



## DEPARTMENT POLICY AND PROCEDURE

09-031

### Consultation and Coordination with Indian Tribal Governments

Original Effective Date: July 24, 2020

Distribution: All EGLE Employees and EGLE Web Site

#### ISSUE

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On October 28, 2002, the State of Michigan entered into a Government-to-Government Accord (the “Accord”) [\[link\]](#) with the twelve federally recognized Indian tribes located in Michigan. The Accord served as an acknowledgement by the State of each tribes’ sovereignty and right to self-governance and self-determination, and as a commitment by the State to use a process of consultation with the tribes to minimize and avoid disputes.

On October 31, 2019, Governor Gretchen Whitmer issued Executive Directive No. 2019-17 (the “Directive”) [\[link\]](#) to reaffirm, implement, formalize, and extend the commitments made by the State of Michigan in the Accord. First, it ensures all state departments are aware of and adhere to certain fundamental principles regarding government-to-government relations with federally recognized Indian tribes located in Michigan. Second, it describes a process of tribal consultation. And third, it builds into the operations of the State of Michigan the infrastructure necessary to ensure that the objectives of the directive and the Accord are realized as fully as possible.

One of the primary goals of this policy and procedure is to fully implement both the Accord and the Directive, with the ultimate goal of strengthening the consultation, communication, coordination, and collaboration between tribal governments and EGLE.

#### POLICY

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EGLE recognizes that tribal governments are sovereign entities with the inherent authority to exercise jurisdiction over their respective lands and citizens. Furthermore, federally recognized Indian tribes possess the right to self-governance and self-determination. Accordingly, it is the goal of this policy and procedure to better communicate with each of the federally recognized Indian tribes located in Michigan on a government-to-government basis on actions and decisions that may have tribal implications.

Consultation is a process of meaningful communication and coordination between EGLE and tribal officials prior to EGLE taking actions or implementing decisions that may affect tribes. Effective communication and coordination are important to ensure tribes have input in department actions and decisions. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined

by past and current practices, adjustments made through this policy and procedure, and the continuing dialogue between EGLE and tribal governments.

This policy and procedure establishes guidelines for consultation across EGLE and seeks to strike a balance between providing sufficient guidance for purposes of achieving consistency and predictability while allowing for, and encouraging, the tailoring of consultation approaches to reflect the circumstances of each consultation situation and to accommodate the preferences of tribal governments.

EGLE recognizes that open communication and robust collaboration with tribal partners is essential to accountability and success. The intent of this policy and procedure is not to preclude or replace existing, ongoing, and future meetings; communication and exchanges of information; or collaboration that occurs between EGLE staff and tribes. These interactions are expected to continue on a regular basis. The main difference between consultation and more routine communication is that consultation includes formal steps to identify issues, notify parties, and provide follow up on input provided during the consultation process.

Ultimately, EGLE recognizes the shared partnership with the tribes in achieving our mission to protect Michigan's environment and public health and recognizes the importance of tribal consultation and coordination to ensure meaningful and mutually beneficial communication and collaboration on matters of shared concern.

This policy and procedure applies to all EGLE divisions, offices, and other organizational units that fall within its jurisdiction, including Type I agencies, broadly referred to as "divisions" in this document.

## **PROCEDURE**

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### **A. Consultation Process**

EGLE must follow this policy and procedure and associated guidance documents before taking an action or implementing a decision that may affect one or more of the federally recognized Indian tribes located in Michigan. This consultation process must adhere to the framework and requirements set forth below, which are designed to ensure that the process is consistent and predictable across divisions but also flexible enough to meet the particular needs and circumstances of each consultation. Meaningful communication and collaboration on matters of shared concern must always be the core and driving objective of this consultation process.

1. Step One – Identification: The first step in the consultation process is the identification of an activity (i.e., an action or decision) that may be appropriate for consultation. Identification includes a determination of the complexity of the activity, the identity of the tribe(s) potentially affected by the activity, the activity's potential implications for tribes, and any time or resource constraints relevant to the application of the consultation process to the activity.

As spelled out in the Directive, “Implications for tribes’ means an express reference to Indians, Indian tribes, bands or groups, or Indian organizations, or a direct effect on their collective or individual treaty rights, natural-resource or environmental interests, economic or commercial interests, civil or criminal jurisdiction, or other rights or benefits secured under Michigan or federal law by virtue of their status as Indians or tribal governments.”

