



MINNESOTA TRIBAL NATIONS

GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH MNDOT
POLICY AD005, EFFECTIVE 2014-02-25

POLICY STATEMENT

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

“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)*

MnDOT 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.

MnDOT will follow these guiding principles In order to promote successful consultation and collaboration between tribal governments and the state:

- 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.

SENIOR OFFICER

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

POLICY OWNER

Scott R. Peterson
Director, Office of Government Affairs

POLICY CONTACT

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POLICY HISTORY

2014-02-25, Established

[MnDOT Policy Website](#)

REASON FOR POLICY

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

- Implementing agreed-upon processes, when MnDOT develops, changes or approves policies, programs, or services with tribal implications
- Aligning with all state and federal laws, regulations, and 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 must 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 that may affect tribes or tribal interests must 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.

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."

Collaboration

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

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.”

Minnesota Tribal Nations

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.

Tribal Sovereignty

It is 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.

PROCEDURES

To the fullest extent possible, MnDOT 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. MnDOT will concentrate on three focus areas 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 policy in planning, project development and scoping, design, construction, operations and maintenance, and measurement and evaluation are 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 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 policy requires multi-jurisdictional coordinating, collaborating, partnering, and planning with tribal nations, and other implementing agencies to accomplish efficient and effective system planning and the connectivity 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 must employ early, continuous and meaningful involvement of the public and the full range of affected stakeholders throughout its planning processes and must reach out to populations who may be under-represented or under-served by the transportation system. The stakeholders should include all populations covered under the following, [Americans with Disabilities Act \(1990\)](#), [Title VI of the Civil Rights Act](#) 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, concerning all tribal nations, must be in the project development process scoping worksheets and documents.
- Plans and projects will consider future demand from all users along and across all corridors, such as with phased projects in the corridor.
- MnDOT must 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 oversize- and overweight-permitted loads are appropriately detoured to 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 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 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 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 MnDOT 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 MnDOT.

Several web-based resources are available to tribal members to help facilitate whom to call, how to find out more information. Three websites provide over-arching lists of resources, [Doing Business with MnDOT](#), [Contact MnDOT](#) and [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.

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.
- Fulfill the spirit and intent of the executive order. Maintain a positive relationship with tribal nations and tribal groups.
- Serve as a Standing Member on the Indian Affairs Council.
- Actively supports and ensures the integration of the 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.
- Ensure that MnDOT senior leadership understands and implements the requirements of the policy.

Director, Office of Government Affairs

- Represents MnDOT by establishing and maintaining positive relationships with tribal nations and groups, and serves as a key point of contact on the policy to ensure department-wide understanding and integration of policy relating to MnDOT programs, projects and planning.
- Attain and sustain agency-level support and resources necessary to implement and integrate the policy.
- Provide executive level stakeholder communications.
- Removes roadblocks and resolves issues that may impede the successful implementation and operation of the policy.

MnDOT Tribal Liaison

- Serve as the designated MnDOT representative on the 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.
- Serve as the designated MnDOT representative on the Indian Affairs Council when the Commissioner is not in attendance.
- Establish and promote effective working partnerships between MnDOT leadership and tribal governments.
- Work 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.
- 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 policy into MnDOT programs, projects and planning.

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

- Ensure the integration of policy compliance and operational performance of staff into MnDOT programs, projects and planning by establishing and maintaining positive relationships with tribal nations and groups.
- As recommended by the MnDOT Tribal Liaison, serve as a member of the Advocacy Council for Tribal Transportation.

Employees

- Read, understand and follow the policy.
- Support MnDOT efforts and strategies to integrate this policy into programs, projects and planning as they relate to the policy.

Governance Council

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

FREQUENTLY ASKED QUESTIONS

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, 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.

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). Expressly granting 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. Public Law 280 expressly excludes application to the Red Lake Nation. 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.

RELATED INFORMATION

[25 CFR 170.100](#)

POLICY OWNERSHIP AND AUTHORIZATION

Policy Owner



Scott R. Peterson
Director, Government Affairs

Date Signed 2-7-14

Governance Council has reviewed this policy and recommends approval



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

Date Signed 2-13-14

Responsible Senior Officer



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

Date Signed 2/25/14