



# ANCSA Corporations as Non-Federal Interests

## Draft USACE Policy

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# Partnering with ANCSA Corporations – Overview



## Goals of this Webinar:

- (1) Provide *who* is covered under this policy and *where* we are in the process;
- (2) Provide *why* we are updating this policy;
- (3) Provide an overview of *what* the policy covers; and
- (4) Ensure Tribal Nations know *who* to reach out to for requesting Nation-to-Nation Consultation, or for provide written feedback by September 22, 2023



SACW

DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Alaska Native Corporations as Non-Federal Interests

1. References:

a. Section 221(b) of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b(b)), Definition of non-Federal interest.

b. Section 1156 of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2310), Cost sharing for Territories and Indian tribes.

c. Implementation Guidance for Section 2003(b) of the Water Resources Development Act (WRDA) of 2007 – Definition of Non-Federal Interest, dated 5 April 2012.

d. Implementation Guidance for Section 1131 of WRDA 2016, Participation of Non-Federal Interests, dated 6 July 2017.

e. Implementation Guidance for Section 1119 of WRDA 2016, Indian Tribes, dated 11 May 2017.

f. Implementation Guidance for Section 1129 of WRDA 2016, Application of Section 1156 Cost Sharing Waiver to Indian Tribes and Territories, dated 5 May 2017.

2. The purpose of this memorandum is to establish the policy and procedures for partnering with Alaska Native Claims Settlement Act (ANCSA) corporations as non-Federal sponsors to better align Civil Works policy with updated legislation and legal precedent. This policy furthers the objective of this Office by removing barriers to entities that represent Tribal interests and thereby improving access to U.S. Army Corps of Engineers (USACE) Civil Works programs.

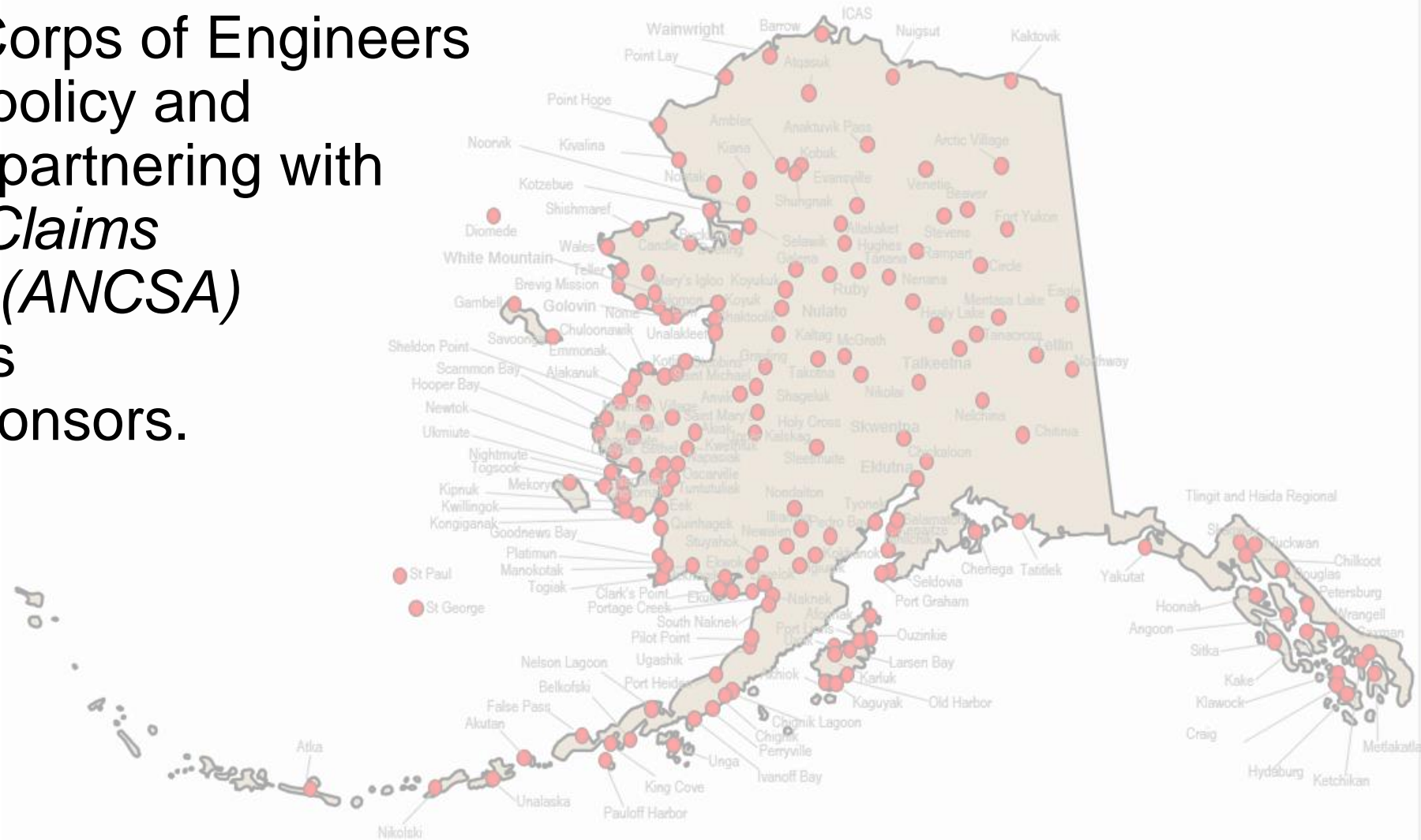
3. This policy supersedes the definition of a Federally-recognized Indian Tribe in References 1.c. and 1.d. Section 1155 of WRDA 2018 amended Section 221(b)(1) of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b(b)(1)). Reference 1. a., by inserting "Indian tribe or tribal organization (as those terms are defined in section 5304 of title 25)". In 2021, the U.S. Supreme Court held that the Indian Self Determination and Education Assistance Act (25 U.S.C. 5304) definition of "Indian Tribe" expressly



