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Humans are affected by climate, both microclimatic events such as a rainstorm and global climate changes in temperature. However, climate effects are so pervasive that often they go unnoticed. Where humans live, how they live, and when they perform seasonal activities such as planting crops and plowing sidewalks all are determined by climate. As long-time residents of North America, Native Americans[1] have much to offer in both knowledge of climatic variation and strategies for coping with change. Native American tribes and tribal organizations are unique and important partners to those doing climate-related research and outreach, especially in the Southwest. Consequently, one aim of the National Oceanic and Atmospheric Administration (NOAA)-funded Southwest Climate Assessment Project (CLIMAS)[2] is to include Native Americans and their concerns in all projects for which they have an interest.

Tribes have a direct government-to-government relationship with the U.S. government wherein no decisions about their lands and people are made without their consent. In Arizona, for example, American Indian reservations occupy nearly 30 percent of the land. Native Americans have a legal and moral claim to significant quantities of water as well. Because of their special legal standing in the United States, tribes are not just another group of stakeholders to be considered in the research and policy process. The purpose of this paper is to provide a legal and political background for interactions between the United States and tribal governments and provide models for those interactions, with special attention to research and outreach. Because climate-related initiatives frequently include persons with university affiliations, one section is devoted to university policies governing research and outreach in Indian Country.[3]

LEGAL AND POLITICAL BACKGROUND

Interactions between the United States and tribal governments take place within a very specific context determined both by federal laws, statutes, executive orders and court decisions, and by tribal law and custom. This section summarizes the evolution of U.S. federal law and policy regarding Native Americans and provides an overview of tribal governments. It is neither possible nor necessary to describe the hundreds of tribal policies and their evolution, but scholars have identified patterns in U.S.-tribal relations, and those are described here. Rather than an exhaustive discussion of either U.S. or tribal government policy and laws, this section is intended as an overview designed to inform researchers and outreach specialists with little or no experience working in Indian Country. Its purpose is to inform such individuals about the context within which they will be interacting with tribes and help them understand why tribes are very cautious,

and often suspicious, in dealing with government agencies and researchers working on behalf of those agencies.

U.S. Law and Policy Regarding Tribes

Partnerships between and among U.S. federal agencies and tribes arise from one of two primary directions: (1) decision making and action regarding tribal members and their land and resources held in trust by the U.S. government over which a tribal government has authority but must operate within the boundaries of federal law; and (2) decision making and action regarding land and resources to which a tribe has cultural and/or historic ties over which a federal agency has authority but about which the tribe must be consulted. Because both have affected how tribes work with U.S. government agencies, and NOAA activities may occur within either of these contexts, they both will be considered in this discussion.

The first section focuses on the impacts of laws that affect tribal trust land and the people living on it. It describes the major eras in the history of U.S. - tribal relations and the historical context within which occur interactions between tribes and the U.S. government that are of potential relevance to NOAA efforts. The second section outlines the basis for tribal authority over decisions about and actions on land beyond reservation boundaries. It pays particular attention to policies regarding consultation with Native Americans because these have established a standard that many tribes expect will be followed in all their dealings with agents of the U.S. federal government.

Tribal Governance in the Major Eras in the History of U.S.-Tribal Relations

Because their nations and communities predated the establishment of the U.S. government, Native Americans are distinct from other minority or ethnic groups in this country.[4] Indian tribes that have a legal relationship to the U.S. government through treaties, Acts of Congress, executive orders, or other administrative actions are "recognized" by the federal government as official entities and receive services from federal agencies. The inherent powers of limited sovereignty held by tribes today were vaguely established in 18th and 19th century treaties and have been codified by law and interpreted by the courts throughout the 19th and 20th centuries. From the late 1700s forward, American Indians ceded to the U.S. government large tracts of land in exchange for reservations and protection from the laws and citizens of newly emerging states. Tribes possess the power of a sovereign state limited by their being subject to the legislative power of the United States and qualified by treaties (Cohen 1971[1942]). Their relationship with the federal government affirms that

> the inherent right and exercise of native sovereignty pre-dates the United States itself. Unlike other Americans who chose to emigrate to the United States and become a part of this country, nearly all Native American groups were conquered by acts of war, and forced to become a part of the United States or perish (Office of Hawaiian Affairs; www.oha.org/prog/sov.html).

The Supreme Court and Congress manage the unique constitutional status of tribes through the doctrine of trust. The trust doctrine is theorized as specifying the responsibility of the federal government to uphold its fiduciary duty to protect tribes' property, treaty rights, and way of life. Its vagueness and Congressional acts that establish trust duty without clear guidance have led to a great variety and, some say, contradictions, in Supreme Court decisions over the years such that “the contours of trust responsibility” have been defined procedurally rather than substantially (Rice, et al. 1995, Williams 1999).

> [The] peculiarities and distinctions [of the tribal-federal relationship] have combined to create an exotic juridicial potage seasoned by the Court’s innovative development of legal doctrines justifying, on the one hand, the imposition of federal authority over tribal lands and Indian citizens and, on the other, creating a set of legal (some say moral, e.g., “trust doctrine”) barriers designed to protect tribes from federal agencies, states, and private parties” (Wilkins 1997:22).

Federal Indian law historically has thwarted the ability of most Indian nations and groups to flourish. The U.S. legal system based its dealings with Indians on the doctrine of discovery, which established a legal relationship between European discoverers and the Indian tribes (Deloria and Lytle 1984, Shattuck and Norgren 1991). This doctrine placed title to native lands in the hands of the "discoverers" without denying the native right to occupancy and possession. Native American rights were acknowledged through treaties between the federal government and Indian nations as an element of national policy, rather than being handled as state land grants or contracts with individuals or groups. Consequently, Indian tribes were recognized as nations, and states were granted no authority over tribes. In the southwest, the Spanish government recognized native occupation of certain lands and jurisdiction over those lands, and this was upheld by the Mexican government and later the Treaty of Guadalupe Hidalgo. This treaty between the U.S. and the Mexican government kept Pueblo lands in fee simple status and under Pueblo jurisdiction.

The treaty-making period marked the first era in U.S.-tribal relations. Table 1 summarizes seven eras, delineated by Canby (1981) in his historical review, that reflect distinct attitudes toward American Indians, are marked by U.S. government policies, and had specific consequences for tribes and individual Indians.

From Treaty Making to Self-Determination

Canby’s organization is particularly helpful in illustrating the inconsistency of U.S. policy toward American Indians; references to each period are italicized in this section. Policy changes reflect shifts in the general perceptions of the American public and leaders toward Indians and Indian Country. They were often supported by well-intentioned individuals, but an overall ignorance about native cultures and inability to protect minority populations from a majority bent on expansion led to continued disruption and destruction of native populations,

resources, and lifeways. In the 1800's, Supreme Court Chief Justice John Marshall's application of the doctrine of discovery set a precedent that Indian treaties could be overridden by subsequent Congressional action. Not surprisingly then, competition over land led quickly to the misuse of treaties and created havoc within the federal government until, in 1871, legislation was passed to ban all new treaties.

Table 1. Seven Eras of U.S. Federal-Tribal Policy

Era	U.S. Government Policies	Consequences for American Indians
Treaty-Making Period (1790-1834)	Trade and Intercourse Acts (e.g., 1 Stat 137 (1790); 2 Stat 139, (1802); 4 Stat 729, (1834))	· separate Indians from non-Indians and place all interactions under federal control · delineate Indian Country · did not regulate interactions of Indians in Indian Country
Removal Period (1820-1850)	21 US (8 Wheat.) 543 (1823) 30 US (5 Pet.) 1 (1823) 31 US (6 Pet.) 557 (1832)	· remove tribes to west of the Mississippi · facilitate non-Indian expansion into tribal lands · establish tribes as "domestic dependent nations" with a relationship to the U.S. government that "resembles that of wards to a guardian"
Reservation Period (1850-1887)	Reservation Day Schools est. by Indian Bureau (1865) Boarding Schools est. by Indian Bureau (1878) Termination of Treaties, 15 Stat. 566 (1871) United States v Berry (1880, DC Colo) 2 McCrary 58, 4 F 779 Court of Indian Offenses authorized (1883)	· "civilize" Indians via missionaries under supervision of Indian agent · end treaty-making · unilaterally impose "law and order codes" and change from community-controlled to government-controlled systems · outlaw certain religious dances and customary practices · establish off-reservation boarding schools
Assimilation Period (1887-1933)	General Allotment Act (Dawes Act), 24 Stat. 388, 390 (1887) Curtis Act, 30 Stat. 495, 502 (1898) Stephens v Cherokee Nation (1899) 174 US 445, 43 L Ed 1041, 19 S Ct 722 43 Stat. 253 (1924)	· reduce Indian land from 138 million acres (1887) to 48 million acres (1934) · allot portions of land to individual Indians with title held in trust for 25 years and confer U.S. citizenship on allotees · allow Secretary of the Interior to negotiate with tribes to acquire all "excess" Indian lands for non-Indian settlement · impose new concepts of property ownership and legal title, promote different patterns of land use and person occupation · continue efforts to bring Indians into non-Indian culture · extend American citizenship to all Indians born in the territorial limits of the United States
Reorganization Period (1934-1952)	Indian Reorganization Act (Wheeler-Howard Act), 48 Stat. 984 (1934) Indian Claims Commission Act, 60 Stat. 1049 (1946)	· assert that tribes will and *should* be in existence · authorize the Secretary of the Interior to acquire land and water rights and set up reservations for tribes · authorize tribes to organize and adopt constitutions and bylaws - based on U.S. rather than tribal governmental practices

Termination Period (1953-1967)	PL 83-280, 67 Stat. 589 (1953) and numerous tribal-specific laws between 1954 and 1962	· terminate the special status of federally recognized tribes · end the status of Indians as wards of the Unites States · encourage tribes to leave their reservations under the relocation program · extend to five states jurisdiction over Indian reservations, without their consent, and allow any other state to assume jurisdiction by statute or state constitutional amendment
Self-Determination Period (1968-present)	Indian Civil Rights Act, 82 Stat. 77 (1968) Indian Financing Act, 24 USCS § 81451 (1974) Indian Self-Determination and Education Assistance Act, 88 Stat. 2203 (1975), amended 1988, 1991, 1994 Indian Tribal Government Tax Status Act, 26 U.S.C. 7871 (1982) Reagan's American Indian Policy of 1983 Bush's American Indian Policy of 1991 Clinton's Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments of 1994 Clinton's Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments	· confer most of the requirements of the Bill of Rights onto tribes · require tribal consent for any extension of state jurisdiction · establish a revolving loan fund to aid in the development of Indian resources · award business development grants to individual Indians · create programs on reservations to build skills for planning and self-governance · support self-governance through Indian programs for health, finance, education, and urban programs · transfer many programs, such as health and education, from the BIA to tribes (known as self-governance or 638 compacting or 638 contracting) to enable tribes to tailor the federal programs and redistribute funds as needed to meet their specific needs · recognize government-to-government relationship between Indian tribes and the federal government

Because much Euroamerican settlement of the southwest occurred after this date, few southwestern tribes ever had treaties with the U.S. government. After 1871, tribal relations with the federal government were established through Congressional acts, executive orders, and executive agreements. From that time forward, tribal nations were no longer "recognized as polities capable of treating with the United States, yet they remained separate if wholly unequal sovereigns, outside the pale of the American Constitution" (Shattuck and Norgren 1991:110).

Apart from *treaty making,* early Congressional actions aimed to separate Indians from non-Indians and place all interactions between these two groups under federal control. They restricted the activities of Indians, but also protected Indians lands from purchase or settlement by non-Indians. When it became impossible to continue to separate Indians from non-Indians because of the unrelenting pressure of Euroamerican settlers, Presidents Monroe, Adams, and Jackson changed federal policy to facilitate non-Indian expansion into tribal lands. Tribes were *removed* to the west of the Mississippi River.

