
3 we can incorporate your feedback into our work.
4 And we want to make sure that we're strengthening
5 and evolving our relationships with you all. So,
6 with that, I want to open up the floor to leaders
7 if you are joining us by phone. I believe you can
8 press star nine to raise your hand. And those of
9 you who are joining us over Zoom, you can use the
10 reactions button in the raise my hand function at
11 the bottom of your screen. Going to try to
12 monitor the chat, but there's often a lag time
13 between when I can read that because I'm listening
14 to folks.

15 So, we'll call on folks in the order
16 they raise their hands, ask that you please be
17 respectful of others in your conversation and wait
18 until everybody has had an opportunity to speak
19 before raising your hand for a second time. So,
20 with that, the floor is yours. While we wait,
21 Rachel, would you mind putting in the chat how the
22 deadline for written comments and where those can

1 be submitted.

2 MS. BROWN: Yes, will do.

3 MR. NEWLAND: Thank you, Miss Hensley.

4 MS. HENSLEY: Hi. Good morning or good
5 afternoon.

6 MR. NEWLAND: Good morning. It's good
7 to see you.

8 MS. HENSLEY: Yes, you too. Hi,
9 everybody. (speaks in Native language) Saagulik
10 Elizabeth Hensley. (speaks in Native language)
11 Regional Corporation. Vice President for External
12 affairs. So that's Inca for good morning, and my
13 name is Saagulik Elizabeth Hensley, and I'm Vice
14 President of External affairs at NANA. Thank you
15 very much for the opportunity to participate in
16 this meeting today. It's nice to see some
17 familiar faces, familiar names. I want to start
18 by saying I was really; I had a really wonderful
19 opportunity to work at the Interior Department
20 back in around 2010 when executive order 13175 was
21 really just starting to kind of get rolling and
22 the department was drafting the tribal

1 consultation policies. So, I wanted to disclose
2 that and also just say, wow, what a long distance
3 we've come since then. And it's really wonderful
4 to see the progress made over the years and it's
5 great to see Assistant Secretary Newland again in
6 this role.

7 I believe she was a counselor back then,
8 so it's just really exciting to see the results of
9 time. I wanted to make a few comments about the
10 draft, initial draft that you guys have prepared.
11 And thanks very much for sending the red lines.
12 We appreciate Sarah Walker communicating with us
13 and looping us in. Also, as we always do this
14 work, you know, on paper and paperwork. Which --
15 and we all have to use our imagination to kind of
16 see what it will mean in real life.

17 So, we just really want to extend our
18 appreciation to Assistant Secretary Newland and
19 Tracy Goodluck and others who were able to come to
20 Alaska a couple of months ago and just see and
21 feel and smell and taste in real life, kind of
22 what some of the words on paper mean to us. So,

1 it was great to see you then. We always want to
2 welcome people back. So come on back anytime.
3 So, we took a look at the drafts and understand
4 it's kind of an initial draft. So, thanks for
5 sharing that. One of our questions was, would you
6 be revising the Indian tribes' documents? And so
7 based on what you said, Assistant Secretary
8 Newland.

9 We understand that, yes, the process is
10 going on there, too. And so, thanks for answering
11 that right out of the chute. As you know, Federal
12 law requires that Alaskan native corporations like
13 NANA support and protect Alaskan Native people.
14 That's one of our roles as Alaska Native
15 corporations. And we also know that you've been
16 -- you're familiar with the unique model of
17 self-determination that exists in Alaska, which
18 includes our tribal governments, our federally
19 recognized tribal governments that are engaging in
20 governance activities on behalf of our people, for
21 our people, including myself, as a citizen of the
22 native village of Delta or Kotzebue.

1 And we also know that Alaska Native
2 corporations play a really key role in our model
3 of self-determination as the owners, the holders
4 of the title for a good portion of our indigenous
5 homelands through the Alaska Native corporations
6 be entitled to about a 10th of our indigenous
7 homelands. So not everything, I think we lobbied
8 for getting title to about 110% of Alaska, but we
9 ended up with 10%. Not too shabby, but we really
10 do take our obligation to our people seriously to
11 manage our Indigenous homelands for their benefit.
12 NANA has 15,000 shareholders and a land based
13 about the size of Indiana and we manage our land
14 and protect it and we manage it first and foremost
15 for our people to live our way of life, which is
16 largely a subsistence lifestyle where we hunt,
17 fish, gather.

