

## **Background**

### **Goals of this document:**

- We believe that with the proper guidance, federal agencies and their vendors can better engage in nation-to-nation relationships with tribal nations. Federal agencies can be held accountable to various laws and memorandums, and respect tribal sovereignty by increasing opt-in opportunities for informal consultation and having processes in place to educate on data sovereignty.
- Informal consultation document outlines a process addressing some of the a number of challenges brought up in research (e.g. data sovereignty, IRB, compensation, cultural sensitivity, acknowledgment of nation to nation relationship).
- This document also provides relevant definitions, treaties, memorandums to provide additional context to better education for people engaging in such consultations.

### **Ideas for shape of final document:**

- We could see this on a website in the future, but we didn't have time to prototype or build that all out in Phase 2. We have a lot of useful information that we believe is relevant—definitions, laws/treaties, FAQs, and helpful links—that can make it into the final deliverable.
- [Website how-to guide](#)

### **Where should this final document live for the biggest impact?**

- BIA?
- OMB?
- Standalone website managed by TTS?
- USA.gov?

### **From what we heard from talking to Federal employees trying to do consultation with American Indian and/or Alaska Native people** (Based off of [workshop with GSA tribal consultation team and USA.gov](#) and [research findings](#)):

- Where to start
- How to gain context and learn history to set up equitable team structures/frameworks
- How to respect sovereignty and be culturally sensitive
- Who to contact / How to do outreach/participant “recruiting”
- How to build relationships with short timelines
- How to be non-extractive in data collecting

**Who can work on this:** 10x, Tribal Consultation team, and consultants from AI/AN communities

**Point of contact(s) for this document:** Austin Hernandez (author, lead), Ben Peterson (author)

**Initial intended audience(s):**

- Primary: Federal employees and their vendors/contractors doing user research, human-centered design, and/or tribal consultation
- UX practitioners
- Publicly available

**Status [date]:**

- 4/15/2021: Initiation (Austin)
- 5/2021 - Work in Progress 10x Phase 2 artifact
- *GOAL XX/2021: Picked up by 10x Phase 3 team*
- *GOAL XX/2021: Contributions by AI/AN community and findings from Phase 3 pilot*
- *GOAL XX/2021: V1 living document posted publicly and available for comment*

**How to use:** Please make edits below

## Definitions:

Gaining a shared vocabulary is important as it relates to official terminology with distinct meaning in the context of Federal and Tribal relations. Some of these identifiers can cause offense to some and be a preference of others. Generally speaking, call people by the name they use to introduce themselves, and ask what terms people like to be called. It is something that should be discussed individually and be asked on a need to know basis.

**American Indians and Alaska Natives (AI/AN):** Is a Federal government term which specifically refers to people eligible for benefits and services funded or directly provided by the Bureau of Indian Affairs (BIA). This term very specifically refers to people who are enrolled in Federally recognized tribes. These terms in and of themselves are inherently problematic.

**Alaska Native:** Includes all Indigenous people in Alaska and is used in place of the word “Indian.” [NCAI]

**American Indian:** A person from “lower 48” or the 35 “states”

**Bureau of Indian Affairs (BIA):** It is

**Blood quantum:** “Blood quantum was initially a system that the federal government placed onto tribes in an effort to limit their citizenship. Many Native nations, including the Navajo Nation and the Turtle Mountain Band of Chippewa Indians, still use it as part of their citizenship requirements.” because of this, people who are Native American may not be recognized and therefore do not fit under “AI/AN”. [\[NPR\]](#)

**Data sovereignty:** Give back the data! Protect the data! Extremely important! [\[https://usindigenousdata.org\]](https://usindigenousdata.org)

**Decolonization:** Relates specifically to land repatriation, but has been often used as a metaphor... [\[paper\]](#)

**Design research:**

**Equity Centered Design:**

**First Nations:** The First Nations are the largest group of Canadian indigenous peoples, distinct from the Inuit and Métis. There are 634 recognized First Nations governments or bands spread across Canada. [\[Wikipedia\]](#)

