

	Effective Date:	7/9/2020
	Revised:	
	Policy #:	G-34
Subject: Tribal Consultation Policy		

Purpose

Under Executive Directive No. 2019-17, DIFS is required to maintain a written policy describing the means by which DIFS communicates and collaborates with Michigan’s twelve federally recognized Tribes (Tribes).

DIFS recognizes that cooperation and understanding requires open communication and consultation on matters of mutual concern. This communication and collaboration must occur before DIFS takes any action or implements any decision which may affect one or more of the Tribes. The consultation process will adhere to the requirements set forth in this policy.

Therefore, before taking any action or implementing any decision which may impact one or more of the Tribes, DIFS will inform and consult with the potentially affected Tribe(s).

Policy Statement

DIFS recognizes and will ensure its policies and practices recognize the following fundamental principles:

1. Tribes are sovereign governmental entities which possess:
 - a. The inherent authority to exercise jurisdiction over their respective lands and citizens, and
 - b. The right to self-governance and self-determination.
2. The State of Michigan has a unique government-to-government relationship with each of the Tribes.

Definitions

- Activity: a DIFS action or decision that may be appropriate for consultation. Activities include but are not limited to actions regarding rules or regulations; policies; guidance documents or directives; permits; enforcement and compliance; and efforts to carry out state obligations under a state compact or agreement. The only Activities that should be considered under this policy are those that will have a Disproportionate Impact on a Tribe, tribal members, or businesses located on tribal lands or owned by tribal members.

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- Disproportionate Impact: An impact that has a greater effect or influence on a Tribe, Tribes, or tribal members as compared to the effect or influence on non-tribal groups or individuals.
- Tribes: Indian tribes, bands, and communities that the Secretary of the United States Department of the Interior has recognized as Indian tribes.
- Tribal Representative: any individual designated by a Tribe to contact state departments regarding tribal interests and requests.
- Tribal Liaison: the DIFS employee who is designated by the Director to fulfill the communication and reporting requirements set forth in Executive Directive 2019-17 and this policy.

Guidelines

A. Communication Initiated by DIFS

1. No later than 60 days after the adoption of this policy, the Tribal Liaison shall develop internal guidance for office directors that provides detail and examples on what may constitute Activities that require consultation.
2. Prior to commencing any Activity that may affect tribal interests, the director of the office responsible for the regulation of the Activity will determine whether the Activity is appropriate for consultation.
 - a. In analyzing whether consultation is necessary prior to an Activity, DIFS will begin with the assumption that consultation is advisable. Any Activity which requires DIFS to 1) enter onto tribal lands for any regulatory or enforcement reason, or 2) affects any business or Activity of any Tribe, or 3) may affect the health and welfare of tribal members should be considered as appropriate for consultation.
 - b. The determination regarding consultation on Activities other than those listed above will be based on whether the Activity has a Disproportionate Impact on a Tribe or Tribes compared to the non-tribal businesses or individuals in this state. Only Activities that have Disproportionate Impact on Tribes or tribal members will be subject to this consultation policy.
 - c. Beginning October 1, 2020, and on each April 1 and October 1 thereafter, each office director within the department shall review all current and proposed Activities to determine whether they may affect or

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benefit any or all of the twelve Tribes and submit to the Tribal Liaison a report summarizing any Activities that he or she believes should result in consultation. The Tribal Liaison shall compile the reports and forward them to the Senior Deputy Director.

d. All determinations regarding consultation must identify the Tribe(s) that would be potentially affected by the Activity, the Activity's potential implications for Tribes, the complexity of the Activity, and any time or resource constraints relevant to the application of the consultation process to the Activity.

2. Once the office director determines an Activity should include consultation, the Tribal Liaison shall be notified of the Activity. The Tribal Liaison will in turn notify the Tribal Representative(s) of the potentially affected Tribe(s) of the Activity and the opportunity to consult with DIFS.

3. The notification must include sufficient information for the Tribe(s) to determine whether the Tribe(s) wish(es) to proceed with the consultation process. The notification must also include information regarding any time constraints and apprise the Tribe(s) of how to provide input regarding the Activity. The notification must also include the contact information for the Tribal Liaison so that the Tribal Representative may accept or decline the offer to consult.

4. The Tribal Liaison will ensure that the Tribe's questions and concerns can be discussed with the office director, and obtain an information sharing and confidentiality agreement, if necessary. The consultation will occur directly between the Tribal Representative and the office director. The office director of the most appropriate office will ensure that the Tribal Representative timely receives all information necessary for the Tribe(s) to provide meaningful input and that the Tribe(s) is provided an opportunity to discuss the input with the office director.

5. After the initial consultation, the office director will inform the Tribal Liaison and the Tribe(s) of any significant changes to the Activity and afford the Tribe(s) the opportunity to provide input and to discuss any changes with the office director.

6. The office director will provide written feedback to the most senior tribal official(s) involved in the consultation and to the DIFS Tribal Liaison. The

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feedback will include information to demonstrate DIFS' consideration of tribal input in making its decision.

B. Communication Initiated by a Tribal Government

1. A tribal government may initiate the consultation process by identifying to the DIFS' Tribal Liaison an Activity that may be appropriate for consultation. The DIFS' Tribal Liaison will forward the request to the office director of the most appropriate office to determine whether the Activity meets the criteria for consultation. DIFS will give deference to any tribal requests for consultation and operate under the assumption that the requested consultation is appropriate.
2. The Tribal Liaison shall be notified of any contact between any DIFS office and any Tribe or tribal representative. The Tribal Liaison will maintain current contact information for tribal representatives and facilitate contact between the Tribe(s) and the appropriate DIFS office.
3. On a monthly basis, the Tribal Liaison will provide a list of Activities that required tribal consultation to the DIFS' Director, DIFS' Chief of Staff, and Senior Deputy Directors.

C. Annual Training

Any DIFS employees who may have direct interactions with Tribes or who work on matters that have a direct impact on Tribes shall participate in annual training. The governor's deputy legal counsel on tribal-state affairs will provide the necessary training materials. The training will explain the fundamentals of tribal sovereignty, tribal treaty rights, and tribal governance. At a minimum, the incumbents in the following positions, or their designees, are expected to attend:

1. Chief of Staff
2. All office directors
3. Tribal Liaison

All questions regarding this policy/procedure can be directed to:

DIFS-Tribal-Liaison@michigan.gov