

CHAPTER 123
GOVERNMENT TO GOVERNMENT RELATIONS WITH TRIBES
Chapter Revised 08/01/2002

123.010 PURPOSE

This policy reinforces government to government relationships between the Department of Public Safety and the tribes in Alaska through consultation on significant matters of mutual concern.

This department policy provides guidance to all employees of the department involved in any departmental action(s) that significantly or uniquely affect a tribe in Alaska, and pertaining to any tribal action that significantly or uniquely affects this department. It also reinforces the foundation for establishing and maintaining effective government to government communications between the department and the tribes in Alaska, and promotes consultation and coordination with these tribes, with the goal of ensuring that the department conducts consultation in a culturally sensitive manner.

This policy is intended to assure consistency within the different divisions and offices of the department and to improve the internal management of the department.

This policy clarifies the department's protocol for consulting with federally-recognized tribes in Alaska in a government-to-government relationship

This Policy is not intended to expand, contract, or otherwise diminish or limit the sovereignty held by the state or any federally-recognized tribe in Alaska.

123.020 DEPARTMENT COMMITMENT TO CONSULTATION

The department is committed to consulting with tribes in Alaska as early in the department's decision-making process as practicable, and as permitted by law, prior to taking action or undertaking activities that significantly or uniquely affect a tribe. Department actions shall favor maximum participation of the affected tribe(s), with the goal of achieving informed decision-making through mutual consultation.

123.030 RESPONSIBILITIES, PROCESS, AND PROTOCOLS

To ensure that the department's processes and procedures throughout all of Alaska are generally uniform and consistent, while maintaining necessary flexibility, the department will adhere to the following steps when consulting with a tribe:

- A. *Notice to affected tribe.*** The department will make a good faith effort to notify a tribe, at the earliest practicable time, of any proposed departmental actions that significantly or uniquely affect the tribe. When circumstances permit, the department will afford the tribe reasonable time to respond to any notification and to participate in consultation with the department. Consultation will be initiated as early in the decision-making process as practicable. Consultation will continue throughout the department's decision-making process, except where expressly prohibited by law. If the department determines that any state or federal law expressly prohibits continued consultation at a specified point in the decision-making process, the department will so inform the tribe at the outset of the consultation process, or as soon as possible after the department becomes aware of the prohibition. The department is not obligated to notify a tribe of any departmental actions identified in the Exclusions provision.
- B. *Dissemination of information.*** At the outset of the consultation process, prior to the first consultation meeting, the department will provide the affected tribe(s) with sufficient information about the proposed action(s) to ensure that the tribe(s) can properly assess and respond to such proposed action(s).
- C. *Identification of the participants.*** The department and the affected tribe(s) will identify their respective representatives for the consultation process. The department will work with the tribal representative(s) of the affected tribe(s) to identify any other affected tribe(s) that should be involved in the consultation.

- D. *Authorized initiators.*** Any member of the department with decision-making authority regarding an action that significantly or uniquely affects a tribe(s) is authorized to initiate a request for consultation with the affected tribe(s). The department will likewise accept an unsolicited request for consultation from any representative of a tribe who has decision-making authority on behalf of that tribe. The department member will provide timely notification to the department's "key contact" regarding any consultation.
- E. *Consultation process.*** Consultation will incorporate processes for ongoing communications between the parties that will be established by mutual agreement whenever possible. The department will, at the beginning of the consultation, work with the affected tribe(s) to develop a mutually agreed upon list of participants, establish a timeline, and establish the method and frequency of communication to be used during the consultation. At the conclusion of the consultation the department will notify the tribe(s) of any final decisions on a proposed action within a reasonable time period and prior to the time that the decision takes effect, unless extraordinary or emergency circumstances preclude it.
- F. *Tribal request for consultation.*** The department will maintain a list of its "Key Contacts" and will provide a copy of this list to the tribes. This list will include any information that the tribes may need to contact the "Key Contacts." Any time a tribe desires to request government to government consultation regarding a matter that significantly or uniquely affects the tribe, or to notify the department of any tribal action that significantly or uniquely affects the department, the tribe should provide one of the Key Contacts with this information.
- G. *Inter-Departmental cooperation.*** The department will work cooperatively with other state agencies, and as appropriate, with other federal agencies, to accomplish the goals and responsibilities outlined within this policy. Requests for consultation that are determined to be outside of the department's jurisdiction will be referred to the appropriate "Key Contact" of another state department.
- H. *Working group participation.*** The department recognizes the importance of participating in the Working Groups established within the State-Tribal Forum to facilitate meaningful dialogue between the departments and the tribes regarding issues of mutual concern, as well as interdepartmental communication on issues that are relevant to more than one state department or agency. The department will make a good faith effort to ensure that its Key Contacts actively participate in all meetings of any Working Group that includes the department.
- I. *Exclusions.*** The department has an obligation to enforce the statutes and regulations of the State of Alaska and to provide services that protect the safety and wellbeing of its peoples. Departmental activities relating to actual or suspected violations of state law, or to criminal investigations or initiation of the criminal justice process, civil law enforcement investigations, initiation of the civil law enforcement process, or civil litigation are exempt from this policy. Nothing in this policy is intended to prohibit communication between authorized representatives of parties in litigation

123.040 DEFINITIONS

As used in this chapter:

- A. *"Tribe"*** means any tribe in Alaska that is on the list of federally-recognized tribes published by the federal Bureau of Indian Affairs.
- B. *"Consultation"*** means the timely process of meaningful inter-governmental dialogue between departmental divisions and/or offices and federally-recognized tribes in Alaska regarding a proposed departmental action(s) that significantly or uniquely affects either a tribe(s) or the department. When assessing what action will be subject to consultation, the department will take into account the cultural and traditional activities of the tribe that will be significantly or uniquely affected by the proposed action, as well as any relevant state and/or federal law. "Consultation" may take place by in-person meeting, teleconference, videoconference, and exchange of written documents, e-mail, or other means appropriate to the circumstances.
- C. *"Departmental Action"*** means any proposed action(s), activities, decision(s), legislation, regulation(s), plan(s), policy, procedure(s), program(s), project(s), service(s), or other actions that significantly or uniquely affect a tribe in Alaska other than those described below under the Exclusions provision.
- D. *"Department"*** means the State of Alaska, Department of Public Safety and its divisions and councils, including offices, officials, and/or employees.