**Hawaiians Native Hawaiians:** The Indigenous Polynesian people of the Hawaiian Islands. The traditional name of the Hawaiian people is Kānaka Maoli. [\[Wikipedia\]](#)

**Human-Centered Design:** *mejor que nada.*

**Indian country and Indian Country:** is the term for the area over which the federal government and tribal nations exercise primary jurisdiction. It is a term with a distinct meaning in legal and policy contexts. “Indian Country” (both words capitalized) is a broader term used to refer more generally to tribal governments, Native communities, cultures, and peoples. [\[NCAI\]](#)

**Indigenous sovereignty:** Is what is referred to as a term of art. It is distinguishable from Tribal Sovereignty in that it is not a nation-state recognition of inherent sovereignty under nation-state dominion. Rather, it arises from Indigenous Traditional Knowledge, belonging to each Indigenous nation, tribe, first nation, community, etc. It consists of spiritual ways, culture, language, social and legal systems, political structures, and inherent relationships with lands, waters and all upon them. Indigenous sovereignty

exists regardless of what the nation-state does or does not do. It continues as long as the People that are a part of it continue.

Efforts to destroy our foods is an attack of our inherent food sovereignty which is connected to our respective spiritual ways, culture, language, social and legal systems, political structures, and inherent relationships with lands, waters and all upon them.

Efforts to engage in destructive actions like fossil fuel extraction, fossil fuel pipeline infrastructures crossing across Indigenous territories, lands and waterways, uranium mining and other mining, attack our traditional ecological knowledge which is connected to our respective spiritual ways, culture, language, social and legal systems, political structures, and inherent relationships with lands, waters and all upon them.

Indigenous Sovereignty links Indigenous Environmental Justice; anti-racism; Indigenous Just Transition; social equity and justice; opposition to the commodification and financialization of nature (and carbon specifically through carbon trading, carbon pricing, carbon taxing, polluter “pays”); the Rights of Mother Earth; desecration of sacred sites; destruction and assaults on lands and waters; and protecting and nurturing tribal sovereignty. [[source](#)]

**Native Americans:** All American Indian people are Native American, not all Native people are AI/AN.

**Pre-consultational activities funds:** Learn more here

**State-recognized tribe:** The Federal government makes it very difficult to create a Federally recognized tribe and enroll ... Tribes that are state recognized now may receive Federally recognition tomorrow. The difference between Federal and state is purely legality around rigid requirements, it does not determine the legitimacy and importance of the Tribe.

**Research:** The term research has a heavy connotation. has a very specific meaning and context for different people. “Doing research on” or “on behalf of” a community is something that you should avoid. Instead, do research with.

**Indian Reservation:** not all AI/AN live here

**Tribal Consultations:** A formal process

**Tribal Historic Preservation Officer (THPO):** [[source](#)]

**Trust Responsibility:** The Federal Indian trust responsibility is a legal obligation under which the United States “has charged itself with moral obligations of the highest responsibility and trust” toward Indian tribes (*Seminole Nation v. United States*, 1942). This obligation was first discussed by Chief Justice John Marshall in *Cherokee Nation v. Georgia* (1831). Over the years, the trust doctrine has been at the center of numerous other Supreme Court cases, thus making it one of the most important principles in federal Indian law.

The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes. [[BIA FAQ](#)]

**Tribal sovereignty:** “Tribal Sovereignty” refers to the legal recognition in the United States of America law of the inherent sovereignty of American Indian Nations. The law applied to American Indians by the US government is called Federal Indian Law. Although undermined by various Acts, legal decisions, and policies, it still stands to this day. Indian reservations are recognized as what can be termed “nations within.” Each has its own government and sovereign powers to make laws, tax, etc. and most also have their own tribal justice system, also based upon their inherent powers. As a result of this status, many programs of a general nature to states and their subdivisions do not apply to Indian nations unless specifically mentioned or for which there is specific legislation directed toward Indian nations. When issues like healthcare, housing, and clean water, for example are brought up in a multicultural, marginalized community context, the solutions offered will only apply to Indian nations if there are specific provisions for Indian nations.

