

RESEARCH ORDINANCE

Siletz Tribal Code § 9.100

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Original Date: December 16, 2000
Subject: Research Ordinance

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§ 9.100 POLICY

The Confederated Tribes of Siletz Indians (Tribe) establishes this ordinance to ensure that all persons within the jurisdiction of the Tribe are free from unreasonably harmful, intrusive, ill-conceived, or otherwise offensive research and investigation procedures. The Tribe also establishes this ordinance to develop and advance its own research agenda and ensure appropriate Tribal and community participation in the design, performance and evaluation of all research projects the Tribe permits. This ordinance shall be liberally interpreted to protect collective Tribal interests and individual members' health and well being.

§ 9.101 SCOPE AND NATURE

- (a) This ordinance is civil in nature and hereby amends all existing tribal legislation inconsistent with it.
- (b) This ordinance shall apply on tribal lands and outside tribal lands to the full extent that applicable law permits.
- (c) This ordinance shall apply to all persons subject to the civil jurisdiction of the Siletz Tribe under Siletz Tribal Court Rules and Procedures, STC § 3.003(a)(b).
- (d) The undertaking of research activities affecting the Tribe and/or Tribal members shall

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be considered per se conduct which affects the political integrity, economic security, and/or the health or welfare of the Tribe and its members.

(e) Any person undertaking research activities directly affecting the Tribe and/or Tribal members shall be deemed to have consented to the legislative and regulatory jurisdiction of the Tribal Council and the adjudicatory jurisdiction of the Tribal Court.

§ 9.102 DEFINITIONS

(a) "Project" includes any type of study, survey, or research project.

(b) "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. For the purpose of this ordinance, research include:

- (1) Basic and clinical research;
- (2) Behavioral studies;
- (3) Anthropological, archaeological and other social science studies;
- (4) Educational studies;
- (5) Medical, genetic, and epidemiological studies;
- (6) Biological, environmental, and natural resource studies; and
- (7) Feasibility and other studies designed to evaluate or test programmatic techniques or to develop basic data in all phases of public administration.

(c) "Researcher" means any individual, corporation, agency, or institution which proposes to, or actually secures a permit to, undertake any type of research project on tribal lands.

(d) "Tribal Intellectual Property" means the cultural information, knowledge, uses, and practices unique to the tribes and bands of the Confederated Tribes of Siletz Indians. Tribal Intellectual Property includes, but is not limited to, the following:

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- (1) Knowledge of remembered histories or traditions;
- (2) Details of cultural landscapes and particularly sites of cultural or historical significance;
- (3) Records of contemporary cultural and historical significance;
- (4) Knowledge of the sacred, including but not limited to images, sounds, songs, dances, stories, practices, or material;
- (5) Traditional Ecological Knowledge specific to Tribal Lands and historical territories, including the relationships between plants, animals, natural phenomena, landscapes and timing of events that are used for lifeways, including but not limited to hunting, fishing, trapping, gathering, agriculture, and forestry; and
- (6) Tissues, cells, biogenetic molecules including DNA, RNA and proteins, of tribal members and tribal ancestors, in addition to genetic and other information derived therefrom.

(e) "Tribal Lands" means any land to which title is held by the United States in trust for the Tribe; lands of any Tribal member or group of Tribal members which is subject to a restriction by the United States against alienation; and any land owned by the Tribe.

§ 9.103 PERMIT REQUIRED

(a) Any Researcher wishing to undertake any type of project on Tribal lands or directly affecting the Tribe, Tribal lands, or Tribal members must first obtain a permit approved by the Tribal Council that authorizes the project. This requirement extends to research being conducted or sponsored at the request of any Tribal department, entity, organization, member or governmental branch, and includes independent Researchers and Researchers employed by the Tribe, any State, or the federal government.

(b) It shall be unlawful for any person to conduct research unless the Researcher has obtained a permit. Failure to obtain a permit or to abide by its terms shall result in the penalties and sanctions specified in this ordinance.

