

## **DRAFT: TRIBAL COORDINATION AND CONSULTATION POLICY**

### **Background**

The Environmental Quality Board (EQB or Board) seeks to foster and facilitate positive government-to-government relations between EQB and all federally recognized Tribal Nations that share geography with the state of Minnesota.

In alignment with [Minnesota Statute 10.65](#), The Environmental Quality Board recognizes and supports the unique status of Tribes and their absolute right to existence, self-governance, and self-determination. While Minn. Stat. 10.65 does not directly charge EQB with designating a Tribal liaison to implement a consultation policy, subpart 3(k) encourages and allows all agencies and boards to “engage in consultation and communication with the Minnesota Tribal governments for all matters that have Tribal implications.” EQB has designated a staff person as a Tribal Relations Point of Contact to coordinate outreach and engagement with Tribes.

Overall, the EQB is responsible for monitoring the effectiveness of the state Environmental Review Program, taking measures to improve its effectiveness, and assisting all parties involved. EQB provides leadership and coordination on priority environmental issues that are multi-jurisdictional and multi-dimensional; and provides opportunities for public access and engagement. Most EQB decisions must be made by an affirmative vote of the whole Board; some decisions are delegated to the Chair.

The cabinet-level Executive Branch agencies that serve on the EQB implement their own Tribal Consultation Policies; however, a Tribal Coordination and Consultation Policy specific to EQB’s unique role is needed to fulfill the intent of Minn. Stat. 10.65. According to this statute, “timely and meaningful consultation between the state of Minnesota and Minnesota Tribal governments will facilitate better understanding and informed decision-making by allowing for communication on matters of mutual interest and help to establish mutually respectful and beneficial relationships between the state and Minnesota Tribal governments.”

### **Purpose**

The purpose of this policy is:

- 1) to develop, maintain, and improve meaningful government-to-government relationships.
- 2) to ensure effective communication and coordination, especially on those specific EQB actions and decisions that may affect one or more of the Tribal Nations that share geography with Minnesota.

This policy is prepared in accordance with Minnesota statutes and rules, federal statutes, and regulations. It does not apply to board member agencies acting within the scope of their own authorities and consultation policies.

### **Policy Statement**

The EQB’s policy is to establish and maintain coordination and consultation practices on a government-to-government basis with the federally recognized Minnesota Indian Tribes who share geography with Minnesota when EQB actions and decisions may affect Tribal interests. This policy establishes guidelines for interaction to facilitate positive government-to-government relations.

## Definitions

**Consultation** – Per Minn. Stat. 10.65, consultation means: the direct and interactive involvement of the Minnesota Tribal governments in the development of policy on matters that have Tribal implications. Consultation is the 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. During a consultation, the burden is on the agency [EQB] to show that it has made a good faith effort to elicit feedback. Consultation is a formal engagement between agency [EQB] officials and the governing body or bodies of an individual Minnesota Tribal government that the agency or an individual Tribal government may initiate. Formal meetings or communication between top agency officials and the governing body of a Minnesota Tribal government is a necessary element of consultation.

**Coordination** – As used in this policy, coordination means an affirmative process where EQB staff will proactively identify and seek input from Tribal government staff in a timely and meaningful manner as part of its decision-making process on projects, programs, policy developments, and similar items. It also means that EQB will listen and communicate when staff of any Tribal nation bring forward a request to discuss and provide input on a matter under EQB's consideration. In a coordination process, staff will collaboratively coordinate times and procedures to meet for meaningful discussion around identified issues.

**Matters that have Tribal implications** - Per Minn. Stat. 10.65, matters that have Tribal implications means rules, legislative proposals, policy statements, or other actions that have substantial direct effects on one or more Minnesota Tribal governments, or on the distribution of power and responsibilities between the state and Minnesota Tribal governments.

**Minnesota Tribal governments** - Per Minn. Stat. 10.65, Minnesota Tribal governments means the federally recognized Indian Tribes located in Minnesota including: Bois Forte Band; Fond Du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band; Red Lake Nation; Lower Sioux Indian Community; Prairie Island Indian Community; Shakopee Mdewakanton Sioux Community; and Upper Sioux Community.

**Timely and meaningful** - Per Minn. Stat. 10.65, timely and meaningful means done or occurring at a favorable or useful time that allows the result to be included in the [Board's] decision-making process.

**Tribal Sovereignty** - It is the right of American Indian tribes to determine their own future. Tribal nations possess all the inherent powers of any sovereign government. American Indian tribes, through elected Tribal governments, have the right to operate as self-governing nations.

## Roles and responsibilities of the EQB

The EQB's mission is to enhance Minnesota's environmental quality for current and future generations by leading interagency work to advance meaningful public engagement and facilitate informed decision-making on critical environmental issues. The board has a responsibility to address issues affecting our water, land, air, energy, and climate. In addition, the EQB functions as the coordinating body for Minnesota's Environmental Review Program.

