



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

EXECUTIVE DIRECTIVE

No. 2019-17

To: State Department Directors and Autonomous Agency Heads
From: Governor Gretchen Whitmer
Date: October 31, 2019
Re: State-Tribal Relations

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. This responsibility is deeply important and calls for open communication and robust collaboration between the State and the tribes. Mutually beneficial cooperation and understanding, as well as the resolution of occasional disagreements, can best be achieved through regular consultation between the State and tribes on matters of shared concern.

On October 28, 2002, the State of Michigan entered into a Government to Government Accord (the "Accord") with several federally recognized Indian tribes located in Michigan. This Accord served as an acknowledgement by the State of each tribes' sovereignty and right to self-governance and self-determination, and as a commitment by the State to use a process of consultation with the tribes to minimize and avoid disputes.

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 and agencies 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 and agencies on all matters of shared concern. And third, it builds into the operations of the

State of Michigan the infrastructure necessary to ensure that the objectives of this directive and the Accord, and the strong tribal-state relationship envisioned by them, are realized as fully as possible.

Accordingly, acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. Each department and agency must recognize, and must ensure its policies and practices effectuate, the following fundamental principles concerning Indian tribes, bands, and communities that the Secretary of the United States Department of Interior has recognized as Indian tribes pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a:
 - (a) Federally recognized Indian tribes are sovereign governmental entities.
 - (b) Federally recognized Indian tribes possess inherent authority to exercise jurisdiction over their respective lands and citizens.
 - (c) Federally recognized Indian tribes possess the right to self-governance and self-determination.
 - (d) The United States has a unique trust relationship with federally recognized Indian tribes as set forth in the United States Constitution, treaties, statutes, executive orders, court decisions, and the general course of dealings of the United States with the Indian nations.
 - (e) The State of Michigan has a unique government-to-government relationship with each of Michigan's federally recognized Indian tribes, and that relationship is shaped by accords, compacts, statutes, court opinions, and a multitude of intergovernmental interactions.
2. Each department and agency must adopt and implement a process for consulting on a government-to-government basis with Michigan's federally recognized Indian tribes. The department or agency must engage in this consultation process before taking an action or implementing a decision that may affect one or more of these tribes. This consultation process must adhere to the framework and requirements set forth below, which are designed to ensure that the process is consistent and predictable across departments and agencies but also flexible enough to meet the particular needs and circumstances of each consultation. Meaningful communication and collaboration on matters of shared concern must always be the core and driving objective of this consultation process.
 - (a) *Step One – Identification:* The first step in the consultation process is the identification by the department or agency of an activity (i.e., an action or decision) that may be appropriate for consultation. Identification includes a determination of the complexity of the activity, the identity of the tribe(s) potentially affected by the activity, the activity's potential implications for tribes, and any time or resource constraints relevant to the application of the consultation process to the activity.

Departments and agencies must use the following mechanisms to identify activities appropriate for consultation:

- (1) *State-Initiated Identification*: When undertaking an activity, state departments and agencies must evaluate whether the action or decision may affect tribal interests such that consultation would be appropriate.
- (2) *Tribal-Government-Initiated Identification*: A tribal government may initiate the consultation process by identifying for a department or agency an activity that may be appropriate for consultation. The department or agency must then evaluate whether the activity is appropriate for consultation, and it must afford substantial weight to the tribal government's request in performing that evaluation.
- (3) *Other Resources*: Departments and agencies 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.

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; federal authorizations or delegations; and efforts to carry out state obligations under a state compact or agreement.

- (b) *Step Two – Notification*: As soon as a department or agency has identified an activity that may be appropriate for consultation, it must 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. 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. Departments and agencies must strive to honor tribal preferences regarding the specific method of notification, subject to applicable time and resource constraints.
- (c) *Step Three – Input*: The department or agency 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 the department or agency in whatever format the tribe and the department or agency may mutually deem appropriate. The department or agency must coordinate with the tribe(s) throughout this step to ensure that the tribe(s) participating in the consultation: (1) receive all information necessary to provide the department or agency with meaningful input regarding the activity; (2) are afforded due opportunity to discuss that input with the department or agency; (3) are apprised of any significant changes to the activity, or any other issues that may arise as to it, over the course of the consultation process; and (4) are afforded due opportunity to provide to and discuss with the department or agency any additional input the tribe(s) may have regarding those changed circumstances.


- (d) *Step Four – Follow-up:* The department or agency 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. This feedback must be in the form of a written communication from a senior department or agency official involved in the consultation to the most senior tribal official involved in the consultation.
3. The governor’s deputy legal counsel for tribal-state affairs, or such other individual as the governor may designate, must serve as the governor’s advisor on tribal-state affairs and is responsible for monitoring the implementation of this directive and the Accord. These duties include assisting in the identification of department or agency activities appropriate for consultation, evaluating the adequacy of consultations undertaken by departments and agencies, and ensuring that department and agency consultation practices are consistent with this directive. The governor’s advisor on tribal-state affairs will also serve as the governor’s representative to the Tribal-State Forum formed under the Accord and, together with the tribal representatives to the Forum, must:
- (a) Monitor, confer, critically assess, make recommendations, and prepare an annual report regarding the implementation of this directive and the Accord;
 - (b) Organize an annual meeting or summit between the governor and the tribal leadership;
 - (c) Foster improved government-to-government communications between the executive office of the governor and tribal governments;
 - (d) Ensure that copies of tribal-state accords, each department’s tribal consultation policy, and contact information for the tribal liaisons described in paragraph 4 below are regularly updated and available online; and
 - (e) Encourage the state legislature to adopt a tribal consultation policy and appoint a tribal liaison.
4. Within 30 days of the effective date of this directive, each department and agency must designate an individual serving in the department or agency as the department’s or agency’s tribal liaison. The responsibilities of this liaison must include:
- (a) Monitoring and ensuring the department’s or agency’s implementation of and compliance with this directive and the Accord.
 - (b) Coordinating the department’s or agency’s interactions with the governments of Michigan’s federally recognized Indian tribes.
 - (c) Coordinating and implementing the department’s or agency’s tribal consultation process, including serving as a point-of-contact for department or agency staff, tribal governments, and other parties interested in the process. Within 90 days of the effective date of this directive, the liaison must submit a report to the governor’s advisor on tribal-state affairs describing a plan for adopting a consultation policy by the department or agency pursuant to section (2). Within 180 days of the effective

date of this directive, the department must adopt a consultation policy consistent with section (2).

- (d) Communicating regularly with the governor's advisor on tribal-state affairs regarding the department's or agency's compliance with this directive and the Accord, and regarding the department's or agency's interactions with Michigan's federally recognized Indian tribes.
 - (e) 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.
 - (f) Producing an annual report regarding the department's or agency's implementation of this directive and the Accord. This report must include a description of the most significant interactions, including collaborations and conflicts, between the department or agency 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 or head of the department or agency no less than 21 days before the annual meeting or summit identified in section (3)(b).
5. Each department and agency 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.
 6. This directive does not foreclose, discourage, or supplant existing effective relationships, cooperative efforts, and lines of communication between the departments and agencies and Michigan's federally recognized Indian tribes. Moreover, this directive is not enforceable by third parties, does not confer standing on any individual or entity, and does not supersede any legal obligations. Absence of agreement between the consulting department or agency and one or more tribes does not bar the department or agency from acting.
 7. As used in this directive, "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.

This directive is effective immediately.

Thank you for your cooperation in implementing this directive.



Gretchen Whitmer
Governor