

WASHINGTON STATE UNIVERSITY
EXECUTIVE POLICY MANUAL

Executive Policy #41
Approved October 11, 2021

Policy on Tribal Engagement, Consultation, and Consent for Joint WSU-Tribal Research Activities and Projects

SUMMARY

WSU is committed to meaningful Tribal consultation in support of Tribal sovereignty and the inclusion of their voices in teaching, research, and programming. Therefore, this policy establishes the formal policies and procedures that govern interactions and activities between Washington State University and Tribal governments. It also supplements and bolsters the Memorandum of Understanding (MOU) entered into by and among Washington State University (“WSU” or “University”) and the several Native American Tribal governments (“Tribes”) that are signatories to the MOU. The MOU is located at:

native.wsu.edu/documents/2016/07/mou-with-tribes.pdf/

In addition to this policy, WSU Administrators, faculty, and staff are also required to be aware of, and adhere to, applicable state and federal laws and regulations. This policy is not intended to take the place of any existing WSU policies, or conflict with applicable state and federal laws and regulations. The intent is for WSU Administrators, faculty, and staff to be aware that Tribes hold sovereign status and may require WSU employees working with their Tribal citizens and descendants or on their Tribal land to follow certain protocols and permit processes. In this policy the following terms are defined as follows:

Tribe - the federally recognized American Indian and Alaska Native Tribes, Villages, Native Nations, and Confederacies or the governing body of that Tribe, whether or not located in Washington State.

Tribal land (includes **Indian Country**) - as defined in federal law, as well as trust lands and lands which have been identified by a Tribe to WSU, as containing cultural, historic, or archaeological resources.

WSU or University - the WSU entity or University official authorized or designated to act on behalf of WSU.

POLICY STATEMENT

WSU recognizes that its locations statewide are built on the homelands of Native peoples of the Pacific Northwest, who have occupied these lands since time immemorial. WSU holds deep respect for Tribal cultures, traditions, customs, symbols, beliefs, laws, regulations, sovereignty, and jurisdiction over its lands. Further, the University values the Tribes’ significant contributions

POLICY STATEMENT (cont.)

to society through their knowledge, labor, technology, science, philosophy, resources, and arts and has benefitted from Tribal homelands and successful relationships with the Tribes.

This policy reflects and reaffirms WSU's enduring commitment to strengthening its relationship and on-going communication with the Tribes built on mutual respect and collaboration. It provides the framework and procedures for carrying out this important government-to-government relationship, and outlines responsibilities and guidelines of WSU administration, staff, faculty, and students when conducting research, projects, programs, and activities that affect Tribes or citizens and descendants of Tribes.

APPLICABILITY

This is a system-wide policy (i.e., it applies to all campuses) that applies to WSU individuals with primary oversight of any program, project or activity that has direct and foreseeable implications for those Tribes. This policy does not address matters such as tuition setting and other general issues that affect the Tribes to the same extent as the general public.

WSU recognizes that certain institutional colleges, departments, programs, research centers and extension units conduct ongoing projects with Native American tribes and peoples. This policy is meant to guide new Tribal partnerships, initiatives, policies, programs, and research, not to hinder day-to-day work. If initiatives, policies, programs, and research is initiated by Tribal governments or programs, consultation is implied.

ENGAGEMENT

Engagement refers to the establishment and growth of reciprocal relationships, through which WSU identifies and collaborates with Tribal employees, cultural specialists, and representatives as equal partners. These relationships should be built before projects commence and maintained throughout their duration. Engagement also entails ensuring that Tribal partners are apprised of the impacts of projects and of opportunities that arise because of them.

CONSULTATION

Consultation is a deliberative process, through which WSU shares information regarding WSU programs, activities, and research with affected Tribes. WSU communicates early, regularly, and in good faith with individual Tribal governments or designated Tribal departments to:

- Ensure an understanding of the activity;
- Identify and address Tribal concerns; and
- Secure consent, when applicable, for those activities.

