

Protecting Tribal Nations Through Community
Controlled Research: an Analysis of Established Research
Protocols within Arizona Tribes
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ABSTRACT

In the university setting, when a person wants to conduct research that deals with human subjects, they are required to receive the approval of their Institutional Review Board (IRB). This process takes place to ensure the proposed research is ethical and poses minimal risks to the willing subject. In Indian Country, there is a growing trend where American Indian nations are taking control over regulating research that is conducted within their jurisdictional boundaries.

In my thesis, I discuss the historical background that has led to the IRBs academics are familiar within universities they see today. In addition, I discuss the body of literature that addresses IRBs, human subjects, and the debate on which research should or should not be regulated by universities. I will then, critically analyze the established research protocols that exist in Arizona American Indian tribes. I use Darrell Posey's (1996) idea of Community Controlled Research (CCR) as the framework for my analysis. CCR dictates the people of the community decide the ways in which research is conducted. The purpose of my research is to create recommendations that will assist and inform tribes how to either, strengthen their existing protocols, or create a research protocol that will promotes Community Controlled Research.

DEDICATION

I dedicate my thesis to my father, Sander Tom. During the summer of 2008, I conducted an oral history project in coordination with the Summer Research Institute at the University of Arizona in Tucson. During this time, I was without a vehicle and my dad was kind enough to drive me back and forth between Sells, Arizona where I conducted the oral history project, and Tucson, where I was taking classes. In order to complete my project I had to travel back and forth at least three times a week between the university and the Tohono O'odham Nation. During our travels, I told my dad if I ever went to graduate school it would be because he helped me through this project. My oral history project is what motivated me to decide to pursue a Master's degree. I would not have come to that realization without the help and constant encouragement of my dad.

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PREFACE

Whenever I present my research, I like to begin by describing the process that motivated me to choose my thesis topic of American Indian tribal research protocols. I first learned about this term, “human subjects,” in the summer of 2008 while I was conducting an oral history project of my grandmother. I was constantly offended when my instructors kept referring to my grandma as a “human subject.” Before I started my project I was required to go through an online human subjects training through the Collaborative Institutional Training Initiative at the University of Miami (referred to as CITI training). I was also required to have my grandmother sign a number of forms acknowledging she was fully informed of the research project and consented to participate. I remember, at the time, my grandma told me she would only sign my forms because I was the one asking her. She was slightly offended that her verbal consent was not good enough for the university and that she was required to sign forms.

The next I time I encountered a situation where “human subjects” were discussed was when I entered my Master’s program. At the time I started my program I was able to obtain a position as a graduate assistant to the director of the American Indian Studies department who also served as the ombudsman of the settlement agreement between Arizona State University and the Havasupai Tribe. The settlement agreement was the result of unethical research ASU researchers conducted with blood samples that were taken from members of the Havasupai Tribe. My primary task as graduate assistant was to help work on the settlement agreement with the Havasupai. At the time, I had limited knowledge of the research that took place with the Havasupai Tribe and the settlement agreement. I learned quickly and saw first hand how damaged the relationship between

the tribe and university was as a result. I have seen first-hand, and understandably so, that there is still mistrust of ASU among the Havasupai community. Since then, there has been a genuine effort on the side of ASU to rebuild the relationship between the university and the Tribe. It is my belief and hope the relationship building will continue on, long after the settle agreement comes to an end.

The deciding factor that inspired me to choose my thesis topic came with an assignment given in my research methods class. Our assignment was to create a tribal research protocol. As a class, we were told to look at our own communities and if our tribe did not have a research protocol, we were to create one, in the way we would want it to be. At the time, my tribe, the Tohono O’odham Nation, did not have an established protocol. I was shocked, that outside of archaeological studies, my community did not have an established protocol to regulate research. Between the work I was doing with the Havasupai, which still does not have an official way to regulate research and seeing the lack of regulation in my own community at the time, I was inspired to pursue a thesis topic on American Indian research protocols.

CHAPTER 1

INTRODUCTION

Once I entered graduate school, I had the privilege of entering into a world of academic research and all of the possibilities of positive change that can come from it. However, within American Indian Studies, as a result of a long history of being overly investigated, the topic of research instinctively reminds American Indian people that there is a negative side that can come from research. Many of my professors and colleagues come from American Indian communities where research is instantly viewed with caution. The word itself, “research” has almost become taboo in many Native communities. I believe Linda Smith said it best in *Decolonizing Methodologies*, “The word itself, ‘research’, is probably one of the dirtiest words in the indigenous world’s vocabulary. When mentioned in many indigenous contexts, it stirs up silence, it conjures up bad memories, it teases a smile that is knowing and distrustful.”¹

Like Smith, I explore how research is conducted in American Indian tribes. However, instead of writing about Indigenous methodologies of research, I am looking for how American Indian nations are regulating the research. My study is a move toward what Darrell A. Posey calls Community Controlled Research (CCR). “Community-Controlled Research is research where the objectives and methodologies are decided upon by indigenous peoples themselves.”² Posey, an ethnobiologist, anthropologist, and activist, who was known for his work on promoting indigenous intellectual property rights; “[d]espite his academic credentials, he was sometimes criticized by colleagues

¹ Linda Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 2012), 1.

² Kristina Plenderleith, *Indigenous Knowledge and Ethics: A Darrell Posey Reader*, ed. Darrell Posey (New York: Routledge, 2004), 191.

who frowned on his involvement with the people he was meant to be studying as a detached observer.”³

Unlike Posey’s work, which is centered on indigenous peoples of South American, my study is dedicated towards the indigenous peoples of the United States, American Indians of Arizona. American Indian communities are referred to as nations because of their inherent sovereign status that is recognized by the Federal government. I will discuss Posey’s work in more detail in Chapter two. American Indian people are members of their own sovereign nations with the ability to govern themselves, institute law and regulations. “Tribes’ legal rights empower them not only to screen and approve or disapprove research, but also to control researchers’ access to community members. Tribes have the right to deny permission for investigators to conduct research in Indian communities, particularly where they see little or no benefit to be derived.”⁴ Therefore, I advocate that instituting a research protocol is an efficient way for American Indian nations to control the research conducted within their land base.

The lack of community-controlled research is precisely what led to the unethical, negligent research that was being conducted on the Havasupai tribe.⁵ Starting in 1990, researchers from Arizona State University in anthropology, nutrition, and genetics collected more than 200 blood samples from Havasupai tribal members. The researchers misrepresented their research purposes and led the tribal members to believe their blood samples were solely for genetic testing related to diabetes research. “Over the course of

³ Herbert Girardet, “Obituary: Darrell Posey: Anthropology who championed the rights of Amazonian tribes,” *The Guardian* (London), March 30, 2001, 22.

⁴ Elisabeth S. Grobsmith, “Growing up on Deloria: The Impact of his work on a New Generation of Anthropologists,” in *Indians and Anthropologists: Vine Deloria Jr., and the Critique of Anthropology*, ed. Thomas Biolsi and Larry J. Zimmerman (Tucson: The University Press, 1997), 42.

⁵ The Havasupai Tribe of Arizona resides within the Supai Village located on the Grand Canyon floor.

the next 10 years, those blood samples were also used to examine DNA variants linked to schizophrenia, alcoholism, metabolic disorders, and the geographic and anthropologic origins of the Havasupai.”⁶ In addition to using the samples for unauthorized testing, researchers took samples the summer before the researchers at Arizona State University ever sought permission from the Institutional Review Board (IRB) to conduct this research project. The Havasupai example clearly defies the sole purpose of the IRB, which is to provide informed consent and receive permission *prior* to conducting the research and protect individuals involved as research subjects. The researchers never made Arizona State’s IRB aware their research project was already underway when they approved the project.

The result of the unethical research that took place with Havasupai led to a lengthy legal battle in *Havasupai Tribe of Havasupai Reservation v. Arizona Board of Regents*.⁷ The case ended in a five-year settlement agreement reached in April of 2010.

The following is a list of provision within the settlement agreement:

- An award of \$700,000 was given to individual people within the community
- Return of the blood, genetic samples, derivatives of samples
- Return of documents and non-use policy
- There are five collaborative programs that ABOR will help the Havasupai with
 - 1) Education; 2) Health & Nutrition; 3) Economic Development; 4) Engineering and Architectural Design and Planning, 5) Legal Issues Related to Tribal Governance⁸

⁶ Douglas S. Diekema, “Examining the Quest to Eliminate Discrepancies in IRB Decisions,” *AJOB Primary Research*. 2 (2011): 34.

⁷ *Havasupai Tribe of Havasupai Reservation v. Arizona Board of Regents*, 204 P.3d 1063 (CV.Att.2008)

⁸ *Settlement Agreement and Mutual Release*, Exhibit C, *Havasupai Tribe v. Ariz. Bd. Of Regents*, CV2005-013190 (6 March 2010).

Based on the fact Arizona tribes adopted their research protocols after the Havasupai case came to light, it is clear the case was an influential force in the start of American Indian tribes adopting research protocols. “The court systems may not have looked seriously at the Havasupai’s claims, but many other Native American tribes across the nation have – including every tribe in Arizona.”⁹ The Havasupai case provides an example of how current IRBs are not adequate in protecting American Indian nations and their people.

All research that involves “human subjects” or people is required to be reviewed and approved by an Institutional Review Board (IRB) before the research is to take place. According to ASU’s Research Integrity and Assurance, this policy is “to assure that subjects are being treated ethically.”¹⁰ Although their intent is to promote ethical research, IRBs have proven to be inadequate for American Indian nations. Furthermore, there are studies that test the overall effectiveness of IRBs. From January 2008 to March 2009 the United States Government Accountability Office (GAO) conducted a study titled: *Human Subjects Research: Undercover Tests Show the Institutional Review Board System is Vulnerable to Unethical Manipulation*. The purpose of the GAO is to provide Congress with “information that is objective, fact-based, nonpartisan, nonideological, fair and balanced,” regarding governmental agencies and programs.¹¹ The following details the three aspects of the IRB system the GAO investigated:

- (1) the process for establishing an IRB,

⁹ Jana Bommersbach, “Arizona’s Broken Arrow: Did Arizona State University Genetically Rape the Havasupai Tribe?,” *Phoenix Magazine*, November 2008, 142.

¹⁰ Arizona State University, “Research Integrity and Assurance: Process,” *Knowledge Enterprise Development*, accessed February 2, 2015, <https://researchintegrity.asu.edu/humans/process>

¹¹ United States Government Accountability Office, “About GAO,” accessed December 4, 2014. <http://www.gao.gov/about/index.html>

- (2) the process through which researchers wishing to apply for federal funding assure HHS their human subjects research activities follow ethical principles and federal regulations, and
- (3) the process that medical research companies follow to get approval for conducting research on human subjects.¹²

During the course of this study, the GAO disguised itself as a fictitious company, submitted falsified materials and credentials to an IRB, and was granted approval to conduct a study on human subjects with an unproven medical device.¹³ The results found “that the IRB system is vulnerable to unethical manipulation, particularly by companies or individuals who intend to abuse the system or to commit fraud, or who lack the aptitude or qualifications to conduct and oversee clinical trials.”¹⁴ This study, as well as Havasupai case, illustrates the potential of unethical manipulation of an IRB and why it is so imperative for American Indian nations to take control of the research conducted within their jurisdiction. Indian nations cannot simply rely upon outside Institutional regulations shown to be vulnerable to manipulation.

The mainstream universities IRB processes emulates the dominant society’s way of protecting human subjects in regards to research that is being conducted by their faculty or students. Universities ultimate goal is to protect the institution from being held responsible for unethical research that is conducted; where an ideal tribal research protocols primary goal is to protect the community first. These are likely the reasons why the “human subject” in a study is required to sign an informed consent form to acknowledge they fully understand the parameters of the study they are participating in.

¹² United States Government Accountability Office, “Human Subjects Research: Undercover Tests Show the Institutional Review Board System is Vulnerable to Unethical Manipulation.” Last modified March 26, 2009. www.gao.gov/new.items/d0944t.pdf, 1.

¹³ Ibid., 5.

¹⁴ Ibid., 4.

Institutional Review Boards make the decision if a study is deemed “ethical” or not. More often than not, the people who serve on most university IRBs have little to no knowledge of American Indians, their cultures, how diverse each tribe is from each other and an understanding of their sovereign status. This may be due to the assumption that many people view American Indians simply as another ethnic group. Professor of Law, Rebecca Tsosie comments that, “many Native groups find the existing regulatory framework inadequate to protect their rights.”¹⁵ As a result of this inadequacy, there is a growing trend where American Indian nations are beginning to create their own research protocols to regulate research within their jurisdictional boundaries.

The purpose of this research project is to create a set recommendations that will assist and inform tribes how to either strengthen their existing protocols, or create a research protocol that will enable them to have control over all research conducted within their communities. Within this project I will critically examine the existing research protocols that are within the American Indian tribes of Arizona to illustrate what is already taking place in terms of regulating research. I conclude with recommendations to help tribal governments implement a research protocol. This study is an exploratory study and analysis of tribal IRBs, in Arizona. I rely on primary and secondary sources pertaining to research ethics and Institutional Review Boards.

My work is grounded in American Indian Studies and my focus and theoretical framework is grounded in the American Indian Studies Paradigm. This paradigm provides an American Indian perspective on the topic at hand and sets the foundation for this project in that the purpose is to help tribal communities and a meaningful and

¹⁵ Rebecca Tsosie, Cultural Challenges to Biotechnology: Native Genetic Resources and Concepts of Cultural Harm,” *Journal of Law* (2007): 405.

practical way. I focus “on the protection and strengthening of Indian sovereignty, self-determination, self-sufficiency, and human rights.”¹⁶ American Indian nations are unique, in their sovereign status.

As a scholar in American Indian Studies and as a member of the Tohono O’odham Nation, I see the importance of American Indian nations exercising their sovereignty by regulating research conducted within their nation’s boundaries. Mainstream populations’ benefit from this research by providing a better understating of American Indian nations and the understanding that ethical values vary among the vast variety of American Indian tribes within the United States.

I argue that Community-Controlled Research (CCR)¹⁷ is one influential model that can facilitate American Indian nations asserting their sovereignty. The significance of this study stems from the fact that American Indian peoples are not just an identifiable ethnic group. I argue that instituting an official research protocol is a significant way for American Indian tribes to protect themselves. Throughout this study, I look to answer the following questions: Is it realistic for all American Indian nations to institute and maintain a research protocol, such as an IRB? What is an alternative method to a research protocol that can promote control over research within the community? What is the outcome if a community denies research within their community all-together? How will the growing trend in research protocols effect the willingness of highly qualified research from working with American Indian communities?

¹⁶ James Riding In, “Editors Commentary: An American Indian Studies Paradigm Statement,” *Wicazo Sa Review* 26, 2 (Fall 2011): 7.

¹⁷ Kristina Plenderleith and Darrell Addison, *Indigenous Knowledge and Ethics: A Darrell Posey Reader* (New York: Routledge, 2004), 191.

The following chapter is divided in two sections. The first section provides background information and the history leading to the universities Institutional Review Boards known today. The purpose here is to provide more than timeline of events; it will also show that “scandals will provoke change.”¹⁸ The scandals throughout history have forced the development of the IRBs academics see at universities across the country. These scandals, such as with the Havasupai, have lead to the research codes that are now appearing in American Indian nations.

In the second section of chapter two I review the body of literature that covers various issues related to IRBs. The first area, in this section focuses on biomedical research, which is “the application of natural sciences, especially the biological and physiological sciences, to clinical medicine.”¹⁹ Such research includes those that utilize tissues or DNA samples of any kind. The next area of focus covers the social sciences, which would include history, anthropology, and ethnography. Unfortunately, the majority of the literature focused solely on biomedical research, leaving the social sciences out of the discussion. Social science research seemed to be more controversial because many social scientists do not believe they should have to go through an IRB process. In fact, as you will see in the literature review, many social scientists argue their work is not defined as “research” since they are not dealing with any type of DNA sampling.

In Chapter three, I discuss the current and existing research protocols among the Arizona Tribes. The purpose is to find any related themes among the existing codes, and not to simply provide a list of research codes. Using Darrell Posey’s idea of Community Controlled Research (CCR) as the framework for my analysis, I critically analyze the

¹⁸ George J. Anna, “Anthropology, IRB, and Human Rights,” *American Ethnologist* 33(2006): 542.

¹⁹ “Dictionary.com,” accessed 2014, dictionary.reference.com/browse/biomedical%20?&o=100074s=t

established research protocols. I conclude by readdressing the research questions I proposed earlier. While taking into consideration the existing regulatory protocols, I then provide recommendations for creating a protocol that promotes Community Controlled Research in Indian country.

CHAPTER 2

HISTORICAL BACKGROUND & LITERATURE REVIEW

This chapter is divided into two sections. The first provides a historical timeline that has led to the Institutional Review Board that are common in most universities. The second section is a comprehensive review of the literature that discusses IRBs, human subjects, and the debate on which types of research should or should not be regulated by universities. This chapter sets a solid foundation for my discussion on the current research regulations that have been adopted by American Indian tribes in the state of Arizona.

It is important to understand that, according to the history, research policies were reactive policies. “The social history of the United States abounds with examples of reactive public policy initiatives.”²⁰ Reactive policies are those developed in reaction to address a problem that already exists. The purpose of this chapter is to provide a historical timeline of research projects and events that have enacted policies that lead up to date the current IRBs most universities use within the United States utilize. Unfortunately, the reality is that by the time these types of policies are created and put into effect an unethical research project or event has already occurred.

THE NUREMBERG CODE (1947)²¹

It is generally accepted that the Nuremberg Code marks the establishment of formal research codes because “[i]t served as a blueprint for today’s principles that

²⁰ Frederick Jacobs & Arina Zonnenberg, “Tangible and Intangible Costs of ‘Protecting Human Subjects’: The Impact of the National Research Activities,” *Education Policy Analysis Archives* 12, (2004): 2.

²¹ George J. Anna and Michael A. Gordin, *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*. (Oxford: Oxford University Press, 1992), 2. &

ensure the rights of subjects in medical research.”²² The Code was a result of the Nuremberg trials, which were tried between 1945 and 1947. The trials were an international military tribunal to try major war crimes that were committed in Germany during WWII by Nazi doctors experimenting on people without receiving their voluntary consent. The judges who served on the tribunal were from the United States, Britain, France, and the former Soviet Union. “[T]hroughout the proceedings testimony concentrated on the experiments with the human beings conducted in the Nazi concentration camps. Yet it was not the experiments themselves, but the ways in which they had been conducted, that dominated the proceedings.”²³ Although the idea of obtaining informed consent from subjects is deemed a logical requirement before embarking on human experimentation, prior to the Nuremberg Code, this was not required.

The Nuremberg Code was unlike normative policy-making because the judges brought down the Code. Typical policy-making is created by an administrative agency. “Unlike other codes of conduct, which might be drafted in consultation with a number of interested groups or individuals, this Code was essentially dictated by judges.”²⁴ The Code provides ten points of ethics for human experimentation. Unfortunately, the

²² Paul Ndebele, “The Declaration of Helsinki, 50 Years Later,” *The Journal of the American Medical Association* (2013): 1436.

²³ Jay Katz, “The Nuremberg Code and the Nuremberg Trial,” *The Journal of the American Medical Association* 20 (1996): 1662.

²⁴ Leonard H. Glantz, “The Influence of the Nuremberg Code on U.S. Statutes and Regulations,” in *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*, ed. George J. Annas and Michael A. Gordin (Oxford: Oxford University Press, 1992): 183.

vagueness of the terminology has left room for controversy and debate because it did not define two key terms: “human subject” and “experiment.”²⁵

The second point of ethics within the Code is also relevant to this study. It states that experimental research should be “for the good of society.”²⁶ In this instance, more than likely it was interpreted as the good of the society as whole. In the following chapter, there is a great deal of emphasis on ensuring research is beneficial to the specific American Indian tribe and its members. This is to ensure, as the Code also states within the same point, there is no “random and unnecessary” natured research within the community.²⁷

Declaration of Helsinki (1964)

The World Medical Association (WMA) developed the adoption of the Declaration of Helsinki, which sets ethical guidelines with human experimentation. It built upon the Nuremberg Code’s ten principals. The Declaration was able to address several issues that the Code did not. First, the Declaration of Helsinki was written by doctors, for doctors instead of judges as in the Nuremberg Code. Second, the Nuremberg Code was set in stone and cannot be amended, whereas the Declaration of Helsinki is amendable to keep up with current ethical issues. The latest amendments were added in October of 2013. Finally, the current Declaration addresses issues related to community informed consent.

The new version of the declaration acknowledges that in some cases, such as in close-knit societies, informed consent needs to involve others such as

²⁵ Leonard H. Glantz “The Influence of the Nuremberg Code on U.S. Statues and Regulations,” in *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation*, ed. George J. Annas and Michael A. Gordin (Oxford: Oxford University Press, 1992): 184-185.

²⁶ Appendix A

²⁷ Appendix A

community leaders and significant others. Community leaders can serve as additional layers of protection that researchers need to pass through before they reach the potential participants. By addressing this reality, the new version is emphasizing respect for culture and community norms as part of the research process.²⁸

The newest version of the Declaration of Helsinki refers to issues of working within Indigenous communities by addressing community informed consent. This brings to light significant discussion of community-controlled research, which will be the foundation of my analysis in the following chapter.

Officially Instituting IRBs (1966)

In 1966, the U.S. Surgeon General started requiring institutions, such as universities; to institute a human subjects review committee, known today as institutional review boards. The new requirements “covered both biomedical and social scientists.”²⁹ These same IRBs are utilized today with a few updates from when it was first required. The significance of this new regulation is that it did not just cover medical research, as did the Nuremberg Code and the Declaration of Helsinki. Later in this chapter, I will discuss in more detail the academic debate over regulating biomedical and social science research with university IRBs. This debate is relevant to how American Indian communities are regulating research.

Laud Humphrey’s *Tearoom Trade* (1970)

In 1965, Laud Humphrey’s was a doctoral student in sociology at Washington University in St. Louis. His then dissertation, *Tearoom Trade: Impersonal Sex in Public Places* (1970), focused on the gay men community within St. Louis. The “tearooms” was

²⁸ Paul Ndebele, “The Declaration of Helsinki, 50 Years Later,” *Journal of the American Medical Association* (2001): 2145.

²⁹ Laura Stark, *Behind Closed Doors: IRBs and the Making of Ethical Research* (Chicago: The University of Chicago Press, 2012): 6-7.

a place where men would meet for anonymous sex. For his research Humphrey's began going to public restrooms to observe men engaging in sexual activities. He did not identify himself as a researcher and positioned himself as a lookout. As he kept watch, he recorded the license plate numbers of the other participants. With these license plate numbers, he identified the men's names and addresses. After about a year's time passed, Humphrey approached the identified men at their homes and represented himself as a survey interviewer. Humphrey "informed the subjects that they had been selected in a random sample for a health study. While the health study was genuine, their selection in the sample was not."³⁰ Humphrey's findings were a significant contribution to his field; the study debunked the myth that men in this population "were criminals, transients, or predatory pedophiles that communities needed to hunt down and criminally prosecute."³¹

The important aspects that comes from Laud Humphrey's study is that it started the conversation of what is considered ethical research within the social science disciplines. IRBs and ethic codes are helpful in promoting ethically responsible research, however, they "cannot serve to replace the ethics of individual researchers."³² Humphrey's research brought about the ethical debate deception as a method for research.

Tuskegee Experiment (1932-1972)

³⁰ Earl Babbie, "Laud Humphreys and Research Ethics," *International Journal of Sociology and Social Policy* 24 (2004): 16.

³¹ Michael Lenza, "Controversies Surrounding Laud Humphreys' Tearoom Trade: An Unsettling Example of Politics and Power in Methodological Critiques," *International Journal of Sociology and Social Policy* 24, (2004): 28.

³² Michael Lenza, "Controversies Surrounding Laud Humphreys' Tearoom Trade: An Unsettling Example of Politics and Power in Methodological Critiques," *International Journal of Sociology and Social Policy* 24,(2004): 22.

The Tuskegee Experiment was a clinical study starting in 1932. During the experiment physicians knowingly denied participants, all black men, information regarding their diagnosis of syphilis and withheld medication for treatment. “[A] fundamental ethical problem at the outset was the decision to mislead the treatment subjects and wider community.”³³ One of the outcomes from the Tuskegee experiment was the discussion of the need to enforce ‘informed consent’ policy. The experiment also led to the 1979 Belmont Report. The significances of this experiment in this study lies with the legal framework, or lack thereof, for vulnerable populations within the United States. In regards to vulnerable populations, American Indian nations are different, in that they have sovereign status that can be used to protect themselves.

National Research Act/45 CFR part 46 (1974)

In response to publicized research abuses, such as the Tuskegee experiment, Congress passed the National Research Act in 1974; it created the National Commission for the Protections of Human Subjects of Biomedical and Behavioral research. This Act “mandated the establishment of Institutional Review Boards (IRBs) at all universities that accepted funding from the Department of Health and Human Services (DHHS).”³⁴ Unlike the Nuremberg Code and the Declaration of Helsinki, which set guidelines for the researchers, the National Research Act was directed at institutions that received federal funding.

Frederick Jacobs and Arina Zonnenberg, authors of *Tangible and Intangible Cost of “Protecting Human Subjects”*: *The Impact of the National Research Act of 1974 on*

³³ David M. Smolin, “The Tuskegee Syphilis Experiment as a Consequence of Social Change and illustration of Repeated, Long-Term Ethical Failure,” *Faulkner Law Review* 3, (2012): 231.

³⁴ Joan E. Sieber, *Planning Ethically Responsible Research: A Guide for Students and Internal Review Boards* (Newbury Park: Sage Publications, 1992), 4.

University Research Activities, identify three broad areas the National Research Act oversees:

1. Issues regarding safety, particularly when hazardous materials are to be used;
2. Issues related to the well being of human subjects, including minimizing physical and psychological risks, as well as ensuring that any person involved is apprised of risks and adverse consequences; and
3. Issues related to privacy and the protections in place to ensure confidentiality.³⁵

Just like any of the documents that came before it, the National Research Act provided ambiguous language. The terms “human subject” and “well-being” are not defined within this piece of legislation. Without defining these terms, it makes implementation of this policy difficult.

Belmont Report (1978)

The Tuskegee experiment also inspired a four-day discussion that took place at the Belmont Conference Center at the Smithsonian Institution in February of 1976. The outcome of this discussion was the Belmont Report, which was issued to the President of the United States, Congress, and Secretary of Health, Education and Welfare. The following is a passage from the letter that accompanied the report to all required agencies:

Unlike most of the previous reports of the Commission, the Belmont Report does not make specific recommendations for administrative actions by the Secretary of Health, Education, and Welfare. Instead, it is our recommendation that the Belmont Report be adopted in its' entirety as a

³⁵ Frederick Jacobs and Arina Zonnenberg, “Tangible and Intangible Costs of ‘Protecting Human Subjects’: The Impact of the National Research Activities,” *Education Policy Analysis Archives* 12, (2004): 4.

statement of departmental policy on the conduct of research involving human subjects.³⁶

The Belmont Report provided ethical guidelines for research involving human subjects. “Three specific recommendations for practice emerged: 1) the need for informed consent, 2) the objective assessment of risks and benefits, and 3) the equitable selection of research subjects.”³⁷

Collaborative Institute Training Initiative (CITI) (2000)

In 2000, the University of Miami established the Collaborative Institute Training Initiative (CITI) “[t]o promote the public’s trust in the research enterprise by providing high quality, peer reviewed, web based, research education materials to enhance the integrity and professionalism of investigators and staff conducting research.”³⁸ This web-based training can be customized per institution and organizational needs. It is customary and required by Arizona State University, University of Arizona, and Northern Arizona State University, that anyone that is affiliated with each University use the CITI training program before embarking on their research projects, especially when a research project deals with human subjects. The following is a list of trainings I have taken through the CITI program:

- Code of Ethical Business Conduct Training Curriculum
- Conflict of Interest
- Group 2 Social & Behavioral Research Investigators and key personnel
- Social and Behavioral Responsible Conduct of Research

³⁶ The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research* (Washington, DC: DHEW Publication) (OS).

³⁷ Frederic Jacobs and Arina Zonnenberg, “Tangible and Intangible Costs of ‘Protecting Human Subjects’: The Impact of the National Research Activities,” *Education Policy Analysis Archives* 12, (65): 4.

³⁸ Collaborative Institutional Training Initiative at the University of Miami, “Mission and History,” *CITI Program*, accessed 2014, <https://www.citiprogram.org/index.cfm?pageID=30>

- Native American Research

Among the trainings I have taken, the only one not required, and is listed as a “supplemental” course, is the *Native American Research* course. Since this course is not required course there is no quiz that accompanies the training materials. I believe making the training required, followed by a quiz, would be more beneficial to the potential researcher who will be working with an American Indian tribe.

If a potential researcher chose to use the training materials “Native American Research,” the document can be quite helpful. The materials clearly define the sovereign status of American Indian nations in the state of Arizona and goes on to state:

- Native Nations have the legal right to:
- Approve or deny requests for research.
- Halt research activities without disclosing their reasons
- Decide whether the outcomes of research activities conducted within their jurisdiction will be disclosed/disseminated (or not) in oral or written form.
- Negotiate exclusive or shared ownership of research data.³⁹

The training materials provide a number of links to expand on the provided information. However, majorities of the links (seven) are no longer active. Most importantly, the link that is supposed to take you to the *Native Peoples Technical Assistance Office (NPTAO)* is inactive. The NPTAO is the one site where a person can find a list of all research codes of all Tribes in the state of Arizona.

If the training materials for *Native American Research* that is offered through the CITI program were up to date, with all links working, and it was classified as a “required” course for anyone doing research in American Indian tribes, this would be a

³⁹ Collaborative Institutional Training Initiative at the University of Miami, “Mission and History,” *CITI Program*, accessed 2014, <https://www.citiprogram.org/index.cfm?pageID=30>

valuable mechanism. With this training I find two areas lacking: 1) There is no background information for the way in which “research” is viewed in many American Indian nations. Potential researchers of American Indian tribes should be aware of how negatively the idea of “research” can be within the communities they will be working in. 2) There is no information regarding specific tribal research protocols that are in existence among tribes in the State of Arizona. The *Native Peoples Technical Assistance Office* has a record of each research code, which should be made available within this training in order to provide a more comprehensive training for working with American Indian tribes in the state of Arizona. The lack of information in the CITI program illustrates the need for American Indian nations to regulate research within their land base.

Literature Review

From the provided timeline of events, many controversial research occurred before the institutional regulations that are in place today were enacted. As a result of this controversial history, I have come across a large body of literature that covers issues related to ethical research in Indigenous communities, as well as Institutional Review Boards (IRB), which are meant to protect against all unethical types of research. In the following section, I review three bodies of literature, each complementary to the next. The first focuses on materials that discuss IRBs in universities. I was not able to find a significant body of literature that discusses research ethics in American Indian nations specifically. Therefore, in the second body of literature I review covers ethical issues related to conducting research in Indigenous communities as a whole, and not focused on the Indigenous people of the United States, which are American Indian people. This

chapter concludes with the discussion of materials that pertain to Indigenous research protocols. I show how Indigenous communities, such as American Indian nations, who do not regulate research conducted within their jurisdiction, are left in a vulnerable state, open to unethical research that may expose sacred knowledge or exploit American Indian peoples and communities.

University Institutional Review Boards

The first area I reviewed includes biomedical research and social sciences. Biomedical research is “the application of natural sciences, especially the biological and physiological sciences, to clinical medicine;” this includes any type of research that involved utilizing tissues or DNA samples of any kind.⁴⁰ Social science includes history, anthropology, and ethnography. A majority of the literature I reviewed focused solely on biomedical research, leaving the social sciences out of most of the discussion of ethical research based on many of academic belief that social scientists do not conduct “real research.” Social scientists hold a more controversial stance since there are many who do not believe they should be required to go through an IRB process.

