



## Minnesota Tribal Nations Government-to-Government relationship with MnDOT

*Providing for Consultation,  
Coordination, and Cooperation*

### MnDOT Policy AD005

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*Effective Date as signed by Responsible  
Senior Officer*

Last Update  
*New policy*

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## Policy Statement

The Minnesota Department of Transportation (MnDOT) seeks to foster and facilitate positive government-to-government relations between the Department and all federally recognized Minnesota Tribal Nations<sup>1</sup>.

*“Indian Nations have always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil ... The very term “nation” so generally applied to them, means “a people distinct from others.”*

*Chief Justice John Marshall  
United States Supreme Court  
Worcester v. Georgia  
31 US (6 Pet.) 1515, 561 (1832)*

The Department requires that the principles of the “**Minnesota Tribal Nations**” policy are to be considered at all phases of planning and project development in the establishment, development, operation, and maintenance of a comprehensive, integrated, and connected multimodal transportation system.

In order to promote successful consultation and collaboration between tribal governments and the state, the following guiding principles will be followed:

- We commit to meet annually with Minnesota Tribal Nations to identify priority issues for consultation.
- When tribal officials request consultation, the Department will honor the tribal government’s request with consideration of the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.
- We will consult in face-to-face meetings between the appropriate level staff to increase understandings of any proposed actions and enhance the development of effective outcomes and solutions.
- We will build upon already established and on-going relationships between tribal and state officials.
- We will consult with honesty, integrity and transparency in the consultation process. Mutual respect and trust are fundamental elements in establishing a good consultative relationship.
- We will be open with information that may be beneficial or critical to making a decision or developing a position.
- We will, together with tribal nations, remain flexible to attain practical and progressive solutions.

<sup>1</sup> In Minnesota, the federally recognized tribes are: Bois Forte Band of Chippewa; Fond du Lac Band of Lake Superior Chippewa; Grand Portage Band of Lake Superior Chippewa; 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 Community; White Earth Nation.

## Reason for Policy

The purpose of this policy is to develop, improve, and maintain collaborative relationships between the Department and Minnesota Tribal Nations by:

- Implementing agreed-upon processes, when the Department develops, changes or approves policies, programs, or services with tribal implications.
- Aligning with all state and federal laws, regulations and with tribal laws.

[Executive Order 13-10, State of Minnesota](#) requires that all Executive Branch agencies of the State of Minnesota shall recognize the unique legal relationship between the State of Minnesota and the Minnesota Tribal Nations. Cabinet-level Executive Branch agencies shall coordinate, as needed, with the tribal liaison in the Governor's Office to consult with the Minnesota Tribal Nations.

In addition, federal tribal consultation statutes, orders, regulations, rules, policies, manuals, protocols and guidance are to be taken into consideration in government-to-government relationship with Tribal Nations, such as [Code of Federal Regulations \(CFR\) Title 23, Tribal Consultation](#) to ensure consistency and compliance with the purpose and intent with each requirement.

Consultation is a process of meaningful communication and coordination between MnDOT and tribal officials prior to taking actions or implementing decisions that may affect tribes or tribal interests. As a process, consultation includes several methods of interaction that may occur at different levels.

This policy seeks to strike a balance between providing sufficient direction for purposes of achieving consistency and predictability. In addition allows for and encourages the development of consultative approaches to reflect the circumstances of each situation and to accommodate the preferences of tribal governments.

This policy is prepared in accordance with Minnesota statutes and rules, federal statutes and regulations. The Department, in conjunction with tribal nations, will address issues and opportunities, in context with the law and remain flexible in the means to attain practical and progressive solutions.

## Who Needs to Know this Policy

- All MnDOT employees shall become familiar with the purpose and intent of this policy to further government-to-government relations with tribal nations.
- All MnDOT employees whose work responsibilities involve actual or potential actions which may affect tribes or tribal interests shall follow this policy.
- All consultants and contractors responsible for planning, designing, constructing or maintaining projects along trunk highway right of way on or abutting tribal lands shall become familiar with this policy.

## Procedures

To the fullest extent possible, the Department will develop and utilize a **"big picture view"** of issues to address broad-scale opportunities or challenges, in order to promote and successfully implement government-to-government relations between MnDOT and tribal nations. Identified below, there are three focus areas MnDOT will concentrate on to fulfill the spirit and intent of the Executive Order:

### *Focus Area 1: Transportation System*

#### *Providing for Consultation, Coordination, and Cooperation*

Consistent with MnDOT's mission of providing the highest quality, dependable multimodal transportation system, the [Minnesota GO](#) vision adopted in November 2011 establishes a vision for a multimodal transportation system that maximizes the health of people, the environment and our economy. Achieving this vision includes having a transportation system that:

- Provides safe, convenient, efficient and effective movement of people and goods
- Is accessible regardless of socioeconomic status or individual ability

The procedures for implementing the **"Minnesota Tribal Nations"** policy in planning, project development and scoping, design, construction, operations and maintenance, and measurement and evaluation are specified in numerous agency

policies and technical documents. MnDOT will apply relevant Minnesota or federal statutes, rules, or industry codes as appropriate to the circumstances of the implementation of the “*Minnesota Tribal Nations*” policy in consultation with tribal nations.