In this period, Supreme Court Justice John Marshall was "independently fashioning legal doctrines that would influence Indian Law for the next century and a half" (1981:12). The Court ruled that only a discovering sovereign could extinguish the Indian right to occupancy of land by purchase or by conquest (21 US 543, 1823), that tribes were "domestic dependent nations," and that their relation to the United States "resembles that of wards to a guardian."

Following naturally from notions that the U.S. government bore some responsibility for Indians, policymakers shifted from merely removing tribes to placing them on *reservations.* Though viewed originally as a mechanism for creating physical distance between Indians and non-Indians, reservations came to be seen as a way to "civilize" Indians through the work of missionaries under the supervision of an Indian agent. Certain religious dances and customary practices were outlawed. Off-reservation boarding schools were established so Indian children could be educated away from their tribal environments and "Americanized" as quickly as possible. The unilateral imposition of law and order codes in 1884 significantly changed the structure of tribal justice systems from community controlled to government controlled systems (Coleman, Gaboury, Murray, and Seymour 1999).

Indian populations continued to diminish and even the Indians living on reservations lagged behind Euroamericans in education, health, and economic security. Many Americans feared the Indians would not survive into the 20th century unless they were quickly transformed into farmers, so activities to *assimilate* rather than just segregate American Indians increased. These went hand in hand with efforts to transfer land and resources out of Indian control and consequently were supported by people who opposed government actions on behalf of Indians as well as those who sought to uphold the nation's trust responsibility toward them (see McDonnell 1991).

The General Allotment Act (Dawes Act) authorized the President to allot portions of tribal land to individual Indians, hold the title in trust for 25 years, and then transfer the title to

the individual Indian owner at which time it would be taxed and could be transferred to a non-Indian owner. The Secretary of the Interior also was authorized to negotiate with tribes to acquire all "excess" Indian lands for non-Indian settlement. Indian held land dropped from 138 million acres in 1887 to 48 million acres in 1934. "Because the goal of the Act was to bring Indians into the non-Indian culture, its administration was attended with ever-increasing efforts to destroy tribal traditions and influence" (Canby 1981:21). Even the Five Civilized Tribes (Cherokee, Chickasaw, Choctaw, Creek, and Seminole), previously exempt because they held fee-simple title to their communal lands, were affected.

> The United States also assumed gradual control over tribal revenues and the Indians lost control of their elaborate educational systems. These and other developments transformed the once independent and wealthy nations of the Five Tribes to a poverty status that would take decades for them to rise above (Wilkins 1997:67).

In sum, U.S. allotment policies negated Indians' rights to possess and occupy their lands, "destroying most tribal governments by imposing new concepts of property ownership and legal title and promoting different patterns of land use and personal occupation" (Shattuck and Norgren 1991:4). In 1924, in the midst of this period, to further the process of assimilation, the U.S. Congress extended American citizenship to all Indians born in the territorial limits of the United States.

Indian populations continued to suffer, so, due to public criticism of Indian policy, Secretary of the Interior Hubert Work commissioned the Brookings Institute to conduct an investigation. Its 1928 study, *The Problem of Indian Administration*, known as Meriam Report after its principal author Lewis Meriam (Clarke Historical Library, www.lib.cmich.edu/clarke/ treatyeducation.htm, 12/99), documented the failure of the allotment policies and contributed to a shift in attitude. In response to that shift, Federal policies asserted that "the tribes not only would be in existence for an indefinite period, but that they *should* be" (Canby 1981:23; emphasis added). The goal of the new era was to reconsolidate tribal lands and resources and support Indian economic development. Under the Indian Reorganization Act, tribes were encouraged to adopt constitutions, though these were modeled after the U.S. Constitution rather than any existing tribal government structures. Tribal governments were *reorganized* into structures with leaders who would be recognizable to U.S. government officials (see Tribal Law and Policy below).

The uneven success of the efforts to support and strengthen tribal governments led some to conclude that the United States and Native Americans would benefit if tribes no longer held the special status of federal recognition and Indians no longer were identified as wards of the United States. The Bureau of Indian Affairs (BIA) encouraged tribes to leave their reservations under the "relocation" program. Federal laws extended state jurisdiction over Indian reservations, except hunting, fishing, and water rights, in five states, with or without tribal consent. The laws also provided that any other state could assume jurisdiction by statute or state constitutional amendment. This period remains among the most dismal in federal-tribal history and, although a

number of tribes that were *terminated* have regained federal recognition, it serves as a constant reminder to tribes that federal action toward tribes can be swift, unforeseen, and devastating.

The policy of termination was determined to have been a failure, and, by the late 1950s, momentum for tribal *self-determination* was growing. Over the next 10 to 15 years, tribes worked to develop the capacity to administer their own affairs. Federal laws enabled Indians to get access to BIA grants to assist them in starting new businesses and refinancing old ones and promoted Indian education. In 1968, in a significant shift away from termination, President Johnson sent a message to Congress articulating his support for Indian self-determination and, through his "War on Poverty," created programs on reservations to build skills for planning and self-governance. The War on Poverty built tribal capacity because it was the first time tribes were given the money "to try - and were allowed to succeed or fail" (Ducheneaux 1999). President Nixon first announced his administration's policy of self-determination in 1970 and capitalized on the trend toward self-governance by supporting Indian programs for health, finance, education, and urban programs that promoted independence and autonomy.

> We must assure the Indian that he can assume control of his life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of federal control without being cut off from federal concern and federal support (Nixon 1970).

During the 92nd Congress, tribes and lawmakers alike rejected providing support to tribes primarily through grants because such a relationship was consistent with the goals of termination and failed to recognize federal obligations for training, support, and follow-up (Ducheneaux 1999). Instead, with the passage of the Indian Self Determination and Education Assistance Act (PL 93-638; Table 1), authority and funding for many programs, such as health and education, were transferred from the BIA to tribes while the U.S. government maintained its legal and moral responsibility for those services. Similar in concept to block granting, this process, known as "638 compacting" or "638 contracting" after the number of the Act, enables tribes to deal directly with federal agencies such as the Department of Housing and Urban Development and the Environmental Protection Agency, and to tailor the federal programs and redistribute funds to meet their specific needs (Senate Committee on Indian Affairs 1999).

Following the transfer of contracting, full recognition of a government-to-government relationship was not far behind. In 1983, federal self-determination policy was reaffirmed and expanded upon by President Reagan's Administration. On June 14, 1991, President George Bush issued an American Indian policy statement that again confirmed the government-to-government relationship between Indian tribes and the U.S. federal government. That policy attempted to establish a permanent relationship of understanding and trust, and designated a senior staff member as the president's personal liaison with all Indian tribes.

In 1994, President Clinton signed an Executive Memorandum on Government-to-Government Relations with Native American Tribal Governments. This and his 1998 Executive

Order 13084, on Consultation and Coordination with Indian Tribal Governments, reiterate that tribes are guaranteed the right of self-governance through treaties and outline requirements for consultation, cooperation, and notification. Basing the 1998 order on tribes' right to self-governance, U.S. trust responsibilities, and the unique nature of the government-to-government relationships, President Clinton called for processes through which tribes can "provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities" (Sec.3 (a)) and ordered that, "(o)n issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking" (Sec.5). The document called for all government agencies to ensure that policies affecting Indian tribal governments "be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments" (EO 13084).

As with U.S. policy in general, laws governing tribal self-governance and sovereignty ultimately are explicated by Supreme Court decisions. Since 1978, several Supreme Court cases have demonstrated the Court's antagonism toward three key principles of Indian law: tribes' unique constitutional status, the ability of tribes to exercise their own system of justice, and the sacred trust responsibility that the founders of the United States accepted (Williams 1999, Wilkins 1997).[5]

To ensure their sovereign status and self-determination, tribes will continue to have to protect their interests in both the U.S. Congress and the courts. An Office of Self-Governance has been established in the Department of the Interior and given the responsibility of working with tribes to craft creative ways of transferring decision-making powers over tribal government functions from the Department to tribal governments. Though it cannot do so without reason, Congress maintains the power to terminate a tribe from federal recognition, at which time the tribe no longer has its lands held in trust by the United States nor receives services from the BIA.

Tribal Environmental Programs

Because many of NOAA's activities relate to environmental impacts and decision making, they often will encounter tribal environmental programs. In addition to the legislation that is specific to Native Americans described above, laws that apply to all Americans, such as the National Environmental Policy Act (NEPA), have given increasing authority over the land and resources of reservation environments to tribes. In the past decade, tribes have been specifically addressed in federal environmental regulations, such as the Amendments to the Clean Air Act and the Clean Water Act that permit tribes to apply for treatment as a state. Court decisions also have held tribes responsible for environmental management (e.g., *Blue Legs v United States Bureau of Indian Affairs* (867 F. 2d 1094)).

Most tribal environmental programs developed in the 1990s. Tribes, scholars, and tribal organizations reacted against the inclusion of language in federal legislation that would give tribes the responsibilities of states without a concomitant allocation of resources to develop the infrastructure and regulatory capacity for which states had received resources since the 1960s. One federal response was the establishment of the Environmental Protection Agency's Indian General Assistance Program (GAP).

The EPA's GAP grants, along with specially designated EPA funding for air, water, and waste management, have enabled most southwestern tribes to establish environmental programs. Attempts have been made to overcome the limitations of segregated federal programs (e.g., separation of water, air, and waste) and allow tribes to configure their offices to be most effective in addressing their needs and avoid the fragmentation so common to U.S. environmental policy. Because tribes vary considerably in population, size of their land and resource base, and nature of their environmental concerns, the size and organization of their environmental programs also are diverse. Nevertheless, as long as funding is available, most tribes will have at least one environmental staff person.

Clearly, entering the 21st century, the key feature of U.S.-tribal interaction related to the reservation environment is the shift to self-governance as tribes have taken control of programs such as housing and environmental management that until recently were operated by federal agencies. The shrinking role of the BIA and the explicit treatment of tribes "as states" in federal environmental legislation have combined to shift both authority and responsibility onto tribes.

Off-Reservation Land and Resources to Which Tribes Have Cultural and Historic Ties

Tribal authority over decisions about and actions on land beyond reservation boundaries generally has derived from different laws and cases than those described in the preceding section. Tribal participation in these decisions has been supported by laws such as the National Historic Preservation Act (NHPA) and the Native American Graves Protection and Repatriation Act (NAGPRA) that require federal agencies to contact and consult with tribes about cultural resources[6] and human remains found within those lands. A key feature of such legislation is that it has placed tremendous emphasis on cultural affiliation, a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian Tribe and an identifiable earlier group, as the basis upon which tribes establish their authority to participate in decisions about non-reservation resources and remains. As a consequence of these laws, a federal legislative framework now exists to address many of the issues related to the management of cultural resources (Peterson 1996).

Recent efforts have moved beyond the narrow boundaries on significant places identified within a traditional archaeological or historic preservation framework to the broader conception of cultural landscapes as a mechanism for capturing tribal perspectives on land and resources (e.g., Zedeño, Austin, and Stoffle 1998). Evolving alongside this approach, additional and more specific attention has been devoted to explicating the process of consultation with tribal

governments on issues that impact them, their territories, ways of life, and cultural resources. Over time, U.S. government responsibilities for consultation have expanded from allowing Native Americans to identify and select for special protection those places and resources that have the *highest* cultural significance (Stoffle and Evans 1990:97), to more expansive consultation models that give tribes opportunities to define the scope and nature of their involvement (e.g., EO 13084, see also Deloria and Stoffle 1995). Table 2 summarizes the evolution of the current policies regarding U.S federal - tribal interactions over off-reservation lands and resources.