When discussing biomedical research there appears to be a clear consensus that all human subjects need to be protected by an Institutional Review Board. Transitioning towards IRB literature that pertains to social scientists, the main discussion is not how effective are IRBs, it is whether or not IRBs should be used at all. Joan E. Sieber, a psychologist and professor at California State University, published a book titled, *Planning Ethically Responsible Research: A Guide for Students and International Review Boards*, in 1992. This book was designed as a guide specifically for social scientists.

⁴⁰ “Dictionary.com,” accessed 2014, dictionary.reference.com/browse/biomedical%20?&o=100074s=t

Sieber specializes in empirical research on questions of scientific ethics, culturally sensitivity and data sharing. Zachary Schrag, a History professor at George Mason University, takes a different stance on ethical research and the IRB. Schrag believes that social scientists should not be required to go through the IRB process, which he discusses in his book, *Ethical Imperialism: Institutional Review Boards and the Social Sciences, 1965-2009*.

I found that Zachary Schrage's views of IRBs are shared by many other social scientists who all fear there is too much censorship from universities and it is threatening academic freedom. Some even go as far as to claim IRBs violates their first Constitutional Amendment.⁴¹ Schrag states, "While we cannot measure the research lost to ethics review, it is clear that as a result of IRB oversight, society as a whole has few books and articles, and has fewer scholars willing to interact with other human beings."⁴² However, it is important to keep in mind the idea of academic freedom is not always viewed the same way in American Indian nations as it is within the university setting. Barnaby Lewis of the Gila River Indian Community's Tribal Historic Preservation Office views academic freedom much differently. "[A]cademic freedom – that's a whole different thing in regard to off-reservation ways... And so it's not something... that's accepted with the community."⁴³

⁴¹ Mitch Librett and Dina Perrone. "Apples and Oranges: Ethnography and the IRB," *Qualitative Research* (2010): 744.

⁴² Zachary M. Schrag, *Ethical Imperialism: Institutional Review Boards and the Social Sciences, 1965-2009*. (Baltimore: The John Hopkins University Press, 2010), 2.

⁴³ Barnaby Lewis, "Tribal Historic Preservation Officer The Gila River Indian Community Transcript," Native Peoples Technical Assistance Office, <http://www.nptao.arizona.edu/ProtocolPDFs/Lewis,%20Barnaby%20Gila%20River%20Indian%20Community%20Transcript.pdf>

Schrag believes that it is because of circumstances like Carol Rambo's, an associate professor at the University of Memphis in Sociology, where her research was denied publication, that more and more scholars are ignoring their IRBs. Schrag, himself did not seek IRB approval for the interviews he conducted in his book, *Ethical Imperialism*.⁴⁴

The bottom line is that it is time for the American Anthropological Association (AAA) to formally request the U.S. Department of Health and Human Services' Office for Human Research Protections (OHRP) to exempt all anthropological and ethnographic studies that do not involve research with human tissues (as the Genographic Project does) from IRB review requirements.⁴⁵

Focusing specifically on ethnography or oral histories there are scholars who question if this type of scholarship is considered "research" and if IRB should have the opportunity to review these types of work. According to Rambo, oral histories can be exempt from IRB review on the basis that it is not real research as defined by Health and Human Services 45 CFR part. 46. Rambo's recent article, "Handing IRB an Unloaded Gun" was written out of protest to her article, "An Unloaded Gun: Negotiating the Boundaries of Identity, Incest, and Student/Teacher Relationships" which was approved for publication, but the IRB at her University ruled that it was not ethical to publish the article. The following appeared in Rambo's article, "Handing IRB an Unloaded Gun," which was the denial she received from her IRB:

The Institutional Review Board for the Protection of Human Subjects reviewed the above referenced project on November 13, 2003, and has denied approval... Since the student is also a survivor of incest and, as a result is most likely psychologically fragile, the board felt that the psychological risk to him should he discover the publication of the study is

⁴⁴ Robert B. Townsend "Ethical Imperialism: A Conversation with Zachary Schrag," *Perspectives on History: The Newsmagazine of the American Historical Association*, (2011): 5.

⁴⁵ George J. Annas, "Anthropology, IRBs, and Human Rights," *American Ethnologist* 33 (2006): 543.

far too serious and outweighs whatever benefits may accrue from this study...Similarly, we would not approve of trying to obtain informed consent from the student for the same reasons. Your description of the student as unstable, combined with being a survivor of incest, and the fact that you were in a student/teacher relationship with him simply precludes any consideration of informed consent or publication.⁴⁶

It is apparent to me that Rambo's Institutional Review Board understood the publication of her article had the potential to emotionally harm the "psychologically fragile" student. I view the decision of Rambo's IRB to be satisfactory. In these circumstances, I agree that the emotional well-being of the subject in Rambo's study should be protected at all cost.

Conducting Ethical Research within American Indian Communities

In this section, I will discuss in more detail how the literature response how to conduct ethically responsible research in American Indian tribes, specifically. Although Joan E. Sieber's book focuses is on helping social scientists in general, much of her work is applicable to ethically responsible research within American Indian nations. The purpose of her work was "to provide social scientists, their students, and members of research ethics committees with the theory and practical knowledge needed to plan ethically responsible social and behavioral research."⁴⁷ Sieber stresses the importance of cultural sensitivity, relevance to the concerns of the researched, allowing the subject to provide feedback on the findings and utilizing comprehensive informed consent.

"Informed consent requires clear communication, not complex technical explanations or

⁴⁶ Carol Rambo, "Handing IRB an Unloaded Gun," *Qualitative Inquiry*. 3 (2007): 359.

⁴⁷ Johan E. Sieber, *Planning Ethically Responsible Research: A Guide for Students and International Review Boards* (Newbury Park: Sage Publications, 1992), xi.

legal jargon beyond the subjects ability to comprehend.”⁴⁸ All of these concerns are shared by such scholars as Marie-Claude Strigler, the late Darrel A. Posey, an anthropologist and biologist, and Nathalie Piquemal, a human rights advocate. These values were also shared by the late Vine Deloria Jr. in his book *Custer Died for Your Sins*, where he attacks anthropologists for preying on American Indian people. Deloria says, “[c]ompilation of useless knowledge ‘for knowledge’s sake’ should be utterly rejected by the Indian people. We should not be objects of observation for those who do nothing to help us.”⁴⁹ Deloria spoke about American Indian peoples taking control over the research they allow within their communities in this text. He stated,

I would advocate a policy to be adopted by Indian tribes which would soon clarify the respective roles of anthropologists and tribes. Each anthro desiring to study a tribe should be made to apply to the tribal council for permission to do his study. He would be given such permission only if he raised as a contribution to the tribal budget an amount of money equal to the amount he proposed to spend in his study. Anthropologists would thus become productive members of Indian society instead of ideological vultures.⁵⁰

Although Deloria pointed this towards anthropologists specifically, no doubt this applies to all who wish to research with in American Indian tribes.

Darrel A. Posey was a non-Indigenous anthropologist and biologist who advocated for Indigenous intellectual property rights. During his career, Posey wrote extensively on the importance of ethics of researchers whose research included Indigenous knowledge. Kristina Plenderleith edited a book dedicated towards Posey work

⁴⁸ Johan E. Sieber, *Planning Ethically Responsible Research: A Guide for Students and International Review Boards* (Newbury Park: Sage Publications, 1992),, 26.

⁴⁹ Vine Deloria Jr. *Custer Died for Your Sins: An Indian Manifesto* (Norman: University of Oklahoma Press, 1988), 94.

⁵⁰ *Ibid.*, 95.

on Indigenous knowledge titled, *Indigenous Knowledge and Ethics: A Darrell Posey Reader*. One of the themes within this anthology is the push for compensation for Indigenous knowledge used by researchers.

Now, more than ever, the [Intellectual Property Rights] of native peoples must be protected and just compensation for knowledge guaranteed. We cannot simply rely upon the ‘good will’ of companies and institutions to ‘do right by’ indigenous peoples. If something is not done now, mining of the riches of indigenous knowledge will become the latest, and ultimate, neo-colonial form of exploitation of native peoples.⁵¹

Posey, like Deloria, criticizes anthropologists, as well as ethnobiologists, “who fear that they will have to drastically change their ‘lifestyles’.”⁵² Since anthropologists are known for taking advantage of indigenous peoples and communities; these researchers do not want to share the profit of their work with their “subjects.” “[I]ndigenous peoples are not just concerned about who pays and who profits from commercialization of their resources. Frequently they are more concerned about the misuse or misinterpretation of their knowledge, culture, and cultural expressions.”⁵³

Another theme within Posey’s work was “the ethical need of researchers to change their relationships with their ‘subjects’.”⁵⁴ The way in which Posey expresses the need for healthy relationship building mirrors Shawn Wilson’s views of the relationship between the researcher and the community being researched within his book, *Research is Ceremony: Indigenous Research Methods* Wilson states,

As we Indigenous scholars have begun to assert our power, we are no longer allowing others to speak in our stead. We are beginning to

⁵¹ Kristina Plenderleith, ed., *Indigenous Knowledge and Ethics: A Darrell Posey Reader* (New York: Routledge, 2004), 4

⁵² Ibid., 143

⁵³ Ibid., 157

⁵⁴ Ibid., 5

articulate our own research paradigms and to demand that research conducted in our communities follows our codes of conduct and honors our systems of knowledge and worldviews. Research by and for Indigenous peoples is a ceremony that brings relationships together.⁵⁵

Sieber's work is dedicated toward scientific ethics and culturally sensitive methods of research. The purpose of her book is help social scientists, such as anthropologists and historians, plan ethically responsible research. Although Sieber does not address research conducted with Indigenous communities, her work is helpful in the overall understanding of what is considered ethical when working with 'humans subject' and the process of going through an Institutional Review Board. Sieber identifies a "good scientists" as one who understands "that community-based research cannot be planned or conducted unilaterally, and that culturally sensitive approaches are required."⁵⁶

Conducting Ethically Responsible Research in Indigenous Communities

Due to the reality that historically, American Indian tribes, as well as other indigenous communities, have been overly researched, there is a growing body of literature that covers ethical issues related research within indigenous communities. Within this section I will be reviewing that growing body of literature.

One of the reoccurring issues is the current system within universities do not protect Indigenous populations from unethical research adequately. This leads me to the same conclusion that author on bioethics, Katherine Drabiak-Syed concludes where "it is imperative to re-examine the regulatory framework that governs the collection of human

⁵⁵ Shawn Wilson, *Research is Ceremony: Indigenous Research Methods*, (Black Point: Fernwood Publishing Co.), 8.

⁵⁶ Joan E. Sieber, *Planning Ethically Responsible Research: A Guide for Students and Internal Review Boards* (Newbury Park: Sage Publications, 1992), 4.

biological materials.”⁵⁷ Editors of, *Biomapping Indigenous Peoples: Towards and Understanding of the Issues* focuses on this discussion. One of the very real concerns for Indigenous communities is “that genetic material collected for research purposes will be used in ways detrimental to the tribes, either to profit researchers without compensating tribes or to undermine the sovereignty of tribes by countering claims that they are Indigenous to the regions they inhabit.”⁵⁸ A substantial amount of the text is concerned with the 2005 Genographic Project sponsored by the National Geographic Society. This study aimed to “collect DNA from Indigenous groups around the world in the hope of reconstructing humanity’s ancient migrations”⁵⁹ A majority of American Indian Nations have declined to participate in this study out of concern over what the repercussions might be.

Scholars, such as Sheila Collingwood-Whittick, who wrote “Indigenous Peoples and Western Science,” argue that the root of unethical research conducted within Indigenous communities stem from difference in worldviews of western society and Indigenous societies. In many situations “ethics committees can be of no use, because they cannot reconcile the scientists’ points of view with Indigenous ones: while scientist may think in terms of biomapping, Indigenous peoples inevitably think in terms of biocolonizing.”⁶⁰ Collingwood-Whittick identifies western views as an ingrained

⁵⁷ Katherine Drabiak-Syed, “Lessons from Havasupai Tribe v. Arizona State University Board of Regents: Recognizing Group, Culture, and Dignitary Harms as Legitimate Risks Warranting Integration into Research Practice,” *Journal of Health & Biomedical Law* 6 (2010): 198.

⁵⁸ Marie-Claude Strigler, “Tribal Communities and genetic Research: Concerns and Expectations,” In *Biomapping Indigenous Peoples: Towards and Understanding of the Issues*, ed. by Susanne Berthier-Foglar, Sheila Collingwood-Whittick and Sandrine Tolazzi. (New York: Rodopi, 2012), 177-178.

⁵⁹ *Ibid.*, 166.

⁶⁰ Sandrine Tolazzi, “Reconstruction of Indigenous Identities in the Twentieth Century,” In *Biomapping Indigenous Peoples: Towards an Understanding of the Issues*, ed. Susanne Berthier-Foglar (New York: Rodopi, 2012), 62.

tendency to “equate science with truth, progress, intellectual independence, and enlightenment.”⁶¹ Susanne Berthier-Foglar acknowledges the Indigenous viewpoint of scientific research in “the context of a history of abuse and dispossession.”⁶² These views support the need for Indigenous peoples to regulate the research conducted in their communities, (community controlled research).

The Havasupai are an American Indian nation that has recently been popularly studied as an example of how unethical research can occur since what is now known as the “Blood Case” came into public knowledge. The Havasupai case is cited in most literature which discusses issues with ethical research in Indigenous communities. This is due to the outcome of their case, which is the Settlement Agreement with Arizona State University that was discussed in the first chapter. The Havasupai case illustrates the need for community controlled research. Marie- Claude Strigler writes that “because they have been isolated for so long, the Havasupai are supposed to have a ‘pure’ bloodline that undiluted by marriage – an ideal object of study for geneticist.”⁶³ Strigler does an excellent job as summing up Indigenous peoples mistrust of researchers:

Western scientific research has rightly caused great unease and wariness among many Indigenous peoples. In the name of scientific knowledge, sacred stories and sacred sites have been made public, biological material has been used to contradict and stereotype peoples, and Indian property has been stolen and displayed in museums all over the world; all of this perpetrated under the cover of scientific knowledge.⁶⁴

⁶¹ Sheila Collingwood-Whittick, “Indigenous Peoples and Western Science.” In *Biomapping Indigenous Peoples: Towards an Understanding of the Issues*, ed. Susanne Berthier-Foglar (New York: Rodopi, 2012), 30.

⁶² Susanne Berthier-Foglar, “Human Genomics and the Indigenous.” In *Biomapping Indigenous Peoples: Towards an Understanding of the Issues*, ed. Susanne Berthier-Foglar (New York: Rodopi, 2012), 3-4.

⁶³ Marie-Claude Strigler, “Tribal Communities and Genetic Research: Concerns and expectations,” In *Biomapping Indigenous Peoples: Towards an Understanding of the Issues*, ed. Susanne Berthier-Foglar (New York: Rodopi, 2012), 159.

⁶⁴ *Ibid.*, 160.

Within the past fifteen years there has been work done on helping researchers understand the specific ethical issues there are among Indigenous communities and at least two documents have been developed to assist American Indian tribes gain more control over research. In 2012 the University of New Mexico Center for Rural and Community Behavior Health & Albuquerque Area Southwest Tribal Epidemiology Center created a document; “Guiding Principles for Engaging in Research with the Native American Communities.” This document offers eleven guiding principles to help researchers working in collaboration with Native communities. The American Indian Law Center of New Mexico developed a “Model Tribal Research Code: With Materials for Tribal Regulation for Research and Checklist for Indian Health Boards.” Documents such as these one are important in expanding the awareness uniqueness of Tribal Nations, in that they have the authority to regulate research conducted within their jurisdiction.

Victoria Jane Jacob, a Masters student at Royal Roads University, wrote her thesis on *Indigenous Protocols* in 2010. In Jacob’s paper she “examines how the development of a process of protocol when entering an Indigenous community assists in establishing relationships between Indigenous peoples and professionals who offer their services.”⁶⁵ She frames her research around protocols that are ethical, but not in creating any type of regulatory framework for protection, which is how I am discussing protocols. Jacob’s provide three recommendations at the conclusion of her thesis:

1. Develop initiatives by Indigenous peoples for their communities;
2. Design education curriculum from Indigenous perspectives in consultation with select elders;
3. Develop lists of competencies for visiting professionals based on the finding of this research project.⁶⁶

⁶⁵ Victoria Jane Jacob, “Indigenous Protocol,”(MA Thesis, Royal Roads University, 2010), ii.

⁶⁶ Ibid., 62.

Jacob's research is based on creating awareness of the cultural norms and etiquette, which would be what is considered ethical, within the view of the community and not relying solely on the institutions view of ethical.

Unlike Jacob's work, Rebecca Tsosie, Vine Deloria Jr., and Darrell Posey look to confront these ethical issues in research with legal remedies. Much like Deloria, Posey predicted that Indigenous communities would take control of the research conducted with their communities in a more formal regulator process guided by the community themselves. "It will probably become normal that such rights be negotiated with native peoples before undertaking initial fieldwork. This kind of behavior has never been considered as part of the professional ethic of scientific research and business, but certainly must become so in the near future."⁶⁷ Posey calls this Community-Controlled Research (CCR), which "is research where the objectives and methodologies are decided upon by indigenous peoples themselves."⁶⁸

Regents Professor of law at Arizona State University, Tsosie discusses how the Indigenous population within the United States, American Indians, can protect themselves by asserting their sovereign status and use legal remedies to regulate research. "Tribal law has the capacity to generate a distinctive moral and ethical framework in order to determine how human materials and human beings ought to be treated."⁶⁹ Both Tsosie and Posey makes the same suggestion for those Tribes who do not already have

⁶⁷ Kristina Plenderleith, ed., *Indigenous Knowledge and Ethics: A Darrell Posey Reader* (New York: Routledge, 2004), 151.

⁶⁸ *Ibid.*, 191.

⁶⁹ Rebecca Tsosie, "Cultural Challenges to Biotechnology: Native American Genetic Resources and the Concept of Cultural Harm," *Journal of Law, Medicine & Ethics* (Fall 2007), 408-409

law in place to protect them; Posey states, “[r]esearchers should voluntarily sign contracts with native groups guaranteeing a percentage of any profits from medicines, films, new plant varieties, books, or whatever.”⁷⁰ Tsosie states, “[n]ative nations can enter contracts with researchers, asking for adherence to tribal standards as a condition of the research agreement.”⁷¹ Contracts can be a useful tool to utilize for those communities who are not currently regulating research.

The Native Peoples Technical Assistance Office at the University of Arizona in Tucson has done a significant amount of work of providing a great deal of resources for American Indian nations through their website (www.nptao.arizona.edu). One of the most helpful resources that can be found was developed in 1999 through the American Indian Law Center created, *Model Tribal Research Code: with Materials for Tribal Regulation for Research and Checklist for Indian Health Boards*. This document provides a framework to tribes that will help them in creating their own research code. “The Fundamental responsibility to govern Indian tribes and to protect their members lies in the tribes themselves.”⁷² The suggested framework for creating a research code:

- A. Title – describes the formal title of the code which will be used or cited in legal documents.
- B. Policy Statement – describes the policy or the philosophical underpinnings for the code.
- C. Purpose Statement – describes the intent of the legislation, what it should accomplish, e.g., “The purpose of this code is to protect elders within the jurisdiction from abuse and neglect as defined in this Code.”
- D. Jurisdiction Statement – describes the person and the geographic area covered.

⁷⁰ Kristina Plenderleith, ed., *Indigenous Knowledge and Ethics: A Darrell Posey Reader* (New York: Routledge, 2004), 150.

⁷¹ Rebecca Tsosie, “Cultural Challenges to Biotechnology: Native American Genetic Resources and the Concept of Cultural Harm, in *Journal of Law, Medicine & Ethics*, (2007) 408.

⁷² American Indian Law Center, Inc. “Model Tribal Research Code: with Materials for Tribal Regulations for Research and Checklist for Indian Health Boards.” 4. www.nptao.arizona.edu/research/NPTAOResearchProtocolsWebPage/AILawCenterModelCode.pdf.

- E. Definitions – define important terms so that courts deal with the code in a uniform and consistent basis and from a common understanding.
- F. Procedural Sections – set out the process of how matters are handled under the code.
- G. Substantive Provisions – set out the substance of the code creating duties, rights, and obligations as opposed to procedure.
- H. Remedies Sections – set out what happens if the law is broken. If this is a criminal code, it covers sentencing provision. In a civil code, remedies might include money damages or injunctive relief.⁷³

By providing the model code, it provides a framework for tribal nations to build upon.

I have focused on three bodies of literature, which include: 1) Institutional Review Boards, 2) ethical research within Indigenous communities, 3) Indigenous research protocols. This research has helped to create the foundation of my thesis topic, which is the importance of tribally established research protocols. There are alternative ways for American Indian communities to help protect themselves. Some communities are partnering with neighboring communities to conjointly regulate research. Currently the Inter Tribal Council of Arizona is creating an IRB process that can be utilized by any of the Arizona tribes who do not already have a mechanism into place.

In the chapter that follows, I analyze the current research protocols in Arizona tribes. This will provide an understanding of what is currently being regulated and to what degree. Once my analysis is complete, I will provide my recommendations with my conclusion.

⁷³ American Indian Law Center, Inc. “Model Tribal Research Code: with Materials for Tribal Regulations for Research and Checklist for Indian Health Boards.” 6-7 www.npta.arizona.edu/research/NPTAOResearchProtocolsWebPage/AILawCenterModelCode.pdf.

CHAPTER 3

ANALYSIS OF ARIZONA TRIBAL RESEARCH PROTOCOLS

In this chapter, I will discuss and analyze the current research protocols in Arizona Tribes. The purpose here is to review the related themes among the Arizona tribal research protocols in existence. My analysis is based on six questions, which will help identify the extent of each communities control over research: 1) Who consists of the research reviewing body? 2) Who has the authority to approve research? 3) Do the protocols regulate biomedical research, social science research, or both? 4) Do the protocols regulate human subjects and non-human subjects research? 5) Is there a form of research agreement, contract, or permit issued before research starts? 6) Does the protocol regulate publications?

There are twenty-two federally recognized tribes in the state of Arizona. Of those twenty-two tribes, nine have an established protocol to regulate research. The remaining thirteen tribes do not any type of research protocols. This leaves twelve communities without any type of official procedures to oversee research conducted within their communities. The following are the Tribes that do not have any type of research code or official protocol:

Ak-Chin Indian Community
Cocopah Tribe
Fort Mojave Indian Tribe
Fort Yuma-Quechan Tribe
Havasupai Tribe
Kaibab Paiute Tribe
Salt River Pima Maricopa Indian Community
San Juan Southern Paiute Tribe
Tonto Apache Tribe
White Mountain Apache Tribe
Yavapai-Apache Nation

Yavapai-Prescott Tribe
Pueblo of Zuni

It is important to keep in mind that those communities that do not have an established research protocol might still regulate research within their community in some capacity. However, my analysis is concentrated on those tribe who have an established protocol, such as, a code or ordinance that is dictated by tribal law. My investigation is limited to looking at those documents.

TABLE #1, shows the name of protocols, the name of the research reviewing body and says who within the community has the authority to approve research. There are two regulations that do not specify who reviews the research/project and they both deal with archaeology. The first one is with the Fort McDowell Yavapai Community with their “Antiquities & Archaeological Sites” ordinance. The second is with the Tohono O’odham Nation in their “Archaeological Resources Protection Ordinance.” However, Tohono O’odham have a separate ordinance that regulates other research in their “Research Code.” In terms of the Fort McDowell, their Antiquities & Archaeological Site” ordinance is the only protocol that regulates any type of research. In addition to regulating archaeological studies, Fort McDowell has an “Exclusion Ordinance.” This ordinance is not specifically regulating research, but it can be utilized for that capacity if the Tribe choses to. The Exclusion Ordinance states, “this ordinance providing for the removal or exclusion of Non-Members from the Nation whose presence may be detrimental to the peace, health, morals or welfare of the Nation and/or violate tribal laws

or ordinances.”⁷⁴ To date there is no official protocol that regulates research, overall, within the Fort McDowell Community.

Each of these tribes are distinct from each other. With that in mind, it makes sense that each one regulates research in their own unique way. With each of these protocols, there is a person, or a deciding body that has the ultimate authority to approve or deny a research project. With Fort McDowell and Tohono O’odham ordinance that deals with archaeology, the decision is up to one person. The Archaeological Officer has the authority to approve archeological studies for Fort McDowell. In the case of the Tohono O’odham, their chairman has the authority make approvals.

The Gila River, Hopi, and San Carlos Apache do not specifically state who has the authority to approve research. However, with San Carlos, their protocol states that research proposal is to be submitted to the Elder’s Cultural Advisory Council and the Tribal Council. It would make since that one, or both, have the authority to approve research. With Hopi, research is regulated through the Hopi Cultural Preservation Office, but does not say if the office makes the approval or if they make a recommendation to the Council to approve. The Gila River utilizes their Community Research Review Committee (CRRC) to review research, but does not say if the CRRC or Tribal Council approves research.

The Colorado River Indian Tribes (CRIT) has an Ethics Review Board (ERB) that oversees research and proposals. The ERB makes recommendations for approval to the Tribal Council who has the authority to approve research proposals. Pascua Yaqui Tribe

⁷⁴ Appendix E

uses a similar procedure. They have a Research Review Committee who reviews research and makes recommendations to their Council as well.

The Tohono O’odham Nation and Navajo Nation give the authority to approve research with their research reviewing body. The Tohono O’odham have their Institutional Review Board that approves research. The Navajo Nation has their Human Research Review Board (NNHRR) that approves research. The Hualapai Tribe, through their Cultural Heritage Resource Ordinance, is the only tribe that requires the joint approval of the Tribal Council and the Cultural Resources Department. The approval comes from the recommendation of their Elder’s Cultural Advisory Council. From a researcher point of view, it is important to know who has the authority to approve a proposed research project. Furthermore, it is valuable to have an understanding of what type of professional background the reviewing body has, in order to write an understandable proposal. As with the CRIT, their Ethics Review Board will consult with outside expertise for further guidance when making their final decision.

TABLE #1: PROTOCOL NAME & REVIWEING BODY

Community	Protocol Name	Research Reviewing Body	Authority to Approve Research
Gila River Indian Community	Medical and Health Care Research Code	Community Research Review Committee (CRRC)	Does not specify if the approval comes from the CRRC or the Tribal Council
Hopi Tribe	Protocol for Research, Publication and Recordings: Motion, Visual, Sound Multimedia, and other Mechanical Devices	Regulated through the Hopi Cultural Preservation Office	Does not specify – Regulated through the Hopi Cultural Preservation Office
San Carlos Apache	Procedures for Research Activity and Recording	Elder’s Cultural Advisory Council	Does not specify who approves the research, but states that proposals are to be sent to both Tribal Council and the Advisory Council
Fort McDowell Yavapai Community	Antiquities & Archaeological Sites (Exclusion Ordinance)	None specified	Archaeological Officer
Hualapai Tribe	Hualapai Cultural Heritage Resource Ordinance	Director of Cultural Resources Department, Advised by the Advisory Team of Elders	Tribal Council and the Director of Cultural Resources Department
Colorado River Indian Tribes	Human and Cultural Research Code	Ethics Review Board (ERB)	Tribal Council approves research at the recommendation of the ERB
Navajo Nation	Navajo Nation Human Research Code	Navajo Nation Human Research Review Board (NNHRRB)	NNHRRB
Pascua Yaqui Tribe	Research Protection Ordinance	Research Review Committee (RRC)	Tribal Council approves research at the recommendation of the ERB
Tohono O’odham Nation	Research Code	Tohono O’odham Institutional Review Board (IRB)	IRB
Tohono O’odham Nation	Archaeological Resources Protection Ordinance (ARPO)	None specified	Chairman

As I have shown in the second chapter, much of the discussion on research is divided between the focus biomedical and social science research. With the Tribes that regulate research, there are only two communities that do not regulate biomedical related research through their research protocol. Those communities are the Fort McDowell Yavapai Community and the Hualapai Tribe. As was discussed through Table #1, Fort McDowell only regulates archaeology. Hualapai's protocol regulates, specifically, cultural resources, archaeology, history, and ethnography related research projects.

In terms of regulating social science research, there is one Tribe that does not specify if their protocol extends to social sciences. One community's protocol explicitly does not regulate any type of social science research. The Navajo Nations NNHRRB does not specify, through their research code, if they are to oversee social sciences. It is my opinion that a research code should oversee both types of research, biomedical, and social sciences.

TABLE #2: BIOMEDICAL & SOCIAL SCIENCE RESEARCH

Community	Regulates Biomedical Research	Regulates Social Sciences Research
Gila River Indian Community	Yes	No
Hopi	Yes	Yes
San Carlos Apache	Yes	Yes
Fort McDowell Yavapai Community	No	Yes, specifically Archaeological
Hualapai Tribe	No	Yes (Cultural Resources, Archeological, Historic, and Ethnography Studies)
Colorado River Indian Tribes	Yes	Yes
Navajo Nation	Specifies Medical and psychological research	Does not specify
Pascua Yaqui Tribe	Yes	Yes
Tohono O’odham Nation (Research Code)	Yes	Yes
Tohono O’odham Nation (ARPO)	No	Yes – specifically archaeological studies

The next area I consider is whether or not these protocols regulate humans subject and non-human subject related research. I was surprised to find that more than half of these protocols do not specify if they regulate human and/or non-human subject research. Three communities regulate both; they are the Gila River Indian Community, Pascua Yaqui Tribe, and the Tohono O’odham Nation. The Navajo Nations code is written to specifically regulate human subjects related research.

It makes sense that the protocols would regulate human subject research since that serves as the main purpose of University IRBs. I feel that community controlled research would regulate both. It is also important, within these protocols to explicitly state that

human and non-human subjects are regulated. When it is not specified, that can leave uncertainty with a potential researcher. They might, mistakenly think they do not need the permission of the community to conduct their study. It is important to be clear in what is and not regulated in order to prohibit misunderstandings or confusion.

TABLE #3: HUMAN & NON-HUMAN RESEARCH

Community	Regulates Human Subjects Research	Regulates Non-Human Subjects Research
Gila River Indian Community	Yes	Yes
Hopi Tribe	Does not specify	Does not specify
San Carlos Apache	Does not specify	Does not specify
Fort McDowell Yavapai Community	Does not specify	Does not specify
Hualapai Tribe	Does not specify	Does not specify
Colorado River Indian Tribe	Does not specify	Does not specify
Navajo Nation	Yes	No
Pascua Yaqui Tribe	Yes	Yes
Tohono O’odham Nation (Research Code)	Yes	Yes
Tohono O’odham Nation (ARPO)	No	No

Utilizing contracts, agreement, issuing permits, approving publications and mandating a continual review of research projects is an excellent way to ensure Tribes are controlling the research within their community. Regarding publications, only two communities do not require approval from the Tribe to publish findings of a research project; those communities are Hualapai Tribe and Fort McDowell Yavapai Community. The remaining tribes require researchers to provide a manuscript to be approved before publications can take place. In addition to approval, the Gila River requires credit to be given to the Tribe in the form of being recognized as contributor or co-author. “Any published work shall identify the Community as a co-research investigator and shall

include the name and title of the Governor of the Community, and the Chair of the Council's Health and Social Standing Committee".⁷⁵

Three of the tribes require the researcher to enter into a form of an agreement before a project can go underway. The Hopi Tribe requires the researcher to sign a contract. The Colorado River Indian Tribes, Pascua Yaqui Tribe, and the Tohono O'odham Nation require a written agreement to be signed by the researcher and Tribe. Five of the Tribes require the researcher obtain a research permit, which can be revoked if the Tribe determines they have not followed the required guidelines. The most elaborate permitting process comes from the Hualapai Tribe, with four different classifications of permits. They are as follows:

Class A permits shall be issued for activities involving casual visitation and inspection of cultural resources. Class A permits may also be issued to traditional practitioners who are members of other Indian tribes in the event that such persons choose to apply for a permit rather than to ask the Director for a waiver of the permit requirement.