§ 9.104 PROJECTS NOT REQUIRED TO OBTAIN PERMIT OR CONTRACT

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(a) Minor research projects are not required to complete a Research Permit application or execute a Research Contract and Permit. For purposes of this Ordinance, minor projects include those research projects that will not invade Tribal members' privacy and that will not be published or made available to the general public. Tribal staff members contacted by a potential researcher shall consult with the Chief Executive Officer to determine whether the research project is minor and whether a waiver described in subsection (b) should be required. If a minor research project later loses its character as minor, the Researcher must complete an application for a Research Permit.

(b) Researchers conducting minor research projects must execute a waiver if, in the opinion of the Chief Executive Officer, such a waiver is necessary. Researchers agree by executing the waiver that Tribal members' privacy will not be invaded and that the research project will not be published or made available to the general public without written permission from the Tribe. The Researcher may proceed with the research and Tribal staff may provide answers prior to actual receipt of an executed waiver so long as the Researcher agrees orally that he or she will execute the waiver. If the Researcher is a college or university student, the student must attach the waiver to the rear of the document when turning it in or otherwise take actions that will prevent the publication of the research without the student's knowledge or Tribal permission.

§ 9.105 CLEARINGHOUSE ESTABLISHED

(a) The Tribal Council hereby designates the Tribal Administration Clearinghouse process (Clearinghouse) to facilitate the Tribe's research review process. The Planning Department is authorized to lead the Clearinghouse process.

(b) The Clearinghouse may call upon and bring together any Tribal staff member, or other person whose expertise is necessary, including outside consultants, to examine and comment on all proposals that involve any research affecting the Tribe. The Clearinghouse members shall consult with Tribal Administration to identify funding sources in the event the Tribe must hire any outside consultant to examine a research proposal. The Tribe may require the Researcher to pay, or to contribute to, a consultant's fees and expenses incurred while participating in the Clearinghouse project.

§ 9.106 OBTAINING A PERMIT; CLEARINGHOUSE RESEARCH REVIEW PROCESS

(a) The Planning Department shall develop and revise application forms (and any

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instructions or information regarding the application forms), which prospective Researchers must complete.

(b) The Clearinghouse shall examine all research proposals, and will make recommendations to Tribal Council regarding the proposed research project and any changes or conditions with which a project must comply. If a Researcher has not already been working with a Tribal department, the Clearinghouse will recommend a lead Tribal department to act as continuing liaison with the Researcher. The Clearinghouse may recommend review measures in addition to those required under STC § 9.108 herein.

(c) The designated liaison department shall present the proposal and the Clearinghouse's recommendations to Tribal Council. The Researcher shall appear at the Tribal Council meeting.

§ 9.107 DECISION ON PROPOSAL

The Tribal Council shall be the final decision-making body of all proposals. The Council shall review the proposal and Clearinghouse recommendations to determine if the project is potentially beneficial and will not cause obvious or substantial harm to the Tribal environment, community, individuals or culture, and ensures the confidentiality of sensitive information. If the Tribal Council approves the proposal, it shall, by resolution, specifically accept or reject each of the Clearinghouse's recommendations for inclusion in the Research Contract and Permit, and add any conditions deemed appropriate. The resolution shall direct the liaison Tribal department to work with the Researcher and assist the Researcher to prepare a Research Contract and Permit, and shall authorize execution of the Research Contract and issuance of the permit. Any changes in the project desired by the Researcher after approval of the project shall be submitted to the Clearinghouse, which shall make recommendations to the Council for approval and inclusion in the Research Contract and Permit.

§ 9.108 RESEARCH CONTRACT AND PERMIT

(a) Upon approval of a proposal by the Tribal Council, a Research Contract shall be executed which shall bind the Researcher to the conditions imposed and contain the obligations and responsibilities of the parties.

