



April 19, 2012

VIA EMAIL: consultation@doi.gov

Office of the Secretary
Attn: Alaska Consultation Policy
1849 C Street NW
Washington, DC 20240

Dear Secretary Salazar:

The Tanadgusix Corporation (“TDX”), the Alaska Native Village Corporation for St. Paul Island, appreciates your request for feedback on the U.S. Department of Interior’s (“DOI’s”) proposed Policy on Consultation with ANSCA Corporations. TDX strongly supports DOI’s initiative in developing the policy. TDX is concerned, though, that in key areas, the DOI expresses its intent to administer the policy in a certain way, without refining what rules it will actually apply. TDX asks that DOI consider clarifying its policy and making it more specific, as DOI moves to the final stages of adopting the agency’s overall consultation policies.

In particular, TDX is concerned that, in distinguishing DOI’s federal relationship to ANSCA Corporations from its government-to-government relationship with tribes, DOI may generally defer to tribal governments, even on issues where ANSCA Corporations have more at stake. In several places, DOI says it will apply its tribal consultation policy with “adjustments, as necessary to account for the unique status, structure and interests of ANSCA Corporations as appropriate and allowable.” This statement is very ambiguous. DOI should recognize that ANCs have interests stronger than tribes on some issues, such as those related to their land rights established in ANSCA, and on others, tribes’ interests predominate. In 2004, Congress expressly directed agencies to consult with Alaska Native Corporations *on the same basis* as they consult with tribes under Executive Order 13175.¹

The federal government settled its land claims in Alaska differently than in the Lower 48. Under ANCSA, the traditional governments of the Native groups do not retain traditional Native lands. The law created Native regional and village corporations to hold the land and to invest cash settlement money.² Village Corporations were given land (surface rights) in settlement of their native claims, while Regional Corporations own the subsurface rights of both their own selected lands and those of the village corporations within the region.³

¹ Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div H. Section 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 (emphasis added).

² 43 U.S.C. 1606, 1607 (ANCSA §7 - §8).

³ 43 U.S.C. 1613 (ANCSA §14).

PO Box 88
St. Paul, Alaska 99660
907.546.2312
Fax 907.546.2366

tanadgusix.com

615 E 82nd Ave, Suite 200
Anchorage, Alaska 99518
907.278.2312
Fax 907.278.2316

In contrast, tribes retained traditional governmental rights to take care of their members.⁴ Alaska Natives are shareholders in their respective village and regional corporations.

DOI should recognize these differences when it applies its consultation policy. Policies may impact tribal governments and ANCSA corporations differently, but they both have obligations to serve their members and shareholders.

In certain areas, DOI should prioritize tribes' consultation rights because tribes' interests are superior. For example, on issues such as setting subsistence quotas, or tribal entitlement programs, tribes' interests should predominate. Tribes can best speak for their members on their subsistence needs in these circumstances and their rights to government benefits.

However, when DOI consults on issues where Village Corporations have stronger legal rights, such as related to the land they own, their interests should predominate. They certainly should have equal rights to protect their land, since they are the landowners.

The government has not always consulted with ANCs on the same basis as tribes, as the 2004 law requires, however. In one such case, the Department of Defense consulted with local tribes regarding environmental clean-up of land on Umnak Island, the location of the Fort Glenn Army Base. DOD was addressing hazardous materials that included embedded mustard gas canisters. DOD focused its consultation on the tribes' interests, even though TDX was the owner of adjacent land.⁵ TDX had significant property interests at stake, and would be most impacted by DOD's decision on the level of clean-up required.

Also, in a very recent case, EPA (after consulting with NMFS) and Justice drafted a Consent Decree with Trident to address Trident's violations of the Clean Water Act on St. Paul Island. The agencies never consulted with the Tribe, let alone the Village ANC Corporation, on the terms of the Consent Decree. Both the Trident fish plant and the fish waste outfall lines at issue are on TDX land. The extremely important economic benefits TDX received on St. Paul from the Trident fish plant lease (*e.g.* lease payments, shareholder jobs, and scholarship contributions) were all put at risk by certain terms EPA/DOJ included in drafts of the Consent Decree. Once EPA realized its mistake, it consulted with the St. Paul Tribe very late in the process. But TDX, despite being the impacted Native landowner, was never consulted. The Tribe's interests were not always 100% in alignment with TDX's interests and therefore, the Tribe could not represent TDX's separate Native interests on these issues.

TDX has Tribal Organizational and Shareholder rights specifically related to NMFS/NOAA responsibilities. It has entered into land agreements with these agencies

⁴ Land holdings by tribal governments were settled by federal legislation and by treaties with individual tribes. *See e.g.*, 25 U.S.C. 461 *et. seq.* (Indian Reorganization Act of 1934); 25 U.S.C. 463, Restoration of Lands to Tribal Ownership.

⁵ TDX's land holdings are not limited to St. Paul Island but extend to other locations in the Aleutian Islands. Russian traders took TDX shareholders' ancestors from their historical villages and moved them to St. Paul to aid their fur seal trade. TDX's diverse landholdings recognize its shareholders' historical roots in these other villages.

implementing the Fur Seal Act. These rights are equal to the Tribe's on Aleut subsistence issues. In the case of land rights, joint use and access under the NMFS/NOAA land agreements; TDX has greater standing than the Tribe.

DOI should be aware that ANCs have different, and in some cases, stronger interests than Tribes, and tailor its consultation policy accordingly.

Thank you for the opportunity to provide feedback.

Sincerely,



Ron G. Philemonoff, CEO
The Tanadgusix Corporation
615 E. 82nd Ave, Suite 200
Anchorage, AK 99518