



## Michigan Department of Natural Resources POLICY AND PROCEDURE

### **25.03-01 – Consultation with Federally Recognized Tribal Governments in Michigan (Issued: 10/21/2020)**

---

#### ***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 DNR seeks to strengthen our consultation, communication, coordination, and collaboration with the federally recognized Indian tribes located in Michigan.

#### ***Policy:***

This policy will specifically guide DNR 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 DNR to the tribe(s) involved in the consultation on how their input was considered by the DNR.

The DNR 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 DNR's policy to consult with the federally recognized Indian tribes located in Michigan regarding actions and decision that may affect tribal interests.

The DNR will strive to provide meaningful consultation with the federally recognized Indian tribes located in Michigan when a DNR decision or action is identified as potentially impacting the reserved treaty rights or tribal interest of a tribe or tribes. The DNR 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 into 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

## 25.03-01 – Consultation with Federally Recognized Tribal Governments in Michigan

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 Trevor VanDyke, Director of Legislative and Legal Affairs Office and the DNR's Tribal Liaison, at [Vandyket1@michigan.gov](mailto:Vandyket1@michigan.gov) or 517-284-6243.

### ***Roles and Responsibilities:***

#### **Department Tribal Liaison**

Responsibilities of the DNR's Tribal Liaison include the following:

1. Monitoring and ensuring DNR's implementation of and compliance with the accord, directive, and this policy.
2. Coordinating with DNR Divisions to further develop and review procedures for the implementation of this policy.
3. Coordinating DNR'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 DNR 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 DNR's compliance with the directive and the accord, and DNR'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 DNR'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 DNR Director no less than 21 days before the annual Tribal-State summit.

## 25.03-01 – Consultation with Federally Recognized Tribal Governments in Michigan

### **Division Tribal Coordinators**

Division Tribal Coordinators 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.

### **DNR Staff**

DNR staff can include staff from all levels within the DNR. DNR 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:***

DNR 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 DNR Tribal Liaison will coordinate with the governor's advisor on tribal-state affairs to ensure the appropriate training opportunity is provided.

### ***Administering Division:***

Legislative and Legal Affairs Office

### ***Procedure:***

- |  |   |
|--|---|
| DNR Staff  | 1. Identifies the possible need for a consultation before a decision or action was made.  |
| DNR Staff, Division Tribal Coordinators, and Department Tribal Liaison | 2. Uses the following mechanisms to identify if consultation is appropriate: <ol style="list-style-type: none"><li>a. <u>State-Initiated Identification</u>: When undertaking a decision or action, the DNR must evaluate whether the decision or action could impact the reserved treaty right of a tribe(s) or tribal interests in such a way that consultation would be appropriate. Decisions or actions that may be appropriate for consultation include rules or regulations; wildlife and fisheries orders; policies; emergency preparedness and responses; permits for archaeology on state lands; significant development projects that involve intrusive ground disturbance; historical interpretation; park management plans and any decision or action identified to require consultation by state or federal law or any existing consent decree or other</li></ol> |

## 25.03-01 – Consultation with Federally Recognized Tribal Governments in Michigan

agreement between the DNR and a tribal government.

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 implications for the 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 DNR staff are unclear if the decision or action warrants consultation, they should immediately contact the DNR Tribal Liaison for further assistance.

- b. Tribal-Government-Initiated Identification: A tribal government may initiate the consultation process by identifying for the DNR any proposed decision or action that may be appropriate for consultation. The DNR Tribal Liaison must work with the DNR Director to evaluate whether the activity is appropriate for consultation, and in doing so must afford substantial weight to the tribal government's request.
- c. Other Resources: DNR 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. These partnership groups should include but not be limited to the Chippewa Ottawa Resource Authority, the Great Lakes Indian Fish & Wildlife Commission, and the Michigan Anishinaabek Cultural Preservation & Repatriation Alliance.

DNR Tribal Liaison

- 3. Promptly notifies the tribe(s) potentially affected by proposed decision or action.

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.

Notification must come from the DNR 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.

**25.03-01 – Consultation with Federally Recognized Tribal Governments in Michigan**

4. The notification must include the following:
  - a. Sufficient information to permit the potentially affected tribe(s) to make an informed decision regarding whether to proceed with consultation.
  - b. Apprise the tribe(s) of how they can provide input regarding the proposed decision or action.
  - c. The proposed DNR's decision timeframe and when the DNR must receive a response from the tribe(s) regarding their interest in holding a consultation.
- Tribe(s) 5. Receives and reviews notification.
6. Submits feedback and suggestions, if necessary.  
NOTE: Feedback and suggestions may be provided to the DNR in whatever format the tribe(s) and the DNR mutually deem appropriate.
- DNR Tribal Liaison 7. Receives feedback and suggestions from the tribe(s).  
NOTE: The DNR must consider all input regarding the activity from any potentially affected tribe that may choose to offer it.
8. Coordinates with the tribe(s) to ensure the tribe(s):
  - a. Receives all the information necessary to provide the DNR with a meaningful input regarding the decision or action.
  - b. Is afforded due opportunity to discuss input with the DNR.
  - c. Is 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.
  - d. Is afforded due opportunity to provide and discuss with the DNR any additional input the tribe(s) may have regarding those changed circumstances.
9. If an in-person consultation meeting is scheduled, the notification of the meeting must be sent out at least 30 days in advance.  
NOTE: If the DNR does not receive a reply to the meeting invitation indicating tribal participation seven (7) days prior to the scheduled in-person meeting, the DNR should reschedule the meeting as a conference call meeting.
- DNR Tribal Liaison 10. After the meeting, provides feedback to the tribe(s) involved to explain how their input is being considered in the DNR's decision.  
NOTE: Unless otherwise agreed to by the tribe(s) and the DNR, 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.

**25.03-01 – Consultation with Federally Recognized Tribal Governments in Michigan**

**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.**

11. Notifies tribe(s) of final decision.

***Related References:***

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

[2002 Government to Government Accord](#)

**25.03-01 – Consultation with Federally Recognized Tribal Governments in Michigan**  
is hereby approved.



October 21, 2020

---

Daniel Eichinger, Director

Effective Date