

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 1 of 8

PURPOSE

To ensure meaningful and mutually beneficial communication and collaboration between Michigan's federally recognized tribes and LARA on all matters of shared concerns in a manner consistent with the 2002 Government-to-Government Accord ([accord](#)) and Executive Directive 2019-17 regarding State-Tribal Relations ([directive](#)).

POLICY

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

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

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 2 of 8

ROLES AND RESPONSIBILITIES

Department Tribal Liaison

Responsibilities of LARA's Tribal Liaison include:

1. Monitoring and ensuring LARA's implementation of and compliance with the accord, directive, and this policy.
2. Coordinating with LARA agencies, bureaus, and commissions to further develop and review procedures and guides for the implementation of this policy.
Note: The Marijuana Regulatory Agency (MRA) and the Michigan Public Service Commission (MPSC) are Type I agencies within LARA. Both agencies have appointed tribal liaisons. MRA has adopted and implemented an agency specific tribal consultation policy. MPSC follows the LARA tribal consultation policy and provides a specific guide for involvement by tribes in cases at the MPSC.
3. Coordinating LARA'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 LARA 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 have direct implications for tribes.
6. Communicating regularly with the governor's advisor on tribal-state affairs regarding LARA's compliance with the directive and the accord, and LARA'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 LARA's implementation of the directive and the accord. The report will highlight the most significant interactions, including collaborations and conflicts, between the department and Michigan's federally

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 3 of 8

recognized Indian tribes over the past year. The report must be submitted to the governor's advisor on tribal-state affairs and to the LARA Director no less than 21 days before the annual Tribal-State summit.

Agency, Bureau and Commission Tribal Coordinators

Agency, Bureau and Commission Tribal Coordinators serve as points of contact for LARA's Tribal Liaison as subject matter experts related to tribal affairs and agency, bureau and commission programs. Agency, bureau and commission coordinators will also serve as points of contact for agency, bureau and commission staff to assist in the implementation of this policy.

LARA Staff

LARA staff can include staff from all levels within LARA. LARA 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

A 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

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

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 4 of 8

PROCEDURE

Who

LARA Staff

LARA Staff, Division Tribal Coordinators, and Department Tribal Liaison

Does What

1. Identifies the possible need for a consultation after a decision or action was made.

2. Uses the following mechanisms to identify if consultation is appropriate:

- a. State-Initiated Identification: When undertaking a decision or action, LARA 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.

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

- b. Tribal-Government-Initiated Identification: A tribal government may initiate the consultation process by identifying for LARA any proposed decision or action that may be appropriate for consultation. LARA's Tribal Liaison must work with the LARA Director to evaluate whether the activity is

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 5 of 8

Who

LARA Staff, Division Tribal Coordinators, and Department Tribal Liaison

Does What

appropriate for consultation, and in doing so must afford substantial weight to the tribal government's request.

- c. Other Resources: LARA 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.

NOTE: Activities that may be appropriate for consultation include, but are not limited to, actions or decisions regarding: rules or regulations; policies; 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 LARA and a tribal government.

LARA 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 LARA 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

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 6 of 8

Who

Does What

LARA Tribal Liaison

persons responsible for addressing the concern.

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 LARA decision timeframe and when LARA 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 LARA in whatever format the tribe(s) and LARA mutually deem appropriate.

LARA Tribal Liaison

7. Receives feedback and suggestions from tribe(s).
- NOTE: LARA 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

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 7 of 8

Who

Does What

LARA Tribal Liaison

LARA with a meaningful input regarding the decision or action.

- b. Are afforded due opportunity to discuss input with LARA.
- 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.
- d. Are afforded due opportunity to provide and discuss with LARA 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 LARA does not receive a reply to the meeting invitation indicating tribal participation seven (7) days prior to the scheduled in-person meeting, LARA should reschedule the meeting as a conference call meeting.

LARA Tribal Liaison

10. After the meeting, provides feedback to the tribe(s) involved to explain how their input is being considered in LARA's decision.

NOTE: Unless otherwise agreed to by the tribe(s) and LARA, feedback must be in the form of a written communication from a senior department official

	Effective Date:	7/31/2020
	Policy #:	G-45
Subject: Procedure for Consulting with Michigan's Federally Recognized Tribal Governments		Page: 8 of 8

Who

LARA Tribal Liaison

Does What

involved in the consultation to the most senior tribal official involved in the consultation.

Feedback to the tribe(s) should be sent in advance of a final decision or action 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 or action.

Note: As used in this policy: "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.