EQB staff serve the board and support the EQB's activities. The executive director manages the board's staff and financial resources and serves as the principal liaison to the board. Staff support the environmental review, administrative, and strategic planning functions of the board, and carry out projects on the board's behalf.

EQB staff will regularly share information with staff of Tribal governments and entities about the EQB's project, program, and policy development work, and identify those areas of work likely to be matters that have Tribal implications. Tribal staff may always identify matters that have Tribal implications. EQB staff will then collaboratively plan processes for getting timely and meaningful input on those work products from Tribal government staff. EQB will organize their information sharing and scheduling through the Tribal Relations Point of Contact.

When government-to-government consultation is needed on matters that have Tribal implications, the EQB Chair, Executive Director, and Tribal Relations Point of Contact will generally participate on behalf of EQB in discussions with Tribal government leadership and other Tribal participants that leadership designates. Exact attendees can be decided in cooperation with the relevant Tribal government.

The EQB will provide information and opportunities for its board members and staff to receive training about American Indian Tribal governments, histories, cultures, and traditions.

EQB will coordinate and consult with honesty, integrity, and transparency to build the mutual trust that is fundamental in establishing a good consultative relationship. EQB will be open with information that may be beneficial or critical to deciding or developing a position.

## **Coordination and Consultation Protocols**

The EQB will provide timely and meaningful communication and conduct coordination and consultation as needed — as defined in this document and as permitted by law — before taking action that will affect matters that have Tribal implications for one or more of the federally recognized Tribal Nations that share geography with Minnesota. EQB coordination and consultation will be specific to the scope of EQB's authority.

### **Coordination**

EQB staff will regularly conduct coordination with staff of affected Tribal governments and entities on matters that have Tribal implications. Coordination will include tailored approaches that reflect the circumstances of each individual project or situation and aim to best accommodate the preference(s) of any Tribal government or entity staff. EQB will be open to adjusting deadlines and timelines to have timely and meaningful coordination.

EQB will work to establish times for regular communication and coordination between EQB staff and the staff of Minnesota's Tribal governments and entities to share information on EQB's work generally. The goal of this general coordination will be to promote an open dialogue, share information, ensure that EQB recognizes and reacts to Tribal concerns in all facets of their work, and identify areas for additional in-depth conversations or consultation.

Tribal government staff may always identify issues that have Tribal implications and which need coordination. EQB may undertake projects, including rulemaking, to revise, update, or provide additional guidance on environmental review and other services/programs that EQB provides. For these specific projects, when the project has Tribal implications or may be of interest to Minnesota Tribal governments and Minnesota Tribal entities, major steps to the coordination process include:

- Identification – EQB will identify, at the earliest opportunity, Board decisions or issues that require coordination.
- Notification – EQB staff may also reach out to appropriate Tribal staff with a request for coordination. The timing of the notification should occur in such a way to allow for timely and meaningful input by all parties.
- Information Sharing – EQB staff will provide Tribal staff with relevant and appropriate information on the matter at issue and will ensure that Tribal staff have sufficient time to consider the information before providing timely and meaningful input. EQB will listen to recognize and understand Tribal concerns. EQB may provide technical assistance if requested.
- Listening to input – EQB will accept any form of input from Tribes. Input may occur in multiple iterations of coordination to respond to Tribal and EQB needs.

- Communicating decisions – EQB will provide documentation of the coordination and communicate how it informed decision-making. EQB staff will make information available to the full board when the board is responsible for decision-making. Throughout a project of interest, EQB staff will keep Tribal staff informed of progress, and may make additional requests for input as needed. EQB will communicate outcomes and how the coordination informed decision-making. This includes an explanation if information was not used or could not be used due to limited board authority.

Coordination takes place between EQB staff and Tribal staff. EQB will meet as needed or requested to develop and maintain strong working relationships between EQB and Tribal Nations.

## **Consultation**

The goal of the coordination process is to ensure that information is shared and matters are resolved without needing consultation. However, at any point in that process, EQB or Tribal staff may request that consultation occur, moving the conversation from the staff level to that of the governing body or bodies of an individual Minnesota Tribal government. The general process of identification, notification, information sharing, input, and communication remains the same.

EQB commits to offering to meet at least annually with Minnesota Tribal Nations leadership, to identify priority issues for coordination or consultation on matters that have Tribal implications. Tribal Nation leadership may request additional consultation on any matter, and EQB will honor that request if the requested consultation is specific to EQB's authorities.

EQB will have the board chair, executive director, and Tribal Relations Point of Contact present for consultations. The board will receive all the information regarding coordination and consultation discussions.

## **Who needs to know this policy?**

All EQB members and employees must become familiar with the purpose and intent of this policy to further government-to-government relations with Tribal nations. All EQB employees whose responsibilities involve actual or potential matters that have Tribal implications must follow this policy. All consultants and contractors responsible for planning, designing, implementing, or managing an EQB project, shall become familiar with this policy and work with staff to implement it.

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Nancy Daubenberger, Chair  
Minnesota Environmental Quality Board

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