(b) The Council may require the Researcher to purchase a performance and/or liability bond before approving any contract.

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§ 9.109 REPORTING AND REVIEW REQUIREMENTS

Researchers shall provide for Tribal oversight of projects and report regularly to the Tribal Council and liaison department of project progress and results.

§ 9.110 RESERVATIONS AND TERMINATION OF PROJECTS

- (a) The Tribe reserves the right to:
- (1) Retain sole ownership of all data, documents, correspondence, reports, specimens, or other information or items produced, generated or gathered by the Researcher, unless an express exception is made in the Research Contract.
 - (2) Withdraw consent to use or release information and/or prevent the publication of data that is unauthorized, insensitive, misrepresents, or stereotypes Tribal people or will harm the health, safety or welfare of the Tribe or the Tribal environment.
 - (3) Deny Researchers the opportunity to conduct research in any Tribal community within the Tribe's jurisdiction and to deny access to any segment of the Tribal population. Approval of one project, or of one Researcher or group of Researchers, does not preclude the Tribe from denying access to other Researchers or from denying future access to the Tribe, Tribal lands, or Tribal members.
 - (4) Withdraw approval for projects for cause. On no less than ten (10) days notice, the Tribal Council shall inform the Researcher in writing that it will withdraw approval of a project for cause and give an explanation of the cause. The following constitutes cause:
 - (A) The Tribe has received information that the project or release of data is or will be harmful to individuals of the Tribal community, and that harm cannot be otherwise avoided; or
 - (B) The Researcher has not complied with any provision of the

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Research Permit.

Within the ten day period between notice and withdrawal of project approval, the Tribe's authorized representative and the Researcher must attempt to negotiate such mutually acceptable protections as are necessary to avoid the anticipated harm. The Tribe shall not unreasonably withhold acceptance of proposed additional protections. In the event that the parties cannot agree, the Tribe may immediately withdraw its approval of the project.

- (5) The Researcher may appeal to the Tribal Court to review the Council decision if the Council has clearly violated the agreement with the Researcher and the Researcher has incurred expenses carrying out their obligations under the agreement.
- (6) If the Tribe withdraws approval of a research project, the Researcher shall return all information, data, raw materials, and specimens to the Tribe.
- (7) A Researcher shall not use work product generated under the Research Contract or Permit for any other purpose without the express written consent of the Council.

§ 9.111 ENFORCEMENT

- (a) This ordinance may be enforced as follows:
 - (1) Any person conducting research on Tribal lands without a permit or otherwise in violation of this ordinance may be escorted off Tribal land by Tribal police or other law enforcement officer.
 - (2) Whenever it appears that a Researcher has violated, or is violating, or is threatening to violate this ordinance, the Tribal Council or its representative may file a civil suit for enforcement of this ordinance in the Tribal Court or other court with jurisdiction.
 - (3) Whenever it appears that any person or entity other than an enrolled member of the Confederated Tribes of Siletz Indians, whether such person or entity is operating under a research permit or not, has used Tribal Intellectual Property for personal gain or made Tribal Intellectual Property public without the explicit approval of the Tribal Council, the Tribal Council or its representative may file a civil suit for enforcement of this

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ordinance in the Tribal Court or other court with jurisdiction.

- (4) In any action brought for violation of this ordinance, the Tribal Court may grant injunctive relief, order the preservation and return of all property including data, order forfeiture of any performance bond, order restitution, order civil penalties not to exceed five thousand dollars (\$5,000) and grant such other relief that may be necessary to redress any injury suffered by any person resulting from the violation.

(b) Upon a Tribal Court judgment that a Researcher violated this ordinance, Tribal Council may exclude the Researcher and any institution affiliated with the Researcher from doing research, or from doing business, receiving any charitable donations, or any other beneficial affiliation with the Tribe or any Tribal body. The Tribe may also give notice of the judgment to the Researcher's sponsoring organization and/or funding source, and any applicable professional organization or licensing agency.