

## CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO INSTITUTIONAL REVIEW BOARD

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### Responsible and Ethical Research on Native American Subjects

American tribes and Canadian bands are working hard to control research activity within their communities in order to protect intellectual property rights and sensitive cultural information. Historically, academic researchers have used Native American peoples, their lands, and their communities as laboratories for research with little concern for tribal sovereignty over their own intellectual and cultural property. Native nations are sovereign and have their own laws and policies that must be respected and followed whenever scholars and/or students wish to conduct research about tribes and/or their people and/or cultures, or when they wish to conduct research on tribal land. The same questions that determine when a research project becomes human subjects research may guide researchers in determining when their projects require tribal consultation. If a project is to be conducted on tribal lands, or when it involves direct contact with tribal members about cultural knowledge or practices, consultations should be sought and approval should be gained before any research takes place. When in doubt, researchers should consult with tribal or band authorities to see what clearances they might need before they are approved to conduct research.

In the United States, most tribes do not have formal written policies that explain what is needed in order to gain permission to conduct tribe-related research. Policies differ from tribe to tribe. For example, San Manuel requires that a researcher submit an application to the San Manuel Archives Board outlining the proposed project. The application is then reviewed by the General Council. Most tribal archival records are closed to non-tribal members. The tribe reserves the right to allow or deny any human-subjects research at their own discretion. The Pechanga Tribe has a cultural resources office and a cultural committee that oversee research. Researchers submit their proposals (including questions if conducting interviews or human subjects research) to the Cultural Department, which brings the applications before the Cultural Committee. A researcher can request to present his/her proposal directly to the committee for discussion. As with San Manuel, Pechanga's archives are not open to the public.

### Conducting Tribal Research

It is critical to establish a relationship with the tribe(s) of interest before any research is conducted. A clear understanding should be reached regarding the scope of research, the research questions, methods, goals, plans for dissemination, etc.

Each tribe is its own sovereign entity and controls the process for requesting research approval. At minimum the tribal cultural resources office, board, or tribal council must be consulted and has the right to grant or withhold approval for research. Researchers must work closely with tribal governing bodies to request approval for research and provide documentation of this approval to the university IRB before research can be approved by the university. The requirement to obtain written approval for research from some official tribal governmental entity applies to tribal members and non-tribal members.

It is crucial that researchers be sensitive to the protection of cultural knowledge. Tribes have authority over all cultural knowledge, cultural practices, and traditions. It is the responsibility of the researcher to establish, in consultation with tribal authorities, what falls

under the intellectual property rights of the tribe and what information can be disseminated by the researcher.

Tribes have the right to control collection, storage, and dissemination of any data collected by the researcher. The researcher must consult with tribal authorities where data will be stored, how it will be shared, and how the results from the research will be used. This information must be clearly outlined in the research proposal and in the tribe's letter agreeing to grant permission to conduct the research. If the researcher wants to use the data collected at a later date for purposes other than that outlined in the agreement with the tribe, the researcher must submit a new application with the tribe for approval before data or research may be used for a purpose other than as outlined in the original agreement.

When research involves human subjects, obtaining tribal consent does not preclude acquiring individual consent from human subjects. Researchers are still required to provide informed consent forms to their subjects in order to receive permission from the individuals involved in the research.

### **Key areas of concern when conducting tribal research**

1. Protection of culturally sensitive information, particularly spiritual information.
2. Using information gained through research for commercial gain or any other exploitative purpose.
3. Violations of individual, family, or group ownership over intellectual, creative, or cultural property rights to songs, stories, or other information.
4. Potential conflicts of interest, or harm that may result from the research, including the potential of false or inappropriate interpretations of research or tribal information, or unethical intrusions into tribal or individual privacy, including breaches of confidentiality.

### **Research Proposal Checklist**

The following is reproduced without revision from: *Tribal College Journal* Fall 1996, p. 11

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*The following checklist was developed by the Association of Aboriginal Post-Secondary Institutes in British Columbia, Canada. The checklist has been requested by many First Nations bands since its publication in February 1996. (In Canada, the term "reserve" is used instead of "reservation" and "band" or "First Nations" instead of "tribe.")*

As self-governing Indian nations, the band council and cultural research committee has the right to make rules and laws to protect the integrity of their culture, language, and people. A research proposal consent form, allowing the research to be conducted within the boundaries of the reserve, could contain the following information:

1. Researcher's full name, address (work and personal), phone, fax number and e-mail address. Education qualifications and where earned, i.e., BA, MA, or Ph.D. i.e., University of British Columbia.
2. Familiarity and understanding of Native peoples' issues and with the specific Native band/group involved.
3. Personal and professional references.
4. It should have a clear statement or explanation of the purpose(s) of the research, such as a) expected duration, start and end date (be as specific as possible); b) extent of the band or individual participation; and c) description of the procedures that will be followed.

5. Description of any benefits to the band. You should ask the researcher: How is it advantageous to the band to allow you to conduct this research on the reserve? This area must be as specific as possible.
6. A description of the extent of confidentiality of the information and the specific purposes of the use.
7. What materials will be generated from this research, i.e., book, article, monograph.
8. If appropriate, the band should be given co-ownership of the data and information generated from this endeavor.
9. The researcher must be willing to provide the ownership of the copyright to the band, if appropriate.
10. Who is sponsoring the research? (i.e., a college, university, public or private institution to contact for more specific answers)
11. Are you being funded to conduct this research, the amount, and will any of this be allocated to the band?
12. Who are you going to be interviewing, the records you will be using, and the topics you will research.
13. If interviewing persons such as elders or cultural and spiritual people, the researcher should get their written permission and the band's written permission to proceed.
14. There has to be an option for the band or the individual to decline participation if they desire.
15. Who will receive royalties from the publication of this material?
16. What are the specific uses of this research? How? Where? When? and by Whom?
17. Other information that is specific to your band.

### **For More Information**

- Edgar, Darcy N. and Robert K. Paterson (eds.). "Material Culture in Flux: Law and Policy of Repatriation of Cultural Property." *University of British Columbia Law Review* (1995).
- Greaves, Tom (ed.). *Intellectual Property Rights for Indigenous Peoples: A Source Book*. Oklahoma City: Society for Applied Anthropology, 1994.
- Moore, G., Benally, J., and Tuttle, S. *Process of Conducting Research on the Navajo Nation*. Tucson: University of Arizona, College of Agriculture and Life Sciences, 2008.
- Nason, James D. "Tribal Models for Controlling Research," *Tribal College Journal* (Fall 1996): 17-20.
- Tuttle, S. and Masters, L. *Process of Conducting Research on the San Carlos Apache Reservation*. Tucson: University of Arizona, College of Agriculture and Life Sciences, 2008.
- Ziff, Bruce (ed.). *Cultural Appropriation*. New York: Rutgers University Press, 1996.
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