CONSULTATION (cont.)

The University may, from time to time, develop new programs and services or discontinue existing programs or services for Native American students. The WSU Executive Director for Tribal Relations assists in communicating those programs and services changes to the MOU Native American Advisory Board to the President.

If WSU plans to develop an institutional policy or initiative that may foreseeably affect a Tribe or Tribal members in a manner different from the general public, the University uses its best efforts to share information and solicit input in advance about the proposed policy or initiative with the affected Tribe(s). The Executive Director of Tribal Relations assists in consulting the affected Tribe(s). However, individual university colleges, departments, programs, research centers and extension units may hold their own Tribal consultation advisory councils, procedures, and practices to ensure this policy is followed in a manner that does not hinder day-to-day work. In these situations, a courtesy notification to the Executive Director of Tribal Relations regarding such positions, systems, and procedures that facilitate ongoing consultation with Tribal governments or programs are encouraged.

Activities Subject to Consultation

The following are examples of WSU activities with the potential for direct and foreseeable Tribal implications that requires consultation under this policy as well as special considerations associated with certain activities.

Policies, Initiatives, and Programs

Policies, initiatives, or educational programs that may foreseeably impact or harm Native American peoples, Tribes, and natural resources in a manner different from the general public, or that takes place on aboriginal territories or land under the control or jurisdiction of a Tribe.

Infrastructure Projects

Infrastructure projects that may foreseeably impact or harm Tribal natural resources, treaty rights, or cultural resources. WSU initiates an Inadvertent Discovery Plan (IAD) with the local Tribe(s) before any ground-disturbing work is started.

Research

Research or activity involving:

- The non-incident participation of Tribal members and that may foreseeably produce research results with implications specific to a Tribe or to individuals as members of a Tribe.

Research (cont.)

- Human subjects or human biological material, including DNA, cells, organs, gametes, tissues, waste, or other biological materials in which:
 - The individual's membership in or affiliation with a Tribe is identified, and
 - That is intended to or that may foreseeably result in conclusions or generalizations about a Tribe or individuals as members of a Tribe.

A Tribe may request the return of DNA, tissue, or human biologic material at the conclusion of the agreed research.

- Native American Graves Protection and Repatriation Act materials, including Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.
- Tribes' cultural, historic, archeological, or natural resources, including but not limited to Tribal traditions, languages, customs, and symbols, and research or any activity on land under the control or jurisdiction of a Tribe.

Student Projects

Class and Registered Student Organization projects or activities involving:

- The participation of Native American Tribal members or taking place on aboriginal territories or land under the control or jurisdiction of a Tribe that may foreseeably result in public presentation, publication, or dissemination of findings with implications to a specific Tribe or to individuals as members of a Tribe.
- Native American Graves Protection and Repatriation Act materials, including Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.
- Tribes' cultural, historic, archeological, or natural resources, including but not limited to Tribal traditions, languages, and symbols, and research or any activity on aboriginal territories or land under the control or jurisdiction of a Tribe.

Consultation Process

Consultation may occur at the University level or at the level of a particular program, project, or activity that may foreseeably affect a Tribe or Tribal members. Consultation is the responsibility of the individual with primary oversight of the program, project, or activity. Consultation may emerge from engagement on individual or community levels, but it must also involve Tribal employees or appointees with authority over relevant Tribal departments, programs, or committees.

Consultation Process (cont.)

Through this consultation process, the individual with primary oversight of the program, project, or activity should determine whether formal consent is required from the affected Tribe(s) and proceed accordingly. The Executive Director for Tribal Relations may assist in identifying the appropriate leaders and protocols of the Tribe(s), make introductions, recommend applicable WSU employees that should be consulted, and guide the individual through the consultation process as needed.

If the consultation process results in any formal written agreements between WSU and Tribe(s), such as the right to block publications or insert a rebuttal statement, data use or intellectual property agreements, the individual with primary oversight of the program, project, or activity should submit the agreement to Office of Research for review, guidance, and processing prior to it being finalized.

