



Minnesota Department of Commerce Minnesota Tribal Nations Consultation Policy

I. Introduction

A unique government-to-government relationship exists between the 11 Federally- recognized Minnesota Tribal Nations, the State of Minnesota, and the Federal Government. The U.S. Constitution, numerous treaties, statutes, federal case law, regulations, Executive Orders, as well as political, legal, moral, and ethical principles legally recognize the inherent self-governance and self-determination rights of Indian Tribes. On August 8, 2013, Governor Mark Dayton issued Executive Order 13-10 (EO 13-10) and on April 4, 2019, Governor Tim Walz issued Executive Order 19-24 affirming this unique and legally established relationship between the State of Minnesota and Minnesota Tribal Nations and requiring certain Cabinet-level agencies to implement a Tribal Consultation Policy. The 2021 Special Session codified the **GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH TRIBAL GOVERNMENTS** into statute, Laws of MN 2021, 1st Spec. Sess. Chapter 14, article 11, section 5.

II. Policy Statement

- 2.1** The Minnesota Department of Commerce (“Commerce”) recognizes Tribal Nations in Minnesota (“TNs”) as sovereigns, not political subdivisions of States or other governmental units, with inherent authority and responsibility for self-governance.
- 2.2** In adherence with the Laws of MN 2021, 1st Spec. Sess. Chapter 14, article 11, section 5, Commerce is implementing the following policy (“Policy”) to create an accountable, mutual, and intentional consultation process that encourages and promotes dialogue between TNs and Commerce for input and guidance when Commerce proposes actions and/or policies that may implicate or affect the interests of TNs.
- 2.3** Commerce will encourage cooperation between tribal, federal, state, and local governments to resolve issues of mutual concern.
- 2.4** Commerce will intentionally and proactively identify and consider when its actions and/or decisions may affect Tribal Interests and facilitate informed decision-making with the goal of

achieving mutually beneficial solutions.

III. Definitions

3.1 “Commerce” – is the agency, agency leadership, staff and/or designated officials including directors, managers, supervisors, and technical staff responsible for supporting and implementing this policy.

3.2 “Consultation” – is the government-to-government process of meaningful communication and coordination between Commerce and Tribal officials in the development of policy on matters that have Tribal implications. Consultation is a proactive, affirmative process of identifying and seeking input from appropriate Tribal governments and considering their interest as a necessary and integral part of the decision-making process. Consultation emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinions among parties, which leads to mutual understanding and comprehension.

3.3 “Coordination” – is the process by which each party:

Shares and compares, in a timely manner, its plans, programs, projects and schedules with the related plans, programs, projects, and schedules of the other parties; and

Adjusts its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of Commerce-related projects and services.

Coordination with groups or entities that have representation on some or all of the governing bodies of the Minnesota Tribal governments, such as the Minnesota Indian Affairs Council or the Minnesota Chippewa Tribe, is encouraged but does not satisfy an agency's duty to consult with individual Minnesota Tribal governments on matters that have Tribal implications.

3.4 “Effective Date”— the effective date of this Policy is the date of execution. The Policy will remain in effect until it is amended, superseded by a Commerce Administrative Order, or revoked.

3.5 “Tribal Interests” – shall include the health and well-being of Tribal members; Tribal sovereignty and other legal rights of Tribes and Tribal members; Tribal lands and property; rules, legislative proposals, policies, events, and issues that TNs have communicated, through the consultation process established in this Policy to Commerce as being significant to Tribes.

3.6 “Tribal Nations” (TNs) –11 Federally-recognized Tribes in Minnesota: Bois Forte Band of Ojibwe; Fond Du Lac Band of Lake Superior Chippewa; Grand Portage Band of Chippewa Indians; Leech Lake Band of Ojibwe; Lower Sioux Indian Community; Mille Lacs Band of Ojibwe; Prairie Island Indian Community; Red Lake Nation; Shakopee Mdewakanton Sioux Community; Upper Sioux Indian Community; and the White Earth Nation.

3.7 “Tribal Sovereignty” - is the right of American Indian tribes to determine their own future. Tribal nations possess all inherent powers of any sovereign government, except those powers that have been limited or qualified by treaties, agreements or an act of Congress. American Indian tribes, through elected tribal governments, have the right to operate as self-governing nations.

3.8 “Tribal State Relations Training” (TSRT) –Instituted by the state as the foundation and basis of all other Tribal relations training resources; 15-hour instructor-led certification course is the preferred delivery method, there is a 15-hour virtual cohort course and are

both supported by e-learning modules in the state ELM system.