### ***Planning Stage***

- MnDOT requires tribal input in the development of the [State Transportation Investment Plan](#) and MnDOT District Transportation Improvement Plans.
- MnDOT’s transportation plans will catalog system condition and needs so that projects may prioritize and work towards systems and networks that eliminate or minimize the impact of system and network gaps and barriers for tribal nation’s members.
- Successful statewide implementation of the “*Minnesota Tribal Nations*” policy requires multi-jurisdictional coordination, collaboration, partnering and planning with tribal nations, and other implementing agencies to accomplish efficient and effective system planning and the connectivity that should be addressed at network, corridor and project levels. An effective government-to-government relationship between MnDOT and the tribal nations will provide opportunities to address needs.
- MnDOT shall employ early, continuous and meaningful involvement of the public and the full range of affected stakeholders throughout its planning processes and shall reach out to populations who may be underrepresented or underserved by the transportation system. The stakeholders should include all populations covered under the following, [Americans with Disabilities Act \(1990\)](#), [Title VI Nondiscrimination and Assurance](#) and [Executive Order 12898, Environmental Justice](#) and other Civil Rights laws.
- Tribal nation interests will be addressed using transparent, effective and project appropriate public involvement processes.

### ***Project Development and Scoping Stage***

- Considerations, in regard to all tribal nations, shall be documented in the project development process scoping worksheets and documents.
- Plans and projects will consider future demand from all users along and across all corridors. These needs might be met in phased projects in the corridor.
- MnDOT shall consider all impacted tribal nation’s members in project safety reviews, road safety audits, and intersection control evaluations.
- Refer to the following links for further information, [Highway Project Development Process](#); and the [Project Management, Processes, Guidance and Tools](#).

### ***Design Stage***

- Designers will use flexible design to provide and balance the needs of tribal nation’s safety, and mobility, economy, design consistency, community values, environmental and energy goals, health and aesthetics. MnDOT’s flexible design initiative intends to provide appropriate flexibility inherent in each design element as well as design guidance to encourage solutions oriented toward facility performance and system-wide return on investment.
- Designers shall use MnDOT adopted design standards and guidance as the design basis for projects and will consult with tribal nations.
- Design exceptions and variances shall follow established MnDOT procedures.

### ***Construction Stage***

- As directed by MnDOT’s Field Guide, construction zones will provide alternative and accessible routes and detour provisions to perpetuate previously existing modes of travel, including pedestrians and bicyclists, when closing roads, bridges or sidewalks for construction projects and maintenance work that lasts more than three days.

- Construction staff will coordinate with the Office of Freight and Commercial Vehicle Operations to ensure that oversized/overweight permitted loads are appropriately detoured and minimize the impact on tribal nations.

***Operations and Maintenance Stage, Opportunities for Consultation***

- Work with tribal nations to identify, and coordinate with, the jurisdictions responsible for providing appropriate maintenance and snow removal on all facilities including sidewalks, crossings, bridges, underpasses, and transit stops and hubs.

***Focus Area 2: Employee Training and Outreach***

***Providing for Consultation, Coordination, and Cooperation with Tribal Nations***

Consistent with [MnDOT Statewide Training Guidelines](#), employees shall coordinate with their supervisors for approval of job-assigned training about American Indian tribal governments, histories, cultures and traditions in order to:

- Empower state employees to work effectively with tribal nations; and
- Promote authentic and respectful relationships between state agencies and American Indian tribes.

***Examples of Tribal-State Relations Training***

- ***Tribal – State Relations Training (15 hour instructor-led certification course)***  
Training is designed for decision-makers and front-line staff who work with the tribes on a regular or face-to-face basis.
- ***Tribal – State Relations Training (Condensed web based course)***  
Training will provide all MnDOT staff with information about the intent of the policy and promote an understanding of government-to-government relations with tribal nations.
- ***Tribal Government Specific Training (Video and resource materials)***  
This training is provided for agency staff whose work directly involves interacting with respective tribal governments (as appropriate by location and/or responsibility). Resource information about each of the 11 Minnesota tribal governments, including an understanding of the history, culture, and organizational design of each tribal government is available.
- ***Issue/Topic Specific Training (Video and resource materials)***  
This training is provided for agency staff whose work directly involves interacting with respective tribal governments (as appropriate by location and/or responsibility) and pertains to specific transportation issues or topics.