EGLE will use the following mechanisms to identify activities appropriate for consultation:

- a) **EGLE Identification:** When undertaking an activity, EGLE must evaluate whether an action or decision may affect tribal interests such that consultation would be appropriate. When evaluating whether an activity is appropriate for consultation, EGLE will apply the standard broadly and, when in doubt, err on the side of notification.
- b) **Tribal-Government-Initiated Identification:** A tribal government may initiate the consultation process by identifying an activity that may be appropriate for consultation. EGLE must then determine the appropriate level of response to the request for consultation, for example, informal conversations between environmental staff vs. formal executive level meetings between high ranking officials with decision-making authority within EGLE and the tribe, and it must afford substantial weight to the tribal government’s request in performing that determination.
- c) **Other Resources:** EGLE must also utilize other relevant resources, such as tribal partnership groups in which the tribes may be participants, to assist them in identifying activities that may be appropriate for consultation.

Activities that may be appropriate for consultation include, but are not limited to, actions or decisions regarding rules or regulations; policies, guidance documents, or directives; permits; civil enforcement and compliance monitoring; emergency preparedness and response; federal authorizations or delegations; and efforts to carry out state obligations under a state compact or agreement.

EGLE and tribal governments may develop a process for eligible activities that are numerous, frequent, and/or reoccurring (i.e., annual permits or hundreds of similar activities) such that consultation does not need to be undertaken separately and independently for each occurrence.

2. **Step Two – Notification:** Once an activity is identified that may be appropriate for consultation, EGLE must notify the tribe(s) potentially affected by the activity as early in the process as possible. Notification must include sufficient information to permit the potentially affected tribe(s) to make an informed decision regarding whether to proceed with consultation and must inform the tribe(s) of how to provide input regarding the activity. Notification must also include a time frame for consultation and input. Notification may occur by regular or electronic mail, telephone, or other agreed-upon means, depending on the nature of the activity and the number of tribes potentially affected.

EGLE will strive to honor tribal preferences regarding the specific method of notification, subject to applicable time and resource constraints, including statutory deadlines.

3. Step Three – Input: EGGLE must then receive and consider input regarding the activity from any potentially affected tribe(s) that may choose to offer it. Input may be provided in whatever format the tribe and EGGLE may mutually deem appropriate. EGGLE must coordinate with the tribe(s) throughout this step to ensure that the tribe(s) participating in the consultation: (1) receive all information necessary to provide meaningful input regarding the activity; (2) are afforded due opportunity to discuss that input; (3) are informed of any significant changes to the activity, or any other issues that may arise as to it, over the course of the consultation process; and (4) are afforded due opportunity to provide and discuss any additional input the tribe(s) may have regarding those changed circumstances.

EGGLE will coordinate with the tribe(s) when sharing information about culturally significant resources that may be sensitive and/or confidential in nature.

4. Step Four – Follow-up: EGGLE must then provide feedback to the tribe(s) involved in the consultation to explain how their input was considered in the final decision or action. When feasible, taking into consideration regulatory and/or procedural time frames, EGGLE will provide preliminary feedback before the final decision is made or action is taken. This feedback must be in the form of a written communication from the most senior EGGLE official involved in the consultation to the most senior tribal official involved in the consultation.

## **B. Communication, Coordination, and Collaboration**

EGGLE recognizes that open communication and robust collaboration with tribal partners is essential to accountability and success and encourages the development of meaningful partnerships and collaborative efforts with the tribes. It is the policy of EGGLE to continually improve communication, coordination, and collaborations with tribes. This can be accomplished through a variety of methods, including:

1. Regularly scheduled interactions between EGGLE and tribal staff (i.e., District meetings between EGGLE staff and tribal staff, joint field activities, workshops and conferences, and annual meetings among the EGGLE Director and Tribal Leaders).
2. Participation and attendance at tribal meetings and outreach events (i.e., quarterly Michigan Tribal Environmental Group Meetings and wild rice camps).
3. Providing and partnering in technical assistance, grants, and training opportunities.
4. Collaboration on nonregulatory programs, such as air quality monitoring, water quality monitoring, and watershed management.