Class B permits shall be issued for cultural resources inventory activities involving no disturbance of the cultural resources.

Class C permits shall be issued for cultural resources investigations involving alteration, collection, excavation, removal or any disturbance of cultural resources. If expressly authorized, a Class C permit may allow the excavation of human remains. It is the intent of the Tribal Council that the issuance of a Class C permit will eliminate the need for tribal members and tribal employees to obtain a permit from a bureau of Indian Affairs under the Archaeological Resources Protection Act (ARPA). In issuing rules to establish a program for issuing Class C permits, the Director shall ensure that the tribal permit program is adequate to eliminate, to the extent possible, the otherwise applicable requirement to obtain an ARPA permit and, to the extent that eliminating the ARPA permit requirement is not possible, to expedite compliance with the requirements of ARPA.

Class D permits shall be issued for activities involving research into the cultural resources of the Hualapai Tribe, including ethnographic, historical, cultural or other research. Any form of recording that results

⁷⁵ Appendix I

from any such research must conform to the terms and conditions of a permit.⁷⁶

Three of the research protocols enforce a continual review process. Gila River Indian Community reviews current projects on an annual basis. Colorado River Indian Tribes and the Navajo Nation reserve the right to review current research projects as often as they wish, but does not specify how often. The remaining tribes, seven, do not mention if they continue to review research projects that are already underway. I believe continually reviewing each research project on a regular basis, regardless of how often, would be beneficial and helpful in ensuring the community has control over the research that is taking place.

⁷⁶ Appendix F

TABLE #4: RESEARCH AGREEMENTS & PUBLICATIONS

Community	Controls Publications	Permit/Contract	Continual Review Process
Gila River Indian Community	Yes – Subject to Tribal Council Approval	Permit – Granted by the CRRC	On a Annual Basis
Hopi Tribe	Yes	Yes, Contract	Not mentioned
San Carlos Apache	Yes	No	Not mentioned
Fort McDowell Yavapai Community	No (Exclusion Ordinance does)	Permit – Granted by the Archeological Officer; good for a year and can be renewed	Not mentioned
Hualapai Tribe	No	Yes (Class A, B, C, & D Permits)	Not mentioned
Colorado River Indian Tribes	Yes	Memorandum of Agreement	As often as the ERB requests
Navajo Nation	Yes	Permit	Yes, on a regular basis, but does not specify how often that is
Pascua Yaqui Tribe	Yes, approved by Tribal Council Resolution	Research Permit Research Agreement (legally binding)	Does not specify
Tohono O’odham Nation (Research Code)	Yes	Research Agreement	Not mentioned
Tohono O’odham Nation (ARPO)	No	Permit	Not mentioned

After carefully and thoroughly reviewing each of these research protocols, it is fair to conclude that there are gaps, in terms of the community controlling the research, in regards to the documents themselves. It is important to reiterate here, that my study only evaluates the documents of the protocols themselves. Evaluating what communities do in practice, in addition to, or in place of establishing a research protocol is beyond the scope of my study. Within the next chapter I will provide my recommendation for creating a Tribal research protocol and provide my concluding thoughts.

CHAPTER 4

RECOMMENDATIONS & CONCLUSION

Now that I am at the end of my program, having worked on my thesis for the past two and half years, I often reflect back to the beginning. I now realize, when I made the decision to work on Tribal research protocols for my thesis, I was naïve in my ideas. Originally, my thought was every single tribe in the United States should have an elaborate research protocol, with an ethics review board of at least five people. I originally wanted to work with a tribe and create a research code for them. At the time, I had no idea what a huge undertaking creating a research protocol is. It took me about six months of research to come to this realization. My next thought was that I could develop a research code model, much like the “Model Tribal Research Code” I discussed in chapter two. It took me an additional year to come to the realization that creating a model was not the way my research was leading me. This is when I came to realize, through writing and feedback from presenting my work, what I was writing was recommendations. The American Indian Law Center, Inc. has created a comprehensive framework for creating a research code.

The reality is, American Indian nations differ greatly from each other. They are different in culture, language, worldviews, government, membership, and land base size. All of these differences will have an impact on the way in which each tribe regulates research within their community. At the onset of this thesis, I truly believe it was feasible for every Arizona tribal nation to have a research review board of some sort. At the time, I did not take into consideration the population size of the community. I also did not take into consideration the resources that it would take to launch such an endeavor. How many

people would be needed to make a sufficient review board? What credentials would be needed? Would they be compensated? If so, how much? Where would this board be housed? Does the community have a department building they could meet in? How often would research be reviewed? These are all questions I took into consideration while reviewing the research protocols. The end has resulted in the following recommendations.

Recommendations:

Based on my analysis these ten recommendations are what I feel can help improve upon existing research protocols or should be taken into consideration when creating a research protocol.

1. Define Terms and Scope

Defining terms within a research protocol is extremely important and I believe is the foundation of any research protocol. Terms to be defined should include, but not limited to the following: research, researcher, community/tribe, jurisdictional boundaries, human subject, samples, informed consent, publication, and specimen. The Pascua Yaqui Tribe goes beyond these terms and defines the terms “respect” and “empowerment.” The following is the way in which the community defines these terms:

Respect. This principle recognizes the necessity for researchers to respect the integrity, morality, and spirituality of the cultural, traditions, and relationships of Tribal members with the world, and to avoid the impositions of external conceptions and standards.

Empowerment. This principle recognizes that empowerment is the sharing of power and is premised on mutual respect. Empowerment means that each affected party feels that their needs are being met through a fair and

equitable manner. Empowerment also means that research authorship must be shared between the Tribal community and the researcher.⁷⁷

By imposing the Tribes definition of these terms, it puts the control back into the hands of the tribe, which is needed to perpetuate community controlled research, by not relying on the researchers universities definition of these terms.

2. Require a benefit to the Tribe/Community

Ensuring there is a benefit to the tribe and/or local community (district, chapter, etc.) is imperative for the purpose of community-controlled research. Any research proposal that has no benefit to the community should be automatically rejected. Requiring a benefit to the tribe thus far has been unanimously required within research protocols reviewed in this document.

3. Emphasis on Relationship Building

In American Indian Studies, there is a big emphasis on relationship building when working with American Indian nations. This is reflected with the Pascua Yaqui Tribes Research Code's purpose:

This Ordinance shall establish a research review process as a mechanism to improve relations between the tribe and scientists/researcher, and to promote collaboration within the framework of mutual respect, equity, and empowerment, and to identify benefits and risks to the Tribal community.⁷⁸

To help ensure the relationship building is at the forefront of proposed research I believe it should be required that a working relationship already be established. I would recommend in the application process to have the researcher submit a

⁷⁷ See Appendix I

⁷⁸ See Appendix I

signed letter of reference from a Tribal/community member. The letter would speak on the character of the applicant and would provide additional information on how the Tribal/community member came to know the applicant and how long have they been acquainted and in which capacity (personal or professional).

4. Tribal/Community Preference

For many Tribes, it is common hiring practice to have a tribal/community preference. When a researcher starts an approved research project that will require hired help, they should adhere to the hiring practices the Tribe utilizes. This will help create work opportunities for tribal members. The idea of instituting tribal preference is already written within the research protocols of the Gila River Indian Community and the Hopi Tribe. The language used in both protocols is “Indian preference in employment.”⁷⁹

5. Ethics/Research Review Committee

I recommend instituting an Ethics or Research Review Board or Committee. However, as I have come to realize, this is easier said than done. The following questions need to be taken into consideration when instituting a research review body, such as a board or committee: 1) Who will serve on the board? 2) Will they be appointed position? 3) If so, by whom? 4) How long will the term of the position be? 5) Will the people who serve on this board/committee be compensated? 6) Will the reviewing body have the authority to approve research, or will they make recommendations for the Tribal Council to approve?

⁷⁹ Appendix B & C; the term Indian/Tribal Presence has been suggested, but I use Preference here because it is the terminology used in current hiring practices.

There are currently five Arizona Tribes that have a board/committee to review and oversee research within their communities. 1) Gila River Indian Community's CRRC consists of six (6) seats; 2) Colorado River Indian Tribes ERB consist of seven (7) seats; 3) Navajo Nation's NNHRRB consists of fifteen (15) seats; 4) Pascua Yaqui's RRC has five (5) seats; 5) Tohono O'odham Nation's IRB has five (5) seats. The size of the reviewing body varies and much of that has to do with the size of the tribal nation. In addition, each body contains varying degrees of expertise in terms of research. The following are the details of the Colorado River Indian Tribes Ethics Review Board:

The ERB shall be composed of seven (7) individuals, appointment by the Tribal Council: one (1) legal expert; one (1) Tribal member who is a local practicing physician or researcher; four (4) Tribal members that have thorough knowledge of CRIT's four (4) tribes; one (1) member of the Tribal Council.⁸⁰

It is not realistic for every community to have the capacity to institute a review board like CRIT's. I believe having a review that consisted of three people could be just as effective in regulating research within a smaller community as the Navajo Nation's NNHRRB is.

6. Tribally Specific Cultural Sensitivity Training

I recommend that any person, who is not a tribal member, who will be working on a research project be required to go through a cultural sensitivity training that is specific to the tribal community they will be working in. Currently, only two Arizona tribes have instituted this requirement, the Pascua Yaqui and the Tohono

⁸⁰ Appendix G

O’odham Nation. It is not uncommon for researcher, through the training, to undergo a general cultural sensitivity or diversity training. Although these types of trainings can be beneficial, it is my belief that the only adequate training for people working within American Indian communities would be the conducted by the Tribe. The Tribe or people from the community are the only ones with sufficient knowledge to help researchers understand the culture they will be working in.

7. Timeline

Tribal research review boards/committees and affiliates universities do not run on the same timeline. A prospective researcher might submit a research proposal to a Tribe with the expectation getting approval and starting their project within a months time. Where as, in practices, it can take a tribe months to make a decision. Then after a decision is made, assuming the proposal has been approved, there are specifics that need to be negotiated. Depending on the community, additional steps need to be taken before a research project can start, such as the negotiating the research agreement or contract, the permitting process and the tribally specific cultural sensitivity training. All of these processes take time, and that time might work not well for a researcher who is guided by a universities timeframe. It is important to be very clear in the time frame that is expected before a research project can start. I like the disclaimer the San Carlos Apache put within their research protocol, which states; “[t]he Tribe will not be restricted by the

applicant's time restraints during the period of the proposal review.”⁸¹ I would encourage any tribe who has a research protocol to include a similar disclaimer.

8. Permit

Currently, there are three Arizona Tribes who issue research permits, the Gila River Indian Community, Colorado River Indian Tribes, and the Navajo Nation. Issuing a permit is not only beneficial to the tribe; it is also beneficial to the researcher. Within my community, the Tohono O’odham Nation, research permits are not issued. The residents are aware if non-tribal members who are working within the community. It is common for community members to question non-tribal members if they are allowed to be there, doing the work they are doing. Providing researchers with a permit equips them with instant documentation that they are working with the permission of the Tribe. This will help the researchers from harassment from community members.

9. Research Review, Ongoing Basis

I recommend research be reviewed on a regular basis. There are three Arizona Tribes who review research beyond the initial approval process. They are the Gila River Indian Community, Colorado River Indian Tribes, and the Navajo Nation, although they do not all specify how often. Gila River ties the review process to their permitting process. Their research permits are issued on a yearly basis. Once the year has come to an end, the research is re-evaluated before a permit is renewed. I believe linking the permit to the re-evaluation of the research is an efficient have to regulate research on a regular basis.

⁸¹ Appendix D

10. Be Clear of Prohibited Research

My final recommendation is to clearly state, within the research protocol all activities, or types of research that will not be approved. By stating what is prohibited provides the researcher with an understanding of what type of activities and practices that will not be tolerated. This will assist a researcher, who wants to work with a specific tribe, shape the scope of their research project.

The Pascua Yaqui have, section 200 of their protocol, which lists activities, behavior, research projects that are prohibited. The following is one of these types of provisions:

No entity may seek to patent or commercialize any biological materials obtained from the Tribe or tribal members, from the Tribe's jurisdiction, or obtained from the tribe or tribal members, from the Tribe's jurisdiction, or under the authority of the Tribe. This includes genetic samples, any copies under the authority of the Tribe. This includes genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from the samples.⁸²

The Tohono O'odham Nation also has a similar provision with their research code. Listing prohibited items also ties back to my second recommendation, requiring research to be beneficial to the tribe. By clearly stating what is not allowed exhibits what is not deemed beneficial to the community.

Conclusion

Throughout my thesis I have argued that instituting an official research protocol is a significant way for American Indian nations to protect themselves and take control over regulating research in their communities. I have concluded that it might not be feasible

⁸² Appendix I

for every single tribe in Arizona to institute a research review board/committee, such as an Institutional Review Board. Although it may not be attainable for every tribe to have a research board, it does not mean it is not possible for every community to regulate research that is conducted within their jurisdictional boundaries. There are alternative methods to regulating research without using a research review board. Although some communities, such as the Hualapai, may use their tribal council as the research reviewing body, that is not a practice I recommend. tribal council is responsible for governing the tribal nation and I believe that regulating research is a practice that can be delegated to another department, committee or board. I believe the best alternative method of regulating research, if a research review board is nonexistent, is by a research agreement, such as a contract. These types of agreements can be negotiated between the Tribe and the researcher and is legally binding.

The purpose of my thesis has been to provide recommendations to improve upon existing research protocols and to help guide those tribes who are in the process of creating a research protocol. I have completed these recommendations by evaluating the current research protocols. This does not take into account how research is regulated in practice in each of the Arizona tribes. The implications that stem from my study is there is need for a more in depth analysis. Thus far, there has not been a comprehensive evaluation of how each American Indian tribes regulate research in each of their communities. This type of evaluation would go far beyond analyzing the protocol, which is what I have done. This type of project would require a person to go into each community. They would need a clear understanding of the culture, how their government is structures, and an understanding of the community as a whole. All of these things

would need a more in depth understanding before any one person could provide a more comprehensive recommendations for regulating research within each tribe.

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APPENDIX A
THE NUREMBERG CODE

1. The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.
3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.
4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
5. No experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.
6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.
7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.
9. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.
10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill, and careful judgment required of him, that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject.

APPENDIX B

MEDICAL AND HEALTH CARE RESEARCH CODE – APRIL 2009

Chapter 9. MEDICAL AND HEALTH CARE RESEARCH CODE

This code shall be known as the “Gila River Indian Community Medical and Health Care Research Code” (the “Code”).

9.101 FINDINGS AND POLICY

The Gila River Indian Community Council (the “Community Council”), the governing body of the Gila River Indian Community (the “Community”), recognizes the value of Medical and Health Care Research to the Community and its members. The Community Council must act to protect the safety and well-being of its members and other individuals who are subject to the jurisdiction of the Community. The Community has a fundamental policy to protect and preserve the culture of the Community and to ensure that activities permitted on the Gila River Indian Reservation (the “Reservation”) are conducted in a way that does no harm to the culture of the Community. The Community Council has found that Medical and Health Care Research has been conducted in ways that do not respect the human dignity of human subjects and that do not recognize the legitimate interest of the Community in the integrity and preservation of its culture.

9.102 PURPOSE

The purpose of this Code is to define Community research policies related to Medical and Health Care, and to establish means by which tribal research policies related to Medical and Health Care will be administered by the Community and to provide for procedures by which the Community will grant permission for persons to conduct Medical and Health Care research on the Reservation. The Code establishes:

- A. An application and permitting procedure with which applicant Medical and Health Care researchers must comply in order to obtain permission to conduct Research on the Reservation;
- B. Standards of conduct designed to protect Community members and the Community itself from improper Medical and Health Care Research procedures;
- C. Provisions to protect the rights of Community members, other individuals subject to the jurisdiction of the Community, and the Community in data related to Medical and Health Care Research; and
- D. Provisions to ensure appropriate Community participation in the design and evaluation of Medical and Health Care Research, and appropriate local opportunities in employment and all Medical and Health Care research projects permitted on the Reservation

9.013 SCOPE

- A. This Code is civil in nature and hereby supersedes all existing Community ordinances inconsistent with it.

- B. This Code is adopted pursuant to the Constitution and Bylaws of the Gila River Indian Community (March 17, 1960) in the exercise of Article XV (Powers of the Gila River Indian Community Council). Specifically, this Code asserts that Community's power to provide for the welfare and safety of the Community (Article XV, Section 1(a)(9)), the Community's power to tax and regulate business on the Reservation (Article XV, Section 1(b)(3)&(6)), and the Community's power to exclude non-members from the Reservation (Article XV, Section 1(b)(4).
- C. This Code shall apply within the exterior boundaries of the Reservation. It shall also be enforceable outside the boundaries of the Reservation to the extent applicable law permits with respect to Medical and Health Care Research on the Reservation or Medical and Health Care Research using materials as to which the Community has a claim of ownership or control.
- D. This Code shall apply to all persons subject of the jurisdiction of the Community, including Community members and nonmembers, Indians and non-Indians, and other corporate and institutional entities who or which might undertake to conduct Medical and Health Care Research on the Reservation.
- E. This Code shall apply to all Medical and Health Care Research (as defined elsewhere in this Code) conducted on the Reservation, whether involving human subjects or not, and Medical and Health Care Research regarding materials wherever located as to which the Community has a claim of intellectual, cultural or other ownership, legal or equitable, or over which it has a claim of control arising by virtue of this Code, the terms and conditions of any permit issued under this Code, any agreement, or otherwise.

9.104 DEFINITIONS

- A. As used in this Code, "Medical and Health Care Research" means the use of systematic methods to gather and analyze information for the purpose of providing or disproving a hypothesis, evaluating concepts or practices or otherwise adding to knowledge and insight in the Medical and Health Care fields of knowledge or to demonstrate or investigate theories, techniques or practices in the Medical and Health Care fields. For the purpose of this Code, Medical Health Care Research includes:
 1. Basic and clinical research;
 2. Longitudinal studies regarding diabetes and other diseases and human conditions.
 3. Clinical trials to include but not limited to pharmaceuticals, test, procedures and apparatus of any kind.

This Code does not prohibit day to day Research conducted on the Reservation by Community departments and entities, provided that this day to day Research may not be published without the Community Council's review and approval.

9.105 UNLAWFUL ACTS

It shall be unlawful for any person or entity to conduct Medical and Health Care Research on the Reservation or with respect to materials wherever located as to which the Community has a legal or equitable claim of intellectual, cultural or other ownership or a claim of control unless the primary investigator conducting the Medical and Health Care Research has obtained a permit as specified in this Code. Failure to obtain a permit or to abide by its terms and conditions shall result in penalties and sanctions specified in this Code.

9.106 ADMINISTRATION

There is hereby established a Community Research Review Committee (the "Committee") to approve Medical and Health Care Research proposals permitted pursuant to this Code. The Committee shall be composed of the Chief Executive Officer and Chief Medical Officer of the Gila River Health Care or their designee, three members of the Health and Social Standing Committee (or its designees), and the Director of the Health Resources Department or his or her designee. The General Counsel or his or her designee shall act as an advisor to the Committee. The Committee shall receive staff support from the Gila River Health Care and the Health Resources Department. A reasonable fee may be assessed by the Committee for processing applications under this Code; any monies generated are for the exclusive use of the administration of this Code.

9.107 INFORMATION TO BE PROVIDED

The Committee shall prepare the appropriate application and other forms and shall develop a review process which adequately implements the intent of this Code and which provides fundamental fairness to each applicant conducting Medical and Health Care Research for a permit. At a minimum, the following information shall be provided by a Medical and Health Care applicant researcher in support of an application for permit:

- A. Description of the nature of the Medical and Health Care Research being proposed, including the goals and objectives and the type of information that will be sought from individuals or other participation involving (including any donation of biological specimens), the time to complete the projects, and a description of any information to be compiled concerning culture, customs and practices of the Community, either historical or contemporary.
- B. Descriptions of other related Medical and Health Care Research and a description of why the Research is timely and relevant.
- C. Expected benefits of the proposed Medical and Health Care Research, including immediate and long-range benefits represented in the Medical and Health Care Research, the sum total of human and scientific knowledge, human subjects or participants, and the Community.
- D. Risks associated with or inherent in the Medical and Health Care Research, including risks to the physical or psychological well-being of individual human

- subjects or 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 would be taken to minimize the risks and the ameliorative and curative steps that would be taken in the event Medical and Health Care Research causes actual harm to participants or others.
- E. Whether Medical and Health Care data is to be maintained as confidential and, if so, the means to preserve confidentiality. The applicant shall describe an assurances of confidentiality for the life the project, indicate how confidentiality will be protected after the Medical and Health Care Research is completed and for how long, indicate where raw data and other materials will be deposited in storage at the completion of the project, and indicate the circumstances in which confidentiality may be breached by legal or contractual obligations of the Researcher.
 - F. The application should answer questions the Committee considers relevant to the project including, by not limited to: Who will own the data from the Medical and Health Care Research? What control will the individual medical and Health Care Research participants have over the use of their own data? What control will the Community have over publication and other dissemination of results? Who will own specimens – human biological materials – from the Research? What control will the individual Medical and Health Care Research participants have over the use of their own specimens? What control will the Community have over the current and future use of the human biological material, and how will the control be exercised?
 - G. Opportunities for the Community, the Districts of the Community and individuals to have the Medical and Health Care Research fully explained to them and opportunity to comment on the Medical and Health Care Research; opportunity for the Community, Districts, and individuals, as appropriate to have periodic reports on the progress of the Medical Health Care Research and to comment on the periodic and draft final reports. The burden of this Code is on the researcher to show, to the Committee's satisfaction, that Community, District, or individual input would be inappropriate.
 - H. Provisions of Indian preference in employment in all phases of the project. Preference shall be to Indians who are members of federally recognized Indian tribes.
 - I. The applicant shall describe how it will keep the Committee informed of all unexpected adverse events arising from the Medical and Health Care Research, and how the Committee shall be kept informed of Research progress on an annual basis, if the Research is a multi-year project.
 - J. If the Research involves human subjects research, the applicant shall provide a draft of any necessary Informed Consent form(s) it intends to use for review and possible revision by the Committee.
 - K. If the Research involves biological specimens, the applicant shall state whether biological specimens will be stored by the researcher after Research is completed, for possible use in future research or for other reasons, or whether biological specimens will be returned to the donor(s) or destroyed.

- L. The applicant shall also identify those persons or entities that will have access to the biological specimens during Research and shall state whether such specimens will be collected with, or delinked from, personal identifiers of the donor(s).

9.108 ENFORCEMENT

- A. No Medical and Health Care Research shall be conducted on the Reservation or otherwise unless the researcher has first received a permit from the Committee according to the procedures specified herein. Where off-reservation enforcement of Community rights and interest may be of special importance, the researcher, his or her sponsoring institution or her or his funding sources, may be required to sign an agreement with the Community concerning rights in data or materials or with respect to the ultimate publication.
- B. Any person or entity conducting Medical or Health Care Research on the Reservation without a permit issued pursuant to this Code, in violation of the terms and conditions of the permit, or otherwise in violation of this Code shall be subject to removal and permanent exclusion from the Reservation as determined by the Community Court in accordance with the Gila River Indian Community Law and Order Code, Title 5, Chapter 1, Section 5.101 through 5.104.
- C. Whenever it appears that a person or entity had violated, or is violating, or is threatening to violate any provision of this Code, the Community Research Review Committee, the Community or any aggrieved person may file a civil suit in Community Court to enforce his Code.
- D. In any action brought for a violation of this Code, the Community Court may grant injunctive relief, including a temporary or permanent restraining order, to restrain a person or entity from continuing violation or threat of violation of this Code. The Community Court may order restitution, civil penalties not to exceed \$10,000, and such other relief as may be necessary to redress any injury suffered by any person, family, and organization, the Community or District of the Community resulting from a violation of this Code. The prevailing party in such a legal action shall be awarded court costs.
- E. If a civil suit is filed to enforce his Code, notice shall be given to the research project's sponsoring organization and/or funding source as well as to the professional organization or licensing agency of the person conducting the Research.

9.109 PROCEDURES FOR THE CONTINUING REVIEW OF RESEARCH

The Committee shall adopt procedures and forms. All forms and written procedures to be utilized by the Committee in administering this Code shall be subject to Community Council Approval.

9.110 CONTINUING REVIEW OF RESEARCH ACTIVITIES

The Committee shall regularly review all research activities subject to the authority of this Code. If the Research conditions change, the Committee may require that Research

regulated under this Code by amended consistent with the changed conditions. If the Committee determines that Research regulated by the Code changes in the scope or effect of the Research, the Committee may rescind any research permit or otherwise limit the scope of research activities permitted under the permit.

APPENDIX C

HOPI PROTOCOL FOR RESEARCH, PUBLICATION AND RECORDINGS – 1995

Hopi Cultural Preservation Office

Protocol for Research, Publication and Recordings: Motion, Visual, Sound, Multimedia and other Mechanical Devices

Policy:

The Hopi people desire to protect their rights to privacy and to Hopi Intellectual Property. Due to the continued abuse, misrepresentation and exploitation of the right 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 intellectual property and that such property or activity be reviewed and approved by the Hopi Cultural Preservation Office 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 property of Hopi people, nor is it a justification to bring the Hopi people unwillingly into a commercial relationship. The Hopi Tribe reserves that right not to sell, commoditize or have expropriated from the certain domains of knowledge or information.

Definitions:

- 1) **“Research”** includes, but is not limited to, ethnology, history, biogenetic, medical, behavioral, ethno-botany, agronomy, ecology, anthropology, archaeology, and microbiology.
- 2) **“Hopi Tribe”** includes Hopi individuals, families, clans, villages, communities, Hopi Tribal Government and the Hopi people as a whole.
- 3) **“Projects”** or **“Activity”** includes, but is not limited to, research, publications recording-motion, visual sound whether oral, written oral, written, vial multimedia or other mechanical devices discovered or yet to be discovered.
- 4) **“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:

- 1) All projects or activities must be submitted in proposal format and shall address, at minimum, the following:
 - a) **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 publications 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 findings for their own use?

- b) **Risks:** Discussion the risk associated with or inherent in the project or activity, including risks to the physical and psychological well being of individual human subjects, participants, and risk of deleterious impact on the cultural, social, economic, or political well being of the community.
- c) **Tribal Consent:** The proposal should address a mechanism to obtain permission to use the Hopi traditions, culture, and people as subject matter. A mechanism for “informed consent” should be outlined in detail. Informed consent may be required from the individual, a family or clan, a village or the Hopi Tribal Government.
- d) **Rights to Privacy:** The proposal should address the issue of privacy and describe 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?
- e) **Confidentiality:** A Confidentiality Agreement may be required to assure confidentiality. The applicant shall provide assurance 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 applicants will constitute a breach of confidentiality.
- f) **Use of Recording Devices:** The proposal should outline what recording devices will be used in the project. Recording devices include, but is not limited, to motion picture cameras, audio / video recorders, tape recorders, mechanical, computerized or multimedia technology (CD-ROM), maps 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 recordation takes place.
- g) **Ownership:** The Hopi Tribe reserves the right to:
 - 1) Prevent publication of intellectual resources which is unauthorized, sensitive, misrepresentatives or stereotypical of the Hopi people or harms the health, safety, or welfare of the Hopi people.
 - 2) May require deposit of raw materials or data, working papers or product in a tribally designated repository, with specific safeguards to preserve confidentiality.
 - 3) To deny a license or permit.
- h) **Fair and Appropriate Return:** The proposal should demonstrate how informants or subject 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, royalties, copyright, patent, trademark, or other formats of compensation. Posting of a bond may necessary to ensure compliance with terms of a project or activity which requires a formal contract.

- i) **Indian Preference in Employment or Training:** In all phases of the project or activity, including both on and off the reservation phases, the order of priorities in Indian Preferences shall be 1) Hopi Tribal members; 2) Indian generally; 3) local residents.
- j) **Review of Product of Research Results / Study:** the proposal should demonstrate a process whereby the Hopi Tribe will have an opportunity to review and have input into the product or results before publication. The purpose of this step is to assure that sensitive information is not divulged to the public or misrepresentations can be corrected.

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

For more information, please contact Terry Morgart, Legal Researcher, at:

Hopi Cultural Preservation Office
P.O. Box 123
Kykotsmovi, AZ 86039
(928) 734-3619

APPENDIX D

SAN CARLOS APACHE ELDER'S CULTURAL ADVISORY COUNCIL – 1993

San Carlos Apache
Elder's Cultural Advisory Council

Procedures for Research Activity and Recording

General Policy:

The San Carlos Apache people wish to establish protections for their traditional culture. To this end it is necessary to establish guidelines pertaining to outside researchers and individuals wishing to do work associated with what the Tribe considers to be highly sensitive religious or spiritual practices.

The San Carlos Apache Tribe will be consulted by all those wishing to carry out projects and activities pertaining to San Carlos Apache culture and materials, such as archival and written, dealing with traditional culture. These projects and activities must obtain Tribal approval before they can be initiated.

Definitions:

San Carlos Apache Tribe includes Tribal individuals, families, clans, communities, Tribal government, traditional leaders, and the people as a whole. In this document, "Tribe" refers to that part of the Tribal government that is dealing with the applicant in regards to the submitted proposal.

Projects and activities include, but are not limited to, recordings (audio, visual, and transcription recordings by mechanical or manual means) of Apache culture, and interpretations of Apache culture.

Research topics include, but are not limited to: anthropology, ethnography, ethnology, history, medicine, linguistics, ethnobiology, agronomy, archaeology, religion, astronomy, and geology.

Procedures:

All non-Tribal parties wishing to carry out research, projects, and activities pertaining to Apache traditional cultural must submit a proposal to the Tribal Council and the San Carlos Apache Elder's Cultural Advisory Council that will include the following:

- 1) A statement of the intent or goal of the project or activity, and a detailed description of the project or activity.
This description should include the type of information that the project deals with; working procedures, activities, and principles guiding the project; a specific project time-frame; a detailed budget and source (s) of funding; project personnel backgrounds and qualifications; end- products and anticipated results; and plans for publication or other commercialization of the products.
- 2) A statement pledging that the project personnel or researcher will comply with all current ethical standards of their stated profession.

- 3) A description of how the project will directly benefit the Tribe, and how the project will benefit the project personnel.
- 4) A plan for including Tribal members in the project or activity, including employment and training opportunities for Tribal members as part of the project or activity. There should be a demonstrated attempt to locate and include qualified Tribal members as part of the project personnel.
- 5) An agreement to obtain the fully informed consent of all Tribal members involved in the project or activity, making clear that information obtained from them will be used in the project or activity. This fully informed consent includes obtaining permission from Tribal member participants as to the subsequent use of material obtained from them, and the Tribal member's full and complete understanding of this use.
- 6) A detailed description of how the Tribal member subjects and consultants will be involved in the project or activity, how they will be compensated, and on what rate (if the compensation is monetary) this compensation is based.
- 7) A fully description of all the recording devices to be used in the project or activity, and the exact setting and context in which these devices will be used.
- 8) A description of how the Tribe will have an opportunity to review the project or activity results before the final products are published or otherwise used, and how the Tribe may offer input into this material.
- 9) A description of how the Tribe may obtain copies of the final product, and / or otherwise share and benefit from the project or activity results.
- 10) A mechanism by which the Tribe and applicant can reach an agreement as to the ownership of the all material associated with the project and final product. If the project or activity deals specifically with what the Tribe considers "sensitive information," then the applicant must:
- 11) Sign a "Confidentiality Statement," whereby certain protections may be placed at the Tribe's discretion on material or subjects that the applicant may have access to, and certain protections may be placed on information gathered by the applicant; and
- 12) Show that the appropriate traditional or religious leaders or authorities have been thoroughly consulted regarding the project or activity by either the applicant or an appropriate Tribal representative.