18 Right now, the caribou are starting to
19 come down. So, it's caribou hunting season and
20 moose hunting season, which is a really wonderful
21 time of year. We are also the private landowners,
22 which is unique to Alaska. And this way our --

1 you know, our NANA's land isn't held in trust. We
2 have a full-on title. So, we think that it's
3 important to recognize that there is that private
4 landowner, right, which is important in
5 consultation and when the department might be
6 taking actions that might affect and seize land as
7 private landowners of our indigenous homeland.

8 And we all, we think that ANCSA
9 corporation is consultation isn't only an
10 obligation that's done under federal law to comply
11 with the Consolidated Appropriations Act of 2004
12 and 2005. But we also really find that it's just
13 critically important to incorporating more
14 indigenous knowledge into federal actions and just
15 information from the ground which really can help
16 the outcome of decisions be appropriate to the
17 people that the decisions will affect. We know
18 that the law provides the ANCSA corporations shall
19 be consulted on the same basis as tribes. And
20 something that I really am curious about and pay
21 attention to is like, what does that mean? That
22 quote unquote, on the same basis as, and that's

1 something that I think as the developments to the
2 ANCSA corporation consultation policy and the
3 Indian tribe consultation policy, like keeping
4 that in the back of our minds through these
5 initial drafts and through the work, it's that the
6 loss is on the same basis as.

7 And we -- really people might not
8 necessarily think about ANCs as needing to be
9 consulted when it comes to things like lands and
10 even subsistence. But we think that it's really
11 important that, the department realize that, you
12 know, the ANCSA corporations do need to be
13 consulted, especially because in each region
14 there's a different division of labor. But in
15 general, people really do expect ANCs to be
16 warriors for our people to protect our hunting and
17 fishing rights. You might not realize that if
18 you're thinking like ANCSA corporations are just
19 these for-profit corporation, you know, machines
20 out there. But for us and at NANA, our people
21 expect us to be engaging in fighting for
22 subsistence rights, for our language, for our

1 culture, for programs to help, you know, our
2 language not -- no longer be listed as endangered.

3 And so, I think in fleshing out, like
4 what on the same basis as means, it's really
5 important to think about that. And something that
6 I think we had a question about. And I know and
7 I'll try to not take up too much more time. But
8 we noticed that the new draft says that the
9 department would make a good, good faith efforts
10 to invite ANCSA corporations to consult. But like
11 the current policy before the change, says the
12 department. So, one that, when taking
13 departmental action that has a substantial direct
14 effect on ANCSA corporations, the Department will
15 initiate consultation with ANCSA corporations.

16 So, we are a little worried that a good
17 faith effort rather than will, is happening. So,
18 we just asked you to think about that. Like, is
19 that going to be giving strong enough guidance to
20 your employees who are supposed to be carrying out
21 the consultation. We'd probably want to see
22 something stronger than good faith efforts on that

1 part. And then we had a question because the new
2 revised, 512 BM-6 says that the department, the
3 definition of a departmental action applies in
4 part to quote unquote operational activity. We
5 don't quite know what that means. So, if it might
6 be worth giving providing some clarity on that.

7 MR. NEWLAND: Elizabeth, can you repeat
8 that?

9 MS. HENSLEY: Yes. Happy to Assistant
10 Secretary Newland under the revised 512 BM-6, the
11 policy part. That there's a -- the definition of
12 a departmental action applies in part to an
13 operational activity. We're not quite sure what
14 the term operational activity means, and it's not
15 in the current policy and it's not defined in the
16 proposed one. So, we're just thinking it might be
17 helpful to flesh out what that means a little bit
18 like does operational activity. Include decisions
19 and actions that affect like angst of corporation
20 lands. If so, it would probably be helpful to
21 define that like, you know, so maybe fleshing that
22 out to provide that guidance to your staff would

1 be helpful. And then just finally, I want to put
2 a plug in for training.

