



# DTMB ADMINISTRATIVE POLICY

## 100.31 TRIBAL CONSULTATION POLICY

**Policy Category:** Administrative  
**Effective Date:** 09/16/2020  
**Revision Date:**  
**Reviewed Date:**  
**Distribution:** DTMB Employees; DTMB divisions, offices, and other organizational units that fall within its jurisdiction, including Type I agencies, broadly referred to as “divisions” in this document.

### POLICY

This Policy establishes guidelines for consultation across DTMB 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.

### GENERAL INFORMATION

DTMB acknowledges tribal governments are sovereign entities with the inherent authority to exercise jurisdiction over their respective lands and citizens. Additionally, federally recognized Indian tribes possess the right to self-governance and self-determination. Accordingly, it is the goal of this policy 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 DTMB and tribal officials prior to DTMB taking actions or implementing decisions that may affect tribes. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by dialogue between DTMB and tribal governments.

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.

## PROCEDURE

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### All DTMB Divisions/Employees

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

#### Consultation Procedure:

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1. **Identification:** First step in the consultation process is the proper identification by DTMB of an action or decision that may be appropriate for consultation. 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 tribes of the decision or action, and any time or resources constraints relevant to the application of the consultation process to the decision or action.

When DTMB staff are unclear if the decision or action warrants consultation, they should immediately contact the DTMB Tribal Liaison for further assistance in deciding.

- a. DTMB staff and Department Tribal Liaison must use the following mechanisms to identify when decisions or actions are appropriate for consultation:
  - i. State-initiated Identification: When undertaking a decision or action, DTMB must evaluate whether the decision or action could impact tribal interests or rights in such a way that consultation would be appropriate. Decisions or actions that may be appropriate for consultation include rules or regulations; emergency preparedness and responses; and any decision or action identified to require consultation by state or federal law or any existing consent decree or other agreement between the state of Michigan and a tribal government.
  - ii. Tribal-Government-Initiated Identification: A tribal government may initiate the consultation process by identifying for DTMB any proposed decision or action that may be appropriate for consultation. The DTMB Tribal Liaison must work with the DTMB Director to evaluate whether the activity is appropriate for consultation.
  - iii. Other Resources: DTMB 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.
2. **Notification:** Once DTMB has identified a decision or action that may be appropriate for consultation, it must promptly notify the tribe(s) potentially affected by the proposed decision or action. 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 DTMB Tribal Liaison. The notification should be clear, direct and between persons responsible for addressing the concern. The notification must also include sufficient information to permit the potentially affected tribe(s) to make an informed decision regarding whether to proceed with consultation and must apprise the tribe(s) of how to provide input regarding the proposed decision or action.

3. **Input:** DTMB must then receive and consider input regarding the activity from any potentially affected tribe that may choose to offer it. Input may be provided to DTMB in whatever format the tribes and DTMB mutually deem appropriate. The DTMB Tribal Liaison must coordinate with the tribe(s) throughout this step to ensure that the tribe(s) participating in the consultation:
  - a. Receive all information necessary to provide DTMB with meaningful input regarding the decision or action;
  - b. Are afforded due opportunity to discuss that input with DTMB;
  - c. 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; and
  - d. Are afforded due opportunity to provide to and discuss with DTMB any additional input the tribe(s) may have regarding those changed circumstances.
4. **Follow up:** DTMB must then provide feedback to the tribe(s) involved in the consultation to explain how their input was considered in DTMB's final decision. Unless otherwise agreed to by the tribe(s) and DTMB, this 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.

## **Roles and Responsibilities**

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1. **Department Tribal Liaison:** Responsibilities of DTMB's Tribal Liaison include the following:
  - a. Monitoring and ensuring DTMB's implementation of and compliance with the accord, directive, and this policy.
  - b. Coordinating with DTMB Divisions to further develop and review procedures for the implementation of this policy.
  - c. Coordinating DTMB's interactions with the governments of Michigan's federally recognized Indian tribes.
  - d. Coordinating and implementing the tribal consultation process, including serving as a point of contact for DTMB staff, tribal governments, and other parties interested in the process.

- e. 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 or tribes or tribal interests.
- f. Communicating with the governor's advisor on tribal-state affairs regarding DTMB's compliance with the directive and the accord, and DTMB's interactions with Michigan's federally recognized Indian tribes.
- g. 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.
- h. Producing an annual report regarding the DTMB'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 DTMB Director no less than 21 days before the annual Tribal-State summit.

In compliance with the Directive, DTMB 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 an 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.

## **REFERENCES**

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[Executive Directive 2019-17](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90704-520036--,00.html) (https://www.michigan.gov/whitmer/0,9309,7-387-90499\_90704-520036--,00.html).

## **CONTACT / UPDATE RESPONSIBILITY**

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Any questions or concerns regarding this policy should be directed to Michelle Lange, DTMB Chief of Staff & Tribal Liaison, at LangeM7@michigan.gov.

## **APPROVING AUTHORITY**

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Brom Stibitz, Acting Director

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