The Tribe will not be restricted by the applicant's time restraints during the period of the proposal review. The applicant is expected to keep in touch with the Tribe during the period of the project or activity. The Tribe reserves the right to terminate the project if significant deviations from the project or activity are made by the applicant without Tribal consultation and approval.

APPENDIX E

LAW & ORDER CODE OF THE FORT MCDOWELL YAVAPAI NATION – 1990

CHAPTER 15 – EXCLUSION ORDINANCE

By virtue of the authority vested in the Fort McDowell Yavapai Nation (“Nation”) Tribal Council by Article V, Section 13(A) (14) of the Constitution, the Tribal Council hereby enacts this ordinance providing for the removal or exclusion of Non-Members from the Nation whose presence may be detrimental to the peace, health, morals or welfare of the National and/or who violate tribal laws or ordinances.

Sec. 15-1. PERSONS SUBJECT TO REMOVAL OR EXCLUSION.

- A. Any person, not a member of the Fort McDowell Yavapai Nation may be removed or excluded from the Fort McDowell Indian Reservation upon the grounds stated and in the manner provided in this ordinance with the exceptions contained in Section B.

- B. The provisions of this ordinance shall not apply to:
 - 1. Non-Members who are currently authorized by federal or tribal law to enter upon lands owned, leased or otherwise controlled by the Fort McDowell Yavapai Nation or individual members thereof.
 - 2. Non-Members who are traveling through the Reservation upon federal or state highways within the exterior boundaries of the Fort McDowell Indian Reservation.

Sec. 15-2. GROUNDS FOR REMOVAL OR EXCLUSION.

- A. Interference with the administration, operation and processes of Tribal government as authorized by the Constitution of the Fort McDowell Yavapai Nation.
- B. Commission of criminal offenses classified as a felony in the State of Arizona or a misdemeanor involving injury or damages or threats to persons or property in violation of Federal, State or Tribal law, regardless of whether such offense has been expunged or otherwise forgiven.
- C. Engaging in tortuous conduct in violation of Federal, State or Tribal law or that tortuous conduct would be a violation of state law had the conduct occurred off the reservation.
- D. Engaging in activities causing or resulting in breach of the peace, public unrest or other disruption of the peace, health, morals or welfare of the Nation.
- E. Engaging in exploratory, investigatory or other analytical activities involving, in any manner, Tribal natural resources without prior permission of the Nation.
- F. Solicitation for business, religious, or charitable purposes without prior permission of the Nation.
- G. Interference with tribal ceremonies without consent of the tribal members involved. Under this subsection the meaning of the term “interference” shall

include but is not limited to intrusion upon, disruption of, photographing, taping or other duplication of cultural and/or ceremonial activities.

- H. Establishing or attempting to establish upon any land or entering upon any land, either tribal or individually assigned, without first obtaining the consent of the Nation.

Sec. 15-3. EXCLUSION PROCEEDINGS: NOTICE, HEARING, APPEAL, ENFORCEMENT

- A. **Notice.** An rolled tribal member or a tribal agency or department upon the written request of a Tribal Member may initiate an exclusion proceeding. Upon a determination by either for Fort McDowell Yavapai Nation Tribal Council or the Tribal Attorney that cause may exist for the exclusion of a Non-Member from the Reservation, the Tribal Council shall appoint an Administrative Hearing Officer. The Tribal Attorney shall cause notice to be served upon such person stating that proceedings have been initiated to exclude he/she from the Fort McDowell Indian Reservation. Notice under this subsection shall:

1. Be by personal service or first class regular mail to the Non-Member's last known address. In the event of the latter, service shall be deemed complete upon the date of the return receipt. Notice shall be served no later than ten (10) days prior to the hearing date.
2. State specifically the date, time and place of the hearing before an Administrative Hearing Officer appointed by the Tribal Council at which exclusion shall be sought.
3. State the grounds and the areas for which exclusion is sought, including a brief summary of the facts which serve as the basis for the proposed exclusion and the name and addresses of witnesses to be called in support of the proposed action.
4. Inform the Non-Member of the right to be represented by private counsel, to present evidence and/or witnesses and to cross-examine adverse witnesses.
5. Inform the Non-Member of his right to seek a continuance of the hearing date upon a showing of good cause. Provided however, that the decision to grant a continuance shall in all cases be discretionary with the Administrative Hearing Officer. The term "good cause" as used in this subsection includes but not limited to illness, incarceration, undue hardship.

- B. **Hearing.** After notice has been served as provided in subsection A above, the Administrative Hearing Officer shall hold a hearing to make proposed findings of fact and a proposed recommendation to the Tribal Council whether the Non-Member should be excluded from the reservation. The Administrative Hearing Officer shall either be a member of a bar association of any State or have at least one year experience as a tribal court judge. The hearing procedures arc as follows:

1. If the Non-Member, after notice, fails to appear, the Administrative Hearing officer may in his/her discretion recommend that the Tribal Council enter a default order, indicating its decision to exclude such person, giving the areas and the period of time for which such order shall apply. In the event a default order is entered, a certified copy thereof shall be sent by first class regular mail to the defaulting party at his last known address.
2. The hearing shall be recorded. The enrolled tribal member or tribal attorney shall establish the basis for the proposed exclusion action by presenting oral and other tangible evidence (There shall be no formal rules for witness examination or the presentation of evidence in such proceedings). At the conclusion of the testimony of each witness, the Non-Member, or if represented by private counsel, his attorney may question each witness as to any matter within the scope of the statement given and may challenge the validity or accuracy of any evidence presented.

Once the tribal attorney presents the case for exclusion, the Non-Member, or his/her attorney may call witnesses and present evidence of any nature supporting non-exclusion. That person may direct questions to witnesses produced by the Non-Member and may challenge the validity or accuracy of the evidence presented by the Non-Member or his attorney.

Throughout the hearing, questions may be directed to either side relative to matters presented by the Administrative Hearing Officer.

3. Within seven (7) working days following the hearing, the Administrative Hearing Officer shall issue a proposed finds of fact, proposed conclusions of law, and a proposed recommended course of action to the Tribal Council. The Administrative Hearing Officer shall also transfer the record of the proceedings before him/her to the Tribal Council
4. The Tribal Council shall meet in a closed session for deliberation. In such deliberations the following rules shall apply:
 - i. Each decision shall be based only upon the evidence presented at the hearing.
 - ii. In all cases where permanent or indefinite exclusion is sought to where the proposed ground for exclusion is violation of federal, state or tribal criminal laws and the factual basis therefor is disputed by the Non-Member, the Tribal Council shall find, as a condition to exclusion, that the facts supporting same have been established by clear and convincing evidence.
 - iii. In all other cases of exclusion, the facts supporting a decision to exclude shall be found to exist by a preponderance of the evidence.

5. The Tribal Council may:

- i. Adopt the findings and recommendations of Administrative Hearing Officer,
- ii. Remand the case to the Administrative Hearing Officer for further testimony/consideration,
- iii. If substantial basis exists in the record, refuse to follow the recommendation by the Administrative Hearing Officer and make the order it deems appropriate.

6. The decision of the Tribal Council is final and is not subject to appeal.

- C. **Enforcement.** Failure to promptly comply with the terms of the exclusion order shall result in appropriate enforcement action. Where necessary, and at the direction of the Tribal Council, the tribal policy shall be directed to carry out the order or exclusion, using reasonable force when required under the circumstances.

Sec. 15.4. REMOVAL OF NON-MEMBERS WITHOUT A HEARING.

- A. **Conduct.** In circumstances where the presence of a Non-Member on the reservation presents: (1) a substantial and immediate threat to the safety and welfare of the Nation as a whole, any individual member thereof or any other person within the exterior boundaries of the reservation or (2) whose presence has caused, or threatens to cause, destruction, injury or other impairment to real or personal property, whether held by the Nation or by an individual, the President, or in his/her absence the Vice President, may order the immediate removal of such person from the reservation. In the absence of either the President or Vice President, any two members of the Tribal Council may order removal under this section.
- B. **Person Effecting Removal.** Any police officer of the Nation, or other appropriate police entity at the direction of the Tribal Council may secure the removal of Non-Members under this section.
- C. **Force.** Only the amount of force which is reasonably necessary to secure the removal of the Non-Member and to eliminate the threat that is posed shall be used.
- D. **Hearing.** At the time of removal under this section, the Non-Member shall be served with a notice of charges and the time and place at which a formal exclusion hearing shall be held. At such time, the person receiving such notice shall be informed of his/her right to request a hearing to be held within two (2) business days after receipt of notice. Such request shall be conveyed to the officer in charge of securing removal, whose responsibility it shall be, to notify the Tribal Council and the Tribal Attorney of the hearing demand. The Tribal Council shall then immediately appoint an Administrative Hearing Officer to hold a hearing within three (3) business days after service of the notice. In the event that no immediate hearing is requested, the hearing procedures set forth in Section 3 shall

apply except that the notice served under this section shall be deemed sufficient provided that it contains the information stated in Section 15-3 (A) (2-4).

Sec. 15-5 GENERAL POWERS.

Nothing contained in this ordinance shall be construed as abrogating existing law insofar as injurious conduct is concerned. The provisions of the ordinance, are ancillary to the powers of arrest, detention or incarceration possessed by the Nation.

Sec. 15-6. SEVERABILITY.

If any provision of this ordinance or the applicability thereof is held invalid, the remainder of this ordinance shall not be affected thereby.

CHAPTER 19 – ANTIQUITIES AND ARCHAEOLOGICAL SITES

Sec. 19-1. TITLE.

This chapter shall be known as the “Antiquities Ordinance.”

Sec. 19-2. VIOLATIONS; PENALTIES.

Any person violating any of the provisions of this chapter is guilty of an offense and shall upon conviction be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a period not to exceed six (6) months, or both, and shall, in addition, forfeit to the Fort McDowell Yavapai Indian Community all articles and material discovered, collected or excavated, together with all photographs and records relating to such objects.

Sec. 19-3. POLICY.

It is the policy of the Fort McDowell Yavapai Indian Community that sites within the external boundaries of the community reflecting historic or prehistoric evidence of human activity shall be preserved so that members of this community and others may gain greater knowledge concerning the historic and prehistoric habitation of this community.

Sec. 19-4. EXCAVATING OR EXPLORING ARCHEOLOGICAL SITE; TAKING OBJECTS.

No person, except when acting pursuant to a duly issued permit as provided for in section 19-5, shall excavate in or upon any historic or prehistoric ruin or monument, burial ground or site, including fossilized footprints, inscriptions made by human agency, or

other archaeological or historical features, situated on lands within the external boundaries of the Fort McDowell Yavapai Indian Community, nor shall any person not a holder of a permit as provided in section 19-5 explore for or take any object of antiquity from such site.

Sec. 19-5. PERMIT; CONDITIONS.

Permits for the exploration and excavation of sites described in section 19-4 may be issued by the archaeological officer of the Fort McDowell Yavapai Indian Community only to reputable museums, universities, colleges or other recognized scientific or educational institutions, scientists or their duly authorized agents, or other qualified archaeological research organizations. Such permits may be issued on condition that the permittee will restore the site excavated to the condition it was in prior to the excavation or such modification of such condition as may be appropriate, upon the condition that any objects of antiquity found in exploration and excavation be and remain the property of the Fort McDowell Yavapai Indian Community to be held by the community through its appropriate agencies or lent by the community to such other appropriate agencies for such period of times as seems reasonable to the archaeological officer of the Fort McDowell Yavapai Indian Community, and upon such other conditions as the archaeological officer of the Fort McDowell Yavapai Indian Community shall require or as shall be required by regulations adopted pursuant to this chapter. No permit shall be issued for a period of more than one year, but permits may be renewed.

Sec. 19-6. ARCHAEOLOGICAL OFFICER.

The director of the community development department or that director's designee shall be archaeological officer of the Fort McDowell Yavapai Indian Community.

Sec. 19-7. ADMINISTRATIVE REGULATIONS.

The director of the community development department shall, within one hundred twenty (12) days of the enactment of this chapter, propose to the community council regulations not inconsistent with this chapter for the administration of this chapter. The proposed regulations shall be deemed adopted, as they may have been modified by the community council, as of a date thirty (30) days after the date of submission to the community council. The regulations may be amended from time to time by the same process as required for adoption.

Sec. 19-8. FEES; BONDS.

- a. A uniform fee equal to twenty-five dollars (\$25.00) per week for each of the weeks for which a permit is to be issued shall be made for the total period of the permit at the time of the issuance of the permit. The fee is not payable for issuance of a permit to the Fort McDowell Yavapai Indian Community or any person or entity as

described in section 19-5 who is retained by the Fort McDowell Yavapai Indian community.

- b. The permittee shall, prior to the issuance of the permit, post a bond payable to the Fort McDowell Yavapai Indian Community either in cash or its equivalent, or by a surety acceptable to the Fort McDowell Yavapai Indian Community, in an amount sufficient to assure the restoration of the sites to be explored and excavated, to assure that all antiquities discovered in such exploration and excavation will be promptly turned over to the Fort McDowell Yavapai Indian Community, and to assure performance of all the conditions of the permit, or in such other amount, as may be determined by the archaeological officer.

Sec. 19-9. DUTY OF REPORT DISCOVERIES.

Any, person in charge of any survey, excavation or construction on any lands within the Fort McDowell Yavapai Indian Community shall report promptly to the archaeological officer of the Fort McDowell Yavapai Indian Community the existence of any archaeological or historical site or object discovered in the course of such survey, excavation or construction and shall take all reasonable steps to secure its preservation. The archaeological officer may determine that all such survey, excavation or construction actions shall cease pending an investigation of the discovery of any such site or object.

Sec. 19-10. DEFACING SITE OR OBJECT.

No person, institution or corporation shall deface or otherwise alter any site or object embraced within the terms of section 19-5, except as has been specifically provided for in the permit granted pursuant to section 19-5.

APPENDIX F

HUALAPAI CULTURAL HERITAGE RESOURCES ORDINANCE – 1998

HUALAPAI CULTURAL HERITAGE RESOURCES ORDINANCE

Part 1. GENERAL PROVISIONS

Section 101. Title and Summary

- (a) This Ordinance may be cited as the “Hualapai Cultural Heritage Resources Ordinance.”
- (b) This ordinance establishes the Cultural Resources Department of the Hualapai Tribe; defines the Department’s powers and duties; delegates authority to the Department and to the Director as head of the Department, including authority to develop rules to carry out this Ordinance; designates the Director to serve as the Hualapai Tribal Preservation Officer for purposes of the National Historic Preservation Act; directs the Department to establish a Hualapai Register of Heritage Places; authorizes appropriations from Tribal funds and establishes a cultural resources revenue account; prohibits certain kinds of activities that may affect cultural resources; authorizes the establishment of a permit program to control activities that are prohibited unless a permit has been issued; authorizes civil and criminal penalties for the enforcement of this Ordinance; authorizes administrative appeals procedures and judicial review; and provides a limited waiver of sovereign immunity authorizing actions in Tribal Court for injunctive relief (but not for money damages) to ensure that Tribal agencies and enterprises comply with the procedural requirements of the Ordinance.

Section 102. Findings

The Tribal Council of the Hualapai Tribe finds and declares that:

- (a) The spirit and direction of the Hualapai Tribe are founded upon a reflected in its cultural heritage;
- (b) The cultural heritage of the Hualapai Tribe must be preserved as a living part of community life and development and of the spiritual and religious life of the Hualapai Tribe;
- (c) Many cultural resources which hold significance for the Hualapai Tribe, both within the boundaries of the Hualapai Indian Reservation and other lands traditionally used by the Tribe, have been damaged or destroyed, sometimes inadvertently and sometimes intentionally;
- (d) Preserving and caring for cultural resources will provide cultural, educational, aesthetic, inspirational, spiritual and economic benefits for current and future generations of the Hualapai Tribe;
- (e) In light of the increasing pace of activities and projects that can adversely affect cultural resources (such as economic development projects, sanitation and public health developments, road building and housing construction), present governmental programs, tribal and non-tribal, to preserve the Hualapai Tribe’s

- cultural resources are inadequate and do not ensure that future generations will have a genuine opportunity to appreciate and enjoy the rich heritage of the Hualapai Tribe.
- (f) Increased knowledge about Hualapai cultural resources, along with the establishment of better means of identifying and fostering the preservation of cultural resources, will improve the planning processes used by tribal, federal, state and other government agencies and will facilitate the expeditious implementation of economic development projects;
 - (g) Although the federal and state government agencies have played major roles in cultural resource preservation, and both these levels of government must continue to play their proper roles, it is essential that the Hualapai Tribe expand and accelerate its cultural resource preservation programs and activities;
 - (h) The Tribal Council possesses the authority to enact legislation to establish programs to preserve cultural resources as an aspect of the inherent sovereignty of the Hualapai Indian Tribe, in accordance with Article V of the Constitution of the Hualapai Indian Tribe;
 - (i) The inherent sovereignty of Indian tribes to enact legislation for the preservation of cultural resources is recognized in federal law, including statutes such as the Archaeological Resources Protection Act, National Historic Preservation Act, and Native American Graves Protection and Repatriation Act;
 - (j) Under international human rights law, the Hualapai Tribe has the right to maintain its cultural integrity, and the enactment of tribal legislation to preserve cultural resources is a critical step that the Tribal Council can take to maintain the cultural integrity of the Hualapai Tribe.

Section 103. Policy

It shall be the policy of the Hualapai Tribe to:

- (a) Preserve and manage cultural resources in ways that contribute to meeting the social, environmental, spiritual, economic and other needs of present and future generations;
- (b) Cooperative with other Indian tribes, federal and state agencies, private organizations and individuals in the preservation and management of cultural resources;
- (c) Provide leadership and technical assistance in the preservation, protection, and conservation of cultural resources by building an exemplary cultural resources management program, by sponsoring educational programs for the general public and training programs for tribal employees, by consulting and cooperating with other governmental agencies, and by making contributions to academic journals and other appropriate publications;
- (d) Administer cultural resources that are within the jurisdiction or control of the Hualapai Tribe in a spirit of stewardship and for the inspiration of present and future generations;

- (e) Recognize, support, and perpetuate the traditional stewardship by Hualapai people of cultural resources which are significant for Hualapai cultural heritage and which are located on lands traditionally used by Hualapai people but not currently within the territorial jurisdiction of the Hualapai Tribe;
- (f) With respect to cultural resources that are not within the jurisdiction or control of the Hualapai Tribe but which are significant for Hualapai cultural heritage, to encourage those governmental agencies that do have jurisdiction and other entities that have control to manage such resources in a spirit of stewardship and for the inspiration of present and future generations of Hualapai and non-Hualapai people;
- (g) Encourage the preservation and use of historic buildings and structures located within the Hualapai Indian Reservation.

Section 104. Definitions

The following definitions apply for purposes of this Ordinance and rules issued by the Director to carry out this Ordinance. Rules issued by the Director may clarify the definitions in this section and may include definitions for additional terms, *provided* that any such additional definitions shall be generally consistent with the use of such terms in federal cultural resources law and *provided* that any intentional minor differences in the use of such terms shall be explained in the rules.

- (a) “Advisory Team of Elders” means the group of Hualapai elders established pursuant to section 207 of this Ordinance.
- (b) “Archaeological resources” means any material remains of human life or activities which are at least 100 years of age and which are of archaeological interest, as further clarified in federal regulations (43 C.F.R. § 7.3(a)); *provided*, for purposes of this Ordinance the term does not include human remains and funerary objects.
- (c) “Cultural resource” means any product of human activity or any object or place given significance by human action or belief. Places that may be cultural resources include building and other structures, landforms, archaeological sites, traditional cultural properties, and districts that are eligible, or potentially eligible, for listing on the Hualapai Register of Heritage Places or the National Register of Historic Places. Objects that may be cultural resources include artifacts and other physical remains of human activity, natural objects given significance by human action or belief, human remains and “cultural items” as defined in the Native American Graves Protection and Repatriation Act (funerary objects, sacred objects and objects of cultural patrimony), and archaeological resources. Objects may be eligible for the Hualapai Register of Heritage Places or the national Register of Historic Places if they are in some way connected to a specific place.
- (d) “Department” or “CRD” means the Hualapai Tribal Cultural Resources Department created by Section 201 of this Ordinance.
- (e) “Director” means the duly appointed Director of the Hualapai Tribal Cultural Resources Department.

- (f) “Hualapai Register” means the Hualapai Register of Heritage Places established pursuant to Section 301 of this Ordinance.
- (g) “Hualapai traditional use lands” means all lands historically or traditionally used by the Hualapai people, *expert* for those lands that are currently within the boundaries of the Hualapai Indian Reservation or otherwise included in the term “Hualapai tribal lands” as used in this Ordinance.
- (h) “Hualapai tribal lands” means all lands over which the Hualapai Tribes has jurisdiction, including all land within the exterior boundaries of the Hualapai Indian Reservation and all other Hualapai Indian country, as that term is defined in 18 U.S.C. § 1151.
- (i) “Heritage resource” or “heritage property” means any cultural resource or property that has been determined eligible for listing in the Hualapai Register of Heritage Places.
- (j) “Indian” or “Indian person” means any enrolled member of a federally-recognized Indian tribe and any other person who is considered an Indian for purposes of the Indian Civil Rights Act (25 U.S.C. § 1301(4)) and criminal jurisdiction under the federal Major Crimes Act (18 U.S.C. § 1153).
- (k) “National Register” means the National Register of Historic Places established pursuant to the National Historic Preservation Act and administered by the National Park Service (36 C.F.R. parts 60, 63).
- (l) “Repatriation” means the expeditious return to the Hualapai Tribe of human remains, cultural items and other objects possessed or controlled by persons and entities other than the Tribe and its members. In the event that the Hualapai Tribe comes into possession or control of items to which other tribes or individuals have rights of ownership or control, the term also means the expeditious return of such items to such tribes or persons.
- (m) “Responsible agency official” means the official of a federal, tribal or state agency who has decision making authority over a particular undertaking proposed, or under consideration, by such agency.
- (n) “Responsible person” means the individual in private capacity or official in a non-governmental organization who has decision making authority over a particular undertaking.
- (o) “State Historic Preservation Officer” “SHPO” means the officer or state government agency charged under state law with responsibility for administering a state historic preservation program.
- (p) “Traditional cultural place” or “traditional cultural property” means, as defined by the National Park Service in National Register Bulletin 38, a place that is eligible for the National Register because of its association with cultural practices or beliefs of a living community that are rooted in that community’s history and are important in maintaining the continuing cultural identity of the community. As used in this Ordinance this term also includes such a place if it has been determined eligible for the Hualapai Register regardless of whether or not it has been determined eligible for the National Register.

- (q) “Tribal Environmental Review Commission” or “TERC” means the Commission established pursuant to the Hualapai Environmental Review.
- (r) “Undertaking” means:
- (1) an “undertaking” as defined in the National Historic Preservation Act (16 U.S.C. § 470w(7)): “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including:
 - (A) those carried out by or on behalf of a Federal agency;
 - (B) those carried out with Federal financial assistance;
 - (C) those requiring a Federal permit, license, or approval; and
 - (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency; and
 - (2) Any project, activity or program carried out under the authority of, or with permission from, an agency, enterprise or other entity created by the Hualapai Tribe, including any “development” for which a permit is required under the Hualapai Environmental Review Code, regardless of whether or not there is federal agency involvement sufficient to bring the project, activity or program within the coverage of paragraph (1) of this definition, *provided* that the Director, through the issuance of rules, may establish procedures to avoid the application of this term to projects, activities and programs that do not have the potential to result in changes in the character and use of cultural resources.
 - (3) The Director, through the issuance of rules, may establish that certain kinds of actions are “exempted categories” which generally shall not be treated as “undertakings” for purposes of this Ordinance based on a determination that the potential effects on cultural resources of undertakings within any such category are foreseeable and likely to be minimal. The Director’s rules for exempted categories shall include a procedure for determining, for a particular action that fits within an exempted category, whether the particular action may affect cultural resources, and, if such a determination is made, the action shall be treated as an “undertaking.” Actions that would otherwise be treated “undertakings” under paragraph (1) of this definition may be included in exempted categories only to the extent that such treatment is authorized by the Advisory Council on Historic Preservation, through the Council’s regulations or pursuant to an agreement between the Council and the Tribe.

Section 105. Severability

If any portion of this Ordinance or the application thereof to any person, court or circumstances is held invalid by a Hualapai or federal court, the invalidity shall not affect other provisions of this Ordinance which can be given effect without the invalid provisions or application and to this end, the provisions of this Ordinance are severable.

Section 106. Effective Dates

The permit requirements in Part 3 of this Ordinance become effective on the date that rules to establish a permit program, issued pursuant to Section 208, become effective.

All other provisions of this Ordinance become effective upon enactment by the Tribal Council.

PART 2. CULTURAL HERITAGE RESOURCES PROGRAM ADMINISTRATION

Section 201. Cultural Resources Department

- (a) *Establishment.* The Hualapai Tribal Cultural Resources Department (hereafter referred to as “Department” or “CRD”) is hereby established, by elevating the subdivision of Tribal Government previously known as the Office of Cultural Resources to the status of a Department.
- (b) *Mission.* The Department shall be the Hualapai Tribe’s lead agency for the identification, protection, preservation and management of cultural resources within Hualapai tribal lands and Hualapai traditional use lands.
- (c) *Programs.* The Department shall develop and administer all programs necessary to achieve the purpose of this Ordinance, consistent with direction from the Tribal Council and Tribal Administration, including programs to:
 - (1) Advise the Hualapai Tribal Council, the TERC, and other departments, programs, authorities, enterprises, and other instrumentalities of the Hualapai Tribe, federal, state and local government agencies, private organizations and individuals on matters pertaining to the cultural resources in order to achieve the purposes of this Ordinance on Hualapai tribal lands and on Hualapai traditional use lands.
 - (2) Assume certain functions of the State Historic Preservation Officer on Hualapai tribal lands as provided by agreement with the National Park Service, coordinate with the SHPO with respect to those functions not assumed, and advise the Tribal Council regarding the desirability of assuming additional SHPO functions;
 - (3) Represent the Tribe in consultations with federal agencies and the SHPO for cultural resources located on Hualapai traditional use lands;
 - (4) Enter into interagency memoranda of agreement (MOAs) and programmatic agreements (PAs) to facilities and advance the purposes of this Ordinance;
 - (5) Compile, update and maintain a cultural resources data base for Hualapai Tribal lands and Hualapai traditional use lands, including but not limited to the development of the Hualapai Register of Heritage Places;
 - (6) Provide appropriate education to the public (Hualapai and non-Hualapai) regarding the importance of preservation, protection and management of the cultural resources on Hualapai Tribal lands and Hualapai traditional use lands;
 - (7) Protect Hualapai cultural resources on Hualapai tribal lands by enforcing the prohibitions and administering the permit requirements of Part 3 of this Ordinance;
 - (8) Seek the repatriation of human remains and cultural items from federal agencies and “museums” (as that term is defined in the Native American Graves Protection and Repatriation Act) and other persons and establish

- procedures, in consultation with the Advisory Team of Elders, for determining the appropriate disposition of repatriated items;
- (9) Manage collections of cultural resources excavated from Hualapai tribal lands and Hualapai traditional use lands; and
 - (10) Prepare a Cultural Resources and Historic Preservation Plan for the Hualapai Indian Tribe and provide a copy of this Plan to the Tribal Administration and the Tribal Council on an annual basis, accompanied by a brief report summarizing the Department's accomplishments during the preceding year and issues that merit consideration by the Tribal Administration and the Tribal Council.
- (d) *Appropriations and Funding.* This Ordinance authorizes such appropriations from tribal funds as the tribal Council may from time to time provide. In addition, the Department is authorized to seek and obtain the funds necessary to support the Department's programs from all appropriate sources, and to establish a Cultural Resources Revenue Account pursuant to Section 204 of this Ordinance. Under the supervision of the fiscal accounting department of the Hualapai Tribe, the Director will manage and supervise the Department in the expenditure of funds to achieve its mission and carry programs under this ordinance.

Section 202. Director

- (a) *Executive Direction.* The Department shall be supervised by the Director (hereinafter referred to as "Director" or "CRD Director"), who shall be hired and compensated in accordance with Hualapai Tribal Personnel Policies and Procedures. The Director shall report directly to the Hualapai Tribal Administration and Tribal Council.
- (b) *Responsibilities.* The Director shall have the overall responsibility for carry out this Ordinance. Specific responsibilities of the Director shall include, but not be limited to, the following:
 - (1) Serve as the Hualapai Tribal Preservation Officer for purposes of the National Historic Preservation Act;
 - (2) Serve as the agent of the Tribe for receiving notice to the Tribe in matters relating to cultural resources and, subject to other provisions of this Ordinance, for signing documents relating to cultural resources, *provided* that the Director shall consult with the Tribal Chairperson to determine whether the express approval of the Tribal Chairperson or the Tribal Council would be necessary or advisable for any particular document which the Director proposes to sign on behalf of the Tribe;
 - (3) Consult, coordinate, and negotiate agreements with other Hualapai tribal agencies and entities, including but not limited to the TERC, and with state agencies, federal agencies, and agencies of other Indian tribes regarding cultural resources;
 - (4) Serve as a representative of the Department and, if appropriate, the Tribe in any action in any court or any administrative proceeding involving the validity

- or enforcement of this Ordinance or involving other legal matters relating to cultural resources;
- (5) Review undertakings and administer a permit program pursuant to Part 3 of this Ordinance;
 - (6) Develop, in consultation with the Advisory Team of Elders, plans and programs to protect and preserve the cultural resources of the Hualapai Tribe;
 - (7) Seek funding from appropriate sources and negotiate and administer grant and contractual agreements to ensure that the obligations assumed by the Department in such agreements are carried out;
 - (8) Established a program to oversee the quality of cultural resources work carried out pursuant to permits issued under Part 3 of this Ordinance and to monitor the quality of similar work carried out on Hualapai traditional use lands pursuant to permitting authority of other governmental agencies;
 - (9) Develop and maintain Departmental archives containing records, publications, and other material relating the cultural heritage of the Hualapai Tribe; and
 - (10) Develop and issue rules and other formal policy statements and guidance documents to carry out this Ordinance, in accordance with Section 208.

Section 203. Delegation of Authority

The Tribal Council hereby delegates to the department and to the Director the authority necessary to carry out this Ordinance, subject to such review and oversight as the Tribal Council chooses to exercise.

Section 204. Cultural Resources Revenue Account

The Department is authorized, in cooperation with the fiscal accounting department of the Tribe, to establish a Cultural Resources Revenue Account. All revenue from sources such as contracts, cooperative agreements, and grants shall be deposited into this account for disposition in accordance with the terms of such contracts, cooperative agreements, and grants. Revenue from fees, fines, civil penalties, civil forfeitures and other sources under this Ordinance shall be deposited into this account and shall be expended in accordance with Hualapai Tribal budgetary procedures to help achieve the purposes of this Ordinance.