3 Our experience on the ground is that
4 people, really good federal employees who are
5 trying to do the right thing will a lot of the
6 times, I think, be mixed up on what constitutes
7 consultation versus a meeting versus a listening
8 session versus an update. And we find that people
9 don't necessarily know like what the rules are
10 that they're playing by. So, for example, will
11 get an invitation that says we want to have an
12 ANCSA corp consultation. So, we can provide you
13 some updates and we're like, okay, can we just so
14 that we all understand what the goalposts are, and
15 the rules of engagement are, can you just let us
16 know what you view as the policy that we're
17 following for this consultation and like, they
18 might not know or and we're like, so we're kind of
19 helping to educate them.

20 Like, Okay, what decisions are you
21 seeking are meaningful consultation on like the
22 specific decisions so that we can help you make an

1 informed decision that will benefit the federal
2 government and benefit our people? And a lot of
3 the times it's kind of up in the air and they're
4 like, well, we could call this a consultation or
5 we could call it just like our update to you,
6 whatever you want to call it. And we're like, oh,
7 nope, like this, we have to be more specific than
8 that. And so, I think training's really important
9 because I think people really want to do the right
10 thing and they just need a little help figuring it
11 out. And then the report that you'll do on the
12 consultation, I think will also be helpful and
13 just getting that accountability and helping
14 everybody see what's going on.

15 So, I know I've spoken for kind of a
16 long time, so I'll stop now, but I really want to
17 thank you for seeking our input on this, and we
18 look forward to continuing to work with the
19 department to make this something that really
20 helps strengthen the relationship and advance our
21 people forward. So, thank you.

22 MR. NEWLAND: Thank you, Ms. Hensley,

1 and I appreciate your thorough comments and
2 appreciated the chance to work with you and when
3 you were here at the department. And the passage
4 of time is strange, although to I think it has a
5 -- takes a greater toll on some of us maybe -- but
6 thanks for joining us. And with respect to
7 training, that's something that is at the top of
8 our list. There's a lot of when you're developing
9 policy, there's the forward-facing stuff that the
10 public sees. And then I like to refer to it as
11 the back of house stuff to make, which is the work
12 that happens in the building to make sure that
13 there's things behind the policies, that they're
14 not just words on paper. And that's one of the
15 things we're doing in the back of house when it
16 comes to consultation and actually going to throw
17 it to Tracy to talk a little bit about that.

18 MS. GOODLUCK: Yes, thank you, Assistant
19 Secretary Newland. And Liz, it's always good to
20 see you. And yes, I would love to get back out to
21 Alaska someday. Beautiful, very beautiful
22 country. I loved it. So, thank you. You all

1 were gracious hosts to us when we were there. In
2 regard to the training, we have heard time and
3 time again, what you just said, that it's very
4 critical that from your staff all the way up to
5 political appointees get trained on what tribal
6 consultation means. Looks like what's the
7 difference between a listening session versus a
8 tribal consultation? What is government
9 consultation?

10 So, thank you for that comment and that
11 question and Bryan is correct that we are
12 (inaudible) the back of house work is to put some
13 teeth behind this. I am part of, as others are on
14 this call here in Inter-agency Policy Committee
15 working with the White House at the Domestic
16 Policy Council and other agencies across the
17 federal government to look at how to do effective
18 training for our -- for the federal government
19 employees on Tribal consultation. So, while I
20 don't have anything to announce yet about what
21 that's going to look like or entail, I do want you
22 to know that from the initial beginning of this

1 administration, when we did the consultations on
2 consultation way back when a year ago. Over a
3 year and a half ago now.

4 From that, there was a report developed
5 that was given to the president on best practices
6 for Tribal consultation. We're looking at that
7 again and figuring out how does that then
8 correspond to doing things like training for
9 federal government employees on consultation. So,
10 we are actively working on this, discussing this,
11 sharing ideas across interagency folks and working
12 to come out with some announcements at some point.
13 Soon.