IV. Implementation

- 4.1 Identification of Required Consultation.** The analysis, planning, and implementation of Consultation should take into account all aspects of the action under consideration, including but not limited to, the complexity, implications, and resource constraints of the activity.
- 4.2 Timing.** Commerce will consult early and often with TNs prior to the agency taking action or implementing decisions that may directly affect Tribal Interests about whether, how, or when to act on a matter under consideration. Consultation is required on an ongoing basis, including any additions or amendments that occur later in the process. Prior to September 1 each year Commerce will consult with each TN to engage in development of legislative and fiscal proposals for submission into the Governor's budget and legislative proposal. By October 1 each year, these priorities will be submitted to the Office of the Governor and Lieutenant Governor for review.
- 4.3 Notification.** Consultation may be initiated by written notification or other method either by Commerce or any of the TNs. Commerce's notification will be from the Commissioner, addressed to a Tribal Chairperson and the highest ranking applicable Executive Administrator, or Tribal Council officer and should include sufficient information for the TN to make informed decisions about participation. Commerce Tribal Liaison will follow up on an official request from TNs in a timely manner with the appropriate tribal representative.
- 4.4 Presence of Third-Parties.** Either the TN or Commerce may invite third-parties to participate in consultation with the agreement of the consulting parties.
- 4.5 Record-Keeping.** An Administrative Record shall be created by Commerce, if needed, and sent to the most senior Tribal Official involved in the consultation. The TN will review and make changes and/or comments to be incorporated into a final administrative record created by and distributed by Commerce.
- 4.6 Input.** Either Commerce or the TN can provide input at meetings, through written and oral exchanges of information, phone calls, or other ways depending on the specific circumstances.

V. Roles and Responsibilities

- 5.1 Commissioner of Commerce.** In accordance with this policy, the Commissioner will engage in Consultation with the identified Tribal Leader. The Commissioner will also appoint a person from Commerce to serve as the Department Tribal Liaison.
 - i. Ensure that Commerce senior leadership understands and implements the requirements of the policy.
 - ii. Actively supports and ensures the underlying principles of the policy into Commerce's vision, mission and core values so that Commerce programs, projects and planning reflect the objectives and requirements of this policy.
 - iii. Attend TSRT as well as Deputy Commissioners and Assistant Commissioners who will also identify

staff to complete TSRT.

Tribal Liaison. The Tribal Liaison is responsible for the coordination and implementation of Tribal Consultation and Coordination in accordance with this Policy and has the authority to:

- i. Identify and define appropriate Commerce-initiated issues for Consultation.
- ii. Evaluate the adequacy of that Consultation.
- iii. Ensure all Tribal nation requests for Consultation are delivered to the Commissioner in a timely manner;
- iv. Ensure that Commerce program and Consultation practices are consistent with this Policy;
- v. Actively support and participate in TSRT in facilitating breakout sessions and providing support to agency attendees.
- vi. Provide guidance on developing process when working with TNs
- vii. Ensure that a formal record of the Consultation is maintained, if needed; and
- viii. Identify the appropriate and essential Commerce staff necessary for Consultation;
- ix. Serve as the designated Commerce representative on the Indian Affairs council when the Commissioner is not in attendance
- x. Establish and promote effective working partnerships between Commerce leadership and staff and that of Tribes;

5.2 Employees. Support Commerce efforts and strategies to integrate this policy into programs, projects and planning as they relate to the policy

- i. Read, understand and follow the policy
- ii. All agency employees whose work is likely to impact TNs will attend TSRT
- iii. Work with Tribal Liaison to develop guidance on business unit process working with TNs

VI. Preemption

- 6.1** Nothing in this policy shall require Commerce to violate or ignore any laws, rules, directives or other legal requirement or obligations imposed by state or federal law, set forth in agreements or compacts between one or more of the TNs and the State or its agencies.
- 6.2** Consultations are not intended to preclude or replace the existing, ongoing, and future meetings, communications, and exchanges of information and input that occur between Commerce and TN.
- 6.3** If any provision of this policy conflicts with state or federal law, administrative rules, or other legal requirements or obligations, state and federal law shall control.

Responsible Manager(s):

Contact Person(s):

Related Commerce Policies:

Agency Signature: 
[Signature gif/jpg of Commissioner]

Tribal Liaison Signature: 

Effective date of this policy: 1/22/2020