

## ADMINISTRATIVE PROCEDURES MANUAL

TITLE: EFFECTIVE DATE: PROCEDURE #:

TRIBAL CONSULTATION October 1, 2020 36

**PURPOSE:** To provide a standard procedure for identifying issues of importance to tribes,

collaboration, information sharing, and formal consultation on departmental

decisions that are matters of shared concern.

**APPLICATION:** Department wide.

**GENERAL STATEMENT:** 

Michigan is home to twelve federally recognized Indian tribes. Each tribe is a sovereign government with an inherent right to self-governance and self-determination. Each has its own governing structure, culture, traditions, laws, regulations, and policies, which it uses to exercise jurisdiction over land and people. And each has a special trust relationship with the federal government. These principles are rooted in and affirmed by the Constitution, treaties, statutes, and court opinions of the United States, and they fundamentally define the unique legal relationship between these tribes and the State of Michigan. The State of Michigan shares a responsibility with Michigan's federally recognized Indian tribes to provide for and protect the health, safety, and welfare of their common constituents.

The Department must adopt and implement a process for consulting on a government-to-government basis with Michigan's federally recognized Indian tribes and must engage in this consultation process before taking an action or implementing a decision that may affect one or more of these tribes.

Activities 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; non-regulatory activities; federal authorizations or delegations; grant opportunities; and efforts to carry out state obligations under a state compact or agreement. When in doubt, it is best to offer consultation.

## RESPONSIBILITY:

## **ACTION:**

DIRECTOR:

Designate a tribal liaison, per the 2002 Government to Government Accord and Executive Directive 2019-17.

TRIBAL LIAISON

- 1. Monitor and ensure the department's implementation of and compliance with this Executive Directive 2019-17 and the Accord.
- 2. Coordinate the department's interactions with the governments of Michigan's federally recognized Indian tribes.
- 3. Coordinate and implement the department's tribal consultation process, including serving as a point-of-contact for department staff, tribal governments, and other parties interested in the process.
- 4. Communicate regularly with the governor's advisor on tribal-state affairs regarding the department's compliance with Executive Directive 2019-17 and the Accord, and regarding the department's interactions with Michigan's federally recognized Indian tribes.

- Participate 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.
- 6. Produce an annual report regarding the department's implementation of Executive Directive 2019-17 and the Accord, including a description of the most significant interactions, including collaborations and conflicts, between the department and Michigan's federally recognized Indian tribes over the past year. The tribal liaison must provide this report to the Governor's advisor on tribal-state affairs and to the director of the department no less than 21 days before the annual meeting or summit.
- 7. Educate departmental staff on tribal history, treaty rights and sovereignty, and the importance of collaboration and consultation, including assisting with identifying matters for possible consultation.
- 8. Facilitate annual training on tribal-state relations for all department employees who have direct interactions with tribes or who work on matters that have direct implications for tribes.
- 9. During consultation, work with each tribe to determine the method(s) of notification and the individuals who will be involved, as well as provide notifications of timelines.

DEPARTMENT

The department will use this process to effectuate consultation:

- 1. Step One Identification. Identification of actions or decisions that may be appropriate for consultation based on the nature of the matter, the identity of the tribe(s) potentially affected, and the activity's potential implications for tribes. This is based upon prior experiences with tribal interest and involvement, and an evaluation of whether the action or decision may affect tribal interests such that consultation would be appropriate. Any tribe may also request consultation on a departmental activity, and the tribal liaison will facilitate an evaluation and response to that request.
- 2. Step Two Notification. The tribal liaison will promptly notify the tribe(s) potentially affected by the activity. Notification must 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 activity.
- 3. Step 3 Input. The department must then receive and consider input regarding the activity from any potentially affected tribe that may choose to offer it. This may occur through in-person or virtual meetings in addition to correspondence. Through this process, the department will inform the interested tribe(s) of any significant changes that occur during the process. Someone with decision-making authority must represent the department in all consultations.
- 4. Step 4 Follow-up. The department must then provide feedback to the tribe(s) involved in the consultation to explain how their input was considered in the final decision or action.

DIVISION DIRECTORS

Identify actions or decisions that may be appropriate for consultation based on the nature of the matter, the identity of the tribe(s) potentially affected, and the activity's potential implications for tribes. Relay that information to the tribal liaison.

Consider designation of a divisional tribal liaison to act as a resource and subject matter specialist on topics of ongoing or routine interest to tribes.

**ALL STAFF** 

Staff will report interactions with tribes and consider whether their work has potential impact to tribes, either due to its nature or geographic location. Staff who have direct interactions with tribes or who work on matters that have direct implications for tribes will participate in annual training.

## REVISION HISTORY: Revision #1:

Date: October 1, 2020

SUNSET DATE: RESPONSIBLE DIVISION/PERSON October 1, 2023 Executive Office/Tribal Liaison