***Focus Area 3: Additional Resources***

***Providing for Consultation, Coordination, and Cooperation with Tribal Nations***

Identified in Departmental policy and procedures, resources for a host of subjects, including but not limited to employment, contracting, training and technical assistance are available to employees and the tribes. Best practices will evolve as meaningful and timely consultation helps with the identification of issues of importance to both the tribal nations and the Department.

Several web-based resources are available to tribal members to help facilitate who to call, how to find out more information. Three websites provide over-arching lists of resources, [Doing Business with MnDOT](#), [Contact MnDOT](#) and [Alphabetical List of Subjects and Resources at MnDOT \(A to Z\)](#). The Department currently has a number of government-to-government relationships with the tribal nations; refer to the MnDOT website [Tribes and Transportation](#) for further information.

**Forms/Instructions**

## Definitions

### Consultation

"Government-to-government communication in a timely manner by all parties, about a proposed or contemplated decision in order to:

- Secure meaningful tribal input and involvement in the decision-making process; and
- Advise the tribe of the final decision and provide an explanation."<sup>2</sup>

### Collaboration

"All parties involved in carrying out planning and project development work together in a timely manner to achieve a common goal or objective."<sup>3</sup>

### Coordination

"Each party:

- Shares and compares in a timely manner its transportation plans, programs, projects and schedules with the related plans, programs, projects, and schedules of the other parties; and
- Adjust its plans, programs, projects, and schedules to optimize the efficient and consistent delivery of transportation projects and services."<sup>4</sup>

## Responsibilities

### Commissioner

- Creates the "Tone at the Top" in recognizing the unique legal relationships between MnDOT and the Minnesota Tribal Nations and ensures that MnDOT accords Tribal governments the same respect accorded to other governments.
- Is accountable for the fulfillment of the spirit and intent of [Executive Order 13-10, State of Minnesota](#) by establishing and maintaining positive relationships with tribal nations and tribal groups.<sup>5</sup>
- Serves as a Standing Member on the Indian Affairs Council.
- Actively supports and ensures the integration of the "**Minnesota Tribal Nations**" policy, its underlying principals and procedures into MnDOT's vision, mission and core values so that MnDOT programs, projects and planning reflect the objectives and requirements of this policy.
- Ensures that MnDOT senior leadership understands and implements the requirements of the "**Minnesota Tribal Nations**" policy.

### Director, Office of Government Affairs

- Represents MnDOT by establishing and maintaining positive relationships with tribal nations and groups<sup>6</sup>, and serves as a key point of contact on the "**Minnesota Tribal Nations**" policy to ensure department-wide understanding and integration of policy as it relates to MnDOT programs, projects and planning.
- Is accountable for agency level support and resources to sustain the implementation and integration of the "**Minnesota Tribal Nations**" policy.
- Provides executive level stakeholder communications.

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<sup>2</sup> 25 CFR 170.100, "[What do the terms "consultation, collaboration, and coordination" mean?](#)"

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Examples of tribal groups include:

[Indian Affairs Council, State of Minnesota](#), established in 1963, the Indian Affairs Council is the oldest council in the nation and serves as a liaison of the Indian tribes and the state of Minnesota. The Indian Affairs Council Offices, located in St. Paul and Bemidji, Minnesota, carry out the mission of the Indian Affairs Council, which is "to protect the sovereignty of the eleven Minnesota tribes and ensure the well-being of all American Indian citizens throughout the state of Minnesota."

[Advocacy Council on Tribal Transportation](#), founded in 2006, discusses roadway policy and issues involving roadways on or near Indian reservations. Membership includes representatives from eleven Minnesota tribes, MnDOT, BIA, Michigan TTAP, Minnesota Indian Affairs Council, FHWA, US Forest Service – CNF and Minnesota counties and cities. **Mission:** The Advocacy Council for Tribal Transportation is committed to bringing forward recommendations for improving tribal transportation through effective collaboration and partnerships.

<sup>6</sup> *Ibid.*

- Removes roadblocks and resolves issues which may impede the successful implementation and operation of the **“Minnesota Tribal Nations”** policy.