14 MR. NEWLAND: Thank you, Tracy. Okay.
15 We can hear from our next speaker if anyone else
16 wishes to speak. While we wait to see if anyone
17 else wishes to speak. We are -- you can see it in
18 the chat. We are accepting written comments on
19 this all the way up until midnight on October the
20 17th. You can email those written comments to us
21 at, consultation@bia.gov. We have a hand raised,
22 Josie Hickel.

1 MS. HICKEL: I thank you. First of all,
2 I want to just thank you for the work that's gone
3 into the proposed changes to consultation. You
4 know, this is something I recall the last time we
5 met and had a conversation about it, I believe,
6 was in 2018. I'm Josie Hickel, I'm an Executive
7 Vice President for the Chugach Alaska Corporation.
8 We appreciate a few things that we see in the
9 changes that are responsive to comments that we
10 have given in the past. And that really has to do
11 with the fact that consultation should be
12 meaningful, and it should be timely and for
13 Chugach, we've been working with Department of
14 Interior the last several years pretty extensively
15 on the land exchange issue.

16 And, you know, we've experienced where
17 we've had consultations on our requests. The
18 concern is that this issue about being meaningful
19 when the input we provide doesn't seem to be
20 heard, but also just the lack of follow up. And I
21 think that goes back to some of the comments that
22 Elizabeth made. And I want to thank her for those

1 comments, because I think that they were all in
2 line with our position as well, that Alaska Native
3 corporations are (inaudible) -- and the way that
4 our corporations and our relationships with our
5 Tribes and our Tribal entities is somewhat complex
6 and it's unique and it's not the same as it is for
7 other organizations and Indian Tribes, as an
8 example.

9 And so, I think what we're concerned
10 about is we just want to make sure that we're
11 protecting our rights for consultation and then
12 also that, that consultation be meaningful and
13 that there be follow up so that we know that we
14 actually have been heard instead of silenced,
15 which is unfortunately all too often what we are
16 getting. I have a concern in particular with the
17 proposed language in the departmental manual under
18 scope that it's Section 6.2, that essentially says
19 that to the extent that Indian Tribes and Alaska
20 Native corporations opinions differ on a matter
21 that the department shall give due consideration
22 to the rights of the sovereign -- sovereignty and

1 self-government government of federally recognized
2 Indian Tribes.

3 And our concern about that, is that it's
4 creating a situation where it basically reads as
5 though the tribes would get deference. And I
6 think because of the issue of the Alaska Native
7 corporations being unique and are structured,
8 being different, that we need to have an equal
9 voice and be heard. And as Liz talked about, we
10 have land ownership rights, we provide services to
11 our tribes and our regions and communities related
12 to social services and many other factors around
13 economic development and health and housing and
14 other things. And each one of our 12 Alaska
15 Native corporations are a little bit different in
16 that respect. But it's important that our voices
17 be heard equally.

18 And I, I hope that that's not the
19 intent, that somehow, we're not getting equal and
20 due process here and that our voices are heard in
21 an equal way as Indian Tribes. So that that's
22 primarily my most significant comment that I

1 wanted to make today. And again, I think we agree
2 with many of the comments that Liz made as well
3 and will be submitting written comments. Thank
4 you.

5 MR. NEWLAND: Thank you for that, Josie,
6 and thank you for taking the time to share your
7 comments with us, a part of your written comments.
8 I want to acknowledge also that the secretary's
9 Senior Advisor on Alaska issues, your friend, our
10 friend Raina Thiele, has joined us.

11 MS. THIELE: Hi, everyone. Thank you
12 for joining.

13 MR. NEWLAND: Okay. We can go to our
14 next speaker. You can raise your hand using the
15 "Raised My Hand" feature. It's under the
16 reactions, button at the bottom of your screen.
17 And if you don't wish to speak in this
18 consultation session but want to make sure that
19 you comment, we are accepting written comments all
20 the way through October 17th at midnight, at
21 consultation@bia.gov. Yes, Miss Hensley.

