

# TRIBAL CONSULTATION POLICY

## POLICY INFORMATION

<b>Policy Sponsors:</b>	Nathan Levi Esquerra Senior Vice President for Native American Advancement and Tribal Engagements
<b>Responsible Unit:</b>	Native American Advancement Initiatives & Research
<b>E-mail:</b>	<a href="mailto:levie@arizona.edu">levie@arizona.edu</a> or for more information: <a href="https://www.naair.arizona.edu/">https://www.naair.arizona.edu/</a>

## PURPOSE AND SUMMARY

The University of Arizona ("University") values its relationship with sovereign Indian Tribes and is committed to honoring the fundamental principles of tribal consultation ("Consultation") and respect required by the Arizona Board of Regents Tribal Consultation Policy (ABOR 1-118). The purpose of the Tribal Consultation Policy is to provide a framework for the University to preserve a foundation of respect and to acknowledge the cultures, traditions, beliefs, governance processes, laws, codes, regulations, and protocols of sovereign Indian Tribes, while maintaining compliance with federal, state, and local laws.

This Policy is further intended to enhance meaningful dialogue between the University and sovereign Indian Tribes, to inform University activities and policies having a foreseeable impact on sovereign Indian Tribes and/or their members, and establishes oversight and training requirements.

## SCOPE

This Policy applies to the University Community when engaging with activities and policies that have a foreseeable impact on sovereign Indian Tribes and/or their members.

## DEFINITIONS

**Cultural Objects** means collectively, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony that have ceremonial, religious, historical, traditional, or other tribal significance as defined and protected by the NAGPRA regulation (see NAGPRA "Definitions" set out in 43 CFR 10.2).

**Human Remains** means the physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, Human Remains incorporated into a Cultural Object, as defined above, must be considered as part of that item (43 CFR 10.2(d)(1)).

**Human Subjects Research** means any Research or Research Project that involves or implicates human subjects.

**Indian** means Indian means a person who is a member of a sovereign Indian Tribe as defined below. Throughout this Policy, Indian is synonymous with American Indian, Alaska Native, and Native American.

**Indian Tribe** means any state recognized tribe *and* any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 USC 479a).

**Indian Tribe Official** means the principal leader or representative of an Indian tribe who is formally designated by the Tribal Government, or as otherwise provided by tribal code, policy, or established procedure, to speak on behalf of the Indian Tribe in consultations with outside parties.

**Research** and **Research Project** means any organized program of scientific inquiry that involves a systematic investigation, study or experiment, and data dissemination designed to develop or contribute to generalizable knowledge that is performed at or under the auspices of the University. Research includes non-sponsored research, research fellowship and training programs, and research-related activities in undergraduate, graduate, and postdoctoral education program of scientific inquiry that involves a systematic investigation, study or experiment designed to develop or contribute to generalizable knowledge that is performed at or under the auspices of the University. Research includes non-sponsored research, research fellowship and training programs, and research-related activities in undergraduate, graduate, and postdoctoral education.

**Tribal Government** means the governing structure of a sovereign Indian tribe.

**Unit** means a college, department, school, program, research center, business service center, or other operating unit of the University.

**University Community** means any of the following individuals: (a) University student; (b) University employee; or (c) third party, including, but not limited to, volunteers, contractors, vendors, Designated Campus Colleagues, visitors, and guests.

**University Consultation Representative** means a University employee designated by the University Tribal Liaison to act as the primary lead in Consultation or engagement with Indian Tribes for activities and policies in their functional area. In the case of activities and policy matters relating to NAGPRA regulations, this will be the Director of the Arizona State Museum.

**University Tribal Liaison** means the Senior Vice President, Native American Advancement and Tribal Engagement will serve as the University Tribal Liaison and is the person responsible for implementation, interpretation, and oversight of this Policy.

## POLICY

### A. CONSULTATION

The University will communicate early, regularly, and in good faith with individual Tribal Governments regarding activities and policies with a foreseeable impact on Indian Tribes and/or their members, as outlined in **Section B**. The University Consultation Representative, or designee, will coordinate the appropriate Consultation procedure as set forth in **Section C** of this Policy.

Consultation must take place before initiating any activities and policies with a foreseeable impact to Indian Tribes and/or their members.

This Policy does not apply to activities or policies that affect sovereign Indian Tribes and/or their members to the same extent as the public.

### B. ACTIVITIES AND POLICIES THAT NECESSITATE CONSULTATION

1. Research, including Human Subjects Research, and Research Projects that:
  - a. Targets Indians for enrollment or participation;
  - b. Involves genetic testing or collection and testing of blood, tissue, or other biological materials in which membership in or affiliation with an Indian Tribe may be identified;
  - c. May foreseeably result in conclusions or generalizations about an Indian Tribe and/or its members; or
  - d. Collects, evaluates, publishes, or otherwise disseminates data that has implications for an Indian Tribe.
2. Institutional activities and policies involving/implicating Human Remains and/or Cultural Objects.
3. Land Use/Access Agreements:
  - a. Institutional activities and policies implicating access and/or use of land under the control or jurisdiction of an Indian Tribe; or
  - b. Any activity where there is a high probability of impact for land under the control or jurisdiction of an Indian Tribe.

4. Program and Service Offerings:

- a. Educational programs, including cooperative extension programming, designed for students, employees, and members of the public who are members of, or affiliated with, an Indian Tribe.