It is important to understand that tribal sovereignty is not delegated from the US government. Treaties do not create tribal sovereignty. Treaties are an affirmation between Indian nations and nation-states. They are not contracts executed solely under nation-state laws and frameworks. When we speak of treaty rights, we are not saying our rights come from the relevant treaty, but rather, that the relevant treaty is a mutual recognition of rights that already existed and continue to exist under the terms of the treaty.

There are at present a complex set of laws and legal decisions that limit tribal sovereignty, but do not eliminate it. Some of the key laws and policies include Treaty making; the recognition of inherent sovereignty; Plenary Power and Political Question doctrine; the Dawes Allotment Act; The Indian Reorganization Act; Termination Policy inclusive of Public Law 280 and Relocation; the Indian Civil Rights Act; The Alaska Native Claims Settlement Act; The Self Determination Act; the Oliphant decision; and the Montana decision. Each of this merit their own definitions, but looked at collectively, are efforts to fully assimilate Indian nations and transform them into corporate and municipal entities under state jurisdiction and control. [\[source\]](#)

**Unrecognized:** Call out going through BIA to prove your “blood”!

**Urban Indigenous Communities:** Important to note history. Important to note various locations. Important to note the difference in reservation protections.

**User Research** is used in user experience design to refer to a variety of methods to collect evidence to inform design decisions. These methods include things like cognitive walkthroughs, usability testing, contextual interviews, card sorts, and surveys. User research is most effective when conducted with people who will be impacted by policies, services, and products. The people impacted are often members of the public. The term “research” can create obstacles to gaining alignment with partners in two ways:

1. People sometimes interpret “research” to always require statistical significance, i.e. quantity of input to attempt to prove something is true, rather than a method to get insights on people’s needs, motivations, and mental models.
2. Federal research and data collection with AI/AN tribes has often resulted in loss of autonomy, loss of privacy, misuse of bodily specimens and religious items, and other ethical violations, resulting in a lack of trust in agencies interested in conducting research with tribe members.

“Research” is a correct term to use in relation to the methods described above. It involves human subjects, and thus is subject to Institutional Review Board approval, as described in [HHS CFR 45 part 46](#). Nevertheless, it may be helpful to use specific method terms, such as “user interviews,” “cognitive walkthroughs,” and “prototype testing,” more frequently than the overarching term “user research.”

## Related laws and treaties:

- **[Indian Self-Determination and Education Assistance Act \(ISDEAA\) of 1975 \(Public Law 93-638\)](#)**: This law recognizes that American Indian tribes have an inherent status as sovereign nations, which is distinguished by their relationship with the federal government and this law marked a distinct change in federal policy toward Native American tribes and tribal people. This self-governance policy has been so successful that over 50% of all federal Indian programs are carried out by tribes rather than federal agencies [\[source\]](#)
- **National Historic Preservation Act 106:**  
[\[https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm\]](https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm)
- **477:** [\[source\]](#)  
[\[https://www.acf.hhs.gov/ofa/programs/tribal/public-law-102-477-program\]](https://www.acf.hhs.gov/ofa/programs/tribal/public-law-102-477-program)
- **UNDRIP:**  
[\[https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf\]](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)
  - **Tribal Implementation Toolkit:** Project to Implement the United Nations Declaration on the Rights of Indigenous Peoples  
[\[https://un-declaration.narf.org/wp-content/uploads/Tribal-Implementation-Toolkit-Digital-Edition.pdf\]](https://un-declaration.narf.org/wp-content/uploads/Tribal-Implementation-Toolkit-Digital-Edition.pdf)