# WHO This Policy Covers



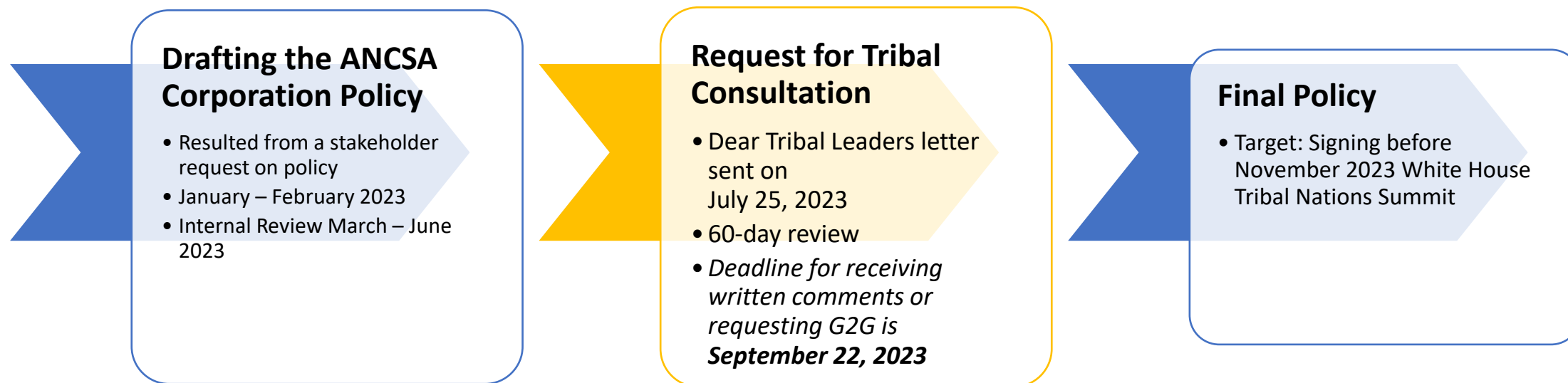
The US Army Corps of Engineers is establishing policy and procedures for partnering with *Alaska Native Claims Settlement Act (ANCSA) Corporations* as non-Federal sponsors.