The Executive Director for Tribal Relations may also consult in instances of disputes or disagreements between WSU individuals or units that affect WSU's relationship with Tribe(s).

CONSENT

Consent is the receipt of voluntary, prior, and informed consent before the actions specified in this policy that directly and foreseeably affect the Tribes, Tribal rights, or Tribal lands. WSU seeks consent when undertaking infrastructure projects, research, or activities on land under the control or jurisdiction of a Tribe as outlined in this policy and that foreseeably and directly affect a Tribe. The form of consent required varies among Tribes, and types of projects and activities. Thus, the consent process should be guided by the Tribe(s) that hold jurisdiction.

The University recognizes that certain laws that protect individual participants in research may not be sufficient to protect the interests of a sovereign Tribe that may be affected by research. For example, some Tribes have their own research/project permit process that is required above and beyond the requirements of the University's Institutional Review Board.

Other Tribes may also reserve the right, during the consultation process, to block or embargo the publication process or insert a rebuttal statement if they believe their Tribe(s), people, language, culture, etc. are being misrepresented.

WSU does not need to seek consent on broad matters that impact many or all Washington Tribes when "consensus" from all affected Tribal governments is both impractical and inconsistent with the independent sovereignty of each Tribe.

Consent Process

During the Tribal consultation process, the individual with primary oversight of the program, project, or activity is responsible to identify whether or not a formal Tribal consent is required. The consent process must be initiated by the individual with primary oversight of the program, project, or activity that is subject to consent under this policy. The responsible individual varies

Consent Process (cont.)

based on the scope of the program, project, or activity. The Executive Director of Tribal Relations can assist in identifying the appropriate leaders and approval protocols of the Tribe(s), make introductions, and guide the individual through the consent process as needed.

Any formal written agreements and contracts should follow WSU's Office of Research Support and Operations (ORSO) guidelines and procedures. Further, a Tribal research consent or permit should be in addition to following WSU's Institutional Review Board guidelines and procedures for human subjects.

The individual with primary oversight of the program, project, or activity that is subject to consent under this policy requests consent by sending notification to the chair of the Tribe's governing body and/or designated Tribal departments, in accordance with the applicable protocols or processes of the Tribe(s) involved. The request should be sent at least 30 days prior to when a response is needed and must:

- Provide clear information about the policy, initiative, infrastructure project, research, or activities involved; and
- Describe its potential impact on the Tribe(s).

WSU requests that consent be provided in written form issued by the governing body or designated Tribal department of the affected Tribe(s).

If a Tribe responds to a request for consent by objecting to the project, research, or activities involved, WSU may request consultation with the Tribe to see if issues raised by the Tribe may be addressed.

NOTICE TO THE EXECUTIVE DIRECTOR FOR TRIBAL RELATIONS

A courtesy notification of new Tribal consultation and consent outreach and requests to the Executive Director for Tribal Relations is recommended. For individual university colleges, departments, programs, research centers and extension units who have their own Tribal consultation advisory councils, procedures, and processes in place, a consultation meeting with the Tribal Relations Office is also recommended.

The notification or consultation allows the Executive Director to effectively guide WSU to engage in best practices and principles of Tribal consultation and consent processes, and effectively inform and respond to Tribal queries regarding programs, projects, or activities being conducted with their Tribal citizens and descendants or on their Tribal land. E-mail courtesy notifications and consultation requests to tribalrelations@wsu.edu.

GUIDING PRINCIPLES FOR JOINT RESEARCH ACTIVITIES AND PROJECTS

WSU and Tribes collaborate in the design of research in which they jointly choose to participate and are partners in study design, data collection, interpretation, and publication in the research and in the dissemination of results to federal, community, and academic constituencies. The individual with primary oversight of the program, project, or activity that is subject to this policy is responsible for ensuring that such collaboration is conducted throughout the project lifecycle.