Table 2. Evolution of Additional Policies Governing U.S. Federal-Tribal Interactions Regarding Off-Reservation Lands and Resources

U.S. Government Policies	Purpose	Consequences for U.S.-Tribal Interactions
1966 National Historic Preservation Act, amended 1980, 1992	· mandate federal agencies to consider how their actions and decisions might affect cultural resources · authorize the Secretary of the Interior to spend money for preservation activities · direct federal agencies to contact and consult with Indian tribes in preservation-related activities and to maintain confidentiality in these proceedings	· provide greater authority to tribes to recommend ways to "preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are an expression of our American heritage" · provide tribes with resources to take action
1970 National Environmental Policy Act	· document the impacts of federal agency actions on environmental and socioeconomic conditions, and cultural resources · prepare an Environmental Impact Statement (EIS) for "any federal action determined to have potentially significant environmental impacts"	· call for (though not mandate) solicitation of input from affected Indian tribes · government agency completing the EIS must invite tribal participation in the "scoping" process for any work or action affecting a tribe
1990 Native American Graves Protection and Repatriation Act	· require that federal agencies consult with tribal governments for the protection and repatriation of human remains, funerary objects, and objects of cultural patrimony	· establish expectations for consultation
1993 policy "Consultation with Native Americans Concerning Properties of Traditional Religious and Cultural Importance" (Advisory Council on Historic Preservation)	· direct agencies to "learn how to approach Native Americans in culturally informed ways" and assert that "consultation with Native Americans must be conducted with sensitivity to cultural values, socioeconomic factors and the administrative structure of the native group" · reaffirm commitment to maintain confidentiality regarding cultural resources and in the Section 106 process to "seek only the information necessary for planning"	· ensure that agencies will take specific steps to address language differences and issues such as seasonal availability of Native American participants as well
1994 Executive Memorandum (Clinton)	· direct executive departments and agencies to consult to the greatest extent practicable and to the extent permitted by law with tribal governments prior to taking actions that affect federally recognized tribal governments · assess the impact of federal plans, projects, programs, and activities on tribal trust resource	· remove any procedural impediments to working direct and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes
1997 Secretarial Order (Babbitt and Daley)	· clarify responsibilities of Interior and Commerce Departments when actions taken under authority of the Endangered Species Act involve tribal land, trust resources, or rights	· give Tribes a seat at the table in the planning and consultation process related to the Endangered Species Act
1998 Exec Order (Clinton)	· further explicate federal policies regarding interactions with tribes	
2000 Executive Order (Clinton)	· strengthen government-to-government relationships between the United States and Indian tribes · prohibit agencies from promulgating regulations imposing compliance costs on Indian tribal governments · prohibit agencies from promulgating regulations that preempt tribal law without tribal consultation and an analysis of impacts	· require federal agencies to recognize and work with tribal governments in promulgating regulations

NOAA-Specific Policies

NOAA is an agency within the U.S. Department of Commerce. There are no Native American policies specific to NOAA, but several departmental policies have been issued since Clinton's 1994 executive memorandum. The first policy, issued March 30, 1995, provides general guidance to employees for actions involving native governments. It states the Department's recognition of federal laws calling for government-to-government consultation and the trust relationship between the federal government and tribes. It calls for a cooperative working relationship between the Department, other federal agencies, and tribes to achieve the goal of tribal economic self-sufficiency.

A June 5, 1997 Secretarial Order issued jointly by Secretary Daley of the Department of Commerce and Secretary Babbitt of the Department of the Interior, entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," seeks "to establish effective government-to-government working relationships with tribes" through consultation and participation by tribes in "data collection, consensus seeking and associated process" (p. 4). The Order requires the Departments to make available to tribes all information relate to Indian lands and tribal trust resources and to minimize "adverse effects" to Indian culture, religion, and spirituality p. 6).

On August 6, 1998, President Clinton directed the Department of Commerce, the Department of the Interior, and the Small Business Administration to "develop, in consultation with other interested parties, including governments, a strategic plan for coordinating existing Federal economic development initiatives for Native American and Alaska Native communities." The implications of these Orders to consult with tribal governments are broad, affecting the policies and actions of all government agencies working with or impacting Native Americans. Consultation, cooperation, and tribal assistance have become the responsibility of the federal government in all dealings with tribal governments, replacing the more paternalistic relationships of the past. To be effective in meeting these obligations, federal bureaucrats and those involved in research and outreach with tribes must become familiar with the laws and policies of the tribes with which they work. The following section provides a brief overview of tribal law and policy.

Tribal Law and Policy

There are 556 federally recognized Native American tribes in the United States, over 200 of which are in the state of Alaska (65 *Federal Register* 13298, March 13, 2000). Beginning in the 1970s, decisions about tribal status were transferred from the Executive Office and Congress to the BIA's Bureau of Acknowledgement and Research. Tribes seeking acknowledgement must submit petitions and extensive documentation demonstrating their status. Of 126 petitions for federal recognition received by the BIA since 1978, eight have received acknowledgement of tribal status and 12 have been denied. Twelve other groups gained federal recognition outside the BIA process through action by the U.S. Congress (www.em.doe.gov/stake/natinfo.html, 12/99). The BIA maintains a current list of federally recognized tribes and their contacts

(http://www.doi.gov/bia/areas/agency.html). In addition, some tribes are recognized by individual states, a process that usually entails a vote of the state legislature. Each tribe has its own government, laws, and policies, so this review can only provide a brief summary of the highlights of tribal self-governance.

Prior to the arrival of Europeans and even until the implementation of the Indian Reorganization Act (IRA) in 1934, tribes maintained their own, often highly developed, systems of self-government.[7] At the same time that the IRA reversed the policies of assimilation and allotment and attempted to return power to the tribes, it forced upon them systems of government that mirrored that of the United States. Among other things, the IRA encouraged tribes to institute constitutions and systems of justice. Under guidelines of the IRA, many federally recognized tribes adopted constitutions and governing bodies with executive, legislative, and judicial branches. Consequently, by the end of the 1930's, over half of all traditional tribal governments had ceased to exist on the reservations (O'Brien 1989:93).

An elected, or appointed, tribal council, recognized as such by the Secretary of the Interior, has authority to speak and act for the tribe and to represent it in negotiations with federal, state, and local governments. In Arizona, the more common tribal government structures are an executive branch consisting of a chairman, vice chairman, council secretary and treasurer or of a president, vice president, secretary and treasurer. Twenty of the twenty-one federally recognized tribes in Arizona operate under this system. In New Mexico, the tribal government of most Pueblos function under a system that reflects early Spanish occupation of the area. In 1620, a decree by Spanish authorities required the Pueblos to organize under a Governor and Lieutenant Governor rule (O'Brien 1989:173). Of the 19 Pueblos, only four function under a constitutional government. None of the others have constitutions, and they are considered traditional governments even though they have a Governor and Lt. Governors, and a tribal council that operates under the direction of the religious elders. The Governor presides over the nation and represents the tribe in dealings with other governments (O'Brien 1989:174).

Tribal governments generally define conditions of membership, regulate domestic relations of members, prescribe rules of inheritance for reservation property not in trust status, levy taxes, regulate property under tribal jurisdiction, control conduct of members by tribal ordinances, and administer justice. Laws such as the National Environmental Policy Act and the Clean Air Act apply to tribal land, but, like states, tribes have the authority to develop their own environmental policies and codes. Tribes also establish policies governing who enters their reservations and under what conditions. Explicit permission to travel within a reservation beyond federal and state highways should be obtained from the tribal government. Many tribes provide an escort for non-members with reason to travel within the reservation.

Tribal jurisdiction over non-members is complex. Most researchers and outreach personnel will not encounter them, but a majority of tribes now maintain tribal court systems and/or detention facilities. The purpose of these facilities is to detain tribal members convicted of certain offenses within the boundaries of the reservation. Indian tribes retain inherent sovereign

power to exercise some forms of civil jurisdiction over non-Indians on their reservations; for instance, a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements (see *Montana v. United States*, 450 U.S. 544, 67 L. Ed. 2d 493, 101 S. Ct. 1245).

Tribal laws govern on-reservation activities and also may specify the role of tribal authorities in decisions made beyond the reservation boundaries within the tribe's traditional or aboriginal territory. When federally-supported activities are proposed either for the reservation, even at the request of a tribal authority, or off the reservation within a tribe's traditional territory, certain practices will facilitate communication and assure that tribal policies and protocol are followed. Most tribes require that proposals for projects, research, or other activities be submitted to the relevant tribal office and then presented to the tribal council for review. Proponents may be asked to come before the tribal council or another entity to explain the proposal.

Pan-Tribal Organizations

In contrast to individual Tribal governments that represent one group of people, pan-tribal organizations are composed of members from many Indian communities. Their purposes vary, but all provide a means of disseminating and sharing information among Indian tribes, and most report a commitment to increasing self-determination. These organizations, comprised either of member tribes or individuals, do not have the status of governments. This section will introduce two southwestern tribal organizations composed of tribal governments: the InterTribal Council of Arizona (ITCA) and the All Indian Pueblo Council (AIPC) of New Mexico. Both organizations offer valuable services to their member tribes and facilitate information sharing among the tribes of Arizona and New Mexico. Still, although these and similar organizations may negotiate or help create policy on behalf of tribal governments, only individual tribes may sign contracts or legal documents. Organizations or consortiums like the ITCA and AIPC can sign Memoranda of Understanding or Agreement (MOUs or MOAs) if their member tribes vote to do so.

The Inter Tribal Council of Arizona (ITCA) was formed in 1952 to support leaders of Tribal governments in Arizona. Since its inception, ITCA has sought to provide a united front for addressing common tribal concerns. In 1972, ITCA became a private, non-profit corporation. Its mission is to promote Indian self-reliance through public policy development. Its voting members include twenty tribes in Arizona.[1] A Board of Directors composed of a President, First Vice-

[1] The 20 tribes are the Ak-Chin Indian Community, Cocopah Tribe, Colorado River Indian Tribes, Fort McDowell Mohave-Apache Community, Fort Mojave Indian Tribe, Gila River Indian Community, Havasupai Tribe, Hopi Tribe, Hualapai Indian Tribe, Kaibab Band of Paiute Indians, Pascua Yaqui Tribe, Quechan Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, San Juan Southern Paiute Tribe, Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai Apache Nation, Yavapai-Prescott Tribe. The Navajo Nation and the Chemehuevi Tribe of Southern California are non-voting members and participate in ITCA programs and activities.

president, Second Vice-President, and Secretary/Treasurer governs ITCA. Work is carried out under the direction of an Executive Director and Assistant Director.

ITCA operates more than 20 projects that provide ongoing assistance and training to tribal governments in program planning and development, research and data collection, resource development, management and evaluation. Its staff works with tribal governments to increase self-determination through participation in the development of the policies and programs that affect their lives. Through the ITCA's Environmental and Natural Resources Program, for example, implemented programs include Tribal Air Quality, Tribal Water Quality, Environmental Justice, Emergency Response, Integrated Waste Management Planning project, Radon Education, and Pesticide Regulatory and Enforcement. ITCA produces public education material addressing tribal environmental protection, and sponsors workshops, conferences and seminars on environmental issues of concern to Arizona tribes. (ITCA brochure and www.itcaonline.com/mission.html, 11/99).

Similar to the ITCA, the All Indian Pueblo Council (AIPC) is the political organization of the nineteen Pueblo Nations.[2] The AIPC predates European contact and was in existence well before the late 1500s when the Spaniards entered the Rio Grande Valley. The Pueblo leaders met in Santo Domingo Pueblo to share and discuss common issues and concerns and often created a unified front against other enemy or marauding tribes. Subsequent to Spanish contact and up to today, AIPC continues to function as the political entity for the Pueblos' common concerns. The AIPC derives its authority through consensus of the Pueblo secular and religious leaders. In the mid 1970's, a corporation was established under the AIPC that would enable the organization to apply for funding through grants and contracts with federal and other agencies to provide services to the Pueblos. Today, AIPC operates many of the same programs as ITCA and serves to coordinate the Pueblos' programs and activities. The AIPC also includes New Mexico's two Apache tribes (Jicarilla and Mescalero Apache) among its members. In September 1991, the Pueblos created the Pueblo Office of Environmental Protection (POEP) within the AIPC to coordinate waste management and environmental activities. The POEP provides technical assistance on environmental issues to the nineteen Pueblos of New Mexico. (POEP, www.aipc-poep.com/page2.html, 12/99). The incorporated arm of AIPC has no authority to represent the tribes.