#### **MnDOT Tribal Liaison**

- Serves as the designated MnDOT representative on the **“Minnesota Tribal Nations”** policy by providing leadership, direction, policy development and meaningful tribal consultation to ensure department-wide understanding and integration of the policy as it relates to MnDOT programs, projects and planning, by establishing and maintaining positive relationships with tribal nations and groups.<sup>7</sup>
- Serves as the designated MnDOT representative on the Indian Affairs Council when the Commissioner is not in attendance.
- Is responsible for establishing and promoting effective working partnerships between MnDOT leadership at all levels and tribal governments. Works collaboratively with entities such as the U.S. Department of Transportation to ensure integration of the requirements of this policy, into transportation planning, programming, project development and implementation.
- Is responsible for the development and implementation of timely and department-wide training to ensure understanding of and all steps needed to integrate requirements of the **“Minnesota Tribal Nations”** policy into MnDOT programs, projects and planning.

#### **Senior Leadership Team, Office Directors and District Engineers, Managers and Supervisors**

- Ensure policy compliance and operational performance of staff so that the requirements of this policy are fully integrated into MnDOT programs, projects and planning by establishing and maintaining positive relationships with tribal nations and groups.<sup>8</sup>
- May serve as a member of the Advocacy Council for Tribal Transportation, as recommended by the MnDOT Tribal Liaison.

#### **Employees**

- Read, understand and follow the **“Minnesota Tribal Nations”** policy.
- Support MnDOT efforts and strategies to integrate this policy into programs, projects and planning as they relate to the **“Minnesota Tribal Nations”** policy.

#### **Governance Council**

- Review and approval of MnDOT policies
- Approve the changes or retirement of existing policies

## **Appendices**

### **Frequently Asked Questions**

**Q: *Why is the Executive Order needed?***

**A:** The Governor of the State of Minnesota established the Order to:

- Recognize that the State of Minnesota recognizes and supports the unique status of the 11 federally recognized Minnesota Tribal Nations and their right to existence, self-government, self-determination; and
- Affirm the Government-to-Government relationship between the State of Minnesota and the Minnesota Tribal Nations; and,
- Direct meaningful consultation between the State of Minnesota and the Minnesota Tribal Nations to facilitate better understanding and informed decision making by allowing for collaboration on matters of mutual interest, and help to establish respectful relationships between the State and Minnesota Tribal Nations.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

**Q. *What is a federally recognized tribe?***

A. A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and are eligible for funding and services from the Bureau of Indian Affairs.

Furthermore, federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. At present, there are 566 federally recognized American Indian and Alaska Native tribes and villages.

**Q. *What is the relationship between the tribes and the United States?***

A. The relationship between federally recognized tribes and the United States is one between sovereigns, i.e., between a government and a government. This “government-to-government” principle, which is grounded in the United States Constitution, has helped to shape the long history of relations between the federal government and these tribal nations.

**Q. *What is the relationship between the tribes and the individual states?***

A. Because the U.S. Constitution vested the federal Legislative Branch with plenary power over Indian Affairs, states have no authority over tribal governments unless expressly authorized by Congress. While federally recognized tribes generally are not subordinate to states, they can have a government-to-government relationship with these other sovereigns, as well.

Furthermore, federally recognized tribes possess both the right and the authority to regulate activities on their lands independently from state government control. They can enact and enforce stricter or more lenient laws and regulations than those of the surrounding or neighboring state(s) wherein they are located. Yet, tribes frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement.

**Q. *What is Public Law 280 and where does it apply?***

A. In 1953, Congress enacted Public Law 83-280 (codified as amended at 18 U.S.C. §1162 and 28 U.S.C. §1360) which expressly granted to Minnesota and five other states jurisdiction over criminal matters committed by or against American Indians on reservations and jurisdiction to allow state courts to handle civil litigation involving American Indians that had previously come under tribal or federal court jurisdiction. However, Public Law 280 expressly excludes application to the Red Lake Nation. Furthermore, the law did not grant states civil regulatory power over tribes or lands held in trust by the United States; federally guaranteed tribal hunting, trapping, and fishing rights; basic tribal governmental functions such as enrollment and domestic relations; nor the power to impose state taxes. These states also may not regulate matters such as environmental control, land use, gambling, and licenses on federal Indian reservations.

**Q: *What is Tribal Sovereignty?***

A: “Tribal Sovereignty” refers to the right of American Indian tribes to determine their own future. Tribal nations possess all of the 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.

## **Related Information**

[25 CFR 170.100](#)

## **History of Policy Updates or Amendments**

*New policy*

**Policy Owner**



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Scott R. Peterson  
Director, Government Affairs

Date Signed 2-7-14

**Governance Council** has reviewed this policy and recommends approval



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Sue Stein (*on behalf of the Council*)  
Division Director, Corporate Services Division

Date Signed 2-13-14

**Responsible Senior Officer**



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Susan M. Mulvihill, P.E.  
Deputy Commissioner/Chief Engineer

Date Signed 2/26/14