

## **Guidelines for Working with Indian Tribes or on Projects Having the Potential to Impact a Tribal Government, its Community or its Members<sup>1</sup>**

**General Principle** - Arizona State University (ASU) acknowledges and affirms its special relationship with American Indian tribal governments. This relationship is built on recognizing and complying with the intent and spirit of laws and policies relating to American Indians and the laws and policies enacted by tribal governments. ASU endeavors to conduct “use inspired” research that has purpose and impact. Thus, before undertaking any activity or project that has the potential to affect a tribal government, its community or tribal members, ASU faculty, staff and students must first determine whether tribal government input, participation or approval is required.

**Purpose** - These guidelines are intended to:

- establish *interim* guidance for ASU faculty, staff and students who wish to engage in project development or research that may affect or impact Indian tribal communities;
- supplement the Arizona Board of Regents (ABOR) Tribal Consultation Policy 1-118, which requires that ASU engage in tribal consultation before undertaking any activity that may affect a tribal government or community; and
- support ASU’s desire to enhance its relationships with Indian tribes while promoting “use inspired” research and collaboration.

**Background** - Arizona is home to 22 Indian tribal governments. Nationally, there are at least 565 federally recognized Indian tribes. Each Indian tribe has its own laws, procedures and departmental guidelines governing activity occurring on tribal land that seek to protect the tribe’s communities and members while promoting the health, welfare and education of the tribe. In many areas, Indian tribes have community, religious and cultural ties that intersect with interests of ASU. Indian tribes also enjoy a unique political and legal status which ASU recognizes and respects. To understand this unique status it is critical to understand the concepts of *sovereignty*, *government-to-government relations* and *trust responsibilities*. These concepts are critical to mutually beneficial relationships with and responsibilities toward tribal governments.

### **Important Definitions**

**Indian tribe** means an American Indian or Alaskan Native tribe, band, nation, pueblo, village or community that the Secretary of Interior acknowledges to exist as an Indian tribe pursuant to the Federally-Recognized Indian Tribe List Act of 1994, as amended.

**Tribal government** means the governing structure of a sovereign, federally-recognized government of an Indian tribe.

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<sup>1</sup> ***These guidelines do not supplant other federal, state or ASU rules, regulations, policies or IRB processes that may govern the specific activity that you wish to undertake.***

**Tribal officials** are the elected or duly appointed officials of Indian tribes or authorized inter-tribal organizations.

**Sovereignty** of tribal governments is reflected in the U.S. Constitution, treaties, federal statutes, and Supreme Court decisions. Tribal sovereignty means that Indian tribes have independent and self-governing powers not subject to the authority of any local or state government, and in some instances, to the federal government. ASU recognizes the distinctive rights which flow from inherent tribal sovereignty and acknowledges American Indian tribal self-determination.

**Government-to-government relations** refer to the manner in which ASU (as an instrumentality of the State of Arizona) engages with tribal governments. Federal law and ABOR policy require that official relations between ASU and Indian tribes be conducted on a government-to-government basis. Government-to-government relations may be different with Indian tribes than with state or local governments or other constituencies since tribal governments exercise inherent sovereign powers over their members and territory.

## **Responsibilities**

**With the above in mind, when developing a research project or proposal (including master's thesis projects, coursework, and doctoral dissertation research) or engaging in any other activity that may affect a tribal government or its community, ASU's Faculty, Staff and Students will:**

- (1) Determine whether the activity will take place on or near Indian tribal lands, involves activity with an agency or department of an Indian tribe or has the potential to affect the members of an Indian tribe.
  - a. **Activity on or near Indian lands** – Where an activity, no matter how slight, will occur on Indian lands, approval for the activity by a tribal official is necessary as a general rule.
    - i. Each Indian tribe determines for itself the tribal official who has the authority to approve activity on tribal lands;
    - ii. Indian tribes have laws, policies or procedures governing the types of activities that may be contemplated. Some Indian tribes have Institutional Review Boards or an equivalent body that oversees certain activity such as health, natural resources or records reviews.

**Best Practice** – *If any part of your activity/proposal/research will occur on tribal lands, or involve an agency or department of an Indian tribe, identify early potential partners within the tribe/department that may collaborate with you. Often, letters of support or a tribal partnership can help you through the requisite tribal approval process. This method also fosters ASU's "use inspired" research approach.*

- b. **Activity involving a tribal agency or department** – Where research, projects or proposals seek the involvement of a tribal department, it may not be sufficient for the department “head” to enter into an agreement for the project. Since Indian tribes are sovereign governments, a tribal leader, the tribe’s lawyer or a department director may be the approving tribal official.

**Best Practice** – *Inquire early who, within the tribal government, is the tribal official having the “final approval” of the activity in which you seek to engage the involvement of a department or agency of an Indian tribe.*

- c. **Activity that has the potential to “affect” a tribal government or its community regardless of where the activity occurs** – You should ask yourself whether the results of your activity will be distributed widely, may bring about positive or negative change, or may impact the way in which the public views a specific Indian tribe, group of tribal members (e.g., children, elderly, males of the particular tribe etc.), or reflect on a specific tribe’s culture, health issues etc.

**Tip** – *Projects that focus on a specific Indian tribe or a specific tribe’s issues (health, education, economy, society, culture, tradition, history etc.) often warrant closer scrutiny by ASU’s Office of Research Integrity and Assurance (ORIA), Research Administrative Staff in the Unit, the Office of Research and Sponsored Projects (ORSPA) and the ASU President’s Special Advisor on American Indian Affairs to determine if tribal input and/or partnership are required.*

(2) Obtain the appropriate tribal input by following the below principles –

- a. Interact early and directly with a tribal representative or tribal official to develop and or enhance your project.
- b. Openly communicate your intentions in developing the project.
- c. Collaborate and cooperate with tribal governments and the appropriate tribal officials regarding ASU activities and programs.
- d. Develop, in consultation with tribal governments, mutually acceptable protocols to guide government-to-government relationships.
- e. Educate yourself about tribal cultures or systems where necessary so that programs and activities may be administered sensitively and equitably.
- f. Request tribal governments to identify formal (e.g., tribal officials) and informal points of contact to represent them.

(3) As necessary, enter into a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) or other formal agreement with the Indian tribe.

- a. If the tribe requires an MOU or MOA for the activity, the MOU or MOA will be between the Arizona Board of Regents as the governing authority for ASU, and the tribal government.
- b. All MOUs and MOAs must be reviewed by the ASU Office of General Counsel (represented by the Special Advisor to the President for American Indian Affairs) to ensure all appropriate ABOR policies and state laws, rules and regulations are considered.

**Best Practice** – *If an MOU or MOA is preferred, alert the ORIA, ORSPA and/or the Special Advisor on American Indian Affairs. These offices can guide you through the appropriate processes that meet your project needs.*

**The Office of Special Advisor on American Indian Affairs** – The Special Advisor to the President is responsible for enhancing and building relationships between ASU and Indian tribal governments. Each tribal engagement has the potential to enhance ASU’s reputation in the tribal government community. Therefore, if you are unsure how to engage a tribal partner, you are encouraged to work with the Special Advisor. In addition, the Special Advisor can:

- Direct you to helpful resources or tribal personnel to facilitate the success of your proposal.

- Coordinate the process and requirements for working with a tribal government, when necessary.

- The Special Advisor’s web page has examples of various projects relating to Indians and Indian tribal governments. Once your proposal is approved, you are encouraged to list your project at:

<https://americanindianaffairs.asu.edu/>

- The Special Advisor is located in Discovery Hall Room 216 or you may call (480) 965-5793.