



MICHIGAN STATE POLICE

Tribal Consultation Policy

- Process for Consulting on a Government-to-Government Basis with Michigan's Federally Recognized Indian Tribes –

NOVEMBER 2020

Consultation with Federally Recognized Tribal Governments in Michigan

Issue/Purpose:

To comply with the requirements of the 2002 Government-to-Government Accord (Accord) and Executive Directive 2019-17 (Directive).

Through the successful implementation of the Accord and Directive, the Michigan State Police (MSP) seeks to strengthen our consultation, communication, coordination, and collaboration with the federally recognized Indian tribes located in Michigan.

Policy:

This policy does not prevent, discourage, or replace existing effective relationships, cooperative efforts, and lines of communication between the MSP and Michigan's federally recognized Indian tribes. Instead, this policy will specifically guide MSP staff to identify when consultation is appropriate, how to properly notify the potentially affected tribe(s), how to gather input from the potentially affected tribe(s) through consultation, and how to provide feedback from the MSP to the tribe(s) involved in the consultation on how their input was considered by the MSP.

The MSP 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 located in Michigan possess the right to self-governance and self-determination. Accordingly, it is the MSP's policy to consult with the federally recognized Indian tribes located in Michigan regarding actions and decision that may affect tribal interests.

The MSP will strive to provide meaningful consultation with the federally recognized Indian tribes located in Michigan when a MSP decision or action is identified as potentially impacting the reserved treaty rights or tribal interest of a tribe or tribes. The MSP will proactively seek to identify when a potential decision or action could impact the reserved treaty rights of a tribe(s) or tribal interests and will seek to engage in meaningful consultation prior to making a final decision on those identified activities.

This policy will specifically provide staff with procedure guidance on:

1. How to identify when a proposed decision or action could potentially impact the reserved treaty right of a tribe or tribes.
2. How to notify the potentially affected tribe(s).
3. How to gather input from the potentially affected tribe(s) through meaningful consultation.
4. How to provide proper feedback to the tribe(s) involved in the consultation.

General Information:

On October 28, 2002, the State of Michigan entered a Government-to-Government Accord with the federally recognized Indian tribes located in Michigan. This Accord served as an acknowledgment by the State of each tribe's sovereignty and right to self-governance and self-

determination. It also served as a commitment by each tribe and the State to develop an effective process to permit representatives of the other government to provide meaningful and timely input on matters that significantly or uniquely affect the interests of that government to minimize and avoid disputes.

On October 31, 2019, Governor Whitmer issued Executive Directive No. 2019-17 that specifically requires each state department to adopt a tribal consultation policy. This Directive serves to reaffirm, implement, formalize, and extend the commitments made by the State of Michigan in the Accord. First, it ensures that all departments are aware of and adhere to certain fundamental principles regarding government-to-government relations with Michigan's federally recognized Indian tribes. Second, it describes a process of tribal consultation designed to ensure meaningful and mutually beneficial communication and collaboration between these tribes and the departments on all matters of shared concern. Lastly, it builds into the operations of the State of Michigan the infrastructure necessary to ensure that the objective of this Directive, the Accord, and the strong tribal-state relationship envisioned by them, are realized as fully as possible.

Questions or concerns regarding this policy and procedure should be directed to Steve Beatty, MSP's Tribal Liaison, at Beattys@michigan.gov or 517-284-3236.

Roles and Responsibilities:

Department Tribal Liaison - Responsibilities of the MSP's Tribal Liaison include the following:

1. Monitoring and ensuring MSP's implementation of and compliance with the Accord, Directive, and this policy.
2. Coordinating with MSP Divisions to further develop and review procedures for the implementation of this policy.
3. Coordinating MSP's interactions with the governments of Michigan's federally recognized Indian tribes.
4. Coordinating and implementing the tribal consultation process, including serving as a point of contact for MSP staff, tribal governments, and other parties interested in the process.
5. Coordinate annual training on tribal-state relations for all department employees whose job description includes tribal relations or affairs, are expected to have direct interactions with tribes, or who work on matters that could potentially impact the reserved treaty right of a tribe(s) or tribal interests.
6. Communicating with the governor's advisor on tribal-state affairs regarding MSP's compliance with the Directive and the Accord, and MSP's interactions with Michigan's federally recognized Indian tribes.
7. Participating in the annual summit, the annual Tribal-State Forum, and monthly tribal-state conference calls as coordinated by the governor's advisor on tribal-state affairs.
8. Producing an annual report regarding the MSP'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 MSP Director no less than 21 days before the annual Tribal-State summit.

Division Tribal Coordinators - Division Tribal Coordinators may be assigned to serve as a point of contact for the Department Tribal Liaison as subject matter experts related to tribal affairs and division programs. Division Tribal Coordinators will also serve as points of contact for division staff to assist in the implementation of this policy.