# Partnering with ANCSA Corporations – Where We Are

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# The *WHY* – Modernize Civil Works Initiatives



- (1) Update to the USACE Civil Works Tribal Consultation Policy**
- (2) Develop Comprehensive Guidance for the Tribal Partnership Program**
- (3) Potential rulemaking on the Regulatory Program's implementation procedures for Section 106 of the National Historic Preservation Act found at 33 CFR Appendix C
- (4) Potential rulemaking to develop implementing procedures for the Principles, Requirements and Guidelines
- (5) Finalize an environmental justice policy, including a definition for purposes of Section 160 of the Water Resources Development Act of 2020 for the "economically disadvantaged community"

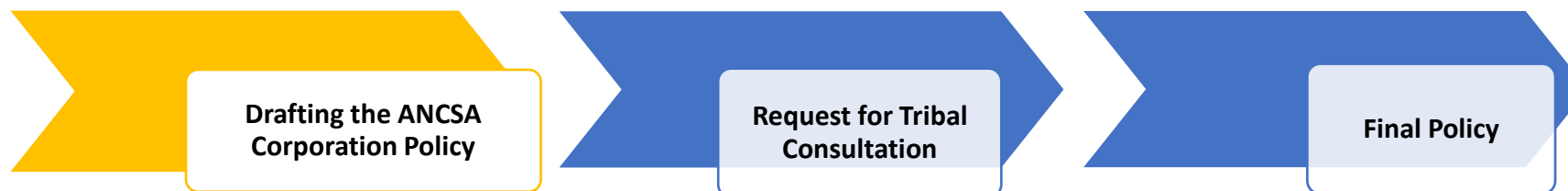


# The *WHY* – Existing USACE Policy



## ASA(CW) Guidance 2012

- Defines “non-Federal interest” to include Tribes on the Secretary of the Interior’s list of Federally recognized Indian tribes
- ANCSA corporations are not on the Secretary’s list





# The *WHY* – Existing USACE Policy

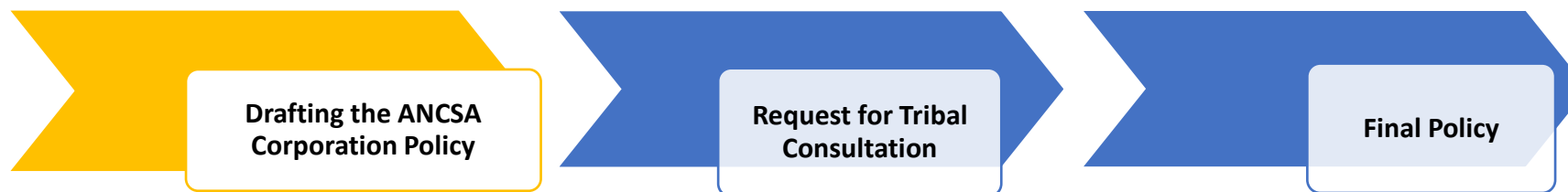


## Water Resources Development Act of 2018 Amendment

- Section 1155 of the Water Resources Development Act of 2018 inserted “Indian tribe or tribal organization (as those defined in section 5304 of title 25)” in definition of non-Federal interest:

*“Indian tribe” or “Indian Tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*