Section 205. Archaeological Services Branch

The Director is authorized to establish an Archaeological Services Branch within the Department to provide or arrange for archaeological services for other departments of tribal government, tribal enterprises, and the private sector, and to charge reasonable fees to cover the costs of providing such services. If, in the Director's judgment, it would be preferable for the Tribal Council to create a separate subdivision of tribal government or some other entity to provide archaeological services, the Director shall provide recommendations to the Tribal Council.

Section 206. Hualapai Tribal Museum

- (a) The Director is authorized to develop plans to establish a Hualapai Tribal Museum. The Museum shall be established only after these plans have been developed and presented to the Tribal Council and when secure funding for the Museum's establishment and operation have been identified.
- (b) There is hereby established a Museum Development account into which funds raised for the purposes of development and operation of the Museum shall be deposited. These funds shall remain available in this account until they are appropriated and expended for the purposes of developing and/or operating the Museum.
- (c) Unless otherwise provided by the Tribal Council, the Museum shall be managed by a Curator-Manager, who shall report to the Director, in accordance with Hualapai tribal personnel policies and procedures.

Section 207. Advisory Team of Elders

- (a) In carrying out their responsibilities under this Ordinance, the Director and the employees of the Department shall be guided by the wisdom and expertise of an Advisory Team of Elders.
- (b) Upon enactment of this Ordinance the Director, in consultation with the members of the Interim Advisory Team of Elders described in paragraph (e) of this section, shall develop:
 - (1) A Policy Statement on the Roles and Responsibilities of the Advisory Team of Elders; and
 - (2) A Procedure for Appointments to the Advisory Team Elders.
- (c) In addition to such other roles and responsibilities as the Director determines are appropriate for the Advisory Team of Elders, this Team also shall perform a role similar to that performed by a State Review Board under regulations issued by the National Park Service regarding nominations of properties to the National Register of Historic Places. (36 C.F.R. parts 60, 61).
- (d) The Policy Statement and Procedure for Appointment shall take effect upon approval by the Tribal Council.
- (e) An initial Advisory Team of Elders was established by the Office of Cultural Resources in 1992, with concurrence of the Tribal Council, and this Team shall remain in effect until a new Team is appointed pursuant to the Policy Statement and Procedure for Appointments.
- (f) The Policy Statement may include provisions for the payment of compensation to the members of the Advisory Team of Elders for their service to the Tribe in this capacity.

Section 208. Rulemaking and Other Policy Documents

- (a) *Rulemaking Authority.* The Director is authorized to issue rules to carry out this Ordinance. For some provisions of this Ordinance, the issuance of rules is

- mandatory: the Ordinance expressly requires the Director to issue rules, and those provisions cannot be carried out until rules have been issued. In addition, the Director is authorized to issue rules to carry out other provisions of this Ordinance if, in the Director's judgment, rules would be advisable to help clarify the Ordinance and to provide guidance to the affected public.
- (b) *Rulemaking Procedure.* The development of rules is intended to be a process in which persons whose interests will be affected by the rules have an opportunity to understand how the rules will affect their interests and to make their views known. The Director is responsible for ensuring that, unless the expedited procedure in paragraph (d) of this section applies, the following steps are taken:
- (1) A proposed rule shall be made available to the public, including an explanation of the rule in plain language. A notice of the availability of the proposed rule shall be posted at the office of the Tribal Chairperson and may be published in local newspapers and mailed to persons known to be interested in the rule.
 - (2) A comment period of forty-five (45) days shall be provided during which interested persons may file written comments on the proposed rule.
 - (3) A final rule shall be made available to the public, which shall include a summary of comments received and a brief discussion of the Director's response to comments received, although the Director need not respond to every point raised in the comments. A notice of the availability of the final rule shall be posted at the office of the Tribal Chairperson.
 - (4) A final rule shall be placed on the agenda for a scheduled meeting of the Tribal Council and shall become effective upon approval by the Tribal Council or upon the Council taking no action on the rule for thirty (30) days after the first Council meeting for which the rule was included on the agenda, unless the Council otherwise provides through resolution.
- (c) *Additional Procedures for Rulemaking.* The Director may use additional methods to inform the public and seek the views of concerned persons, such as informal community meetings and more formal public hearings. If the Council, through resolution or ordinance, imposes additional procedural requirements that clearly are intended to apply to rulemaking under this Ordinance, the Director shall comply with such requirements.
- (d) *Procedures, Standards, Guidelines and Policy Statements.* The Director may develop, adopt, and carry out various kinds of policy and guidance documents other than rules that the Director deems necessary or advisable to carry out this Ordinance. Such document may include procedures, standards, guidelines and policy statements. Unless specifically required by this Ordinance or by other formal action of the Tribal Council, such documents generally do not require Tribal Council approval before taking effect. The Director shall provide a copy of any such document to the Tribal Council.

Section 209. Hearings

The Director is authorized to hold legislative hearings as part of the rulemaking process, administrative hearings on permit applications and appeals, and enforcement hearings on alleged violations of this Ordinance.

- (a) *Rulemaking hearings.* In developing rules, the Director may hold a hearing in which Hualapai tribal members and others who may be affected by rules to be developed are given the opportunity to express their views. Notice of rule-making hearings shall be provided at least thirty (30) days prior to the date of the hearing and the text of the proposed rules, with explanatory materials, also shall be made available to the public as least thirty (30) days prior to the date of the hearing.
- (b) *Administrative hearings.* When considering whether to approve an application for a permit pursuant to Part 3 of this Ordinance, the Director generally will make the initial decision based upon the written application. The Director is authorized to hold administrative hearings to gather information to be used in making the initial permit decision. The Director shall hold an administrative hearing when an affected party has requested review of a permit decision pursuant to Section 502 of this Ordinance. In an administrative hearing, the burden is on the applicant to demonstrate to the Director that the issuance of a permit would be consistent with the Ordinance and the Department's rules. A written transcript shall not be required, but the applicant shall be entitled to a written decision. The Director shall issue rules establishing procedures for administrative hearings.

Section 210. Publication Meetings

The Director is authorized to hold public meetings whenever doing so would help carry out the policies of this Ordinance. Public meetings generally are less formal than public hearings and do not require the preparation of a transcript or other record. Public meetings can be used to encourage community involvement in the rulemaking process or to inform the public about the Hualapai cultural heritage resources program or for any other worthwhile purpose in the judgment of the Director.

PART 3. PROTECTION OF CULTURAL HERITAGE RESOURCES

Section 301. Hualapai Register of Heritage Places

- (a) *Creation of the Register.* Director shall create, expand, maintain and administer a Hualapai Tribal Register of Heritage Places (hereinafter referred to as the "Hualapai Register") comprising places, buildings, districts, objects, and structures significant in Hualapai history, culture, archaeology, engineering, and architecture. The Director shall issue rules to establish criteria for eligibility and procedures for determining eligibility and nominating places to be listed on the Hualapai Register. Eligibility for the Hualapai Register shall not be limited to places that are located on Hualapai Tribal lands but, rather, may also include places located on Hualapai traditional use lands.

- (b) *Inventory, Evaluation, and Registration.* The Director shall establish a program to locate, inventory and evaluate cultural resources on Hualapai tribal lands and Hualapai traditional use lands. In accordance with rules issued pursuant to paragraph (a) of this Section, upon a determination that a place is eligible for the Hualapai Register, the Director may formally add the place to the Register or the Director may maintain a separate listing of places that have been determined eligible but have not been formally listed.
- (c) *Advisory Team of Elders.* The rules issued by the Director pursuant to paragraph (b) shall include a procedure through which the Director shall consult with the Advisory Team of Elders in determining whether any particular place is eligible for the Hualapai Register and, if it is eligible, whether or not it should be formally listed. The consultations leading up to such determinations may be closed to the public if, in the judgment of the Director or the Advisory Team of Elders, confidentiality is advisable to protect the cultural resources at issue and the traditional uses of such resources by tribal members, *provided* that members of the Tribal Council and persons designated by them may participate in such consultations. In the event of a disagreement between the Director and the Advisory Team of Elders, the Director shall defer to the judgment of the Advisory Team of elders and issue a determination for the Department.
- (d) *Appeals.* A determination by the Director on the eligibility of a place for the Hualapai Register may be appealed pursuant to Section 503.

Section 302. National Register of Historic Places

- (a) *Inventory, Evaluation, and Nomination.* The Director shall establish a program to locate, inventory and evaluate cultural resources on Hualapai tribal lands and Hualapai traditional use lands that appear to be eligible for the National Register of Historic Places, and to determine whether such properties should be formally nominated to the National Register. In establishing and carrying out this program, the Director shall consider (1) places that are eligible for both the Hualapai Register and the National Register, and (2) places that are eligible for the National Register but which are not significant in Hualapai history, culture, archaeology, engineering, and architecture and thus are not eligible for the Hualapai Register.
- (b) *Advisory Team of Elders.* The program established by the Director shall include a role for the Advisory Team of Elders similar to that performed by State Review Boards in regulations issued by the National Park Service governing nominations to the National Register (36 C.F.R. part 60)
- (c) *Appeals.* Determinations by the Director to nominate a property to the National Register, or not to nominate a property, may be appealed to the Keeper of the National Register in accordance with regulations issued by the National Park Service (36 C.F.R. part 60). Such determinations shall *not* be subject to appeal or judicial review pursuant to Sections 503 and 504 of this Ordinance.

Section 303. Clearance Requirement for Undertakings

- (a) *Clearance Requirement.* Before carrying out any undertaking that may affect cultural resources located on Hualapai tribal lands, the responsible agency official or responsible person proposing the undertaking must provide the Director with a reasonable opportunity to review the undertaking and determine the effects the undertaking is likely to have on cultural properties. The undertaking shall not proceed unless and until the Director has given the responsible agency official or responsible person written clearance to proceed. Such written clearance may include mitigation measures, which shall be binding on the responsible agency official or responsible person.
- (b) *Relationship to Environmental Review Code.* If the undertaking constitutes “development” under the Hualapai Environmental Review Code, the responsible agency or responsible person proposing the undertaking must apply to the Tribal Environmental Review Commission (TERC) for a permit, pursuant to the requirements of the Environmental Review Code. The TERC will consult with the Director regarding the effects the undertaking is likely to have on cultural resources and will include in the permit any conditions required by the Director.
- (c) *Discovery Situations for Development under a TERC Permit.* If cultural resources are discovered during the course of development pursuant to a TERC permit, the TERC will consult with the Director regarding such cultural resources and will include any modification to the permit required by the Director. Depending on the likely effects that the undertaking may have on such cultural resources, the TERC may consider suspending or revoking the permit, subject to the procedural protections of notice and hearing provided in Section 309 of this Ordinance and the judicial review provision of Section 503.
- (d) *Procedure.* The Director is authorized to issue rules to carry out the consultation requirement of this Section. IN these rules the Director may provide that certain kinds of activities that normally do not adversely affect cultural resources may be excluded from the clearance requirement or may be addressed through programmatic agreements with responsible agencies. In the absence of rules issued by the Director, the procedure for conducting this consultation shall follow the procedure set out in the regulations issued by the Advisory Council on Historic Preservation for the Section 106 consultation process under the National Historic Preservation Act (36 C.F.R. part 800), with the Director performing the role of the SHPO, *provided*, that, as provided in paragraph (a) of this Section, unless and until the Director issues clearance, the responsible agency official or responsible person cannot lawfully proceed with an undertaking.
- (e) *Relationship to Permit Requirements.* The clearance requirement established by this Section is in addition to any permit requirements pursuant to Section 305 of this Ordinance, or pursuant to the Hualapai Environmental Review Code, that may also apply. For many kinds of undertakings it may be necessary to obtain one or more permits under Section 305 in order to gather sufficient information to make final plans for the undertaking and/or to adequately mitigate adverse effects on cultural resources prior to seeking clearance from the Director for the undertaking itself.

- (f) *Hearings and Appeals.* If the Director denies clearance for an undertaking, the person or agency proposing the undertaking may request a hearing pursuant to Section 502 of this Ordinance. Any final decision made by the Director is subject to judicial review pursuant to Section 503 of this Ordinance.

Section 304. Prohibited Activities

The prohibitions in this Section apply to cultural resources located on our within Hualapai Tribal lands.

- (a) No person or agency shall carry out an undertaking without first obtaining clearance from the Director or a permit from the Tribal Environmental Review Commission, as the case may be, pursuant to Section 303 of this Ordinance.
- (b) No person shall disturb, take, excavate, remove, damage, destroy, desecrate or alter any cultural resource or conduct any investigation relating to any cultural resource, or make an exploratory excavation to determine the presence to any cultural resource without first obtaining a permit form the Director pursuant to this Ordinance, or permit from the TERC, as the case may be, unless an exemption from the permit requirement applies.
- (c) No person shall sell, purchase, exchange, transport, receive, or offer to sell, purchase, exchange or transport any cultural resource in violation of:
 - (1) The prohibitions in paragraph (b) of this Section;
 - (2) The conditions of any permit issued pursuant to tribal or federal law; or
 - (3) Any rule, ordinance or other provision of tribal or federal law in effect at the time of the prohibited conduct.
- (d) No person shall conduct ethnological or archeological studies without first obtaining a permit pursuant to this Ordinance, unless an exemption applies.
- (e) No person who is not a tribal member shall conduct historical, cultural or other research, oral or written, scientific or non-scientific, or make recordings of any kind, regardless of the technology used, without first obtaining a permit pursuant to this Ordinance.
- (f) Any person who receives a letter of inquiry from the Director pursuant to Section 401 of this Ordinance shall respond truthfully within the time specified in such letter; any person who gives false information in response to a letter of inquiry is not itself a violation of this Ordinance.

Section 305. Permit Requirements

Any person, other than a person who is exempt from permit requirements by Section 306 of this Ordinance, proposing to visit or inspect cultural resources, undertake cultural resources inventory, alter, collect, excavate, or remove cultural resources or engage in ethnographic research, or to conduct any other activity that would otherwise be prohibited by Section 304, shall apply to the Director for a Hualapai Tribal Cultural Resources Permit, or to the TERC for a Development Permit, as the case may be. As

provided in Section 308, the Director shall issue rules to establish permit application procedures.

Section 306. Exceptions and Waivers

- (a) The prohibition against, and permit requirement for, visitation of cultural resources shall not apply to enrolled members of the Hualapai Tribe or to Hualapai tribal employees engaged in properly authorized official activities.
- (b) The prohibition against, and permit requirement for, alteration, collection, disturbance, excavation or removal of cultural resources or for the conduct of ethnographic research does not apply to:
 - (1) Hualapai tribal members engaging in activities directly related to the practice of traditional Hualapai religion or traditional cultural practices.
 - (2) Tribal employees engaged in properly authorized official business, relating to cultural resource management approved in accordance with rules and/or guidance documents issued by the Director.
- (c) The Director may waive otherwise applicable permit requirements on a case-by-case basis to allow to cultural resources by traditional practitioners from other Indian tribes.
- (d) The Director may waive otherwise applicable permit or clearance requirements on a case-by-case basis in the event of an emergency or natural disaster.
- (e) *Persons Not Excepted.* Employees of federal or state agencies are not excepted from the permit requirement. In addition, persons serving as agents for the Hualapai Tribe who are not employees of the Tribe (such as consultants, advisors, and others who provide services under contract), are not exempt from the permit requirements of this Ordinance. Through the issuance of rules, the Director may establish expedited procedures for such persons to obtain permits.

Section 307. Classes of Permits

- (a) There shall be four classes of permits.
 - (1) Class A permits shall be issued for activities involving casual visitation and inspection of cultural resources. Class A permits may also be issued to traditional practitioners who are members of other Indian tribes in the event that such persons choose to apply for a permit rather than to ask the Director for a waiver of the permit requirement.
 - (2) Class B permits shall be issued for cultural resources inventory activities involving no disturbance of the cultural resources.
 - (3) Class C permits shall be issued for cultural resources investigations involving alteration, collection, excavation, removal or any disturbance of cultural resources. If expressly authorized, a Class C permit may allow the excavation of human remains. It is the intent of the Tribal Council that the issuance of a Class C permit will eliminate the need for tribal members and tribal employees to obtain a permit from a bureau of Indian Affairs under the Archaeological Resources Protection Act (ARPA). In issuing rules to establish

a program for issuing Class C permits, the Director shall ensure that the tribal permit program is adequate to eliminate, to the extent possible, the otherwise applicable requirement to obtain an ARPA permit and, to the extent that eliminating the ARPA permit requirement is not possible, to expedite compliance with the requirements of ARPA.

- (4) Class D permits shall be issued for activities involving research into the cultural resources of the Hualapai Tribe, including ethnographic, historical, cultural or other research. Any form of recording that results from any such research must conform to the terms and conditions of a permit.
- (b) Permits shall normally only be issued on a case-by-case basis, except that Indian preference firms may be granted blanket Class B permits. The Director may waive this requirement and issue blanket permits whenever he or she finds that the issuance of a blanket Class B permit would be in the best interests of the Hualapai Tribe.
- (c) Permits normally shall not be issued for a period of more than twelve months, except when longer periods are required to allow for the completion of a single project. In rules for permit programs under this Ordinance, the Director is authorized to establish other categories in which a permit may be issued for a period of longer than twelve months.

Section 308. Permit Application Procedures

- (a) *Rules.* The Director shall establish procedures for permit applications through the issuance of rules. When such rules have been adopted, the Director may issue a permit to any qualified person, subject to appropriate terms and conditions, and subject to the full payment of any permit fees assessed by the Director.
- (b) *Fees.* The rules shall include an appropriate schedule of fees for the various classes of permits, and may provide for the Director to grant a waiver of fees in appropriate cases. The Director shall reconsider the fee schedule on a periodic basis, at least every three years, and may revise the schedule whenever in his or her judgment revisions are warranted, provided that any change in the fee schedule must be accomplished through rulemaking in accordance with Section 208.
- (c) *Special Provisions for Class C Permits.* In issuing rules for Class C permits, the Director shall take into consideration the requirements for permits under the Archaeological Resources Protection Act (43 C.F.R. part 7, 25 C.F.R. part 262), in order to ensure that a tribal permit is adequate to eliminate the need for an ARPA permit to the extent possible and, in circumstances in which an ARPA permit is required, to expedite ARPA compliance.
- (d) *Hearings and Appeals.* If an application for a permit is granted or denied without a hearing, the applicant or any interested person may request a hearing from the Director pursuant to Section 502. Final decisions made by the Director are subject to judicial review pursuant to Section 503.
- (e) *Relationship to Environmental Review Code.* The issuance of any permit pursuant to this Ordinance shall not constitute “development” under the Hualapai

Environmental Review Code and shall not require a development permit; rather, the issuance of a permit under this Ordinance, if required for a development project, will be required prior to the consideration of an application for a development permit by the Tribal Environmental Review Commission.

Section 309. Suspension and Revocation of Permits

- (a) *Suspension or Revocation for Cause.*
 - (1) The Director may suspend a permit for cause upon determining that the permit holder has failed to meet a term or condition of the permit or has violated any prohibition of this Ordinance or the rules issued to carry out this Ordinance.
 - (2) The Director may revoke a permit for cause upon determining that:
 - (A) The permit holder has failed to correct the situation that led to the suspension of the permit within the time specified in the notice of suspension;
 - (B) The permit holder has been convicted of a criminal violation of this Ordinance or of other tribal or federal law in a matter directly related to the activities covered by the permit;
 - (C) A civil penalty has been assessed against the permit holder pursuant to this Ordinance or pursuant to other tribal or federal law in a matter directly related to the activities covered by the permit; or
 - (D) The permit holder has engaged in activities that would be grounds for the suspension of a permit, and the permit holder has previously had a permit suspended for cause.
- (b) *Suspension or Revocation Without Fault.* The Director may suspend or revoke a permit for reasons not relating to the conduct of the permit holder upon determining that continuation of work under a permit would not be in the best interests of the Hualapai Tribe or would be in conflict with legal requirements or land management policies not in effect when the permit was issued. Such a suspension or revocation is made without liability to the Hualapai Tribe, its employees and agents. Such a suspension or revocation shall not prejudice the ability of the permit-holder to hold or obtain other permits.
- (c) *Notice of Hearing.* The Director shall provide written notice to the permit holder of the suspension or revocation, the cause of the suspension or revocation and, in the case of a suspension, the requirements that must be met before that suspension will be lifted.
- (d) *Effective Date.* Suspension of a permit shall be effective immediately unless a later date is specified in the notice of suspension. Revocation of a permit shall be effective 30 days after issuance of the notice of revocation, unless a later date is specified. If the permit holder requests a hearing, then: (1) an order of suspension shall remain in effect pending the final determination by the Director on appeal, unless the Director in his sole discretion orders otherwise; (2) an order of revocation, if upheld, shall be effective thirty (30) days after the final determination by the Director on appeal.

PART 4. ENFORCEMENT

Section 401. Investigations

The Director is authorized to investigate compliance with permits issued pursuant to this Ordinance and to investigate activities that are being carried out without a permit in possible violation of this Ordinance. As part of an investigation, the Director may serve any person with a letter of inquiry. Any such letter of inquiry shall inform the person to whom it is addressed that: answers must be provided to the Director within 60 days; failure to respond may result in the imposition of civil penalties; information provided may be used in law enforcement proceedings; and giving false information is in itself a violation of this Ordinance.

Section 402. Notices of Violation

- (a) If the Director has reason to believe that a violation of this Ordinance has occurred, or is occurring, the Director is authorized to issue a Notice of Violation to the person(s) apparently responsible for the violation. If the apparent violation occurred, or is occurring, on land in which a person other than the alleged violator holds a property interest, a Notice of Violation shall also be issued to the holder of such an interest.
- (b) A Notice of Violation shall include:
 - (1) a concise statement of facts believed to constitute a violation;
 - (2) specific reference(s) to the provisions(s) of this Ordinance and/or the rules to carry out this Ordinance allegedly violated;
 - (3) the proposed amount of a civil penalty pursuant to Section 406 of this Ordinance (possibly accompanied by a proposal to reduce or waive collection of the amount if the violator takes certain actions to mitigate damage) or a statement that a penalty may be assessed in an amount to be determined after further investigation;
 - (4) a statement that the amount of the civil penalty may be doubled if the violation continues to occur after the Notice of Violation has been served on the alleged violator; and
 - (5) an explanation of rights to petition for relief, request an administrative hearing, and seek judicial review of any final determination pursuant to Part 5 of this Ordinance.
- (c) A Notice of Violation may include a Summons to appear before the Director at an enforcement hearing at a specified time and date. If such a Summons is included it shall advise the alleged violator that failure to appear will constitute a violation of this Ordinance, which may result in the imposition of civil penalties.
- (d) A Notice of Violation may be served on an alleged violator by the Director or by an employee of the Department or, at the request of the Director, by a Tribal law enforcement officer.
- (e) A Notice of Violation may be served on a permit holder before the Director issues a notice of suspension or revocation of a permit pursuant to Section 309.

Section 403. Cease and Desist Orders

- (a) If the Director has reason to believe that an ongoing and continuing violation is occurring, or that there is a substantial likelihood that a violation will occur in the near future, the Director is authorized to petition the Tribal Court for a Cease and Desist Order to prevent the violation from continuing or occurring. The Director's petition shall include a brief statement of facts, according to the Director's information and belief, and a brief explanation of how the alleged facts, if true, constitute a violation of this Ordinance.
- (b) The Tribal Court is authorized to issue a Cease and Desist Order upon a showing by the Director that:
 - (1) probable cause exists that a violation is occurring, or is likely to occur in the near future; and
 - (2) the violation has resulted in, or is likely to result in, damage to cultural resources.
- (c) If the petition concerns a violation for which the Director has issued a Notice of Violation, a showing by the Director that the conduct has continued after the Notice of Violation was served on the alleged violator shall be sufficient to establish probable cause that a violation is occurring, or is likely to occur in the near future.
- (d) The consideration by the Court of a petition by the Director for a Cease and Desist Order shall not require that notice of the hearing be provided to the alleged violator.
- (e) A Cease and Desist Order shall include:
 - (1) a concise statement of facts believed to constitute a violation of this Ordinance;
 - (2) specific reference(s) to the provisions(s) of this Ordinance and/or the rules to carry out this Ordinance allegedly violated;
 - (3) a statement that the Tribal Court has determined that there is probable cause to believe that a violation has occurred or is likely to occur in the near future;
 - (4) a statement that the alleged violator must Cease and Desist the conduct that constitutes a violation and that failure to comply with the Cease and Desist Order is in itself a violation of this Ordinance;
 - (5) the proposed amount of a civil penalty pursuant to Section 406 of this Ordinance (possibly accompanied by a proposal to reduce or waive collection of the amount if the violator takes certain actions to mitigate damage) or a statement that a penalty may be assessed in an amount to be determined after further investigation;
 - (6) a statement that the amount of the civil penalty may be tripled if the violation continues to occur after the Cease and Desist Order has been served on the alleged violator; and
 - (7) an explanation of rights to petition for relief, request an administrative hearing, and seek judicial review of any final determination pursuant to Part 5 of this Ordinance.

- (f) A Cease and Desist Order may be served on an alleged violator by the Director or by an employee of the Department or, at the request of the Director, by a Tribal law enforcement officer.

Section 404. Criminal Penalties

- (a) *Tribal Criminal Penalties.* It is a criminal offense for an Indian person to violate any of the prohibitions of Section 304 of this Ordinance or to knowingly counsel, procure, solicit, or employ any other person to violate any of the prohibitions of Section 304. Upon conviction in Tribal Court, such a criminal offense may be punishable by restitution, community service, a fine not to exceed \$5,000, and/or imprisonment for a term not to exceed one year. For the purposes of this Ordinance, each act committed on Hualapai Tribal lands that constitutes a criminal offense shall be considered a separate offense. A person convicted of such an offense may also be subject to civil penalties.
- (b) *Federal Criminal Penalties.* Any person who commits an act on Hualapai tribal lands that would be a criminal offense under this Ordinance if committed by an Indian may also be subject to criminal prosecution under federal law.

Section 405. Trespass

Any nonmember of the Hualapai Tribe who violates any prohibition in Section 304 of this Ordinance without having obtained the relevant permit has committed trespass. Nonmember Indians may be subject to prosecution in Tribal Court; non-Indians may be subject to civil actions in federal court; all persons may be subject to civil actions in Tribal Court for damages; Any law enforcement action taken on grounds of trespass may be separate from enforcement actions taken under other provisions of this Ordinance. The circumstances relating to the trespass may be taken into consideration in the event that civil penalties are imposed.

Section 406. Civil Penalties

- (a) *Conduct Subject to Civil Penalties.* Individuals who violate the prohibitions in Section 304 of this Ordinance shall be subject to civil penalties, which may be assessed by the Director, in accordance with rules adopted expressly for this purpose. A permit holder who engages in conduct that violates the terms and conditions of his or her permit is considered to violate the prohibition in Section 304.
- (b) *Procedure for Assessing Penalties.* Following the procedure set out in Section 208, the Director shall issue rules for the assessment of civil penalties. In developing these rules, the Director may draw upon the procedures used by the Department of the Interior for assessing civil penalties under the Archaeological Resources Protection Act (43 C.F.R. §§ 7.15,7.16) and the Native American Graves Protection and Repatriation Act (43 C.F.R. § 10.12). At a minimum, the procedure shall include:

- (1) *Notice of Violation*, in accordance with Section 402 of this Ordinance;
 - (2) *Response Period* of at least forty-five (45) days after service of the Notice (or service of the proposed penalty amount if not included in the Notice) of the alleged violator to respond to the Notice of Violation, during which the alleged violator may seek informal discussions with the Director or may file a Petition for Relief pursuant to Section 501;
 - (3) *Assessment of Penalty*, by the Director after the expiration of the Response period or after consideration of a Petition for Relief, unless the Director determines that, based on all the available information, no violation has occurred;
 - (4) *Notice of Assessment*, which shall be formal notification to the violator of the amount due, how to pay it, and appeal rights pursuant to Part 5 of this Ordinance.
- (c) *Penalty Amounts*. Rules to carry out this Section shall include guidelines for the Director to use in assessing civil penalties. The Director shall take appropriate measures to inform the public regarding civil penalties under this Ordinance.
- (1) For violations relating to failure to obtain Class A, B, or D permits, the civil penalty amounts may be set at relatively nominal amounts for first time offenders, but shall be at least comparable to the fees that would be charged for such permits. The rules shall provide for penalty amounts to be substantially increased for second and third offenses.
 - (2) With respect to Class C permits, the Director shall develop a system for determining penalty amounts that reflects consideration of the following factors:
 - (A) Costs of restoration and repair of damaged cultural resources and the archaeological or commercial value of cultural resources that are destroyed or otherwise not recovered;
 - (B) Enforcement and administrative costs associated with the assessment and collection of the civil penalty;
 - (C) Cost of disposition of cultural resources, including as appropriate, cost of curation in perpetuity;
 - (D) Costs associated with documentation, testing and evaluation of the cultural resource in order to assess the characteristics of the cultural resource and plan for its restoration; and
 - (E) Costs of any additional mitigation measures the Director deems appropriate to implement;
 - (F) An amount based on the loss to the Tribe of the use of cultural resources for cultural and religious practices;
 - (G) For any second offense, a factor allowing the total penalty amount to be doubled or tripled, in the Director's judgment depending upon the nature of the offense.
 - (H) A factor allowing the total amount of the penalty to be doubled in the event that conduct constituting a violation continued after service of a Notice of

Violation and tripled if such conduct continued after service of a Cease and Desist Order.

- (d) *Referral to Federal Authorities for Civil Penalties.* In lieu of, or in addition to, imposing civil penalties under this Ordinance, the Director may refer matters to federal authorities. Any penalties collected by the federal government and paid to the Hualapai Tribe (pursuant to 43 C.F.R. § 7.17(c)) shall be deposited in the Cultural Resources Revenue Account established pursuant to Section 204 of this Ordinance.

Section 407. Civil Forfeitures

- (a) *Seizure and Forfeiture of Personal Property.* In the event that a Tribal Law Enforcement Officer is present at the scene of any violation of this Ordinance, whether or not in the process of serving a Notice of Violation and/or Cease and Desist Order, the Officer is authorized to seize all items of personal property that apparently have been involved in the violation. Title to such property shall be deemed to vest in the Hualapai Tribe at the time of the commission of the unlawful activity, provided that the Director brings an action in Tribal Court to perfect the Tribe's title and the Tribal Court issues a ruling in favor of the Department. If the former owner is present at the time of seizure, the Officer shall obtain the necessary information to provide such person information on the procedure to seek the return of such property; if not present at the time of seizure, a notice shall be posted and other reasonable steps taken to provide notice to the former owner.
- (b) *Action To Perfect the Department's Title in Seized Property.* The Director may file an action in Tribal Court seeking to perfect the Tribe's title to any personal property seized. Any such action shall be considered by the Tribal Court in accordance with section 504 of this Ordinance. The former owner of seized property shall be referred to as a "claimant." If the Director fails to file such an action within 60 days after the date of seizure, the items of personal property that were seized shall be returned to the claimant. At any time that an action to perfect the Tribe's title in seized property is pending, the Director is authorized to return the seized property to its former owner upon timely payment of any and all related civil penalties that may have been assessed against the violator.
- (c) *Use by Department..* Any forfeited property title to which has vested in the Tribe pursuant to an order of the Tribal Court shall be made available for the use of, or deposition by, the department upon the expiration of the period for filing an appeal in Tribal Court of Appeals. At any time up until the property is made available for the use of the Department, the Director is authorized to return the property to the former owner if any and all civil penalties assessed against the former owner have been paid.
- (d) *Seizure under Federal Law.* The Director is authorized to cooperate with federal officials with respect to the forfeiture of items of personal property in connection with violations of the Archaeological Resources Protection Act. Any such items

that are transferred to the Tribe (pursuant to 43 C.F.R. § 7.17(c)) shall be made available for the use of, or disposition by, the Department.