Though pan-tribal organizations such as the ones described here are not authorized to sign contracts or legal documents on behalf of tribes, they play an important role in disseminating information and may facilitate interactions among federal agencies and tribes on matters that are of importance to more than a single tribe.

[2] These are the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Pojoaque, Picuris, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni.

Summary

This brief review demonstrates both that Native Americans in the United States have survived a long history of unpredictable and often detrimental relations with the federal government and that federal agencies enter the 21st century with legal mandates to interact with tribal governments in very specific ways over decisions that affect lands and resources both on and off reservations. Bureaucrats and researchers entering Indian Country in this new century can expect that their intentions will be evaluated by tribal groups who have more than a century of such experience. Perspectives, attitudes, and legal systems have developed in response to those interactions.

Though Indian policies derive from the federal government and generally apply to all tribes, their impacts have not been uniform. Tribal governments, likewise, have evolved in the unique ways most appropriate to the cultures and circumstances of their people. Given the complexities of intercultural meetings, the following section has been prepared to provide some models of interaction among tribes, U.S. agencies, and researchers. It highlights some models for working with tribes that recognize and take into account the diversity of tribes and their governments.

MODELS FOR INTERACTION

How might the impacts of the federal policies just described become apparent in interactions with tribes? First, in many cases tribal governments have come to expect that interactions between themselves and U.S. government agencies will be defined through formal agreements such as Memoranda of Agreement or Understanding. Such agreements spell out issues such as the nature of the relationship, access to both reservation lands and people, and confidentiality with regard to information gathered (see Appendix A).

Second, tribes and their representatives will "test" the partners in the relationship to determine their understanding of tribal concerns. An early step in this test will occur in a group meeting among the partners. As significant as the *content* of the meeting will be its *form*. Issues such as who controls the form and how compromises among styles are worked out are critical aspects of the test. The allocation and management of time are of special importance. Just as bureaucrats or researchers are representing their agencies and institutions, tribal representatives are attending the meeting on behalf of their tribes. Because of Americans' general lack of differentiation among tribes and minimal experience with Indian people, tribal representatives often are expected to present *the* "Native American" perspective on topics of concern to the group. They will resist speaking for their own tribes, much less any other tribal groups. Nevertheless, they generally are obligated to participate in the meeting and are interested in assuring that the others present recognize that they know the proper form for participation *as an Indian person*. Several researchers have noted that tribal representatives' introductory statements, which assert general principles such as "this land is ours," are critical for establishing the framework and setting the tone for a meeting (Stoffle and Evans 1990, Gallagher 1988). In

meetings where off-reservation land and resource use issues are not a major focus, topics are likely to include sovereignty and government-to-government relationships. What is important is to recognize that this form is as important to tribal participants as Parliamentary Procedure and the guidelines of *Roberts Rules of Order* may be to others.

Critical to the successful partnership is recognition by non-Indian participants of the Native American style and the willingness to work out a form that allows all to participate comfortably. Native Americans may characterize non-native response in terms of the eras of U.S.-tribal relations with which they are familiar. For example, in one meeting where university researchers took control of the form of the interaction and determined who would speak and for how long, one native participant leaned over and commented, “This is reminiscent of the BIA of the ‘50s.” Though seemingly incompatible, these very different forms of behavior can both be accommodated in meetings. Those accustomed to measuring success in terms of rules and efficiency will come to value the insights shared during oratories while everyone can benefit from interactions where all who wish to speak are granted that opportunity but the meeting nevertheless continues to move along. Regardless of the length of a relationship, negotiations on meeting form will happen at every meeting, especially when new participants are present. When placed in the context of a well-planned partnership, bureaucrats and researchers who demonstrate awareness of potential native concerns about the relationship will be poised for success.

Much has been written about appropriate interactions among U.S. federal agencies, researchers, and tribal governments, but these typically have been restricted to very specialized contexts, especially involving the identification and protection of cultural resources. For example, as described in the preceding section, the 1990 Native American Graves Protection and Repatriation Act (NAGPRA) requires that federal agencies consult with tribal governments, and consultation models have been described for that purpose (e.g., Evans et al. 1994, Deloria and Stoffle 1995). Similarly, the 1992 Amendments to the National Historic Preservation Act (NHPA) direct federal agencies to consult with tribes in culturally appropriate ways and have led to numerous formal agreements among tribes and agencies (e.g., Deloria and Stoffle 1995). Many agencies have developed regulations to govern such interactions. The purpose of this section is to highlight aspects of successful interactions between tribes and both federal agency personnel and researchers affiliated with federally funded programs. Interactions between agencies such as NOAA and tribes are likely to involve research and outreach rather than consultation, so the consultation process is only briefly reviewed to provide context for the later discussion. Because much federally funded research and outreach takes place through universities, a special section is devoted to university policies governing interactions with Native Americans.

Government-to-Government Consultation

Because of the legal history described in the preceding sections, consultation has a very specific definition when applied to interactions between tribal governments and federal agencies. Under the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act, consultation is a “process by which Native American peoples with traditional

ties are identified and brought into discussions about cultural resources" on lands under the control of federal agencies (Deloria and Stoffle 1995:89). The quality and success of the consultation process depends directly on the degree to which decision-making power is shared (see Dobyns, 1951, Arnstein 1969, Parenteau 1988:5-10). For example, in his studies of participation in decision-making, Arnstein (1969) created a classification scale ranging from *manipulation*, where no power is shared, to *partnership*, where all power in the decision is shared. Examples of federal-tribal consultation can be found at all stages along that scale.

Consultation can be either general or specific (Deloria and Stoffle 1995). In general consultation, a long-term relationship is established between a federal agency and the Native American groups with cultural ties to the lands and resources managed or affected by its actions. Following thorough study of the Native Americans with cultural affiliation to the land and resources in question, a process is established through which the partnership will develop. Regular communication is established to ensure that appropriate decisions are made. Specific consultation is required when a particular activity, such as the unearthing of a human burial, occurs and information must be shared among the agency and affiliated Native Americans.

Nine steps have been identified in an ideal consultation process: (1) defining consultation; (2) establishing cultural affiliation; (3) contacting the tribes; (4) having an orientation meeting; (5) forming a consultation committee; (6) conducting site visits; (7) developing site-specific recommendations; (8) maintaining ongoing interactions and monitoring the activities; and (9) terminating consultation (Deloria and Stoffle 1995). These steps are not intended to be absolute; in each case, the consultation relationship is developed to meet the needs of the involved Native Americans, the federal agency, and the requirements of the relationship.

Though some federal agencies manage large tracts of land and participate in regular and ongoing consultation with Native Americans, NOAA only has limited interactions of this nature. In 1993, for example, residents in Boulder, Colorado raised concerns that there was a Native American medicine wheel located on a Department of Commerce campus there that would potentially be affected by a NOAA building project (http://boulder.noaa.gov/updates/tribes.html). Through discussions with the Colorado State Historic Preservation Office, the Indian Affairs Coordinators of several federal agencies, and an independent consultant hired for the project, fourteen tribes were identified as having possible affiliation to the site and agreeing to enter into consultation. The aim of the consultation was to provide tribes "a reasonable opportunity to participate as co-partners with the Federal Government" in the management of the proposed medicine wheel (http://boulder.noaa.gov/updates/tribes.html). Individual meetings were conducted at the offices of the participating tribes. Then, three inter-tribal consultation conferences were held in Boulder between October 1994 and May 1995 to provide tribal representatives with the opportunity to discuss the issue with other tribal representatives and the public, and three additional meetings of the tribal representatives were held in the late summer and fall of 1995. The results and agreements from the consultation process were summarized in a Memorandum of Agreement that includes (1) an easement covering portions of the campus now protected for the tribes, (2) the

implementation of a tribal monitoring program during site evacuation, and (3) a programmatic agreement that will address the use and maintenance of these areas. Though climate-related interactions are unlikely to lead to consultation of the sort described here, the steps of the consultation process are equally valuable for a research partnership, as described in the next section.

Research in Indian Country

Federally funded research is governed by laws and regulations aimed at ensuring the protection of persons involved in the research and the appropriateness of the endeavor. Unlike consultation, much of what governs research and establishes appropriate action in research with Native Americans is covered in policies and guidelines rather than law. In the past, much research was conducted on or with tribes, often without informed consent, and results were rarely shared with the tribes, so tribes became particularly wary of participating in externally initiated research. This section provides a model of interaction that has proven beneficial to both tribes and researchers. A full description of a research effort involving 29 tribes and the Department of Energy is provided in Austin (1998). The examples provided in this section are drawn from the first effort undertaken by the NOAA-funded CLIMAS project at the University of Arizona. At the end of this section, two topics that relate to all research but have been of special concern within Indian Country are included.

Social scientists have long recognized that research results are affected by the extent to which study participants are informed about and agree to the purposes of a study. Research and outreach involving Native Americans should adhere to the principles of sound participatory research (e.g., Austin 1998). Though tribes commonly identify their research needs, get funding, and conduct research, this section will focus on federal projects for which funding and the general purpose has been defined outside the tribe. The following steps in a participatory process are described below: (1) defining the partnership; (2) contacting the tribes; (3) having an orientation meeting; (4) designing the research/outreach activities, including forming task groups; (5) conducting the research/outreach activities; and (6) analyzing and sharing results/evaluation. Based on the outcome of the research or outreach efforts, the final step may lead to a new effort and begin the steps again.

1. Defining the Partnership

As in any new partnership, the first step in developing a research project is to identify potential partners, set up a committee or forum within which to interact, and ensure that there is a liaison who will maintain contact with all participating tribes. Our first step in conjunction with CLIMAS was to contact the InterTribal Council of Arizona (ITCA) and arrange a meeting at the ITCA offices in Phoenix. During that first meeting, we discussed the goals and activities of the ITCA and those of CLIMAS and determined that both groups would benefit from a partnership. Because ITCA's environmental program was most closely related to the CLIMAS initiative, the ITCA representative suggested that the relationship develop there.

2. **Contacting the Tribes**

In each tribe there is an established protocol for interacting with the tribal government. Among most tribes, an appropriate contact is a tribal staff member who can advise a bureaucrat or researcher about how to interact with the tribe. An advantage of the ITCA-CLIMAS partnership is that ITCA has well-established channels of communication with the Arizona tribes and volunteered to serve as a liaison to the project and to disseminate information generated by it. Consequently, in the initial stages, the CLIMAS researchers did not contact the tribes directly. Because all Arizona tribes have environmental programs, the ITCA provided information to and gathered information from the staff of those programs.

3. **Having an Orientation Meeting**

A critical step in the development of a relationship is to come face to face to work out the details of the partnership. A valuable way to set the tone of the meeting is for the organizers to present a tentative agenda and have it reviewed, modified, and approved by the group. Because tribal representatives may feel the need to discuss decisions without agency or outside researchers present, some mechanism, such as calling for an "executive session" among the tribes, should be agreed upon from the start. These practices extend to all meetings, especially as the relationship proceeds and new individuals are incorporated into the group.

After the initial meeting at the ITCA offices, the ITCA representative left the organization and the project was reassigned to the staff of the air program. Two individuals came to Tucson for a meeting with CLIMAS researchers. At that time the first steps in designing research/outreach activities were taken. In addition, the staff member invited the CLIMAS researchers to attend an ITCA-sponsored quarterly meeting of all the Arizona tribal environmental managers. The CLIMAS researchers were present at the meeting as observers, introducing themselves and the project during general introductions but making no further efforts to explain the project. The purpose of the researchers' attendance was to acquaint themselves with the environmental issues of concern to the tribes. Given the myriad of responsibilities of the environmental programs, it was not surprising that climate-related issues were not mentioned as the managers updated the group on their activities of the preceding quarter.

4. **Designing the Research/Outreach Activities**

Once a partnership has been formed, this step puts that partnership to work. Though in an ideal research project this step occurs before a budget has been drawn up, in the chaos of the federal budget process where uncertainty prevails and timelines are short, an overall budget may have been established prior to step one. When this is the case, researchers must build flexibility into the budget from the start. In the case of the CLIMAS budget, time for upcoming Native American projects was allocated for a senior researcher and a graduate student with experience working in tribal communities, and funds were set aside for tribal consultants.