<https://www.law.cornell.edu/uscode/text/25/5304>



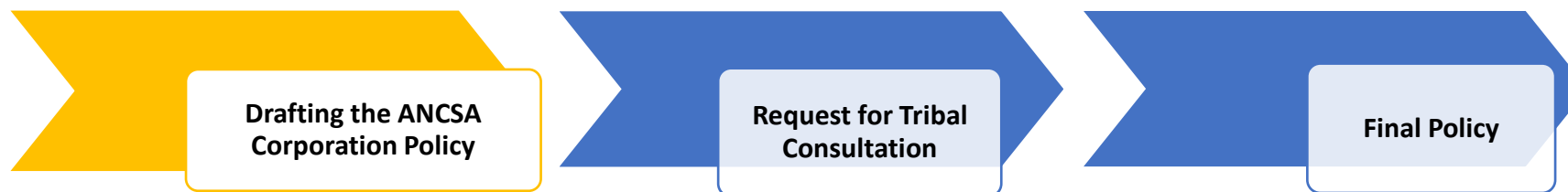


# The *WHY* – Changes in Case Law



## Supreme Court Decision: *Yellen v. Confederated Tribes of the Chehalis Reservation*, No. 20-543, 141 S. Ct. 2434 (2021)

- Case dealt with definition of “Indian tribe” that is tied to the current USACE definition of “non-Federal interest”.
- ISDEAA definition is not limited to federally recognized tribes, finding that it expressly includes ANCSA corporations for all purposes.







# Partnering with ANCSA Corporations – Policy Highlights

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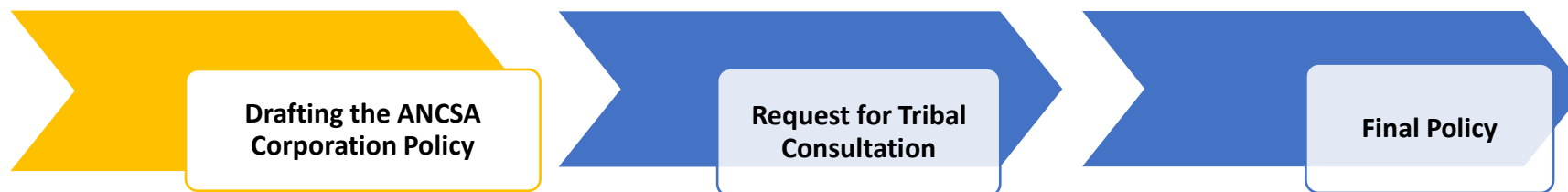


## Current Definition of “non-Federal interest”

“(1) a legally constituted public body (including an Indian tribe and a tribal organization (as those terms are defined in section 5304 of Title 25);

or

“(2) a nonprofit entity with the consent of the affected local government,....”



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# Partnering with ANCSA Corporations – Policy Highlights

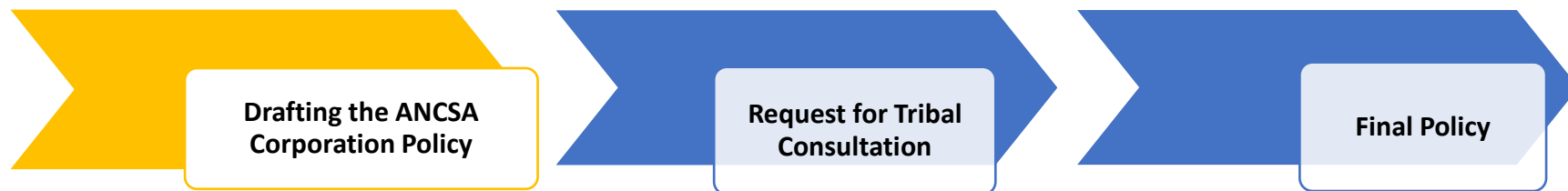
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## Consent of Affected Local Government

The affected Tribal governments must consent, in writing, to the ANCSA corporation acting as sponsor for the feasibility study, design, or construction of a project.

- For large or complex projects, written consent must be obtained by the ANCSA Corporation from each affected Tribal government and provided in the applicable agreement package.
- Studies for technical assistance and watershed planning activities do not require consent as they result in a transfer of information and data analysis only.