- (e) *Seizure of Cultural Resources.* Cultural resources located within Hualapai tribal lands are presumed to be the property of the Hualapai Tribe unless tribal customary law provides otherwise. Thus unless a person who has excavated or otherwise removed a cultural resource from its proper setting is the holder of a permit authorizing such action, a presumption arises that a violation of this Ordinance has occurred. In the event that a Tribal Law Enforcement Officer is present at the scene of any apparent violation of this Ordinance at which cultural resources have been damaged, excavated, or removed from their proper settings, the Officer shall take appropriate steps to protect the cultural resources from further damage, which may include seizing the resources and holding them in police custody.

Section 408. Referrals to Federal and Other Authorities

When, in the judgment of the Director, it would serve the interests of the Hualapai Tribe, the Director is authorized to provide information to, and cooperate with, federal agencies, state agencies, and other Indian tribes in the enforcement of cultural resources laws within Hualapai Tribal lands and Hualapai traditional use lands.

Section 409. Civil Actions in Federal Court

When, in the judgment of the Director, it would serve the interests of the Hualapai Tribe to file a civil action in federal court to seek protection or recognition of the Tribe's rights and interests under federal law relating to cultural resources, the Director shall so advise the Tribal Chairperson. In most circumstances the filing of such an action must be authorized by the Tribal Council. In the event that the Director and the Tribal Chairperson both conclude that the matter is an emergency, the Chairperson is authorized to file such an action on behalf of the Tribe.

PART 5. APPEALS AND JUDICIAL REVIEW

Section 501. Petitions for Relief

A person who has been served with a Notice of Violation which includes a proposed civil penalty may file a Petition for Relief with the Director. The person filing such a Petition may request that no penalty be assessed that the penalty amount be reduced. The petition shall include reasons in support of the request. Any such Petition must be filed within forty-five (45) days of the date on which the Notice of Violation was served (or from the date that the penalty amount was proposed, if later). The Director's decision in response to a Petition for Relief shall be conveyed to the Petitioner in the Notice of Assessment issued pursuant to Section 406.

Section 502. Administrative Hearings

- (a) *Hearings Before the Director.* The Director is authorized to conduct adjudicatory hearings regarding clearances under Section 303, permit applications under Section 308, suspensions or revocations of permits under Section 309, notices of violation under Section 402, and any other instances in which a hearing is authorized pursuant to this Ordinance or rules issued to implement this Ordinance. Departmental staff designated by the Director will assume responsibility for presenting the Department's case at the hearing. The Tribal Administration may provide legal counsel to assist Departmental staff and/or the Department may provide its own legal counsel. The person whose permit or actions are the subject of the hearing or who has requested the hearing may be represented by legal counsel at that person's own expense.
- (b) *Appointment of a Hearing Officer.* In any hearing involving the assessment of a civil penalty, and in any other hearing in which the Department has a direct financial interest, any party to the hearing may require the appointment of a Hearing Office to conduct the hearing and render a decision. In any other matter, any party may request the appointment of a Hearing Officer, but one will not be appointed as a matter of right. In any hearing in which a Hearing Officer conducts the hearing and renders the decision, the Director may participate in the hearing as a party. In any such case, the decision of the Hearing Officer shall constitute final agency action for the Department.
- (c) *Rules.* The Director shall issue rules governing the conduct of administrative hearings. The rules shall specify the steps in the hearing process, identify who may, request a hearing, establish notification requirements and time limits for action on the part of all parties, enumerate documentation requirements, and include any other elements the Director determines are necessary to carry out the purposes of this section. In addition, these rules shall ensure that parties to hearings are afforded administrative due process, including:
 - (1) notice of the time and place of the hearing;
 - (2) an opportunity to present reasons in support of the ruling that the appellant seeks;
 - (3) an unbiased tribunal; and
 - (4) a written decision including reasons in support of the decision.
- (d) *Coordination with Tribal Environmental Review Commission.* The Director shall consult with the Directors of other Departments of Tribal Government and with the Tribal Environmental Review Commission regarding the establishment of a unified procedure for the appointment of hearing officers and the conduct of administrative hearings. The Director shall submit a report on this issue to the Tribal Administration within one year of the date of enactment of this Ordinance.

Section 503. Judicial Review

- (a) *Review of Administrative Hearings.* Any person who participated in an administrative bearing and who is adversely affected by the outcome of the hearing under the rules promulgated pursuant to Section 502 of this Ordinance

- shall be entitled to review of the action in the Hualapai Tribal Court. Such an appeal must be filed in writing with the Hualapai Tribal Court within thirty (30) days of notification of the decision based on the administrative hearing.
- (b) *Review of Decisions without Administrative Hearings.* Any person who is entitled to a hearing before a Hearing Officer shall have a right to judicial review of the original decision in the event that Director formally decides not to appoint a Hearing Officer or has not appointed a Hearing Officer within sixty (60) days of the date that the request for such appointment was made. Such an appeal must be filed in writing with the Hualapai Tribal Court within thirty (30) days of notification of decision not to appoint a Hearing Officer or within thirty (30) days of the date on which the 60-day period for the appointment of a Hearing Officer expires. In such a case, any person who would be directly and adversely affected by a decision of the Director, or by the judicial modification or reversal of a decision by the Director, may file an appeal with the Tribal Court, in the event that the person entitled to a hearing does not file an appeal, within ten (10) days after the expiration of the time allowed for filing by a person originally entitled to a hearing. In the event the original party files an appeal, any person who could have appealed in his/her own right may participate in the appeal as an intervenor.
- (c) *Standards for Review.* The Tribal Court shall review decisions after administrative hearings based on the pleadings and the administrative record. The Court generally shall not make its own inquiry into the facts, but it may in cases in which an appellant was entitled to the appointment of a Hearing Officer and none was appointed. In all cases, the Court may review questions of law on a *de novo* basis. The Court shall not set aside or reverse a decision of the Director or a Hearing Officer unless the Court finds that the decision:
- (1) is not supported by substantial evidence;
 - (2) was issued without compliance with the requirements of this Ordinance or rules issued pursuant to this Ordinance;
 - (3) is arbitrary and capricious;
 - (4) deprived the appellant of any right guaranteed by Article IX of the Constitution of the Hualapai Indian Tribe; or
 - (5) deprived the appellant of due process of law or other rights that the appellant may have under the Indian Civil Rights Act (25 U.S.C. 1301-1341).
- (d) *Advisory Team of Elders.* In any case arising under this Ordinance, the Tribal Court may seek advice from the Advisory Team of Elders on questions relating to tribal cultural traditions.
- (e) *Private Rights of Action in Tribal Court.* In any case in which a person or governmental agency subject to this Ordinance, including an agency or instrumentality of the Tribe, has carried out an undertaking without first obtaining clearance from the director pursuant to Section 303, and the Director has not initiated enforcement by issuing a Notice of Violation or by petitioning the Tribal Court for Cease and Desist Order, any person who is directly and adversely affected by the violation of the Section 303 clearance requirement may file an action in Tribal Court seeking an Order to enjoin the undertaking and to compel the alleged violator to apply for an obtain clearance from the Director prior to

- resuming the undertaking. In any such case, the person filing the action shall bear the burden of showing, by a preponderance of the evidence, that a violation of Section 303 has occurred. If the Tribal Court determines that injunctive relief is warranted in such a case, and issues an appropriate Order, action taken by the Director on an application for clearance after the issuance of such an Order by the Tribal Court shall be subject to hearing and judicial review in the same manner as other determinations by the Director.
- (f) *Waiver of Sovereign Immunity.* This section of the Ordinance constitutes a limited waiver of tribal sovereign immunity for actions in tribal court against agencies and officers of the Tribe, provided that any such actions shall be limited to injunctive relief. This section shall not be construed to authorize an action against the Tribe or its officers contrary to Article XVI, Section 2 of the Constitution of the Hualapai Indian Tribe.
 - (g) *Tribal Court of Appeals.* A decision by the Tribal Court adjudicating a dispute arising under this Ordinance may be appealed to the Tribal Court of Appeals in accordance with such rules as that Court may prescribe.

Section 504. Action To Perfect the Tribe's Title in Seized Property.

- (a) *Action Filled by the Director.* The Director is authorized to file an action in Tribal Court to perfect the Tribe's title in any property that has been seized pursuant to Section 406 of this Ordinance. Any action must be filed within 60 days from the date on which the seizure occurred.
- (b) *Burden of Proof.* The Director bears the initial burden of establishing probable cause that any item of personal property seized was associated with or involved in unlawful activity. If the Director meets this initial burden, the claimant bears the burden of showing, by a preponderance of the evidence, that the item of personal property is not subject to forfeiture. This burden can be met by disproving probable cause or by establishing innocent ownership of the property.
- (c) *Appeals.* A decision by the Tribal Court in a civil forfeiture action under this Ordinance may be appealed to the Tribal Court of Appeals in accordance with such rules as that Court may prescribe.

APPENDIX G

CRIT HUMAN & CULUTRAL RESEARCH CODE – 2009

**COLORADO RIVER INDIAN TRIBES
HUMAN AND CULTURAL RESEARCH CODE**

ARTICLE 1. HUMAN AND CULTURAL RESEARCH CODE

[NOTE: Except as otherwise noted, the provisions of Article 1 of the Human and Cultural Research Code were enacted on October 1, 2009 by Ordinance No. 09-04, and are effective on November 1, 2009]

CHAPTER 1. GENERAL PROVISIONS

Section 1-101. Purpose.

This Code is intended to carry out the following purposes:

- (1) To create uniform standard in how research on the Colorado River Indian Reservation (“Reservation”) is to be conducted.
- (2) To create a specific and formal authorization body to provide protection of the Colorado River Indian Tribes’ (“CRIT” or “Tribe”) property including physical, real, cultural and intellectual property and communal property such as blood and tissue samples from the Tribe in large scale human subjects research.
- (3) To provide protection from CRIT’s land.
- (4) To preserve and protect the unique and distinctive languages, cultures and traditions of the Tribes.
- (5) To protect all persons within the territorial jurisdiction of the Reservation from unreasonable, harmful, intrusive, ill-conceived or otherwise offensive research and investigation procedures.

Section 1-102. Definitions.

- (a) “Conflict of Interest” means any situation in which an ERB Members is in a position to exploit his/her professional or official capacity in some way for ERB Members’ personal benefit in financial gains or in-kind gains in the form goods, commodities, or services.
- (b) “ERB” means the Ethics Review Board that is the administrative body with the responsibility for implementing and enforcing the provisions of this Code.
- (c) “Human Participant” means a living or non-living individual, including human remains, about whom a researcher, whether professional or student, conducting research obtained private information of data through intervention or interaction with the individual, involving physical procedures by which data are gathered, for example, blood draws, and/or manipulations of the participant or the participant’s environment.
- (d) “Informed Consent” means a prospective participant’s voluntary agreement, based upon full disclosure and adequate knowledge and understanding or relevant

- information, to participate in research or to undergo a diagnostic, therapeutic, or preventive procedure. In giving informed consent, the participant may not waive or appear to waive any legal rights to applicant researcher, the funding source, or agent. Additionally, the participant may not release or appear to release the applicant researcher, the funding source or agent from liability for negligence.
- (e) “Research” means the use of systematic methods to gather and analyze information for the purpose of proving or disproving a hypothesis, evaluating concepts or practices or otherwise adding to knowledge and insight in a particular discipline or field of knowledge or to demonstrate or investigate theories, techniques or practices. For the purpose of this Code, research includes the following.
 - (1) Basic and clinical research.
 - (2) Behavioral studies including studies of wildlife and domestic animals.
 - (3) Anthropology and archaeological studies.
 - (4) Community and cultural based research including interviews, questionnaires, and surveys.
 - (5) Feasibility and other studies designed to develop, test and evaluate basic data in all phases of environmental and public health.
 - (6) Geological and botanical research.
 - (7) Linguistic research.
 - (f) “Researcher” means any person, organization, business or other entity which conducts research within the territorial jurisdiction of CRIT.
 - (g) “Reservation” means the land area inside boundaries of the Colorado River Indian Reservation.
 - (h) “Work-For-Hire” means the creator’s work product is not the copyrighted product of the creator. The copyright belongs to the entity that hired the creator to do work.

Section 1-103. Application.

This Code is applicable to all research done within the boundaries of the Reservation by all agencies:

- (1) Non-CRIT governmental agency;
- (2) Non-CRIT non-for-profit or for-profit agency, organization or institution;
- (3) CRIT governmental department, agency or enterprise; and
- (4) All other not-for-profit or for-profit agency, organization, business or institution originating on the Reservation.

CHAPTER 2. ETHICS REIVEW BOARD

Section 1-201. Ethics Review Board.

- (a) CRIT Ethics Review Board (“ERB”) is the administrative body with the responsibility for implementing and enforcing the provisions of this Code.

- (b) The ERB shall review all proposals, notwithstanding other Institutional Review Boards' approval, for human research which will occur within the territorial jurisdiction of CRIT. The ERB shall issue permits for those projects which are consistent with the terms and intent of this Code after its recommendation to and approval from the Tribal Council to proceed with said projects. The ERB, as appropriate, review and approve the results of such studies before publication.
- (c) The ERB shall consider, when appropriate, to coordinate with CRIT Archives, Museum, and Environmental Protection Agency to avoid conflicts.

Section 1-202. Composition and Terms.

- (a) The ERB shall be composed of seven (7) individuals, appointment by the Tribal Council: one (1) legal expert; one (1) Tribal member who is a local practicing physician or researcher; four (4) Tribal members that have thorough knowledge of CRIT's four (4) tribes; one (1) member of the Tribal Council.
- (b) The term of an appointment by the Tribal Council shall be three (3) years from appointment. The term of appointment shall be staggered.
- (c) The Tribal Council shall appoint a temporary appointment shall last until the conflict ERB member resumes his/her post.
- (d) A Chair Person shall be designated by the ERB through a majority vote of quorum. Voting to select a Chair Person be anonymous.

Section 1-203. Meetings, Quorum.

The ERB shall meet at least quarterly, but as often as necessary. Four (4) members shall constitute a quorum. A decision shall be made through a majority vote of the quorum.

Section 1-204. Purposes of the ERB.

The purposes of the ERB are to assure that research and publication activities:

- (1) Are consistent with the cultural, health and education goals and objectives of CRIT.
- (2) Do not endanger the well-being of individuals or communities or aesthetics of the Reservation.
- (3) Require informed consent of all affected individuals or their legal representatives.
- (4) Are culturally relevant to the extent possible and are appropriate clinically, technically, epidemiologically and statistically.
- (5) Present only reasonable risks to participants in relation to anticipated benefits.
- (6) Select participants equitably. In making this assessment, the ERB shall take into account the purpose of the research, the setting in which the research will be conducted, and the population from which participants will be recruited.

Section 1-205. Powers of the ERB.

Consistent with the requirements of this Code, the powers of the ERB shall include:

- (1) The review of research proposals and make the final recommendation to the Tribal Council.
- (2) The review and grant final approval of presentation materials and manuscripts, including thesis, dissertation and abstracts, prior to publication.
- (3) The negotiation of additional and/or revised procedures, methodologies, and approaches to research and publication with researchers.
- (4) The ERB may request assistance from other persons with specialized knowledge in the review of any application, proposal or manuscript. When research is reviewed involving a category of vulnerable participants, e.g., prisoners, children, and individuals who are mentally disabled, the ERB shall include in its reviewing body one or more individuals who have a particular expertise and concern from the welfare of these participants.
- (5) The ERB may conduct public hearings if any research proposal may involve participants of particular concern, controversy, or sensitivity to the Tribes in order to obtain feedback from the members of CRIT.
- (6) Pursuant to the approval of the Tribal Council, the ERB shall adopt/amend appropriate rules and procedures regarding: confidentiality of participants; storage of specimens and other research materials; monitoring of research activities; amendments to any research proposals; financial disclosure regarding the research ; payments to participants; adverse reactions of any participants; applications and their contents; fees for permits and other services; and other procedures to implement this Code.
- (7) The ERB will coordinate with other appropriate CRIT boards and committees and other Institutional Review Boards and cultural board and committees.

Section 1-206. Conflict of Interest.

- (a) Persons. No ERB Member shall participate directly or indirectly in the administration, review and/or approval of a research project or the selection of a paid expert consultant if an actual or foreseeable conflict would be involved. Such conflict would arise when a financial or in-kind interest in the form of goods, commodities or services in the research project or the expert consultation is held by:
 - (1) The ERB Member.
 - (2) The ERB Member's relative, grandfather, grandmother, father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, daughter-in-law, brother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, and half sister.

- (3) The ERB Member's business partner.
- (4) An organization which employs, is negotiating to employ, or has any arrangement concerning prospective employment of any of the above persons.
- (b) Disclosure. When there is an actual or foreseeable conflict under Section 1-206 (a), the ERB Member must disclose the conflict in writing as soon as the fact is known to the ERB Member.
- (c) Resolution. When a conflict has been confirmed by the ERB, the ERB may do the following to resolve the conflict:
 - (1) The ERB may waive the conflict if there are valid reasons; waiver must be in writing stating the reason for such a waiver; or
 - (2) Request the conflict ERB Member to rescue himself/herself from the administration, review and/or approval of the research project or the selection of a paid expert consultant.

CHAPTER 3. RESEARCH ADMINISTRATION

Section 1-301. Research Proposal Packet.

Research Application must submit a research proposal packet to the ERB for review and approval that includes all of the following:

- (1) Cover sheet titled "CRIT ERB Research Protocol Application"
- (2) Abstract/Executive Summary
- (3) Research Project Description
 - (A) Introduction
 - (B) Background
 - (C) Purpose
 - (D) Methods, including involvement of local community
 - (E) Benefits and Risks: including steps that will be taken to protect participants
 - (F) Protection of Privacy and Confidentiality Assurance; must disclose group identification
 - (G) Funding Source and Budget
 - (H) Time line for Survey or Research
 - (I) Informed Consent Form for research that involves individuals; consent form from heir/relatives must be obtained for research that involved human remains, sound recordings, photographs, and the like of deceased individuals.
 - (J) Intent or plan to publish research and potential for royalties
- (4) Curriculum Vitae of the Principal Investigator and any Co-Principal Investigator.
- (5) Approval and requirements of any sponsoring educational and other institution's human subject or institutional review board. Researcher must provide contact information of sponsor(s).

- (6) A provision that results will be presented to the ERB and that all publications must be reviewed and approved by ERB.
- (7) A provision that the Researcher shall be governed by and construed in accordance with the laws of the Colorado River Indian Tribes now in force and effect or that may be hereafter in force and effect. Researcher, his/her agents and employees hereby consent to the jurisdiction of the Tribal Court of the Colorado River Indian Tribes. Such jurisdiction shall include, without limitation, jurisdiction to enter judgments for compensatory and punitive damages.

Section 1-302. Informed Consent Form.

The Participant's Informed Consent form that shall include the following:

- (1) The voluntary nature of participant's involvement;
- (2) The project purpose and use;
- (3) Selection criteria for participants;
- (4) Duration of participant's involvement;
- (5) Research procedures;
- (6) Risks and benefits to the participant;
- (7) Confidentiality measures;
- (8) Involvement;
- (9) Project contacts;
- (10) Non-waiver of Liability; and
- (11) Participant's/ parent's/ custodian's signature(s).
- (12) One (1) witness signature.

Section 1-303. Record Retention.

- (a) The ERB shall develop and maintain an up-to-date file on all research projects, past and ongoing, approved and disapproved. Records of research projects will be maintained at least ten (10) years after the ERB receives the proposal or five (5) years after publication of a paper derived from the research activity, whichever is longer. The ERB shall maintain a file of reprints of publications resulting from all research projects conducted within the territorial jurisdiction of CRIT.
- (b) Researcher shall provide CRIT Archive a copy of the final official written report/thesis/dissertation/publication at end of each stage of the research project.

Section 1-304. Research Permit.

- (a) Prior to undertaking any human research within the territorial jurisdiction of CRIT, Researcher must apply for a permit by submitting a Research Proposal Packet to the ERB.
- (b) The ERB shall make its final recommendation to the Tribal Council to grant a Research Permit.

- (c) Once the research is approved by the Tribal Council by resolution, the Researcher must enter into a Memorandum of agreement with the Tribe prior to the issuance of the Research Permit. The Research Permit shall be signed by the ERB Chair Person and the Tribal Chairman.

Section 1-305. Administrative Fees.

- (a) The ERB may assess reasonable costs associated with the review of proposals and other materials; any monies generated are for the exclusive use of the administration of this Code. Administrative fees are subject to change.
- (b) The Research shall be responsible for the ERB's consulting fees in the event that the ERB require outside professional expertise.
- (c) Research originates from the Tribal government, tribal members, and not-for-profit Tribal organizations or institutions are exempt from the Administrative Fees.

CHAPTER 4. RESEARCH POLICY

Section 1-401. Confidentiality and Security.

There must be stringent assurance that the data and information generated during the conduct of research is protected from unauthorized access and misuse consistent with informed consent provisions, CRIT's confidentiality policy, and other CRIT's information technology. The ERB may demand proof of confidentiality and security.

Section 1-402. Progress Reports on Research.

- (a) Researcher shall report to the ERB the progress of their research as often and in the manner required by the ERB. The Progress Report shall contain the following information:
 - (1) Status of research
 - (2) Preliminary data, if appropriate for disclosure at this point
 - (3) Deviations from Research Proposal Packet
- (b) Researcher shall promptly report any injuries or adverse impacts, including violations of an individual's privacy, to human participants to the ERB.
- (c) Researcher shall promptly report any unanticipated problems such as death, illness and injury, which involve risks to the human research participants or others to the ERB.

Section 1-403. Continuing Review of Research Activities.

The ERB shall regularly review all research activities conducted within the territorial jurisdiction of CRIT. If, during the course of research activity, the research conditions

change, the ERB may require Researcher to amend their application consistent with the changed conditions. Proposed changes by Researcher must go through the approval process of this Code. If the ERB determines that a research project is no longer viable because of changes in the scope of effect of this research, it may rescind any research permit or otherwise limit the scope of research activities which may be conducted under the permit. Appeal procedures under Section 1-501 are applicable for all actions taken under Section 1-403.

Section 1-404. Publication Review Procedures.

All individuals whether or not affiliated with the original researcher or research entity proposing publishing the results of any research covered by this Code are required to submit a manuscript to the ERB for approval, in advance of publication. The manuscript will be reviewed for technical content and validity, organization of content, readability, sensitivity of material or deemed harmful to individual Tribal members of CRIT, as well as assurance that they are consistent with the goals, intent and policies of this Code. All references to or descriptions of CRIT's intellectual property rights must be removed or corrected prior to publication.

While CRIT understands that academic publications rarely result in royalties, if any publication for any purpose results in the payment of royalties, an agreement for the sharing of such royalties with CRIT must be negotiated in good faith.

CHAPTER 5. APPEAL PROCEDURES

Section 1-501. The Appeal Procedures.

- (a) Researchers who are denied a research permit can request a one-time reconsideration by the ERB of their application upon a showing of good causes. A request for reconsideration shall be deemed to have shown good cause if it:
 - (1) Presents significant relevant information not previously considered by the ERB;
 - (2) Demonstrates that significant changes have occurred in the factors or circumstances considered by the ERB in reaching its decision; or
 - (3) Demonstrates that the ERB failed to follow its adopted procedures in reaching its decision.
- (b) A request for reconsideration must be received within thirty (30) days after Researcher is notified of a decision of the denial.
- (c) If good cause is found by the ERB, reconsideration shall be conducted within thirty (30) days after receipt of the appeal request.
- (d) All appeal decisions made by the ERB are final.

CHAPTER 6. PROTECTION OF RIGHTS

Section 1-601. Ownership of Property.

- (a) CRIT shall retain all ownership, property, trademark, copyright, and other rights to cultural, linguistic, and historic information that is not the intellectual property of Researcher. Non-CRIT employee participants or researchers or both in the research shall sign a Work-for-Hire Agreement for research projects that are designated as property of CRIT.
- (b) Researcher shall credit CRIT, when applicable, as the appropriate source of all information used to develop their intellectual property.
- (c) Individuals on whom research will be conducted have the right to the information and intellectual property that is provided to Researcher. Researcher shall provide CRIT and each individual with a statement of the individual's rights as it pertains to the information collected from the individual and the statement of rights shall be in plain language. Individuals retain the right to cease involvement in any research at any time.

CHAPTER 7. INTELLECTUAL PROPERTY

Section 1-701. Copyrighted Works.

- (a) Use of CRIT's copyrighted works such as literary works, musical works including any accompanying words, dramatic works including any accompanying music, pantomimes choreographic, pictorial, graphic, audiovisual, architectural, motion pictures and sculptural works and sound recordings shall be granted on a case by case basis.
- (b) CRIT may permit use of its copyrighted works for the following purposes: criticism, comment, news reporting, teaching, including multiple copies for classroom use, scholarship, or research.

Section 1-702. Trademark.

Use of CRIT's trademark(s) such as words, phrases, symbols or designs, or a combination of words, phrases, symbols or designs, that identifies CRIT as the source may be granted on a case by case basis. CRIT shall enforce federal trademark rights afforded under the Lanham Act, 15 U.S.C. §§ 1051 – 1127, and common law trademark rights.

Section 1-703. Patent.

CRIT shall enforce its patent rights under United States and international patent laws.

CHAPTER 8. ENFORCEMENT

Section 1-801. Remedies.

Whenever it appears that Researcher or other person or entity has violated the provisions of this Code or the terms of the permit, the ERB on its own initiative may petition the Tribal Court for injunction or other appropriate relief. If the Court, after a hearing, finds that this Code or the permit has been violated, it shall ban the researcher(s) from any future research at CRIT, assess civil penalties of up to five hundred dollars (\$500) per violation, award restitution to CRIT or research participants as appropriate, enter orders for injunctive and equitable relief, and award any other monetary damages resulting from the violation.

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APPENDIX H

NAVAJO NATION HUMAN RESEARCH CODE – 1995

Chapter 15. Navajo Nation Human Research Code

§ 3252. Purpose

The purpose of this Code shall be to set forth the conditions under which investigators, physicians, researchers and other may perform research activities on living human subjects within the territorial jurisdiction of the Navajo Nation.

§ 3253. Policy

- A. All persons within the territorial jurisdiction of the Navajo Nation are free from unreasonable harmful, intrusive, ill-conceived or otherwise offensive research and investigation procedures.
- B. Research conducted is beneficial, community-based, and consistent with Navajo Nation priority and concerns.
- C. Research information and data generated by and about Navajo individuals, communities, culture represent inalienable intellectual properties of the Navajo people and over which the Navajo Nation will provide oversight.

§ 3254. Rules and regulations

The Health and Social Services Committee is authorized to promulgate rules and regulations consistent with the necessary to implement this Code.

§ 3255. Definitions

As used in this Code, the following definitions apply:

- A. Subjects. As used in this Code, “Subjects” means a living individual about whom a researcher (whether professional or student) conducting research obtains private information or data through intervention or interaction with the individual, involving physical procedures by which data are gathered (for example, venipuncture) and/or manipulations of the subject or the subject’s environment.
- B. Navajo Nation Human Research Review Board. This is the Board Created in Section 3256 of this Code
- C. Research. As used in this Code, “research” is the use of systematic methods (including but not limited to note taking, interviewing, video and audio taping) to gather and analyze information for the purpose of proving or disproving a hypothesis, concepts or practices, or otherwise adding to knowledge and insight in a particular medical or psychological discipline. Generally, proposed studies are defined as “research” if their goal is to produce generalizable descriptive knowledge through the use of human subjects or volunteers whose protection must be assured in accordance with the ethical principles of respect for persons; the duty to help others or beneficence; and justice or fairness. This may include, at the discretion of the Navajo Nation Human Research Review Board, quality

assurance activities, chart reviews and program evaluations. All data and research subject to this Code are the property of the Navajo Nation, although a researcher may be given a permit.

- D. Publication. As used in this Code, the term “Publication” includes all proposed professional and program papers and reports concerning Navajo individuals. Also requiring advance approval are papers based on research conducted within the territorial jurisdiction of the Navajo Nation, prepared for presentation at national or international professional society meetings by researchers. Papers or reports for technical and lay audiences prepared and approved by Indian Health Service or the Navajo Nation for compliance with contract or grant requirements are specifically excluded from this definition.
- E. Researcher. As used in this Code, the term “researcher” means any person, organization, business or other entity which conducts research within the territorial jurisdiction of the Navajo Nation.

§ 3256. Creation of the Navajo Nation Human Research Review Board

There is hereby created the Navajo Nation Human Research Review Board, whose purpose is to review all proposals (notwithstanding other IRB approvals) for human research which will occur within the territorial jurisdiction of the Navajo Nation or which otherwise concerns Navajo individuals as an identifiable group, issue permits for those projects which are consistent with the terms and intent of this Code, and, as appropriate, review and approve the results of such studies before publication. However, this Board is to coordinate with the Historic Preservation Department to avoid jurisdiction conflicts. The Navajo Nation Human Research Review Board is administratively assigned to the Navajo Nation Division of Health for support services.

§ 3257. Composition and term of the Navajo Nation Human Research Review Board

- A. The Navajo Nation Human Research Review Board shall be composed of 15 individuals, selected as follows: three (3) persons appointed by the Navajo area Health Board; three (3) persons appointed by the Office of the President of the Navajo Nation; three (3) persons appointed by the Health and social Services Committee of the Navajo Nation Council; three (3) persons appointed by the Navajo Area Indian Health Servicer Area Director; and three (3) persons appointed by the Education Committee. At least two persons serving on the Navajo Nation Human Research Review Board shall be licensed physicians and at least one of the appointees must be a community representative.
- B. The term of an appointment to the Navajo Nation Human Research Review Board shall be three (3) years from appointment.

§ 3258. Meetings, quorum

The Navajo Nation Human Research Review Board shall meet at least quarterly, but as often as necessary. Five members, one of whom must be a licensed physician and once of whom must be a community representative, of the Navajo Nation Human Research Review Board shall constitute a quorum.

§ 3259. Purposes of the Navajo Nation Human Research Review Board

The purposes of the Navajo Nation Human Research Review Board are to assure that research and publication activities:

- A. Are consistent with the health and education goals and objectives of the Navajo Nation.
- B. Do not detract from, nor interfere with, the provision of human services to the Navajo people.
- C. Do not endanger the well-being of individuals or communities.
- D. Require informed consent of all affected individuals or their legal representatives.
- E. Are culturally relevant to the extent possible and are appropriate clinically, technically, epidemiologically and statistically.
- F. Present only reasonable risks to subjects in relation to anticipated benefits, if any, to those subjects, and the importance of knowledge that reasonably may be expected to result.
- G. Select subjects equitably. IN making this assessment the Navajo Nation Human Research Review Board shall take into account the purposes of the research, the setting in which the research will be conducted, and the population from which subjects will be recruited.

§ 3260. Powers of the Navajo Nation Human Research Review Board

Consistent with the requirements of this Code, the powers of the Navajo Nation Human Research Review Board shall include:

- A. The review and approval or disapproval of research proposals.
- B. The review and approval or presentation materials and manuscripts, including thesis, dissertations and abstracts, prior to publication.
- C. The negotiation of additional and/or revised procedures, methodologies, and approaches to research and publication with researchers.
- D. The Board may request assistance from other person with specialized knowledge in the review of any application, proposal or manuscript. When research is reviewed involving a category of vulnerable subjects (e.g., prisoners, children, and individuals who are mentally disabled), the Navajo Nation Human Research Review Board shall include in its reviewing body one or more individuals who have a particular concern for the welfare of these subjects.
- E. Subject to the approval of the Health and Social Services Committee, and education Committee and the requirements of this Code, the Navajo Nation Human Research Review Board shall adopt appropriate rules and procedures regarding: confidentiality of subjects; storage of specimens and other research materials; monitoring of research activities; amendments to any research

- proposals; financial disclosure regarding the research; volunteer payments and fees; adverse reactions of any volunteers; applications and their contents; fees for permits and other services; and other procedures to implement this Code.
- F. The Board will coordinate with other appropriate boards and committees including but not limited to, other Institutional Review Boards, and the Historic Preservation Department for activities which may also be subject to the Cultural Resources Preservation Act (CMY-19-88).