A key factor in designing research and outreach activities is to determine the geographical and political boundaries. A project that is too narrow may produce results useful only in that context while one that aims too broadly may become unwieldy. As the research unfolds, the initial committee or organizational liaison may change. In our case, due to a change of staff at the ITCA, interactions with the CLIMAS researchers became the responsibility of ITCA's air program. The first CLIMAS-ITCA project was negotiated by a staff member and CLIMAS researcher to complement an existing ITCA project funded by the Environmental Protection Agency to examine the feasibility of alternate energy technologies for tribes in Arizona. Because the ITCA serves all the Arizona tribes (see section above), this first project could provide information to the tribes and allow them to learn more about CLIMAS without creating a situation in which one tribe was favored over another because of the particular interests or relationships of the researchers.

Also important to a research effort is to use locally informed research instruments wherever possible. An ITCA staff member and CLIMAS researcher met to identify information needed from the Arizona tribes as part of the research project. The researcher used the questions and helped to create a short inventory to be sent to all the tribes' environmental managers by the ITCA. The inventories were sent out prior to the Environmental Protection Agency's annual regional meeting, so the staff member took advantage of the meeting to remind tribal managers who had not completed the inventory that theirs was needed.

5. **Conducting the Research/Outreach Activities**

The nature of the research or outreach activities will vary from project to project. Some research involves little interaction with tribal members and can be conducted in partnership with a few tribal staff. Other research requires the participation of a tribal officials or members. Data can be gathered by tribal staff and transmitted, when necessary and approved by the tribal government, to outside researchers. Sometimes tribes lack either resources or capacity to gather certain types of data, and they seek the help of outside researchers. Where possible, pairing researchers with tribal staff during the data collection process meets the needs of the tribe to understand the research process and also helps build tribal capacity. In some situations, such as when data about the effectiveness of a tribal program are being collected, it is preferable for outside researchers to collect data. In general, local researchers bring familiarity and intimate knowledge of a particular tribal community under study while outside researchers bring specialized training and experience working in more than one community or situation.

In the first CLIMAS-ITCA project, some information was needed from the Arizona tribes, and the ITCA took the lead in gathering that data by sending out and collecting the inventories. ITCA already had a significant amount of information about tribal characteristics such as population and reservation size, so the staff provided that data. At the same time, CLIMAS researchers gathered climate data to generate maps showing the relationship of Arizona tribal lands to areas that had been identified as having good potential for using solar, wind, and geothermal energy (see Figure 1). CLIMAS researchers also compiled information and conducted interviews with local experts about these renewable energy sources, technologies for using them, and building technologies appropriate for the southwestern climate.

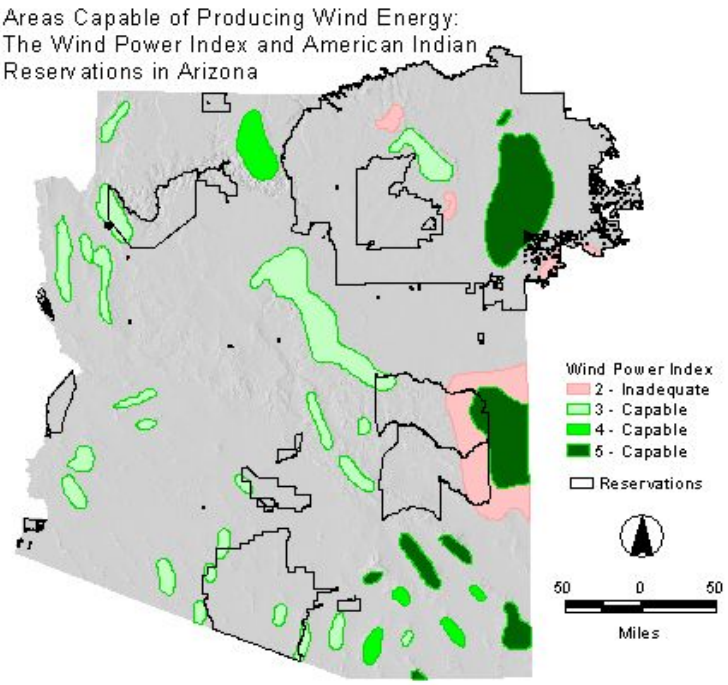

Figure 1. Map showing relationship between areas of high potential for wind power generation and Arizona reservations

6. **Analyzing and Sharing Results/Evaluation**

As in any research project, data that goes unanalyzed and unreported serves no purpose. Where possible, all partners should participate in the analysis, sharing, and evaluation of the project. Though outside researchers may have special skills needed in data analysis, tribal partners should understand those data well enough to suggest and help implement avenues for sharing the information with affected persons and groups.

The results of the initial CLIMAS-ITCA project were exchanged between the ITCA staff and the CLIMAS researchers in meetings, over the phone, and via email. Several meetings were held to review the data being collected and share ideas about data analysis and research products. The CLIMAS researchers developed a Geographic Information Systems (GIS) database to relate the climate information to the location of the reservations. They also created a relational database to handle the inventory data and demonstrated its function to the ITCA staff. After removing all identifying information from the tribal responses, the ITCA staff transmitted the data to the CLIMAS researchers who entered it in the database, analyzed it and prepared a report summarizing the findings. The inventory results were combined with the information about climate and alternate technologies and presented in both paper and multimedia format using html

scripting. The multimedia projects were stored on CD-ROMs and include text, photos, graphs, maps, and GIS projects for Environmental Systems Research Institute's (ESRI) ArcView and ArcExplorer. These interactive multimedia projects were pilot tested with members of ITCA's air quality working group and then revised for distribution to the ITCA staff and all tribal chairpersons and environmental managers. The database containing the inventories was delivered to the ITCA for future use.

Though the initial vehicle for sharing the results with all tribes was the quarterly meeting of the Arizona tribal environmental managers, as the analysis proceeded ideas about other ways to share information emerged. Even before the first project had ended, CLIMAS researchers and ITCA staff had identified other climate-related projects taking place in Indian Country, and information about tribal needs began reaching the CLIMAS researchers. The process of defining the partnerships for new projects is underway.

Institutional Considerations

University Policies Governing Research with Native Americans

As recently as twenty-five years ago, little protocol existed for conducting research on or with Native Americans. Tribes often were inundated with researchers who gathered information without tribal consent. Much of the research conducted was done through universities or university affiliates. Prompted by the desire for good relations with Native Americans, and in an effort to remain sensitive to the economic, physical, psychological, religious and socio-cultural welfare of those being studied, some universities explored or developed research protocol through university policy. At the same time, self-determination fostered Indian involvement and choice. Some tribes chose not to rely on universities to develop policy, but instituted their own protocol for approval of research within their communities (see Appendix B).

The three state universities of Arizona, the University of Arizona (UofA), Northern Arizona University (NAU), and Arizona State University (ASU), all have at various times approached the issue of American Indian policy. The degree of development and implementation has varied between each institution, and although at the current time no specific American Indian policies are in effect, each university has established protocol for research in Indian Country. At this time the University of New Mexico has no American Indian policy (personal communication, Denise Wallen, October 2, 1999).

At the University of Arizona, the position of Coordinator of Indian Programs was established in 1968 under President Harvill. Its purpose was to represent the UofA among tribes and government agencies and eventually was expanded to include the responsibility of reviewing and approving all University research proposals and contracts with Indian tribes (Office of Indian Programs ca. 1990). "In addition to the University's overall mission of supporting academic scholarship, the University seeks to encourage Indian related research to promote Indian self-determination" (Lomayesva 1995). This was made an official part of the University's Indian Policy in 1983:

> [T]he President of the University of Arizona … designates the Coordinator of Indian Programs as the primary agency to insure coordination between specific research and service programs affecting Indians and the University's general aim in promoting Indian self-determination (Koffler, 1983).

Administration of the policy became the responsibility of the Office of Indian Programs (OIP) after President Koffler's departure from the University. Passage of new federal policies (e.g., NAGPRA, NHPA) in the last fifteen years has stimulated numerous university-tribal outreach projects at the UofA. Extensive OIP review of each proposal was increasingly less effective as tribes put their own research guidelines into effect. Currently at the UofA, the OIP reviews and tracks all proposals involving Native American research, but it no longer acts as the liaison between the tribe and the researcher. Any possible concerns detected in the proposal are directed to the researcher who then must work directly with the tribe (personal communication, Claudia Nelson, October 18, 1999).

In the spring of 1991, Northern Arizona University created the Native American Research Guidelines Advisory Committee (NARGAC) because of institutional concerns regarding research with Native Americans. At the time, NAU had partnership agreements with the Hopi and Navajo nations, and was hoping to establish similar agreements with other tribes (NARGAC 1991). A statement of principle and guidelines was produced but never formally instituted. Like other universities, NAU does require that all proposals involving human subjects be submitted to the Internal Review Board (IRB). Research proposals that focus on Native Americans must have approval from the Indian nation before submission to the IRB (personal communication, Dr. Vasquez, November 22, 1999) Currently, NAU is researching the development of an Intellectual Property Rights policy to further define research on Native Americans (personal communication, Claudette Piper, December 1, 1999).

At Arizona State University, all research proposals involving human subjects must be approved by the IRB, but there are no special guidelines for projects involving Native Americans. An American Indian Studies Program has recently been created at ASU and is awaiting final approval from the Arizona Board of Regents for implementation. Plans include development of a Policy Center within this program (personal communication, Bo Cobert, November 29, 1999).

All three Arizona State universities recognize a government-to-government relationship with Indian tribes, and expect tribal input on research proposals that will affect Native Americans. Tribes have become more involved in the research process and "have begun to exact control over the design and methods employed in field research that effects [sic] them" (Lomayesva 1995) Field research on Native Americans is now dependent upon tribal approval. Each tribe has its own process for approval, with some (e.g., Tohono O'odham) requiring review by various committees, and others requiring the researcher to apply for a tribal permit in order to conduct field research on the reservation. It is becoming more common for Indian nations to establish written permit and research guidelines. For example, in the southwest, Hopi, San Carlos

Apache and Zuni are examples (see Appendix B). “Hopi has gone to the extent of requiring that all interview materials (tapes, videos, etc..) be copyrighted in the tribes [sic] name” (Lomayesva 1995). Self-determination, aided by the passage of federal policies, has changed the practice of research in Indian Country to one of a partnership between the university and its researchers and the tribe. Researchers can begin the process of finding out their university’s policies by contacting their contracting or sponsored projects offices.

U.S. Laws and Policies Affecting Federally-Funded Research

Any research sponsored by a federal agency is subject to the laws and federal regulations governing such activity. Often during consultation and research, Native Americans are asked to share information that federal managers and researchers will use to develop policy. Special knowledge may be linked to individual and group identity, and decisions to share it are not made lightly. It is important to recognize under what conditions that knowledge can be protected.

In recent years, the unique knowledge and practices of Native Americans and other indigenous populations have been recognized as intellectual property. Intellectual property is the novel expression or embodiment of an idea (Guest 1995-96). In Anglo-American culture, ownership of intellectual property is achieved through patents, copyrights and trademarks and then protected through legal statutes that establish and secure rights such as sale and use to the owner. Common everyday ideas and ideas already in the public domain do not qualify as intellectual property. Often, Native American concepts of property ownership and of intellectual property ownership are based on communal notions and are at odds with Anglo-American legal perceptions of concepts of property ownership, intellectual property ownership, and property rights. Efforts to protect Native American intellectual property, such as seed banks and religious objects, under U.S. laws have generally been unsuccessful (see Guest 1996-96).