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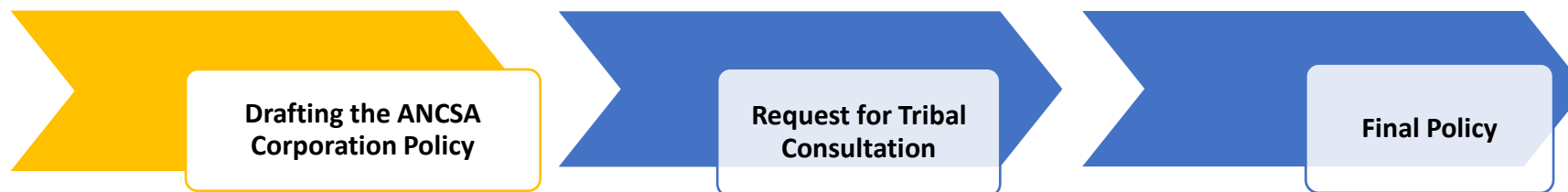
# Partnering with ANCSA Corporations – Policy Highlights

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## Demonstration of Project Benefits

- Goal is to use USACE capabilities and programs to advance the interest of Tribal communities.
- In addition to letters of consent from affected Tribal governments, the ANCSA Corporation must include a statement on how a particular project or agreement would benefit federally recognized Tribe(s) in proximity to the proposed activity.





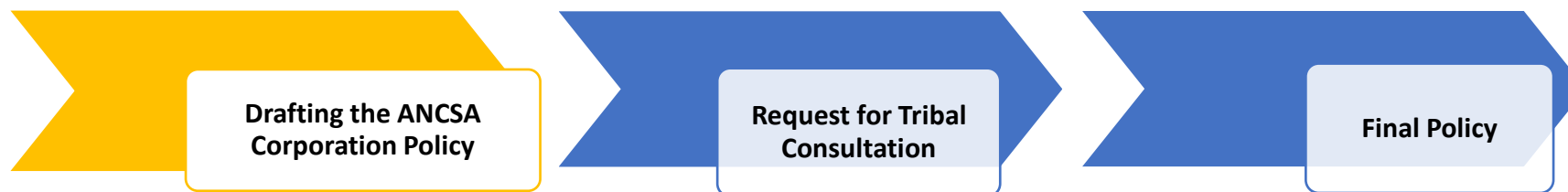
# Partnering with ANCSA Corporations – Policy Highlights

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## Sponsorship by an ANCSA Corporation

- May be sole sponsor for construction so long as it is the land holding entity of surface rights for the necessary lands needed for the project. Additional discussion may be explored to include the land holder as a co-sponsor.
- As a sponsor, the ANCSA Corporation and its subsidiaries have access to non-public information about the project. As such, they are prohibited in bidding on study, design or construction work arising from these agreements.





# Partnering with ANCSA Corporations – Policy Highlights

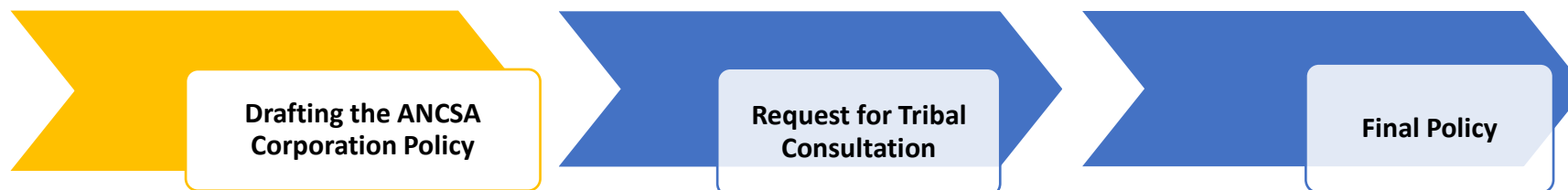
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## Sponsor Responsibilities

Any sponsor must demonstrate full legal and financial authority and capability to perform the terms of the agreement (study or project).

- Payment of the applicable cost share of project costs.
- Provision or performance of lands, easements, rights-of-way, relocations, and disposal areas (LERRDs) required for the project.
- Performance of non-Federal OMRR&R requirements in perpetuity.