§ 3261. Record retention

The Navajo Nation Human Research Review Board shall develop and maintain an up-to-date file on all research projects, past and ongoing, approved and disapproved. Records of research projects will be maintained at least then (10) years after the Navajo Nation Human Research Review Board receives the proposal or five (5) years after publication of a paper derived from the research activity, whichever is longer. The Navajo Nation Human Research Review Board shall maintain a file of reprints of publications resulting from all research projects conducted within the territorial jurisdiction of the Navajo Nation.

§ 3262. Research permit required

Prior to undertaking any human research within the territorial jurisdiction of the Navajo Nation, a researcher must apply for and receive from the Navajo Nation Human Research Review Board a Research Permit as provided for in Section 3264 or within the Cultural Preservation Act.

§ 3263. Administrative fees

The Navajo Nation Human Research Review Board may assess reasonable costs associated with the review of proposals and other materials; any monies generated are for the exclusive use of the administration of this Code.

§ 3264. Research application

The Research Application shall be in a form developed by the Navajo Nation Human Research Review Board in accordance with Section 3259, but such application, at a minimum shall include research goals, methodology, and anticipated results. The application shall also include a separate section addressing specific anticipated benefit to the study's subjects, Navajo individuals or groups of tribal members, the Navajo Nation and all other readily identifiable potential beneficiaries. The Research Application must be signed by the Researcher and include a provision that the Researcher agrees to the civil jurisdiction of the Navajo Nation with respect to the research to be undertaken and any publications arising from such research.

§ 3265. Confidentiality and security

There must be adequate assurance, as determined by the Navajo Nation Human Research Review Board, that the data and information generated during the conduct of research is protected from unauthorized access and misuse consistent with informed consent provisions, the Navajo Nation Privacy Act, and other Navajo Nation information technology requirements.

§ 3266. Informed consent

Before any research may be conducted on any subject, the researcher must obtain the active informed consent of that prospective subject, or their parent, legal custodian or guardian, as appropriate. At a minimum, this informed consent must be in writing, acknowledged by the subject, which informs the subject of the purpose of the research, any potential risks, and alternative treatments or procedures. The Informed Consent may not include any exculpatory language or disclaimer of liabilities.

§ 3267. Progress reports on research

- A. Researchers shall report to the Navajo Nation Human Research Review Board the progress of their research as often and in the manner prescribed by the Navajo Nation Human Research Review Board in the research permit.
- B. Researcher shall promptly report any injuries or adverse impacts (including violations of an individual's privacy) to human subjects to the Navajo Nation Human Research Review Board.
- C. Researchers shall promptly report any unanticipated problems which involve risks to the human research subjects or others to the Navajo Nation Human Research Review Board.

§ 3268. Continuing review of research activities

The Navajo Nation Human Research Review Board shall regularly review all research activities conducted within the territorial jurisdiction of the Navajo Nation. If, during the course of a research activity, the research conditions change, the Navajo Nation Human Research Review Board may require the researcher to amend their application consistent with the changed conditions. If the Navajo Nation Human Research Review Board determines that a research project is no longer viable because of changes in the scope of effect of the research, it may rescind any research permit or otherwise limit the scope of research activities which may be conducted under the permit.

§ 3269. Publication review procedures

- A. All individuals proposing publishing covered by this Code are required to submit a manuscript to the Navajo Nation Human Research Review Board for approval, in advance of publication.

- B. The manuscript will be reviewed for technical content and validity, organization of content, readability, as well as assurance that they are consistent with the goals, intent and policies of this Code.

§ 3270. Permit appeal procedures

- A. Researchers who are denied a research permit may request reconsideration of their application upon a showing of good cause. A request for reconsideration shall be deemed to have shown good cause if it:
 - 1. Presents significant relevant information not previously considered by the Navajo Nation Human Research Review Board;
 - 2. Demonstrates that significant changes have occurred in the factors or circumstances considered by the Navajo Nation Human Research Review Board in researching its decision; or
 - 3. Demonstrates that the Navajo Nation Human Research Review Board failed to follow its adopted procedures in reaching its decision.
- B. A request for reconsideration must be received within thirty (30) days after the researcher is notified of a decision.
- C. If deemed in good cause, reconsideration shall be conducted within thirty (30) days after receipt of the appeal request.

§ 3271. Enforcement

Whenever it appears that a researcher or other person or entity has violated the provisions of this Code, the Navajo Nation Human Research Board on its own initiative may petition the Courts of the Navajo Nation for injunction or other appropriate relief. If the Court, after a hearing, finds that this Code has been violated, it may assess civil penalties of up to five thousand dollars (\$5,000), in addition to any other damages resulting from an unpermitted research activity.

APPENDIX I

PASCUA YAQUI RESEARCH PROTECTION ORDINANCE – 2008

**TITLE 8 – REGULATORY CODE
PART VII – RESEARCH
CHAPTER 7-1- RESEARCH PROTECTION**

SUBCHAPTER A GENERAL PROVISIONS

Section 10 Short Title, Codification (8 PYTC § 7-1-10)

- (A) This ordinance shall be known as the “Research Protection Ordinance of 2008.”
- (B) This ordinance shall be codified in Title 8, Chapter 7 -1.

Section 20 Findings and Policy (8 PYTC § 7-1-20)

This Ordinance shall establish a research review process as a mechanism to improve relations between the Tribe and scientists/researcher, and to promote collaboration within the framework of mutual respect, equity, and empowerment, and to identify benefits and risks to the Tribal community.

Section 30 Purpose (8 PYTC § 7-1-30)

- (A) The purposes of this Ordinance are to:
 - (1) Protect the people, cultural and natural resources of the Tribe and the Tribe’s future generations from unauthorized research; and
 - (2) To reduce the adverse effects of research and related activities on the Tribal community; and
 - (3) To ensure that researchers recognize Tribal control of research activities and that the Tribe owns all data and information generated or produced by such research; and
 - (4) To ensure tribal participation in the research, development, implantation, analysis and dissemination, and
 - (5) To establish and provide a statutory basis for a process to review and govern any research, collection, data management, or publication undertaken on the Reservation or with tribal members.

Section 40 Definitions (8 PYTC § 7-1-40)

- (A) For purposes of this Ordinance:
 - (1) “Academic Research” means research carried out to obtain educational qualifications or as part of their academic career at a university or affiliated institutions.
 - (2) “Biodiversity” means the total variety of life in all its forms. It includes many levels that range from the level of alleles to the biosphere. The major elements of biodiversity include alleles, genes, populations, species, ecosystems, landscapes, and the ecological processes of which they are a part.

- (3) “Biogenetic Resources” means biological and genetic resources, including plant material, animals, microorganisms, cells, and genes.
- (4) “Biological Samples” means, but is not limited to: bacteria and other microorganisms, bacteria, plant, animal, or any human biological materials, genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.
- (5) “Commercial Purposes” means to sell, purchased, barter, trade, delayed compensation for profit, exchange, transport, or offer to sell, purchase, barter, trade, delay compensation for profit, exchange, or transport.
- (6) “Cultural Research” means any endeavor, by means of critical investigation and study of a subject, to discover new or collate old facts or hypotheses on a cultural subject, the latter being defined as any ethnographic or anthropological study, including basic data collection, studies of or incorporating traditional knowledge or classifications systems (e.g. studies of medicinal properties of plants), documentary films, archaeology, linguistics and ethno-historical accounts.
- (7) “indigenous” means native, originating or growing naturally in specific landscape. Also refers to people descending from the original inhabitants of the Western Hemisphere who have maintained distinct languages, culture, or religion from time immemorial.
- (8) “Products of Research” means publications including but not limited to reports, studies, articles, theses, books, manuscripts, sound recordings, film and video, media interviews, computer databases, field notes, illustrations, photographs, sound recordings, collected material artifacts, replicas, and specimens, including any derivative forms they may take such as translations, and communications through the electronic media, including the internet and world wide web.
- (9) “Research” includes identification, description, classification, collection, compilation, recordation, analysis, and publication in fields including, but not limited to: agronomy, archaeology, astronomy, biology, ethnobotany, ecology, ethnography, history, linguistics, paleontology, medicine, photography, psychology, remote sensing, sociology, theology, videography, and other investigative disciplines or approaches as identified by the Tribe.
- (10) “Reservation” means all lands within the exterior boundaries of the Pascua Yaqui Reservation which are under the jurisdiction of the Tribe, and such lands as may hereafter be obtained or added to the jurisdiction of the Tribe.
- (11) “RRC” means the Research Review Committee established under this Ordinance.
- (12) “Taboo/Sacred” means a subject to which access is restricted to any degree. Such subjects can include places, names, knowledge, oral traditions, objects, and practices.
- (13) “Traditional Indigenous Intellectual Property” means the indigenous cultural information, knowledge, uses, and practices unique to the Tribe’s ways of life maintained and established over tribal homelands and aboriginal

areas since time immemorial. This knowledge is based upon millennia of observation, habitation, and experience, and is a communal right held by the Tribe and in some instances by individuals. This property includes, but is not limited to, the following:

- (a) Knowledge of remembered histories and traditions;
 - (b) Details of cultural landscapes and particularly sites of cultural significance;
 - (c) Records of contemporary events of historical and cultural significance;
 - (d) Sacred property (images, sounds, knowledge, material, cultural or anything that is deemed sacred by the community);
 - (e) Knowledge of current use, previous use, and/or potential use of plant and animal species, soils, minerals, objects;
 - (f) Knowledge of preparation, processing, or storage of useful species;
 - (g) Knowledge of formulations involving more than one ingredient;
 - (h) Knowledge of individual species (planting methods, care for, selection criteria, etc.);
 - (i) Knowledge of ecosystem conservation (methods of protecting or preserving a resource);
 - (j) Biogenetic resources that originate (or originated) on indigenous lands and territories;
 - (k) Tissues, cells, biogenetic molecules including DNA, RNA, and proteins, and all other substances originating in the bodies of Tribal members, in addition to genetic and other information derived therefrom;
 - (l) Cultural property (images, sounds, crafts, art, symbols, motifs, names performances);
 - (m) Knowledge of systems of taxonomy of plants, animals, and insects.
 - (n) Knowledge of the Hiaki language.
- (14) “Traditional Knowledge Right” means the traditional right of individuals to control the ways the information they provide is used and accessed. The issue of traditional knowledge rights arises when individuals either own or are the custodians of specialized (or usually taboo/sacred) knowledge and its communication. This knowledge can include names, ceremonies, designs, or forms, oral traditions, practices and skills.
- (15) “Tribal Member” means an individual Indian who is enrolled in the Pascua Yaqui Tribe.
- (16) “Tribe” means the Pascua Yaqui Tribe.

Section 50 Research Review Committee Established (8 PYTC § 7-1-50)

- (A) There is hereby established a Research Review Committee, which shall be comprised of:
- (1) The Director of the sponsoring Division;

- (2) A cultural preservation office representative;
 - (3) A community member;
 - (4) A tribal elder;
 - (5) A specialist in the area of research within the Tribe.
- (B) The community member and the tribal elder shall be appointed to serve on this committee by the Chair of the Tribal Council.
- (C) The Research Review Committee shall have the following duties and responsibilities:
- (1) To examine and comment on all proposals for research to be conducted within the Reservation.
 - (2) To develop and propose to the Tribal Council rules under which the Research Review Committee shall operate.
 - (3) To coordinate and insurance that affected Tribal programs', departments', and members' interests are protected and represented.
 - (4) Submit recommendations regarding proposals to the Tribal Council for final approval
 - (5) Coordinate and interact with the researcher(s) in order to ensure Tribal control of the research process and Tribal ownership of data and information generated by such research.
 - (6) Negotiate the terms and conditions of a research agreement, and submit such agreement for execution by the Tribal Council.

**Section 60 Guiding Principles for Research Review Committee
(8 PYTC § 7-1-60)**

- (A) The Research Review Committee, in examining proposals, shall be guided by the following principles:
- (1) Fully Informed Consent after Full Disclosure and Consultation. Research should not be conducted until there has been full consultation with all potentially affected Tribal communities and individuals, and each such community and individual has approved the research after full disclosure. Full disclosure shall consist of:
 - (a) The full range of potential benefits and harms of the research;
 - (b) All relevant affiliations of the person(s) or organization(s) seeking to undertake the research;
 - (c) All sponsors of the researcher(s);
 - (2) Principle of Immediate Risks and Benefits to the Tribal Community. The research should be of immediate benefit to the Tribal community, and the risks associated with the research should be less significant than the benefits to be gained.
 - (3) Principle of Confidentiality. This principle recognizes that the Tribe and local communities, at their sole discretion, have the right to exclude from publication and/or to have kept confidential any information concerning their culture, traditions, mythologies, or spiritual beliefs, Furthermore, researchers and other potential users shall guarantee such privacy and confidentiality.

- (4) Respect. This principle recognizes the necessity for researchers to respect the integrity, morality, and spirituality of the cultural, traditions, and relationships of Tribal members with the world, and to avoid the impositions of external conceptions and standards.
- (5) Communication. This principle recognizes that communications should be carried out in the local language, using translators as necessary.
- (6) Empowerment. This principle recognizes that empowerment is the sharing of power and is premised on mutual respect. Empowerment means that each affected party feels that their needs are being met through a fair and equitable manner. Empowerment also means that research authorship must be shared between the Tribal community and the researcher.
- (7) Equity. This principle recognizes that equity is a sharing of resources. Both the researchers and the Tribe must bring equity to any research contract, agreement or understanding. Each of the participants in a good research agreement must evaluate such equity in relation to the research. Finance or money is only one form of equity. Community knowledge, networks, personnel and political or social power are other forms of equity useful to the project. Each of these commodities has value and must be shared between the researchers and the Tribe if a good agreement is to be formulated. The parties must continuously review equity over the duration of a research agreement.
- (8) Mutual Respect. This principle recognizes that in order to develop a good research agreement, the researchers and the Tribe must generate respect for each other. Respect is generated by understanding the social, political and cultural structures of the other party. The researchers and the Tribes can not assume that they believe in the same things or share the same goals and expectations. Good communication is required if a proper research agreement is to be generated. Cultural sensitivity training for the researchers and Tribal awareness presentations will help develop a mutual understanding in conducting the research project. Definitions and assumptions must be clarified and questioned by each side and set forth in an agreement. The Tribes and the researchers must listen to each other with open minds.
- (9) Prior Rights. This principle recognizes that indigenous peoples, traditional societies, and local communities have prior, proprietary rights and interests over all air, land, and waterways, and the natural resources within them that these peoples have traditionally inhabited or used, together with all knowledge and intellectual property and traditional resource rights associated with such resources and their use.
- (10) Self-Determination. This principle recognizes that indigenous peoples, traditional societies and local communities have a right to self determination and that researchers and associated organizations will acknowledge and respect such rights in their dealings with these peoples and their communities.
- (11) Inalienability. This principle recognizes the inalienable rights of indigenous peoples in relation to their traditional territories and the natural resources within them and associated traditional knowledge. These rights are collective by nature but can include individual rights. It shall be for

indigenous peoples to determine for themselves the nature and scope of their resource rights regimes.

- (12) Traditional Guardianship. This principle recognizes the holistic interconnectedness of humanity with the ecosystems of our Sacred Earth and the obligation and responsibility of indigenous peoples to preserve and maintain their role as traditional guardians of these ecosystems through the maintenance of their cultures, mythologies, spiritual beliefs and customary practices.

Section 70 General Requirements (8 PYTC § 7-1-70)

- (A) In order to conduct research on the Pascua Yaqui reservation, applicants must:
 - (1) Submit a Research Proposal to the Research Review Committee,
 - (2) Execute a Research Agreement with the Tribe,
 - (3) Obtain a Research permit as required by Section 140; and
 - (4) Receive Tribal Council approval of the Research Proposal.

Section 80 Research Proposal Requirements (8 PYTC § 7-1-80)

- (A) The Research Review Committee shall develop standard application forms for Research Proposals and set forth the type of information that must be submitted.
- (B) Research Proposals must include a short (a maximum five pages) single sided synopsis of the project.
- (C) The following information must be included in any Research Proposal:
 - (1) Statement of the Issue/Problem/Research Question. The applicant shall briefly describe the issue/problem the applicant is addressing by the proposed research. Specific questions related to the issue/problem and the theoretical rationale behind the questions shall be set forth. If the applicant has a specific hypothesis, the applicant shall briefly set forth such hypotheses.
 - (2) Intent/Benefit to the Tribe. The applicant must clearly outline and discuss the intent of the research project and the benefit(s) that the project, research or activity will have to the Tribal community. Some questions to be answered are: (1) what are the anticipated consequences or results/outcomes of the project; (2) what groups will be affected and what groups will benefit; and (3) in what way will these groups and the Tribe benefit?
 - (3) Method. The applicant shall briefly describe:
 - (a) The procedure for the recruitment of participants;
 - (b) The procedures to be used to obtain the consent of the participants;
 - (c) The subjects, settings, study procedure and the nature of the data to be collected.
 - (4) Confidentiality. The applicant shall:
 - (a) Identify the circumstances under which the obligations of the applicant may constitute a breach of confidentiality.
 - (b) Describe how individual participants will be informed of the degree of confidentiality that will be maintained throughout the study.

- (c) Disclose whether the Tribal community will be identified in any data released to the general public.
 - (d) The Tribe maintains that unless otherwise specified, only aggregate data, not individual data, shall be published or released to the general public. All individual identifiers such as names, addresses and phone numbers must be kept confidential and no sale or transfer of databases outside the specific research project shall be allowed.
- (5) Disposition of Data and Samples. The applicant shall describe:
- (a) How individual participants will be informed of how data and samples will be used.
 - (b) What the applicant plans to do with the information and samples that are collected.
 - (c) The plans to provide individual participants with their own personal results
 - (d) The frequency and manner by which the aggregate data and progress reports will be shared with the RRC.
 - (e) Communication strategies to present aggregate data to the community at large.
- (6) Risks. The applicant shall:
- (a) Describe any potential legal, financial, social, physical or psychological risks that are anticipated in the research.
 - (b) Assess any risks of deleterious impact on the cultural, social, economic or political well-being of the Tribe or Tribal members. The assessment of risk will also address the steps that to minimize, ameliorate or repair any actual harm caused to the Tribal community by the research.
 - (c) Describe how potential risks will be explained to participants and how the risks are justified by the potential benefits of the research.
- (7) Funding/Budget. If the study is funded by an public or private sources, the applicant shall provide a full reference of this funding source and explanation of any limits on the confidentiality of research results. If the applicant is currently seeking funding, the applicant shall list all funding agencies for which proposals are being sought.
- (8) Equity. The applicant must demonstrate how the participant and the Tribe will be given a fair and appropriate return for cooperation in the research. Just compensation or fair return includes, but is not limited to:
- (a) Obtaining copies of the research findings;
 - (b) Authorship, co-authorship or acknowledgement;
 - (c) Royalties, fair monetary compensation,
 - (d) Copyright, patent, trademark,
 - (e) Compensation for expenses incurred in reviewing/advising researchers,
 - (f) Coverage of training/education or outreach expenses or other forms of compensation.
- (9) Consent. The applicant must describe the mechanisms they will use to obtain informed consent, which may be required from individual participants and/or the Tribal Government. The applicant shall list all the agencies, professional,

government representatives or individuals within the Tribal community with which the applicant has previously discussed the proposed research and whether or not these people have given their informed consent, or other support, to the research.

- (10) Empowerment. The applicant shall describe how individuals and Tribal members will be empowered by the research process through employment, training or outreach efforts.
 - (11) Intellectual Property Rights. The application shall address the plans (pre, during and post-project) for publication or commercial use of the research findings. If such publication or commercialization is contemplated, the applicant shall address how the Tribal community shall share in the authorship of publications or commercialization of the research findings. The Tribe also needs to know how the Tribal community will have access to the project, research data or findings for the Tribe's own use.
 - (12) If applicable, a copy of the IRB human rights subject approval application and approval letter shall be submitted to the RRC.
- (D) Administrative Fee:

The applicant shall remit with the research proposal an administrative fee in the amount of \$50.00 to cover administrative costs associated with review of the proposal and permitting.

**Section 90 Review of Research Proposals and Review Process
(8 PYTC § 7-1-90)**

- (A) Research proposals must be submitted to the Research Review Committee at least 45 days prior to the anticipated project start date.
- (B) All research proposals must be complete before the RRC will consider the proposal. A proposal is complete when it contains the fee and all of the information required in Section 80 that is necessary for the RRC to decide whether or not the proposal should be approved.
- (C) The Research Review Committee shall review the application materials that are submitted and may:
 - (1) Return the proposal to the applicant with requests for additional information or with suggestions for clarification or change;
 - (2) Consult with other Tribal members, Tribal elders, professionals, technical experts or specialists for a second evaluation before sending recommendations to the Tribal Council;
 - (3) Request the researcher to attend a hearing to review the proposal;
 - (4) Forward the proposal and request to the Tribal Council with the recommendation for approval or disapproval.

**Section 100 Recommendation Prepared by Research Review Committee;
Notice to Applicant (8 PYTC § 7-1-100)**

- (A) The Research Review Committee shall prepare a recommendation regarding each research proposal specifying whether the research applicant was determined eligible to conduct research by the Research Review Committee.
- (B) The Research Review Committee shall present the recommendation to the Tribal Council in the form of proposed resolutions and shall make available to the Tribal Council all application files
- (C) Notice of the Research Review Committee's decision shall be given to the applicant within three working days of the date of the decision. The notice shall be on a form approved by the Tribal Council and shall state, at minimum, the decision of the RRC, the basis for the decision, the fact that the Tribal Council makes the final determination of eligibility.

Section 110 Tribal Council Approval (8 PYTC § 7-1-110)

- (A) The Tribal Council shall have final approval authority regarding research proposals.
- (B) The Tribal Council shall review and consider the proposed resolutions and research proposal that was reviewed by the RRB. The Tribal Council shall approve or disapprove a research proposal by acting upon the proposed resolutions presented by the RRC.
- (C) Following approval of the research, the researcher shall secure all permits and licenses that may be required by Tribal law, including but not limited to a permit as provided under Section 140.

Section 120 Notice to Applicant (8 PYTC § 7-1-120)

- (A) Each applicant approved to conduct research by the Tribal Council shall be given written notice, on a form to be approved by the Tribal Council, indicating such approval, along with the resolution number and date of adoption.
- (B) Upon determination by the Tribal Council that an applicant is not eligible to conduct research, the applicant shall be given written notice on a form to be approved by the Tribal Council that they failed to meet the requirements for conducting research on the Tribe.

Section 130 Research Agreements (8 PYTC § 7-1-130)

- (A) An agreement specific to the research shall be developed so that studies proceed in a manner that is both culturally sensitive and relevant to the participants and the Tribal community.
- (B) Where any of the products of the research are to be used for commercial purposes, a separate agreement will be made specifying the bases on which sales are to be made and the proceeds of sales are to be distributed. Where research is engaged in for commercial purposes, it is the responsibility of the researcher to make all informants and suppliers of information aware of this fact, and to come to an agreement with them on the amount of compensation to be paid. There must

be a limit on samples that the researcher may obtain and take off the Reservation, and the approved list and amount of samples to be taken must be followed strictly.

- (C) A sworn notarized declaration of noncommercial use of research products and/or traditional and indigenous knowledge is required in conjunction with an Academic Research agreement. This declaration may be included in the body of the Research Agreement.
- (D) If a research project receives approval by the Tribe, the approval remains in effect for the period of time specified in the research agreement unless substantial changes are made in the research protocol. At the end of the period approved for the research project, the applicant must submit a letter in writing which summarizes the status of the project (complete, incomplete, discontinued), any unanticipated problems that occurred during the data collection phase of the project, and a time schedule for completion of all work, including community education/outreach, related to the project. If the project is incomplete, the applicant must also request in writing an additional period for the data collection phase of the project.

Section 140 Permits (8 PYTC § 7-1-140)

- (A) The Research Review Committee shall develop standard application forms for research permit applicants and set forth the type of information that must be submitted.
- (B) The RRC shall develop a standard permit form, which at a minimum shall include the name(s) of the researcher(s) covered, name and/or brief description of the study approved, location(s) of research to be conducted, and effective start and ending dates of the permit.
- (C) An application form for a Research Permit may be obtained from the RRC or from the Office of the Tribal Secretary.
- (D) All persons covered by a Research Permit shall have such Permit in their possession at all times while conducting research. The Research Permit must be produced for inspection or surrendered upon demand by authorized Tribal authorities.
- (E) A Research Permit issued under this Section may be suspended or revoked at any time by the Tribal Chairperson, responsible Division Head, or the RRC, if a permit holder is engaged in activities not allowed by the permit, fails to abide by a permit term or condition, has committed fraud or misrepresentation or provided incorrect statements in the application or permitting process, or is engaged in or has engaged in activities prohibited by this Ordinance or any other Tribal law or resolution.
- (F) A revocation or suspension of a permit issued pursuant to this Section is final and not subject to appeal.

Section 150 Completion of Review Process (8 PYTC § 7-1-150)

- (A) The review process and approval of the research is complete when the applicant receives a letter of notification from the RRC and enters into a binding Research Agreement (see Appendix) with the Tribe that contains the obligations and responsibilities of the parties. Upon approval, principal investigators, researchers, graduate students and any others involved in the research shall undergo cultural sensitivity training at the researcher's expense before any project begins within the Reservation or with tribal members.
- (B) The RRC may specify a Compliance Fee in an amount appropriate to ensure the applicant's compliance with the conditions of the research. Upon completion of the research, the compliance fee may be refundable.

Section 160 Modifications of an Approved Project (8 PYTC § 7-1-160)

- (A) If the applicant wishes to make substantial changes in his or her research project after receiving approval from the Tribe, he or she must submit a summary of the proposed modifications to the RRC.
- (B) Modifications in the data collection procedures must be reviewed by the RRC and approved by the Tribal Council. Modifications to the research project shall not be implemented until the researcher and the RRC have amended the research agreement and permits, and the researcher receives written approval from the RRC.

Section 170 Regulation of Biological Samples (8 PYTC § 7-1-170)

- (A) Any researcher who seeks to collect, acquire, or analyze any biological samples must agree and abide by the following conditions with regard to research with biological materials.
 - (1) The Tribe may, at any time decide to withdraw from the research project or any portion thereof, and request the return of all biological samples. The researcher, and any other parties, must comply.
 - (2) Upon completion of the research project, or termination or cancellation of the project at any time prior to completion, the biological samples must be completely and fully returned to the possession of the Tribe.
 - (3) No biological samples from this study may be released to, or used by, any other researcher(s), research institution, or any other entity, whether public or private, without the prior and fully informed written approval of the Tribe.
 - (4) If the Tribe permits any biological samples to be stored in any other locations, the researcher shall maintain at all times a complete list thereof. The list shall include a description of the sample or data, source, specific use or purpose of each item, responsible person(s) at the location, and where the item is housed (e.g., in a "gene bank" or on a specific computer), and any relevant time lines with regard to use of, disposition, return, or destruction of the samples or data. The researcher shall provide an updated copy of the list to the Tribe whenever changes are made. The updated list shall include identification of changes made since the last copy of the list was provided to the Tribe.

- (5) Any situation where biological samples will leave the possession or control of the researcher will require a separate agreement between the Tribe and the external party in accordance with this Ordinance.
- (6) No entity may seek to patent or commercialize any biological materials obtained from the Tribe or tribal members, from the Tribe's jurisdiction, or under the authority of the Tribe. This includes genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

Section 180 Reservations and Termination (8 PYTC § 7-1-180)

- (A) The Tribe reserves the right to:
 - (1) Withdraw consent to use or release information and/or prevent the publication of data which is unauthorized, insensitive, misrepresents or stereotypes Tribal people or will harm the health, safety or welfare of the Tribe or the Tribal environment.
 - (2) Deny researchers the opportunity to conduct research in any Tribal community within Tribal jurisdiction. In addition, other researchers or scientists from the same research institution may be denied any future access to the Reservation.
 - (3) Withdraw approval for projects. Should this occur, the Tribe will explain the rationale for withdrawing approval and explain why this project or the release of data is deemed to be harmful to individuals or the Tribal community at large. In the case of withdrawal of approval by the Tribe, all information and copies of data must be returned to the Tribe.
 - (4) Exclude individuals from the Reservation
 - (5) Seek injunctive relief, including an order restraining a person from continuing to enter onto the Reservation.
- (B) If a project is terminated, the research entity or individual must provide just compensation to any field staff or member of the Tribe for their time and efforts spent related to the research project.
- (C) This ordinance does not apply to Tribal members or communities conducting research within their own community for their own use, provided, however, that this ordinance shall apply if a Tribal member is conducting research for, or is affiliated with, an outside institution.

Section 190 Publication (8 PYTC § 7-1-190)

- (A) All publications produced as a result of an approved research project shall be reviewed and approved by Tribal Council resolution.
- (B) The Tribal Council shall develop standards for approving publications.
- (C) Tribal Council decisions are final.

SUBCHAPTER B ENFORCEMENT; REMEDIES

Section 200 Prohibited Conduct (8 PYTC § 7-1-200)

- (A) No person shall conduct any research without first obtaining approval by the RRC.
- (B) No person shall conduct any research without obtaining a fully executed research agreement with the Tribe.
- (C) No person shall conduct any research without maintaining in their possession a permit issued by the Tribe.
- (D) No person shall collect, acquire, or analyze any biological samples without abiding by the provisions of this Ordinance.
- (E) No person shall alter, damage, disturb, excavate, removed, or desecrated any biodiversity related resources, biogenetic resources, or traditional indigenous intellectual property on or of the Reservation or Tribe;
- (F) No person shall, while on the Reservation, conduct any visitation, inventory, collection, research, or filming related to any biodiversity related resources, biogenetic resources, or traditional indigenous intellectual property, or disturb any animals, vegetation, or landscapes of the Reservation or Tribe;
- (G) No person shall sell, purchase, exchange, transport, receive, or offer to sell, purchase, exchange, transport, or possess any biodiversity related resources, biogenetic resources, biological samples, or traditional indigenous intellectual property if such resource or property was obtained in violation of this Ordinance or any permits.

Section 210 Penalties (8 PYTC § 7-1-210)

- (A) Criminal Penalties
 - (1) Any person who violates any section of this ordinance, or any condition of limitation of a permit issued under this ordinance, shall be guilty of a criminal offense punishable by restitution, community service, a fine not to exceed \$5,000.00, imprisonment for not more than 1 year, or any combination of these penalties.
- (B) Civil Penalties
 - (1) Any person who violates any section of this Ordinance, or any permit issued under this Ordinance, shall be assessed a civil penalty not to exceed \$5,000.00 per violation, or if applicable, any civil penalty provided for under Federal laws.
 - (2) No civil penalty shall be assessed unless such person is given notice and an opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. The trial of any such violation shall be by the Tribal Court and the prosecution shall have the burden of proving the alleged violation by a preponderance of the evidence.
 - (3) Any person who violates this ordinance, or any permit issued under this ordinance, may lose the privilege of doing business or conducting research on the Pascua Yaqui Reservation or with the Tribe.