Two U.S. laws that govern the collection and dissemination of information will receive special attention here. First, due to its recent passage and confusion surrounding it, the 1995 Amendments to the Paperwork Reduction Act (PRA) is discussed Then, because of recent efforts to challenge the protection of research data, the 1998 Amendments to the Freedom of Information Act (FOIA) and efforts to subpoena data are described.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

While the Paperwork Reduction Act (PRA) had many purposes and has many ramifications for federal programs, it has specific implications for researchers seeking information from individuals, tribes, and institutions. Under the PRA, federal agencies must obtain approval from the White House Office of Management and Budget (OMB) for each collection of information they sponsor. According to OMB regulations, a collection of information is “*the obtaining, causing to be obtained*, soliciting, or requiring the disclosure to an agency, third parties or the public of *information by or for an agency by means of identical questions posed to*, or identical reporting, recordkeeping, or disclosure requirements imposed on, *ten or more persons*,

whether such collection of information is *mandatory, voluntary, or required to obtain or retain a benefit*" (5 CFR part 1320.3). All surveys, questionnaires, and structured interviews fall within this definition. The definition does not generally include facts or opinions obtained through direct observation, nonstandardized oral communication in connection with such observation, or requests for facts or opinions obtained or solicited from a single person, at or in connection with public hearings or meetings, or through nonstandardized follow-up questions designed to clarify responses to approved collection of information. Failure to comply with the PRA has resulted in lawsuits against the federal agency sponsoring the research and the invalidation of research results (Lauterbach 1999).

The PRA process requires a minimum of six months to complete. Steps in the process include (1) preparing and publishing a 60-day advance *Federal Register* notice informing the public about the proposed information collection and including the proposed survey forms and questionnaires, (2) preparing and submitting the Information Collection Request (ICR), (3) preparing and publishing a 30-day *Federal Register* notice informing the public that the ICR has been submitted to the OMB, and (4) obtaining OMB approval. The ICR must be accompanied by the Paperwork Reduction Act Submission form (OMB 83-1; see Appendix C) and a Supporting Statement (described on p. 2 of OMB 83-1). Upon OMB approval, each copy of the survey or questionnaire must include a valid OMB control number and a statement explaining why the information is being collected, how the information is to be used, an estimate of how long it will take to complete the survey or questionnaire, that completion is voluntary, and the nature and extent of confidentiality to be provided.

Confidentiality and Challenges to the Protection of Research Data

At the heart of scientific research lies the need to protect from harm those who participate in the research. One way to reduce the likelihood of injury from participation is to ensure confidentiality to participants, and guarantees of privacy and protection of identity are part of the codes of ethics of professional societies representing anthropologists, sociologists, and other social scientists. The increasingly litigious nature of American society and public debates over the validity and application of scientific data have led to events that potentially threaten the ability of any scientist to guarantee confidentiality. Researchers and those who participate in research projects must be sensitive to the limits within which data can be protected from public exposure. Provided here are examples of two recent efforts to expand the nature and scope of information that must be released to the public and thus have raised questions about what can be protected and under what circumstances. The first example includes all information collected with federal funds, and the second includes information that may become part of a court case.

The Freedom of Information Act (FOIA) was passed to give members of the public access to information collected with federal funds and upon which policy decisions were made. The 1998 amendments to the Act required the OMB to revise the guidelines for federal grants and awards (OMB Circular A-110) to ensure public access to "underlying data" through FOIA.

Efforts to halt or slow down the OMB process of revision failed, but there have been some attempts to balance the needs and concerns for both researchers and the public. In the fall of 1999, for example, OMB provided a clarification to the proposed revision which states that public access through FOIA is limited "to data related to published research findings used by the Federal government in developing a regulation." As the intent of applied science is to influence policymaking, this definition should be seen as applicable to much of the information collected in federally funded research projects.

In some cases, tribes have entered into specific agreements with federal agencies to maintain sensitive data in their tribal offices. For example, during the conduct of the Environmental Impact Statement for the Glen Canyon Dam, a Tribal Advisory Team worked with representatives of the U.S. Bureau of Reclamation's Glen Canyon Environmental Studies office to establish guidelines for information tribes would maintain within their offices (see Stoffle et al. 1995 for an example of a report that indicates which information is held within the tribe).

Though it is too early for case law to have tested the OMB revision, the experiences of researchers involved in "high stakes litigation" (e.g., the litigation involving the drug DES or the *Exxon Valdez* oil spill) have offered some indication of what may be to come. When research reports and publications are referenced in a court case, the research activities, data, and professional integrity of the researchers who produced those documents can and will be challenged (see, for example, Picou 1996). Despite guarantees of privacy and respondent confidentiality, researchers and their data can become the subject of subpoenas. Under such circumstances, protracted legal battles have ensued wherein researchers and their attorneys fight to protect data files and records while those in court battle to gain access to all materials associated with the project that produce the findings in question. While the *Exxon Valdez* case involved Native Americans and Native Alaskans, the issues raised by the case are not particular to those groups. To date, court rulings have compelled the release of data used in the publication of peer-reviewed articles but not that which had not yet produced anything subjected to the peer-review process (see Wiggins and McKenna 1996, O'Neill 1996, Picou 1996).

Researchers have recognized their potential vulnerability under these policies and have taken various steps to address that vulnerability. For example, in a longitudinal study, researchers agreed after each participant's final interview to remove all personal identifiers from the master data file and destroy all hard copies of the data (Picou 1996). Others have adopted policies to destroy all field and interview notes as soon as a project is completed (J. Steven Picou, June 1999, personal communication). Certain types of information, such as the location of archaeological sites, have been protected from FOIA requests since the law was first passed, and the new changes do not appear to threaten that type of information. In some cases, Native Americans have negotiated to attempt to protect sensitive cultural data collected under a federal program by allowing only limited access to the information on a request-by-request basis (see Stoffle et al. 1995). Such efforts have not been challenged in court. The impact of decisions to modify data collection, maintenance, and release in response to threats to confidentiality cannot

be anticipated. Each decision must be undertaken with care to ensure that the research process is not undermined in the efforts to protect the data collected.

Summary and Conclusions

When carefully planned and executed, partnerships among Native American tribes, bureaucrats, and researchers can be fruitful and satisfying. Just as the U.S. government has concluded that Native Americans are best served by strong, effective tribal governments, so have many tribal governments determined that they and their members benefit from appropriate relationships with their non-Indian neighbors.

A successful partnership among tribes, bureaucrats, and researchers requires time and resources. The participants must establish the bases for interaction, identify what each partner brings to and needs from the relationship, and create opportunities to adjust the process as circumstances change. Though centuries of abuse and mistrust cannot and should not be forgotten, we enter the 21st century with the information and tools upon which collaborative partnerships can be built. The models of interaction presented in this paper are offered as examples of those tools.

Notes

[1] The people whose tribes are indigenous to the United States are referred to in this paper as Native Americans, American Indians, and Indians. The term Indian is inaccurate but has been used in this paper because it is used in federal policies and other writing on native peoples and also is the one many natives use when talking about themselves. The failure of non-Indian people to differentiate among tribes is the cause of much misunderstanding. Tribes represent distinct sociocultural groups, many of which have as little in common with one another as they do with Europeans. U.S. law, however, has generally treated tribes as members of a single group.

[2] CLIMAS was established in 1998 with seed funding from the National Oceanic and Atmospheric Administration (NOAA) to enhance U.S. capacity to assess climate variability and longer-term climate change with regard to the impacts on human and natural systems in the southwest. The project's mission is to improve capacity within the region to respond appropriately and effectively to climatic events and climate changes. The project aims to foster participatory, iterative research involving researchers, decision makers, resource users, educators, and others who need more and better information about climate and its impacts. As part of its efforts, CLIMAS has begun to investigate the potential for partnerships with tribes and tribal organizations.

[3] Lands held in trust by the U.S. government for Indian tribes and individuals are collectively referred to as Indian Country. The definition of Indian Country has evolved beyond restriction to geographical boundaries and also represents the political relationship of the United States to tribes (Deloria and Lytle 1983).

[4] In Morton v. Mancari (417 US 535, 1974), for example, the trust doctrine was cited as a justification for "discrimination against Euro-American employees of the Bureau of Indian Affairs" (Wilkins 1997:22). Williams (1999) and Shattuck and Norgren (1991) agree that this decision was instrumental in clarifying the unique status of Tribes and the message that they cannot be treated, simply, as another U.S. minority group.

[5] Among other things, these cases (e.g., Oliphant v. Suquamish Indian Tribe (435 US 191, 1978); Montana v. Blackfeet Tribe (471 US 759, 1985); Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation (492 US 408, 1989)) have denied tribes criminal jurisdiction over non-Indians

committing crimes against Indians on reservation land, have left open the possibility that Congress could tax tribal enterprises, and have given states authority to zone land within the exterior boundaries of a reservation.

[6] Cultural resources include prehistoric, historic, and architectural features as well as traditional cultural properties such as power places, ethnobotanical gathering areas, and hot springs.

[7] In addition to the IRA, two other pieces of legislation have had significant impact on the organization of tribal governments. The Oklahoma Indian Welfare Act of 1936 provided for the organization of Indian tribes within the State of Oklahoma, and the 1971 Alaska Native Claims Settlement Act provided for the creation of village and regional corporations under state law to manage the money and lands granted by the Act(http://www.em.doe.gov/stake/natinfo.html). Despite the influence of the IRA, some tribes, such as the Muscogee, have maintained a more traditional tribal government system that incorporates a principal and second chief (O'Brien 1989:133).

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APPENDIX A:
Example of a Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
REGARDING NATIVE AMERICAN HUMAN REMAINS AND ASSOCIATED MATERIALS ENCOUNTERED AS A RESULT OF SUBSURFACE ARCHAEOLOGICAL TESTING OF SITES AZ U:IO:2O AND AZ U:IO:25 (ASU), AND AZ U:IO:60 THROUGH AZ U:IO:68 (ASM) AT WILLIAMS AIR FORCE BASE

BETWEEN THE GILA RIVER INDIAN COMMUNITY, AK-CHIN INDIAN COMMUNITY SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, AND THE TOHONO O'ODHAM INDIAN NATION; THE HOPI TRIBE; AND THE UNITED STATES AIR FORCE

WHEREAS, the United States Air Force intends to close and dispose of real property presently known as Williams Air Force Base (AFB), and

WHEREAS, the United States Air Force is sponsoring a Class Ill Archaeological Survey and Subsurface Testing Project to determine the extent of archaeological remains at Williams AFB involving the intentional excavation and potential discovery of Native American Human Remains, associated funerary objects, sacred items, and objects of cultural patrimony, and

WHEREAS, the United States Air Force is responsible for the identification, protection and consultation with Native Americans regarding the disposition of Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony located on lands under their ownership and control pursuant to the Native American Graves Protection and Repatriation Act of 1990 (25 USC 3002) (NAGPRA), and

WHEREAS, the The Gila River Indian Community, Ak-Chin Indian Community, Salt River Pima-Maricopa Indian Community, The Tohono O'odham Indian Nation, and The Hopi Tribe (Tribes) have claims of cultural or ancestral affiliation in the area now within the boundaries of Williams AFB and all Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony associated with said groups are claimed by under Section 3 of the Native American Graves Protection and Repatriation Act of 1990, and

WHEREAS, other Tribes may come forward with claims of Cultural Affiliation under Section 3 of the Native American Graves Protection and Repatriation Act of 1990, and

WHEREAS, those Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony so claimed by the Tribes are considered to be the property of the Tribes pursuant to the Native American Graves Protection and Repatriation Act of 1990, and

WHEREAS, it is the intent of the Air Force to minimize any unavoidable damage to Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony discovered during the Williams AFB Class lll Archaeological Survey and Subsurface Testing by ensuring that they are, for their protection,to be left ***in situ,*** and the earth in which they are found is returned to the greatest extent possible a condition consistent with pre-survey conditions, and

WHEREAS, Section 11 of the Native American Graves Protection and Repatriation Act of 1990 permits and encourages specific agency-tribal agreements to ensure the appropriate treatment of Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony;

NOW THEREFORE, the United States Air Force and the Tribes agree that the following procedures will be followed for the discovery, treatment, and disposition of all Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony of the Tribes which are discovered on lands that are owned or controlled by the United States Air Force during the Williams Air Force Base Class lll Archaeological Survey and Subsurface Testing.

STIPULATIONS

I. DEFINITIONS

For the purposes of this Memorandum of Understanding (MOU), the following definitions apply:

1. ***Associated Funerary Objects*** means objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with the individual Human Remains at the time of death or later.