**C. UNIVERSITY TRIBAL CONSULTATION PROCESS AND AUDIT**

**1. The designated University Consultation Representative will determine and coordinate the appropriate Consultation process as follows:**

- a. **Research and Human Subjects Research Consultation** is to be conducted using procedures required by the University of Arizona [Human Subjects Protection Program](#), the relevant Indian Tribe laws, codes, regulations and protocols, and, when applicable, the requirements of the Indian Health Service <https://www.ihs.gov/dper/research/hsrp/>. In cases involving the collection of human specimens, Consultation must include coordination with the relevant Unit and the University Tribal Liaison.

(See also the University of Arizona Guidelines for Research and Institutional Engagement with Native Nations:  
<https://naair.arizona.edu/sites/default/files/UA%20Guidelines%202021.pdf>).

- b. **Human Remains and/or Cultural Object Consultation** is to be facilitated by the Director of the Arizona State Museum, or their designee, and in coordination with the University Tribal Liaison.
- c. **Land Use/Access Agreements and other Policy/Program Consultations** foreseeably impacting Indian Tribes are to be conducted in coordination with the relevant Units and the University Tribal Liaison.
- d. **Program and Service Offerings**, regardless of type, must include coordination with the relevant Unit and the University Tribal Liaison.

**2. The Consultation is subject to documentation and audit requirements, as follows:**

- a. Working with the appropriate Tribal Representatives, the University Consultation Representatives must document evidence of Consultation.
- b. For institutional engagements that *require permission* from a Tribal Government authority, Tribal permission must also be documented.
- c. University Consultation Representatives will keep information and records related to Consultations with Indian Tribes confidential, meaning only those with a legitimate interest will be given access to such records. The parties acknowledge that the University is subject to the Arizona Public Records laws, ARS 39-121, et seq.; however; to the extent permitted by law, the University will not release University Consultation records, including correspondence, notes, and other documents, and will notify Indian Tribal Representatives of any request for such records prior to any release. The University acknowledges and agrees that Indian Tribe documents are

the sole property of the Indian Tribe and are not subject to disclosure under Arizona public records law.

- d. Consultation documentation and documentation of required tribal permission is subject to compliance audit upon request by the University Tribal Liaison and the Office of Research, Innovation, and Impact's ("RII") Native Peoples Technical Assistance Office.

### **3. Share outcomes:**

- a. Outcomes of Consultation must be documented and shared with the collaborators in the Consultation including, Indian Tribe Official(s)/Tribal Representative(s), the appropriate University Units, and the University Tribal Liaison.
- b. Required permissions from Tribal Government authorities and Consultation must be documented and shared with the collaborators in the Consultation including, Tribal Official(s)/Tribal Representative(s), the appropriate University Units, and the University Tribal Liaison.
- c. In the case of Research and Human Subjects Research Consultations, outcomes must be additionally shared with RII's Native People Technical Assistance Office and the Institutional Review Board ("IRB").

## **D. TRAINING**

Before initiating in a Consultation pursuant to this Policy, University Consultation Representatives must complete any Tribal Consultation Training requirements as promulgated by the Office of the Senior Vice President for Native American Advancement and Tribal Engagement.

## **E. REPORTING REAL OR SUSPECTED VIOLATIONS**

Any real or suspected violations of this Policy, or the laws or policies of an Indian Tribe, must be reported immediately to the University Tribal Liaison to initiate, in coordination with appropriate University personnel, investigation and resolution procedures outlined in ABOR 1-118.

## **COMPLIANCE AND RESPONSIBILITIES**

### **A. POLICY OVERSIGHT AND ENFORCEMENT**

The University Tribal Liaison is charged with implementing this Policy as well as providing oversight of Policy compliance.

Upon learning of any allegations of violations of this Policy, or the laws or policies of an Indian Tribe, the involved University Personnel will promptly advise the University Tribal Liaison who will immediately notify the University President. The University President or the President's designee will assist in notifying the affected Indian Tribe.

## **B. RESOLUTION**

The University Tribal Liaison, or their designee, is charged with carrying out the responsibilities outlined in this paragraph. As suspected violations of this Policy are reported, the University Tribal Liaison will, in coordination with appropriate University Personnel, review potential violations of this Policy, make violation determinations, including identifying responsible actors, and report responsible actors to their supervisors, or to the Dean of Students in the case of students. For Research and Human Subjects Research-related investigations, violations will also be reported to the Senior Vice President for RII. For investigations involving Human Subjects Research, as determined by the University's IRB, violations will also be reported to the IRB which may conduct additional investigation in accordance with federal law.

## **C. VIOLATIONS AND/OR FINDINGS OF NON-COMPLIANCE**

The University Tribal Liaison or their designee is authorized to review policies, programs, initiatives, and other activities to determine if they violate this Policy. It is within the University Tribal Liaison's discretion to recommend that appropriate University leadership immediately put on hold policies, programs, initiatives, and other activities under review for compliance with this Policy until it is determined that it satisfies the requirements of this Policy. If compliance with this Policy cannot be established, University leadership may indefinitely suspend the Policy or activity.

The Senior Vice President for RII or their designee is likewise authorized to review and suspend Research and Human Subjects-related activities until compliance with this Policy can be established. Violations of this Policy may result in disciplinary action as provided for in the [appropriate Employee Handbook](#) and/or the Student Code of Conduct, up to and including termination or dismissal.

## **FREQUENTLY ASKED QUESTIONS\***

None.

## **SOURCES\***

[ABOR 1-118](#)

## **RELATED INFORMATION\***

[Tribal Consultation Guideline](#)

[ASM Repatriation Guidelines/Policy](#)

[Reporting and Resolution Process](#)

[Human Subject Research Protocols](#)

[IRB Protocols](#)

## REVISION HISTORY\*

January 2023: New Policy

**\* Please note the Frequently Asked Questions, Sources, Related Information, and Revision History sections are provided solely for the convenience of users and are not part of the official University policy.**