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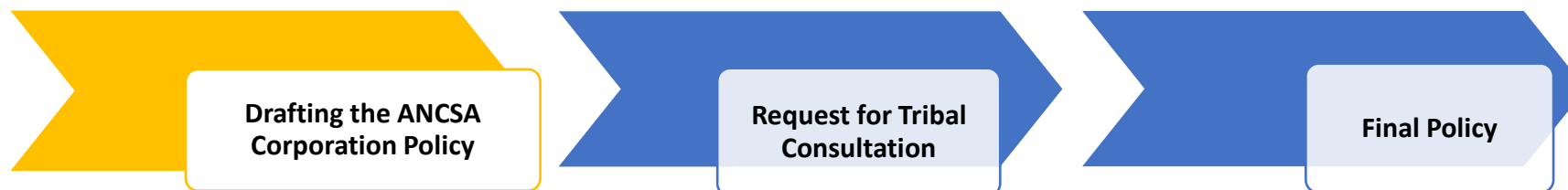
# Partnering with ANCSA Corporations – Policy Highlights

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## Applicability of the Adjusted Cost Share Waiver

- Section 1156 of WRDA 1986, as amended, waives eligible sponsor's cost share requirements up to a Congressionally authorized amount. As of Fiscal Year 2023, the current waiver is up to \$665,000.
- This waiver applies to the feasibility phase, and if applicable, again in construction phase.

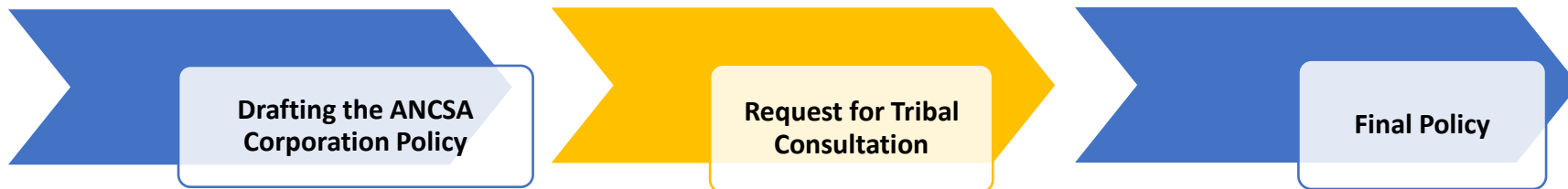




# How to Request Individual Tribal Consultations:

Please submit Tribal Consultation Requests and/or written input to Quana Higgins at: [quana.n.higgins.civ@army.mil](mailto:quana.n.higgins.civ@army.mil) by September 22, 2023.

For more information on Army Civil Works actions on these and other Tribal Nations initiatives, visit the [ASA\(CW\) Initiatives webpage](#).

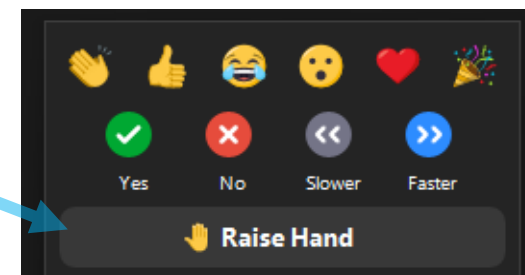
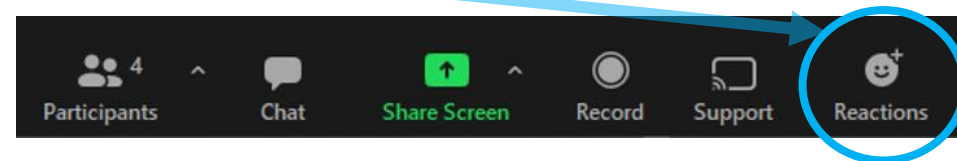




# How to Request to Speak



- If you would like to speak, please raise your hand.
  - On a computer (or mobile device), select the **Reactions** button then click on “**Raise Hand**”
  - If you called in, you may also press \*9 on your phone to raise your hand.



- When it is your turn to speak, the host will call on you by using your name or phone number.
- At that time, you can unmute yourself by pressing the unmute button on your screen or dialing \*6 on your phone.
- Please feel free to turn on your video while you are speaking.
- If you have technical issues, please use the chat function.