2. ***Cultura/ Affiliation*** means a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian Tribe and an identifiable earlier group.

3. ***Discovery*** means the intentional excavation per Section 3.c. of NAGPRA and subsurface testing of sites AZ U:IO:20 and AZ U:IO:25 (ASU), and AZ U: I0:60 through AZ U:IO:68*(ASM) for the purpose of determining their extent and eligibility for inclusion on the National Register of Historic Places and the discovery, identification and recovery of Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony as defined herein within the property lines of the Williams Air Force Base.

4. ***Human Remains*** are any physical remains of a human being.

5. ***Interested Tribe*** shall, for the purposes of this MOU, mean any Tribe that has cultural affiliation with a Discovery and that has represented an intent to participate in the treatment and disposition of Remains.

6. ***Objects of Cultural Patrimony*** are objects having ongoing historical, traditional, or cultural importance central to Native American group or culture itself, rather than property owned by an individual Native American. Objects of Cultural Patrimony cannot be alienated, appropriated, or conveyed by an individual regardless of whether or not the individual is a member of the Native American group, and such objects must **have been considered inalienable at the time they were separated from the group.**

7. ***Remains*** means Human Remains, any remains thought to be Human Remains, and all other Cultural Items as defined by NAGPRA, including Associated Funerary Objects Sacred Objects, and Objects of Cultural Patrimony.

8. ***Sacred Objects*** are specific ceremonial objects that are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.

9. ***Tribal Monitor*** shall, for the purposes of this MOU, mean an observer chosen by the Tribes to watch and/or participate in the archaeological activities to be conducted at Williams AFB.

10. ***Tribe*** means any tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the programs and services provided by the United States to Indians because of their status as Indians.

II. DISCOVERY, TREATMENT, AND DISPOSITION OF REMAINS

1. The foilowing procedures regarding the discovery, treatment, and disposition of Remains shall be implemented after consultation and in accordance with the express wish of or in conformity with the policies and guidelines of the Tribes.

2. All discovered Remains shall be treated with respect and dignity in order to avoid any unnecessary disturbance of Remains, separation of Human Remains from their Associated Funerary Objects, or physical modification of Remains.

3. All Remains discovered during the course of the Williams AFB Class Ill Archaeological Survey and Subsurface Testing shall receive the agreed upon treatment and disposition measures set forth herein.

4. The intentional subsurface testing of sites AZ U:IO:20 and AZ U:IO:25 (ASU), and AZ U: IO:60 through AZ U:IO:68 (ASM) for the purpose of determining their extent and eligibility for inclusion on the National Register of Historic Places and the discovery, identification and recovery of Native American Human Remains and Associated Funerary Objects shall be undertaken in accordance with the Standards of Research Performance of the Society of Professional Archaeologists and the professional standards for archaeological data recovery as established in the Research Design and Plan of Work approved for this Class Ill Archaeological Survey and Subsurface Testing project by the U.S. Air Force, the Tribes, and the State Historic Preservation Officer (SHPO) for Arizona.

5. A Tribal Monitor, to be chosen by. the Tribes, will be on-site at all times during excavations and subsurface testing at Williams AFB to advise the archaeologist and identify and monitor the treatment of Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony.

6. Unless otherwise agreed between the U.S. Air Force, the Tribes, and any ***other*** Interested Tribe subsequently signatory to this agreement, the treatment and disposition of Human Remains shall be conducted as described in the Archaeologist's Plan of Work, attached here by reference, and as follows:

   a. All Human Remains and Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony discovered at Williams AFB shall be left ***in situ,*** as undisturbed as is reasonably possible to assure their protection. If the lineal

descendants of the Native American (whose remains are discovered) cannot be identified, then Representatives of Interested Tribes shall be consulted regarding the disposition and reinterment of the Remains and shall be given an opportunity to carry out religious ceremonies/rituals attendant upon reinterment of the Remains.

b. If excavation of Native American Human Remains and Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony is requested by the Tribes, reinterment of the Native American Human Remains and Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony shall occur within ninety (901 days of the completion of the Williams AFB Class III Archaeological Survey and Subsurface Testing.

c. No destructive analyses of the Human Remains shall be permitted.

7. If excavation and reinterment of Remains is requested, the Tribal Monitor and representatives of the Tribes and any other Interested Tribe subsequently signatory to this agreement shall have the opportunity to be present during the excavation, treatment, and disposition of the Remains in order to ensure the recognition of all Associated Funerary Objects.

a. Representatives of the Tribes and any other Interested Tribe subsequently signatory to this agreement shall be afforded the opportunity prior to reinterment to review all artifact collections and records from the Class III Archaeological Survey and Subsurface Testing in order to identify Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony.

9. **The Tribal Chairman, President, Chairman's** Designated Representative, Tribal Cultural Preservation Officer, Tribal Monitor or other Designated Representative as appropriate for each Interested Tribe, shall be responsible for the timely and expeditious treatment and disposition of the Remains.

10. No excavated Human Remains shall be put on public display in any manner nor photographed except for the purpose of scientific documentation and only with the express consent of the affected tribal group(s). No photographs of the Human Remains shall be distributed or published without the written permission of the Tribes and any other Interested Tribe subsequently signatory to this agreement.

11. **In those instances** where Cultural Affiliation cannot be determined and/or the Tribes do not state a claim to the Remains, the U.S. Air Force shall determine their treatment and disposition in consultation with other potentially Interested Tribes.

12. The location of the discovery shall be reported solely to the appropriate U.S. Air **Force** land manager(s) having immediate administrative responsibility and to the Tribal Chairman, President, Chairman's Designated Representative, Cultural Preservation Officer, Tribal Monitor or other Designated Representative as appropriate, of the Tribes and any other Interested Tribe subsequently signatory to this agreement.

13. The specific location of the discovery of Remains shall be withheld from disclosure and protected to the fullest extent allowed by law.

14. Within ninety (90) days after the disposition of the Remains, the Air Force shall submit a final report documenting the discovery, treatment, and disposition of those Remains to the Tribes and any other Interested Tribe subsequently signatory to this agreement.

III. DISPUTE RESOLUTION

All disputes regarding the Cultural Affiliation of Discovered Remains shall be resolved **in accordance with Sections 2** and 3 of the **Native American Graves Protection and Repatriation Act and the procedures set forth in this agreement; such disputes shall not interfere with the Class Ill Archaeological Survey and Subsurface Testing as set forth above nor with the closure or reuse of Williams Air Force Base.**

1. The U.S. Air Force shall seek out the comments of Interested Tribes regarding the procedures set forth in this MOU. Should any Interested Tribe make a conflicting claim of Cultural Affiliation or dispute the methods of treatment or disposition of Remains as set forth herein, the U.S. Air Force shall convene a meeting with the disputing parties within thirty (30) days of receiving notice of disputation.

2. The disputing parties shall attempt to reach a resolution with the assistance of the U.S. Air Force.

3. lf a resolution cannot be reached within ninety (90) days, the U.S. Air Force shall forward all pertinent documentation to the Review Committee established under NAGPRA with a request for the Committee to provide their recommendations.

4. If upon receipt of the recommendations of the Review Committee it still cannot be determined which requesting party is the most appropriate claimant, the U.S. Air Force may retain the disputed Remains until the requesting parties agree upon their disposition or the dispute is otherwise resolved pursuant to the provisions of NAGPRA **or by a court of competent jurisdiction.**

IV. **TERM** AND AMENDMENTS

This MOU shall remain in effect until the disposition of all Remains discovered during **the** Williams AFB Class Ill Archaeological Survey and Subsurface Testing has been completed. It may be amended only by the written consent of all parties hereto at the time of such amendment.

V. ADDITIONAL PARTIES

Interested Tribes claiming lineal descent or cultural affiliation may join and execute this MOU at a later date should they express a desire to do so.

THE TRIBES

GILA RIVER INDIAN COMMUNITY

By: _____ Data: _____

Title _____

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By: _____ Date: _____

Title _____

AK-CHIN INDIAN COMMUNITY

By: _____ Date: _____

Title: _____

TOHONO O'ODHAM INDIAN NATION

By: _____ Date: _____

Title: _____

THE HOPI TRIBE

By: _____ Date: _____

Title: _____

UNITED STATES AIR FORCE.

By: _____ ' Date: _____

Title: _____

APPENDIX B:
Examples of Tribal Research Policies

(1) Hopi Cultural Preservation Office Policy and Research Intellectual Property Rights

(2) Navajo Nation Historic Preservation Department Policies, Procedures, and Requirements

HCPO Policy and Research

Protocol for Research, Publications and Recordings: Motion, visual, sound, multimedia and other mechanical devices

The Hopi Tribe

Policy:

The Hopi people desire to protect their rights to privacy and in and to **Hopi intellectual resources**. Due to the continued abuse, misrepresentation and exploitation of the rights of the Hopi people, it is necessary that guidelines be established and strictly followed so as to protect the rights of the present and future generations of the Hopi people.

Towards this end, the Hopi Tribe shall be consulted by all projects or activity involving Hopi intellectual resources and that such project or activity be reviewed and approved by the Office of Historic and Cultural Preservation through a permitting process or other contractual agreement.

This Protocol should in no way be construed as being a call for commoditization or commercialization of the intellectual resources of Hopi people, nor is it a justification to bring the Hopi people unwillingly into a commercial relationship. The Hopi Tribe reserves the right to NOT sell, commoditize or have expropriated from them certain domains of knowledge or information.

Definitions:

Research:
Includes, but is not limited to: ethnology, history, biogenetic, medical, behavioral, ethnobotany, agronomy, ecology, anthropology, archaeology, microbiology or orthography. Click on **Research Interests of the HCPO** to learn about current research interests.

Hopi Tribe:
Includes Hopi individuals, families, **clans**, villages, communities, Hopi Tribal Government and the Hopi people as a whole.

Projects or Activity
Includes, but is not limited to: research, publications, recordings - motion, visual, sound, whether oral, written, via multimedia or other mechanical devices discovered or yet to be discovered, by non-Hopis.

Multimedia
Includes any product derived from Hopi intellectual resources of text, sound and images combined into an integrated product that can be transmitted and accessed interactively via digital machine readable form or computerized network.

Procedure:

All projects or activity must be submitted in a proposal format and shall address, at a minimum, the following:

1. **Intent and Benefit to the Hopi Tribe:**
   The proposal should clearly outline and discuss the intent and benefit of the project or activity to the Hopi Tribe. Questions to be considered are:
   - What are the anticipated consequences or outcome of the project?
   - What groups will be affected?
   - What are the plans (pre, duration, post-project) for publication or commercialization of the product or research findings?
   - How will the Hopi Tribe share in future publication or commercialization of the product or research findings?
   - How may the Hopi Tribe have access to the product or research data or findings for their own use?
2. **Risks:**
   Discuss the risks associated with or inherent in the project or activity, including risks to the physical and psychological well-being of individual human subjects, participants and risks of deleterious impact on the cultural, social, economic or political well-being of the community. The assessment of risk will also address the steps that will be taken to minimize, ameliorate, or cure the risks in the event that actual harm is caused to the Hopi Tribe.
3. **Tribal Consent:**
   The proposal should address a mechanism to obtain permission to use the Hopi tradition, culture and people as subject matter. A mechanism for "informed consent" should be outlined in detail. Informed consent may be required from an individual, a family or clan, a village or the Hopi Tribal Government.
4. **Right to Privacy:**
   The proposal should address the issue of privacy and address a mechanism whereby the privacy of the Hopi Tribe will be recognized and protected.
   - What issues or subject matter will the project or activity potentially or actually impact?
   - What are the limits, parameters or boundaries necessary to complete the project or activity?
5. **Confidentiality:**
   A Confidentiality Agreement may be required to assure confidentiality. The applicant shall provide assurances of confidentiality for the life of the project, if required, indicating how confidentiality will be protected; indicate where raw data or materials will be deposited and stored at the completion of the project; and indicate the circumstances in which the contractual or legal obligations of the applicant will constitute a breach of confidentiality.
6. **Use of Recording Devices:**
   The proposal should outline what recording devices will be used in the project. Recording devices include, but are not limited to: motion picture cameras, audio/video recorders, tape recorders, mechanical, computerized or multimedia technology (CD-ROM), maps and hand drawings. The proposal should address a mechanism whereby the informants or subjects will understand clearly what the project plans to do with the recorded information presently and potential future uses before recording takes place. The proposal should address plans for publication of recorded information in the project or activity and in any other non-research project or activity.
7. **Fair and Appropiate Return:** The proposal should demonstrate how informants or subjects of the project or activity will be justly compensated. Just compensation or fair return includes

but is not limited to: obtaining a copy of the research findings, acknowledgement as author, co-author or contributor, royalities, copyright, patent, trademark, or other forms of compensation. Posting of a bond will be required to ensure compliance with terms of a project or activity which requires a formal contract.