### **C. Roles and Responsibilities**

1. Department Tribal Liaison: The responsibilities of EGLE's Tribal Liaison include the following:
  - a) Monitoring and ensuring EGLE's implementation of and compliance with the Accord, the Directive, and this policy and procedure.
  - b) Coordinating with EGLE divisions to develop procedures for implementation of this policy and procedure.
  - c) Coordinating with tribal governments to determine the preferred method of notice and to identify the contact information of all positions or persons to whom the notice must be sent.
  - d) Coordinating EGLE's interactions with the governments of federally recognized Indian tribes located in Michigan.
  - e) Coordinating and implementing the tribal consultation process, including serving as a point-of-contact for EGLE staff, tribal governments, and other parties interested in the process.
  - f) Communicating regularly with the Governor's advisor on tribal-state affairs regarding EGLE's compliance with the Directive and the Accord and EGLE's interactions with federally recognized Indian tribes located in Michigan.
  - g) Participating in Tribal-State meetings, summits, and conference calls as coordinated by the Governor's office and tribal governments.
  - h) Producing an annual report regarding EGLE's implementation of the Directive and the Accord. The report must be submitted to the Governor's advisor on tribal-state affairs and to the EGLE Director no less than 21 days before the annual meeting or summit identified in Section C(1)(g).
2. Division Directors: Division Directors or their designee oversee the consultation process in their respective divisions. Division Directors also designate a Division Tribal Liaison. Each division is responsible for coordinating with the Department Tribal Liaison to implement this policy and procedure.
3. Division Tribal Liaisons: Division Tribal Liaisons serve as a point-of-contact for the Department Tribal Liaison as subject matter experts related to division programs and contacts to assist with implementation of this policy and procedure and interactions with Tribes. Division Tribal Liaisons will also serve as a point-of-contact for division staff to assist in the implementation of this policy and procedure.

4. EGLE Staff: EGLE staff can include staff from all levels within the department. EGLE staff assist in identifying matters appropriate for notification and consultation within their respective programs and districts and provide updates to the Division Tribal Liaisons and Department Tribal Liaison on tribal interaction.
5. Tribal Official: The Tribal Official is an elected, appointed, or designated official who is determined by each tribe. Each tribe will determine their own roles and responsibilities within the consultation process.

#### **D. Reporting**

EGLE is required to produce an annual report that includes a description of the most significant interactions, including collaborations and conflicts, between the department and federally recognized Indian tribes located in Michigan over the past year to be submitted to the Governor’s advisor on tribal-state affairs and to the EGLE Director. EGLE staff are required to report a summary of any interactions and communication with tribes to their Division Tribal Liaisons and the Department Tribal Liaison.

#### **E. Training**

In compliance with the Directive, EGLE must provide annual training on tribal-state relations for all department and agency employees who have direct interactions with tribes or who work on matters that have direct implications for tribes. This training must teach the fundamentals of tribal sovereignty, tribal treaty rights, and tribal governance and must also provide a historical overview of Indian tribes in Michigan, with lessons on indigenous dispossession and Indian boarding schools. The Governor’s advisor on tribal-state affairs will provide the necessary training materials.

#### **F. Annual Review**

This policy and procedure will be reviewed on an annual basis.

#### **LINKS TO ADDITIONAL INFORMATION**

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[2002 Government-to-Government Accord between the State of Michigan and the Federally Recognized Indian Tribes in the State of Michigan](#)

[Executive Directive No. 2019-17](#)

#### **APPROVING AUTHORITY**

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Liesl Eichler Clark, Director

## HISTORY

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Policy No.	Action	Date	Title
09-031	Original	July 24, 2020	Consultation and Coordination with Indian Tribal Governments

## CONTACT/UPDATE RESPONSIBILITY

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Any questions or concerns regarding this policy and procedure should be directed to Katie Kruse, Environmental Justice and Tribal Liaison, Executive Office, at [KruseK2@Michigan.gov](mailto:KruseK2@Michigan.gov) or 517-249-0906.

*An EGLE policy and procedure cannot establish regulatory requirements for parties outside of EGLE. This document provides direction to EGLE staff regarding the implementation of rules and laws administered by EGLE. It is merely explanatory, does not affect the rights of or procedures and practices available to the public, and does not have the force and effect of law. EGLE staff shall follow the directions contained in this document.*