- (4) Any nonmember of the Tribe who violates this ordinance or any permit issued under this ordinance may be excluded from the Reservation.
- (C) Civil Damages
 - (1) Assessment of Actual Damages: Any person who violates any section of this Ordinance or any permit issue under this Ordinance shall be liable to the Tribe for civil damages to be assessed by the Pascua Yaqui Tribal Court after a hearing. "Civil Damages" shall be interpreted liberally by the Pascua Yaqui Tribal Court to include, but not be limited to, the following:
 - (a) Cost of restoration and repair; and
 - (b) Enforcement costs associated with the enforcement of this Ordinance; and
 - (c) Costs associated with the culturally appropriate disposition of resources, including conservation, curation, and/or reburial.
 - (2) Assessment of Treble Damages: In addition to actual damages, the Pascua Yaqui Tribal Court, in its discretion, may assess damages of p to three times the amount of actual damages.
- (D) Forfeiture
 - (1) All objects of property in the possession of any person, and obtained in violation of this Ordinance or in violation of a term or condition of a permit obtained thereunder, shall be seized by law enforcement agents and forfeited to the Tribal for disposition.
 - (2) A person may recover all such property incapacitated by paying to the Tribe the costs incurred by the Tribe in carrying out legal proceedings, and by paying all fines due for violations of Tribal law.

Section 220 Enforcement (8 PYTC § 7-1-220)

The Office of the Attorney General shall have the authority to enforce this Ordinance.

SUBCHAPTER C MISCELLANEOUS

Section 230 Severability (8 PYTC § 7-1-230)

If any provision of this ordinance or the application thereof to any person, court, or circumstance is held invalid by a Tribal Court the invalidity shall not affect other provisions of this ordinance which can be given effect without the invalid provision or application and to this end, the provisions of this ordinance are severable.

Section 240 Repeal of Conflicting Laws or Regulations (8 PYTC § 7-1-240)

Any ordinance, resolution, act, or rules and regulations in conflict with the provisions of this Ordinance shall be superseded and repealed to the extent of such conflict.

Section 250 Waiver (8 PYTC § 7-1-250)

No individual person, Tribal official, or Tribal employee is authorized to waive any part of this Ordinance.

APPENDIX J

TOHONO O'ODHAM NATION RESEARCH CODE – 2013

TITLE 17 – HEALTH AND SAFETY

CHAPTER 8 – RESEARCH CODE

Section 8101 Definitions

“Adequate Knowledge” means that the potential research participant is informed of all possible risks and benefits of the proposed research.

“Biological Sample” means, but is not limited to: bacteria and other microorganisms, bacteria, plant, animal, or any human biological materials, genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

“Commercial Purposes” means to sell, purchase, barter, trade, delay compensation for profit, exchange, transport, or offer to sell, purchase, barter, trade delay compensation for profit, exchange, or transport.

“Human Subject” means a living or nonliving individual (including human remains) about whom a researcher conducting research obtains information or data through interaction with the individual, involving physical procedures by which data are gathered (for example, blood draws), and/or manipulations of the subject or the subject’s environment.

“Informed Consent” means a prospective participant’s voluntary agreement, based upon adequate knowledge and understanding of relevant information, to participate in research or to undergo a diagnostic, therapeutic, or preventive procedure. In giving informed consent, the subject may not waive or appear to waive any legal rights, or release or appear to release the applicant researcher, the funding source, or agents thereof from liability for negligence.

“Nation” means to the Tohono O’odham Nation.

“Nation’s Lands” means all land within the exterior boundaries of:

- (a) The Sells Tohono O’odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);
- (b) The San Xavier Reservation established by the Executive Order of July 1, 1874;
- (c) The Gila Bend Indian Reservation established by the Executive Order of December 12, 1882, and modified by the Executive Order of June 17, 1909;
- (d) The Florence Village established by Public Law 95-361 (92 Stat. 595); and
- (e) Such other lands as may have been or may hereafter be added thereto by purchase, gift, act of Congress or otherwise.

“Publication” is the dissemination of any information, data, or compilation, whether confidential, by any method or media, including verbal, written or electronic communications, including periodic or final reports required by a grantor.

“Research” is the use of systematic methods to gather and analyze information for the purpose of proving or disproving a hypothesis, evaluating concepts or practices or otherwise adding to knowledge and insight in a particular discipline or field of knowledge or to demonstrate or investigate theories, techniques or practices. For the purpose of this Chapter, research includes but is not limited to the following:

- (1) Basic and clinical research.
- (2) Behavioral studies.
- (3) Anthropological studies.
- (4) Community based participatory research.
- (5) Practice based research.
- (6) Cultural or historical research.
- (7) Feasibility and other studies designed to develop, test and evaluate basic data in all phases of environmental and public health. Changes in development, testing, or evaluation must be pre-approved by the Tohono O’odham Nation Institutional Review Board (“IRB”).
- (8) Research on plants, animals, water, land, air, or weather.

“Researcher” means any person, organization, business, or other entity which conducts or participates in the collection of data for research.

“Specimens” means any tangible and intangible data collected for research.

Section 8102 Scope and Applicability

- (A) This Chapter is civil in nature and shall apply within the jurisdiction of the Nation. It shall also be enforceable outside the jurisdiction of the Nation to the maximum extent permitted by law with respect to research conducted on the Nation’s Lands, research using materials as to which the Nation has a claim of ownership, or research that the Nation formally approved by resolution by permit.
- (B) This Chapter shall apply to all persons subject to the civil jurisdiction of the Nation, including members and non-members, Indian and non-Indians, and corporate and institutional persons who or which might conduct research on the Nation’s Lands.
- (C) This Chapter shall apply to all research conducted within the Nation, whether involving human subjects or not, and all research regarding materials wherever located as to which the Nation has a claim of intellectual, cultural, or other ownership.

- (D) This Chapter does not apply to research conducted by a department of the Nation's government if the research is within the scope of that department's delegated responsibilities.
- (E) This Chapter does not apply to research or surveys of archeological resources as defined in the Archeological Resources Protection Ordinance, Ordinance No. 06-84, or as it may be amended.

Section 8103 Prohibited Acts

It shall be prohibited for any person to conduct research within the jurisdiction of the Nation (whether involving human subjects or not) or the collection of materials (wherever located) unless the researcher has obtained a permit as specified in this Chapter. Failure to obtain a permit or to abide by its terms shall result in the civil penalties and sanctions specified in the Chapter.

Section 8104 Institutional Review Board

- (A) Board. The Tohono O'odham Nation Institutional Review Board ("IRB") is established to administer this Chapter and is vested with the power to approve or disapprove research proposals submitted pursuant to this Chapter.
- (B) Composition. The IRB shall consist of five enrolled members of the Nation with sufficient experience within their respective fields to effectively evaluate research proposals and perform the additional functions vested in the IRB by this Chapter.
- (C) Appointment. IRB members from the following fields shall be nominated by the Nation's chairperson and appointed by the Legislative Council:
 - (1) An individual with sufficient education and experience in the Nation's culture and traditions, including but not limited to an employee of the Cultural Affairs Office;
 - (2) An individual with sufficient education and experience in health care, including but not limited to an employee of the Tohono O'odham Health and Human Services Department;
 - (3) An individual with sufficient education and experience in academics, including but not limited to an employee or board member of the Tohono O'odham Community College or an employee of the Nation's Department Education;
 - (4) An individual with sufficient education and experience in the field of elder care, including but not limited to an Tohono O'odham Nursing Care Authority employee or board member; and
 - (5) A Nation's member over the age of eighteen.
- (D) Terms. IRB members shall serve staggered three-year terms expiring on September 30 of the third year. In order to establish and maintain staggered terms, the Legislative Council may appoint three initial IRB member to a three-year term and two initial members to two-year terms. Thereafter, all terms shall be for three years. IRB members shall serve until replaced, and shall be eligible for reappointment upon expiration of their terms.

- (E) Officers.
- (1) The IRB shall elect from its membership a chairperson, vice-chairperson, and secretary to two year terms in October every odd-number year. The IRB may appoint other officers as it deems necessary and may determine their duties, terms, and compensation by IRB resolution and by laws.
 - (2) The IRB chairperson shall preside at IRB meetings, prepared meetings agendas which are subject to approval by the IRB, and shall perform other duties as may be prescribed by IRB bylaws.
 - (3) The IRB vice-chairperson shall perform the duties of the chairperson, in the chairperson's absence.
 - (4) The IRB secretary shall keep IRB meeting minutes, provide timely notice of IRB meetings to all IRB members, and keep on file at all times a complete and current copy of the IRB's resolutions and bylaws. On a quarterly basis, the IRB secretary, with approval from the IRB, shall provide the Legislative Council and the Nation's Chairperson with an updated list of permitted research proposals and any pending proposals.
- (F) Removal. An IRB member may be removed with or without cause by the Nation's chairperson with the concurrence by majority vote of the Legislative Council.
- (G) Resignation. An IRB member may resign at any time by giving written notice to the IRB chairperson and the Nation's chairperson. A resignation shall become effective at the time specified in the written notice or, if not time is specified, on the date of receipt by the Nation's chairperson. Any IRB member who fails to attend three consecutive, properly noticed IRB meetings or who fails to attend six properly noticed IRB meetings in any fiscal year shall, unless excused from attendance by the IRB chairperson, be considered to have resigned. An IRB member who was appointed as an employee or board member of an entity identified in Section 8104(C) shall be considered to have resigned from the IRB if he or she is no longer serving as an employee or board member of that entity.
- (H) Vacancy. The IRB chairperson shall promptly notify the Nation's chairperson concerning any vacancy to be filled. A vacancy shall be filled for the unexpected portion of that term and shall reflect the same category of IRB member as the previously vacated position.

Section 8105 IRB Meetings

- (A) Meetings and Notice. The IRB shall meet to consider a research proposal within 30 days after it is provided to the IRB chairperson with any required applications or other materials. The IRB may conduct additional meetings at the request of the IRB chairperson or by vote of a majority of the IRB. All IRB members will be given five days advance written notice of the meeting date, time, and location.
- (B) Quorum. The presence at a meeting of at least three IRB members shall constitute a quorum of the IRB for the transaction of any official action.
- (C) Actions. The act of a majority of the IRB members present and voting at a meeting with a quorum shall be recorded in writing as a resolution of the IRB and

- shall be considered an official approval or disapproval of any research proposal submitted under this Chapter. An official written record accurately describing all formal actions of the IRB shall be maintained in the form of written minutes.
- (D) Bylaws. The IRB may adopt and amend bylaws consistent with the Chapter and necessary for the orderly conduct of its business.
 - (E) Records. The IRB's minutes and resolutions shall be available for review at all reasonable times by the IRB members, the Nation's chairperson, and members of the Legislative Council.
 - (F) Expenses. The IRB members shall be reimbursed for reasonable expenses such as mileage incurred to attend meetings and performing duties incidental to their positions on the IRB. Subject to the appropriation of funds, the IRB members will be paid a stipend from the Nation's Executive Office's annual budget for attending IRB meetings.
 - (G) Policies. The IRB shall adopt policies and procedures necessary to implement this Chapter, including a destruction of biological samples policy. Specifically, the destruction of biological samples policy shall outline procedures which safeguard and provide for the appropriate disposal of biological samples in a manner respectful of the Nation's culture and traditions.

Section 8106 Information to be Provided

The IRB shall develop a review process which adequately implements the intent of this Chapter and which provides fundamental fairness to each applicant for a research permit. At a minimum, the following information shall be provided by an applicant in support of an application for a permit:

- (1) Description of the overall nature of the research being proposed, including but not limited to the goals and objectives and the types of information that will be sought from individuals or other participation involving individuals including: the donation of specimens; the type of information concerning the culture, religion and customs and practices of the Nation; alternative testing sites or facilities; disposal of specimens and data upon completion of the project; whether secondary use of any retained specimens is contemplated; informed consent regarding saved specimens and future uses; timelines; funding sources; and malpractice coverage of applicant.
- (2) Description of other related research and justification why the research should be done within the Nation's Lands at this time.
- (3) Expected benefits of the proposed research, primary or secondary findings, including immediate and long range benefits to: the science or discipline represented in the research; the sum total of human and scientific knowledge; human subjects or participants; the Nation; Native Americans generally; and society generally.
- (4) Risks associated with or inherent in the research, including risks to the physical or psychological well-being of individual human subjects or 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 are being taken to minimize the risks and the steps that will be taken in the event the research harms participants or others.

- (5) Assurances of confidentiality of data as appropriately applied to individuals and, where necessary, to families, communities, and the Nation itself. The applicant shall provide assurances of confidentiality in writing for the life of the project; indicate how confidentiality will be protected after the project and for how long; indicate where and how data and other materials will be deposited and stored at the completion of the project, and destroyed; and indicate the circumstances in which confidentiality may be breached by legal or contractual obligations of the researcher. The applicant shall provide signed data use, informed consent forms, or other privacy agreements as applicable.
- (6) Information regarding discussions with affected districts and if those districts support, oppose, or raised concerns about the research proposal.
- (7) Acknowledgment by applicant that rights to license and publish material and information produced after permission is granted by the IRB shall be subject to IRB policies regarding publication. The Nation has a right to ownership of the work product created by the research or researcher. Works created for hire and copyrighted works transferred to the Tohono O'odham Nation shall be deemed to be the property of the Tohono O'odham Nation. Any permission to publish must be granted by the IRB prior to publication. The Tohono O'odham Nation reserves all rights not granted, including the right of review prior to publication. The IRB has sole authority to control publication of all research, disclosures, and findings.
- (8) An explanation as to how the principal researcher and co-researcher will participate in authorship of articles, publications, or other dissemination of information.
- (9) Ownership of specimens, control by the individual research participants over the use of their won specimens, and the Nation's control over the current and future use of the specimens must be disclosed and agreed to by the researcher and the IRB prior to a permit being issued.
- (10) Opportunities for the Nation, individual subject communities, and individuals to have the research proposal fully explained to them in O'odham and English. Opportunities for the Nation, communities, and individuals, as appropriate, to receive periodic reports on the progress of the research.
- (11) Program study changes, changes in testing data, changes in methodology, and alternative or unexpected findings must be communicated throughout the project and preapproved, if possible, by the IRB.
- (12) If the study is funded by an public or private sources, the applicant shall provide a full reference of this funding source and explanation of any limits on the confidentiality of research results. If the researcher is currently seeking funding, the researcher shall list all funding agencies for which proposals are being sought. Researchers shall budget funding to cover cultural sensitivity training, to provide adequate resources to cover community education and

outreach efforts as a part of the research, and finally, to rectify any harm to, or exploitation of, Nation's property resulting from the research.

- (13) All researchers, graduate students, and any other people involved in conducting the research will be required to undergo cultural sensitivity training to be provided at the researcher's expense. Cost will be determined based on the scope of the project. The training shall be provided by the Cultural Affairs Office
- (14) 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 researcher plans to do with the recorded information 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.
- (15) The anticipated completion date of the research proposal.

Section 8107 Permit Process

- (A) The IRB shall adopt policies and procedures necessary to implement this Section.
- (B) Research proposals may be submitted to the Office of the Nation's Chairperson or directly to the IRB chairperson.
- (C) The IRB shall review the applicant's research proposal using the criteria enumerated at 45 C.F.R. § 46.111 and Section 8106 of this Chapter.
- (D) The IRB may:
 - (1) Grant full permission without modifications;
 - (2) Grant permission with modifications to the proposal;
 - (3) Deny the proposal; or
 - (4) Withhold a determination until stated date.
- (E) The IRB may revoke a research permit for good cause with written notice to the researcher.
- (F) No IRB member may participate in the initial or continuing review of any research proposal in which the member has a conflict of interest. An IRB member has a conflict of interest when the IRB member or the member's immediate family has personal or financial interest in the research proposal. An IRB member with an actual or potential conflict of interest will promptly disclose the conflict to the other IRB members.
- (G) Decisions by the IRB shall be issued within 60 days of receiving the research proposal, unless a majority of IRB members vote for additional time to consider the request. IRB decisions may not be overruled or reversed, and may not be reviewed by any court.
- (H) The applicant shall remit to the Nation's Treasurer an application fee in the amount of \$50.00 to cover administrative costs associated with review of the

proposal and permitting. The applicant shall include a copy of the administrative fee receipt with the research proposal materials.

- (I) If approved, the permit shall include the timeframe allowed for the researcher to conduct his or her research on the Nation's Lands.

Section 8108 Research Agreements

- (A) An agreement specific to the research shall be negotiated so that studies proceed in a manner that is both culturally sensitive and protects the research participants, materials, and interests of the Nation.
- (B) The IRB, working in collaboration with the Office of Attorney General, shall establish uniform provisions protecting the Nation's interests in accordance with this Chapter that must be included in all research agreements.

Section 8109 Regulation of Biological Samples

Any researcher who seeks to collect, acquire, or analyze any biological samples must agree and abide by the following conditions:

- (1) If the IRB decides to revoke a research permit or any portion thereof for good cause and requests the return of all biological samples, the researcher, and any other parties, must immediately comply.
- (2) Upon completion of the research project, or termination or cancellation of the project at any time prior to completion, the biological samples must be completely and fully returned to the possession of the Nation.
- (3) No biological samples from the study may be released to, or used by, any other researcher, research institution, or any other entity, whether public or private, without the prior and fully-informed written approval of the IRB.
- (4) If the IRB permits any biological samples to be stored in any other location, the researcher shall maintain at all times a complete list thereof. The list shall include a description of the sample or data, source, specific use or purpose of each item, responsible person at the location, and where the item is housed (e.g. in the "gene bank" or on a specific computer), and any relevant time lines with regard to use of, disposition, return, or destruction of the samples or data. The researcher shall provide an updated copy of the list to the IRB whenever changes are made. The updated list shall include identification of changes made since the last copy of the list was provided to the IRB.
- (5) Any situation where biological samples will leave the possession or control of the researcher will require review by and a separate agreement with the IRB and the external party in accordance with this Chapter.
- (6) No entity may seek to patent or use for commercial purposes any biological materials obtained from the Nation or its members, from the Nation's Lands, or under the authority of the Nation. This includes genetic samples, any copies of the original genetic samples, any cell lines containing copies of the original genetic samples, and data derived from these samples.

Section 81010 Enforcement

- (A) No research shall be performed within the jurisdiction of the Nation or otherwise subject to this Chapter unless the researcher has first received review, approval, and a permit from the Nation's IRB. Any violation of this Chapter by any researcher shall be subject to the sanctions provided in this section.
- (B) Any outside agency or researcher conducting research within the jurisdiction of the Nation within a permit or otherwise in violation of this Chapter shall be subject to exclusion from the Nation in accordance with the Nation's laws governing removal and exclusion.
- (C) Whenever it appears that a person has violated, or is violating, or is threatening to violate any provision of this Chapter, the Nation's Attorney General or his or her designee may file an action in the Nation's Judicial Court ("Court") to enforce this Chapter.
- (D) In any action brought for violation of this Chapter, the Court may grant injunctive relief to restrain the person from continuing the violation or threat of violation. The court may order restitution, civil penalties, recovery of research properties and other work products, and such other relief that may be necessary to redress any injury suffered by the Nation, any person, family, organization, or community resulting from the violation.
- (E) The researcher's funding source may be enjoined from any further research activities and the Nation may report the researcher and his or her funding source's actions to other tribes and appropriate organizations and federal, state, and local agencies.
- (F) Any member of the public may provide comments, concerns, or questions to an IRB member regarding any researcher, proposal, or research on the Nation. Any alleged violation of this Chapter may be reported to an IRB member.

Section 81011 Notice to Other Persons or Institutions

If a petition is filed pursuant to this Chapter, written notice shall be given to the researcher's sponsoring organization and/or funding source. If a judgment is entered against the researcher subject to the Chapter, written notice of the judgment shall be given to the researcher's sponsoring organization and/or funding source as well as to the professional organization or licensing agency of the researcher, the National Institutes of Health, the Nation's Chairperson, and the Legislative Council.

APPENDIX K

PAPAGO ARCHAEOLOGICAL RESOURCES PROTECTION ORDINANCE – 1984

ORDINANCE OF THE PAPAGO TRIBAL COUNCIL
(ARCHAEOLOGICAL RESOURCES PROTECTION ORDINANCE)

Statement of Purpose: An ordinance for the protection and preservation of archaeological resources historically associated with traditional or sacred values and beliefs important to the O’odham, and of the physical site, location or context in which archeological resources are found.

BE IT ENACTED by the Council of the Papago Tribe of the Papago Reservation as follows:

Section 1 Short Title

This Ordinance may be cited at the Archaeological Resources Protection Ordinance of the Papago Tribe.

Section 2 Interpretation

This ordinance shall be deemed an exercise of the police power of the Papago Tribe for the protection of the public welfare, health, peace and morals of the people of the Papago Reservation and all provisions of this ordinance shall be liberally construed for the accomplishment of this purpose.

Section 3 Definitions

In this ordinance, unless the context otherwise requires:

- (A) “Archaeological resource” means any material remains of past human life or activities which are of archaeological interest and the physical site, location or context in which they are found. An archaeological object, site or other material remain is of archaeological interest if, through its scientific study and analysis, information or knowledge can be obtained concerning human life or activities. Non-fossilized or fossilized paleontological specimens and treasure-trove or abandoned property as defined in the escheat Ordinance of the Papago Tribe, or any portion or piece thereof, shall not be considered archaeological resources under this ordinance unless found in an archaeological context.
- (B) “Material remains of past human life or activities” means physical evidence of human habitation, occupation, use or activity, including, but not limited to:
 - (1) Surface or subsurface structures, shelters, facilities or features (including, but not limited to, domestic structures, storage

- structures, cooking structures, ceremonial structures, human-made mounds, earthworks, canals, reservoirs, horticultural/agricultural gardens or fields, rock alignments, cairns, trail, borrow pits, cooking pits, refuse pits, middens, graves, hearths, kilns post molds);
- (2) Surface or subsurface artifact concentrations or scatters and the three dimensional relationship of artifacts to each other in the ground.
 - (3) Whole or fragmentary tools, implements, containers, weapons and weapon projectiles, clothing and ornaments (including, but not limited to, pottery and other ceramics, basketry, cordage, weavings, coins, bullets, bottles and other glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers, pigments);
 - (4) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;
 - (5) Organic waste (including, but not limited to vegetal and animal remains, corrolites);
 - (6) Human skeletal or mummified remains (including, but not limited to, bone, flesh, teeth, burials, graves, cremations);
 - (7) Rock carvings, rock paintings, intaglios and other works of artistic or symbolic representation;
 - (8) Rockshelters and caves, location or context in which any of the foregoing are situated;
 - (9) The physical site, location or context in which any of the foregoing are situated;
 - (10) Any portion or piece of any of the foregoing.
- (C) “Chairman” means the Chairman of the Papago Council who is hereby designated as the official to receive notification of any archaeological permit applications or of any archaeological or environmental impact or activities required to be given to the Papago Tribe pursuant to Federal Acts or regulations promulgated pursuant thereto.
- (D) “Federal Act” means:
- (1) The Act of June 8, 1906 (“Antiquities Act of 1906”; 16 U.S.C. 432, 433; 43 CFR Part 3);
 - (2) The Act of June 27, 1960 (“Reservoir Salvage Act of 1960”; 16 USC 469) as amended by the Act of May 6, 1974 (“Archaeological and Historic Preservation Act of 1974”; 16 U.S.C. 469);
 - (3) The Act of October 15, 1966, as amended (“National Historic Preservation Act of 1966”; 16 U.S.C. 470 a-t; 36 CFR Part 800);
 - (4) American Indian Religious Freedom Act of 1973 (42 U.S.C. 1996);
 - (5) The Department of Transportation Act of 1970 (49 U.S.C. 1653);
 - (6) The National Environmental Policy Act of 1969 (42 U.S.C. 4321);

- (7) Any other act enacted by Congress for the protection of archaeological, environmental or historic sites or resources on Indian lands or affecting Indian tribes.
- (E) "Person" means any individual, corporation, partnership, trust, institution, association, or any other entity.

Section 4 Prohibited Acts

- (A) No person, other than a member of the Papago Tribe, may conduct any archaeological survey or study on the Papago Reservation, and no person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on the Papago reservation, unless such activity is pursuant to a permit issued under Section 7 or is exempted by Section 5 (B).
- (B) No person may sell, transfer, transport or receive an archaeological resource if such resource was excavated or removed from the Papago Reservation in violation of this ordinance or of any applicable Federal Act, or of any permit issued pursuant thereto.

Section 5 Permit, Exempts

- (A) Permits are required for persons wishing to conduct excavations and/or removal or archaeological resources from the Papago Reservation, and to carry out activities associated with such excavation and/or removal, and are issued by the Chairman to qualified persons, subject to appropriate terms and conditions. The Papago Tribe shall have absolute discretion in the issuance of a permit.
- (B) Exceptions:
 - (1) No permit shall be required for archaeological surveys or studies which do not involve the collection or disturbance of archaeological resources; provided, that persons who are not members of the Papago Tribe shall first receive the written consent to conduct such surveys or studies from the District Council in which the lands subject to the proposed surveys or studies are located; and provided further, that, if archaeological resources are discovered, such resources shall be left undisturbed and a permit shall be obtained in accordance with the provisions of Section 7 before resuming such surveys or studies.
 - (2) No permit shall be required for the collection or recovery by an employees and agents of the Papago Tribe of treasure-trove or abandoned property as defined in the Escheat Ordinance of the Papago Tribe

- (3) Employees and agents of the Papago Tribe carrying out their official duties associated with the management of archaeological resources shall be deemed to be operating under a valid permit.
- (4) No permit or other consent shall be required for employees and agents of the Federal government carrying out official duties associated with the management of archaeological resources.
- (5) No permit shall be required to carry out any archaeological activity which was authorized by a Federal permit issued under a Federal Act before the enactment of this ordinance.
- (C) Activities relating to archaeological resources on the Papago Reservation may be subject to Federal Acts and permits.
- (D) A permit issued under this ordinance shall constitute consent on behalf of the Tribe to the issuance of permits for the excavation or removal of archaeological resources located on the Papago Reservation required by any applicable Federal Act.

Section 6 Application for Permits

- (A) Any person may file an application with the Chairman for a permit to excavate and/or remove archaeological resources from the Papago Reservation and to carry out activities associated with such excavation or removal.
- (B) Each applicant for a permit shall include:
 - (1) The exact character of the work proposed including how and why it is proposed to be conducted, proposed time of performance, location maps, and proposed outlet for public written dissemination of the results.
 - (2) The name and address of the individual(s) proposed to be responsible for conducting the work, his/her institutional affiliation, if any, and evidence of his/her education, training, and experience.
 - (3) The name and address of the individual(s), if different from the individual(s) named in paragraph (B) (2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.
 - (4) Evidence of the applicant's capability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.
 - (5) Where the applicant is for the excavation and/or removal of archaeological resources, the name of the university, museum or other scientific or educational institution in which the applicant proposes to store all collections, records, data, photographs, and other documents derived from the proposed work in the event the Papago Tribe does not wish to take custody of or otherwise dispose of the archaeological resources. Applicant shall submit

written certification by an authorized official of the institution of its willingness to curate the collections, records, data, photographs and other documents derived from the proposed work.

- (6) The Chairman may require additional information to be included in the application for permit and shall so informed the applicant.

Section 7 Issuance of Permit

The Chairman may, after consultation with the District Council of the District(s) in which the proposed work is to take place, issue a permit, upon determining that:

- (A) The applicant is appropriately qualified, as evidenced by training, education and/or experience, and possesses demonstrable competence in theoretical and methodological design, and in collecting, handling, analyzing, evaluating and reporting archaeological data, relative to the type and scope of work proposed.
- (B) The proposed work will benefit the Tribe by furthering archaeological knowledge in the public interest.
- (C) The proposed work, including time, scope, location, and purpose is not inconsistent with any management plan or policy of the Tribe or District.
- (D) The required consent has been obtained from Indian landowners of allotted land.
- (E) Evidence is submitted that the university, museum or other institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records, and that such university, museum or institution acknowledges the Tribe's ownership of the archaeological resources and associated records.
- (F) The applicant has certified that a Tribal representative shall inspect all archaeological resources prior to removal from the Papago Reservation, and that, not later than the date of the final report is submitted to the Chairman, the following will be delivered to the Papago Tribe or to the appropriate official of the approved university, museum or other institution named in the permit, namely, all artifacts, samples, collections, records, data, photographs, and other documents resulting form the work conducted under the requested permit.
- (G) The applicant has certified that, to the greatest extent possible, the applicant will employ qualified members of the Papago Tribe to do the work proposed under the requested permit.

Section 8. Terms and Conditions of Permits

- (A) All permits issued shall specify the nature of work permitted, including time, duration, location and purpose, the names of the individual(s) responsible for conducting the work and of the university, museum or other institution, if any, in which any collected material or data shall be deposited.
- (B) To the extent possible, excavation work shall be open to the public, including inspection of the work in progress, in cooperation with local schools and educational programs.
- (C) The Chairman may specify terms and conditions as he deems necessary to protect the public interest and can limit activities incidental to work authorized under the permit.
- (D) The permittee shall not be released from the requirements of a permit until all provisions of this ordinance have been complied with, and all terms and conditions of the permit have been satisfied, whether or not the permit has expired.
- (E) Initiation of work or other activities by the permittee under the authority of the permit will constitute acceptance of the terms and conditions of the permit.
- (F) The permittee shall provide the Chairman with a complete inventory of all archaeological resources found and a detailed report of all the activities of the permittee.

Section 9 Suspension, Revocation and Termination of Permits

- (A) The Chairman may suspend a permit upon determining that the permittee has failed to meet the terms and conditions of the permit or has violated any provision of this ordinance. The suspension shall remain in effect until such time as permittee corrects the situation, as determined by the Chairman.
- (B) The Chairman may revoke a permit if the permittee fails to correct the situation which led to the suspension or upon assessment of a civil penalty against permittee under Section 13.
- (C) The Papago Tribe reserves the right to terminate a permit, at any time for program purposes, without liability to the Tribe, its agents or employees.

Section 10 Appeals Relating to Permits

Any person may appeal permit issuance, denial of permit issuance, suspension, revocation, termination, and terms and conditions of permits by written petition addressed to the Papago Council which shall be heard by the council within ninety days of service thereof upon the Chairman.

Section 11 Custody and Ownership of Resources

- (A) Archaeological resources excavated or removed from the Papago Reservation remain the property of the Papago Tribe, and permission to remove the resources shall not imply transfer of ownership.
- (B) The Chairman may promulgate regulations establishing procedures and guidelines for the exchange of archaeological resources among suitable universities, museums or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained

Section 12 Disposition of Human Remains

- (A) The Papago Tribe reserves the right to determine the method and place of disposition of human remains in accordance with religious or traditional practices.
- (B) Whenever human remains (including, but not limited to skeletal or mummified remains, bone, flesh, teeth, burials, burial urns, graves or cremations) are discovered in the course of permitted activity, the permittee shall take the following steps:
 - (1) The permittee shall immediately notify the Chairman and shall not further uncover or disturb the human remains, but shall do everything reasonably necessary to safeguard the remains in their existing condition.
 - (2) The Chairman shall notify the District Council of the District in which the remains were discovered which may consult with an appropriate medicine man about the ultimate disposition of the remains.

Other relief as is necessary and proper for the enforcement of this ordinance, including, but not limited to, the impoundment of archaeological resources, vehicles and equipment, and injunctive relief against or involved in violations of this ordinance or in violations of conditions of permits issued under this ordinance.

- (B) All actions for forfeiture of impoundment under this ordinance shall be considered in rem, against the property only, and not against the person.

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