MSP Staff - MSP staff can include staff from all levels within the MSP. MSP staff assist in identifying matters appropriate for notification and consultation within their respective divisions and provide advice to the Division Tribal Coordinator and Department Tribal Liaison.

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.

Training:

MSP must provide annual training on tribal-state relations for all department employees whose job description includes tribal relations or affairs, are expected to have direct interactions with tribes, or who work on matters that could potentially impact the reserved treaty right of a tribe(s) or tribal interests. 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 MSP Tribal Liaison will coordinate with the governor's advisor on tribal-state affairs to ensure the appropriate training opportunity is provided.

Administering Division:

Transparency and Accountability Division

Procedure:

<p>Step 1: MSP Staff</p>	<p>Identifies the possible need for a consultation after a decision or action was made.</p>
<p>Step 2: MSP Staff, Division Tribal Coordinators, and Department Tribal Liaison</p>	<p>Uses the following mechanisms to identify if consultation is appropriate:</p> <ol style="list-style-type: none"> 1. <u>State-Initiated Identification:</u> When undertaking a decision or action, the MSP must evaluate whether the decision or action may affect tribal interests such that consultation would be appropriate. Decisions or actions 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. <p>Identification includes a determination of the complexity of the decision or action, identifying the tribe(s) potentially affected by the decision or action, the potential</p>

	<p>implications for tribe(s) of the decision or action, and any time or resource constraints relevant to the application of the consultation process to the decision or action. When MSP staff are unclear if the decision or action warrants consultation, they should immediately contact the MSP Tribal Liaison for further assistance.</p> <p>2. <u>Tribal-Government-Initiated Identification</u>: A tribal government may initiate the consultation process by identifying for the MSP any proposed decision or action that may be appropriate for consultation. The MSP Tribal Liaison must work with the MSP Director to evaluate whether the activity is appropriate for consultation, and in doing so must afford substantial weight to the tribal government's request.</p> <p>3. <u>Other Resources</u>: MSP 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.</p>
<p>Step 3: MSP Tribal Liaison</p>	<p>Promptly notifies the tribe(s) potentially affected by proposed decision or action.</p> <p>NOTE: 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.</p> <p>Notification must come from the MSP Tribal Liaison who must strive to honor tribal preferences regarding the specific method of notification, subject to applicable time and resource constraints. The notification should be clear, direct and between persons responsible for addressing the concern.</p> <p>The notification must include the following:</p> <ol style="list-style-type: none"> 1. Sufficient information to permit the potentially affected tribe(s) to make an informed decision regarding whether to proceed with consultation. 2. Apprise the tribe(s) of how they can provide input regarding the proposed decision or action. 3. The proposed MSP's decision timeframe and when the MSP must receive a response from the tribe(s) regarding their interest in holding a consultation.
<p>Step 4: Tribe(s)</p>	<p>Receives and reviews notification. Submits feedback and suggestions, if necessary.</p> <p>NOTE: Feedback and suggestions may be provided to the MSP in whatever format the tribe(s) and the MSP mutually deem appropriate.</p>

<p>Step 5: MSP Tribal Liaison</p>	<p>Receives feedback and suggestions from tribe(s).</p> <p>NOTE: The MSP must consider all input regarding the activity from any potentially affected tribe that may choose to offer it.</p> <p>Coordinates with the tribe(s) to ensure the tribe(s):</p> <ol style="list-style-type: none"> 1. Receives all the information necessary to provide the MSP with a meaningful input regarding the decision or action. 2. Are afforded due opportunity to discuss input with the MSP. 3. Are apprised of any significant changes to the decision or action, or any other issues that may arise as to it, over the course of the consultation process. 4. Are afforded due opportunity to provide and discuss with the MSP any additional input the tribe(s) may have regarding those changed circumstances. <p>If an in-person consultation meeting is scheduled, the notification of the meeting must be sent out at least 30 days in advance.</p> <p>NOTE: If the MSP does not receive a reply to the meeting invitation indicating tribal participation seven (7) days prior to the scheduled in-person meeting, the MSP should reschedule the meeting as a conference call meeting.</p>
<p>Step 6: MSP Tribal Liaison</p>	<p>After the meeting, provides feedback to the tribe(s) involved to explain how their input is being considered in the MSP's decision.</p> <p>NOTE: Unless otherwise agreed to by the tribe(s) and the MSP, feedback must be in the form of a written communication from a senior department official involved in the consultation to the most senior tribal official involved in the consultation.</p> <p>Feedback to the tribe(s) should be sent in advance of a final decision or action in order to provide the tribe(s) an opportunity to provide any further clarification they deem necessary prior to a final decision being made.</p>
<p>Step 7: MSP Tribal Liaison</p>	<p>Notifies tribe(s) of final decision.</p>

Related References:

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

[2002 Government to Government Accord](#)