

# PROCEDURE MANUAL

## 16-01



MICHIGAN STATE POLICE

## Tribal Consultation

**Purpose:** This manual provides guidance for consulting with the federally recognized Indian tribes located in Michigan. Through the implementation of these procedures, the department seeks to strengthen our consultation, communication, coordination, and collaboration with the sovereign tribes sharing geography with the state of Michigan.

**Effective Date:** August 19, 2022

## Table of Contents

---

### Tribal Consultation

<b>Section 1: Department Tribal Liaison</b>	<b>2</b>
1.1 Selection of the Department Tribal Liaison	2
1.2 Responsibilities of the Department Tribal Liaison	2
<b>Section 2: Tribal Consultation and Department Actions</b>	<b>2</b>
2.1 Identification of Action Needed	2
2.2 Tribal Notification	3
2.3 Coordination of Feedback	4
2.4 Consideration of Feedback and Final Decision	4
2.5 Related References	4

## Definitions:

---

**Consultation:** An enhanced form of communication which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision making with the goal of reaching consensus on issues.

**Department Tribal Liaison:** Coordinator of interactions with the governments of the federally recognized Indian Tribes sharing geography with the state of Michigan.

**Division Tribal Coordinators:** Division Tribal Coordinators may be assigned by division commanders to 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 written directive.

**Federally Recognized Indian Tribe:** Indian tribes with whom the federal government maintains an official government-to-government relationship, usually established by a federal treaty, statute, executive order, court order, or a Federal Administrative Action. The Bureau of Indian Affairs maintains and regularly publishes the list of federally recognized Indian tribes.

**Member:** Includes staff from all levels within the department. Members 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.

## Section 1: Department Tribal Liaison

---

### 1.1 Selection of the Department Tribal Liaison

The Director shall select a member of the Transparency and Accountability Division to serve as the department's Tribal Liaison.

### 1.2 Responsibilities of the Department Tribal Liaison

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

- a. Monitoring and ensuring the department's implementation of and compliance with the Accord, Executive Directive No. 2019-17 (Directive), and the department's Tribal Consultation written directives.
- b. Coordinating with department work units to further develop and review procedures for the implementation of the department's Tribal Consultation written directives.
- c. Coordinating the department's interactions with the governments of the federally recognized Indian tribes sharing geography with the state of Michigan.
- d. Coordinating and implementing the tribal consultation process, including serving as a point of contact for department members, tribal governments, and other parties interested in the process.
- e. Coordinate annual training on tribal-state relations for all department members 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.
- f. Communicating with the governor's advisor on tribal-state affairs regarding department compliance with the Directive and the Accord, and department interactions with the federally recognized Indian tribes sharing geography with the state of Michigan.
- 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 department's implementation of the Executive Directive and the Accord. The report must be submitted to the Governor's advisor on tribal-state affairs and to the Director no less than 21 days before the annual Tribal-State summit.

## Section 2: Tribal Consultation and Department Actions

---

### 2.1 Identification of Action Needed

Upon identifying the possible need for consultation after determining that an action may have potential implications for one or more of the tribes, the following mechanisms are to be used to determine the appropriate action:

- a. State-Initiated Identification
  - i. When undertaking a decision or action, members must evaluate whether the decision or action may affect tribal interests such that consultation would be appropriate.

Decisions or actions that may be appropriate for consultation include, but are not limited to:

1. Actions or decisions regarding rules or regulations
  2. Policies
  3. Guidance documents, or directives
  4. Permits
  5. Civil enforcement and compliance monitoring
  6. Emergency preparedness and response
  7. Federal authorizations or delegations
  8. Efforts to carry out state obligations under a state compact or agreement.
- ii. 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 members are unclear if the decision or action warrants consultation, they should immediately contact the Department Tribal Liaison for further assistance.
- b. Tribal-Government-Initiated Identification
- i. A tribal government may initiate the consultation process by identifying for the department any proposed decision or action that may be appropriate for consultation. The Department Tribal Liaison must work with the 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
- i. Other relevant resources, such as tribal partnership groups in which the tribes may be participants, shall be used to assist in identifying activities that may be appropriate for consultation.

## 2.2 Tribal Notification

- a. Once aware, the Department Tribal Liaison shall promptly notify the tribe affected by the proposed decision or action.
- i. 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.
- b. Notification shall include:
- i. Sufficient information to permit the potentially affected tribe(s) to make an informed decision regarding whether to proceed with consultation.
- ii. Advisal to the tribe(s) of how they can provide input regarding the proposed decision or action.

- iii. The proposed decision timeframe and when the department must receive a response from the tribe(s) regarding their interest in holding a consultation.

## 2.3 Coordination of Feedback

Following notification, the tribe may provide feedback and suggestions to the department in whatever format is deemed appropriate. Upon receipt of the feedback or suggestions, the Department Tribal Liaison shall coordinate to ensure the tribe(s):

- a. Receives all the information necessary to provide the department with meaningful input regarding the decision or action.
- b. Are afforded due opportunity to discuss input with the department.
- 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 the department any additional input the tribe(s) may have regarding those changed circumstances.

If an in-person consultation meeting is scheduled, the notification of the meeting must be distributed at least 30 days in advance.

If the department does not receive a reply to the meeting invitation indicating tribal participation seven (7) days prior to the scheduled in-person meeting, the department should reschedule the meeting as a conference call meeting.

## 2.4 Consideration of Feedback and Final Decision

- a. After the meeting, the Department Tribal Liaison provides feedback to the tribe(s) involved to explain how their input is being considered in the department's decision.
  - i. Unless otherwise agreed to by the tribe(s) and the department, 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.
- b. 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.
- c. The Department Tribal Liaison will notify the tribe(s) of the final decision.

## 2.5 Related References

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

2002 Government to Government Accord

**Accreditation Standards:** N/A