8. **Hopi Preference in Employment and Training:**
   In all phases of the project or activity, including both on and off reservation phases, preference shall be given to qualified Hopi Tribal members in employment and training.
9. **Review of Product or Research Results/Study:** The proposal should demonstrate a process whereby the Hopi Tribe will have an opportunity to review and have input into the the product or results before publication. The purpose of this step is to assure that sensitive information is not divulged to the public and that misrepresentations can be corrected.
10. **Ownership:** The Hopi Tribe reserves the right to:
    - Assess a permit fee(s).
    - Prevent publication of intellectual resources which are unauthorized or sensitive; misrepresentions or stereotypes the Hopi people; will harm the health, safety, or welfare of the Hopi people; or violates customary and traditional laws of the Hopi Tribe.
    - Require deposit of raw materials or data, working papers or products in a tribally designated repository, with specific safeguards to preserve confidentiality.
    - Deny a licence or permit.

Enforcement of this Protocol requires a cooperative spirit. The Hopi people may share the right to enjoy or use certain elements of Hopi cultural heritage, under its own Hopi laws and procedures, but always reserves the right to determine how shared knowledge and information will be used. The collective right to manage our cultural heritage continues to be a crucial concern.

For more information, please contact:
The Hopi Cultural Preservation Office
P.O. Box 123, Kykotsmovi, AZ 86039

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NAVAJO NATION HISTORIC PRESERVATION DEPARTMENT
POLICIES, PROCEDURES, AND REQUIREMENTS FOR ACQUIRING
CULTURAL RESOURCES INVESTIGATION PERMITS

December 15, 1993

The Navajo Nation Historic Preservation Department (HPD) issues three categories of permits. Class A permits are for site visitation (including personal archaeological research involving site visitation only). Class B permits are for noncollection inventories conducted pursuant to Section 106 of the National Historic Preservation Act (NHPA) and/or the Navajo Nation Cultural Resources Protection Act (CRPA); authorized activities include archaeological inventories as well as ethnographic inquiries that are conducted **simultaneously with the archaeological inventory (see 36 CFR 800.4,** identifying historic properties). Class C permits are for archaeological excavation or collection purposes (including monitoring) ethnographic inventories conducted as a separate phase of Section 106 and/or CRPA investigations, ethnographic research conducted for the purpose of treating traditional cultural properties pursuant to Section 106 and/or CRPA, and ethnographic inquiries involving personal research. Ethnographic research includes any systematic collection of oral information from members of the Navajo Nation regardless of differences in academic definitions for specific kinds of ethnography. Explanations regarding ethnographic research appear below in permit-specific contexts.

Navajo Nation permits are required on a11 lands of the Navajo Nation. Navajo Nation lands are defined as lands of the Nation, or of Navajo individuals, that either are under the ownership, jurisdiction, or control of the Nation or are held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by the Nation or a Navajo individual. The most common Navajo land statuses are Tribal Trust, Allotted, Fee, and P.L.O. 2198. Permit requirements for these land statuses are provided in Table 1. ***It is the responsibility of the sponsor and the permittee to ensure correct identification of land status.*** Fieldwork conducted without the proper permit(s) is illegal and will result in prosecution pursuant to CRPA (CMY-19-88) and/or the Archaeological Resources Protection Act (43 CFR Part 7).

PERMIT APPLICATION PROCEDURES

Permit application procedures are described below and are summarized in Table 2. Navajo Nation Cultural Resources Investigation Permit Request Forms and Cultural Resources Permit fee schedules are enclosed.

POLICIES, PROCEDURES, AND REQUIREMENTS FOR ACQUIRING CULTURAL RESOURCES INVESTIGATIONS PERMITS
Effective December 15, 1993

TABLE 1. Permit Requirements for Common Land Statuses on Navajo Nation Lands

Land Status	Activity	NN Permit	BIA Permit
Tribal Trust	Visitation	Class A	none
	Inventory	Class B or Class C	none
	Collection Excavation	Class C	ARPA
	Ethnographic	Class B or Class C	none
Allotment	Visitation	Class A	none
	Inventory	Class B or Class C	none
	Collection Excavation	Class C	ARPA
	Ethnographic	Class B or Class C	none
Tribal Fee	Visitation	Class A	none
	Inventory	Class B or Class C	none
	Collection Excavation	Class C	none
	Ethnographic	Class B or Class C	none
P.L.O. 2198	Visitation	Class A	none
	Inventory	Class B or Class C	none
	Collection Excavation	Class C	ARPA
	Ethnographic	Class B or Class C	none

POLICIES, PROCEDURES, AND REQUIREMENTS FOR ACQUIRING
CULTURAL RESOURCES INVESTIGATIONS PERMITS
Effective December 15, 1993

TABLE 2. Summary of Navajo Nation Permit Requirements

PERMIT CLASS	PURPOSE	ANNUAL APPLICATION?	PERMIT FEE?	HPD REVIEW PERIOD
CLASS A	Site visitation	No	group tours	10 days
	noncollection personal research on archaeological sites	No	No	10 days
CLASS B				
General	noncollection archaeological and ethnographic inventory associated with Section 106/CRPA requirements	Yes	Yes	10 days
Navajo *Preference Blanket*	as above, for Navajo Preference firms	Yes	Yes	10 days
Indefinite Services	as above, for non-Navajo Preference firms conducting numerous projects of the same kind for one sponsor	Yes	Yes	10 days
CLASS c	Archaeological collection/excavation for personal research	No	Yes	30 days
	Archaeological, collection, excavation or monitoring for Section 106/CRPA requirements	Yes	Yes	30 days
	Ethnographic data collection for personal research	No	Yes	30 days
	Ethnographic data collection for treatment of cultural resources per Section 106/CRPA	Yes	Yes	30 days
	Ethnographic inventory if as a separate phase of work for Section 106/CRPA purposes	Yes	Yes	10 days

POLICIES, PROCEDURES, AND REQUIREMENTS FOR ACQUIRING CULTURAL RESOURCES INVESTIGATIONS PERMITS
Effective December 15, 1993

ANNUAL APPLICATION

An initial application is generally required at the beginning of each calendar year (see below for permit-specific requirements). If approved, this application allows the contractor to apply for project-specific permits during the calendar year. The information submitted with the initial application does not need to be resubmitted with each project-specific request. Information needed for the initial application includes

- a statement of the organization's qualifications (including facilities and equipment)

- current resumes of supervisory/specialist personnel (Principal Investigator[s], Project Director[s], Crew Chief[s], Cultural Specialist(s), Laboratory Director(s), and Analyst[s])

  The annual application must clearly and unambiguously identify the applicants for the specific position(s) they will hold, Resumes must be in a simple format that provides all of the information required to document the person's qualifications (e.g., education; time spent in the field [distinguishing between survey, excavating, and ethnographic work, as appropriate], laboratory, etc.). Individuals may not assume positions of greater responsibility than those for which they have been approved; violation of this provision may lead to the nullification of a company's annual application approval, the disapproval of future project-specific permit requests, and/or to the suspension or revocation of project-specific permits already issued.

  Resumes for added personnel, or for persons applying for positions of greater responsibility than were originally approved, must be submitted during the year for review, approval, and inclusion in the annual application file. Such individuals may not be listed in requests for project-specific permits or authorizations until approved by HPD.

- a letter outlining the kind(s) and scale(s) of projects that are anticipated during the year and any other relevant information

APPENDIX C:
Form OMB 83-1, Paperwork Reduction Act Submission

PAPERWORK REDUCTION ACT SUBMISSION

'lease read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's PaperworkClearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room **10102, 725 17th Street** N.W., Washington, DC 20503

Agency/Subagency originating request

2. OMB control number b.☐ None

a . _ - - - - - -

3. Type of information collection **(check one)**

a.☐ **New Collection**
b.☐ **Revision of a currently approved collection**
c.☐ **Extension of a currently approved collection**
d.☐ **Reinstatament, without change, of previously approved collection for which approval has expired**
e.☐ **Reinstatement, with change, of a previously approved collection for which approval has expired**
f.☐ **Existing collection in use without an OMB control number**

For **b-f,** note item **A2 of Supporting Statement Instructions**

4. Type of review requested **(check one)**

a. •i Regular submission
b.☐ Emergency Approval requested by: _____/_____/_____
c.☐ Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? ☐ Yes ☐ No

6. Requested expiration date
a.☐ Three years from approval date
b.☐ Other Specify: _____

7. Title

3. Agency form number(s) ifapplicable

9. Keywords

10. Abstract

11 Affected public (Mark primary with "P" & all others that apply with "X"

a. ___ Individuals or Households
b. ___ Business or other for-profit
c. ___ Not-for-profit institutions
d. ___ Farms
e. ___ Federal Government
f. ___ State, Local or Tribal Govt.

12. Obligation to respond (Mark primary with "P" and all others that apply with "X")

a. ☐ Voluntary
b. ☐ Required to obtain or retain benefits
c. ☐ Mandatory

13. Annual recordkeeping and reporting burden

a. Number of respondents _____
b. Total annual responses _____
1. Percentage collected electronically _____%
c. Total annual hours requested _____
d. Current OMB inventory _____
e. Difference _____
f. Explanation of difference
1. Program change _____
2. Adjustment _____

14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

a. Total annualized capital/startup Costs _____
b. Total annual Costs (O&M) _____
c. Total annualized cost requested _____
d. Current OMB inventory _____
e. Difference _____
f. Explanation of difference
1. Program change _____
2. Adjustment _____

15. Purpose of information collection (Mark primary with "P" and all others that apply with "X')

a. Application for benefits
b. Programevaluation
c. _____General purpose statistics
d. _____Audit
e. Program Planning or Mgmt.
f. _____Research
g . _Regulatory or compliance

16. Frequency of recordkeeping or reporting (check all that apply)

a.☐ Recordkeeping
b.☐ Third party disclosure
c. Cl Reporting
1,☐ On occasion
2.☐ Weekly
3.☐ Monthly
4,☐ Quarterly
5.0 Semi-annually
6.☐ Annually
7.☐ Biennially
8.☐ Other(describe) _____

17. Statistical methods
Does this information collection employ statistical methods?

☐ Yes ☐ No

18. Agency contact (person who can best answer questions regardir the content of this submission)

Name: _____

Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

VOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b)(3), appear at the end of the instruction: The certification is to be made with reference to those regulatory provisions as set forth in the instructions.

The following is a summary of the topics, regarding the proposed collections of information, that the certification covers:

(a) Is necessary for proper performance of the agency's functions and has practical utility;
(b) It avoids unnecessary duplication;
(c) It reduces burden on small entities;
(d) It uses plain, coherent and unambiguous terminology that is understandable to respondents;
(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
(f) It indicates the retention periods for recordkeeping requirements;
(g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3)

(i) Why the information is being collected;
(ii) Use of information;
(iii) Burden estimate;
(iv) Nature of response (voluntary, required for a benefit, or mandatory);
(v) Nature and extent of confidentiality; and
(vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to collected;
(i) It uses effective and efficient statistical survey methodology; and,
It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Iten 18 of the Supporting Statement.

Sponsoring Official	Date
Reports Clearance Officer	Date
Signature of Senior Departmental Official or Designee	Date