22 MS. HENSLEY: Thank you. Assistant

1 Secretary Newland, And I was just going to jump in
2 if nobody else wanted to claim the airwaves here.
3 Just to follow up with Josie and her comments,
4 which I really appreciated, but I think that's
5 just kind of what we're -- when I'm talking about
6 what does on the same basis as really mean, like
7 does that allow for that deference to Tribes
8 standard is, and to me, that's just something to
9 put a lot of consideration into because like Josie
10 was saying, there's just so many different subject
11 matters that we could be consulting about.

12 And sometimes, you know, there will be
13 times when it's appropriate to, you know, we'll
14 hear everybody out. But it might not be
15 appropriate to defer to one or the other just on
16 the basis of one being a Tribe and one being an
17 ANC. And I think that, that's really getting to
18 understand our model of self-determination will
19 help that make a little bit more sense. But I
20 think that's where that where I was coming, I just
21 said it in a different way, I think, which is
22 really what does that legal requirement on the

1 same basis mean? And I think that it it's a
2 little bit concerning the way that it's drafted
3 right now. So, thanks for a second chance to speak
4 and, I will lower my hand now. Thanks.

5 MR. NEWLAND: Thank you. Yes, we would
6 certainly welcome comments, maybe written
7 comments, or a place to provide more detail on.
8 Your ideas and how to build that out and provide a
9 clear meaning that, the point of this consultation
10 is I want to make sure we're being interactive and
11 responsive, but I don't want to offer up an
12 interpretation today and lock ourselves into
13 something. We want to make sure we're hearing
14 from you. But that's, it's a really good point to
15 flag. I got it with a red star on my notes, which
16 means I have to come back to it. So, look forward
17 to seeing your recommendations on that as well.
18 Okay.

19 Do we have anyone else here who wishes
20 to speak? We've got this scheduled for a couple
21 hours. We don't have to keep you here staring at
22 our faces for a few hours. You want to make sure

1 we're being respectful of your time, but we'll
2 stay the whole time as long as folks want to share
3 their views. I will do another call. Comments.
4 And I'll do a last call. Before we do last call
5 for comments, I do want to share, in case you're
6 not aware already, that the Department of the
7 Interior and the Department of Commerce will be
8 coming up to Alaska in a couple of weeks to do a
9 series of consultations on subsistence fisheries
10 issues. We're going to be in Bethel and Nome in
11 Fairbanks, I believe, Rose that's the 4th, 5th and
12 6th of October. You had those dates, right?

13 MS. PETOSKEY: October 5th in Bethel and
14 then October 6th in Nome, October 7th in
15 Fairbanks. And we sent the letter out on
16 September 6th. It should be on the main DOI
17 consultation page shortly, hopefully today. So,
18 you should be able to find it there. I'll drop
19 the link in the chat for the consultation page and
20 you should see it there either later today or
21 later this week, tomorrow.

22 MR. NEWLAND: Thanks, Rose. So again,

1 that's the 5th, 6th and 7th. And we'll have
2 representatives, myself, folks from the Fish
3 Wildlife Service, the National Parks Bureau of
4 Land Management, as well as representatives from
5 Nome. And this is a continuation of our dialogue
6 from last winter on these same topics. And I'm
7 looking forward to having the chance to come back
8 up and meet with many of you in person again.
9 Okay. Last call for comments on this consultation
10 session. Once. Twice. Okay. See, no hands
11 raised and hearing none, we can wrap up today's
12 session again. Invite your written feedback to
13 consultation@bia.gov on these proposed changes to
14 the departmental manual.

15 We're accepting those all the way
16 through midnight on October the 17th. I
17 appreciate those of you who joined us this morning
18 and those of you who have shared your ideas and
19 your thoughts with us. We want to make sure we're
20 getting this relationship right and that we're
21 building this into the department's policies in a
22 way that is lasting. So, thank you so much for

1 joining us today. I hope you all have a happy,
2 wonderful and safe weekend and we'll see you very
3 soon. That concludes this session.

4 (Whereupon, at 2:41 p.m., the
5 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 DISTRICT OF COLUMBIA

3 I, Rachel Egyed, notary public in and for
4 the District of Columbia, do hereby certify that
5 the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
7 that the witnesses were sworn to tell the truth
8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this proceeding was called; and, furthermore,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the District of Columbia

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