WSU recognizes the sovereignty of Tribes, and different Tribal governments and programs may agree to varying levels of involvement. Tribal researchers and partners are given credit according to their roles in the research, analysis, and publication of the project in accordance with applicable authorship guidelines and academic standards.

Data includes information and knowledge, in any format, that impact Tribe(s) at the collective and individual levels. This includes but may not be limited to data about Tribal resources and environments (land, water, geology, plants, animals, etc.), individuals (administrative, legal, health, social, commercial, corporate, etc.), and as Native Nations (traditional and cultural information, archives, oral histories, literature, ancestral and clan knowledge, stories, belongings, objects of cultural patrimony, etc.).

Factors that should be mutually agreed upon in writing when engaging in joint research projects include, but are not limited to, the following:

- Whether data include information heard in conversations, informal discussions, or social gatherings, and who is empowered to give associated permissions;
- Permissions and ownership of data collected formally or informally during the course of research;
- Protocols for the transport, storage, security, and retention of data;
- Principles of co-authorship and a transparent pre-review process for publications, presentations, online postings, and other forms of information dissemination;
- Communication channels and timeliness of communication between stakeholders; and
- Conditions for data analyses, including scope of research, privacy issues, and intellectual property rights.

PROCESS TO ADDRESS NONCOMPLIANCE OR RAISE CONCERNS

The goal of this policy is to provide a framework for government-to-government interactions to promote collaborative relationships and ensure mutual respect for the rights, interests, and obligations of each sovereign.

PROCESS TO ADDRESS NONCOMPLIANCE OR RAISE CONCERNS (cont.)

If any federally- or state-recognized Tribe(s) or Tribal member(s), or WSU faculty, staff, or students, become aware or concerned of a violation to this Tribal Consultation policy, or wish to bring forward an issue of concern or a dispute arising out of this policy, the following procedure should be followed:

1. Tribe(s) or Tribal member(s) are invited to bring matters to the attention of WSU's Executive Director of Tribal Relations if resolution cannot be reached. This notification is not meant to replace existing WSU resolution procedures (e.g., Human subject's consent forms ask concerned parties to contact Principal Investigator or Institutional Review Board). WSU faculty, staff, or students are required to inform WSU's Executive Director of Tribal Relations of any matters requiring resolution.
2. The Executive Director of Tribal Relations coordinates with appropriate University community members and Tribal representatives, or other affected individuals, to reach a mutually acceptable resolution.
3. If the Executive Director of Tribal Relations and the affected Tribal or WSU parties are not able to develop a satisfactory and timely resolution, the Executive Director of Tribal Relations informs the University President or Provost. The President, Provost, or their designee(s) offer to meet with the designated leadership of the Tribe(s) and the pertinent WSU parties to continue to address the concerns and develop a mutually acceptable resolution.

ROLES AND RESPONSIBILITIES

WSU holds various positions dedicated to Native American health sciences, research centers, student services, and Tribal liaisons, which all contribute to WSU's ability to develop meaningful relationships with Tribe(s) and consultation practices. The following list outlines the roles and responsibilities of each position recognized to guide this policy:

President

- Meet bi-annually with Native American Advisory Board;
- Guide and assist with reinforcing Tribal consultation policy and resolving disputes;

Provost and Executive Vice President

- Supervise the Office of Tribal Relations;
- Meet bi-annually with the Native American Advisory Board; and
- Guide and assist with reinforcing Tribal consultation policy and resolving disputes.

ROLES AND RESPONSIBILITIES (cont.)

Executive Director of Tribal Relations and Special Assistant to the Provost

- Serve as the point of contact and liaison with Tribal governments;
- Provide direction, leadership and guidance on Tribal consultation policy and resolving disputes; and
- Direct and coordinate with other key WSU positions dedicated to liaison with, serve, and advocate for Tribal governments and peoples.

Assistant Director of Tribal Relations and Recruitment

- Assist the Executive Director with all coordination and administrative duties pertaining to Tribal relations and the Tribal consultation policy; and
- Oversee Native American student recruitment and outreach.